

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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 OF THE UTILITY REFORM NETWORK
ON THE SEPTEMBER 29 WORKSHOPS AND RELATED WILDFIRE SAFETY
DIVISION COMPLIANCE PROPOSAL**



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1. INTRODUCTION

TURN appreciates this opportunity to provide comments on the Wildfire Safety Division Draft Wildfire Mitigation Plan Compliance Process¹ (“WMP Compliance”) proposal issued by the Wildfire Safety Division (WSD) and the related workshop held on September 29, 2020. While TURN offered its initial feedback at the workshops, these comments provide additional observations on and suggestions for the WSD proposal. The compliance process should focus on the shared goals of reducing both wildfire risk and Public Safety Power Shut Offs (PSPS) events and ensuring that utility wildfire mitigation measures are effective and cost-efficient. TURN recommends that WSD adopt a flexible compliance regime that is designed to encourage effective and cost-efficient wildfire mitigation.

2. WSD COMPLIANCE PROCESS

Public Utilities Code § 8389(d)(3) requires the Commission and WSD to “adopt and approve a wildfire mitigation plan compliance process.” Under § 8389 (g), when the WSD “determines that an electrical corporation is not in compliance with its approved wildfire mitigation plan, it may recommend that the commission pursue an enforcement action against the electrical corporation for noncompliance with its approved plan.”

WSD proposes a compliance process with two components: 1) an annual assessment of the utility’s WMP over the previous year; and 2) “ongoing assessments...based on WSD’s field inspections, paper audits, Independent Evaluator reports, and other regular reporting.”² When the WSD determines that the utility is not “satisfactorily implementing its WMP,” it may recommend that the Commission take an enforcement action. In the event that WSD determines that the utility is not in compliance with its

¹ WSD Draft Wildfire Mitigation Plan Compliance Process, Sept. 18, 2020.

² *Id.* at 3.

WMP, WSD may require the utility to correct the identified defect.³ The Commission may determine that penalties are an appropriate response to the failure.⁴ WSD states that “this is a goal-oriented framework” identifying implementation of WMP initiatives and reduced wildfires and PSPS events as the identified goals.⁵

3. TURN RECOMMENDS A FLEXIBLE ENFORCEMENT PROCESS THAT ENCOURAGES EFFECTIVE AND COST-EFFICIENT WILDFIRE MITIGATION.

TURN recommends that WSD develop a compliance process that focuses on outcomes and ratepayer impacts and encourages the utilities to pursue the best outcomes for their customers rather than strict compliance with what is in their WMP. A flexible enforcement process should recognize and allow for deviations from the approved WMP. This allows for coordination with the ratemaking process and for the utility to be able to abandon programs that ultimately do not serve ratepayers without fear of an enforcement action.

3.1. The Enforcement Process Needs to Reflect the Division of Responsibilities Between WSD and the Commission

While WSD is tasked with approval of WMPs and determines whether utilities are in compliance with their approved WMP, the Public Utilities Code leaves ratemaking responsibilities with the Commission. Specifically, § 8386.4 states that “[t]he commission shall consider whether the cost of implementing each electrical corporation’s plan is just and reasonable in its general rate case application” and “[n]othing in this section shall be interpreted as a restriction or limitation on Article 1

³ *Id.* at 5.

⁴ *Id.* at 6.

⁵ *Id.* at 6.

(commencing with Section 451) of Chapter 3 of Part 1 of Division.”⁶ This direction is confirmed in the Commission disposition of the 2019 and 2020 WMPs. D.19-05-036 states: “[n]othing in this Resolution constitutes approval of the costs associated with electrical corporations’ Wildfire Mitigation Plan (WMP) efforts.”⁷ WSD-002, includes identical language.⁸

WMP approval and a determination that a program is just and reasonable are not equivalent.

D.19-05-036 explains the meaning of WMP approval:

The question remains: what does WMP approval mean? Here again the statute provides the answer: approval means that every WMP contains 19 elements that the SB 901 Legislature deemed essential to catastrophic wildfire mitigation. Those elements are aimed at ensuring an electrical corporation has plans in place to protect the public from catastrophic wildfire. Without SB 901, existing wildfire-prevention and other safety requirements might not include all of the elements on the list.⁹

Meanwhile, the Commission’s § 451 determination that a program is just and reasonable requires that the utility demonstrate that the program is necessary, reasonable in scope and pace, and cost-effective.¹⁰

⁶ § 8386.4 (b)(1) and (4).

⁷ D.19-05-036 at 22.

⁸ WSD-002, OP 2, p. 44.

⁹ D.19-05-036, p. 25.

