

CALIFORNIA PUBLIC UTILITIES COMMISSION

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

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

The Commission has quasi-legislative authority to adopt regulations, some of which are codified in Chapter 1, Title 20 of the California Code of Regulations (CCR). The Commission also has quasi-judicial authority to take testimony, subpoena witnesses and records, and issue decisions and orders. The CPUC’s Administrative Law Judge (ALJ) Division supports the Commission’s decision-making process and holds both quasi-legislative and quasi-judicial hearings when evidence-taking and findings of fact are needed. In general, the CPUC ALJs preside over hearings

and forward “proposed decisions” to the Commission for all final decisions. At one time, the CPUC decisions were solely reviewable by the California Supreme Court on a discretionary basis, but Public Utilities Code section 1756 permits courts of appeal to entertain challenges to most CPUC decisions. Still, judicial review remains discretionary, and most petitions for review are not entertained. The CPUC’s decisions are effectively final in most cases.

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

The CPUC staff—which includes economists, engineers, ALJs, accountants, attorneys, administrative and clerical support staff, and safety and transportation specialists—is organized into 15 major divisions.

In addition, the CPUC maintains services important to public access and representation. The San Francisco-based Public Advisor’s Office, as well as the Commission’s outreach offices in Los Angeles and San Diego, provide procedural information and advice to individuals and groups who want to participate in formal CPUC proceedings. Most importantly, under Public Utilities Code section 309.5, an Office of Ratepayer Advocates (ORA) independently represents the interests of all public utility customers and subscribers in Commission proceedings in order to obtain “the lowest possible rate for service consistent with reliable and safe service levels.”

Pursuant to [AB 1054 \(Holden\) \(Chapter 79, Statutes 2019\)](#), the Wildfire Safety Division (WSD) is the CPUC’s newest division; its purpose is to “evaluate and approve or deny electrical corporations’ Wildfire Mitigation Plans . . . in order to ensure that the electrical utilities are taking effective actions to reduce utility-related wildfire risk, . . . actively audit and evaluate IOU compliance with Wildfire Mitigation Plans, promptly addressing faults, including Public Safety Power Shutoff protocols, and [issue] safety certifications to the electrical corporations if they have satisfied several requirements.” CWSAB’s purpose is to advise the Wildfire Safety Division, established pursuant to section 326 of the Public Utilities Code in response to increased risk of catastrophic wildfires.

The five CPUC Commissioners each hold office for staggered six-year terms. Current commissioners include President Marybel Batjer and Commissioners Liane M. Randolph, Clifford Rechtschaffen, Martha Guzman Aceves, and Genevieve Shiroma. Alice Stebbins is the Commission’s Executive Director.

HIGHLIGHTS

Internal CPUC Policies

On March 4, 2020, Governor Newsom issued a [Proclamation of State of Emergency](#) in response to the COVID-19 pandemic, and the CPUC subsequently posted [guidance on conducting public meetings](#) during the pandemic. The CPUC continues to perform its essential functions, but all formal matters not essential to the core functions of the CPUC were cancelled, postponed, or are happening remotely through April 10, 2020. For meetings scheduled after April 10, 2020, the respective ALJs for each proceeding will determine whether to hold proceedings on a case-by-case basis. The service lists for each such proceeding is notified of the approach to be undertaken. Some

proceedings were not publicly updated between March 4 and April 15, 2020. However, alterations are increasingly announced.

Commission Sets Hearing Regarding San Diego Gas & Electric’s Application to Extend “Power Your Drive” Pilot Program ([A.1910012](#))

On February 6, 2020, Commissioner Clifford Rechtschaffen issued a [scoping memo](#) specifying the subject matter of proceedings and setting a schedule regarding San Diego Gas & Electric’s (SDG&E) request to extend and to modify its Power Your Drive (PYD) [application](#). The utility’s October 28, 2019 request follows the CPUC’s original approval of the PYD Pilot in January 2016 ([D.16-01-045](#)). This initial decision allowed SDG&E to install an Electric Vehicle (EV) charging infrastructure at multi-unit dwellings and workplaces in order to make EVs more accessible to populations who do not have the resources to install their own charging stations. In its application, SDG&E states that it designed and constructed infrastructure to support the over 3,000 charging ports deployed as part of the PYD Pilot, but that they have experienced significant demand, with hundreds of potential site hosts listed on a PYD Pilot interest list. At this point, SDG&E reports that it is unable to fulfill the existing demand for charging infrastructure after the initial PYD Pilot installations were completed and is therefore applying for an extension of the program.

SDG&E requests that the PYD Extension Program retain most features the CPUC already approved in 2016 and deploy approximately 2,000 Level 2 charging ports over two years. SDG&E intends to simplify program implementation, further attract customers, and continue to leverage and promote the private market. SDG&E requests a timely approval as a substantial time gap between the close of the PYD Pilot and the PYD Extension Program could result in interested site

hosts dropping off and reducing the benefit of the outreach, marketing, and the technical development achieved by SDG&E.

On April 9, 2020, in response to the COVID-19 pandemic, the Commission filed an [e-mail ruling](#) modifying procedural schedule and resetting evidentiary hearing dates from June 25–July 2, 2020 in San Francisco to August 3–7, 2020. Technical and Community Workshops are anticipated but have not yet been scheduled.

AB 1941 Introduced to Address Power Shut-offs and Wildfire Prevention

[AB 1941 \(Gallagher\)](#), as amended February 18, 2020, would amend various sections of the Public Utilities Code to temporarily suspend public utilities’ obligations to meet the requirements of the California Renewables Portfolio Standard Program (the Program). The suspension would continue until infrastructure and vegetation management conditions are improved. The bill would also prohibit utilities from increasing the salaries of, or providing bonuses to, their executive officers during the suspension.

