CALIFORNIA PUBLIC UTILITIES COMMISSION

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

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

The Commission has quasi-legislative authority to adopt regulations, some of which are codified in Chapter 1, Title 20 of the California Code of Regulations (CCR). 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 where evidence-taking and findings of fact are needed. In general, the CPUC ALJs preside over hearings and forward "proposed decisions" to the Commission, which makes all final decisions. At one time, the CPUC decisions were reviewable solely by the California Supreme Court on a discretionary basis; now, Public Utilities Code section 1756 permits courts of appeal to entertain challenges to most CPUC decisions. Judicial review is still discretionary and most petitions for review are not entertained; thus, the CPUC's decisions are effectively final in most cases.

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

The CPUC staff—which include economists, engineers, ALJs, accountants, attorneys, administrative and clerical support staff, and safety and transportation specialists—are organized into 12 major divisions.

In addition, the CPUC maintains services important to public access and representation. The San Francisco-based Public Advisor's Office, and 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."

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

The five CPUC Commissioners each hold office for staggered six-year terms. Current Commissioners include President Michael Picker, Commissioners Carla J. Peterman, Liane M. Randolph, Martha Guzman Aceves, and Clifford Rechtschaffen. Alice Stebbins is the Commission's Executive Director.

MAJOR PROJECTS

Internal CPUC Policies

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

On July 23, 2018, the CPUC issued an Order Instituting Rulemaking (OIR) to establish a framework and processes for assessing the affordability of utility services. The goals set forth in the OIR are to: (1) develop a framework and principles to identify and define affordability criteria for all utility services under CPUC jurisdiction; and (2) develop the methodologies, data sources, and processes necessary to comprehensively assess the impacts on affordability of individual Commission proceedings and utility rate requests. Citing to section 451 of the Public Utilities Code, the OIR highlights the requirement that all charges demanded or received by public utilities be "just and reasonable." To reach this goal, the OIR explains that the CPUC intends to develop new methods of assessing affordability that take into account various factors that impact it, such as income, weather, and climate change. The OIR suggests that developing these metrics and methodologies will "promote greater transparency" and further inform the Commission of "trade-offs" to consider when trying to foster sufficient investments in services while also assuring customers safe and reliable access to those services.

The 20-day public comment period ended on August 13, 2018. Thirteen comments were filed, mostly by companies that the OIR names as respondents, including San Diego Gas and Electric (SDG&E), Southern California Gas Company (SoCalGas), AT&T California, Cal-Ore Telephone Company, and California Water Association. A comment filed by the California Water Association answers questions the OIR poses regarding the possible challenges and resources needed to address the definition of "affordable." Another comment filed by the California Community Choice Association (CalCCA) also provides recommendations for considering affordability. CalCCA suggests assessing median household income and median household utility costs throughout the state and comparing across regions to reveal "differences in overall affordability impacts based on the varying costs of different utility services." In addition, with regard to the OIR's coverage of "disadvantaged communities," the comment advocates for a regional approach to "integrat[ing] investments in energy efficiency and … affordable housing," which would "facilitate development of program performance metrics relevant to regional demographic and economic circumstances." Note that California has adopted goals relevant to carbon reduction to address global warming. [See discussion of "Renewables Portfolio" under "Energy Efficiency, Solar and Storage" *infra*].

These goals include reduction targets over the coming years and are reflected in county land use decisions and certain housing costs, such as a movement to require solar panels in new construction, and subsidies for electric vehicles. [See LEGISLATION]

On August 22, 2018, two non-profits, the National Asian American Coalition (NAAC) and the National Diversity Coalition (NDC), filed a joint motion seeking "party status" in the proceedings. Both entities work with low-income communities that the proceedings will address and offered to provide "research, insight, and recommendations" for assessing affordability. In an e-mail ruling dated September 5, 2018, ALJ Sophia J. Park granted the joint motion.

A pre-hearing conference occurred on October 12, 2018. Pursuant to section 1701.5 of the Public Utilities Code, the CPUC anticipates that the proceeding will be resolved within 18 months of the date the rulemaking was opened, *i.e.* by early 2020.

Wildfires

The wildfires of 2016 through 2018 have imposed enormous costs on individuals and insurers in California. Many of these fires have been caused by the CPUC-regulated utilities. Pacific Gas & Electric (PG&E) has particular vulnerability due to fires where its lines have ignited or accelerated fires, resulting in deaths and the destruction of many structures. PG&E is also the defendant in increasing numbers of civil actions for damages. It is unclear how PG&E assets would allow for payment of damages and whether it may seek the extreme remedy of complete or partial bankruptcy to limit the payable damages that may be assessed.

Adding to that concern is the historical involvement PG&E had in the San Bruno gas disaster. As a result of that event, the utility was found guilty in a federal criminal case and was placed on probation under the jurisdiction of federal district court judge William Alsup. That status as a probationer from criminal negligence in gas line oversight may portend probation violations for the utility from the subsequent electric grid negligence causing deaths and major damage. The consideration of probation violation remedies are likely to include required preventative measures in electric transmission, and raising jurisdiction questions *vis-à-vis* the CPUC and Federal Energy Regulation Commission (FERC). The latter may be implicated because the electric grid of PG&E extends into other states. *[23:2 CRLR 150-154]*

The CPUC Affirms Statewide Interim Disaster Relief Emergency Protections Pursuant to Resolutions M-4833 and M-4835

On August 9, 2018, the Commission issued decision D.18-08-004, which affirms the provisions of Resolutions M-4833 and M-4835 as statewide interim disaster relief emergency protections for customers whose utilities are affected by natural disasters. The decision came after a pre-hearing conference on May 7, 2018 regarding R.18-03-011, which considered whether to adopt the M-4833 and M-4835 post-disaster consumer protections for all utilities within the CPUC jurisdiction in the event that the Governor issues a state of emergency. *[23:2 CRLR 152-53]* These protections apply to residential or non-residential (small business) customers of gas, electric, telecommunications, and water companies that are regulated by the Commission. Some protections include: (1) waiver of deposit requirements for affected residential customers seeking to reestablish service for one year and expedite move-in and move-out service requests; (2) stoppage of estimated energy usage for billing attributed to the time period when the home or unit was unoccupied as a result of the emergency; (3) implementation of payment plan options for residential customers; (4) waiver of the service charge for installation of service at the temporary or new permanent location of the customer and again when the customer moves back to the original premises; and (5) device charging stations and WiFi in areas where impacted wireless customers seek refuge from fires.

On October 1, 2018, the Commission filed a ruling that notified utility company stakeholders of upcoming emergency disaster relief workshops pursuant to its decision. The Commission requires stakeholders to submit preliminary workshop comments answering questions posed by the ruling, such as cost recovery techniques and actions to take before, during, and after natural disasters, by October 17, 2018.

