

# 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, some aspects of transportation (rail, moving companies, limos, shared-ride carriers) and water/sewage, and limited aspects of communications. The CPUC 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 CPUC 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 with a mandate to balance the public interest—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 “used and useful” investments.

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). The Commission also 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 when evidence-taking and findings of fact are needed. In general, the CPUC ALJs preside over hearings and forward “proposed decisions” to the Commission for all final decisions. At one time, the CPUC decisions were solely reviewable by the California Supreme Court on a discretionary basis, but Public Utilities Code section 1756 permits courts of appeal to entertain challenges to most CPUC decisions. Still, judicial review remains discretionary, and most petitions for review are not entertained. 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, an 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.”

Prior to this Update, the Office of Safety Advocate (OSA) was the CPUC’s newest division, created by [SB 62 \(Hill\) \(Chapter 806, Statutes 2016\)](#). OSA’s purpose is to “advocate for the continuous, cost-effective improvement of the safety management and safety performance of public utilities.” Under SB 62, OSA’s sunset date is set for January 1, 2020. To extend OSA’s sunset date to January 1, 2025, the California state legislature enrolled [SB 199 \(Hill\)](#) on September 13, 2019. However, Governor Newsom vetoed SB 199 on October 12, 2019. According to the Governor’s [veto message](#), changes made to the CPUC since SB 62 passed in 2016 have rendered OSA’s activities duplicative. Although OSA is scheduled to sunset at the start of 2020, other departments within the CPUC will continue to execute OSA’s duties.

Pursuant to [AB 1054 \(Holden\) \(Chapter 79, Statutes of 2019\)](#), the California Wildfire Safety Advisory Board (CWSAB) is now the CPUC’s newest division. CWSAB’s purpose is to advise the Wildfire Safety Division, established pursuant to Section 326 of the Public Utilities Code in response to increased risk of catastrophic wildfires (see MAJOR PROJECTS).

The five CPUC Commissioners each hold office for staggered six-year terms. Current commissioners include President Marybel Batjer, Commissioners Liane M.

Randolph, Clifford Rechtschaffen, Martha Guzman Aceves, and Genevieve Shiroma. The California Senate confirmed the January 2019 appointment of Genevieve Shiroma on July 9, 2019. Alice Stebbins is the Commission’s Executive Director.

Governor Newsom appointed President Batjer on July 12, 2019, after CPUC’s previous president, Michael Picker, announced his resignation on May 30, 2019. Former Governor Brown had appointed Mr. Picker in 2014. President Batjer’s oath of office ceremony took place on August 16, 2019.

## **MAJOR PROJECTS**

### **Internal CPUC Policies**

#### **CPUC Establishes a Framework and Processes for Assessing the Affordability of Utility Service (R.18-07-006)**

On July 30, 2019, the CPUC issued a ruling [noticing](#) a Workshop on Staff Proposal regarding the CPUC’s [Order Instituting Rulemaking](#) (OIR) to establish a framework to assess the affordability of utility services, to take place on August 26, 2019. The CPUC originally issued the OIR on July 12, 2018. [[24:2 CRLR 190-91](#); [24:1 CRLR 138–140](#)]

On August 20, 2019, Administrative Law Judge Sophia J. Park issued a [ruling](#) inviting comments on the workshop. At the workshop, the CPUC [proposed](#) (1) definitions of essential service and affordability; (2) metrics to measure affordability of essential service; and (3) geography and data sources for those metrics. The CPUC’s definitions maintain the commission’s broad authority in setting rates, implementing new metrics without predetermining any of the CPUC’s decisions. The CPUC proposes to add the definitions to the California Public Utilities Code, supplementing and clarifying their use

in section 451. Note that consumer advocacy groups have criticized the ability of the CPUC to adequately assess affordability through the use of these new metrics.

Because the proposals made at the workshop affect rates across utilities, public comments on the workshop varied significantly. Stakeholders who filed comments included multiple energy utilities, alternative energy companies, water utilities, and consumer advocate groups. Comments on the Workshop and Staff Proposal were due by September 10, and reply comments were due by September 20, 2019. As of this writing, the CPUC issued no further documentation for this proceeding.

## **Wildfires**

### **The Commission Begins Crafting Policy for Commercialization of Microgrids**

On September 19, 2019, the CPUC issued [R.19-09-009](#), an OIR Regarding Microgrids Pursuant to [SB 1339 \(Stern\) \(Chapter 566, Statutes of 2018\)](#). The OIR’s stated purpose is “to begin crafting a policy framework surrounding the commercialization of microgrids.” According to SB 1339, a microgrid is “an interconnected system of loads and energy resources . . . appropriately sized to meet customer needs . . . that can act as a single, controllable entity, and . . . can be managed and isolated to withstand larger disturbances and maintain electrical supply to connected critical infrastructure.”

Some experts believe that microgrids could present a solution to public safety power shutoffs (PSPS), or planned power outages in high fire risk areas to prevent utilities’ equipment from sparking a fire. Because microgrids each have their power sources, they can respectively disconnect from the greater electrical grid and still provide electricity to communities during macro power shutoffs. They do not resume receipt of power from long-distance lines going through vulnerable forests.

The microgrid market is estimated to grow nearly fivefold, up to \$31 billion by 2027, with microgrids that incorporate solar power and batteries as particularly valuable, self-sufficient energy generation for cities. While the Commission acknowledges that “[m]icrogrid commercial activity is still nascent,” the legislature recognizes how “microgrids may support California’s policies to integrate a high concentration of distributed energy resources on the electric grid.”

The issues in this ruling are as follows: how to develop standards necessary to meet microgrid permitting requirements, reduce barriers for microgrid deployment, determine what impact studies microgrid need to connect to the grid, develop separate rates to support microgrids, form a group to codify standards to meet microgrid requirements, streamline interconnection costs, ensure that Commission actions do not discourage microgrid development and ownership, and ensure that any microgrid rules or programs are consistent with SB 1339.

A scoping ruling is scheduled for release during the first quarter of 2020.

### **The Commission Issues Decisions on Wildfire Mitigation Plans and Launches Phase 2 of the Mitigation Plan Proceeding [Update]**

As discussed in the previous issue, [R.18-10-007](#) is an order instituting rulemaking to implement electric utility wildfire mitigation plans under [SB 901 \(Dodd\) \(Chapter 626, Statutes of 2018\)](#). [[24:2 CRLR 193–195](#)]

On May 30, 2019, the Commission issued multiple decisions regarding utilities’ 2019 Wildfire Mitigation Plans (WMP). The Commission [approved](#) Southern California Edison’s (SCE) WMP, on the condition that SCE follows up by providing further explanation and details on its wildfire mitigation programs. Before [approving](#) San Diego

Gas and Electric’s (SDG&E) WMP, the Commission requires that SDG&E “comply with the reporting, metrics, advice letter, and other follow-up requirements set forth in this decision in order to address concerns with its existing WMP.” Before [approving](#) Pacific Gas and Electric’s (PG&E) WMP, the Commission requires that PG&E “comply with the reporting, metrics, advice letter, and other follow-up requirements set forth in this decision in order to address concerns with its existing WMP and improve its next WMP filings.”

The Commission [approved](#) both the WMPs of Horizon West Transmission, LLC and Trans Bay Cable LLC. The Commission issued a [decision](#) for Liberty Utilities/CalPeco Electric, Bear Valley Electric Service, and PacifiCorp, jointly. Before approving Liberty Utilities/CalPeco Electric’s WMP, the Commission “impose[d] reporting, data gathering and similar requirements this cycle, and direct[ed] Liberty to include additional information in its next WMP, as discussed in previous sections and provided in the guidance decision concurrently issued in this proceeding.” Before approving Bear Valley Electric Service, the Commission “expect[ed] BVES’ next WMP to conform to [its] requirements stated in the Future WMP section of this decision.” Before approving PacifiCorp’s WMP, the Commission “order[ed] certain compliance, reporting and data gathering during this WMP cycle, as well as the inclusion of new information in the 2020 WMP.” On May 30, the Commission also issued a [guidance decision](#) that “addresses issues that are common to all of the Wildfire Mitigation Plans.”

On June 14, 2019, the Commission issued a [ruling](#) Launching Phase 2 of the Wildfire Mitigation Plan Proceeding. In a [prehearing conference](#) held on August 28, parties discussed the scope of this phase, and on September 18, the Commission issued a [Scoping Memo and Ruling for Phase 2](#). As outlined in this ruling, the scope of Phase 2 focuses on

the following: evaluating and enforcing WMPs, using effective metrics and data, ensuring independent evaluations, and developing a process of enforcement for WMPs; in-language outreach focusing on expanding the number of languages adopted for community outreach; analyzing PG&E's Second Amended Plan, which the utility submitted too late for Phase 1 consideration; and discussing statutory changes affecting WMPs as amended by AB 1054 and AB 111 (see LEGISLATION).

On October 10, 2019, the assigned ALJ issued a [ruling](#) Requesting Comment on Workshops in Phase 2. In response to workshops held on September 17, 18, and 19, the ALJ seeks comments

relate[d] to metrics to determine whether the utilities' wildfire mitigation measures are effective in reducing the risk of catastrophic wildfire; the process for handling future Wildfire Mitigation Plans pursuant to Assembly Bills (AB) 1054 and 111 (2019); the process for hiring and using an Independent Evaluator to track utilities' work pursuant to Wildfire Mitigation Plans; and in-language outreach to communities before, during and after wildfires.

Comments are due October 30, and responses are due November 13.

### **Utilities' Controversial Power Shut-offs Stir Debate**

On October 14, the [CPUC](#) sent PG&E an urgent [letter](#) demanding "immediate corrective actions" after the utility conducted PSPS during the week of October 7, 2019, which impacted two million people. The Commission described how PSPS could endanger lives for those reliant on power for medical reasons, disrupt critical infrastructure, and strain local and state emergency responses. According to the Commission, PG&E's exacerbated this problem due to "multiple issues with communication, coordination, and event and resource management." The Commission directed PG&E to "perform an after-action review and take immediate corrective actions," as outlined in the letter. On October



14, 2019, Governor Newsom also sent PG&E a [letter](#), finding the scope and duration of the PSPS “unacceptable” and “the direct result of decades of PG&E prioritizing profit over public safety.” Governor Newsom urged PG&E to credit customers \$100 and small business \$250 each for the purported “poor execution” of the PSPS.

### **Utilities are Burying Power Lines Underground to Prevent Wildfires**

In response to the 2018 Camp Fire that burned through Paradise, California, PG&E will rebuild the electric distribution grid in this city by installing power lines underground, a process that could take five years. Undergrounding power lines reduces the risk of wildfires because these lines cannot make contact with vegetation and thus spark a fire. However, outside of Paradise, PG&E has over 100,000 miles of distribution lines. It costs approximately \$2.3 million per mile to install underground power lines compared to \$800,000 per mile for above-ground lines, leading PG&E to assert that a service-wide transition is cost-prohibitive (see LEGISLATION).