Under the Program, eligible renewable energy resources and zero-carbon resources must supply 100% of retail sales of electricity to California end-use customers and 100% of electricity procured for all state agencies by December 31, 2045. The 25 years from now target is part of the general global warming prevention movement.

Of note, the bill would require the CPUC to determine the amount the utilities would be saving by not having to comply with the renewable energy standards and require them to expend that amount to improve its transmission and distribution infrastructure to minimize the risk of wildfire ignition. According to a [press release](#) issued by author Assembly member James Gallagher, and principal co-author, Senator Jim Nielsen, both of whom represent the town of

Paradise and the Camp Fire victims, Pacific Gas & Electric (PG&E) “is currently spending roughly \$2.4 billion annually to uphold a legislative mandate to buy renewable power. At the same time, the company spent only \$1.5 billion to update its century old infrastructure in 2017.” The authors believe that “policies coming out of the State Capitol that distract from these primary objectives [of providing safe and reliable power] only make matters worse.”

The bill is currently pending before the Assembly Utilities and Energy committee. To provide your input on this bill, [register](#) on the legislature’s webpage and submit your comments to the author.

Federal Court Dismisses Lawsuit Regarding Decommissioning of San Onofre Nuclear Generating Station for Lack of Jurisdiction

On December 3, 2019, the United States District Court for the Southern District of California issued an [order](#) in *Public Watchdogs v. Southern California Edison Company*, Case No. 19-CV-1635 JLS (MSB) (S.D. Cal. Aug. 29, 2019). The order granted defendant’s motion to dismiss plaintiff’s first amended complaint with prejudice and denying plaintiff’s motion for preliminary injunction. The Court held that it lacks subject-matter jurisdiction as to all of Plaintiff’s causes of action and the Plaintiff fails to allege proper facts that would confer authority for its consideration.

Public Watchdogs, a non-profit corporation that advocates for public safety, had filed a complaint, motion for temporary restraining order, and motion for preliminary injunction on August 29 and 30, 2019, alleging federal Administrative Procedures Act and state nuisance and strict product liability violations against Defendants Southern California Edison Company (SCE), SDG&E, Sempra Energy (Sempra), Holtec International (Holtec), and the United States Nuclear

Regulatory Commission (NRC) pertaining to their respective roles in the decommissioning of the defunct San Onofre Nuclear Generating Station (SONGS). Plaintiff alleges that the Defendants are risking the lives of millions of California residents and the prospect of irreparable harm to the environment by removing spent nuclear fuel from a storage location specifically designed and used for that purpose for decades; transporting it into canisters that are damaged, defective, and not properly designed to serve their intended purpose; and dropping it into holes a mere 108 feet from one of California's most populated public beaches, within a tsunami zone, and surrounded by active fault lines.

In seeking to enjoin the Defendants from proceeding with this plan, Plaintiff also alleges multiple instances of poor safety and regulatory compliance at the SONGS facility; faulty canister design changes without NRC authorization; poor oversight over the operation by the NRC; and two incidents in which the utility defendants lost control of two 49-ton canisters containing deadly radioactive nuclear waste since the burial of nuclear waste began on January 31, 2018 in support of their argument about the substantial evidence of irreparable harm should the plan go forward.

In denying the motion for a preliminary injunction and dismissing the complaint, the District Court agreed with Defendants that all of Plaintiff's claims were incidental to the NRC's final licensing and certification decisions regarding spent fuel storage at SONGS, and therefore original jurisdiction to review such NRC licensing activity is vested exclusively with the Ninth Circuit Court of Appeals pursuant to the Hobbs Act. It also found that Plaintiff failed to state facts to constitute a plausible claim for relief, and thus it failed to meet the standard for a preliminary injunction that it had a "likelihood of success" on the merits.

On December 31, 2019, Public Watchdogs filed a notice of appeal with the Ninth Circuit, and on January 27, 2020, the Ninth Circuit granted its request for an expedited briefing schedule.

On January 21, 2020, Public Watchdogs also filed a parallel supplemental [petition](#) to the NRC requesting this federal agency immediately suspend all nuclear waste burial operations at SONGS. Specifically, Plaintiff states (1) the recent events confirm that these licensees cannot ensure their financial ability to pay for the total cost of decommissioning and long term spent fuel management, (2) the licensees are violating NRC regulations by burying spent nuclear fuel at SONGS in a storage system that does not allow for ready retrieval of the fuel, and (3) the SONGS on site burial process is operating in an unanalyzed condition.

On February 25, 2020, the NRC issued an [inspection report](#), stating that within the scope of the inspection, no violations were identified at SONGS.

California’s Major Utilities Set to Increase Rates, but not Profits

On December 20, 2019, the CPUC issued [D.19-12-056](#), a decision on the 2020 cost of capital for California’s major energy utilities, including PG&E, SCE, SDG&E, and Southern California Gas (SoCalGas). After a lengthy proceeding that began in April of 2019, the CPUC rejected the utilities’ requests to increase their 2020 common cost of equity (i.e., the profit margin for shareholders). The Commission kept PG&E’s rate of return at 10.25% instead of the requested 12.00%, SCE’s at 10.30% instead of 11.45%, SDG&E’s at 10.20% instead of 12.38%, and SoCalGas’s at 10.05% instead of 10.70%. However, customers’ bills are still likely to rise in 2020 due to allowable cost increases.

On December 20, 2019, PG&E submitted a settlement proposal to the CPUC that it had reached with public and industry interest groups. Under this agreement, PG&E would increase bills by approximately 3.4%, or \$5.69 per month per customer in 2020 in order to invest in the safety and reliability of its energy resources—primarily involving fire safety related costs.

