Commission on Catastrophic Wildfire Cost and Recovery
March 13, 2019
Meeting Minutes

3:00pm-7:00pm
Shasta County Board of Supervisors Chambers
1450 Court Street
Redding, CA 96001

Please Note: These meeting minutes are not meant to be a transcription of the Wildfire Commission meeting; they are notes taken by staff. For a full record of what was discussed, please refer to the video recording found at: https://www.youtube.com/watch?v=VQ8kbW9HlGM

Item 1: Call to Order

Chair Carla Peterman: We are here for our second meeting of the Commission on March 13th in Redding, California. This meeting is being webcast. We thank everyone who has joined here in person and on the phone. I will call this meeting to order.

Item 2: Roll Call

Present:
Chair Carla Peterman
Commissioner Michael Kahn
Commissioner Pedro Nava
Commissioner Michael Wara

Not Present:
Commissioner Dave Jones

Chair Carla Peterman: We are also joined by our Executive Officer Evan Johnson.

Item 3: Agenda Changes

Chair Carla Peterman: For agenda changes, we have one additional panelist on our third panel. For the Community Needs Around Wildfire Damages panel, we will be joined by Director Patrick Minturn with the Shasta County Department of Public Works. Executive Officer, any other agenda changes?

Evan Johnson: Not on my end, thank you.

Item 4: Initial General Public Comment

Chair Carla Peterman: Before we turn to some initial public comment, let me take a moment outside of my Chair's role to say thank you to everyone in the Redding community for welcoming us and having this important meeting here today. Your community and your neighbors have been affected by the catastrophic and devastating wildfires that we have seen in the state for the last several years and we are very much looking forward to your input regarding the costs and liabilities that you have seen and any recommendations that you have for the State as we move forward to deal with this crisis.

We have an opportunity for public comment at the end of our agenda and at the end of each panel, but we appreciate that not everyone can stay until the end. If there is anyone who would like to make a public comment now, you are welcome to do so. We are not putting time limits on public comment, but in the interest of time we ask that you keep it to three minutes.

PUBLIC COMMENT 1: Cedric Twight, Sierra Pacific Industries.

I have a recommendation to the Commission to support the California Board of Forestry and Fire Protection to undertake emergency rulemaking procedures to revise the Emergency Notice for Fuel Hazard Reduction. Currently, that process is underway, but they are taking the regular rulemaking path, which means that that tool, after it is revised, will be very effective for private land owners to implement strategic fuel hazard projects, but it won't roll out until January 2019.

As a large landowner in California, we have a strategic plan where we are going to implement a lot of different strategic fuel breaks throughout the Sierras and properties throughout our ownership to protect watershed resources, timber assets, and important wildlife elements. It would be really helpful to utilize an Emergency Notice for Fuel Hazard Reduction sooner rather than later, especially if it gets revised by the Board.

PUBLIC COMMENT 2: John Schaffer, Our Grandchildren's Future.

I am here on behalf of our grandchildren's future. My concern is that there is not enough money from traditional sources – PG&E, insurance, and governments – to pay for victims' losses in 2017 and 2018, more so into the future. Society shouldn't abandon those climate victims damaged by fires, floods, and landslides.

We had fires of course in California long before it was California. Firefighters tell us now that fires are much worse due to climate change. So, who is to blame for climate change? I am, and so is everyone who is burning fossil fuels. In fairness, we, fossil fuel burners, should pay for some of the damages that we caused. California can arrange this, thereby covering climate victims and encouraging all of us to use fewer fossil fuels. That is the only way we can restrain climate change.

The devil is in the details. We need to change SB 901 (Senate Bill 901), which authorized paying off PG&E's probable liabilities with non-bypassable fixed recovery charges on every electric

customer – not the way we need to do it. Then we need to enhance cap and trade fees at the California Air Resources Board (CARB). Instead of non-bypassable fixed recovery charges, I propose victims' climate losses be covered, at least partly, by additional CARB fees on fossil fuel users. This is sound economics; Pigovian fees should internalize external costs. And it is sound legal logic, charging tort damages to those of us who are responsible. Both are bedrock principles for a society that takes care of itself.