### **Utilities are Investing in Technology to Prevent Wildfires and Track Vegetative Management**

SDG&E is employing more advanced weather data and artificial intelligence to monitor a greater number of at-risk trees in areas of high fire danger. Leading this effort is its Fire Safe 3.0 program, which analyzes weather updates every 30, compared to every 10 minutes. PG&E plans to install approximately 1,300 new weather stations, compared to its current 350 stations, by 2022 and 600 high-definition, infrared cameras in order to monitor and predict the weather over a greater service area.

To prevent vegetation from sparking fires after contacting power lines, PG&E is strategically trimming trees near its lines and keeping track of its progress through the

software Arc Collector. While some homeowners believe that PG&E’s management needlessly eradicates too many trees and branches, a [report](#) filed August 14 with the district court by monitor Mark Filip found that PG&E is failing to trim “numerous trees” near utility lines. According to the report, part of this oversight results from inaccurate and inadequate reporting in Arc Collector. As of September 21, PG&E was approximately 31% complete with its vegetative management plan for the year, having trimmed vegetation along 760 miles of the intended 2,455 miles of power lines (see LEGISLATION and MAJOR PROJECTS).

### **The Commission Considers Non-Bypassable Charge for the Wildfire Fund**

On July 26, 2019, the CPUC issued [R.19-07-017](#), an OIR to Consider Authorization of a Non-Bypassable Charge to Support California’s Wildfire Fund, in response to the enactment of [AB 1054 \(Holden\) \(Chapter 79, Statutes of 2019\)](#), which created the Wildfire Fund, and requires the CPUC to adopt a decision related to the charge within 90 days of initiating the rulemaking proceeding (see LEGISLATION). According to the OIR, its stated purpose is to “consider whether the Commission should exercise its authority under Public Utilities Code Section 701 to require certain electrical corporations to collect from ratepayers the non-bypassable charge described in that statute to support California’s new Wildfire Fund.” The OIR identifies its initial scope of issues as follows: (1) whether it is appropriate for the CPUC to impose a non-bypassable charge, (2) whether this charge is just and reasonable, (3) “[t]he estimated dollar amount of the revenue requirement,” (4) the agreement’s relationship with the Department of Water Resources, and (5) any other related issue that must be addressed before a charge can be imposed.

On August 14, 2019, designated Commissioner Rechtschaffen issued a [Scoping Memo and Ruling](#), which revised the scope of issues for the proceeding, taking into consideration comments heard during the August 8 [prehearing conference](#), and setting forth an expedited schedule for the submission of comments, requests for oral argument, and the dates for the commission’s decision consistent with the 90-day expedited statutory mandate. Specifically, the revised scope of issues adds per TURN’s request from its August 7 [Prehearing Conference Statement](#), whether the CPUC’s “process for determining and collecting the non-bypassable charge” would be the same as the Department of Water Resources bond charges. It also added, per PG&E’s [Prehearing Conference Statement](#), whether PG&E would still have to levy the charge if ineligible to participate in the Wildfire Fund. The comment period for scoped issues opened on August 22, the comment period ended on August 29, and the deadline for CPUC replies was September 6.

On September 23, 2019, ALJ Patrick Doherty published a [Proposed Decision](#) “approving imposition of a non-bypassable charge to support California’s Wildfire Fund and adopting rate agreement between the [DWR] and the [CPUC].” Furthermore, he found that the rates were just and reasonable, in the public interest, and must be “on a dollar per kWh basis.” According to this decision, because AB 1054 directed this non-bypassable charge should be “based on collections made by DWR for the DWR Bond Charge,” then its specific mechanics, such as the revenue requirement and revenue allocation, must match those made by DWR. Lastly, the decision approved the CPUC’s proposed rate agreement with the DWR, originally [noticed](#) on August 21.

On September 24, the CPUC issued a [ruling](#) scheduling an [oral argument](#) for October 10 in response to a [Motion for Oral Argument](#) filed by Ruth Hendricks. At oral

argument, parties debated the just and reasonableness of approving a non-bypassable charge on ratepayers. Opposed to the charge were utility customers, UCAN, the Solar Energy Industries Association, TURN, California Large Energy Consumers Association, Center for Accessible Technology, Energy Producers and Users Coalition, and Joint Community Choice Aggregators. In support of the charge were Western States Petroleum Association, Coalition of California Utility Employees, PG&E, SCE, and SDG&E. The CPUC has until October 24 to adopt a decision according to section 3289(b) of the Public Utilities Code, requiring initiation of this rulemaking within 14 days of July 12, and the adoption of a decision within 90 days from the initiation of this rulemaking.

### **The Commission Issues Decision Adopting Criteria And Methodology for Wildfire Cost Recovery [Update]**

As discussed in the previous issue, rulemaking [R.19-01-006](#) is an Order Instituting Rulemaking to Implement Public Utilities Code section 451.2 Regarding Criteria and Methodology for Wildfire Cost Recovery Pursuant to [SB 901\(Dodd\) \(Chapter 626, Statutes of 2018\)](#). [[24:2 CRLR 195–196](#)]

On May 24, assigned ALJ Robert W. Haga issued a [proposed decision](#) Adopting Criteria and Methodology for Wildfire Cost Recovery Pursuant to Public Utilities Code § 451.2. Of note,

[t]his decision adopts a methodology for conducting a financial “Stress Test” to consider an electrical corporation’s financial status and determine the maximum amount the corporation can pay for 2017 catastrophic wildfire costs without harming ratepayers or materially impacting its ability to provide adequate and safe service, as required by Public Utilities Code Section 451.2(b).

This section of the Public Utilities Code requires the Commission to “consider the electrical corporation’s financial status and determine the maximum amount the corporation can pay

without harming ratepayers or materially impacting its ability to provide adequate and safe service.” On June 27, the Commission issued [D.19-06-027](#), which adopts a methodology using this financial “stress test.” Specifically, this test provides a “framework as the process for determining what additional wildfire costs, if any, to allocate to ratepayers under [section] 451.2(b).”

### **The Commission Issues Decision Adopting Guidelines for PSPS and Enters the Second Phase of its Rulemaking to Examine Electric Utility De-Energization of Power Lines in Dangerous Conditions [Update]**

As discussed in the previous issue, [R.18-12-005](#) examines electric utility de-energization of power lines in dangerous conditions. [[24:2 CRLR 198–200](#)] On May 30, the Commission issued a [decision](#) adopting de-energization PSPS Guidelines (Phase 1). According to this decision, electric utilities have “proactively cut power to lines that may fail in certain weather conditions in order to reduce the likelihood that their infrastructure could cause or contribute to a wildfire” in response to the “devastating” wildfires that “resulted in billions of dollars in damage and numerous lives lost.” At issue in this decision include the following: whether to update resolution ESRB-8, which provided that utilities must “ensure that public and local officials are prepared for power shut off and aware of the [utilities’] de-energization policies”; what are the best practices for notification and communication to the public and governments; which structures and practices maximize coordination between utilities and first responders and local governments; what information the Commission needs to show that a shut-off was a method of last resort; and what additional provisions or protocols are necessary for future de-energization of the power-grid. Appendix A provided guidelines in response to each of these issues. In general,

utilities must continue to adhere to ESRB-8 and provide timely notification of impending de-energization events to customers and local governments. Additionally, de-energization must be a practice of last resort, and utilities must have procedures in place for mitigating the effects of these shutoffs.

On August 14, the assigned commissioner issued a [Scoping Memo and Ruling](#) that addressed Phase 2 of this rulemaking. According to the memo, “[t]he purpose of Phase 2 is twofold: first, the Commission will examine issues . . . outside the scope of Phase 1, and second, the Commission will revisit . . . issues in Phase 1 that require additional examination and development.” Specifically, the Commission will address the following issues in “Track 1” of the proceeding: the definitions and standard nomenclature of prudent terms, efforts to address Access and Functional Needs (AFN) Populations, issues on power shut off strategy and decision-making, notification and communication on power shutoffs, issues regarding transmission lines during power shutoffs, and lessons learned from past power shutoff events. In “Track 2” of the proceeding, the Commission will address the following issues: lessons learned from the past power shutoffs, proper notification, and communication, mitigating risks during power shutoffs, the best strategies for reducing the need of power shutoffs, re-energizing power lines after a power shutoff, delaying power shutoffs, increasing education and outreach, and evaluating power shutoff events. On October 3, the comment period opened, and the proposed decision is due the first quarter of 2020.

## **The Commission adopts Two Disaster Relief Programs, One for Communications Service Provider Customers and One for Natural Gas, Water, and Sewer Utility Customers [Update]**

As discussed in the previous issue, rulemaking [R.18-03-011](#) is an OIR regarding emergency disaster relief program to support California residents. [[24:2 CRLR 192–193](#)]

On July 19, the Commission issued [D.19-07-015](#), a decision adopting an emergency disaster relief program for electric, natural gas, water, and sewer utility customers in response to the series of wildfires that have affected California over the past two years. The decision’s stated purpose is to “establish[] a state-wide approach to support customers with essential utility functions across a range of potential threats and emergencies.” The issues before the Commission were the following:

a) When should post-disaster emergency customer protections take effect? The Commission concluded that when the governor of California or the president of the United States declares an emergency for a disaster that disrupts the delivery or receipt of utilities services or results in the degradation of the service’s quality, then this action automatically triggers the implementation of emergency customer protections.

b) What is the period of implementation for the post-disaster emergency customer protections? The Commission concluded that utilities could only conclude administering the protection no sooner than twelve months from the date of the emergency proclamation. Additionally, utilities can request an extension of time beyond the twelve months in order to provide the mandated emergency protections to those still needing assistance.

c) How will utilities demonstrate compliance? The Commission decided that a utility fulfills compliance when it notifies the Commission with a Tier 1 Advance Letter

describing its implementation of the emergency customer protections within 15 days of implementing these protections. A utility must file another Tier 1 Advice Letter with the Commission after the disaster or at the default 12-month conclusion of the emergency customer protections.

d) Should the Commission adopt the customer protections from Resolutions M-4833 and M-4835? The Commission decided to [adopt](#) these resolutions, which included emergency customer protections such as discontinued billing, prorated monthly charges, alternative payment plan options, suspended disconnection for nonpayment, waived deposit and late fee requirements, and low-income customer support.

e) What coordination should occur between a utility and a Community Choice Aggregate (CCA) in a disaster situation? The Commission “direct[ed] the utilities to continue to coordinate with the CCAs in times of disaster.”

f) Should utilities provide customer information to governmental agencies besides the Commission to assist those affected by the disaster? The Commission decided that utilities must coordinate efforts with the Office of Emergency Services and the Department of Forestry and Fire Protection so those first responders can better serve customers.

g) Should the Commission direct utilities to increase customer awareness on emergency customer protections? The Commission decided that increasing awareness is vital and that minimum outreach includes online outreach, community outreach, and coordination with local governments.

h) How should utilities recover costs for these protections? The Commission decided that electric and natural gas utilities should use their Customer Protections



Memorandum Account (ECPMA) or their Catastrophic Memorandum Account (CEMA) for cost tracking and recovery. Water and sewer utilities can recover costs from their rate base.