SB 378 (Wiener), Addressing Utilities' Roles in Power Shutoffs, Moves to the Assembly

[SB 378 \(Wiener\)](#), as amended January 21, 2020, is a two-year bill that would add sections 592, 748, 776.7, 911.3, and 2111.5 to the Public Utilities Code to impose numerous requirements related to an electrical investor-owned utility's (IOU) decision to proactively shut off power, usually pursued where high winds threaten power line security and fire danger. The bill would require reimbursement of specified costs, particular penalties for shutting off power, and detailed reporting requirements. According to the author, the bill aims “to create some incentive for IOUs to use planned blackouts more judiciously and in a more targeted fashion.” Of note, new section 592 would require utilities to submit an annual report to the CPUC WSD that would include information on their electric equipment and the current and future fire and safety risks this equipment could pose.

New Section 748 would allow customers and local governments to recover costs from electric corporations incurred during a power shutoff. It would also require the CPUC, in consultation with the Public Advocate's Office, to establish procedures for consumers and local governments to recover the costs on or before June 1, 2021. The bill also requires the Commission to establish rules to determine whether utilities can recover these expenses from ratepayers. New section 2111.5 would establish a civil penalty on utilities of at least \$250,000 per 50,000 customers affected for every hour of a “deenergization event” (*i.e.* power shut-off) if the utility did not act in a reasonable and prudent manner in doing so. The utilities' shareholders would have to exclusively pay this penalty (rather than ratepayers). SB 378 passed out of the Senate on a 25-2 vote on January 27, 2020 and is currently pending referral to a policy committee in the Assembly.

Under New Proposals, the CPUC Could Revoke PG&E’s License if Utility Operates Unsafely

On February 18, 2020, the California Public Utilities Commission (CPUC) issued [I.19-09-016](#), a ruling setting forth assigned Commissioner proposals “relating to the application of state law to the proposed plan of reorganization for [PG&E].” Five months after the CPUC opened an [investigation](#) into the regulatory approvals PG&E needs to successfully exit Chapter 11 Bankruptcy, assigned commissioner Marybel Batjer issued a series of proposals, including a new oversight and enforcement process for PG&E.

In order for PG&E to comply with [AB 1054 \(Holden\) \(Chapter 79, Statutes of 2019\)](#) and access its statutorily-created \$20 billion Wildfire Fund, it must exit bankruptcy by June 30, 2020, with a commission-approved reorganization plan. After considering PG&E’s plan, the CPUC’s proposals focus on enhancing the utility’s following goals: establishing Risk and Safety Officers, instituting an Independent Safety Advisor, expanding the Safety and Nuclear Oversight Committee, maintaining its Board of Directors, altering approval of senior management, restructuring on a regional level, adhering to more stringent safety and operational metrics, and linking its earning and compensation structure, including that for executives, to safety performance.

Of greatest significance beyond these proposals is the new CPUC’s proposal for oversight and enforcement. The new method would enumerate 6 steps to be followed in the safety assurance process. PG&E would trigger a required step by violating a requirement or failing to implement CPUC’s remedies prescribed under the previous step. For example, PG&E triggers Step 1 if it fails “to comply with its regulatory reporting requirements.” The Commission then lists corrective plans for these failures. PG&E triggers Step 2 if it fails to take Step 1’s corrective measures or, for

example, PG&E fails to follow rules or prudent management practices that result in the destruction of over 1,000 buildings. Steps 3 through 6 are “enhanced enforcement” measures because they require more onerous triggers and provide for more stringent corrective measures. PG&E can trigger Step 4 by causing an incident resulting in the destruction of over 1,000 buildings due to willful misconduct or repeated violations, instead of simply not following management practices. If PG&E eventually triggers and fails Step 6, then the CPUC can revoke PG&E’s Certificate of Public Convenience and Necessity (CPCN) (*i.e.*, its license to operate in California). This could subsequently result in a state takeover of the utility. Before this occurs, the CPUC would require that PG&E’s interim management post-bankruptcy conclude either that “Receiver Oversight will not result in restoration of safe and reliable service,” or that PG&E failed to correct Step 5 (and any subsequent chain of events that brought PG&E to that step).

The CPUC held evidentiary hearings ([Vol. 1](#), [Vol. 2](#), [Vol. 3](#), [Vol. 4](#), [Vol. 5](#), [Vol. 6](#), [Vol. 7](#)) on February 25, 2020, through March 4, 2020. The CPUC will additionally serve concurrent briefings on the proposals on March 26, while reply briefs are due this same day. As of April 15, the CPUC had not yet issued a decision.

PG&E’s Bankruptcy Case Has Reached Monetary Settlements and Governor-Approved Reorganization Agreements

In re PG&E, Case No. 19-30088-DM (Bankr. N.D. Cal.). On February 27, 2020, the CPUC, pursuant to a settlement agreement, [imposed](#) a \$2.137 billion fine¹ on PG&E to cover state expenditures and corrective actions with respect to the role its electrical facilities had in igniting

¹ On March 27, 2020, CPUC Commissioner Clifford Rechtschaffen proposed lowering the fine by \$200 million due to hardships on PG&E. As of April 15, the CPUC had not approved this request.

fires in its Service Territory in 2017, as well as the Camp Fire in 2018. In light of PG&E’s pending bankruptcy proceeding, however, federal bankruptcy Judge Dennis Montali must approve all imposed fines, settlements, and restructuring agreements before the utility can exit bankruptcy.

[\[24:2 CRLR 223-224\]](#) At this writing, the Court has yet to approve this penalty.

PG&E must exit bankruptcy by June 30, 2020, in order to access the Wildfire Fund created in [AB 1054 \(Holden\) \(Chapter 79, Statutes of 2019\)](#). Exiting requires both Court and CPUC approval. While an endorsement from Governor Newsom is unnecessary, it is influential, in part, because the CPUC’s President, Marybel Batjer, is his appointee.

