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April 22, 2019

TO: Members of the Commission on Catastrophic Wildfire Cost and Recovery
FR: Rex Frazier, President

RE: Request for Comment

This letter responds to your Request for Comment in anticipation of the Commission's April 29, 2019 meeting. These comments are made to aid the Commission in determining the effect of wildfire on residents, insurers and utilities. They are submitted from the perspective that the most reasonable solution likely involves adjustment to existing legislative and regulatory schemes, rather than a massive overhaul of the system in an attempt to engage in cost-shifting with many potential consequences. Those consequences may include instability in the insurance markets with more stress on availability and/or affordability, decreased incentives for Investor Owned Utilities (IOUs) to take reasonable steps to reduce risk of wildfire, and continued market instability as legal challenges are pursued.

Below, we address several of the questions raised by the Commission:

Wildfire Liability Regime

- What, if any, issues exist with the application of the inverse condemnation doctrine? Do they limit the equitable distribution of wildfire costs, and if so, how?
- What benefits, if any, are provided by the current application of the inverse condemnation doctrine?
- What, if any, changes to the utility wildfire liability regime do you recommend, and what are the consequences of these changes?

Insurance

- What actions can ensure that local governments, homeowners, and businesses are adequately insured for wildfire loss?
- What actions can improve availability and affordability of homeowners' insurance?

Funding Mechanisms

- What options are available to fund catastrophic liabilities related to utility-caused fires?

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Background

A proper response to the Commission's questions requires some historical context. The risks of utility-caused wildfires are long known, and have been the subject of significant policymaker attention well before the 2017 wildfires.

For years before the Tubbs fire in Santa Rosa, policymakers expressed concern about drought- and climate-fueled utility wildfires. On February 17, 2014, Governor Brown proclaimed a State of Emergency and directed state officials to take all necessary actions to prepare for conditions that could result from the drought. On February 18, 2014, the California Public Utilities Commission (CPUC) directed IOUs to take all practicable measures necessary to reduce the likelihood of utility-caused fires, including increased inspections in fire threat areas, re-prioritization of corrective action items, and modification to protective schemes. The CPUC further directed each IOU to 1) notify CPUC officials if a third party was preventing correction of a safety hazard and 2) self-report violations of applicable safety rules.

On June 16, 2014, the CPUC issued Resolution ESRB-4 (the "Safety Resolution") in response to Governor Brown's drought-related State of Emergency declaration. The Safety Resolution required IOUs to go above and beyond normal operating requirements, and provided for their recovery of incremental costs to address these emergency conditions. The Safety Resolution also made findings of fact, including the following:

- Statistical data from CalFire indicates an increased number of wildfires from previous years during the first five months of this year;
- Wildfires threaten the utilities' critical infrastructure, and, therefore the reliability of their vital services;
- Utility-linked wildfires have had devastating impacts in California;
- In addition to all of their other devastating impacts, wildfires perpetuate the Climate Changes by destroying numerous acres of forests, which would otherwise reduce the amount of greenhouse gas emissions responsible for much of the Climate Changes;
- The current drought and recent fires occurred as examples establishing the severity of the impacts of Climate Change on Californians;
- There is an increased chance of large and devastating wildfires occurring this year; and
- There were already multiple mechanisms that were available for utilities to recover costs for mitigation or prevention of wildfires.

Appropriately, the focus of the Safety Resolution was on the potential source of wildfires: IOU infrastructure.

At that time, IOUs did not respond to the Safety Resolution by stating that California's wildfire liability system was a problem. While they did not like California's liability law, and periodically challenged it in court, they did not give it prominence in their securities filings. They responded to the Safety Resolution with submissions to the CPUC outlining their plans to improve safety and their requests to pass along the costs to ratepayers. A search of the May 28, 2015 application for cost recovery by PG&E reveals no mention of fire lawsuits or "inverse

condemnation." To the contrary, in subsequent PG&E investor filings, PG&E cited its "constructive regulatory and policy environment." (PG&E Form 8-k, March 17, 2017)

Following the April 28, 2016 determination by the California Department of Forestry and Fire Protection ("CalFire") that PG&E's poor tree maintenance caused its infrastructure to start the Butte Fire in Amador and Calaveras Counties in September, 2015, PG&E issued an investor report (Form 8-k) the same day that casually mentioned utility liability under various causes of action, including inverse condemnation and negligence. PG&E did not state that California's liability laws were unsustainable or unprecedented[1].