Most affected by these decisions are young persons. Let me quote one: "I want you to panic. I want you to feel the fear that I feel every day. I want you to act as if the world is in a crisis. I want you to act as if the house is on fire because it is." - Greta Thunberg.

Item 5: Consent Calendar

Chair Carla Peterman: Next we are going to turn to the Consent Calendar, which includes the minutes from our February 25th meeting as well as our Scope of Work, which had some minor modifications coming out of our last meeting.

Evan Johnson: Minutes were posted earlier this week. We had a few minor revisions to them to accurately reflect the testimony that was received at the last meeting, which are minor and not substantive changes.

Commissioner Pedro Nava: On page 15 of the minutes, in the paragraph where I am making remarks as it relates to the requirement of insurance it says, "which then results potentially in a for sale or foreclosure of that property"; what I said was, "in a forced sale." Other than that, these minutes look fine.

Chair Carla Peterman: I will remind everyone that the minutes taken are by staff. For a full accounting of the meeting and transcript, please refer to the webcast video. Any other proposed changes?

Evan Johnson: I did want to highlight the two minor changes that are going to be made to the Commission's Scope of Work pursuant to the comments that we received at the last meeting. One was to get rid of the word "current" in bullet number one, much discussed at our last meeting, and the second was to remove a grammatical error. We took out "a mechanism" in bullet number three to accurately reflect the statutory language in SB 901.

> **ACTION:** Voting to approve February 25, 2019 minutes, with noted revisions, and Scope of Work, with noted revisions.
>
> Motion: Commissioner Pedro Nava
> Second: Commissioner Michael Kahn
> Commissioner Michael Wara: Aye
> Chair Carla Peterman: Aye
> Abstain: None.

Item 6: Chair's Report

Chair Carla Peterman: At our first meeting, we had comments from the Director of the Office of Planning and Research (OPR), where the Wildfire Commission is housed. Director Kate Gordon pointed out that the Wildfire Commission is one of the many state entities that is working on how to address wildfire risk to make sure that we have safe and healthy communities and have access to vital services like electricity and water that we will be discussing today. Her testimony outlined well the various initiatives happening at the State so I will refer you to that video. We are here to do our part in this discussion.

This Commission was created by Senate Bill 901 and signed into law in 2018. This Commission is tasked with examining and addressing issues related to wildfires caused by utility infrastructure. In particular, we are directed by the Legislature to provide recommendations by July 1st for how to equitably and fairly allocate costs related to wildfire liability. The five of us here (the Commissioners) were appointed by the Governor and the Legislature. We all bring different expertise to this role. We are serving in this capacity on our voluntary time because we believe in the importance of this mission of this Commission as well as the need for the State to address this overall challenge.

The legislation also requires us to have at least four meetings around the state. We had our first meeting in Sacramento, and we have our meeting here in Redding today. You can follow the OPR website for details about future meetings, which we will post as soon as possible.

Given the tight timeline and turnaround to give recommendations to the Legislature and some of the logistical challenges of scheduling meetings, sometimes all Commissioners will not be able to attend every meeting; however, those who cannot attend, for example, Commissioner Jones today, will have available to them the webcast and informal comments that we file.

Item 7: Executive Officer's Report

Evan Johnson: We have been receiving public comments. They have been posted online in advance of this meeting and shared with the Commissioners and the room. We will continue to collect public comments as they come in, so please submit comments: either short, brief comments on perspectives, or long, detailed comments with data and information for the Commissioners. Everything is welcome.

The work in front of this Commission is significant and we welcome all the expertise that can be brought to bear on this issue. I appreciate the continued support and I would like to take a moment to thank everyone the Chair, the Commissioners, the City of Redding, and everyone in this room for giving your time.

Item 8: Presentation of Expert Testimonial

Chair Carla Peterman: During the Commission's first meeting, we set the stage by having background presentations about the utility industry, the insurance industry, and wildfire risk. These presentations are available on OPR's website: http://opr.ca.gov/wildfire/

We also decided in the last meeting that in each of our meetings around the state, we would hold panels where we would take expert testimony on a couple of key issues. Our recommendations can and may expand beyond what we hear in these different meetings. You are welcome to provide comments or expert testimony on broad range of issues. These are the issues we thought warranted a deeper dive.