On March 20, 2020, PG&E announced in a [press release](#) that it had reached an agreement with Governor Newsom after offering new commitments as part of its proposed reorganization plan that would allow the utility to exit bankruptcy. PG&E filed the new plan with the Bankruptcy court that day, and Governor Newsom filed a [statement](#) in support of the plan with the Court on the same day as well. Earlier, in December 2019, Governor Newsom sent a [letter](#) to PG&E criticizing its original reorganization plan, and filed a [statement](#) in the bankruptcy proceeding urging Judge Montali not to approve PG&E’s proposed reorganization plan, arguing that it fell “woefully short” of addressing needed leadership changes, safety metrics, and enforcement processes.

Of note, the revised plan includes PG&E’s commitments to support the CPUC’s enactment of measures to strengthen PG&E’s governance and operations, including enhanced regulatory oversight and enforcement that provides course-correction tools as well as stronger enforcement if it becomes necessary; an agreement to host an observer to provide the state with insight into the company’s progress on safety goals before the company exits Chapter 11; an agreement that it will conduct an orderly process to sell its business if it does not exit Chapter 11; a commitment not to

reinstate a dividend to shareholders for three years; and a commitment not to seek recovery in customer rates of any portion of the approximately \$25.5 billion that will be paid to victims of the 2017–18 wildfires under the company’s plan when PG&E emerges from Chapter 11 bankruptcy.

The plan also proposes to pay out \$13.5 billion for damages not covered by insurance to victims of the 2015 Butte Fire in Amador and Calaveras counties, the 2017 wine country fires, the 2018 Camp Fire, and the 2016 Ghost Ship fire in Oakland—a [compromise](#) reached in December 2019 between PG&E and the lawyers representing the wildfire victims. The proposal, however, includes a partial payment (totaling \$6.75 billion) to victims in PG&E stock, which has been fluctuating in the wake of the economic downturn in recent weeks due to the COVID-19 pandemic. The victims have [until May 15, 2020](#), to vote on PG&E’s plan, and on April 7, the court [declined to approve](#) a letter the tort claimants committee wished to send to victims encouraging them to wait until the end of April to vote. The court held that such a delay would “cause more harm than good.”

Meanwhile, on March 23, 2020, PG&E [pled guilty](#) to 84 counts of involuntary manslaughter and a single count of unlawfully causing a fire in connection with the 2018 Camp Fire. The plea resulted in a fine of \$4 million. After initially proposing to pay this fine out of the \$13.5 billion for wildfire victims, PG&E reversed course and [announced](#) on March 30, 2020, that the \$4 million will not reduce the funds available to the wildfire victims, and that it would be funding it from other sources (see LITIGATION).

Ultimately, the bankruptcy court will rule on PG&E’s latest governor-approved reorganization plan, whether or not the victims agree, at a [hearing](#) set for May 27, 2020.

RULEMAKING

Internal

- [R.18-07-006](#) (Establishing a Framework and Processes for Assessing the Affordability of Utility Service. The CPUC posted no decisions before April 15, 2020, but posted a [motion](#) filed March 9, 2020, to accept late reply comments, on April 10, 2020.) [[25:1 CRLR 222–23](#); [24:2 CRLR 190–91](#); [24:1 CRLR 138–40](#)]

Telecommunications

- [A.18-07-012](#) (In the Matter of the Joint Application of Sprint Spectrum L.P. and Virgin Mobile USA L.P. and T-Mobile USA, Inc., for Review of Wireless Transfer. The CPUC issued a [proposed decision](#) on March 11, 2020 to approve the merger of the companies, and retained a final decision date of April 16, 2020. As of April 15, 2020, the CPUC had not issued a final decision.)
- [R.18-03-011](#) (Resiliency Planning for Communications Companies. The CPUC issued proposals on March 6, 2020 for maintaining resilient communications networks during catastrophic events.)

Transportation

- [R.12-12-011](#) (On February 7, 2020, CPUC Commissioner Genevieve Shiroma issued a [proposed decision](#) on data confidentiality issues pertaining to transportation. The Commission’s Order Instituting Rulemaking (OIR) pertained specifically to passenger carriers, ridesharing, and new online-enabled transportation services. The CPUC originally initiated R.12-12-011 on December 20, 2012, to assess the public safety risks of then-new rideshare technologies, including Uber and Lyft, now known as Transportation Network Companies (TNCs). The

proposed decision reverses a policy the Commission [adopted](#) in 2013 allowing entrants into the newly regulated “ride-sharing” transportation industry (Uber and Lyft), to submit their required annual reports on a confidential basis. Neither the general public nor lawmakers have had access to this safety data despite the exponential growth of TNCs from 2012 to 2020.

According to the proposed decision, the original order was based on a “presumption of confidentiality [that] was acknowledged at a time when TNCs were a nascent transportation service. Commissioner Shiroma found that in the six years since issuing this order, the Commission’s knowledge of the TNC industry now requires that the confidentiality policy should be ended. Specifically, she noted, “[a]s there are no apparent competitors that can rival Uber and Lyft’s market-share dominance, the suggestion that producing their annual reports could place them in an unfair competitive disadvantage lacks factual support.”

Proceeding number R.12-12-011 remained open when California declared a state of emergency on March 4, 2020, and the CPUC’s Commissioners voted on the proposed decision at the [CPUC Voting Meeting](#) on March 12, 2020. On March 16, 2020, the CPUC posted a [decision](#) to reverse their policy by no longer permitting TNCs to submit annual reports confidentially.)