Utility companies, such as AT&T California, and consumer organizations, such as TURN, have filed rehearing requests either opposing the Commission's decision or proposing amendments to it. The National Consumer Law Center, the Center for Accessible Technology, and TURN ("Joint Consumers") filed a Joint Consumers' application for rehearing on October 4, 2018, stating that the decision allows for disparate treatment between energy and telecommunications providers and fails to provide sufficient relief to customers due to the overly narrow and vague language of Resolutions M-4833 and M-4835. To further this point, the Joint Consumers argue that the decision fails to address specific tariff provisions that would apply to the Commission's billing relief measures for telecommunications customers. They contend that the provisions in both

Resolutions M-4833 and M-4835 and D.18-08-004 are vague and strictly voluntary for wireless providers. Therefore, among other requests, their application for rehearing urges the Commission to provide greater specificity regarding the obligations of wireless and wireline providers to both provide relief to disaster victims and require wireline and wireless providers to include a payment plan and other forms of deferred billing as part of the terms and conditions of service.

Extending De-Energization Reasonableness, Notification, Mitigation and Reporting Requirements to All Electric Investor Owned Utilities

On July 16, 2018, the CPUC issued Resolution ESRB-8, which extends the de-energization reasonableness, public notification, mitigation, and reporting requirements set forth in decision D.12-04-024 to all electric Investor Owned Utilities (IOUs) and adds new requirements. Citing to sections 451 and 399.2(a) of the Public Utilities Code, the resolution provides that electric utilities have authority to shut off electric power in order to protect public safety, including when implemented for the prevention of fires caused by strong winds.

Under D.12-04-024, issued in 2012, SDG&E must meet several requirements, including: (1) notifying the Director of the Safety & Enforcement Division (SED) no later than 12 hours after the power shut-off; (2) demonstrating that the decision to shut off power is necessary to protect public safety; and (3) providing notice and mitigation to its customers, to the extent feasible and appropriate, whenever it shuts off power pursuant to its statutory authority. However, the decision did not establish standards on reasonableness, notification, mitigation, and reporting by IOUs other than SDG&E.

After the devastating 2017 Northern California wildfires, the CPUC issued Resolution ESRB-8 as a necessary means to enhance the existing de-energization policy and procedures. As part of this strengthening measure, the resolution requires IOUs to submit a report to the Director of SED within 10 business days after each de-energization event, as well as after high-threat events where the IOU provided notice to local governments, agencies, and customers of possible de-energization, even though no de-energization occurred. Public outreach, notification, and mitigation requirements also include publishing a summary of de-energization policies and procedures on the IOU's website, meeting with representatives from local communities that may be affected, and discussing potential mitigation measures the IOU can take to decrease the negative impacts of the power outage. The resolution does not currently include additional requirements for reasonableness standards beyond what was listed in D.12-04-024 and applied to SDG&E.[1]

The resolution was met with some criticism. Zuma Beach FM Emergency and Broadcasters Inc. ("Zuma Beach FM Broadcasters"), a local non-profit in Malibu, filed an application for rehearing of Resolution ESRB-8 on August 13, 2018, arguing that the Commission violated state laws and its own Rules of Practice and Procedure when it failed to diligently notify concerned parties to the resolution proceeding and failed to publicize its decision to remove certain requirements that were in the original resolution in advance of the July 12 vote. Zuma Beach FM Broadcasters also claims that the Commission's

[1] Under D.12-04-024's reasonableness standards, SDG&E must: (1) demonstrate that its decision was necessary to protect public safety; (2) rely on other measures, to the extent available, as alternatives to shutting off power; (3) reasonably believe that there is an imminent and significant risk that strong winds will topple its power lines onto tinder dry vegetation during periods of extreme fire hazard; and (4) consider efforts to mitigate the adverse impacts on the customers and communities in areas where it shuts off power, including steps to warn and protect its customers whenever it shuts off power.

decision enables IOUs to violate the mandates of various sections of Public Utilities Code, including sections 451 and 399.2(a), ultimately giving IOUs permission to take actions that endanger the property and lives of people in the community and shift the financial burden on customers. Lastly, the application lists negative impacts the decision would have on school districts, public health, and other utilities.

SDG&E, PG&E, and Southern California Edison Company (SCE) all filed responses to the application for rehearing on August 27, 2018.

General Energy Regulation

Continued Implementation of the Public Utility Regulatory Policies Act (PURPA) and Related Matters

On August 1, 2018, the CPUC issued R.18-07-017, an OIR Regarding Continued Implementation of the Public Utility Regulatory Policies Act and Related Matters. According to the summary, the rulemaking is to consider changes to California's existing implementation of PURPA for the states IOUs. The rulemaking will consider adoption of a new standard offer contract to Qualifying Facilities (QFs) designated under PURPA. The rulemaking will also consider adoption of a price for energy delivery when a QF has sold energy to the utility without a contract. The purpose of the proposed rulemaking is to consider whether the New QF [standard offer contract (SOC)] should incorporate changes to other terms of the Standard Contract for QFs 20 MW or Less to ensure implementation of PURPA consistent with state and federal laws and regulations." R.18-07-017. The Commission proposes to start with the non-price terms provided in the SOC. The Commission anticipates the new SOCs will primarily differ from the previous SOCs in that they will provide new alternative avoided cost pricing options for QFs. An avoided cost is the cost that a utility would pay if the energy were bought not from a QF, but from an alternative energy source (normally a cheaper nonrenewable source).

A prehearing conference was scheduled for September/October, 2018, a follow-on scoping memorandum and final decision are not yet scheduled.

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

On July 20, 2018, the CPUC issued R.18-07-005, an OIR to Consider New Approaches to Disconnections and Reconnections to Improve Energy Access and Contain Costs pursuant to SB 598 (Hueso) (Chapter 362, Statutes of 2017). According to its stated purpose, the "OIR is to undertake a comprehensive assessment of the root causes of … residential customer disconnections while also evaluating the rules, processes and procedures regarding disconnections and reconnections at both a statewide and utility specific level." R.18-07-005. The CPUC's goal is to adopt policies, rules, or regulations that substantially reduce the rates customers pay for disconnections and minimize the time for reconnections. The rulemaking will implement specific requirements of SB 598. SB 598 orders the CPUC to evaluate the impact of any proposed rate increases on disconnections for nonpayment and to develop a metric for utility disconnections for nonpayment.

On July 20, 2018, the Commission approved the OIR pursuant to SB 598. At the August 15, 2018 prehearing conference, the scope and schedule for phase 1 of the OIR implementation was discussed with a scoping memo released. A proposed decision on phase 1 is scheduled for Spring 2019, and a final decision is scheduled within 18 months of the scoping memo.