1. Existing wildfire liability legal regime
2. Utility insurance
3. Community needs around wildfire damages

PRESENTATION 1: Existing Wildfire Liability Legal Regime

Background:

- Scott Cavanaugh, Deputy Attorney General, Tort & Condemnation Section, Office of the California Attorney General

Panel:

- Dan Skopec, Vice President of Regulatory Affairs, San Diego Gas & Electric (SDG&E)
- Joy Mastache, Senior Attorney, Sacramento Municipal Utility District (SMUD)
- Rex Frazier, President, Personal Insurance Federation of California
- Cara Martinson, Senior Legislative Representative/Federal Affairs Manager, California State Association of Counties (CSAC)

Scott Cavanaugh: I have been invited here to talk to you about the law of inverse condemnation as it is applied to privately held utility companies. As a disclaimer, this not legal advice or legal opinion. This is just a synopsis of how the law stands today.

First, what is inverse condemnation? Inverse condemnation is the opposite of eminent domain. Eminent domain is when the government seeks to take property from a private individual. It may do so, but it must pay the fair market value for the property. In inverse condemnation, it occurs the other way. If a property owner believes the government has taken their property, they can make the government pay for the property that was taken or damaged by the government project. These are guaranteed rights in Article 1, Section 19, of the California Constitution.

I am going to give a quick example of what it looks like in real life. Let's say a public entity wants to build a park on a vacant lot. The public entity goes to the park and then offers the property owner money for it. The sale is made, the fair market value is paid for the land, the park is taken, and the park building may begin by the public entity. If during that construction, a bulldozer knocks over an adjacent fence or pours dirt onto the adjacent property owner's land, then the adjacent private property owner could say, "Your public project owes me money. You have taken or damaged my property." That is how inverse condemnation arises. If a property owner wants to bring a claim in inverse condemnation, they must prove three things: 1) that a

public entity 2) took or damaged their property 3) for a public use. If you prove those three things, you prove inverse condemnation.

Now, we come to the interesting circumstance of a privately-owned utility. During the 1993 Mill Creek fires, power lines were knocked down that were owned by Southern California Edison. Those power lines fell and started a fire and burned some property. Those property owners brought a lawsuit in inverse condemnation. The lead property owner was Mr. Virgil Barham. He brings this to the Fourth District and sues for inverse condemnation. SCE argued that they failed on the first prong because they were not a public entity, but the Fourth District Court disagreed. The Court held that because privately-owned utilities enjoy monopolies or quasi-monopolies in providing the services to the people in their area, they are to be treated as public entities for the purposes of inverse condemnation. The Court reasoned it was unfair to foist the burden or cost of providing electrical services that millions of people enjoy onto just those few property owners who suffered the burn damage.

Fast forward to 2012 when we have a Second District case. This is another SCE case. A big bird got zapped between two charged power lines and went into some underground trenching, in which Pacific Bell had wiring and cabling, and destroys it. So Pacific Bell sued SCE and said that SCE owed them in inverse condemnation. SCE said, "Let's go back to the Barham case. They got it wrong." The Second District disagreed and followed the Barham Case. They found that SCE is a monopoly and enjoys monopoly rights, because of that and because they want to protect owners' property damage from bearing the disproportionate cost of the public improvement. They found SCE liable in inverse condemnation. SCE did not think this was fair because they are not like a public entity. Public entities could go to taxpayers and raise rates for everyone in order to pay for the cost of the public improvement, but their company would have to go to the Public Utilities Commission (PUC) and ask for permission. If they did not receive permission, SCE would have to bear the cost and that is not fair. The Second District considers this argument but rejects it. The most important thing was that SCE was a monopoly and enjoys special privileges, so they don't have the right to be treated like another private company. They even wrote in Footnote 6: even if the Legislature were to pass a law that said they could not recoup money from their customers, that would not be enough to take them out of the inverse condemnation regime.

That is the status of the brief summary of the law of inverse condemnation as applied to privately-owned utility companies. I am available for further questions.

Chair Carla Peterman: Just to clarify, this also applies to our publicly-owned utilities (POUs), correct?

