BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

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Order Instituting Rulemaking to Implement Electric Utility Wildfire Mitigation Plans Pursuant to Senate Bill 901 (2018).	Rulemaking 18-10-007 (Filed October 25, 2018)

COMMENTS ON WILDFIRE MITIGATION PLANS OF THE CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION

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COMMENTS ON WILDFIRE MITIGATION PLANS OF THE CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION

The California Large Energy Consumers (CLECA)[1] submits these comments on the wildfire mitigation plans pursuant to the schedule set in the Assigned Commissioner Scoping Ruling and Memo, dated December 7, 2018. These comments follow the common outline that was developed pursuant to the direction given at the February 26, 2019 Prehearing Conference and in the March 5, 2019 e-mail ruling regarding briefing of Judge Thomas, and they primarily focus on overarching procedural issues, issues of statutory interpretation and Commission authority.

[1] CLECA is an organization of large industrial electric customers of Pacific Gas & Electric Company and Southern California Edison Company. Some members are bundled utility customers; some are direct access customers; some are customers of community choice aggregators and some have onsite renewable generation to serve a portion of their load. The member companies are in the steel, cement, industrial gas, mining, pipeline and beverage industries and share the fact that electricity costs comprise a significant portion of their costs of production. CLECA members engage in demand response to both promote grid reliability and help mitigate the high cost of electricity in California on the competitiveness of manufacturing. CLECA has been active in Commission proceedings since the early-to-mid 1980s.

INTRODUCTION

Senate Bill 901 directs multiple agencies to undertake many activities in a very short time frame, all with the goal of reducing or mitigating the risk of catastrophic wildfires. This proceeding is one of those many ongoing activities. The accelerated pace of these activities, necessitated both by statute and by the looming wildfire season, compels decisive Commission action pursuant to black-letter law. The mandated time-frame for a decision on the plans is three months; the plans were filed in February so the decision is due in May. There is no time now for an in-depth analysis of the scope and reasonableness of the wildfire mitigation plans, nor is there need now, as this will be undertaken later. SB 901's iterative process for annual wildfire mitigation plans includes the legislative directive for Commission review of the "justness and reasonableness" of the costs in general rate cases. The Legislature is long-familiar with the Commission's in-depth prudency review in general rate cases. SB 901 specifies that forum for the review of costs not already included in the revenue requirement, while allowing the tracking of those incremental costs in memorandum accounts upon approval of the wildfire mitigation plans. SB 901 twice references the continuing statutory requirement for just and reasonable rates, making it clear that the legislation in no way limits or restricts the Commission's obligation to ensure just and reasonable rates. Indeed, SB 901 directs the use of traditional ratemaking tools, general rate case prudency reviews and memorandum accounts to ensure just and reasonable rates.

In its decision on the wildfire mitigation plans, the Commission should reinforce the Order Instituting Rulemaking issued October 25, 2018, and track SB 901, and the Commission should state that approval of the wildfire mitigation plans:

- does not extend to approval of whether the cost is just and reasonable, as the reasonableness of the cost will be reviewed without limitation or restriction in the general rate cases;

- is concurrent with authorization of establishment of memorandum accounts for the tracking of costs incurred to implement the plans;

- identifies any changes that must be made to the plans;

- means the Commission has taken comments on the plans and verified that the plans (with any needed changes) comply with rules, regulations and standards, as appropriate; and

- starts the initial compliance period.

The Commission decision on these initial wildfire mitigation plans should also set the timeline for the filing of the subsequent round of annual wildfire mitigation plans.

1. MEANING OF PLAN APPROVAL

SB 901 is clear and the plain meaning of the statute needs no convoluted interpretation. In *Murphy v. Kenneth Cole Productions* (56 Cal.Rptr.3d 880 (2007), 155 P.3d 284, 40 Cal.4th 1094), the California Supreme Court describes the rules of statutory interpretation:

> it is well-settled that we must look first to the words of the statute, "because they generally provide the most reliable indicator of legislative intent." (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 871, 39 Cal.Rptr.2d 824, 891 P.2d 804.) If the statutory language is clear and unambiguous our inquiry ends. "If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs." (*People v. Snook* (1997) 16 Cal.4th 1210, 1215, 69 Cal.Rptr.2d 615, 947 P.2d 808; *Diamond Multimedia Systems, Inc. v. Superior Court* (1999) 19 Cal.4th 1036, 1047, 80 Cal.Rptr.2d 828, 968 P.2d 539.) In reading statutes, we are mindful that words are to be given their plain and commonsense meaning. (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735, 248 Cal.Rptr. 115, 755 P.2d 299.)[2]

[2] *Murphy v. Kenneth Cole Productions*, 56 Cal.Rptr.3d 880, 886 (2007), 155 P.3d 284, 40 Cal.4th 1094.