Mobilehome Park Pilot Program and Programmatic Modifications

On May 7, 2018, the CPUC issued R.18-04-018, an OIR to Evaluate the Mobilehome Park Pilot Program and to Adopt Programmatic Modifications. The Commission opens this OIR to evaluate the Mobilehome Park Pilot Program which is a three-year program to incentivize mobilehome parks and manufactured housing communities (collectively MHPs) with master-metered electricity and gas to convert to direct utility services. The direct utility services are believed to be a safer option due to heightened regulatory oversight on gas and electric lines to individual customers allowing MHP owner/operators to construct the services. The Commission will determine, based on the results of the pilot program, if it will expand beyond the initial three-year program. If the Commission decides to establish a permanent MHP Utility Upgrade Program, this OIR will consider programmatic modifications based on findings from the three-year MHP Pilot Program.

Many residents of MHPs built in California before 1997 do not receive electricity and/or natural gas directly from the utility. Instead, the utility serves a master-meter customer (typically, the MHP owner or operator) who then distribute the electricity, natural gas, or both to individuals at the MHP through a privately-owned distribution system.

The purpose of the OIR is to undertake a comprehensive evaluation of the Mobile Home Park Pilot Program and to determine whether the program should be adopted as a permanent Mobile Home Park Utility Program. Further, the goal of the Mobile Home Park Pilot Program is to incentivize MHP owners with master-metered utilities to convert to direct utility services.

On June 19, 2018, the assigned ALJ set a prehearing conference for July 30, 2018. A scoping memorandum with ALJ ruling is set for October 17, 2018 and a Commission decision preliminarily set for third quarter 2019.

Review of Alternatives to the Power Charge Indifference Adjustment

On October 11, 2018, the Commission issued decision R.17-06-026, modifying the Power Charge Indifference Adjustment (PCIA), methodology used to determine the exit fees charged when a Community Choice Aggregation (CCA) is formed. The decision is based on the proposed exit fees set forth by Commissioner Peterman. The PCIA fee is based on financial obligations utilities made to customers to build powerplants and enter into long term power purchase contracts with independent power producers.

The Commission provides some background on the need to issue a decision on PCIAs:

> CCA programs allow communities to provide electricity to customers within their boundaries, replacing the regulated electric utilities as their provider. In light of the growing trend toward formation of CCAs, the electric utilities subject to the jurisdiction of this Commission are experiencing a widening disparity between the level of resources in their portfolios and what is required to serve the reduced load after customers depart for CCA service. This customer movement has also led to corresponding changes in California's electric procurement market as CCAs expand their portfolios, compounding the challenges of ensuring that customer departure from utility service is facilitated consistently with the statutory framework supporting CCA formation. That framework requires the Commission to ensure that departing customers remain responsible for certain costs incurred on their behalf by their utility, without being subject to costs that were not incurred on their behalf.

R.17-06-026.

The Commission initiated the proceeding to respond to concerns that the existing cost allocation and recovery mechanisms were not preventing cost shifting between customers.

By way of explanatory background: the growth of CCAs, particularly over the past decade in Northern California, have precipitated increased concern from utilities who argue that this competition and aggregation of demand separate from the utility may have consequences disadvantageous to existing consumers and it may lead to decreased demand for the power generation assets of the utilities as the CCA's develop alternative power generation options. The historical generation facilities relied upon by utilities include those directly controlled by it. The utilities note that as utilization of a major sunk cost power plant declines, the average cost of production per kWh rises. To the extent large fixed cost generation cannot be reduced or efficiently utilized, those consumers still dependent upon the utility may suffer substantial rate increases. On the other hand, supporters of CCAs argue that the options for power generation are now varied and more easily adjusted to changing volume. CCA supporters also cite the value of competition and a needed check on a monopoly enterprise and that supply adjustments over time are generally feasible. *[23:2 CRLR 162]*

The Commission's decision "adopts revised inputs to the market price benchmark (MPB) that is used to calculate the PCIA, the rate intended to equalize cost sharing between departing load and bundled load. The revised methodology will be used to calculate the PCIA that takes effect as of January 1, 2019." R.17-06-026.

Under the new formula for exit fees, a CCA customer would incur an estimated 1.68% increase for PG&E, 2.5% increase for Edison, and 5.24% increase for SDG&E jurisdictions. The decision will go into effect on January 1, 2019. *Id.*

Nuclear Power

San Onofre Nuclear Plant Retirement

On August 2, 2018, the Commission issued decision I.12-10-013, on the settlement agreement of January 30, 2018. The 2018 Settling Parties[2] assert that the 2018 Settlement Agreement "'resolves the issues in this Order Instituting Investigation (OII), is reasonable in light of the record, comports with applicable law, and is in the public interest.'" I.12-10-013. The Settling Parties request that the Commission adopt the 2018 Settlement Agreement in its entirety without change. The Commission adopted the 2018 Settlement Agreement with modifications. The proposed modification is to reject the proposed Greenhouse Gas (GHG) Program. The GHG Program created a fund in the amount of $12.5 million over five years. The fund would provide for campuses and research institutes of California State Universities in Southern California. The Commission finds the GHG Program inconsistent with the public interest and rejects the proposed section of the 2018 Settlement Agreement. *[23:2 CRLR 154-157]*

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[2] Alliance for Nuclear Responsibility, California Large Energy Consumers Association, California State University, Citizens Oversight dba Coalition to Decommission San Onofre, Coalition of California Utility Employees, Direct Access Customer Coalition, Henricks, ORA, SDG&E, SCE, TURN, and Women's Energy Matters are collectively referred to as the 2018 Settling Parties.

Energy Efficiency, Solar, and Storage

Guidance Re Climate Change Related Policies

On May 7, 2018, CPUC issued R.18-04-019, an OIR to Consider Strategies and Guidance for Climate Change Adaptation. The Commission opened this OIR to consider strategies to integrate climate change adaptation into further proceeding to ensure the safety and reliability of all investor-owned public utilities.

The Commission will consider the following in phase 1:

- How to define climate change adaptation for the electricity and natural gas utilities.
- Ways to address climate change adaptation issues in Commission proceedings and activities to ensure safety and reliability of utility operations.
- Data, tools, and resources necessary for utility planning and operations related to climate adaptation.
- Risks facing the electric and natural gas utilities with respect to climate change adaptation and the magnitudes of these risks.
- Guidance to electric and gas utilities on how to incorporate adaptation into their planning and operations.

The Commission reports that "California is experiencing impacts from climate change, such as rising sea levels that can potentially inundate power plants and substations, increased temperatures that cause undue strain on transformers, increased line losses between electric generators and load, and increased overall electric demand." R.18-04-019. Therefore, "future changes in the climate will have a significant impact on the electric system. However, further analysis is required to better understand the vulnerabilities each utility faces." *Id.*

The Commission opens this OIR to determine how to address adaptation to climate change. On August 6, 2018, a prehearing conference was held to determine the scope and schedule for the OIR. On October 10, 2018, a scoping memorandum was released framing the issues and schedule for follow-on proceedings. A final Commission decision is set for September 2019.

