

Up from the Ashes
A COALITION OF FIRE VICTIMS HURT BY PG&E



June 3, 2019

Governor's Office of Planning and Research
P.O.Box 3044
Sacramento, CA 95812-3044

Commissioner Carla Peterman, Chair
Commissioner Dave Jones
Commissioner Michael Wara

Commissioner Michael Kahn
Commissioner Pedro Nava
Evan Johnson, Executive Officer

Dear Commissioners:

We represent a broad coalition of wildfire victims, cities and counties, consumer attorneys, and insurance companies that are unified in our desire to protect the rights of fire victims, reduce the incidence and severity of wildfires, and ensure utilities are held accountable for the safety of their systems.

On May 29, 2019, your Commission on Catastrophic Wildfire Cost and Recovery released a draft report providing recommendations to the governor and legislature on how to manage the long-term costs and liabilities associated with utility-caused wildfires. The conclusion of the draft report calls for the legislature to revise the CPUC's prudent manager standard and cost recovery process and change the current inverse condemnation/strict liability standard, with the addition of a modest Wildfire Victims Fund to pay out claims quickly. In addition, the report questions the practicality of establishing a large Wildfire Victims Fund, but suggests that it should be an option in the absence of inverse/strict liability reform.

Our coalition strongly believes the proposed changes to wildfire utility liability laws contained in your report represent a huge win for utilities and their shareholders and a stark blow to the rights of fire victims. Rewarding PG&E executives and shareholders for bad behavior by stripping victims of their constitutional rights with changes to inverse condemnation is not the solution to protect Californians from wildfires or provide safe, affordable energy.

We are very grateful that legislative leaders and the governor have stated they will not pursue the draft recommendations to change utility liability laws and will instead focus on solutions that unite Californians in our goal to "strengthen mitigation efforts, expand and modernize our emergency response and firefighting systems, harden our energy grids and delivery infrastructure, and to hold bad actors like PG&E accountable."

Our coalition urges the Commission to reject the draft report recommendations to change inverse condemnation and to focus on the Governor's principles of reducing risk, protecting victims, ensuring safe and affordable power and holding utilities accountable. Our organizations strongly believe the current constitutionally protected liability standard is one of the very best tools to decrease the risk of catastrophic wildfires. It incentivizes safety and facilitates actions that reduce wildfire risk as we adapt to our changing environment and become more resilient.

Our coalition is committed to working on solutions. We previously presented the following key principles to address the need for fair and prompt treatment for wildfire victims and allocating the burden of wildfire damage fairly:

- 1. *Provide Immediate Help for Fire Victims***
- 2. *Prioritize Safety to Reduce the Incidence and Severity of Wildfires***
- 3. *Protect the Constitutional Rights of Fire Victims***
- 4. *Develop Clear, Fair Standards for Cost Recovery***
- 5. *Establish a Catastrophic Wildfire Fund***

Many of the recommendations in the Commission's draft report are consistent with our principles and we are pleased to support options for reforming the prudent manager standard to provide clear, fair standards for cost recovery. Rather than attempting to eliminate inverse condemnation or otherwise shift costs to others, the Commission should continue to focus on fair mechanisms for utilities to pass on those costs to their ratepayers, subject to appropriate exclusions depending upon their behavior. Current standards for cost recovery are unclear, and utilities' exposure, therefore, is potentially unlimited.

We believe that the best way to protect Californians from utility-caused wildfires is to adopt aggressive safety measures. The Governor's strike force report provides a comprehensive set of steps to prevent and respond to catastrophic wildfires that includes expanded fire prevention activity, new investments in fire suppression and response, and more resilient communities, among other ideas. In addition, the Commission should consider including some of Judge Alsup's recommendations for independent monitors and quarterly reports on safety improvements.

Our coalition strongly agrees that, at a minimum, there needs to be a modest Wildfire Victims Fund to pay claims quickly. Further, we are optimistic that a large Wildfire Victims Fund can be established despite the challenges noted in the draft report. California's approach should hold utilities accountable, treat victims fairly, ensure safe, reliable and affordable energy for California, as well as continue progress to achieve the state's ambitious climate goals.

Similar to many of the recommendations in the Commission's draft report, we offer the following principles for establishing such a fund:

1. Fund proceeds should be only be available for wildfire property damage caused by utility-caused ignitions.
2. Electric utilities should be required to continue purchasing commercial insurance and the fund would be available once the insurance is exhausted.
3. To minimize moral hazards (1) the CPUC should retain authority to punish IOUs for imprudent management; (2) IOU's should face increased post-loss fund premiums following fires due to

imprudent management; and (3) willful misconduct and punitive damages should never be covered by the fund.

4. The fund should include a tax-exempt feature (both state and federal).
5. The fund may purchase reinsurance and other risk financing instruments.

While undermining victims' rights by changing constitutionally protected strict liability standards is an untenable solution, we concur with the Commission's draft report on the need to clarify the current "prudent manager" standard for cost recovery by investor owned utilities (IOUs). In combination with a catastrophic wildfire fund, this would provide the certainty investors need to stabilize the financial market for California IOUs and offer a clear methodology to apportion liability.

Our coalition is committed to providing real solutions that will best serve Californians and we look forward to the work ahead. Should you have any questions regarding our position or our coalition, please contact Cara Martinson, CSAC Senior Legislative Representative at 916-327-7500, ext. 504, or cmartinson@counties.org.

California State Association of Counties, Up from the Ashes, Consumer Attorneys of California, Personal Insurance Federation of California, American Property Casualty Insurance Association