> **Scott Cavanaugh:** Yes. In fact, the courts said that specifically in the Pacific Bell Case. One of the reasons they made that decision was they could not differentiate between a publicly-owned utility being held liable for inverse condemnation when a privately-owned utility would not be for essentially the same thing.

Commissioner Michael Kahn: The California Supreme Court hasn't ruled on this, correct?

Scott Cavanaugh: That is correct. These are two separate appellate court decisions.

Commissioner Michael Kahn: How many appellate courts are there?

Scott Cavanaugh: There are six appellate courts.

Commissioner Michael Kahn: And if one of the appellate courts who hasn't ruled on this have that issue, are they bound by that or are they allowed to review that de novo?

Scott Cavanaugh: Each appellate court may determine this matter individually.

Commissioner Michael Kahn: So not only is it not bound by the Supreme Court, it is not binding on any district except the two that ruled on it?

Scott Cavanaugh: That is correct.

Chair Carla Peterman: Thank you. If we have clarifying questions, we will call you back. Now let me ask our panel will join us. For some context**,** the reason we are getting into a legal discussion is because one of the key issues we need to be aware of and think about is: who is liable? And what does liability currently look like? There are various stakeholders who have different views on the interpretation of this doctrine.

We are looking to hear your feedback on the implication of the inverse condemnation doctrine as it stands and ultimately what can we do to manage liabilities and costs, particularly associated with utility infrastructure. We ask everyone to give five minutes of introductory comments and then we will open it up to questions and discussion.

Dan Skopec: As you may be aware, SDG&E was the first utility to experience the true peril that inverse condemnation places upon electric utilities. In 2007, southern California experienced extremely powerful Santa Ana winds that fueled more than a dozen destructive wildfires throughout the entire region. CAL FIRE (the California Department of Forestry and Fire Protection), Cal OES (the California Governor's Office of Emergency Services), and the U.S. Forest Service published a comprehensive report on the causes of and recommendations around the fires. I don't have time to review that, but I would commend that to the Commission. The ignition of three of the fires were attributed to SDG&E power lines. Asserting inverse condemnation, property owners, local governments, CAL FIRE, and insurance companies sued SDG&E for approximately $5.6 billion dollars in claims. SDG&E settled the lawsuits, paying a total of $2.4 billion in settlement costs and legal fees despite strong evidence to the fact that we were not negligent and were operating safely and critically. As you just heard, that is not the standard under inverse condemnation. The standard is strict liability, giving SDG&E little to no option but to settle.

At the time of the 2007 fires, SDG&E carried approximately $1.1 billion in insurance and achieved reimbursements totaling $824 million from a cable company and some contractors. That left around $500 million in liability. As you just heard about the legal principal, the theory is that the utility should remain strictly at fault because it could pass those costs onto the customers, just as a government company could pass those onto the taxpayers.

Subsequently, SDG&E filed for recovery of these costs from regulators, PUC at the state level and the Federal Energy Regulatory Commission (FERC) at the federal level. Over several decisions, FERC authorized recovery of all costs associated with our transmission system. In approving recovery, FERC stated, under California law, SDG&E would likely have been responsible for such costs regardless of fault.

Unfortunately, in 2017, the PUC came to the exact opposite conclusion in response to our filing known as the Wildfire Expense Memorandum Account (WEMA) filing. PUC declared that inverse condemnation doesn't have relevance to jurisdictional responsibility. They went on to declare that SDG&E had not prudently operated its system and used a hindsight review to establish a perfection standard. I will note, however, that PUC's President, Michael Picker, has frequently commented on the flaws in the application of inverse condemnation to investor-owned utilities (IOUs). Upon voting for the WEMA decision, he said the question of SDG&E's prudence was a close call and led into question the rigidity of the PUC's own prudency standard. He asked the Legislature to consider giving the PUC the tools to do a more nuanced assessment of fault. It was this vote, combined with the wildfires of 2017 and 2018, that led to the financial crisis that caused one investor-owned utility to file for bankruptcy and the other two to suffer multiple rating downgrades.