Here, the words of the statute are not ambiguous. The meaning of plan approval has many implications (reviewed below), but a restriction or limitation on the Commission's subsequent review of whether the costs incurred are reasonable to an accounting exercise that merely matches cost categories and forecast levels of costs is not one of them.

a. MEANING OF PLAN APPROVAL FOR JUST AND REASONABLENESS REVIEW AND COST RECOVERY

The statute explicitly directs the Commission, after the plan's approval and implementation, to review the costs of the plans and to disallow costs that are unreasonable.[3] This review and determination of "whether the cost of implementing each electrical corporation's plan is just and reasonable" is to be undertaken in the general rates cases.[4] The plain meaning of the words used by the Legislature in SB 901 should govern. As the Order Instituting Rulemaking instructs:

> The scope of this proceeding also does not include utility recovery of costs related to wildfire mitigation plans, which Section 8386 requires be addressed in general rate case applications. The Commission's approval of wildfire mitigation plans in this proceeding is not a substitute – implicit or explicit – for the Commission's review in a general rate case whether the associated costs are just and reasonable. ***The Commission will <u>not</u> consider or approve explicit expenditures in wildfire mitigation plans in this proceeding***; however, in evaluating the proposed plans the Commission may weigh the potential cost implications of measures proposed in the plans. This proceeding is accordingly categorized as ratesetting.[5]

Arguments that approval of the plan limit or restrict the scope of the Commission's subsequent review should fail. SB 901 explicitly orders that "*Nothing* in this section shall be interpreted as a

[3] PUC § 8386(g); *see also* PUC § 8386(j).
[4] PUC § 8386(g).
[5] Order Instituting Rulemaking, issued Oct. 25, 2018, at 4 (citing PUC §8386(g)(emphasis added).

restriction or *limitation* on Article 1 (commencing with Section 451) of Chapter 3 of Part 1 of Division 1." [6] Merriam-Webster's online dictionary defines nothing as "not any thing: no thing" or "no part".[7] It defines restriction as "something that restricts: such as … a regulation that restricts or restrains"[8] and limitation as "something that limits **:** RESTRAINT".[9] Because of this clear statutory directive, no part of SB 901 can be interpreted as placing any limits or restraints on the Commission's obligation and duty under Section 451 to ensure that charges placed in rates are just and reasonable.

Section 451 provides in relevant part:

> All charges demanded or received by any public utility … for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.[10]

The costs shall be reviewed without limitation – meaning that the scope, the pace and the cost-effectiveness of new programs in the plans are all fair game. The plain meaning of SB 901 is that the Commission's consideration of the costs in the general rate case is to be a full consideration and not limited or restricted in any way.

Further, all parts of the statute must be given meaning and the statute should be read holistically. The California Supreme Court holds:

> [T]he "plain meaning" rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute. The meaning of a

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[6] PUC § 8386(g)(emphasis added).
[7] https://www.merriam-webster.com/dictionary/nothing
[8] https://www.merriam-webster.com/dictionary/restriction
[9] https://www.merriam-webster.com/dictionary/limitation
[10] PUC § 451.

> statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible. (*Dyna-Med, Inc.* v. *Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387 [241 Cal. Rptr. 67, 743 P.2d 1323].) (5) Literal construction should not prevail if it is contrary to the legislative intent apparent in the statute. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act. (*People* v. *Belton* (1979) 23 Cal.3d 516, 526 [153 Cal. Rptr. 195, 591 P.2d 485]; *Amador Valley Joint Union High Sch. Dist.* v. *State Bd. of Equalization* (1978) 22 Cal.3d 208, 245 [149 Cal. Rptr. 239, 583 P.2d 1281].) An interpretation that renders related provisions nugatory must be avoided (*People* v. *Craft* (1986) 41 Cal.3d 554, 561 [224 Cal. Rptr. 626, 715 P.2d 585]); each sentence must be read not in isolation but in the light of the statutory scheme (*In re Catalano* (1981) 29 Cal.3d 1, 10-11 [171 Cal. Rptr. 667, 623 P.2d 228]); and if a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed (*Metropolitan Water Dist.* v. *Adams* (1948) 32 Cal.2d 620, 630-631 [197 P.2d 543]).[11]

In addition to reviewing the reasonableness of the costs in general rate cases, the Commission must use the independent evaluator's report in its consideration. SB 901 dictates, "the independent evaluator's findings shall be used by the commission to carry out its obligations under Article 1 (commencing with Section 415) of Chapter 3 of Part 1 of Division 1."[12] Obviously, that cannot happen now, in this three-month period, as there are no findings by independent evaluators yet; the list of independent evaluators has not even been compiled.[13]

The Commission's discussion topics for the February 25-26 technical workshops asked if the scope of the Commission's review and approval of plans should be limited. The statutory timeline – three months - necessarily limits the scope of the review and approval. The Commission recently concluded in the PG&E Safety Investigation that PG&E would be responsible for implementing safety recommendations and refused to "pre-bless PG&E's plans

[11] *Lungren v. Deukmejian,* 45 Cal.3d 727, 775 (1988), 755 P.2d 299, 248 Cal. Rptr. 115.
[12] PUC § 8386(h)(2)(B)(iii).
[13] PUC § 8386(h)(2)(A).

for doing so."[14] Here, the Commission has been explicitly directed to not pre-bless the wildfire mitigation plans and to reserve judgement on the reasonableness of the costs of the plans. If the Legislature had wanted to enact a statutory scheme by which use of "upfront criteria and standards" to develop the plans meant that the cost recovery would be assured by simply following the plans, it could have done so. It has done exactly that for procurement and knows exactly which words to use in such legislation.[15] But the Legislature did not do that here; it used different words: "The commission shall consider whether the cost of implementing each electrical corporation's plan is just and reasonable in its general rate case. Nothing in this section shall be interpreted as a restriction or limitation on Article 1 (commencing with Section 451) of Chapter 3 of Part 1 of Division 1."[16] These words are clear; they have well-known, plain, common sense meanings. They should be given effect, not subverted.

b. MEANING OF PLAN APPROVAL FOR TRACKING OF COSTS

The statute states, "At the time it approves each plan, the commission shall authorize the utility to establish a memorandum account to track costs incurred to implement the

[14] D. 18-11-050, at 4.

[15] *See* PUC § 454.5(b)(7)("The upfront standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to execution of the transaction. This shall include an expedited approval process for the commission's review of proposed contracts and subsequent approval or rejection thereof. The electrical corporation shall propose alternative procurement choices in the event a contract is rejected.") Notably, the integrated resource planning process (like the long term planning process before it) takes far longer than three months to develop the procurement plans and the standards and criteria; indeed, two full years were devoted to this rigorous and thorough effort, which is based on complex, significant analysis and data-intensive modeling. *See generally* R. 16-02-007 (opening the rulemaking in February 2016 and adopting a decision on the requirements for the plans (D. 18-02-018) in February 2018).

[16] PUC § 8386(g).

plan."[17] SCE's 2019 Wildfire Mitigation Plan states:

> SCE's new mitigation strategies/programs identified in Table 7T1 include three memorandum accounts (MA) that SCE will use to track its incremental costs, as appropriate. These memorandum accounts include the GSRP MA, SB 901 MA, and the Fire Hazard Prevention Memorandum Account (FHPMA). SCE has and will set up separate accounting in its SAP system to track cost for each MA. The separate accounting will ensure that SCE does not account for these incremental costs more than once. Moreover, SCE will seek cost recovery for the incremental costs in the SB 901 MA and the FHPMA in its 2021 GRC.[18]

SCE's Preliminary Statement N describes the purpose of memorandum accounts, "The purpose of a Memorandum Account is to record all costs incurred by the Company for Specified Projects authorized by the Commission" and lists its memorandum accounts (over 60).[19] There should be no interpretation questions on the use of memorandum accounts to track costs as they are regularly used. The plan approval means that memorandum accounts will be authorized and used to track wildfire mitigation plan costs not already being recorded elsewhere.