Renewables Portfolio Standard Program Continuation

On July 12, 2018, the CPUC issued R.018-07-003, an OIR to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard (RPS) Program. This proceeding addresses the 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 OIR also provides for the following possible further changes to the RPS program:

> (1) through exercise of the Commission's authority under Assembly Bill 327 (Perea), Stats 2013, ch. 611, to increase the percentage of RPS-eligible electricity sold to retail end-user customers; (2) through examination of the relationship of the RPS program to other state mandates that include the electricity sector (*e.g.*, reduction in emission of greenhouse gases); and (3) through coordination with other proceedings and initiatives of the Commission.

Id.

Numerous organizations submitted comments to the Commission expressing their respective views on further changes to the RPS program. For example, on August 13, 2018, the Green Power Institute submitted a comment outlining its position that the Commission should set as the highest priority those carry-over items that have not been addressed since the previous OIR on the RPS program.

A pre-hearing conference was scheduled for September 24, 2018, and a follow-on scoping memorandum is scheduled for the fourth quarter 2018, with the final decision not yet scheduled. [See TRANSPORTATION]

Transportation

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

On May 4, 2018 the CPUC issued D.18-04-005 which made Uber subject to the same regulations as limousines and tour buses. Under both sections 3.1 and 4.1 of the decision Uber was reclassified as both a transportation network company (TNC) and a transportation charter party carrier (TCP). This new designation has led to a number of changes including subjecting Uber to additional requirements and fees. Some of these fees have been assessed as back fees and penalties requiring Uber to pay as far back as "the fourth quarter of 2013." The CPUC first addressed Uber's designation as a TNC explaining, "[r]egardless of the presence of purported independent providers and Uber subsidiaries, Uber's upfront and continuous involvement serves as the catalyst for providing transportation services in California, thus making it a TNC under the plain meaning of Pub. Util. Code § 5431."

The Commission then addressed Uber's arguments calling them "unpersuasive" at the outset. First, the Commission explained that it had previously rejected "Uber's claim that it is simply a technology company engaged in the business of developing and licensing software." Next, the Commission found "Uber's suggestion that regulating it would contravene federal policy supporting the growth of Internet-based services has also been previously rejected by the Commission." Third, the Commission found "Uber's claim that it would serve no purpose to require it to register as a TNC because the Commission already regulates Uber's subsidiary, Rasier-CA, as a TNC, is without merit." Uber argued that it provided support services to its subsidiary, Raiser-CA and that Uber "has adopted additional standards in its Community Standards beyond the minimum TNC requirements in California and other states. Drivers who violate the Community Guidelines may have their accounts deactivated." In contrast, the Commission found Uber to be "actively involved in facilitating the transportation services in California" rather than "behaving as a passive technology company." Further, the CPUC pointed out that it has "assert[ed] jurisdiction over companies even when the business activities are divided or unbundled between separate companies" in the past. Thus, the Commission concluded that "given their respective roles in providing TNC services . . . [b]oth Uber and Rasier-CA should be required to receive Commission authority to operate as TNCs."

Second, the CPUC addressed Uber's designation as a TCP. The court held that Uber controls "Uber USA and UATC," two charter party carrier companies that were "mere agents or instrumentalities of Uber." These companies provide the Uber app to Uber drivers. The Commission further held that, "[w]ithout Uber's engagement, there would be no TCP services for the TCP holders to provide under the Uber service." Thus, the court found that, "Uber [is] a TCP under the plain meaning of Pub. Util. Code § 5360."

Before the CPUC passed D.18-04-005, only Uber subsidiaries Rasier-CA and UATC were assessed CPUC fees based on total revenue earned from passenger operations for the reporting period. This ruling would assess fees based on the total revenue of Uber as a whole rather than its small subsidiaries.

The CPUC & Transportation Electrification

On May 31, 2018, the CPUC issued a proposed decision (A.17-01-020) approving the applications of three utility programs to "accelerate widespread transportation electrification," as required by SB 350 (de León) (Chapter 547, Statutes of 2015): the Clean Energy and Pollution Reduction Act of 2015. The Commission explained that this "approves budgets totaling approximately $738 million" and "sets aside $29.5 million for evaluation of the projects." In its findings of fact, the CPUC explained the catalyst for the bill and this decision writing, "[l]ight-duty vehicles … are responsible for approximately 80 percent of combined on-road and off-road GHG emissions." Then the CPUC explained the effect of this decision explaining "emissions reductions associated with both existing and new deployments of non-light-duty electric vehicles in PG&E's service territory would be … 1.90 tons/day in 2026." The Commission put this in easier terms writing that SCE forecasted that by 2030 "the replacement of conventional vehicles with electric vehicles would reduce greenhouse gas emissions by about 26.2 million metric tons, resulting in a net 24.6 million metric tons reduced." Lastly, the Commission noted how the decision will emphasize deployment in disadvantaged communities which "often the hardest hit by emissions from the transportation sector."

Water

The CPUC investigation into San Jose Water Billing Practices

On September 14, 2018, the CPUC announced a formal investigation (I.18-09-003) into San Jose Water Company's (SJWC) billing practices. The Commission explains that a previous investigation done by the Consumer Protection and Enforcement Division (CPED) alleges that the water company had, for the past "three decades," engaged in illegal billing practice. One of the claims that the CPED alleges is that SJWC would bill customers any "new, increased service charge for the entire billing cycle instead of pro-rating the bill so that customers were only charged the new, increased service charge for the period of time in which the new service charge actually became effective." Another claim the CPED alleges is that SJWC would "double-bill[]" customers, during a transition from billing customers in advance to billing customers in arrears, by adding both charges to customers' bills thereby "charging customers the same service charge twice." Under the remedies section of the report, the CPUC explains how the CPED recommends SJWC implement "a sur-credit of approximately another $2 million credit" in addition to the $1.7 million that the SWJC has proposed. Altogether the CPED has the total amount of double billing when SJWC converted from billing in advance to billing in arrears amounts to nearly $5 million. The Commission summed up by ordering that a formal investigation be done to determine if SJWC's actions were illegal and allowing the Commission to adopt fines or penalties to steer away future bad behavior.

LEGISLATION

Internal

SB 1358 (Hueso), as amended August 24, 2018, amends sections 1701.1, 1701.2, 1701.3 and 1701.4 of the Public Utilities Code, establishes the following: (1) the assigned CPUC Commissioner, rather than a vote of all CPUC Commissioners, must determine whether a proceeding requires a hearing as part of the initial scoping memo for each proceeding; (2) a quiet period must begin three days before the CPUC's scheduled vote on a decision; and (3) the language set forth in section 11123 of the Government Code, which requires a Commissioner to be physically present at the location specified in the public notice for a teleconference meeting, shall not apply to a meeting of the Commission during a quiet period. According to the author, "SB 1358 will improve the efficiency of CPUC proceedings by eliminating and reducing some of the bureaucratic hurdles all while maintaining transparency and due process requirements."