On August 15, the Commission issued [D.19-08-025](#) a Decision Adopting an Emergency Disaster Relief Program for Communications Service Provider Customers. This decision asked the same issues presented above and answered them equivalently as applicable to communication service providers. Accordingly, it neither discussed rate-recovery nor communication with CCAs.

On September 12, the Commission issued [D.19-09-035](#), an Order Extending Statutory Deadline. The Commission first filed this rulemaking on March 22, 2018, and set it to expire 18 months later on September 21, 2019. The Commission, however, extended the deadline to March 21, 2020, in order to proceed with Phase II of the rulemaking, which “will focus on enhancing communication from this public safety component.”

### **The Commission Launches an Investigation into Whether PG&E Violated Public Utilities Code During 2017 Wildfire Season**

On June 27, 2019, the CPUC issued [I.19-06-015](#), an OII on the Commission’s Motion into the Maintenance, Operations and Practices of PG&E concerning its electric facilities; and Order to Show Cause why the commission should not impose penalties and/or other remedies for the role PG&E’s electrical facilities had in igniting fires in its service territory in 2017. According to the OII, its stated purpose is to

institute[] a formal investigation to determine whether Pacific Gas and Electric Company (PG&E), violated any provision(s) of the California Public Utilities Code (PU Code), Commission General Orders (GO) or decisions, or other applicable rules or requirements about the maintenance

and operation of its electric facilities that were involved in igniting fires in its service territory in 2017.

The OII identified its initial scope of issues as follows: (1) whether PG&E violated General Order 95 and/or Resolution E-4148 as identified in the SED Fire Report; (2) whether PG&E violated any provisions of the Public Utilities Code, General Orders, Commission decision, or any other applicable regulations for its maintenance and operation of its electric facilities as identified in this investigation; and (3) what penalties should be imposed for any proven violation(s) found above under PUC sections 701, 2107 and 2108.

On August 23, 2019, designated Commissioner Rechtschaffen issued a [Scoping Memo and Ruling](#), which revised the scope of issues for the proceeding, taking into consideration filed pleadings and comments heard during the August 13 [prehearing conference](#). Specifically, the revised scope of issues adds whether “other remedies or corrective actions should be imposed in response to any proven violation(s) found above under Pub. Util. Code [sections] 701, 2107, and 2108[, and whether] any systemic issues contributed to the ignition of the wildfires at issue in this OII.”

On October 9, 2019, Commissioner Rechtschaffen amended the proceeding schedule; however, the Commission does not yet have a decision deadline.

### **The Commission Investigates the Implications of PG&E’s Chapter 11 Bankruptcy Caused by Wildfire Losses**

On September 26, 2019, the CPUC issued, [R.19-09-016](#), an OII on the Commission’s Motion to Consider the Ratemaking and Other Implications of a Proposed Plan for Resolution of Voluntary Case, *In re Pacific Gas & Electric Corp. & Pacific Gas & Electric Co.*, Case No. 19-30088 (see LITIGATION). According to the OIR, its stated purpose is to “open[] an investigation into the ratemaking and other implications for . . .

(PG&E) that will result from the confirmation of a plan of reorganization and other regulatory approvals necessary to resolve PG&E’s [bankruptcy proceeding]” (see LITIGATION). The OII identifies its initial scope of issues as follows: (1) whether it is reasonable to approve a proposed plan of reorganization submitted by PG&E; and (2) whether the Commission should make determinations for a reorganization plan that includes the acceptability of PG&E’s governance structure, the consistency of the plan with California’s climate goals, the plan’s neutrality to PG&E ratepayers, and the plan’s recognition of PG&E’s ratepayer contributions to resolving the insolvency proceeding.

The prehearing conference is scheduled for October 23, and the Commission intends to render a decision before June 30, 2020.

### **Potential Changes to PG&E’s Structure and Ownership**

Currently, PG&E operates as an investor-owned utility (IOU), where private shareholders invest in the utility for a return on this investment. San Jose, however, has called for PG&E to transition into a customer-owned utility or a non-profit utility cooperative. Because this model is based on public ownership, any profits are reinvested in the utility and not part of a reasonable rate of return for investors. San Jose has indicated a desire to convince other California cities to join in efforts to transform PG&E’s ownership. This type of ownership differs from Community Choice Aggregates (CCAs), for which cities such as San Diego are developing. What San Jose may be proposing changes the ownership and operation of PG&E itself into public hands. In contrast, CCAs still rely on private utilities such as PG&E for energy generation and transmission—but have independent authority to charge customers and decide which energy to purchase.

In San Francisco, one of the early communities to opt for a CCA option, the city has advanced a bid to purchase PG&E's power lines within the city for \$2.5 billion. That purchase would enable localized control even over the transmission of this territory. Citing a price below market rate, PG&E declined this offer. Governor Newsom, however, supports this bid, stating that splitting up PG&E into smaller units would encourage needed competition in the energy market.

On the private side, bondholders and shareholders are fighting over control of PG&E after it exits bankruptcy (see LITIGATION). In June, bondholders offered a \$30 billion plan to remove PG&E from bankruptcy, pay off claims, and rename the utility Golden State Power Light & Gas Co. After Judge Montali of the bankruptcy proceeding denied this plan, bondholders in September proposed a new \$24 billion plan. Judge Montali has yet to rule on a reorganization plan (see LITIGATION). Whichever groups end up controlling PG&E, the CPUC will still have regulatory authority.

## **General Energy Regulation**

### **CPUC Implements SB 237**

On June 3, 2019, CPUC issued a [decision](#) on [R.19-03-009](#), an OIR to Implement SB 237 related to Increased Limits for Direct Access Transactions. SB 237 increased the number of gigawatt-hours (GWh) allowed to non-residential customers through Direct access (DA) arrangements. Direct access allows end-use customers of an IOUs—such as PG&E, SDG&E, or SCE—to choose to take their electric service from a competing Electric Service Provider.

First, the decision implements a 4,000-gigawatt hour increase allowed for DA transactions that will be apportioned for each respective IOU's service territory. Further,

the decision sets forth the procedures and timing for assigning the increase to eligible customers, following SB 237.

Second, the decision adopts portions of the Commission staff proposal for determining how the Commission should apportion the DA increase and modifies the Commission staff's proposal for determining the customers who are eligible for the increase. The decision adopts the Commission staff's proposal to delay the service date for customers who enroll in the DA expansion. Also, the decision changes the earliest start date from January 1, 2020, to January 1, 2021, to better coordinate the expansion of DA and ensure compliance with the Commission's resource adequacy rules.

On August 2, 2019, CPUC issued a [decision](#), specifically to modify the previous decision and amend the process for enrolling customers in the Direct access expansion, directed by SB 237. If a notified customer declines the opportunity to join the DA program, the IOU must notify the next eligible customer in the queue for the IOU service territory, and direct these customers to submit their decision regarding DA service to the IOU within fifteen (15) business days of such notification. Further, as of September 10, 2019, the IOUs shall provide to each affected CCA a preliminary report of the aggregate hourly peak demand and hourly load data for the latest entire year to date of 2019 and 2020 waitlist customers who chose to switch from the CCA's service to the Direct Access Program. A final report shall be provided to each affected CCA by February 10, 2020 (new text *supra*, underlined).

### **CPUC Issues OIR Crafting a Policy Framework on Building Decarbonization**

On May 17, 2019, CPUC set forth [scoping rules](#). The scoping memo and ruling set forth the category, issues to be addressed, and schedule of the proceeding under Public

Utilities Code section 1701.1 and Article 7 of the Commission’s Rules of Practice and Procedure. On July 16, 2019, the scoping rules were [amended](#) to include the following issues: (1) funding mechanism and program budgets; and (2) customer eligibility for benefits of the Building Initiative for Low-emissions Development (BUILD) and the Technology and Equipment for Clean Heating (TECH) Initiative. The following questions were added for development in the record: (a) how should the Commission authorize the funding for the BUILD program and the TECH initiative according to section 743.6 (b) how should the Commission establish the budgets for the BUILD program and the TECH initiative, (c) what customer eligibility requirements for benefits of the BUILD program should be established, and (d) what customer eligibility requirements for benefits of the TECH program should be established?

### **SDG&E Not Required to Buy Otay Mesa Energy Center for \$280 Million**

On August 6, 2019, CPUC issued an [order](#) on A.19-03-026. Previously, CPUC approved a 10-year Power Purchase Tolling Agreement (PPTA) between SDG&E and Otay Mesa Energy Center, LLC (OMEC), a subsidiary of Calpine Corporation (Calpine). Under the PPTA, SDG&E purchases energy and capacity from OMEC, a 608 megawatt (MW) gas-fired combined-cycle power in SDG&E’s service territory. The PPTA was modified by D.06-02-031 and D.06-09-021, which resulted in the PPTA to end on October 2, 2019. The modification approved a Ground Sublease and Easement Agreement that added provisions by which SDG&E could own OMEC when the current contract term expires (Under the alternative “Put Option,” exercisable at Calpine’s discretion, SDG&E would purchase OMEC for approximately \$280 million). SDG&E requested CPUC

approval of a new four-year, 11-month contract with OMEC. Under the new approval, SDG&E would purchase local, system, and flexible capacity. The new terms of the contract were approved in Resolution E-4981 and began on October 3, 2019 and end August 31, 2024. The Protect Our Communities Foundation (POC) applied for rehearing, but CPUC determined good cause had not been established to grant rehearing.

### **SDG&E Proposes Rate Increase Cost of Capital Proceeding Application**

On April 22, 2019, SDG&E filed an [application](#) with CPUC seeking approval of its proposed cost of capital for 2020. SDG&E requests the CPUC determine the appropriate rate of return necessary to attract capital at reasonable rates and compensate the utility for business, regulatory, and financial risks. SDG&E states the rate of return is the weighted average cost of debt, preferred stock, and common equity, and requests adjustments to the rate of return. SDG&E claims for estimated impact on electric rates and bills, a typical non-CARE residential customer living in the inland climate zone and using 500 kilowatt-hours per month could see a monthly summer bill increase of 3.0% (\$5.59). Further, SDG&E claims the estimated impact on gas rates and bills would increase for a typical residential customer using 24 therms per month by 4.9% (\$1.68) in 2020.