The plans can also include costs either already authorized or for which an authorization request is pending. For example, the table in SCE's chapter 7 of its 2019 Wildfire Mitigation Plan, at pages 97-98-99, includes costs in its Grid Safety and Resiliency Program, its 2018 general rate case and its 2021 general rate case.[20] Vegetation management work pending in PG&E's general rate case may also overlap with its wildfire mitigation plan. This is why the statute also provides "an electrical corporation shall not divert revenues authorized to

[17] PUC § 8386(e).
[18] SCE 2019 Wildfire Mitigation Plan, filed Feb. 6, 2019, at 97.
[19] https://www1.sce.com/NR/sc3/tm2/pdf/ce91-12.pdf
[20] SCE 2019 Wildfire Mitigation Plan, filed Feb. 6, 2019, at 98-99.

implement the plan to any activities or investments outside of the plan."[21] The plan approval means that such costs must also be tracked to ensure that they were not improperly diverted to non-plan activities.

c. MEANING OF PLAN APPROVAL FOR THE PLAN

The plain words of the statute are that, "prior to approval, the commission may require modifications of the plans",[22] and upon approval of the plans, the plans will "remain in effect until the commission approves a subsequent plan."[23] Merriam-Webster's online dictionary states "*prior to"* is a synonym of "*before*"[24] and "*modification*" means "*alteration"* or "*change"*.[25] Thus before a plan is approved, changes can be ordered by the Commission; the common sense corollary is that after plan approval, no "post-approval" modifications are to be made to the plan in effect. This makes sense, as the plans are to be prepared on an annual basis.[26]

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[21] PUC § 8386(i). Notably, PG&E has been criticized by federal district court Judge Alsop for paying dividends during the same time-period as failing to "trim or remove thousands of trees." *See* Second Order to Show Cause Why PG&E's Conditions of Probation Should Not Be Modified, issued March 5, 2019, in US v. PG&E, Case No. CR 14-0175 WHA, at 7 (noting the utility "previously paid out immense sums in dividends — $798 million and $925 million in 2017 and 2016, respectively, with the vast majority paid to PG&E Corporation, PG&E's holding company … dividends paid to common shareholders by PG&E Corporation during 2017 and 2016 amounted to one billion dollars and $921 million, respectively … Yet, during this same period, PG&E knowingly failed to trim or remove thousands of trees it had already identified as posing a hazard. Put differently, some of these dividends could and should have been kept and used to bring PG&E into compliance with state and federal law with respect to what has become the number one cause of PG&E induced wildfires.")

[22] PUC § 8386(b).

[23] PUC § 8386(e).

[24] https://www.merriam-webster.com/dictionary/prior%20to?src=search-dict-box

[25] https://www.merriam-webster.com/dictionary/modifications

[26] PUC § 8386(b)("each electrical corporation shall annually prepare and submit a wildfire mitigation plan to the commission for review and approval, according to a schedule established by the commission,

d. MEANING OF PLAN APPROVAL FOR COMMENTS AND VERIFICATION PURPOSES

The statute further provides that the Commission "shall accept comments on each plan from the public, other local and state agencies, and interested parties, and verify that the plan complies with applicable rules, regulations and standards, as appropriate."[27] This statutory section immediately precedes the section setting the three-month timeline for Commission approval of the plans.[28] As noted above, the Commission can direct changes to the plans before the plans are approved.[29] Plan approval thus means that the time for comments on that plan is over. Further, as the time for requiring changes to the plans is prior to their approval, plan approval also means that the time for verification of the plan's compliance with "applicable rules, regulations and standards, as appropriate"[30] is over. Critically, plan approval does not offer a defense to an enforcement action. SB 901 states that plan approval "does not establish a defense to any enforcement action for a violation of a commission decision, order, or rule."[31]

e. MEANING OF PLAN APPROVAL FOR PLAN COMPLIANCE AND COMPLIANCE PERIODS

The statute states, "Following approval, the commission shall oversee compliance with

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which may allow for the staggering of compliance periods for each electrical corporation"). The OIR defers this issue, and it is not clear at this point if or when a schedule for staggering of compliance periods will be addressed; the current focus is appropriately on the development and approval of the initial set of SB 901 wildfire mitigation plans. That said, there should be a process for parties and the public to participate in if such staggering of compliance periods is addressed.