So, where do we stand today? This entangled financial and regulatory situation led to the reforms enacted by the Legislature last year in SB 901. We appreciate the Legislature's steps toward reforms in SB 901, but unfortunately it did not go far enough. There is more that needs to be done. Inverse condemnation reform was not included in SB 901. As a consequence, investors assume that IOUs will continue to be strictly liable under inverse condemnation related for wildfires linked to our equipment. In light of the PUC's WEMA decision, investors will also assume that the PUC will not permit recovery of wildfire costs, which means that costs will be borne by investors. This status quo with respect to wildfire liabilities has seriously harmed IOUs' credit worthiness. PG&E's bankruptcy is the most glaring example of this loss of access to capital markets. I will note that, even though SDG&E's equipment did not start the catastrophic wildfires in 2017 and 2018, nevertheless, like the other IOUs, SDG&E's credit rating has suffered downgrades in both 2018 and 2019 because of the existing liability reform. I was going to cite some of the ratings agencies' concerns, but in the interest of time I have passed out a copy of those reports for you: S&P, Moody's, and Fitch. I will also note that increased capital costs are harmful to both IOUs and their customers since this cost of capital is passed onto customers through rates. This will certainly be an issue in the upcoming cost of capital proceeding at the PUC later this year.

In conclusion, I want to stress the urgent need for further action to build off the reforms on SB 901. We make the following recommendations. First, the issue of inverse condemnation or the issue of utility cost recovery is really at the heart of this matter. Either the State needs to reform inverse condemnation, or it needs to establish a clear path for utilities to recover liability costs when they are found to be prudent operators. The determination of a prudent operator needs to be established in statute and approved by the PUC upfront. Utilities should be deemed prudent if it is in substantial compliance with its wildfire management plan required in SB 901. Substantial compliance means a utility has met every reasonable objective of its wildfire management plan. Gross negligence, willful misconduct, and a pattern of noncompliance is not substantial compliance. When a utility is out of compliance with PUC rules, the Commission has broad authority to penalize it. That authority was extended in SB 901.

Second, a statewide wildfire insurance fund should be established to socialize the costs of wildfire liability broadly. Such a fund should include investor-owned utilities and municipal utilities. The fund should operate on top of the utility's insurance coverage and utilities should contribute to that fund based on their relative risk profile, factoring in their service territory size, fire risk, and investments and programs to mitigate catastrophic wildfires.

Third, utilities should have access to a wildfire fund or be able to securitize their liabilities through a dedicated rate component prior to an after-the-fact reasonableness review. This is essential to avoid a future liquidity crisis that could lead to bankruptcy.

Commissioner Michael Kahn: I would like to ask you two questions and I want to ask each panelist the same question. You say you want reform, but you don't tell us what reform. I would like to know what reforms specifically you think we should make.

I am not interested right now in passing the costs onto someone else through prudency. I want to know what reform to inverse condemnation we should advocate. What mechanism should that reform take – an act by the Legislature, a Constitutional amendment – what is the mechanism?

> **Dan Skopec:** We believe you can either reform inverse condemnation or you can address cost recovery. Inverse condemnation is based on the California Constitution, so a complete repeal of inverse condemnation, many legal scholars believe, would take a Constitutional amendment. But a reform to it that is less than a complete repeal – that indicates where entities like IOUs would be liable and where they wouldn't be at a standard lower than inverse condemnation – we believe could be done in statute. A reasonableness standard or prudency standard could be put in place in statute that would be a standard lower than inverse condemnation.

Joy Mastache: SMUD is the nation's sixth largest, community-owned, not-for-profit, electric service provider and second largest in California. We serve 1.5 million residents in Sacramento

County and smaller adjoining portions in Placer and Yolo Counties. We operate our American River hydroelectric project in El Dorado County within PUC's high fire threat district.

As we come to grips with the "new normal" of our changing climate including all the unprecedented wildfires, we must all do more to keep our communities safe. SMUD has and continues to implement more expansive wildfire prevention plans to strengthen construction, maintenance, and operation of electrical equipment throughout its service area. SMUD and other utilities should remain liable for wildfire costs when they are at fault. That is only fair. However, utilities should not be held strictly liable for wildfire damages when they have acted responsibly and prudently and have met safety inspections and maintenance standards. We feel the current system is unsustainable the face of increasingly severe and frequent weather events. Concerns of liability structure have been repeatedly faced by the ratings agencies, as was mentioned, and by many others. Updating the liability standard is essential to ensure that California's utilities can continue to provide affordable and reliable service and make investments and programs designed to achieve California's climate goals.