In the past, when IOUs have disclosed to investors the risks associated with operating in California, including wildfire liability risk, no alarms were sounded. For example, in its Form 8-k dated July 29, 2016, Southern California Edison ("Edison") plainly noted the risk of not being able to recover from ratepayers the cost of wildfire liability insurance "or in the absence of insurance the ability to recover uninsured losses." In its 2017 Annual Report, without urging a change in liability laws, Edison noted:

> SCE has approximately $1 billion of insurance coverage for wildfire liabilities for the period ending on May 31, 2017. SCE has a self-insured retention of $10 million per wildfire occurrence. SCE or its contractors may experience coverage reductions and/or increased insurance costs in future years. No assurance can be given that future losses will not exceed the limits of SCE's or its contractors' insurance coverage.

The catalyst for IOUs to seek escape from their fire liabilities and transfer them to others was <u>not created by a change in case law regarding inverse condemnation</u>, but rather by the CPUC's unexpected, and complete, rejection of San Diego Gas & Electric's (SDG&E) application to socialize its uninsured costs ($379 million) from the San Diego fires it caused in 2007. In a November 30, 2017 action, the CPUC unanimously approved a proposed administrative law judge decision that held as follows:

> California law, Commission practice and precedent all essentially require that before ratepayers bear any costs incurred by the utility, those costs must be just and reasonable[2]. Because we find SDG&E's management and control of its facilities prior to the ignition of the Witch, Guejito and Rice Wildfires unreasonable, such costs incurred by the utility in settling third-

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[1] That same day, CalFire also announced it would seek to recoup $90 million in fire-fighting costs from PG&E. Research reveals no PG&E statement discouraging the Brown administration or the State of California from using an inverse condemnation cause of action to seek recovery.

[2] The ALJ opinion stated it was applying the following rule: "The term reasonable and prudent means that at a particular time any of the practices, methods and acts engaged in by a utility follows the exercise of reasonable judgment in light of the facts known or which should have been known at the time the decision was made. The act or decision is expected by the utility to accomplish the desired result at the lowest reasonable cost consistent with good utility practices. Good utility practices are based upon cost effectiveness, safety and expedition. (citing 24 CPUC 2d 476, 486)

> party damage claims are unjust and unreasonable. As such, those costs must not be recovered through ratepayers. SDG&E's request to recover $379 million recorded in its WEMA must be denied.

IOUs and their investors clearly did not expect this decision by the CPUC. But, the CPUC stated that it was enforcing existing law. It was this unexpected decision that, when combined with the massive losses suffered by victims of the Tubbs Fire in Santa Rosa the month before, upset IOUs' and financial markets' assumptions that they could automatically make ratepayers pay the costs of their fires. Not long after, in an analyst call, then-PG&E CEO Geisha Williams referred to California's rules for utility-caused fires as "a risk to the financial health of all the California IOUs[3]." But her newfound attention to this situation was not caused by the victims of utility-caused wildfires or the liability laws that had gone with little mention to investors for the previous twenty years.

A sensible response by the IOUs following these developments would have been to seek to clarify the uncertainties created by the CPUC decision. SDG&E noted that federal regulators had found their conduct in the 2007 fires to be reasonable and questioned why the CPUC would find otherwise. This was an appropriate response because the CPUC had never set forth clear rules defining when utilities have acted in a "just and reasonable" manner or have managed their affairs "prudently."

<u>WILDFIRE LIABILITY REGIME</u>
<u>What, if any, issues exist with the application of the inverse condemnation doctrine?</u>

Application of the Inverse Condemnation Doctrine to IOUs is Proper: Inverse condemnation works well. It is rooted in the long-standing constitutional right to receive fair compensation for a taking of private property .The Takings Clause[4] protects property owners from IOU fire costs because there is no constitutional distinction between an IOU and government – which indisputably is subject to the Takings Clause. While IOUs are owned by shareholders, and are not governmental entities, IOUs have mounted numerous legal challenges to various aspects of the inverse condemnation doctrine, often based on a mischaracterization of the premise underlying the doctrine. California courts have repeatedly rejected these attempts and maintained the inverse condemnation theory[5]. In fact, some litigation efforts have actually

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[3] https://finance.yahoo.com/news/edited-transcript-pcg-earnings-conference-194600198.html

[4] Article I, Section 19, of the California Constitution states in relevant part, "Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner."

