

Evan Johnson

From: Sandy Dean <sandy@sansome.com>
Sent: Tuesday, April 16, 2019 10:34 AM
To: OPR Wildfire Commission
Subject: comments on inverse condemnation

My name is Sandy Dean. I am sending in these comments as a citizen of the state, and without any personal agenda or possible personal gain.

I am very interested in the public policy issues being raised by the recent wildfires. My experience to address these issues includes

- I lost our second home in the Tubbs fire (4 structures and 60 acres of trees burned to the ground, and also I have to say I am probably the least affected of the 5,000 people who lost homes in the Tubbs fire because everyone associated with our property was safe, we had insurance, and it was a second home with limited personal belongings that could not be replaced... and also with all that said, it was still a big emotional loss),
- I am attuned to the role of forest management for wildfires as I have overseen Mendocino Redwood Company for 20 years and Humboldt Redwood Company for ten years (440,000 acres combined),
- I have overseen institutional investments in FERC regulated utility assets in the 2003 to 2007 time frame, so I have a keen understanding of rate of return regulated businesses,
- I helped form Humboldt Redwood Co by leading the federal bankruptcy reorganization of the old Pacific Lumber Co (completed in 2008) where public trust issues were an important part of the reorganization and the State of California ultimately intervened aggressively in support of our reorganization plan, and
- I worked on fire liability reform issues as one of the leading proponents of AB 1492 (passed and signed into law in 2012).

I start off with a simple premise -- **Most important of all is the concept that the three big electric utilities in the state (PGE, SCE, SDCE) depend almost entirely on the ratepayers of California for their long term financial sustainability.** Imposing liabilities on PGE/SCE/SDGE ultimately falls back onto the ratepayers. Yes, in the short term stockholders can be forced to share in liability, but ultimately these asset intensive businesses will have to have be supported with a reasonable mix of equity and debt to finance their assets. Accordingly, penalties or liabilities that take from the stockholders are illusory.... In the end penalties or liabilities that reduce stockholder equity in a utility will be forced by capital markets to be restored, so that a utility is supported by a reasonable debt/equity ratio. Any equity lost to a liability or penalty will have to be restored by retained earnings or raising new equity in the future. New retained earnings clearly comes from ratepayers, and raising new outside equity capital will require a promise of additional profits to compensate the newly raised equity, and those profits will have to come from (again) ratepayers. If we expose our utilities to events that result in large or frequent destruction of equity capital, the prospective return required by the capital markets to compensate future equity issuances will dramatically grow, and that will ultimately fall (again) onto ratepayers.

In this way, I have liked to refer to PGE/SCE/SDGE as really being “ourselves.” They are not nameless faceless institutions that we can easily punish financially, for when we do that we punish ourselves.

That brings us to inverse condemnation. Whatever the historic logic (addressed in the strike force report), to restore stability to our electric utilities it has to go. We will not be able to support the asset intensive nature of electric utilities in our state if they are exposed to liabilities of \$10 bb or more from a single wildfire that could arise without negligence on the part of the utility. Such a state will result in successive bankruptcies where utilities are unable to emerge without all costs being imposed on ratepayers (or perhaps in the alternate the general fund for the state), or where the wildfire liabilities and other unsecured creditors are substantially compromised in bankruptcy.

The grid needs to be dramatically hardened in response to changing climate conditions (and no surprise but those costs will have to ultimately be borne by rate payers). Perhaps de-energizing also needs to be substantially increased (a big inconvenience at best, and perhaps a material risk to various citizens, but the risk of a catastrophic wildfire outweighs these drawbacks). Forest management to increase fire resiliency will also play a role, but that is mostly up to the state to come up with policies to get to 500,000 annual acres a year of treatment including substantial use of prescribed burning. But in conjunction with eliminating inverse condemnation we need to define the new standard of safety we want from our electric utilities and to the extent utilities adhere to the standard, the liability should shift to a fault based system, and catastrophic liability has to be limited to failing to meet the safety standard on a negligence or gross negligence basis. Maybe the fault system could include up to 10% of the insured losses or some other symbolic sharing of the pain, but the wipe out the company risk has to be eliminated in the absence of negligence (or preferably gross negligence) as it is incompatible with stable electric utilities. Using an incentive system for SLIGHT increases in ROE in exchange for exemplary safety behavior is another option.

If inverse condemnation goes away, who pays for wildfires? A substantially greater share will be borne by homeowners and insurance companies, and this risk will motivate hardening of houses and defensible spaces and a demand for fire safe management of forests and rangelands near houses. Defensible space has historically been hard to regulate. **Greater personal responsibility for wildfire exposure will better distribute increasing fire resiliency in our state.** Insurance rates could be allowed to adjust based on defensible space inspections and hardening of houses as well. **Yes, this will increase costs some for the 11 million Californians who live in areas vulnerable to wildfires, but if not them who should bear these costs?** Again trying to put the costs on the utilities just puts it back on all the ratepayers in the end, and will sometimes create high levels of frustration when bankruptcy is used to compromise catastrophic liabilities.

Maintaining inverse condemnation hoping to avoid increased personal accountability will fail as the liabilities are too big to allow for stable electric utilities. We can confront the problem now or later, but inverse condemnation appears to be entirely unsustainable for the state of California utilities.

The strike force suggested two alternatives.

- **The “Liquidity-only” fund appears fatally flawed to me.** it works great in an instance when a wildfire liability is recouped from the ratepayer, as in that instance it serves as a short term bridge to allow timely payout of liabilities to victims. But in instances where wildfire liability is not recouped from the ratepayers, the Liquidity-only fund will be unable to get its money returned from the utility as the utility can seek bankruptcy and thus the fund is left holding the bag.
- **The catastrophic wildfire fun is an interesting idea.** Sort of a self insurance fund. That is fine but it will ultimately increase the capital needs of PGE/SCE/SDGE and thus indirectly have to be supported by the ratepayers. Perhaps it could be built up over some number of years as a smoothing mechanism, but it is not in and of itself a solution.

I am impressed by the vetting of the options that can be considered by the strike force. Perhaps everything I have shared is mostly known, but I wanted to express this view and thank you for working to address these complicated policy topics for our state.

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