

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



FILED

02/28/19
04:59 PM

Order Instituting Investigation on the
Commission's Own Motion to
Determine Whether Pacific Gas and
Electric Company and PG&E
Corporation's Organizational
Culture and Governance Prioritize
Safety.

Investigation 15-08-019
(Filed August 27, 2015)

**MUSSEY GRADE ROAD ALLIANCE REPLY COMMENTS ON
ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING**

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Dated: February 28, 2019

1. INTRODUCTION

On December 21, 2018, the Assigned Commissioner issued a Scoping Memo and Ruling opening a new phase of this proceeding to “examine PG&E’s and PG&E Corporation’s (PG&E Corp.) current corporate governance, structure, and operations to determine if the utility is positioned to provide safe electrical and gas service, and will review alternatives to the current management and operational structures of providing electric and gas service in Northern California.”¹ On January 22, 2019, the ALJ issued a ruling granting an extension of time for comments and extending the reply comment date to February 28.² On February 13, 2019, parties filed comments. Pursuant to the provisions of the OIR, the ALJ Ruling and Rule 11.6 of the CPUC Rules of Practice and Procedure the Mussey Grade Road Alliance (MGRA or Alliance) files these reply comments in response to comments made by parties in their February 13th filings.

2. BACKGROUND

As described in our opening comments, the Alliance is a non-profit, grassroots, community-based advocacy organization dedicated to the preservation and protection of Mussey Grade Road and environs in Ramona, California, and generally committed to wildfire safety for which we’ve been advocating at the Commission since 2006.³

In our opening comments we noted that while we are not PG&E customers, we have a keen interest in how the outcome of this proceeding and PG&E’s fate in general will impact wildfire safety in the state of California. Some comments made by parties do in fact relate to general safety issues, and we address them in this reply.

¹ I.15-08-019; ASSIGNED COMMISSIONER’S SCOPING MEMO AND RULING; December 21, 2018 (Scoping Memo).

² I.15-08-019; E-MAIL RULING GRANTING EXTENSION OF TIME; January 22, 2019.

³ I.15-08-019; MUSSEY GRADE ROAD ALLIANCE COMMENTS ON ASSIGNED COMMISSIONER’S SCOPING MEMO AND RULING; February 13, 2019. (MGRA Comments)

3. ISSUES

We stated in our Opening Comments that: “As a small community organization, MGRA doesn’t presume to suggest corporate governance or structure for the largest utility in the state. We do believe, though, that actions have consequences, and that utilities that have benefitted from guaranteed rates of return on their business should suffer the consequences if they fail to manage their infrastructure in the prudent manner required by law. We believe that this accountability should be clear and present for any organization, public or private, charged with providing safe and reliable service to Californians.”⁴

In particular, we have concerns regarding the comments made regarding inverse condemnation by PG&E, TURN, and the American Public Power Association (APPA). We also believe that special scrutiny with regard to public safety be given public power utilities that would wish to take over “wires” management of portions of the current PG&E distribution network.

3.1. Inverse Condemnation

In its comments, PG&E states:

“PG&E proposes consideration of reforms to legal liability for utilities arising from wildfires, including inverse condemnation. California remains one of the only states in the country that applies strict liability inverse condemnation to IOUs. Reforming inverse condemnation liability is critical to ensuring that utilities in California are able to continue providing safe, reliable, and financially viable electric service to customers...

As with other proposals under consideration, such reforms would require coordination with the Legislature. As these and other proposals require legislative action, PG&E urges the Commission to continue working collaboratively with the Legislature to evaluate and advocate for these reforms to inverse condemnation liability, a state insurance fund, and other legal and policy changes, both through the Blue Ribbon Commission, and directly with the Legislature.”⁵

⁴ Id.; p. 3.