- [R-19-02-012](#) (Order Instituting Rulemaking to Implement Senate Bill 1376 Requiring Transportation Network Companies to Provide Access for Persons with Disabilities, Including Wheelchair Users who need a Wheelchair Accessible Vehicle. The CPUC issued a [Decision on Track 2 Issues](#) on March 19, 2020, establishing requirements for the offset eligibility and exemption eligibility process, and the distribution of funds for the [Transportation Network Company \(TNC\) Access for All Fund.](#)) [[25:1 CRLR 247–48](#)]

Water

- [L18-09-003](#) (Formal Investigation into San Jose Water Billing Practices. The CPUC issued a [Decision Approving Settlement](#) between the San Jose Water Company and the Consumer Protection and Enforcement Division of the Commission that resolves all outstanding issues in the proceeding.) [[25:1 CRLR 248–49](#); [24:1 CRLR 155–56](#)]

Energy

- *Building Decarbonization Pilot Programs*: (On April 6, 2020, the Commission issued a [decision](#) on two pilot programs to develop valuable market experience for the purpose of decarbonizing California’s residential buildings in order to achieve California’s zero-emissions goals.)

- *Establishing Policies and Rules to Ensure Safe and Reliable Gas Systems in California and to Perform Long-Term Gas System Planning*: (On January 27, 2020, the Commission [ordered rulemaking](#) to ensure safe and reliable natural gas service at just and reasonable rates.)

- *Self-Generation Incentive Program Revisions Pursuant to SB 700 and Other Program Changes*: (On January 27, 2020, the Commission issued a [decision](#) to prioritize the allocation of \$166 million annually for the years 2020 to 2024 in accordance with AB 1144 and benefit customers impacted by public safety power shutoffs or elevated wildfire risks.)

- *Electric System Reliability Procurement for 2021–2023*: (On November 13, 2019, the Commission issued a [decision](#) to ensure safe and reliable electric service and meet SB 350 greenhouse gas reduction goals. The decision also takes a number of steps to address potential electricity system shortages beginning in 2021.)

- ***Transportation Electrification Pilots for Schools and Parks Pursuant to AB 1082 and 1083:*** (On November 13, 2019, the Commission issued a [decision](#) to approve eight electric vehicle charging pilots proposed by four of California’s electric investor owned utilities to meet SB 350 greenhouse gas reduction goals. The pilots will provide electric vehicle charging stations at city and county parks, state parks and beaches, school facilities, and educational institutions.)
- ***Claim for Electric Meter Functionality as a Smart Meter Opt-Out Customer, and Associated Relief:*** (On November 12, 2019, the Commission issued a [decision](#) that found PG&E not in violation of Commission rules for denying reimbursement to its customer for electricity charges incurred as a result of PG&E’s delayed interconnection. The customer failed to accept three standard meter options offered by PG&E as a condition of interconnection.)
- ***Approving PG&E’s Application to Revise its Gas Rates and Tariffs:*** (On October 31, 2019, the Commission issued a [decision](#) to resolve PG&E’s gas cost collection and rate design, authorize revisions to gas rates and tariffs, and address revenue requirement allocation and rate design for PG&E gas customers not decided from prior proceedings.)
- ***Approving Application for PG&E’s Commercial Electric Vehicle Rates:*** (On October 28, 2019, the Commission issued a [decision](#) to approve PG&E’s application for new commercial electric vehicle rates and creation of a new class of customers under these rates.)

Wildfire

- ***PG&E Seeks Interim Rates:*** (On February 7, 2020, PG&E submitted to the CPUC [A.20-02-003](#), an Application for Wildfire Mitigation and Catastrophic Events Interim Rates. The utility requested “authorization to recover, on an interim basis, \$899 million in revenue over a period commencing in August 2020 and continuing through 2021.” PG&E requested this increase due to diminishing revenue from wildfire related costs; however, this request is separate from

PG&E's bankruptcy proceeding (see HIGHLIGHTS). On April 14, 2020, the CPUC issued a [Scoping Memo and Ruling](#), lowering the requested amount to \$891 million over a 17-month period and setting the Commission decision for June 25, 2020.)

LEGISLATION

Internal

- [AB 2067 \(Holden\)](#), as amended March 9, 2020, would amend section 792.5 of the Public Utilities Code to change requirements to audit balancing accounts of public utilities from exceptions for companies that *will be* audited or reviewed by the Public Advocate's Office or an independent auditor to only those accounts that *have been* reviewed or audited within the last three years. [*A. U&E*]

- [SB 605 \(Hueso\)](#), as amended January 6, 2020, is a two-year bill, that would authorize, rather than require, the assigned PUC commissioner in a proceeding to schedule a prehearing conference. The bill would also prohibit the assigned commissioner from waiving a prehearing conference if there is a disputed issue of material fact, law, or policy identified; would prohibit the assigned commissioner from reducing the public comment period for a proceeding; and would provide for remote participation in a prehearing conference where practicable. On January 27, 2020, the bill passed in a vote by the Senate Committee on Appropriations and was referred to the Assembly. [*A. Desk*]

Telecommunications

- [AB 1366 \(Gonzalez\)](#), as amended April 6, 2020, is a two-year bill, that would keep internet oversight in the hands of the Senate instead of the PUC. [*25:1 CRLR 263–64*] [*S. EU&C*]

- [SB 1058 \(Hueso\)](#), as amended April 3, 2019, would add section 879.6 to the Public Utilities Code to require the PUC to evaluate the extent to which federal reductions in the lifeline telephone service subsidies would result in rates limiting access to basic voice service, and to require mitigation measures. *[S. EU&C]*

Transportation

- [AB 1350 \(Gonzalez\)](#), as amended January 15, 2020, is a two-year bill that would add Chapter 2 (commencing with section 99100), to Part 11, Division 10 of the Public Utilities Code to require transit agencies statewide to provide free youth transit passes to persons ages 18 and under in order to be eligible for funding from specific state transit programs. The bill includes a set of legislative findings and declarations with respect to the threat of global climate change and the fact that providing free transit passes to youth would increase overall transit ridership and decrease greenhouse gas emissions. According to the author, “[r]equiring local transit agencies to offer free transit passes to youth riders, regardless of income or educational status, removes an additional barrier to encourage youth ridership and creating life-long transit users.” *[S. RLS]*