### **SDG&E Proposes to Add Fixed Charge of \$10 to Monthly Bills**

On October 18, 2019, SDG&E published an [article](#) on proposals for new rate redesign proposals to the CPUC. SDG&E asked the CPUC to consider three concepts: (1) lower electricity rates by about 25% through the implementation of a \$10 fixed charge for all residential customers; (2) increase the minimum monthly bill amount from \$10 to \$38; and (3) explore an alternative higher fixed charge of \$72 for up to 2,000 customers. If any changes are approved, it would be implemented in the spring of 2021.

# Energy Efficiency, Solar, and Storage

## Renewable Portfolio Standard Program Continuation Update

On June 28, 2019, CPUC issued a [decision](#) regarding [R.18-07-003](#), an OIR to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard (RPS) Program. R.18-07-003 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.

The decision implements the procurement quantity requirements for the California RPS program for years beginning in 2021 that are revised by [SB 100 \(de León\) \(Chapter 312, Statutes of 2018\)](#). The decision requires: (1) for the compliance period 2021–2024, retail sellers must procure no less than 44 percent of their retail sales from eligible renewable energy resources by December 31, 2024; (2) for the compliance period of 2025–2027, retail sellers must procure no less than 52 percent of their retail sales from eligible renewable energy resources by December 31, 2027; (3) for the compliance period 2028–2030, retail sellers must procure no less than 60 percent of their retail sales from eligible renewable energy resources by December 31, 2030; (4) progress toward compliance during intervening years of each compliance period from 2021 through 2030 will continue to be treated using the same “straight-line” method set out in D.11-12-020 and continue in D.16-12-040; and (5) for each compliance period beginning with the 2031–2033 compliance



period, each retail seller must procure not less than 60 percent of retail sales from eligible renewable resources, measured as an average over the compliance period.

On August 7, 2019, CPUC issued a [decision](#) to enforce California’s RPS program rules to impose fines on two entities, Liberty Power Holding, LLC (Liberty Power) and Gexa Energy, California LLC (Gexa), for failing to comply with certain program requirements and denying the entities’ request for waiver of penalties. The RPS program requires all load serving entities serve electric load with a specified percentage of renewable energy in each “compliance period.” The compliance period at issue here spans the years 2011–2013. Neither Liberty Power nor Gexa met their required levels of renewable procurement. Liberty Power and Gexa did not meet their burden of showing entitlement to a waiver, thus a penalty of \$431,014 on Liberty Power and \$1,725,461 on Gexa was enforced.

On September 18, 2019, CPUC issued a [decision](#) to accept the 2018 RPS Procurement Plans (Plans) submitted by six new CCAs but cautions the CCAs that more detail is required in their 2019 plans. The CCAs are required to amend their 2019 Plans to conform to the decision as well as [D.19-02-007](#). Each of the six new CCAs will start providing electricity to customers in 2020. The affected CCAs will be required to address whether they will hold a solicitation in 2019, how many megawatts they intend to procure during the year, how many megawatts they intend to procure long term, the resources they intend to procure in particular portfolio content categories set forth in the RPS statute, their “Net RPS Procurement Need,” the steps planned to reach it, and the appropriate minimum margin of procurement, upcoming participation in solicitations, or other needed forms of procurement. CPUC will accept the new CCAs plans as final for 2018. The decision also

grants the request of Liberty Power for a limited, conditional waiver from the submission of future RPS Procurement Plans until such time that Liberty Power resumes serving retail load. However, CPUC denied Liberty Power's request to be excused from filing RPS Compliance Reports.

On October 3, 2019, CPUC issued a [decision](#) to adopt modeling requirements for IOUs to determine one element of their respective least-cost best-fit methodologies, the Effective Load Carrying Capability (ELCC) values, to be used for the RPS program bid ranking and selection. The modeling requirements are: (1) the Strategic Energy Risk Valuation Model must be used to determine marginal ELCC values; (2) behind-the-meter Photovoltaic (PV) must be treated as a supply-side resource; (3) an annual loss of load expectation study must be conducted; (4) three resource classes (wind, solar PV, and storage) and six resource class subtypes (fixed axis PV, tracking PV, tracking PV paired with storage, distributed PV, wind, and wind paired with storage) must be modeled, four geographic locations located in the California Independent System Operator (CAISO) area and three regions located outside of the CAISO are must be modeled, and installed capacities from the Integrated Resource Planning (IRP) proceeding's most recently updated base portfolio (Reference System Plan or Preferred System Plan) must be used; and (5) the resource portfolio from the 2017–2018 IRP's Preferred System Plan with a study year of 2022, 2026, and 2030 must be modeled for the 2020 procurement cycle, and the most recently updated base portfolio from the IRP proceeding must be used with study years of subsequent four-year increments. CPUC directs the IOUs to conduct a joint ELCC study utilizing the adopted modeling requirements for use in RPS procurement in 2020 and must continue to update the joint ELCC study annually until directed otherwise.

## **New Energy Saving Goals**

On August 23, 2019, CPUC issued a [decision](#) regarding [R.13-11-005](#), an OIR concerning energy efficiency rolling portfolios, policies, programs, evaluation, and related issues. The decision adopted energy efficiency goals for 2020–030. Specifically, the CPUC ordered that: (1) the energy efficiency goals in section 7 based on the Reference scenario in the final draft of the 2019 potential study are adopted for 2020–2030; (2) the requirement for ex-post evaluations of home energy report programs is suspended for three years or until the CPUC reinstates this requirement via ruling (in this proceeding or a successor proceeding), whichever occurs first—staff will have discretion to conduct impact evaluations of home energy reports programs during suspension; and (3) PG&E, SCE, Southern California Gas Company, SDG&E, the Bay Area Regional Energy Network, the Southern California Regional Energy Network, the Tri-County Regional Energy Network, and Marin Clean Energy shall prepare and submit their annual budget advice letters for program year 2020 pursuant to the guidance included in the decision.

## **Vehicle Recharge Station**

On August 15, 2019, SDG&E [announced](#) a major program to build charging infrastructure for electric buses, trucks, and more to help businesses and public agencies transition to zero-emission transportation over five years. SDG&E claims the program will help support regional and statewide goals to reduce air pollution and GHG emissions by implementing zero-emission transportation beyond passenger vehicles. CPUC approved the program to build a minimum of 3,000 plug-in medium-duty and heavy-duty electric vehicles and equipment. Part of the CPUC’s approval is a vehicle-to-grid pilot for electric school buses; large batteries on school buses will soak up electrons from the grid when

energy is abundant and discharge the energy during high demand. According to SDG&E, heavy-duty vehicles produce more particulate matter than all of the state’s power plants combined and can cause or worsen asthma and other health conditions in California. SDG&E’s program will be the first large-scale program to build charging infrastructure for local businesses and public agencies to adopt zero-emission transportation. SDG&E developed the program in accordance with [SB 350 \(Hertzberg\) \(Chapter 547, Statutes of 2015\)](#) to help reduce GHG emissions. SDG&E also applied for permission from the CPUC to create an optional electricity pricing plan to increase the competitiveness of transportation electricity for businesses that adopt electrically powered equipment.

## **Telecommunications**

### **CPUC Issues Decision (18-06-013) to Overlay New 341 Area Code onto the 510 Area Code**

On July 22, 2019, the CPUC overlaid the 341 area code onto the area traditionally served by the 510 area code. Previously, only the 510 area code served telephone numbers in portions of Alameda and Contra Costa Counties. Under Public Utilities Code sections 7936 and 7943(c), with permission from the North American Numbering Plan Administrator, the CPUC approved an overlay in [D.18-06-013](#) to accommodate the need for additional telephone numbers in the [geographic region](#) served by the 510 area code on June 21, 2018. The overlay adds a new area code to the area surrounding the City of Oakland without discontinuing use of the old area code, effectively creating an area with two codes.

However, consumers with a 341 area code must dial “1” before calling another 341 number. This method was not previously required for consumers with a 510 area code

when making local calls. Users must reprogram any automatic dialing systems attempting to reach numbers located in the Oakland area.

## **Transportation**

### **Order Instituting Rulemaking to Implement Senate Bill 1376 Requiring Transportation Network Companies to Provide Access for Persons with Disabilities, Including Wheelchair Users who need a Wheelchair Accessible Vehicle**

On August 15, 2019, CPUC issued an [Amended Scoping Memo and Ruling of Assigned Commissioner](#) for [R.19-02-012](#), an OIR to implement [SB 1376 \(Hill\) \(Chapter 701, Statutes of 2018\)](#), which requires transportation network companies to provide access for persons with disabilities, including wheelchair users who need a wheelchair accessible vehicle. On March 4, 2019, CPUC opened R.19-02-012 to address implementation of SB 1376. The original Scoping Memo for R.19-02-012 established three tracks for issues in this proceeding. This Amended Scoping Memo adds an issue omitted from Track 2 of the original scoping memo.

Following public comments from a wide range of public and private sector stakeholders including transportation network companies (TNCs), taxi companies, and municipalities, on June 27, 2019, the CPUC issued [D.19-06-033](#). The decision established an Access for All Fund, for which a \$0.10 per-trip fee will be charged for each TNC trip completed. CPUC also designated each county in California as the geographic areas for the purposes of the Access for All Fund. CPUC intends to use the fund to address accessibility of TNC transportation for wheelchair users by mandating the availability of wheelchair accessible vehicles (WAVs).

The Amended Scoping Memo adds an issue omitted from the original Scoping Memo. Issue No. 4 of Track 2 will now address concerns regarding the Act’s provision allowing TNCs to provide WAVs with vehicles that it owns or by contract with a transportation provider. By definition, TNCs are not allowed to own vehicles, so implementation of the Act must address this contradiction in the law.

The Amended Scoping Memo also adds sub-issue (i) to Issue No. 1 of Track 2. The sub-issue will address the establishment of TNC Investment Offsets and whether driver training and vehicle accessibility features will qualify for an offset.

The Amended Scoping Memo amends the schedule to the following: Parties and Consumer Protection and Enforcement Division must submit proposals on Track 2 issues on September 20, 2019; the workshop on Track 2 proposals is scheduled for September 30, 2019; Comments on the workshop and all proposals are due on October 25, 2019; a proposed decision on Track 2 will issue in Q4 2019; and a final decision on Track 2 will be in early Q1 2020. Track 3 will follow.