⁵ I.15-08-019; OPENING COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 M) AND PG&E CORPORATION ON THE ASSIGNED COMMISSIONER’S SCOPING MEMO AND RULING; February 13, 2019; pp. 36-37. (PG&E Comments)

It is important to note that privately owned utilities will only be responsible for their losses under inverse condemnation if they *fail* to meet the “Prudent Manager Standard” established and enforced by the Commission.⁶ If they meet the Prudent Manager Standard, they will be able to pass inverse condemnation costs on to ratepayers through submission of an application. Therefore, the purpose of this purported reform of inverse condemnation would be to hold imprudent utilities unaccountable for their actions, and MGRA has opposed this kind of “reform” both at the Commission and in our letter to Governor Jerry Brown, the President pro Tempore of the Senate, the Speaker of the Assembly, and the members of the Assigned Assembly-Senate Conference Committee,⁷ and in Alliance Spokesperson’s presentation to said Committee. As we stated in our letter:

- “Attempts by utilities, their financial backers, and their allies to blame threats to utility viability on California’s interpretation of “inverse condemnation” are misleading. The CPUC has held that utilities that have operated in a “reasonable and prudent” fashion can collect losses from ratepayers.⁸ SDG&E was unable to prove its case in WEMA, which is why it was held responsible for \$379 million in liability losses. PG&E and SCE will have the opportunity to

⁶ D.18-07-025; pp. 2-3: “Section 451 requires utilities to show that all requested charges are “just and reasonable” in order to be recovered in rates.⁵ To ensure that charges requested by a utility are just and reasonable, and ensure that a utility has operated and maintained its system in a safe and reasonable manner, we have adopted the longstanding Prudent Manager Standard.

Under that standard, a utility has the burden to affirmatively prove that it reasonably and prudently operated and managed its system.⁶ As discussed at more length in Part II.A. below, that means a utility must show that its actions, practices, methods, and decisions show reasonable judgment in light of what it knew or should have known at the time, and in the interest of achieving safety, reliability and reasonable cost.⁷

⁵ D.17-11-033 at p. 10, citing e.g., *Re Southern California Edison Company (“Re SCE”)* [D.87-06-021] (1987) 24 Cal.P.U.C.2d 476, 486. Pub. Util. Code Section 451 states in pertinent 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.

Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities...as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

Pub. Util. Code Section 454 states in pertinent part:

(a) Except as provided in Section 455, a public utility shall not change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the commission and a finding by the commission that the new rate is justified....

⁶ See, e.g., *Re SCE* [D.87-06-021], *supra*, 24 Cal.P.U.C.2d at p. 486.

⁷ *Id.* at p. 486.”

⁸ R.19-01-006; MUSSEY GRADE ROAD ALLIANCE COMMENTS ON THE ORDER INSTITUTING RULEMAKING; February 11, 2019; Appendix A:

MUSSEY GRADE ROAD ALLIANCE LETTER TO GOVERNOR BROWN AND SENATE AND ASSEMBLY COMMITTEE MEMBERS

⁸ CPUC Decision D.17-11-033, pp. 9-10.

make their case for “reasonable and prudent” operation in future proceedings regarding the 2017 fires.

- Applying inverse condemnation to monopoly utilities serves the laudable purpose of reducing the burden of loss recovery that fire victims face. We do not think a change to current law is warranted.”

All of the major California IOUs have been responsible for creating the false and misleading impression that inverse condemnation will force even prudently managed utilities to take financial responsibility for wildfire losses, regardless of their culpability. For instance, in its filing in the sister proceeding to this one which considers measures to financially protect utilities (R.19-01-006), San Diego Gas and Electric Company states that: “the Commission explicitly determined that ‘Inverse Condemnation principles are not relevant’ in cost recovery proceedings under its prudent manager standard, thereby undermining the cost spreading rationale of inverse condemnation.⁵ 5. D.17-11-033, p. 65”⁹

This is a flagrant misquoting of the Commission’s intent, since in the next paragraph the Decision clarifies that: “Even if SDG&E were strictly liable, we see nothing in the cited case law that would supersede this Commission’s exclusive jurisdiction over cost recovery/cost allocation issues involving Commission regulated utilities.”¹⁰