¹⁰ D.14-08-032, pp. 28-29: “*The burden is on PG&E to establish that its proposed work activities are necessary, and that it has prudently examined alternatives before receiving ratepayer funding. PG&E’s policy witnesses agreed in principle that, for all proposed programs, even those justified on the basis of safety, PG&E’s GRC showing must demonstrate both (1) the need for and reasonableness of PG&E’s proposed programs, supported in most cases by a well explained cost-benefit analysis; and (2) that the proposed approach is the most cost-effective method available to the utility. . . . We have carefully evaluated PG&E’s justifications of costs both in terms of quantified cost savings and qualitative benefits that PG&E did not or could not quantify. We have also considered the basis for objections to approval of cost increases as raised by various opposing parties. In weighing the qualitative benefits in relation to costs, however, it is not enough merely for PG&E to make assertions that benefit will result. In addressing PG&E’s proposals, as discussed throughout this decision, given the limitations in PG&E’s cost/benefit showing, we have used our best judgment to weigh both the quantitative and qualitative benefits in relation to the costs involved for each program or project. In many cases, based on our weighing of overall benefits versus costs, we approve funding for the new or expanded programs proposed by PG&E. In other cases, we approve program funding, but reduce the level of funding below*

In some cases, an approved WMP may include a program that has not yet been reviewed under the just and reasonable standard in a GRC or equivalent proceeding. In addition, the utility may not be able to successfully justify each and every program, as described and scoped in their WMP, under the just and reasonable standard. The compliance process should account for these potential scenarios and not consider the utility out of compliance for any program that has yet to undergo CPUC cost review or where the Commission has determined that the scope, pace or other aspect of a program does not meet the requirements of just and reasonable service.

3.2. A Flexible Enforcement Process Encourages the Commission to Adjust its WMP To Best Serve Its Ratepayers

WMP compliance should not require the utility to rigidly implement its WMP as proposed, but instead allow the utility to implement wildfire mitigation measures consistent with the goals of the WMP. A focus on specified outcomes, like the reduction of wildfire risk and PSPS, and a stated commitment to providing ratepayers service consistent with safety, reliability and affordability encourages the utilities to pursue the most cost-efficient and effective wildfire mitigations.

The Commission resolutions resolving the 2020 WMP approved the plans but also identified a variety of deficiencies in the plans.¹¹ In total, the Resolutions identify 91 deficiencies, categorized from most serious and requiring immediate action, Class A, to those that should be addressed in the 2021 WMP submission, Class C.¹² It makes little sense for the utility to be assessed a penalty for failing to

what PG&E requested or based on a more extended time schedule. In other cases, we decline to approve any funding for certain programs where we find that the claimed benefits do not justify the costs to ratepayers.

¹¹ WSD-002, p. 17.

¹² Guidance on the Remedial Compliance Plan and Quarterly Report Process Set Forth in Resolution WSD-002, July 17, 2020, pp. 1-2.

implement a WMP that the WSD has identified as deficient. For example, the Resolutions identify as a “Class B” deficiency the lack of Risk Spend Efficiency (RSE) values. “RSE calculations are critical for determining whether utilities are effectively allocating resources to initiatives that provide the greatest risk reduction benefits per dollar spent, thus ensuring responsible use of ratepayer funds.”¹³ The utilities were all directed to provide further information on RSEs on a more granular basis in their first Quarterly Report.¹⁴ The identification of this deficiency is an explicit acknowledgment that the WMP submitted by the utilities and “approved” by the WSD is not necessarily the optimal WMP. Highlighting the need for additional information on this topic implicitly acknowledges that such additional information may adjust the actions of the utility.

Rather than looking for strict compliance with identified program targets in the WMP, WSD should look to determine whether the utility is pursuing its work consistent with mitigating safety risks in a cost-effective manner. The utility should have the freedom to abandon a WMP program that is not achieving its stated goals or that in practice is not cost-efficient. The worst result would be for the utilities to spend significant ratepayer dollars and waste utility resources on a program that does not further the goal of reducing wildfire risk and PSPS events.

4. TURN RECOMMENDS CLARIFICATIONS TO THE COMPLIANCE PROCESS THAT ENCOURAGE WILDFIRE MITIGATION CONSISTENT WITH SAFE, RELIABLE AND AFFORDABLE RATES.

An important aspect of any compliance process is putting the utility on notice of the compliance requirements. In the case of WSD’s compliance process, TURN recommends that the WSD identify a

¹³ WSD-002, p. 20

¹⁴ *Id.*

number of defenses to potential enforcement actions. These should include, but not necessarily be limited to:

- Cost recovery for a program has not been approved by the Commission;
- Actual costs of a program are proving to be higher than assumed in the WMP;
- The benefits of a program that were assumed in the WMP are not materializing; and
- Unexpected resource or other constraints limit the feasibility of program implementation as described in the WMP.

Additionally, WSD should make clear that compliance actions will be initiated when the utility's safety work is not cost effective. This would include, for example, a scenario where the utility continues to pursue a project after the Commission has deemed it unreasonable or the continued deployment of a program that has proven inefficient. It could also include a WSD finding that the utility is not completing work properly or has not implemented sufficient quality assurance measures.

5. CONCLUSION

TURN appreciates this opportunity to provide comments on the September 29 workshop and accompanying proposal. For all the foregoing reasons, TURN recommends that the WSD adopt the recommendations described herein.

Respectfully submitted,

Dated: October 2, 2020

By: _____/s/_____

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