While we must not lose sight of the personal devastation inflicted on each and every member impacted by a wildfire, we must be mindful of the inequities that result from shifting all the costs to utilities regardless of fault. Unlike investor-owned utilities, publicly-owned utilities like SMUD don't have shareholders to bear any of the costs and damages of catastrophic wildfires. Our only recourse is to collect from our customers. Those costs can have a disproportionate impact on the customers least likely to afford it. Assuming the current financing options continue to be available, a major wildfire reaching billions in damages could cause SMUD's rates to increase in the neighborhood of 25%. Small publicly-owned utilities could be impacted even more severely.

While SMUD retains wildfire insurance to protect against the financial impact of a catastrophic fire, strict liability for damages has caused insurance rates to skyrocket. Our wildfire insurance costs for this year are almost four times higher than last year, with limited amounts of additional coverage. Higher insurance costs will divert utility investments away from meeting our aggressive renewable energy and greenhouse gas reduction goals. Now more than ever, as wildfires wreak havoc on the electric environment, we must depend on a reliable electric system to meet our clean air goals. California must act swiftly and thoughtfully to address this urgent matter.

SMUD takes this seriously. It has adopted a strategic directive that SMUD will maintain its electric system in good repair, make necessary upgrades, and meet regulatory standards. We are on target to complete our wildfire mitigation plan prior to SB 901's December 31 deadline. SMUD's fire prevention efforts include many we have heard from IOUs, including expanded vegetation management activities, using advanced technologies, regular aerial patrols, initial existent construction, procedures for deactivating disclosures and deenergizing power lines to address severe weather, improving situational awareness, and continued coordination and collaboration with local agencies.

We are also discussing potential financial and funding approaches including the current Assembly Bill 235 (AB 235). We feel that any approach would have to ensure that if ratepayers contribute to such a fund, the utility contribution levels should be based on risk and size and that a proportion of benefit is available if needed. We are also concerned that, if California continues to experience multiple occurrences especially multiple within a short period of time, this could deplete shared funds.

We believe there is no single answer here, but that action on multiple fronts is required. A continued focus on forest and vegetation management, implementation of prevention and response programs, prompt availability of wildfire investigation findings that can inform the development of best practices moving forward, support for public education and emergency response, and an equitable apportionment of wildfire risk. We look forward to working with the Commission on all of these issues.

Chair Carla Peterman: Do you have any specific recommendations that you would like to offer?

> **Joy Mastache:** Our answer would be aligned with the answer from the prior panelist. Last year there was a proposal that offered some approaches to the reform. I believe that is something we can use to work of. As was discussed, there are some options to make some advances to the Legislature short of a Constitutional amendment.

Commissioner Michael Kahn: Do you think public and private utilities should be treated differently or should there be one amendment?

> **Joy Mastache:** It depends on the circumstances but, in general, both publicly-owned and privately-owned utilities should be treated similarly when it comes to a liability perspective.

Cara Martinson: Today I focus my remarks on the local government perspective and victims' perspective. I am encouraged by the other comments, though we differ on one key component. I will start by answering Commission Kahn's question. We don't believe you can change inverse condemnation short of a constitutional amendment, but we do believe there are ways to build on our current liability structure that will increase certainty for utilities and protect ratepayers and ultimately protect victims as well.

CSAC was very engaged in the passage of SB 901. We are committed to its successful implementation of SB 901, but we believe that there are a number of ways that we can improve on it. The core is to improve the safety of our communities because we will continue to experience catastrophic wildfires in California. Our interest has been squarely focused on our communities and our residents and our ability to recover and rebuild from these disasters and ensure that our communities are safer and more resilient moving forward. We feel that the current legal construct of inverse condemnation is really the critical underpinning that facilitates an efficient resolution for victims in the aftermath of a utility-caused wildfire. While this is the main tenant of the system, we do believe there are ways to improve this process, the

regulation of the PUC, and the overall structure to ensure three main points: 1) victims are swiftly compensated after utility-caused wildfires, 2) there remains a strong incentive for safety incentives, and 3) there is a clear path moving forward to determine cost apportionment – what can be passed onto ratepayers or not. We feel that liability and negligence play a key role in that discussion.