## **Water**

### **CPUC Conducts Formal Investigation into San Jose Water Billing Practices (I.18-09-003)**

On July 24, 2019, the parties in [I.18-09-003](#) filed a [Joint Motion for Approval of Settlement Agreement](#) to resolve all outstanding issues presented in the [proceeding](#). [[24:1 CRLR 155–156](#)] The settlement would end the CPUC’s investigation, adopted September 13, 2018, into the San Jose Water Company’s billing practices. However, Water Rate Advocates for Transparency, Equity and Sustainability (WRATES), an intervenor party, filed comments contesting the joint motion. On September 12, 2019, before ruling on the settlement agreement, the CPUC extended the statutory deadline for the proceeding to

March 13, 2020, to review the settlement agreement, to issue a proposed decision for public review, and to allow enough time to the Commission to deliberate and issue a final decision.

## LEGISLATION

### Internal

[AB 560 \(Santiago\)](#), as amended June 20, 2019, adds section 468 to the Public Utilities Code, requiring that any expense incurred by a public utility in assisting or deterring union organizing, as defined, is not recoverable either directly or indirectly in the utility's rates. These expenses are therefore required to be borne exclusively by the shareholders of the public utility.

The bill passed in response to widespread disapproval of PG&E's spending practices and bankruptcy, drawing the ire of both consumers and politicians in 2019. Reports filed by PG&E to the California Secretary of State showed that PG&E spent more than 12.7 million on lobbying between 2017 and late 2019 to influence state lawmakers and utility regulators. Additionally, PG&E's former chief executive officer, Geisha Williams, resigned after collecting \$17.9 million in pay between 2017 and 2018. Williams held her position at PG&E amid catastrophic wildfires caused by PG&E which led to the company's bankruptcy filing two weeks after her resignation. Despite PG&E's financial mismanagement, the CPUC did not explicitly limit responsibility for the costs of PG&E's lobbying efforts to the company's shareholders before passing SB 560. The California legislature passed this bill to prevent PG&E from passing its labor-related lobbying costs onto the public.

Governor Newsom signed SB 560 on October 2, 2019 (Chapter 429, Statutes of 2019).

[AB 1072 \(Patterson\)](#), as amended May 22, 2019, amends sections 314.5 and 314.6 of the Public Utilities Code, loosening audit requirements for all utilities and electrical, gas, heat, telegraph, telephone, and water corporations. Previously, these corporations and utilities required inspections and audits for regulatory and tax purposes every three years if the organization had more than 10,000 customers, and every five years if the organization had less than 10,000 customers. Under AB 1072, these reviews are only conducted for regulatory purposes, and a review conducted for a rate proceeding is considered to be satisfactory.

Governor Newsom signed AB 1072 on October 2, 2019 (Chapter 448, Statutes of 2019).

## **Wildfires**

[AB 1054 \(Holden, Burke, Mayes\)](#), as amended July 5, 2019, is urgency legislation that amends, adds, and repeals a series of sections within the Public Utilities Code, and the Water Code, to create additional safety oversight and processes for utility infrastructure, recast recovery of cost from wildfire damages to third parties, and authorize an electrical corporation and ratepayer jointly-funded Wildfire Fund in California to address future related wildfire liabilities. The bill includes express legislative findings and declarations which recognize the increased risk of catastrophic wildfires and the immediate threat to communities and properties throughout the state. Specifically, the bill expressly states that

[i]t is the intent of the [l]egislature to provide a mechanism that allows electrical corporations that are safe actors to guard against impairment of their ability to provide safe and reliable service because of the financial



effects of wildfires in their service territories using mechanisms that are more cost effective than traditional insurance, to the direct benefit of ratepayers and prudent electrical corporations.

The bill also includes findings and declarations which recognize that the state’s electrical corporations must invest in wildfire prevention and response. Such investments include the state’s electrical infrastructure and vegetation management to reduce the risk. The bill finds that the state has a substantial interest that its electrical corporations operate in a safe and reliable manner and have access to capital at reasonable cost to make safety investments. Accordingly, the bill establishes a new Wildfire Safety Division in California to ensure safe operations by electrical corporations, as well as a Wildfire Safety Advisory Board to ensure that broad expertise is available to develop best practices for wildfire reduction [see internal discussions, *supra*].

According to the author,

[w]e have no good choices but this bill presents a unique opportunity to get our utilities back to investment grade status, with no increase in electric rates. This bill will also double-down on safety by establishing a new comprehensive oversight division and advisory council for all utilities in the state—investor and publicly owned. The investor owned utilities will also be held to account by tying executive compensation to safety; investing a minimum of \$5 billion in their lines and poles, without profit; complying with wildfire mitigation plans; and passing a safety culture assessment; all as conditions of participating in the insurance fund established by this bill.

The bill is the result of a series of “stakeholder meetings” in the wake of recent catastrophic wildfires in California in recent years, and PG&E’s recent Chapter 11 bankruptcy filing in connection with the fires started by its equipment. Of note, as it applies to the CPUC, the bill does the following:

*Wildfire Fund*

- New Part 6 (commencing with section 3280) establishes the Wildfire Fund, consisting of utilities' initial contributions, annual contributions, revenue from ratepayers, and "bonds allocated to the fund as provided in Section 80550 of the Water Code." New section 3288 establishes a transfer of money approved by the Director of Finance in the amount of \$10,500,000,000 from the Surplus Money Investment Fund into the Wildfire Fund in order to pay out short term claims.
- New section 3289 requires that the commission establish a rulemaking procedure within 14 days of the bill's enactment, requiring that utilities collect a non-bypassable charge from its ratepayers in order to fund the Wildfire Fund. The commission must adopt a decision within 90 days of initiating rulemaking.
- New section 80540 allows the Department of Water Resources to issue bonds if indebted in order to support the Wildfire Fund. The aggregate amount of bonds issued cannot exceed \$10,500,000,000 exclusive of refunding bonds for specified purposes.

*PUC Proceedings*

- Amends section 311 of the Public Utilities code to add "Catastrophic Wildfire Proceedings" to emergency situations that allow for less than a 30-day review period. Amended section 451.1 allows the Public Utilities Commission to approve cost recovery to electrical corporations for wildfire damages caused by their lines as long as the cost recovery is just and reasonable. It also requires electrical corporations to show that their conduct that led to the wildfires was reasonable, unless they operated with a valid safety certification. The bill also amends section

850 by replacing the former “appropriate costs” standard with this “just and reasonable” standard.

- Amends sections 1701.1 and 1701.3 to add “catastrophic wildfire” as a fourth possible proceeding designation in addition to quasi-legislative, adjudication, or ratesetting, and to subject ex parte communications in catastrophic wildfire proceedings to disclosure requirements of the article.

#### *Wildfire Safety Advisory Board*

- Adds section 326.1 to establish the seven-member California Wildfire Safety Advisory Board. The Governor will appoint five members, the Speaker of the Assembly one, and the Senate Committee on Rules one. Its duties, per new section 326.2, include developing and making recommendations on mitigation performance metrics and wildfire mitigation plans, providing comments and advice for electrical corporations’ wildfire mitigation plans, and working with the Wildfire Safety Division on any request.
- Amends section 8387 to require that publicly owned electric utilities and electrical cooperatives prepare an annual wildfire mitigation plan to submit to the California Wildfire Safety Advisory Board. The bill also adds new section 8389 to require that the Wildfire Safety Division approve or deny these wildfire mitigation plans based on recommendations from the California Wildfire Safety Advisory Board. The Wildfire Safety Division then provides recommendations to the Commission, which then must determine performance metrics, wildfire mitigation plan requirements and compliance processes, and a process to conduct annual safety culture assessments.

Under the bill, the Commission must initiate a rulemaking proceeding within 14 days of its signing, July 12, 2019, in order to determine if it has authority to collect a non-bypassable charge from ratepayers in order to support the Wildfire Fund. The Commission must then adopt a decision “no later than 90 days after the initiation of the rulemaking proceeding.”

Governor Newsom signed AB 1054 on July 12, 2019 (Chapter 79, Statutes of 2019). Given the legislative finding that the bill should be designated as an urgency statute the bill took effect immediately.

[SB 167 \(Dodd\)](#), as amended August 30, 2019, amends section 8386 of the Public Utilities Code to require that electrical corporation adopt protocols mitigating the public safety impact of preventative power outages as part of their already-required wildfire mitigation protocols. According to the author, these preventative power outages create risks including “the interruption of power needed to operate life support equipment, including, but not limited to artificial means to sustain, restore, or supplant a vital bodily function.” Section 8386 now requires that utilities provide additional information in their Wildfire Mitigation Plans for planned power outages, establish protocols for mitigating public safety impacts of power outages while considering impacts on customers receiving medical baseline allowances, and deploy backup resources or financial assistance to customers receiving medical baseline allowances and who demonstrate financial need.

Governor Newsom signed SB 167 on October 2, 2019 (Chapter 403, Statutes of 2019).

[AB 868 \(Bigelow\)](#), as amended April 9, 2019, and covered in the previous issue, entered committee on April 24, had its first hearing on May 1, and was referred to the

Appropriations Committee’s suspense file. It is currently held under submission. It may become a “2 year bill” and affect further progress and passage in 2020. [*A. Appr*]

[SB 560 \(McGuire\)](#), as amended September 6, 2019, amends section 8386 and 8387 of, and adds new section 776.5 to the Public Utilities Code to require that electric utilities adequately notify customers, public safety offices, first responders, health care facilities, and telecommunication infrastructure operates of planned deenergizing of the electric grid. According to the author, “SB 560 is a simple step to mitigate the risks during times of crisis by requiring utilities to report de-energizing of electrical lines outages to first responders, healthcare facilities and telecommunication providers ahead of outages with greater detail.” Sections 8386 and 8387 now require electric utilities to establish protocols for de-energizing the electric grid, consider undergrounding electric lines, and consider the effects of de-energizing the electric grid on first responders, health and communication infrastructure, and customers who require medical care or are low income. New section 776.5 adds requirements for “facilities-based mobile telephony services” to establish contact points for and develop protocol regarding deenergization events.

Governor Newsom signed SB 560 on October 2, 2019 (Chapter 410, Statutes of 2019).

[SB 247 \(Dodd\)](#), as amended September 3, 2019, amends section 8386.3 of, and adds section 8386.6 to, the Public Utilities Code to require that utilities comply with vegetation management requirements in their wildfire mitigation plans, and that the Wildfire Safety Division audits utilities’ work to ensure compliance. According to the author, “[t]his bill ensures that an expert state agency, rather than a utility with a profit motive, decides what tree trimming should be done and verifies that the utility did it.”

Section 8386.3 now requires that electrical corporations notify the Wildfire Safety Division within one month of completing substantial components of vegetation management requirements in its wildfire mitigation plan. Additionally, the Wildfire Safety Division must audit this work, and it can engage its own independent evaluator, “who shall be a certified arborist” to determine compliance. New section 8386.6 adds that electrical line clearance tree trimmers “shall be qualified line clearance tree trimmers, or trainees under the direct supervision and instruction of qualified line clearance tree trimmers.” Additionally, utilities must pay these trimmers no less than wages of apprentice electrical utility linemen.