[5] In *Barham v. Southern California Edison*[5], California's 4th District Court of Appeal unanimously held that it was "not convinced that any significant differences exist regarding the operation of publicly versus privately owned electric utilities…" and found "no rational basis upon which to found such a distinction." Further, the court rejected being "required to differentiate between damage resulting from the operation of a utility based solely upon whether the utility is operated by a governmental entity or by a privately owned public utility."

In 2012, Edison unsuccessfully attempted to overturn *Barham* but, instead, strengthened its power. In *Pacific Bell Telephone Company v. Southern California Edison*[5] ("PacBell"), a case in which Pacific Bell sued Edison in inverse condemnation when a surge in Edison's underground electrical lines caused Pacific Bell's telephone cables buried

strengthened inverse condemnation's power.

And, despite comments by IOUs about the "unique" nature of California's liability laws[6], research indicates no other state where an IOU has faced an inverse condemnation cause of action in a fire lawsuit and convinced a court to reject it. Given California's population, historical drought, population density (especially in moderate and high wildfire zones) and climate issues, it is likely the case that most states do not face risk of catastrophic wildfire similar to California.

On April 15, 2019, Moody's Investors Service released a commentary related to California utilities' struggle with fire exposure in which it noted that "it is difficult to isolate the effect of inverse condemnation by comparing it with other states that do not apply inverse condemnation, since California's wildfires are so much more destructive. The vast majority of lawsuits filed against utilities in other Western states for wildfire damages settled out of court. In most cases, plaintiffs sued under a negligence cause of action, though some also included inverse condemnation." The Moody's commentary goes on to note that "it is not surprising that California, being the largest of a growing trend, is the first one to have exposures that are large enough to affect utility credit quality."

Courts or the Voters are the Only Appropriate Route for Challenging Inverse Condemnation Rules: In its July 5, 2018 letter to Senator Hill, the State's Legislative Counsel noted that the Legislature could, by a 2/3's vote, submit a constitutional amendment to the voters for subsequent approval, but the Legislature, itself, lacked the power to modify the California constitution. While the Legislature may be entitled to deference when it is "charged with statutorily implementing an unclear constitutional provision," it cannot "statutorily dictate how the judicial branch should interpret a constitutional provision" because courts "are the final arbiters of the meaning of the California Constitution." Legislative Counsel, therefore, concluded that "the Legislature may not statutorily interpret the California Constitution in a manner that conflicts with a judicial interpretation."

We urge the Commission to focus on more realistic solutions that unite the stakeholders in this debate, rather than divide them.

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in the same trench to burn, the 2nd District Court of Appeal unanimously upheld *Barham*, noting approvingly of previous court statements:

> Of particular significance in this case is that "a public utility's monopolistic or quasi-monopolistic authority derives directly from its exclusive franchise provided by the state…" and that monopoly "is guaranteed and safeguarded by the state Public Utilities Commission, which possesses the power to refuse to issue certificates of public convenience and necessity to permit potential competition to enter" the market.

The Court went on:

> We do not believe the happenstance of which type of utility operates in an area should foreclose a property owner's right to just compensation under inverse condemnation for the damage, interest and attorney fees and should limit the property owner to traditional tort remedies.

[6] They also state that Alabama treats IOUs similar to California law.

Do they limit the equitable distribution of wildfire costs, and if so, how?

Inverse condemnation, like many other liability structures, is not necessarily designed to consider an equitable distribution of costs, instead creating a path toward accountability. Indeed, an alteration to inverse condemnation would not assist with cost recovery. Other tools, such as a utility-focused wildfire fund, are the appropriate avenues through which the Commission should look to address equitable distribution of costs. Subjecting IOUs to the Takings Clause emphasizes the policy against overburdening individual property owners rather than the policy of socializing the costs.

Additionally, courts have already evaluated and rejected the argument that application of inverse condemnation to IOUs should be limited in the name of equity or public policy.

What benefits, if any, are provided by the current application of the inverse condemnation doctrine?

First and foremost, the current application of the inverse condemnation doctrine vindicates property owners' constitutional rights under the Takings Clause. There is no need to qualify this benefit further.