- [AB 2012 \(Chu\)](#), as introduced January 28, 2020, would add Chapter 2.5 (commencing with section 99125) to Part 11 of Division 10 of the Public Utilities Code to require the Department of Transportation to provide free senior transit passes to persons over 65 years of age, and require those senior transit passes to count as full price fares for purposes of calculating the ratio of fare revenue to operating costs. *[A. Trans]*

- [AB 2176 \(Holden\)](#), as introduced February 11, 2020, would add Chapter 2.5 (commencing with Section 99120) to Part 11 of Division 10 of the Public Utilities Code to require the Department of Transportation to provide free student transit passes to persons attending community colleges, the California State University, or the University of California, and require

those student transit passes to count as full price fares for purposes of calculating the ratio of fare revenue to operating costs. *[A. HiEd, A. Trans]*

- [AB 2249 \(Mathis\)](#), as introduced February 13, 2020, would add section 185031 to the Public Utilities Code to create the Joint Legislative Committee on High Speed Rail Oversight, and to require the High-Speed Rail Authority and any entity contracting with the authority to provide any documents required by the committee. *[A. Committee]*

- [AB 2698 \(Gray\)](#), as amended March 11, 2020, would add section 185036.5 to the Public Utilities Code to prohibit the High-Speed Rail Authority from using public funds to purchase, lease, operate, or maintain passenger or freight trains powered by a diesel engine or other type of fossil fuel, and from enabling such a train to operate on authority-owned rail infrastructure designed for speeds in excess of 125 mph. *[A. Trans]*

Water

- [SB 1096 \(Caballero\)](#), as introduced February 19, 2020, would add Chapter 2.7 (commencing with section 2721) to Part 2 of Division 1 of the Public Utilities Code, to authorize a water or sewer system corporation to request approval from the CPUC for consolidation with a public water system or state small water system, expanding on the current authorization to consolidate corporations that fail to provide safe drinking water, and to require the commission to approve or deny applications for consolidation within eight months. *[S. EU&C, S. EQ]*

Energy

- [SB 1198 \(Durazo\)](#), as introduced on February 20, 2020, would Article 2 (commencing with section 328.3) to, Chapter 2.2 of Part 1 of Division 1 of, the Public Utilities Code to require that any contractor that causes damage to any subsurface gas installation without

proper markers subject to civil penalties not to exceed \$100,000 and possible suspension or revocation of the contractor's license. Penalties would be deposited in the Safe Energy Infrastructure and Excavation Fund. This bill would also mandate the commission to require each gas corporation to respond to gas leak reports and provide analogous leak reports twice per year, or as determined by the commission. *[S. BP&ED, S. EU&C, S. Jud]*

- [AB 2898 \(Cunningham\)](#), as introduced on February 21, 2020, would amend section 398.4 of the Public Utilities Code and amend section 25741 of the Public Resource Code to include a nuclear energy facility as a renewable electrical generation facility. This bill would also recategorize nuclear energy as an eligible renewable energy resource for retail supplier's electricity source disclosure requirements. *[A. U&E, A. NatRes]*

- [SB 1122 \(Skinner\)](#), as amended April 3, 2020, would amend section 38561.7 to the Health and Safety Code, and section 400.3 of the Public Utilities Code, to require the State Air Resource Board to prepare strategic plan for accelerating the production and use of green electrolytic hydrogen and help meet greenhouse gas emission reduction goals by December 31, 2022. This bill would also require the CPUC to consider green electrolytic hydrogen as a zero carbon-emitting resource that provides optimal integration of renewable energy resources in a cost-effective manner. *[S. EU&C]*

- [AB 2033 \(Wood\)](#), as introduced on January 30, 2020, would add section 768.7 to the Public Utilities Code to require electrical corporations that engage in public safety power shutoffs to compensate customers for any qualified claim for spoilage of food or medication for interruption in electrical service greater than eight hours and where they received less than twenty-four hours advance notice of the interruption. *[A. U&E]*

- [SB 862 \(Dodd\)](#), as amended March 5, 2020, would amend section 8386 and add section 768.9 of the Public Utilities Code, to require an electrical corporation and local governments to identify community resource centers that can operate during a deenergization event. This bill would also require electrical corporations to ensure a mobile backup generator to provide necessary electricity for community resource centers during a deenergization event. *[S. EU&C]*

Wildfire

- [AB 1915 \(Chu\)](#), as amended January 9, 2020, would amend section 8385, and add section 8386.7 to the Public Utilities Code to grant the CPUC authority to create regulations that can levy fines on utilities if their responses to deenergizations events are unreasonable. *[A. U&E]*

- [AB 1916 \(Chu\)](#), as amended January 9, 2020, would amend sections 8385 and 8386 and add section 768.8 to the Public Utilities Code to require that utilities provide information to customers regarding energy deenergization events in every threshold language in an area within its service territory, and to require that utilities' wildfire mitigation plans include mitigation protocols for impacts on medically vulnerable customers during these events. *[A. U&E]*

- [AB 2179 \(Levine\)](#), as introduced February 11, 2020, would amend section 8385 and add section 8386.9 to the Public Utilities Code to require that the California Public Utilities Commission creates regulations requiring electrical corporations to provide local governments with information relating to customers receiving, or eligible to receive, medical baseline rates relevant to a deenergization event. *[A. U&E]*

- [AB 2180 \(Levine\)](#), as amended February 11, 2020, would amend section 8386.3 of the Public Utilities Code to prevent utilities from diverting funds that their wildfire mitigation

plans authorized for one purpose into another authorized purpose if the diversion exceeds five percent of the approved allocation. *[A. U&E]*

- [AB 2475 \(Flora\)](#), as amended February 19, 2020, would add section 8386.8 to the Public Utilities Code to require the state’s three largest electrical corporations to include, as part of their wildfire mitigation plans, proposals to install “monitoring equipment” on transmission and distribution lines in high fire-threat areas. *[A. U&E]*