Nevertheless, the utilities have very successfully controlled the conversation regarding this point, propagating this false and misleading trope into the realms of politics and the media.¹¹ Unfortunately, even TURN seems to have been misdirected by this Jedi mind trick, stating in its filing that “Any utility providing electric service as a successor to PG&E could be subject to wildfire liability claims under the doctrine of inverse condemnation. As such, any utility could face liability for property damage caused by its facilities, whether or not the damage was foreseeable,

⁹ R.19-01-006; INITIAL COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) ON ORDER INSTITUTING RULEMAKING TO IMPLEMENT PUBLIC UTILITIES CODE SECTION 451.2 REGARDING CRITERIA AND METHODOLOGY FOR WILDFIRE COST RECOVERY PURSUANT TO SENATE BILL 901 (2018); p. 6.

¹⁰ D.17-11-033; p. 65.

¹¹ One example of many:

Roger Conrad; Forbes; “How California Fires Affect Power Companies”; September 11, 2019:

“Under the state’s “inverse condemnation” rule, utilities owe for damages when officials deem power lines and other infrastructure played a role, even if the companies have followed required safety practices.”

and even if there was no fault or negligence by the utility.”¹² Clearly this misimpression of the current status of cost recovery is so widespread that it would be in the public benefit if the Commission were to clearly state that utilities which prudently manage their facilities can recover costs through rate applications.

Perhaps part of the problem is that like Diogenes, the Commission still is still searching for a prudent manager among the IOUs. Perhaps in one or a few of the upcoming investigations into the 2017 or 2018 fires it will find one, and the Commission will be able to demonstrate how inverse condemnation costs can be appropriately socialized.

One issue that remains valid, however, is that publicly owned municipal utilities may not have the same ratepayer base as the larger IOUs and may not have the ability to absorb the costs of a major wildfire. We address special issues relating to municipal utilities in relation to fire safety in the next section.

3.2. Municipal Utilities and Wildfire Safety

We note that the American Public Power Association is also urging reform of inverse California condemnation law.¹³ They, at least, have some justification for asking. While they can automatically pass on liability costs to their customers, their customer bases may be very small. Wildfires are not restricted to the service area of a utility. They can spread for many square miles, into neighboring forests and communities. There is no relationship between a utility’s size and the size of the wildfire it may produce. A little muni can start a big, big fire, potentially a deadly multi-billion dollar fire.

We love the *idea* of municipal utilities, but we’re not taking any position in this proceeding on what sort of structure PG&E successor entities should have. We agree with APPA that there is something inherently attractive about having the management of the utility directly answerable to its customer base through political processes. However when it comes to dividing up PG&E’s aging

¹² I.15-08-019; OPENING COMMENTS OF THE UTILITY REFORM NETWORK ON ALTERNATIVE APPROACHES TO PROVIDING ELECTRIC AND NATURAL GAS SERVICE TO CUSTOMERS CURRENTLY SERVED BY PACIFIC GAS AND ELECTRIC COMPANY; p. 20.

¹³ I.15-08-019; OPENING COMMENTS OF THE AMERICAN PUBLIC POWER ASSOCIATION; pp. 13-14.

infrastructure and parceling it out to local jurisdictions, we would urge the Commission to proceed with extreme caution. And to any municipal jurisdiction that would want to take over management of PG&E's wires, we would admonish them: Be afraid. Be very afraid.

APPA's filing does little to nothing to reassure the Commission that a municipal utility would be prepared to fully handle the technical and financial responsibility of managing PG&E distribution equipment. None of the resources APPA cites specifically details how a utility should manage its distribution equipment in a wildfire-prone area. Municipal utilities are not subject to Commission jurisdiction: no GO-95 – as flawed as it may be. NERC applies to transmission equipment. The APPA safety manual cited by APPA is a worker safety manual.¹⁴ And the APPA *All Hazards Guidebook*¹⁵ fails to mention wildfire once in its 52 pages. APPA also states that they claim to help public power companies obtain insurance,¹⁶ though they do not state whether those insurance policies can be extended up to \$30 billion in coverage.