Governor Brown signed SB 1358 on September 18, 2018 (Chapter 519, Statutes of 2018)

Legislative Bills That Died

The following bills reported in Volume 23 Issue 2 pertaining to CPUC's jurisdiction died in committee or otherwise failed to be enacted during 2018: AB 813 (Holden), regarding multistate regional transmission system organization membership; AB 2604 (Cunningham), regarding the prohibition of an employee, as opposed to an executive, of a public utility from serving as Commissioner within two years after leaving employment.

General Energy

SB 1090 Diablo Canyon Nuclear Powerplant

SB 1090 (Monning), as amended on March 15, 2018, would add section 712.7 to the Public Utilities Code. Section 712.7(a) provides that the CPUC must approve both of the following: (1) the full funding for the community impact mitigation settlement proposed in A.16-08-006; and (2) the full funding for the employee retention program proposed in A.16-08-006. According to the added section 712.7(b), the CPUC would ensure that IRPs are designed to avoid any increase in emissions of GHGs as a result of the retirement of the Diablo Canyon Units 1 and 2 power plants. Newly added section 712.7(c) would require the CPUC to establish an expedited advice letter process for the approval and implementation pursuant to subdivision (a) of the community impact mitigation settlement and employee retention program. *[23:1 CRLR 191–193; 23:2 CRLR 148–149, 158]*

Governor Brown signed SB 1090 on September 19, 2018 (Chapter 561, Statutes of 2018).

Legislative Bills That Died

The following bills reported in Volume 23 Issue 2 pertaining to general energy died in committee or otherwise failed to be enacted during 2018: SB 1088 (Dodd), relating to safety, reliability, and resiliency planning by utilities; AB 2208 (Aguiar-Curry), relating to California Renewable Portfolio Standards; and SB 1399 (Weiner), relating to the Green Tariff Shared Renewables Program.

Energy Efficiency, Solar, and Storage

SB 100 (de León), as amended August 20, 2018, known as "The 100 Percent Clean Energy Act of 2018," amends sections 399.11, 399.15, and 399.30 of, and adds section 454.53 to the Public Utilities Code regarding the California Renewables Portfolio Standard Program and the emissions of greenhouse gases. The bill includes a legislative finding and declaration that the CPUC, along with the State Energy Resources Conservation and Development Commission, and State Air Resources Board "should plan for 100 percent of total retail sales of electricity in California to come from eligible renewable energy resources and zero-carbon resources by December 31, 2045." The bill goes on to state that:

> It is the intent of the Legislature in enacting this act to extend and expand policies established pursuant to the California Renewables Portfolio

> Standard Program (Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code), and to codify the policies established pursuant to Section 454.53 of the Public Utilities Code, and that both be incorporated in long-term planning.

Specifically, the bill amends section 399.11 to change the targets for renewable energy resources to 20% by December 31, 2013, 33% by December 31, 2020, 50% by December 31, 2026, 60% by December 31, 2030, and 100% by December 31, 2045. Amended section 399.15 conforms to the Commission's enforcement timeline with the amended requirements of section 399.11. The bill also amends section 399.30 to conform to the requirement that publicly owned electric utilities create a renewable energy procurement plan, aligning with section 399.11, and provides for a reasonable timeline for procurement in the years between compliance periods.

Finally, the bill adds section 454.53 to codify state policy "that eligible renewable energy resources and zero-carbon resources supply 100% of all retail sales of electricity to California end-use customers and 100% of electricity procured to serve all state agencies by December 31, 2045." The section additionally states that "[t]he achievement of this policy for California shall not increase the carbon emissions elsewhere in the western grid, and shall not allow resource shuffling." Under the bill, the Commission must report to the legislature by January 1, 2021, and at least every four years thereafter, on the status of resource allocation; economic barriers and benefits; and effects on overall energy reliability.

Governor Brown signed SB 100 on September 10, 2018 (Chapter 312, Statutes of 2018).

SB 1440 (Hueso), as amended August 20, 2018, added Article 10 (commencing with section 650) to Chapter 3 of Part 1 of Division 1 to the Public Utilities Code regarding adoption of specific biomethane procurement targets. This bill requires the CPUC, in consultation with California Air Resources Board (CARB), to consider adopting specific targets or goals for gas corporations relating to biomethane procurement. The CPUC is required to adopt standards for biomethane constituent concentrations to protect public health. These targets are meant to be cost effective means of achieving a reduction in emissions of short-lived climate pollutants and other GHGs.

Biomethane is a type of renewable bioenergy made from materials derived from biological sources such as wood and agriculture waste, and other organic waste sources. These organic waste sources decompose naturally to create "biogas." Biogas can then be used directly to generate electricity, or it can be processed further to remove CO2 and other impurities

Governor Brown signed SB 1440 on September 23, 2018 (Chapter 739, Statutes of 2018).

SB 1339 (Stern), as amended August 28, 2018, added Chapter 4.5 (commencing with section 8370) to Division 4.1 of the Public Utilities Code regarding the commercialization of microgrids. This bill requires the governing board of a local public utility to develop and make available a standardized process for interconnection of customer-supported microgrids. The CPUC must take action by December 1, 2020, to facilitate commercialization of microgrids for customers of large electric corporations. The CPUC is charged with taking action to help transition microgrids from their current status to a cost-effective, safe, and reliable commercial product that helps California meet its future energy goals and provide customers new ways to manage energy needs.

A microgrid is a self-contained, small, electricity system with the ability to manage critical customer resources, disconnect from the electric grid if needed, and provide the customer with different levels of critical support. A microgrid can be as simple as a diesel fuel generator located near a building, such as a hospital, or can be an entire neighborhood that is outfitted with solar and other technologies ready to provide power during an electric power outage

Governor Brown signed SB 1339 on September 19, 2018 (Chapter 566, Statutes of 2018).

Wildfires

SB 901 (Dodd), as amended on July 2, 2018, addresses various issues regarding wildfire prevention, response and recovery, funding for mutual aid, fuel reduction, forestry policies, wildfire mitigation plans, and cost recovery of electric corporations of wildfire-related damages. The bill includes a series of uncodified findings and declarations, including an express statement that it is "the policy of the state to encourage prudent and responsible forest resource management," and sets forth research findings and data regarding the increase in the number and intensity of wildfires over the last several decades.