Governor Newsom signed SB 247 on October 2, 2019 (Chapter 406, Statutes of 2019).

[SB 70 \(Nielsen\)](#), as amended September 5, 2019, amends section 8386 of the Public Utilities Code to require that electric corporations include in their wildfire mitigation plans where and how they considered undergrounding utility lines within high wildfire risk areas. According to the author, “[u]ndergrounding distribution lines may be the answer” to “address[ing] threatening aboveground lines in high fire hazard severity zones,” because “they are better insulated than overhead electrical lines, are less likely to be affected by hazardous weather conditions and animals, and are better protected from wildfires.” Section 8386 now requires that utilities put in their wildfire mitigation plans “a description of where and how the electrical corporation considered undergrounding electrical distribution lines within those areas of its service territory identified to have the highest wildfire risk in a specified fire threat map.”

Governor Newsom signed SB 70 on October 2, 2019 (Chapter 400, Statutes of 2019).

[SB 209 \(Dodd\)](#), as amended September 3, 2019, adds section 8586.7 to the Government Code to require the Department of Forest and Fire Protection (Cal Fire) to establish and lead the Wildfire Forecast and Threat Intelligence Integration Center. According to the author's office,

[a]s climate change and encroaching development in the wildland-urban interface have combined to significantly raise the risk and threat of destructive wildfires, the need to employ the latest and most advanced weather prediction technology and apply consistent protocols for responding to wildfire threats has become essential to protect life and property.

New section 8586.7 requires that Cal Fire establish and lead the Wildfire Forecast and Threat Intelligence Integration Center, which will serve as an integrated central organizing hub for wildfire and weather forecasting and threat intelligence gathering and analysis to coordinate data sharing and safeguard sensitive information.

Governor Newsom signed SB 209 on October 2, 2019 (Chapter 405, Statutes of 2019).

[AB 1144 \(Friedman\)](#), as amended September 6, 2019, adds section 379.9 to the Public Utilities Code to require that the Commission allocate funds to install energy storage in high fire threat districts. According to the author in response to “more frequent and deadly wildfires . . . [e]nergy storage systems may have the potential to provide grid resilience while also reducing wildfire risk in fire-prone communities.” New section 379.9 requires that the CPUC allocates at least 10% of the 2020 funds from the Self Generation Incentive Program, aimed at increasing the development of distributed energy and storage technologies, to high fire threat districts in order to support communities during

deenergization of the distribution grid. Under the bill, the CPUC must evaluate the impact of this funding in a relevant self-generation incentive program evaluation report no later than December 31, 2022.

Governor Newsom signed SB 209 on October 02, 2019 (Chapter 394, Statutes of 2019).

## **Non-enrolled Bills**

The following bills did not achieve passage. As a result, some may become “2 year bills” and affect further progress and passage in 2020:

- [AB 281 \(Frazier\)](#) Transmission and distribution lines: undergrounding and fire hardening
- [AB 1503 \(Burke\)](#) Distributed energy and microgrids: policies: report
- [AB 1789 \(Flora\)](#) Electrical corporations: high fire threat areas: electrical grid monitoring equipment
- [SB 111 \(Committee on Budget and Fiscal Review\)](#) Wildfire agencies: public utilities: safety and insurance
- [SB 584 \(Moorlach\)](#) Electricity: undergrounding of electrical wires
- [SB 774 \(Stern\)](#) Electricity: microgrids
- [AB 235 \(Maves\)](#), this bill would authorize a bond to electrical corporations in a sum up to \$20 billion in order to pay out wildfire victim’s claims

## **General Power**

[AB 1513 \(Holden\)](#), as amended on September 6, 2019, in addition to making several technical and clarifying changes to various statutes which concern programs under the jurisdiction of, and the authority of, the CPUC and other energy programs, amends section 3292 of the Public Utilities Codes to clarify that, upon termination of the Wildfire



Fund established by AB 1054 (Holden) (Chapter 79, Statutes of 2019), any remaining funds must be transferred to the State's General Fund for wildfire mitigation.

Governor Newsom signed AB 1513 on October 2, 2019 (Chapter 396, Statutes of 2019).

[SB 155 \(Bradford\)](#), as amended on August 30, 2019, amends sections 399.13, 399.16, 399.30, 454.5, and 454.52 of the Public Utilities Code, relating to energy. The bill amends specified requirements concerning the plans for energy procurement by load-serving entities (LSEs) within the jurisdiction of the CPUC. The bill was amended to remove language that would have expressly stated the CPUC "shall enforce" the requirement that the integrated resource plan (IRP) of each LSE contribute to a diverse and balance portfolio of resources, and related IRP requirements. Section 399.13 of the Public Utility Code is amended to require the CPUC to review each RPS annual compliance report filed by a retail seller, to notify a retail seller if the CPUC has determined, based upon its review, that the retail seller may be at risk of not satisfying the renewable procurement requirements for the then-current or future compliance period, and to provide recommendations in that circumstance regarding satisfying those requirements. The existing bill further requires the CPUC to ensure that LSE comply with a requirement that at least 65 percent of the procurement that a retail seller counts towards the RPS requirement of each compliance period be from contracts of 10 years or more in duration or from its ownership or ownership agreements from eligible renewable energy resources.

Governor Newsom signed SB 155 on October 2, 2019 (Chapter 401, Statutes of 2019).

[SB 457 \(Hueso\)](#), as amended on September 11, 2019, amends section 399.19 of the Public Utility Code. Section 399.19 extends the sunset date, by five additional years, of an existing incentive program for biomethane projects administered by the CPUC. Section 399.19 was amended to extend the sunset date of an existing CPUC administered program for biomethane from 2021 to 2026, or until all available program funds are expended, whichever occurs first. Further, section 399.19 extends the date by when the existing statutory section for the incentive program for biomethane projects requires repeal from January 1, 2022, to January 1, 2027.

Governor Newsom signed SB 457 on October 2, 2019 (Chapter 479, Statutes of 2019).

## **Energy Efficiency, Solar, and Storage**

[AB 1057 \(Limón\)](#), as amended on September 6, 2019, amends section 848 of the Civil Code, sections 3205.3 and 3011 of the Public Resource Code. Section 848 of the Civil Code is amended to rename the Division of Oil, Gas, and Geothermal Resources the Geologic Energy Management Division. Section 3205.3 is added to the Public Resource Code to authorize the Oil and Gas Supervisor (Supervisor) to require an operator to provide an additional amount of security in an amount not to exceed the reasonable cost of plugging and abandoning all the operator's wells or \$30 million. Section 3011 is added to the Public Resource Code for the purpose of the Division's regulation to include protecting public health and safety and environmental quality, including reduction and mitigation of GHG emissions associated with the development of hydrocarbon and geothermal resource in a manner that meets the energy needs of the state. Section 3011 additionally requires the Supervisor to coordinate with other state agencies and entities in furtherance of the goals

of California Global Warming Solutions Act of 2006 ([AB 32 \(Nunez\) \(Chapter 488, Statutes of 2006\)](#)) and help support the state’s clean energy goals.

Governor Newsom signed AB 1057 on October 12, 2019 (Chapter 771, Statutes of 2019).

[SB 676 \(Bradford\)](#), as amended on September 6, 2019, adds section 740.16 to the Public Utility Code. Section 740.16 requires the CPUC to establish electric vehicle (EV) grid integration strategies for certain load-serving entities (LSEs). Section 740.16 also requires local publicly owned electric utilities (POUs) to consider EV-grid integration strategies in their integrated resources plan (IRPs) and requires CCAs to report specified information to the CPUC regarding EV-grid integration activities. Section 740.16 was added to require the CPUC to consider National Institute of Standards and Technology (NIST) reliability and cyber security protocols in EV-grid integration strategies. Section 740.16 also modifies how CCAs will report EV-grid integration actions to the CPUC and delete requirements for the California Energy Commission (CEC) to develop EV-grid integration strategies, and instead requires POU’s to consider EV-grid integration strategies in their IRPs.

Governor Newsom signed SB 676 on October 2, 2019 (Chapter 484, Statutes of 2019).

[SB 560 \(McGuire\)](#), as amended on September 6, 2019, amends sections 8386 and 8387 of, and to add section 776.5 to, the Public Utilities Code. Section 776.5 is added to expand the protocols required as a result of the deenergizing of electrical lines initiated by the electrical corporations (electric IOU), a local POU, or an electrical cooperative (co-op) to mitigate the impact of the event on specified customers and critical services, and

specifies the duties of the facilities-based mobile telephone service providers (wireless carriers) before and during a deenergization event.

Governor Newsom signed SB 560 on October 2, 2019 (Chapter 410, Statutes of 2019).

## **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 occurred during the California wildfires of the recent past, and that primarily affected first responders.

[SB 208 \(Hueso\)](#), as amended August 30, 2019, adds section 2893.5 to the Public Utilities Code, requiring a telecommunications service provider to verify and authenticate caller identification for calls carried over an internet protocol network (to detect internet robocallers). SB 208 authorizes the Commission and the Attorney General to bring an action pursuant to federal law and authorizes the Commission, at the request of the Attorney General, to work with the Attorney General for the purpose of enforcing that law.

Governor Newsom signed SB 208 on October 2, 2019 (Chapter 471, Statutes of 2019).

[AB 1132 \(Gabriel\)](#), as amended June 21, 2019, adds section 2893.2 to the Public Utilities Code, making unlawful any actions by any person within the United States, in connection with any telecommunications service or internet protocol enabled voice service,

causing any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value.

Governor Newsom signed AB 1132 on October 2, 2019 (Chapter 452, Statutes of 2019).

[AB 1699 \(Levine\)](#), as amended September 5, 2019, adds section 2898 to the Public Utilities Code, prohibiting internet service providers from throttling lawful internet traffic of an account used by the agency in response to an emergency, and requires a first response agency that acts pursuant to that authorization to notify the mobile internet service provider upon the account no longer being used by the agency in response to the emergency. This bill passed in response to concerns resulting from the repeal of federal net neutrality legislation and ongoing litigation regarding California net neutrality laws.

Governor Newsom signed AB 1699 on October 2, 2019 (Chapter 398, Statutes of 2019).

[AB 497 \(Santiago\)](#), as amended August 14, 2019, amends sections 914.5 and 2881 of the Public Utilities Code, extending funding for the Deaf and Disabled Telecommunications Program by collection of a surcharge of one half of one percent on intrastate telephone service until January 1, 2025.

Governor Newsom approved AB 497 on September 12, 2019 (Chapter 287, Statutes of 2019).