From the local government perspective, we think inverse condemnation provides a strong safety incentive for both utilities and local governments to take action and invest in critical measures to protect ratepayers and residents. We have a great example of that in SDG&E. After their 2007 wildfires, they committed a tremendous amount of resources to change their corporate culture to focus on safety to make sure they are not liable in the future for excess liability from a utility-caused wildfire. It does in certain circumstances work and prioritizes programs and policies that put safety first if for no other reason than you will be liable otherwise.

Secondly, local governments and private citizens use inverse condemnation as a legal standard to bring companies to the table for swift resolution to settle claims rather languish in court under negligence suits. Homeowners have a limited timeframe associated with their alternative living expenses, one or sometimes two years, in which they can settle, rebuild, and recover. Without this standing in place in reimbursement, the overwhelming majority of homeowners would be unable to rebuild. This not only impacts private property owners but also a local government's ability to gain a tax base and move forward as a community. Specifically, from the local government perspective, inverse condemnation is used as well in addition to assistance from state and federal programs. Oftentimes, the costs run in the tens or hundreds of millions of dollars because there are a number of different categories not covered by the state and local government. The local cost share can be millions of dollars as well. We are talking about parks, roads, sidewalks, watershed restoration, water contamination, etc. These are some examples of the uncovered taxpayer losses in the event of a disaster. This is why we want to key thought for keeping this legal standard in place and why it is important.

As we already heard, the talks coming out of SB 901 debated this topic quite a bit last year. We believe they did not change inverse condemnation because it doesn't achieve the problem we are trying to solve, which is greater certainty. SB 901 was successful in creating enhanced safety planning measures of the utilities, it provided a debt tool to PG&E to securitize their debt, but we do think it left a few things off of the table. For instance, it did not clarify the process at the PUC for what debt can be passed onto ratepayers and what is defined as a prudent management standard. It provided additional criteria to the PUC, but it didn't give them that certainty they had been requesting. There are also other factors to consider for socializing the cost of wildfire: What can keep our communities safer? What can protect victims? What can provide greater certainty? The credit markets and fiscal health of our utilities are important to us as well as we want to keep the lights on across California.

Given the frequency and greater costs of wildfires, insurance coverage is something we all need to think about. Local governments have excess liability coverage. Utilities have policies. The

State is contemplating how to ensure their General Fund. Increased coverage of costs on all fronts including at the homeowner level, which starts with education, can go a long way to protect excess liability and then that ultimate pass through to the ratepayers if actions are deemed prudent. We also believe that the concept of the catastrophic wildfire fund has merits. The details are very important. Who can access that fund? At what time? For what purpose? Investment from utilities to the State's General Fund or perhaps the cap and trade fund could provide the upfront capital to start off the fund and simplify the process for victims because the swift compensation for losses at the individual is critically important.

Another thing we are thinking through at the local level is the importance to understand what prudency is; negligence obviously plays a role in that. If actions were prudent and we have inverse condemnation in place and there is a potential for that cost to be passed onto ratepayers, how do we socialize that? As the frequency of wildfires increase, that is going to have a tremendous impact on ratepayers as well. If an event happens in just PG&E's territory, can it be socialized across all of California? We are assessing what the impacts would be on our communities. These are some ideas we have. We look forward to this discussion and we appreciate the opportunity to provide testimony.

Rex Frazier: Today I represent the admitted market, insurers on residential property insurance issues. The admitted market, which means insurers voluntarily writing insurance after receiving a customer application, is presently insuring over 98% of the 1.5 million insured structures in California. The admitted market also provides a financial backstop for high risk properties known as the California FAIR Plan. The FAIR Plan provides property owners guaranteed access to fire insurance. All admitted homeowner insurers are required to be a members of the FAIR Plan as a condition for doing business in California. 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 homes not served by the admitted insurers either directly or indirectly by the FAIR Plan are served by the non-admitted market. These three elements – the admitted market, the 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 to California for months or over a year to serve those people impacted by a fire. When a fire is caused by a third party, property insurers begin the claims process and subrogation process. Subrogation is a common process when private and government payers seek to recover payments from the party who caused the damage. This happens every day in the auto insurance industry where a customer makes a claim to her/his collision insurer and that insurer seeks to recover from the at fault driver's liability insurance. The Medi-Cal system also does this system every day.