Second, current application of the inverse condemnation doctrine also drives quicker resolution of utility-fire claims. Given how often CalFire has determined that utility-caused fires are the result of violations of state law, it is plausible that plaintiffs would still be able to recover from utilities under other causes of action, such as negligence. However, having to prove fault in addition to causation is a substantial increase in complexity and would certainly increase litigation costs and time. In the absence of inverse condemnation, plaintiffs would still proceed using other causes of action such as negligence and be free to seek remedies unavailable through an inverse condemnation case – such as punitive damages, which would likely be borne by IOUs without ratepayer help.

In fact, the April 15, 2019 Moody's commentary on utilities' struggle with inverse condemnation expressly stated that "The significant wildfire risk facing California utilities is not solely attributable to the state's application of inverse condemnation legal theory. Wildfire risk exists even if inverse is eliminated because they can still be subject to negligence lawsuits. Negligence is harder to prove than inverse, but it is not a particularly stringent standard…An emotionally charged jury trial, which has the potential to occur in a major disaster, would put a utility in a perilous position. Once found negligent, the prospect for cost recovery from ratepayers would be dismal." (emphasis added)

Third, with respect to the insurance context, subrogating insurers that have already paid property owners' insurance claims and are seeking reimbursement from a utility are able to maintain lower insurance rates over time. Subrogation recoveries reduce historical losses and a lower loss history leads to lower average rates over time. Further, subrogation recoveries allow insurers to eliminate policyholder deductibles absorbed during their claims process. Subrogation recoveries result in payments to previous claimants.

Fourth, inverse condemnation, like any other liability system, has the potential for shaping behavior. While perhaps not borne out by PG&E, the significant voluntary efforts of SDG&E over the past 10 years, and even the more recent efforts of Edison, speak – at least in part – to this incentive.

What, if any, changes to the utility wildfire liability regime do you recommend, and what are the consequences of these changes?

We do not recommend changing existing liability rules. The long-standing rules are not the cause of the IOUs' current problems.

The consequence of eliminating the inverse condemnation cause of action for IOUs (or, effectively doing so with a "reasonableness" test that eliminates strict liability) would be a financial bailout of IOUs by those not responsible for causing the problems in the first place.

We strongly recommend that the Commission focus on the real problems of IOUs: 1) the lack of an effective catastrophic liability funding mechanism and 2) clear rules for when their conduct is "reasonable" or "prudent."

INSURANCE

What actions can ensure that local governments, homeowners, and businesses are adequately insured for wildfire loss?

With respect to residential property insurance, it is a consumer's choice as to how much insurance to buy. We are unaware of any previous legislative proposals seeking to force homeowners to purchase insurance or increase their coverage limits. However, policymakers have enacted many requirements upon insurers over the years.

Although not mandated to do so by law, insurers and producers typically offer a state-regulated replacement cost estimate (RCE) to help in the customer's determination of how much insurance to buy. The California Department of Insurance (CDI) has issued regulations entitled "Standards for Estimates of Replacement Value" (10 CCR 2695.183). These regulations prohibit an insurance licensee from communicating an RCE unless it contains a specified list of elements, including:

- the expenses that would reasonably be incurred to rebuild the insured structure(s) in its entirety;
- an estimate of the cost to rebuild or replace the structure taking into account the cost to reconstruct the single property being evaluated, as compared to the cost to build multiple, or tract;
- an estimate of replacement cost that is not based upon the resale value of the land, or upon the amount or outstanding balance of any loan; and

- an estimate of replacement cost that does not include a deduction for physical depreciation.

Insurance consumers can, and should, review their policies annually, and contact their agent or insurer with any questions or concerns. They should ensure:

- any updates, additions, or upgrades to their home are promptly reported to their carrier and reflected in the insured amount;
- that they have adequate contents limits for their unique circumstances, including special consideration of special, valuable, or unique items; and
- use of one of the available inventory tools to create, at least, a basic inventory list of contents, which is stored on line or in a separate location; etc.

State and local governments can, and should, do the following:

- establish a public service campaign to help residents plan for a disaster, including understand financial and non-financial considerations;
- ensure adequate disaster routes and planning exist;
- identify and assist at risk communities in preparation and planning; and
- allow recently-enacted statutory changes to be fully implemented and the impact understood before implementing additional insurance requirements or restrictions.