Among several other amendments and additions to the law, SB 901 creates new programs and initiatives to provide people with more adequate tools and resources for managing and preventing wildfires. As it applies to the CPUC and the utilities it regulates, the bill amends and adds a series of provisions to the Public Utilities Code. Of note, the bill adds sections 451.1 and 451.2 to the Public Utilities Code, to require the Commission to examine whether the recovery costs and expenses proposed by electrical corporations for catastrophic wildfires are "just and reasonable." If the Commission determines that such costs are just and reasonable, SB 901 authorizes it to allow electrical corporations to recover costs from wildfires through fixed charges on ratepayers. Section 451.1 lists twelve reasonableness factors to consider when evaluating recovery costs and expenses for wildfires on or after January 1, 2019, including: (1) the nature and severity of the conduct of the electrical corporation and other entities with which the electrical corporation forms a contractual relationship; (2) whether the electrical corporation disregarded indicators of wildfire risk; (3) whether the electrical corporation failed to design, operate, and maintain its assets in a reasonable manner; and (4) whether extreme climate conditions at the location of the wildfire's ignition contributed to the fire's ignition or exacerbated the extent of the damages. However, such factors are not listed in section 451.2's assessment of recovery costs and expenses for the 2017 wildfires. With regard to allocating costs for those wildfires, the bill requires the Commission to take into account the utility's financial status and determine the maximum amount a corporation can pay without harming ratepayers while also maintaining adequate and safe services to customers.

SB 901 adds Article 5.8 (commencing with section 850) to Chapter 4 of the Public Utilities Code, which allows an electrical corporation, in cases where the Commission finds some or all of the costs and expenses to be reasonable pursuant to sections 451.1 and 451.2, to file an application requesting the Commission to issue a "financing order" to authorize costs and expenses to be recovered through "fixed recovery charges." This allows electrical companies to shift some of the financial burden of recovery from wildfires onto ratepayers by authorizing fixed charges related to distribution, connection, disconnection, and termination rates and charges. Article 5.8 also authorizes the use of "rate recovery bonds," which are accumulated through the electrical companies' dedicated fees on ratepayer utility bills, in order to recover, finance, or refinance recovery costs. According to the Senate floor analysis, the use of a rate recovery bond is the securitization of a cash flow stream generated by a fee charged to utility customers. Opponents of these provisions argue that the bill "reduces existing protections by creating more opportunities for utilities to pass on costs to ratepayers for past and future mismanagement and negligence."

SB 901 also requires IOUs and local Publically Owned Utilities ("POUs") to develop and submit wildfire mitigation plans for review. Section 8386 of the Public Utilities Code is amended to address requirements relevant to IOUs, while section 8387 is amended to address requirements relevant to POUs. Under both sections, the mitigation plan must consider several factors, including plans for vegetation management, protocols for de-energizing portions of the electrical distribution system, inspections of electrical infrastructure, and actions the corporation will take to ensure that its system will achieve the highest level of safety, reliability, and resilience. However, the bill distinguishes that POUs may consider these factors "as necessary." When assessing the wildfire mitigation plans, SB 901 requires independent third parties as part of the analytical and procedural process. With each plan, the utilities must engage an "independent evaluator" to assess the plan and whether the utility is in compliance with it. However, while the Commission must consider the independent evaluator's findings, it is not bound by it. Furthermore, the bill authorizes the cost of such independent evaluators to be recovered by rates. Additionally, the POUs must present the mitigation plan in an appropriately noticed public meeting and accept comments on the plan from the public, local and state agencies, and other interested parties.

The bill also emphasizes the importance of specialized expertise when assessing recovery costs and mitigation plans for catastrophic wildfires. For example, the law previously included the Office of Planning and Research (OPR) to provide technical planning information to local governments in California. SB 901 establishes the

Commission on Catastrophic Wildfire Costs and Recovery within OPR and requires it to have five appointed members with specified expertise who hold at least four public meetings throughout the state. These meetings will consist of public and expert testimony and evaluation of specific matters related to the cost of damage associated with catastrophic wildfires. The bill requires that the new Commission then prepare a report assessing the issues surrounding wildfires and making recommendations to "ensure equitable distribution of costs among affected parties."

Additionally, section 706 of the Public Utilities Code previously prohibited an electrical corporation or gas corporation, for a period of five years following a safety violation causing more than $5,000,000 in ratepayer liability, from recovering from ratepayer expenses for annual compensation of an officer in excess of $1,000,000 without CPUC approval. However, SB 901 repeals that provision and prohibits an electrical corporation or gas corporation from recovering from ratepayers any annual salary, bonus, benefits, or other consideration of any value, paid to an officer of the electrical corporation or gas corporation. The bill further requires that such compensation be paid solely by the shareholders of the electrical corporation or gas company. Lastly, SB 901 amends section 2107 of the Public Utilities Code, doubling the fine for any public utility that violates or fails to comply with any provisions of the state Constitution, or that fails or neglects to comply with part of any order, decision, decree, rule, direction, demand, or requirement of the CPUC, from $50,000 to $100,000 for each offense.

Governor Brown signed SB 901 on September 21, 2018 (Chapter 626, Statutes of 2018).

Legislative Bills That Died

The following bills reported in Volume 23 Issue 2 pertaining to wildfires died in committee or otherwise failed to be enacted during 2018: AB 33 (Quirk), regarding the Commission's issuance of financing orders and recovery bonds for PG&E related to the 2017 wildfires.

Telecommunications

SB 822 (Wiener), as amended August 23, 2018, add title 15 (commencing with section 3100) to the Civil Code to enact the California Internet Consumer Protection and Net Neutrality Act of 2018 regarding broadband internet access service and net neutrality. These new sections would essentially enforce net neutrality requirements, imposed by the Obama administration's 2015 Open Internet Order, on ISPs doing business in California. Of note new sections 3101 and 3102 prohibit ISPs from limiting, blocking, or slowing down access to the internet or certain websites unless the ISP meets certain conditions. This bill also include uncodified findings and declarations emphasizing the vital role the internet plays in all aspects of California's economy, democracy, and society.

Governor Brown signed SB 822 on September 30, 2018 (Chapter 976, Statutes of 2018).

Legislative Bills That Died

The following bills reported in Volume 23 Issue 2 pertaining to telecommunications died in committee or otherwise failed to be enacted during 2018: SB 460 (de León), accompanying bill on net neutrality. *[23:2 CRLR 180]*

Transportation

AB 3001 (Bonta), as amended April 3, 2018, would have amended section 25402.1 and added section 25403 to the Public Resources Code, and added section 380.7 to the Public Utilities Code, relating to energy. *[23:2 CRLR 178]*. New section 380.7 would have required utility companies to encourage customers to use space and water heating technologies with low GHG emissions by offering optional residential and commercial rates showcasing the effect these technologies would have on rates. *Id.* In addition, new section 380.7 would have further required the CPUC to initiate a rulemaking proceeding requiring electrical and gas corporations to modify existing energy efficiency programs to support such heating technologies designed to reduce GHG emissions from buildings. *Id.* at 178-79. AB 3001 died in the natural resources committee after its scheduled hearing was canceled at the author's request.