- [AB 2539 \(Bigelow\)](#), as amended March 9, 2020, would add section 768.9 to the Public Utilities Code to require that electrical corporations ensure that deenergization events do not “impair the ability of local elections officials to perform official duties.” *[A. U&E]*

- [AB 2705 \(Low\)](#), as amended March 12, 2020, would add section 8386.7 to the Public Utilities Code to require that utilities provide customers with at least 72 hours’ notice of deenergization events and to require CPUC to create regulations forcing utilities to provide backup power during these events for critical facilities and infrastructure. *[A. U&E]*

- [SB 801 \(Glazer and McGuire\)](#), as introduced January 7, 2020, would amend section 8386 of the Public Utilities Code to require electrical corporations to “deploy backup electrical resources or provide financial assistance for backup electrical resources to a customer receiving a medical baseline allowance” during a deenergization event. *[S. EU&C]*

- [SB 802 \(Glazer\)](#), as amended January 7, 2020, would amend section 8385 and add section 8386.7 to the Public Utilities Code to require electrical corporations, electrical cooperatives, and local publicly owned electric utilities to submit a report to the State Air Resources Board and air quality management districts after undertaking a de-energization event, detailing the timeline of the event, areas affected, and notifications provided to health care facilities regarding it. *[S. EQ, S. EU&C]*

- [SB 862 \(Dodd\)](#), as amended March 5, 2020, would amend section 8386 and add section 768.9 to the Public Utilities Code to require electrical corporations to coordinate with local governments to establish community resource centers and deploy backup power during deenergization events. *[S. EU&C]*
- [SB 952 \(Nielsen\)](#), as amended February 10, 2020, would amend section 8385 of the Public Utilities Code to define terms for the proposed addition of section 6358.3 to the Revenue and Taxation Code to provide a tax exemption on the sale of, storage, use, or consumption of backup electric resources purchased for the government during deenergization events. *[S. Gov&Fin]*
- [SB 1139 \(Hill\)](#), as amended February 19, 2020, would add section 24446 to the Revenue and Taxation Code to “not allow a deduction for expenses or expenditures by an electrical corporation or a gas corporation that the Public Utilities Commission identified in a decision to penalize the electrical or gas corporation for a safety violation.” *[S. Gov&Fin]*
- [SB 1185 \(Moorlach\)](#), as amended February 20, 2020, would add section 8390 to the Public Utilities Code to require electrical corporations, electrical cooperatives, and local publicly owned electric utilities to submit a report to the State Air Resources Board and air quality management districts after undertaking a deenergization event, detailing the timeline of the event and areas affected. *[S. EQ, S. EU&C]*
- [SB 1448 \(Bradford\)](#), as amended March 25, 2020, would amend section 8386 of the Public Utilities Code to require that utilities provide for how they will develop a “diverse workforce” to complete the goals of their Wildfire Mitigation Plans. *[S. RLS]*

LITIGATION

- On February 20, 2020, after hearing oral arguments in the matter of *Clopton v. Cal. Pub. Util. Comm'n*, No. CGC-17-563082 (Cal. Super. Ct. San Francisco, filed Mar. 8, 2018), Judge Ethan P. Schulman [granted](#) the CPUC's Motion for Summary Adjudication regarding former ALJ Karen Clopton's racial discrimination claim in her wrongful termination suit against the CPUC (her former employer) and her supervisors. In granting the motion, the court found that Judge Clopton did not challenge a contradictory finding by the State Personnel Board that her conduct constituted grounds for discipline, and that the CPUC's dismissal was just and proper.

The following day, on February 21, 2020, however, the court denied the individual defendants, Commissioner [Liane Randolph's](#) and former CPUC President [Michael Picker's](#), respective motions for summary judgment on Judge Clopton's retaliation claims, finding that because Judge Clopton claimed discrimination against a protected class under the Whistleblower Act, they can still be liable for retaliation as her supervisors. The court found with respect to both motions that there remain triable issues of material fact as to whether Judge Clopton's supervisors retaliated against her after she made claims of racial discrimination. Specifically, neither President Picker nor Commissioner Randolph rebutted claims that they asked the CPUC General Counsel to initiate an investigation into Judge Clopton's management style, and that President Picker and Commissioner Randolph took the lead in the appraisal of Judge Clopton's employment that resulted in termination.

This employment dispute between the CPUC and Judge Clopton has been ongoing since 2017. [[25:1 CRLR 266](#); [24:2 CRLR 219–220](#); [24:1 CRLR 170–171](#); [23:2 CRLR 185–186](#); [23:1 CRLR 213](#)]

The court set a mandatory settlement conference for the parties to be held on April 24, 2020. At this writing, the courts are closed in light of the COVID-19 pandemic, and the original trial date of April 6, 2020 has been vacated. The court has not yet set a new trial date.

- ***Am. Cable Ass’n v. Becerra*, No. 2:18-cv-02684 (E.D. Cal., filed Oct. 3, 2018).**

After the conclusion of *Mozilla Corp. v. Fed. Comm’n Comm’n*, 940 F.3d 1 (D.C. Cir. 2019), on October 1, 2019, [ruling](#) in favor of the Federal Communications Commission (FCC) in part, upholding the Trump Administration’s repeal of the Obama-era federal net neutrality legislation, the parties in *Am. Cable Ass’n v. Becerra* made no significant filings before April 15, 2020.

Judge John A. Mendez stayed this case on October 26, 2018, effective until final resolution of *Mozilla* because of expected implications from *Mozilla*’s ruling on preemption of state net neutrality laws. A group of plaintiffs including an association of internet service providers and the United States Department of Justice filed the complaint on October 3, 2018, challenging California’s strict net neutrality laws as adopted earlier in 2018 (and contrary to allegedly applicable 2018 FCC policy). The U.S. Chamber of Commerce filed a Motion for Leave to File *Amicus* Brief on October 19, 2018, but the court stayed the case before the hearing date.