The Legislature and Governor enacted several insurance bills in 2018 in response to fire issues. These bills are only at the beginning of implementation. We respectfully suggest allowing these significant changes in insurance laws to be fully implemented and evaluated before considering yet another round of legislation. Amendments to insurance law from 2018 include:

- AB 1772 (Aguiar-Curry and Wood): Extended the minimum time limit during which an insured may collect the full replacement cost of a loss relating to a state of emergency to 36 months (previously 24 months). Requires that additional extensions of 6 months be provided to policyholders for good cause.
- AB 1797 (Levine): Required an insurer that provides replacement cost coverage to provide, on an every other year basis, a customized estimate of the cost necessary to rebuild or replace the insured structure that complies with specified existing regulations.
- AB 1799 (Levine): Required the complete copy of a residential insurance policy provided to an insured after a loss to include the full insurance policy, any endorsements and the declarations page.
- AB 1800 (Levine): Prohibited, in the event of a total loss of an insured structure, a fire insurance policy that limits or denies, on the basis that the insured has decided to rebuild at a new location or to purchase an already built home at a new location, payment of the building code upgrade cost or the replacement cost, including any extended replacement cost coverage.
- AB 1875 (Wood): Required a residential property insurer to disclose specified information to a homeowner, including the Internet Web site address of the Department of Insurance's

Homeowners Coverage Comparison Tool, and to notify the Department on or before February 1 of each year of the amount of extended replacement cost coverage it offers in California.

- AB 2229 (Wood): Required insurers providing a California Residential Property Insurance Disclosure to include any fire safety-related discounts offered by the insurer.
- AB 2594 (Friedman): Extended the statute of limitation to file suit against a fire insurer from 12 to 24 months if the loss is related to a state of emergency.
- SB 824 (Lara): Prohibited an insurer from canceling or refusing to renew a homeowners' insurance policy for one year from the date of a declaration of a state of emergency, based solely on the fact the property is in a county where a state of emergency has been declared.

What actions can improve availability and affordability of homeowners' insurance?

Availability: The admitted market, which means insurers voluntarily writing insurance after receiving a customer application, is presently insuring over 97.5% of the approximately 11.5 million insured structures in California.

The admitted market also provides a financial back-stop for high-risk properties, known as the California FAIR Plan. The FAIR Plan provides property owners guaranteed access to fire insurance. All admitted homeowners' insurers are required to be members of the FAIR Plan as a condition of doing business in California, and the FAIR Plan operates without any state financial support. If the FAIR Plan is short of funds, it will assess admitted insurers, as required. Of the 123,000 properties insured by the FAIR Plan, only 34,000 are located in brush areas with medium- or extreme-brush exposure.

The 18,000 insured homes not served by admitted insurers (either directly or through the FAIR Plan) are served by the non-admitted market.

These three elements, the admitted market, FAIR Plan and non-admitted market, collectively, comprise the private property insurance system in California. Following a major fire, this system executes a massive claims response – which typically involves bringing hundreds of people from across the country who are willing to move to California for months, and sometimes in excess of a year, to serve people impacted by the fires. And, if another admitted insurer becomes insolvent, the rest of the admitted insurers immediately step forward, through the California Insurance Guarantee Association, to pay claims for the insolvent insurer and only later will they seek reimbursement from insurer's estate.

The residential property insurance market is robust and functioning and the FAIR plan and non-admitted markets already provide backstops to any issues involving availability of fire insurance.

While the admitted market is still serving the vast majority of the population, there is a market shift underway. Even before the 2017 fire season, the homeowners' insurance market was already reacting. According to the State's Fourth Climate Change Assessment, while the statewide number of surplus line and FAIR Plan policies had not increased for the previous

fifteen years, total policy count in high-risk areas had already started to increase by 2014 – well before the 2017 fire season.

This development is related to California's restrictive rate rules. California's average homeowners' insurance rates are low when compared to the rest of the country. According to the National Association of Insurance Commissioners, as of 2016, California had the 32nd highest average homeowners' insurance premium in the country (and, when adjusted for average household income, this dropped to 43rd). This lower premium level was a stark change from several years earlier when, in 2009, California had the 14th highest average premium. During that period, the average homeowners' premium in the nation increased by 45%, while California's average only increased by 8.1%. Hurricane-exposed states, such as Louisiana and Florida, have average premiums almost double that of California.

Restrictions on pricing have obvious, and predictable, consequences. The insurance industry's ability to serve high risk properties is directly related to its relationship with the CDI, which has a dual role: on one hand, the Department is empowered to prevent excessive rates and can even order insurers to prospectively reduce previously-approved rates that it believes have become excessive over time; on the other hand, the Department must monitor solvency to ensure that insurers can pay claims. In this balancing act, if the Department restrains an insurer's rates too aggressively, it places financial pressure on that insurer, which will, then, reduce exposure to higher-risk areas.

