



April 22, 2019

Ms. Carla Peterman
Chair, Commission on Catastrophic Wildfire Cost and Recovery
Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814
Submitted via email: wildfirecommission@opr.ca.gov

RE: Request for Comment – Commission on Catastrophic Wildfire Cost and Recovery

Dear Chair Peterman,

On behalf on of the undersigned local government associations, we would like to submit comments to the Commission on Catastrophic Wildfire Cost and Recovery regarding changing the strict liability standard for utilities, also known as inverse condemnation.

Local governments across California have long been at the forefront of wildfire and disaster preparedness and response. With the trends of increasing wildfire severity and longer wildfire seasons, protecting against these disasters are critical.

Question 1. Wildfire Liability Regime

Inverse condemnation is a constitutional property right that entitles property owners and victims to fair and prompt compensation if their property is damaged by *Investor Owned Utility (IOU)*-caused wildfire. Inverse condemnation allows victims of fires including residents, businesses, and local agencies to recover costs after wildfires. Inverse condemnation has its roots in the Takings Clauses of the U.S. and California Constitutions as the flip side of eminent domain, the process by which a government agency can take property for public benefit as long as the property owner is adequately compensated. The “inverse” means that if property is damaged by a public benefit (i.e. providing electricity), damages can be sought and awarded. The power of eminent domain, along with the potential for inverse condemnation damages, has been extended by the courts to private utilities that have eminent domain authority. Thus, a utility cannot enjoy the power of eminent domain without also bearing the risk of liability in inverse condemnation if its actions damage property. In addition, the standard on inverse condemnation is whether “the injury resulted from the intended use and design of the electrical system.” If the injury did not result from the intended use and design of the electrical system, then inverse condemnation does not apply.

This constitutionally derived standard protects local governments, ratepayers, and victims from bearing the financial burden of liability for a *utility caused* wildfire. This is especially important to local governments because not all costs related to wildfire disasters are covered by state and federal disaster reimbursement. Many of these disaster reimbursement programs require local matching funds which come directly out of local agency budgets. Certain disaster related costs for parks, roads, sidewalks, tree removal, overtime, watershed restoration, and water contamination are just a few examples of costs to local agencies that are not covered by disaster relief funds. Inverse condemnation allows local agencies to recover these outstanding costs thereby making efficient use of taxpayer resources.

In addition to helping local agencies and wildfire victims recover after a disaster, the inverse condemnation standard also incentivizes IOUs to invest in safety and wildfire hazard mitigation measures. SDG&E has invested \$1 billion over the past 10 years in an effort to improve safety and prevention of wildfire in order to protect the surrounding public and reduce their potential exposure to inverse condemnation claims. The current liability structure of inverse condemnation incentivized SDG&E to invest in prevention and safety and should remain in place to serve as an incentive to other IOUs to invest in similar measures.

Changing this standard to something else will have serious consequences as it will lengthen the process for victims to receive due compensation awarded in negligence lawsuits. If the law were changed to a “fault-based” standard, time intensive litigation would be required to determine the extent of an IOU liability. This would give an advantage to well capitalized corporations that can wait out smaller entities through extended legal proceedings, eventually forcing settlement claims for far less than the actual costs and impact to victims. We recognize the concerns that the IOUs have about their exposure, but our associations strongly support keeping the inverse condemnation standard intact and would oppose efforts to change this standard.

It is incredibly important that the members of this commission understand that Article I, Section 19 protects victims, property owners and local agencies from multi-billion dollar for-profit corporations that have the power and ability to prevent *utility-caused* wildfires. Eliminating inverse condemnation means further hindering communities that are struggling to get back on their feet. We urge this commission to recognize this important constitutional property right, and support victims and communities throughout California, now and into the future.

Recommendation: Keep the constitutional inverse condemnation standard as is. Inverse condemnation incentivizes public and private utilities alike to focus on safety and requires them to pay damages to fire victims, including residents and local governments that suffer losses resulting from a utility fire.

Question 4. Community and Wildfire Victim Impacts

Wildfire victims are ratepayers and taxpayers too. When a community suffers a devastating wildfire, caused by a utility, victims are impacted in four ways:

1. Loss of real property, personal property, life, or injury;
2. Loss of community resource benefits, including natural and public resources; and an increase in homelessness, crime, cost of living, etc.;
3. Increased/wasted taxes due to loss/expenditure of local and statewide governmental resources;
4. Potential for increase in rates, as IOU ratepayers from all income strata.

Communities and victims of catastrophic wildfires need timely and just recovery payments after a fire. Most homeowner insurance policies include ALE “alternative living expense” terms that expire after two years of benefits—some policies expire sooner. As construction costs increase, as housing costs increase, and as governments strain to rebuild communities in the aftermath of fires, it is vital to provide individuals and public entities resources as soon as possible after a wildfire.

Inverse condemnation encourages rapid payment to victims. Utilities that cause wildfires are obligated to compensate victims without having to go through a drawn out litigation process. If the inverse condemnation standard were to change, these victims and their devastated communities would have more uncertainty in who will pay and when. The victims of these fires cannot afford to wait for a legal battle to unfold to determine who is at fault and to what degree.

Recommendation: To ensure that the needs of wildfire affected victims and communities are met, utilities need to be held financially liable for causing a wildfire and administer expeditious and fair compensation. Any wildfire funding mechanism must take the standard two year ALE related deadlines into account.

We appreciate the Commission allowing us to submit comments. Our associations remain ready and willing partners to help the state, wildfire affected communities and victims address this greatly important topic.

Sincerely,



Derek Dolfie
Legislative Representative
League of California Cities



Cara Martinson
Senior Legislative Representative
California State Association of Counties



Staci Heaton
Regulatory Affairs Advocate
Rural County Representatives of California

cc. Members of the Commission on Catastrophic Wildfire Cost and Recovery