The APPA statement argues well for the point that public safety will be of the utmost concern to the personnel of a public utility.¹⁷ However, they do not mention another driving force that will have a potentially deleterious effect on a public (in fact any) utility: cost. There are and have been strong currents in American political life that are anti-government and anti-spending, and a politically motivated management of a utility may have a difficult time getting approval for expensive safety improvements. It might be well and good for a local jurisdiction and its citizens to take responsibility and accountability for its decisions, but because of the nature of catastrophic wildfire these decisions will affect other neighboring communities and jurisdictions. This is why we believe that the Commission should have a say in any decision of whether to cede control of PG&E equipment to a public entity. There is no longer any Prudent Manager Standard once the equipment

¹⁴ Id; p. 6. Also:

<http://ebiz.publicpower.org/APPAEbiz/ProductCatalog/Product.aspx?ID=7310>

Downloaded February 23, 2019:

“Promote a safe and injury-free environment for your employees with the American Public Power Association's *Safety Manual for an Electric Utility*, 16th Edition. Revised in April 2017, the manual is the premier source of information for electric utility safe work practices.”

¹⁵ Id. p. 12: cites:

APPA's *All Hazards Guidebook*, available at https://www.publicpower.org/system/files/documents/All-Hazards-Guidebook_0.pdf. The *All Hazards Guidebook* is based upon work supported by the Department of Energy under award number DE-OE000075.

Downloaded February 23, 2019.

¹⁶ Id. p. 13.

¹⁷ Id. pp. 4-5.

is transferred. A stingy community that cuts corners on utility safety spending may impact not only itself but its neighbors. It may not have resources to pay out claims, an issue also noted by CUE¹⁸ and PG&E¹⁹.

We therefore would want to disagree with APPA's suggestion that inverse condemnation needs to be removed to protect municipal utilities. This would raise constitutional questions. TURN suggests alternative arrangements that would replace inverse condemnation with another insurance mechanism.²⁰ Even if a Prudent Manager Standard were to be maintained in the new arrangement, however, it would only apply to privately owned utilities. "Stingy" municipalities that insisted on lower rates instead of prudent safety investment in utility infrastructure, however, would be protected just as well as diligent municipalities that paid their fair share of rates in order to have a safe distribution network. This would insert an element of moral hazard, with the decision-makers now being the electorate of a municipality rather than people in a corporate board room. It is not clear how to make this arrangement work in a way that ensures the public good.

We would urge the Commission therefore to adopt standards for any entity that takes over "wires" management from PG&E or any other utility to ensure that they have the appropriate skills to operate safely and that they are able to fully take on the financial burden of a major wildfire either directly or through liability insurance, and that they would adhere to a Prudent Manager Standard.

It may be that in the end, only the State of California itself will have the resources and capability to take over PG&E's wire distribution network and guarantee that it could bear the financial burden of a major utility wildfire in the event that PG&E is no longer able to meet this responsibility. The Commission should consider this "nuclear option" early and determine what legislative measures would be needed to ensure uninterrupted safe and reliable service for PG&E customers should this circumstance come to pass.

¹⁸ COMMENTS OF THE COALITION OF CALIFORNIA UTILITY EMPLOYEES ON THE ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING; February 13, 2019; p. 4.

¹⁹ PG&E Comments; pp. 25-26.

²⁰ TURN Comments; p. 22.

4. CONCLUSION

The Mussey Grade Road Alliance opposes any attempt to compromise or water down California's strict liability laws (inverse condemnation) or its application to private utilities. We also believe that any entity taking over "wires" management in a high fire risk area must be able to show its capability to operate safely and bear the financial burden of liability losses from a major wildfire.

Respectfully submitted this 28th day of February, 2019,

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