[AB 1366 \(Gonzalez\)](#), as amended September 6, 2019, would repeal Chapter 26.5 (commencing with section 22765) of Division 8 of the Business and Professions Code, amend section 53121 of the Government Code, and amend section 710 of the Public

Utilities Code, relating to communications. These changes would extend 2012 legislation ([SB 1161 \(Padilla\) \(Chapter 733, Statutes of 2012\)](#)) to keep internet oversight in the hands of the Senate instead of the CPUC.

As an extension of the 2012 legislation, AB 1366 is intended to allow a nimbler organization (the California Senate) to regulate the internet, rather than the CPUC. Because the CPUC already regulates energy, water, telecommunications, and transportation, Assemblywoman Gonzalez and the bill's other supporters say the CPUC cannot effectively execute internet oversight in addition to its current regulatory duties. The CPUC previously withstood efforts to break it up or reduce its size without the additional burden of internet oversight. In 2017, [SB 19 \(Hill\) \(Chapter 421, Statutes 2017\)](#) even removed small portions of the CPUC's governance responsibilities. [*S. EU&C*]

## **Transportation**

[SB 397 \(Glazer\)](#), as amended June 17, 2019, adds section 99166 to the Public Utilities Code, requiring the Office of Emergency Services and the Department of Food and Agriculture to develop best practices for allowing pets on public transit vehicles serving areas subject to an evacuation order. If an evacuation order that covers all or a portion of a public transit operator's service area is issued, the bill requires the operator to authorize passengers to board public transit vehicles with their pets in the area covered by the evacuation order, consistent with those best practices. By creating new duties for public transit operators, the bill imposes a state-mandated local program.

Governor Newsom signed SB 397 on October 9, 2019 (Chapter 702, Statutes of 2019).

[SB 676 \(Bradford\)](#), as amended September 6, 2019, adds section 740.16 to the Public Utilities Code, requiring the CPUC, in an existing proceeding and by December 31, 2020, to establish strategies and quantifiable metrics to maximize the use of feasible and cost effective electric vehicle grid integration by January 1, 2030. By passing SB 676, the California legislature intends to integrate electric vehicle infrastructure before further development displaces existing opportunities for transportation infrastructure to be powered by renewable energy.

Governor Newsom signed SB 676 on October 2, 2019 (Chapter 484, Statutes of 2019).

## **Water**

[SB 200 \(Monning\)](#), as amended July 3, 2019, adds section 53082.6 to the Government Code, amends sections 39719, 100827, 116275, 116385, 116530, 116540, and 116686 of, and adds Chapter 4.6 (commencing with section 116765) to Part 12 of Division 104 of, the Health and Safety Code, and adds Chapter 7 (commencing with section 8390) to Division 4.1 of the Public Utilities Code, relating to, making an appropriation for, and declaring the urgency of providing safe drinking water, to take effect immediately.

SB 200 establishes the Safe and Affordable Drinking Water Fund in the State Treasury to help water systems provide an adequate and affordable supply of safe drinking water in both the near and long terms. The bill authorizes the state to continuously appropriate money to the state board for grants, loans, contracts, or services to assist eligible recipients. The bill also requires the state board to make publicly available a map of aquifers that are used or likely to be used as a source of drinking water that are at high risk of containing contaminants that exceed safe drinking water standards.

Governor Newsom signed SB 200 on July 24, 2019 (Chapter 120, Statutes of 2019).

## LITIGATION

### Internal

*Karen Clopton v. Cal. Pub. Util. Comm'n*, No. CGC-17-563082 (Cal. Super. Ct. San Francisco). On October 1, 2019, the Superior Court of San Francisco [denied](#) the CPUC's Motion for Summary Adjudication in Administrative Law Judge Karen Clopton's wrongful termination suit, and the court confirmed the trial date for this case to be set for April 6, 2020. After hearing oral arguments for the CPUC's motion, the court ruled that the CPUC did not meet its burden to establish an affirmative defense, despite acknowledging the alleged adverse employer actions. The court held that Judge Clopton may maintain her first claim for relief under the Whistleblower Act. Because the court denied summary adjudication, a jury trial will commence for all four causes of action if the parties do not settle before April 6, 2020. [[24:2 CRLR 219–220](#); [24:1 CRLR 170–171](#); [23:2 CRLR 185–186](#); [23:1 CRLR 213](#)]

Previously, the hearing for the CPUC's Motion to Stay Discovery was continued further from May 8 to June 5, 2019. On June 5, 2019, the court [denied](#) the CPUC's motion to stay. Then, on June 6, 2019, the court [granted](#) Judge Clopton's Motion for Protective Order and Sanctions.

### Wildfires

*San Diego Gas & Electric v. Public Utilities Commission*, Docket No. D074417 (Cal. App. Ct.). After the California Supreme Court denied SDG&E's appeal on January 30, 2019, as discussed in the previous issue, SDG&E filed a [petition for a writ of certiorari](#) in the Supreme Court of the United States on April 30. [[24:2 CRLR 221–222](#)] SDG&E



argued in this petition that the CPUC denying it recovery through rates of the \$379 million that it had paid in unreimbursed inverse condemnation costs was an uncompensated taking of its private property for public use, and thus violative of the Fifth and Fourteenth Amendments of the U.S. Constitution. Because the California court of appeal and the California Supreme Court refused to consider this issue and because of the increasing threat of future inverse condemnation proceedings, SDG&E argued that the Supreme Court should grant certiorari.

On October 7, 2019, the Supreme Court [denied](#) (at pp. 62–63) the petition, thus preventing SDG&E from recovering costs through customers for damages which it believed were out of its control.

*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 (Cal. PUC).* As discussed in the previous issue, this case regards misrepresentations as to how quickly utilities responded to requests to mark underground pipelines for excavators. [[24:2 CRLR 224–225](#)]

On April 25, 2019, the Commission granted compensation for substantial contribution to [D.18-06-28](#), which denied SDG&E and Southern California Gas Company’s proposed certificate of public convenience and necessity, to [UCAN](#), [Protect Our Communities Foundation](#), and [TURN](#) for approximately \$222,000, \$185,000, and \$179,000, respectively. On May 16, 2019, the Commission awarded compensation to Sierra Club on the same grounds.

On June 3, these same parties (Petitioners) [petitioned](#) the Commission to modify D.18-06-28, and on September 12, the presiding ALJ Anne Simon issued a [proposed](#)

[decision](#) approving in part and denying in part the petition. Of note, the ALJ agreed to open phase 2 of the proceeding in order “to consider a cost forecast pertaining to Southern California Gas Company and San Diego Gas & Electric Company’s (Applicants’) Line 1600 Pipeline Safety Enhancement Plan (PSEP) [Pipeline Safety Enhancement Plan] Design Alternative 1 . . . .” This plan focuses on enhancing public safety, minimizing customer impacts, and maximizing the cost effectiveness of safety investments. The earliest the Commission can hear this proposed decision is on October 24.

***In re Pacific Gas & Electric Company, Case No. 19-30088-DM (Bankr. N.D. Cal.)***. As discussed in the previous issue, PG&E Corporation, the holding company for the state’s largest electric energy utility, filed for Chapter 11 bankruptcy in federal court on January 29, 2019. [[24:2 CRLR 223–224](#)] The bankruptcy proceeding is still ongoing.

On April 23, 2019, Judge Montali ruled that PG&E could pay \$235 million in bonuses to approximately 10,000 employees. According to PG&E, these bonuses were part of a promised short-term incentive program based on the performance of employees.

On May 22, 2019, Judge Montali approved PG&E’s voluntarily proposed Wildfire Assistance Program, a \$105 million fund to assist wildfire victims. According to PG&E, the fund’s [stated purpose](#) is “to help those who are either uninsured or need assistance with alternative living expenses or other urgent needs.” The fund will provide Basic Unmet Needs in the sum of \$5,000 per household to cover living expenses beyond what the Federal Emergency Management Agency (FEMA) provided in the days immediately following the wildfires. After these claims are paid out, the fund will also issue Supplemental Unmet Needs for families facing extraordinary circumstances. Property loss claims against PG&E for these wildfires add up to \$30 billion, leading critics, such as attorneys for wildfire

victims, to argue that PG&E's assistance program does not do enough to help victims, but rather is a political tactic ahead of impending reorganization. Judge Montali acknowledged that this fund's creation was voluntary on PG&E's part. Victims have until November 15, to file claims.

On August 16, 2019, Judge Montali ruled that victims of the 2017 Tubbs Fire could proceed in a suit against PG&E in civil state courts. State investigators found that the Tubbs Fire began due to private power equipment; however, fire victims believe this finding was incorrect. The trial is set to begin on January 7, 2020 and overseen by San Francisco Superior Court Judge Teri Jackson. According to Judge Jackson, one jury will oversee both phases of the trial, the first focusing on PG&E responsibility for starting the fire, and the second focusing on the harms claimed by victims.

On August 26, Judge Montali appointed U.S. District Judge, James Donato to the bankruptcy case, as well as U.S. Magistrate Judge, Sallie Kim, to assist the district judge. Judge Donata will oversee aspects of the damage estimation process, including whether emotional distress by fire victims is recoverable.

On August 30, Judge Montali denied PG&E its plan to pay top executives bonuses estimated at \$11 million, citing that these bonuses showed no "ascertainable connection between the officers' performance and the metrics." Because these bonuses should have been motivated by safety metrics, Judge Montali gave PG&E the option to submit a new plan based on this reasoning.

On September 9, PG&E proposed a [reorganization plan](#) that included \$18 billion in payments. First estimates placed PG&E's property loss claims for wildfire victim at \$30 billion. This plan would cap insurance claim payouts at \$8.5 billion and wildfire victims at

\$8.4 billion. Earlier, PG&E had already settled with local governments on a payout of \$1 billion. PG&E's restructuring plan will not be able to include a \$20 billion wildfire recovery bond from the state, which was contingent on a legislative bill that did not pass this session (see LEGISLATION). Judge Montali has not yet approved this reorganization plan.

On September 13, PG&E agreed with insurance companies on a settlement of \$11 billion for insurance claims from the 2018 Camp Fire and 2017 wine country fires. Initially, insurance companies wanted \$20 billion from PG&E; however, the bankruptcy court must still approve this lesser settlement, on which Judge Montali has not yet ruled.

**Butte County Criminal Investigation of PG&E.** Butte County prosecutors are conducting a criminal investigation on PG&E for its role in the deadly Paradise, California, Camp Fire. In order to determine fault for starting these fires, the FBI investigated burned PG&E equipment to determine fault. On May 15, Cal Fire issued a [press release](#) determining "that the Camp Fire was caused by electrical transmission lines owned and operated by . . . (PG&E) located in the Pulga area [of Butte county]." Cal Fire further stated that "[t]he cause of the second fire [which was consumed by the original fire] was determined to be vegetation into electrical distribution lines owned and operated by PG&E." Cal Fire forwarded this information to Butte County District Attorney Mike Ramsey. In April, Ramsey stated that the county is "taking [the investigation] step-by-step [and that they are] putting a lot of resources into this." The investigation is ongoing, and the county has not yet brought criminal charges against PG&E.