Because the United States Court of Appeals for the District of Columbia Circuit ruled in *Mozilla* that states are not preempted by the FCC’s net neutrality rules under the Trump Administration, this case is expected to resume in 2020. Despite the federal ruling in *Mozilla*, California’s state courts in this case could potentially strike down the California legislature’s stricter 2018 net neutrality laws, effectively ending California lawmakers’ pursuit of net neutrality in the state with the largest economy in the nation. [[25:1 CRLR 274–76](#); [24:2 CRLR 225–26](#); [24:1 CRLR 175](#)]

- ***Cannara and Nelson v. California Dep’t of Water Resources Director Karla Nemeth*, Case No. 19-CV-04171 (N.D. Cal., filed Jul. 19, 2019).** On April 13, 2020, plaintiffs’ counsel submitted a [supplemental brief](#) at the behest of presiding Judge Donato, describing how the CPUC unlawfully failed to hold an evidentiary hearing when determining whether it should “require certain electrical corporations to collect from ratepayers the non-bypassable charge” provided for in AB 1054. During a hearing on March 12, Judge Donato refused to dismiss the case and rather wanted further information on these points; however, he has yet to rule following the latest submission. [[25:1 CRLR 271–72](#)]:

- ***In re Woolsey Fires Cases*, JCCP 5000 (Super. Ct. Los Angeles County).** On November 13, 2019, SCE settled 26 lawsuits with government entities in connection with its potential role in causing the 2018 Woolsey fires, the 2017 Thomas fire, and the 2018 Montecito mudslide. The total settlement payment for the Woolsey fires totaled \$210 million, with Los Angeles County receiving \$78 million, while agencies affected by the Thomas fire and mudslides received \$150 million. In its [annual SEC filing dated February 21, 2019](#), the utility stated its belief “that its equipment could be found to have been associated with the ignition of the Woolsey Fire,” the total liability for which could rise to \$4.7 billion. [[Form 10K](#) at 5, 105] While SCE settled with public agencies, private individuals are proceeding with their lawsuits. Regarding these ongoing cases, presiding Judge Highberger, during a hearing on February 13, 2020, did not dismiss SCE’s motion challenging the plaintiff’s alleged inverse condemnation (which could create strict liability for wildfire damages.) [[25:1 CRLR 270–271](#)]

- ***Presbyterian Camp & Conference Centers v. Superior Court*, Case No. S259850 (Cal. Sup. Ct.).** On January 22, 2020, the California Supreme Court granted the petition for review in a case relating to the 2016 Sherpa Fire, that burned nearly 7,500 acres and cost the Department

of Forestry and Fire Protection (CalFire) over \$12 million to fight. This fire resulted from the negligent act of an employee of the Presbyterian Church Camp and Conference Association (PCCC). Accordingly, CalFire sued the PCCC to recover costs under California law permitting cost recovery from a corporation for the negligent acts of its employees. PCCC appealed this decision, and on November 18, 2020, the Second Appellate District affirmed the ruling. Due to a split among districts, however, the Supreme Court will decide whether California law indeed allows monetary recovery stemming from the negligent acts of a corporation’s employees.

- ***People of the State of California v. Pacific Gas & Electric Co., Case No. 20CF01422 (Super. Ct. Butte County)***. On March 23, 2020, PG&E [pled guilty](#) (at p. 6) to 84 counts of involuntary manslaughter and agreed to \$4 million in fines as part of a plea agreement with the Butte County District Attorney. This criminal investigation stemmed from PG&E’s involvement in causing the 2018 Camp Fire, California’s deadliest wildfire in history. As part of this agreement, PG&E agreed to pay the maximum total fine and penalty of \$3.5 million and then \$500,000 directly to Butte County to reimburse the cost of the investigation. Additionally, PG&E “committed to spend up to \$15 million over five years to provide water to Butte County residents impacted by . . . the 2018 Camp fire.”

On March 30, [PG&E clarified](#) that it will fund the \$4 million in fines from the \$11 billion insurance settlement it struck in bankruptcy court. This was a stark change from PG&E’s original, criticized proposal to fund the penalties from the \$13.5 billion settlement it struck in bankruptcy court with wildfire victims (see HIGHLIGHTS).

- ***In re Pacific Gas & Electric Company, Case No. 19-30088-DM (Bankr. N.D. Cal.)***. As discussed in the previous issue, PG&E Corporation, the holding company for the state’s largest electric energy utility, filed for Chapter 11 bankruptcy in federal court on January 29, 2019.

[\[24:2 CRLR 223–224; 25:1 CRLR 237–238, 268–270\]](#) The bankruptcy proceeding is still ongoing (see HIGHLIGHTS).

- ***United States v. Pacific Gas & Elec. Co.*, Case No. 14-CR-00175-WHA (N.D. Cal.)**. On February 12, [PG&E responded](#) to a [January 16 court request](#), demanding that the utility explain why the court should not require that PG&E hire and train additional tree trimmers to remedy the utility’s violation of its terms of probation by not ensuring proper vegetation management and clearance requirements. PG&E argued that it had already added approximately 4,700 trimmers and inspectors in 2019 and that any “additional qualified tree workers do not currently exist in California.” U.S. District Judge William Alsup, who is overseeing PG&E’s criminal probation stemming from the 2010 San Bruno pipeline explosion, has yet to officially require additional trimmers as a term of PG&E’s probation.

However, note that earlier (on November 29, 2019), PG&E [reported](#) to the court (as part of a request for information stemming from a power safety shutoff (PSPS) event on October 23, 2019), that a power line inspection uncovered 218 instances of damage that could have resulted in wildfires. These findings helped spur the court’s later requests into how PG&E is meeting its vegetation management terms of probation. Further orders from Judge Alsup on tree trimming are expected.