AB 2127 (Ting), as amended April 16, 2018, adds section 25229 to the Public Resources Code to require the Energy Commission to work with CARB and the CPUC to prepare a report of the statewide supply of electric vehicle charging stations. Specifically, the bill requires the CPUC to cooperate with the Energy Commission in a biennial audit of the amount electric-vehicle recharging facilities in the state, keeping in mind California's current target of 5 million electric-only vehicles with zero emission in the state by 2030. According to the author,

> "California must drastically reduce air pollution and greenhouse gas emissions from the transportation sector, especially from vehicles traveling on highways and roads. Zero-emissions vehicles, particularly battery electric vehicles, represent the potential for significant emissions reductions in the transportation sector, which generates nearly 40 percent of GHG emissions. Installation of electric vehicle charging infrastructure is critical to continue California's national leadership in ZEV deployment. This bill

will facilitate the build-out of charging infrastructure by identifying our existing infrastructure and our future needs in a coordinated manner."

Governor Brown signed AB 2127 on September 13, 2018 (Chapter 365, Statutes of 2018).

Legislative Bills That Died

The following bills reported in Volume 23 Issue 2 pertaining to transportation died in committee or otherwise failed to be enacted during 2018:

AB 1745 (Ting), as introduced January 3, 2018, would have added section 4150.8 to the Vehicle Code relating to vehicle registration for fossil-fuel vehicles. *[23:2 CRLR 178]*. New section 4150.8 would have, beginning January 1, 2040, limited the DMV to only accept registrations from electric-vehicles or zero-emissions vehicles, thus, in effect eliminating fossil-fuel vehicles from being driven due to the inability of renewing or acquiring registrations for those vehicles. *Id*. If AB 1745—appropriately titled the Clean Cars 2040 Act— passed, it would have effectively banned the sale and use of fossil fuel-powered cars in California after 2040. *Id*. AB 1745 died in the transportation committee after its scheduled hearing was canceled at the author's request.

Water

SB 959 (Beall), as amended June 13, 2018, adds section 2715 to the Public Utilities Code to require large water corporations to maintain an archive of all advice letters that are pending, approved, or rejected on or after January 1, 2019. Currently, the CPUC is responsible for regulating water corporations, as they are public utilities. This bill would apply strictly to water corporations with more than 10,000 service connections and would require these internet archives to have direct links to documents and indices of advice letters.

Governor Brown signed SB 959 on September 14, 2018 (Chapter 409, Statutes of 2018).

LITIGATION

Internal

CPUC Adopts Settlement Agreement of Numerous Parties Re San Bruno, Including Procedural Changes (D.18-04-014)

On April 26, 2018, the CPUC granted a joint motion by the City of San Bruno, the City of San Carlos, ORA, SED, TURN, and PG&E that argued the reasonableness of a Settlement Agreement the parties agreed to in March 2014. The settlement between the non-PG&E parties and PG&E came after a lawsuit filed by the City of San Bruno to compel the Commission to comply with four record requests the city made in February 2014. The records concerned several communications between PG&E and Commission personnel from 2010 to 2014 that were either self-reported or late-noticed by PG&E in violation of the Commission's *ex parte* communications rule.[3] According to the joint motion, a portion of the communications in question included approximately 65,000 emails regarding the selection of an ALJ to be assigned to a pending PG&E case.

[3] Pursuant to Pub. Util. Code § 1701.1(c)(4) and Rule 8(c) of the CPUC's Rules of Practice & Procedure, an *ex parte* communication has four components: (1) any written or oral communications; (2) between a "decisionmaker" and an "interested person;" (3) in a matter before the Commission regarding a substantive (not procedural) issue); (4) that does not occur in a public hearing, workshop, other public setting, or on the record of the formal proceeding. A "decisionmaker," in part, includes any Commissioner or assigned Administrative Law Judge, and an "interested person," in part, includes any party to the proceeding or any person with a financial interest.

The Commission's decision granting the joint motion reiterated the settlement terms pertinent to its evaluation of their reasonableness, including: (1) PG&E's admissions that it violated Commission rules and its conduct harmed customers and constituents; (2) PG&E payment of $97.5 million in financial remedies; and (3) changes to PG&E's interactions with decisionmakers, parties, and employees to promote greater transparency and understanding of commission rules. Regarding the $97.5 million in remedies, PG&E must pay $12 million to the State of California General Fund, forgo collection of $63,500,000 in revenue requirements for 2018 and 2019 as determined in its Gas Transmission and Storage Rate Case, and implement a one-time adjustment of $10,000,000 to be repaid in equivalent annual amounts over its next General Rate Case cycle. The remaining $12 million will be paid, in equal parts, to the City of San Bruno General Fund and the City of San Carlos General Fund. Changes to PG&E's interaction practices include, for two years following the Commission's approval of the Settlement Agreement, providing notice within three days of any tour of its facilities to a Commission decisionmaker and any "meet and greet" meetings between certain PG&E officers and the CPUC decisionmakers. Additionally, for three years following the Commission's approval of the Settlement Agreement, PG&E must provide to the non-PG&E parties a copy of the training materials used at its annual trainings on the Commission's *ex parte* rules and an annual certificate of completion for the training of all officers, Regulatory Affairs employees, and Law Department attorneys.

Update on Michael Aguirre's Suit Against the CPUC

In *Michael J. Aguirre v. Public Utilities Commission*, Case No. A151282, on June 19, 2018, the Court of Appeals for California First Appellate District ruled on Aguirre's petition for review of CPUC's denial of Aguirre's appeal seeking access to the withheld and redacted records requested under his Public Records Act (PRA). On December 12, 2016, Aguirre requested records from the CPUC pursuant to the PRA. The CPUC produced approximately 880 of the requested records while withholding or redacting some documents the CPUC asserts revealed deliberative internal processes or were exempt as correspondence with the Governor's Office. The CPUC denied Aguirre's appeal requiring access to the withheld or redacted records. On October 27, 2017, the Court of Appeals granted Aguirre's petition for review of the CPUC denial and ordered the CPUC to produce the records for an in-camera review by the court.

After in-camera review the court ruled that the CPUC must within 10 days produce the majority of records requested. The court states that the CPUC did not meet its burden of demonstrating the need for confidentiality versus the public interest in disclosure.

Karen Clopton Files Wrongful Termination Claim

In *Clopton v. Public Utilities Commission, et al.*, Case No. CGC-17-563082 on May 29, 2018 the San Francisco Superior Court sustained the CPUC's demurrer to Clopton's wrongful termination claim against defendants Aceves, Peterman, and Reschtschaffen, without prejudice but otherwise upheld Ms. Clopton's whistleblower retaliation and race discrimination claims against the Commission, and defendants Picker and Randloph.

Clopton filed a complaint against the CPUC, Michael Picker, Carla Peterman, Liane Randolph, Martha Guzman Aceves, and Clifford Rechtschaffen, in December 2017, claiming that the Commission retaliated against and ultimately terminated her due to her protected disclosures related to PG&E's unethical *ex parte* communications with Commission staff. *[23:2 CRLR 185-186]*.