While the Gulf States have already had a climate-driven increase in insurance rates, California has not. California law continues to prohibit insurers from using climate change modeling in pricing – instead requiring insurers to predict future losses based upon the average of the last 20 years of losses[7]. California's recognition of a "new normal" does not yet extend to insurance rates.

This climate change restriction is on top of California's continued prohibition on allowing fire insurers to include their actual cost of reinsurance in insurance rates[8]. As the world reinsurance market recognizes California's climate risk and seeks higher prices from California insurers, California law continues the legal fiction that insurers do not buy reinsurance.

California provides guaranteed access to property insurance while holding rates low. If a customer cannot find insurance in the admitted market, then the FAIR Plan must serve them (and there remain opportunities through the non-admitted market). Because backstops exist, we do not believe that there is an availability problem.

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[7] 10 CCR § 2644.5. "Catastrophe Adjustment. In those insurance lines and coverages where catastrophes occur, the catastrophic losses of any one accident year in the recorded period are replaced by a loading based on a multi-year, long-term average of catastrophe claims. The number of years over which the average shall be calculated shall be at least 20 years for homeowners multiple peril fire…"

[8] 10 CCR § 2644.25. California rate regulations allow consideration of reinsurance for "earthquake and for medical malpractice facultative reinsurance with attachment points above one million dollars," but for all other lines, "ratemaking shall be on a direct basis, with no consideration for the cost or benefits of reinsurance."

Affordability: When policymakers question the availability of homeowners' insurance, the discussion typically turns to price, with an argument that insurance is functionally unavailable due to expense. The prices charged in the admitted market and the FAIR Plan are based upon actual risk, as reviewed and controlled by the CDI. When property owners argue that insurance is too expensive, they are actually arguing that the risk they face is unacceptable for their personal situations. Insurance is one of the few businesses where pricing can link climate risk directly to individuals; suppressing this link reduces individual incentives to adapt to climate change. And, as noted above, official statistics comparing California to the rest of the country show California to be a low price state. California's rates are already pushed down to their constitutional minimums.

Retaining existing underwriting flexibility is also essential to any attempts to control affordability. While imposing additional regulatory oversight and/or limiting an insurer's ability to non-renew a policyholder *may*, in the short-term, impact availability of insurance in high wildfire areas, it will have the opposite effect on affordability -- especially when coupled with the existing pricing issues.

The state-wide efforts under consideration and/or already in the works, including enhanced utility system hardening and monitoring, will hopefully impact overall risk of wildfire. As data shows whether the underlying risk is lowering through these efforts, we anticipate that the lowered risk will also be reflected in affordability and availability.

FUNDING MECHANISMS

What options are available to fund catastrophic liabilities related to utility-caused fires?

In addition to improved measures for overall risk reduction (forest management, emergency response, utility and home hardening, and inspections/enforcement), we respectfully recommend creation of a **utility catastrophic wildfire recovery fund** ("Wildfire Fund") to achieve broad risk and cost sharing that covers property damage resulting from wildfires caused by electric utility ignitions.

There are several important principles that should be reflected in creation of a Wildfire Fund. As to scope, a Wildfire Fund should be limited to property damage claims against utilities. Creating a liability funding mechanism with a broader focus will only increase the complexity of reaching consensus before the next fire season comes.

A Wildfire Fund should be available only for catastrophic events. IOUs should be required to continue purchasing commercial insurance for smaller events. The governing body of a Wildfire Fund should require that electric utilities continue to procure economically feasible amounts of commercial insurance, with appropriate deductibles, and continue to aggressively mitigate wildfire risks. The Wildfire Fund should respond and pay claims for property damage once an individual electric utility's insurance is exhausted.

Preventing moral hazard should remain a top priority. The CPUC should continue to have penalty authority. There should be a mechanism for ensuring that ongoing IOU payments to the Wildfire Fund would increase following a Wildfire Fund payment based upon imprudent conduct.

The Wildfire Fund should be structured to take advantage of tax-advantaged status. The California Earthquake Authority received I.R.S. tax-exempt status as a publicly-managed, privately-financed risk management entity. A similar result for the Wildfire Fund would allow tax free accumulation of pre-event loss reserves.

Thank you for allowing us to participate in previous Commission meetings and for the opportunity to provide this additional information.