***In re Woolsey Fires Cases, JCCP 5000 (Super. Ct. Los Angeles Cnty).*** Multiple lawsuits against SCE for this utility's role in the 2018 Woolsey fires have been filed and

designated in Los Angeles Superior Court with Judge William F. Highberger presiding. ([Woolsey Fire Cases, JCCP No. 5000](#) at p. 98). According to an annual filing by SCE, filed in February, the utility “believes that its equipment could be found to have been associated with the ignition of the Woolsey Fire.” Among the parties include Los Angeles County, citing losses amounting to \$100 million in response to these wildfires. Due to the threat of future fires and growing legal costs, SCE has sought to raise ratepayer’s bills by \$170 annually. SCE has also challenged inverse liability condemnation; however, Judge Highberger postponed ruling on this until after the Supreme Court of the United States ruled on SDG&E’s request, where it declined this utility’s petition on October 7. Accordingly, Judge Highberger has also invited the CPUC to determine whether inverse condemnation should apply to claims against SCE. The Commission has until November 1 to submit an amicus brief on SCE’s motion for judgement on the pleadings.

***Cannara & Nelson v. California Department of Water Resources Director Karla Nemeth 19-CV-04171 (N.D. Cal.)***. On July 19, 2019, Michael S. Aguirre of Aguirre & Severson LLP [filed](#) a lawsuit in the Northern District of California, arguing that [AB 1054 \(Holden\) \(Chapter 79, Statutes of 2019\)](#) is invalid because it violated the California and U.S. Constitutions (see LEGISLATION). Named defendants are the Department of Water Resources, the CPUC, and the Department of Finance. Specifically, plaintiffs argue that AB 1054 would unlawfully impose unjust and unreasonable rates on consumers by violating their due process rights, and because AB 1054 is emergency legislation, it would violate the public’s right to access records. On September 26, the state filed a motion to dismiss plaintiff’s claims, arguing that “[e]ach of the harms alleged in the complaint is

merely a generalized grievance” and not specific to any of the plaintiffs. The court set a hearing for November 14.

## **General Power**

*Winding Creek Solar LLC v. Peterman*, 932 F. 3d 861 (9th Cir. 2019). On July 29, 2019, the United States Court of Appeals, Ninth Circuit, [ruled](#) that the CPUC’s Renewable Market Adjusting Tariff (Re-MAT) violates the Public Utility Regulatory Policies Act of 1978 (PURPA) requirements, because it caps the amount of energy utilities are required to purchase from Qualifying Cogeneration Facilities (QFs) and because it sets a market-based rate, rather than one based on the utilities’ avoided cost. Because California does not offer a PURPA-compliance alternative, PURPA preempts Re-MAT.

PURPA requires electric utilities to buy all the power produced by alternative energy generators known as QFs and requires these utilities to pay the same rate they would have if they had obtained that energy from a source other than QFs. QFs are guaranteed their choice of this “avoided cost” rate as calculated either at the time of contracting or the time of delivery. Winding Creek Solar LLC is a QF and sought to develop a one megawatt solar generating facility in Lodi, California.

In 2012, CPUC created Re-MAT to regulate the terms of utilities’ contracts with alternative energy sources, such as wind farms or solar producers, and establish competitive market-based rates for energy from alternative sources. The two important features of Re-MAT are: the amount of energy a utility must buy through Re-MAT is capped to purchase only 750 MW through Re-MAT statewide; and the CPUC sets the contract price at \$89.23/MWh for facilities that have energy available for peak times like Winding Creek.

On August 12, 2013, Winding Creek was offered a drop in the contract offer at \$77.23/MWh, and [challenged](#) the Re-MAT program before the Federal Energy Regulatory Commission (FERC). Winding Creek filed suit in district court after various orders and notices of intent not to act.

This decision held Re-MAT violates PURPA in two ways: (1) Re-MAT allows a utility to purchase less energy than a QF makes available, an outcome forbidden by PURPA; and (2) the Re-MAT pricing that is arbitrarily adjusted every two months according to the QF's willingness to supply the energy at the pre-define price, goes too far outside the scope from the utility's but-for costs to satisfy PURPA.

***Public Watchdogs v. Southern California Edison Co., Case No. 3:19-cv-01635-JM-MSB (S.D. Cal. 2019).*** Public Watchdogs filed a [complaint](#) alleging federal and state claims against the Defendants (SCE, SDG&E, Sempra Energy (Sempra), Holtec International (Holtec), and the United States Nuclear Regulatory Commission (NRC)) who are in the process of burying toxic nuclear waste in defective containment vessels on a site (the defunct San Onofre Nuclear Generating Station (SONGS)) that is in a tsunami inundation zone, between two seismic fault lines (108 feet from the Pacific Ocean).

On August 28, 2019, the Southern District Court of California held immediate equitable relief is warranted since there is an imminent danger that the canisters will fail and release deadly radioactivity into highly populated regions of Southern California. The court determined the Plaintiff easily clears the temporary equitable relief bar, irreparable harm is self-evident, an injunction is in the public interest, the balance of hardships tips sharply in Plaintiff's favor, the Plaintiff will likely succeed on the merits, and the Plaintiffs need not provide any undertaking.

## Telecommunications

*Mozilla Corp. v. Fed. Commc'n Comm'n*, 940 F.3d 1 (D.C. Cir. 2019). On October 1, 2019, the United States Court of Appeals for the District of Columbia Circuit [ruled](#) in favor of the Federal Communications Commission (FCC) in part, upholding the Trump Administration's repeal of the Obama-era federal net neutrality legislation. However, the court overruled the FCC's claim of preemption of state net neutrality laws. This case is a consolidation of challenges brought against the FCC by more than twenty organizations, including internet companies, non-profits, and state and local governments. Multiple cases brought in state courts regarding state net neutrality laws will now resume, after being stayed until the outcome of cases consolidated under *Mozilla*. [[24:2 CRLR 225–226](#); [24:1 CRLR 175](#)]

At issue in this case was the FCC's 2018 [order](#) reclassifying broadband internet service as an “information service.” The Obama administration previously classified broadband internet as a “telecommunications service,” which requires regulation as a utility. Now under the Trump Administration, the FCC's 2018 classification allows “light touch,” market-based regulation of internet service providers. The FCC argues that “light touch” regulation increases investment and lowers the cost of service; benefits that outweigh those of a regulation system meant for a utility. Implicit in the 2018 rules is a lack of regulation of arbitrary throttling (deceleration of internet service) by internet service providers, considered an unfair practice by net neutrality supporters and members of the Obama Administration. The FCC says the burdens of utility-style regulation outweigh the benefits, but does not specify whether this analysis applies to consumers.



Despite the FCC's reclassification victory, the court vacated the portion of the FCC Order asserting preemption of state law. Because the court vacated this assertion, state governments are not barred by *Mozilla* from creating legislation regulating internet services more stringently than the federal government will do under the FCC Order. In essence, the court left states the option to determine their own net neutrality laws, turning the spotlight to *Am. Cable Ass'n v. Becerra*, Case No. 2:18-cv-02684 (E.D. Cal. 2018).

Finally, the court partially remanded the case for determinations regarding (1) public safety; (2) what reclassification will mean for regulation of pole attachments; and (3) the effects of broadband reclassification on the Lifeline Program, which subsidizes low-income consumers' access to communications technologies including broadband internet access.

***Am. Cable Ass'n v. Becerra*, No. 2:18-cv-02684 (E.D. Cal.)**. After the conclusion of *Mozilla Corp. v. Fed. Comm'n Comm'n*, 940 F.3d 1 (D.C. Cir. 2019), on October 1, 2019, the parties of this case made no significant filings before October 15, 2019. Judge John A. Mendez stayed this case on October 26, 2018, effective until final resolution of *Mozilla* because of expected implications from *Mozilla's* ruling on preemption of state net neutrality laws. A group of plaintiffs including an association of internet service providers and the United States Department of Justice filed the complaint on October 3, 2018, challenging California's strict net neutrality laws as adopted earlier in 2018 (and contrary to 2018 FCC policy). The U.S. Chamber of Commerce filed a Motion for Leave to File Amicus Brief on October 19, 2018, but the court stayed the case before the hearing date.

Because the United States Court of Appeals for the District of Columbia Circuit ruled in *Mozilla* that states are not preempted by the FCC's net neutrality rules under the

Trump Administration, this case is expected to resume in late 2019 or early 2020. Despite the federal ruling in *Mozilla*, California's state courts in this case could still strike down the California legislature's strict 2018 net neutrality laws, effectively ending California lawmakers' pursuit of net neutrality in the nation's largest state economy.

***Ponderosa Tel. Co. v. Cal. Pub. Util. Comm'n*, 36 Cal. App. 5th 999 (2019).** On June 18, 2019, the California Court of Appeal in the Fifth District affirmed the CPUC's decisions, Nos. 16-12-034 and 17-12-029, establishing utilities' cost of capital as a component of rate setting.

Rural telephone utilities brought petition for writ of review to the Court of Appeal after the CPUC's administrative proceedings determined that the rural telephone companies assessed too much risk as a component of rate setting. In their cost of capital calculations, the companies included costs for risk associated with the small company size, industry-specific risk, and regulatory risk. Implicit in the companies' calculations is the increased risk of catastrophic wildfires in the modern era. If the new cost of capital calculations were allowed to stand, then consumers would pay higher rates to cover the costs.

Without the extra risk-associated costs, the telephone companies argued that the cost of capital calculations, and thus utility rates, were so low as to render the services confiscatory. However, the Court of Appeal disagreed, affirming the CPUC's decisions. As of October 15, 2019, the plaintiffs had not petitioned the Supreme Court of California for further review.

*Calaveras v. Cal. Pub. Util. Comm'n*, 39 Cal. App. 5th 972 (2019). On August 20, 2019, the California Court of Appeal in the Fifth District annulled and remanded the CPUC's decisions, [D.16-09-047](#) and [D.16-09-049](#).

In this case, small independent telephone corporations sought review by the Court of Appeal of the CPUC decision denying requests for funding from the California High Cost Fund A (CHCF-A), a program to help Californians in remote areas receive access to telecommunication services at reasonable rates. The court found that the CPUC improperly denied the companies' requests for funding. However, the court stopped short of granting the companies' requests for funding, finding that the funding was not mandatory. The court remanded the case to the CPUC for further determination based on the court's stipulation regarding the denial process. As of October 15, 2019, there was no further petition for review.