On June 28, 2018, the CPUC filed an answer to Clopton's First Amended Complaint, which was filed on March 8, 2018. On October 10, 2018, the Court issued an order to show cause ordering Clopton to appear on November 27, 2018, and show cause as to why her action should not be dismissed or sanctions should not be imposed for failure to obtain answers from or dismiss defendants Peterman, Guzman Aceves, and Rechtschaffen as to her First Amended Complaint.

General Power

Pipeline Safety: Motion for SoCalGas/SDG&E to show cause why it is not in violation of Commission Rules (A.15-09-013)

On June 20, 2018, the ORA filed a motion requesting that the Commission issue an Order to Show Cause for why SoCalGas and SDG&E should not be sanctioned for making misrepresentations and false statements regarding the traceability, verifiability, completeness, and accuracy of its safety records to a panel of Commissioners and the ALJ during oral argument on May 29, 2018. According to the Commission's motion, SoCalGas/SDG&E made incorrect and misleading statements regarding their safety records and the classification of Line 1600, a large natural gas transmission pipeline running from Fallbrook to the City of San Diego. SoCalGas/SDG&E failed to identify that at least one area along Line 1600 that should be identified as a Class 4 location as required by federal regulations. Class 4 locations are defined as locations with higher population density specifically a prevalence of building with four or more stories. Federal regulations require that Class 4 pipelines be inspected more frequently than those with lower Class locations to ensure the safety of the pipeline and surrounding communities.

Given the serious nature of this issue, a Commission Order to Show Cause is necessary to require the utilities to explain their misclassification of this area of Line 1600. ORA requests that the Commission impose sanctions on SoCalGas/SDG&E in the form of fines, penalties, direction for corrective actions, and/or other remedies as appropriate.

Wildfires

CPUC Denies Application for Rehearing of Previous Decision Denying SDG&E's Rate Recovery Request of $379 Million for the 2007 Wildfires (D.18-07-025)

On July 12, 2018, the CPUC denied SDG&E's application for rehearing decision D.17-11-033, which denied SDG&E's request to recover from ratepayers $379 million in costs associated with the 2007 wildfires. In D.17-11-033, the Commission found that SDG&E did not reasonably manage and operate its facilities prior to the fires and, therefore, denied the utility's request to recover costs recorded in its expense report. [*23:2 CRLR 152*]. In its application for rehearing, SDG&E argued that the common denominator underlying the Witch, Guejito, and Rice fires at issue was "extreme and unprecedented environmental conditions" and that it managed its facilities prudently, carried reasonable levels of liability insurance, and effectively managed all claims for recovery. SDG&E also argued that the decision imposes upon the utility an "unreasonable and unattainable standard of perfection" even when damages are caused by extreme factors beyond SDG&E's control.

Despite SDG&E's claims, the Commission's decision denying its application for rehearing concludes that, after examining the Witch, Guejito, and Rice fires individually, it is clear that SDG&E did not act reasonably. Citing to the CPUC's "just and reasonable" and "Prudent Manager" standards, the decision explains that, at a particular time, any practices, methods, and acts engaged in by a utility must follow the exercise of reasonable judgment in light of facts known or which should have been known at the time the decision was made. Various factors led to the Commission's conclusion that SDG&E's actions were not reasonable or prudent, including the fact that SDG&E's 14-mile long transmission line caused the Witch fire and SDG&E de-energized the transmission line approximately 6.5 hours after the first fault occurred and almost 2.5 hours after they knew the Witch fire had started. The Commission also rejected SDG&E's argument that, even if its actions were unreasonable, strict inverse condemnation liability should be applied to recover the $379 million.[4] This claim stems from the 2,500 civil lawsuits SDG&E faced after the 2007 wildfires, which the San Diego Superior Court allowed to be brought and settled under the doctrine of inverse condemnation due to the inevitably high recovery costs. As stated in the Commission's decision denying the application for rehearing, "[t]he policy underlying inverse condemnation is one of cost sharing or cost spreading." However, the Commission concludes that applying inverse condemnation by recovering a portion of the $379 million in rates would violate section 451's requirement of providing "just and reasonable" rates.

On August 3, 2018, SDG&E filed a petition for writ of review, arguing, in part, that the CPUC erred in applying the "Prudent Manager" standard and judicial precedent

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

imposes strict inverse condemnation liability on POUs based on California's constitutional premise of spreading costs among ratepayers. On September 7, 2018, the CPUC filed an answer to petition for writ of review, arguing that inverse condemnation is traditionally applied to civil claims and, because Commission-regulated utilities have no taxing authority and are under the exclusive jurisdiction of the Commission, case law does not suggest that Courts have "directly grappled with whether inverse condemnation should apply to regulated utilities."

Transportation

***Overton v. Uber Techs., Inc.*, Case No. 18-16610 (9th Cir. 2018).** On September 18, 2018, the Ninth Circuit Court of Appeals denied appellant Overton's further motions to expedite the appeal process and set aside the decision of whether to grant Plaintiffs an "en banc" hearing for a different order. Plaintiffs Archie Overton and S. Mandel, both Uber drivers, sued Uber in April 2018 seeking a temporary restraining order due to (1) the CPUC's alleged mistake of collecting fees from plaintiffs instead of Uber and (2) Uber's alleged operation without a valid permit. The first prong of the plaintiffs' argument concerned the way that the CPUC has licensed Uber and its drivers. At the time of the litigation, Uber drivers had been licensed as drivers by the CPUC. TCP drivers are required to pay an annual revenue-based fee. However, if a driver works for a company who is a TCP and a TNC then the company would be on the hook for these fees rather than the drivers. Thus, the plaintiffs argued that Uber's continuing operation without a TCP permit violated state and federal registration and licensing requirements. The court ultimately ruled that a temporary restraining order would not remedy the plaintiff's harm since it would not lead to repayment of the charged fees.

In May 2018, the CPUC issued a decision, D-18-04-005, addressing rulemaking, R-12-12-011. [See MAJOR PROJECTS] This decision reclassified Uber as both a TCP and TNC. It meant that Uber would have to pay fees and back fees for the past three years Uber has operated in California. However, this did not translate into a win for plaintiffs Overton and Mandel as a judge in August, 2018 dismissed the plaintiffs suit due to a lack of evidence for their claims.

Telecommunications

Additional Parties Join CPUC and California in Suit to Block FCC Repeal of Net Neutrality

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

DOJ Brings Suit to Block SB 822

In *United States v. State of California, et al.* (E.D. Cal. 2018) on September 30, 2018, the United States Department of Justice filed an action for declaratory and injunctive relief in the Eastern District of California to invalidate and permanently enjoin the

California Internet Consumer Protection and Net Neutrality Act of 2018 (SB 822 (Wiener) (Chapter 976, Statutes of 2018)). The suit alleges that FCC rules preempt state rules. At this writing, the state has not yet filed a responsive pleading.