[27] PUC § 8386(d).

[28] PUC § 8386(e)("The commission shall approve each plan within three months of its submission").

[29] PUC § 8386(b).

[30] PUC § 8386(d).

[31] PUC § 8386(f).

the plans pursuant to subdivision (h)."[32] Plan approval thus means the setting of the specific plan against which utility compliance during the compliance period is measured. As discussed above, per the plain language of the statute, plan approval does not mean the plan costs are deemed reasonable, nor does it restrict the review of reasonableness in the general rate case to a mere accounting exercise; in the meantime, the costs are to be tracked "in the memorandum accounts" and the Commission may "disallow recovery of those costs the commission deems unreasonable."[33]

Plan approval also triggers the beginning of the relevant compliance period, and the approval of the subsequent plan means the end of the relevant compliance period (and beginning of the subsequent compliance period).[34] While the Commission is charged with overseeing plan compliance, the electrical corporation must help in this endeavor; it must "three months after then end of [its] … initial compliance period … file … a report addressing its compliance with the plan during the prior calendar year."[35]

2. OVERALL OBJECTIVES AND STRATEGIES

The objective is to mitigate risk of wildfire; CLECA would support an initial focus on mitigating the risk of catastrophic wildfires, not all wildfires. Several wildfires are characterized

[32] PUC § 8386(b).
[33] PUC § 8386(j).
[34] PUC § 8386(b)(referencing the Commission's oversight over compliance with the plan "following approval"). PUC § 8385(a) states that compliance period "means a period of approximately one year."
[35] PUC § 8386(h)(1).

as catastrophic in D. 17-12-024.[36] Common traits of those wildfires could be used to develop a definition of catastrophic wildfire.

3. RISK ANALYSIS AND RISK DRIVERS

CLECA supports close alignment of the plans with SMAP and RAMP.[37]

4. WILDFIRE PREVENTION STRATEGY AND PROGRAMS

Not addressed.

5. EMERGENCY PREPAREDNESS, OUTREACH AND RESPONSE

CLECA will raise important outreach needs for industrial customers supporting critical infrastructure needs during emergencies (e.g., a pipeline providing transportation fuels to first responders) in connection with public safety power shut offs in R. 18-12-005.

6. PERFORMANCE METRICS AND MONITORING

Not addressed.

7. RECOMMENDATIONS FOR FUTURE WMPS

The wildfire mitigation plans should use common language; for example, SCE calls its plan a Wildfire Mitigation Plan, but PG&E calls its plan a Wildfire Safety Plan. CLECA prefers

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[36] D. 17-12-024, at 7-8 (discussing conditions for catastrophic wildfires as "an elevated hazard for the ignition and rapid spread of power-line fires due to strong winds, abundant dry vegetation, and other environmental conditions. These are the environmental conditions associated with the catastrophic power-line fires that burned 334 square miles of Southern California in October 2007."); *see also Id*, at 47 (referencing October 2007 catastrophic wildfires in Southern California); *see also id* at 53 (referencing catastrophic wildfires in October 2017 in Southern California and October 2017 in Northern California); *see also id* at 57-58 (referencing past catastrophic wildfires); *see also* id at 114-115.

[37] *See generally*, D. 18-12-014.

SCE's name for its plan as it matches SB 901. The decision on approval of the initial wildfire mitigation plans should direct that a common lexicon of standard terms for the wildfire mitigation plans be developed in the next phase of this proceeding; the decision should also require use of the common lexicon in the next round of wildfire mitigation plans.

8. OTHER ISSUES

The decision on approval of the initial set of wildfire mitigation plans should set a clear timeline for when the next round of annual wildfire mitigation plans is to be filed.

CLECA appreciates the opportunity to offer these comments.

Respectfully submitted,

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