This subrogation process applies equally on the rare occasion that a utility causes a fire. Wildfire plaintiffs, including subrogating insurers, have repeatedly settled claims from utility-caused fires. This practice didn't see significant public attention until late 2017, after the PUC

found that SDG&E didn't reasonably operate its facilities prior to its 2007 wildfires. The PUC denied SDG&E's application to socialize across its ratepayers, meaning its fire costs exceeded its commercial insurance recoveries. While the 2018 legislative session featured the debate around whether the takings clause should apply to IOUs, this debate obscured the real problem facing the IOUs: how the 2017 PUC decision disrupted the widely held market assumption that all excess liabilities of the IOUs would be automatically socialized across the ratepayer base, particularly when that PUC decision was so close in time to accruing after the Tubbs Fire in Santa Rosa.

For the first time, investors realized that a California IOU could face a large unfunded liability if the PUC determined, after the fact, that an IOU imprudently caused the damages. This risk exists whether or not plaintiffs sue using constitutional rights to an inverse condemnation claim or more traditional causes of action, such as negligence.

In 2018, we urged parties to focus on developing brighter lined PUC standards for when and how an IOU should be permitted to socialize its unfunded liabilities. Every regulated company deserves a clear legal standard for evaluating its conduct. Such standards allow managers to develop proper goals and supervise towards achieving them. The standards applied to SDG&E in 2017 left them claiming unfair surprise and this rippled across the investor community. While SB 901 included changes to the process for determining prudent behavior, it pertained much more ambiguity compared to a traditional negligence analysis.

An additional concept of how to better socialize wildfire liability is the emerging consideration of a utility excess liability fund, and we encourage the serious deliberation of such a funding mechanism. While there are many details, the concept is straightforward. After first determining a utility's self-insured retention, meaning the fire risk it obtains, and the preconditions necessary to claiming a catastrophic pool, such as compliance to a wildfire mitigation plan, a utility can tap pooled funds to pay for catastrophic liabilities and costs. There are many options for how to capitalize such a fund and many conversations occurring outside of this forum. We remain committed to actively participating in these discussions and responding the Governor's challenge to develop a framework for a solution in the very near future.

Chair Carla Peterman: I appreciate you all noting that this is a topic that was part of Legislative hearings last year. Unfortunately, over the six-month period we've had a few added data points that continue to inform our thinking about fires as well as utility financial health. We welcome your insights again today.

Ms. Martinson, two questions for you. I appreciate you noted that the inverse condemnation doctrine allows for the efficient resolution of wildfire victim claims. Do you think that the resolution for fire claims is still efficient given the potential for bankruptcy that we now see is possible? This Commission is focused on the equitable allocation of costs. Can you explain how the current doctrine is equitable as well as efficient?

Cara Martinson: On the first point, obviously bankruptcy is not a place that victims or utilities want to find themselves in. It is my understanding from talking to our counsels – of which I am not one of them – that negotiations for settlement continue while they are also talking about restructuring. So those processes can move simultaneously. I also think that certainty is an important part for utilities to find. It sounds like these are moving on track together. It doesn't speed up the process, and I do think that it has the potential to slow it down. But no one wants to find themselves in the scenarios that we are in now.

On your second point, there is a potential to greater socialize the costs associated with liability under inverse condemnation, but that depends on what the nature of liability is. If the liability was strict liability and there was determination that the utility acted reasonably and prudently, then those costs can be socialized across its territory. I think the PUC currently has the ability to do that; I'm not sure if they have or if they feel that they do, but we feel that the criteria is there and throughout they discussions last year they mentioned that they wanted additional criteria and additional guidance to make that determination. But the potential to socialize those costs, depending on the type of liability, currently exists in our opinion.

Chair Carla Peterman: So from my understanding is that your preference is for a mechanism that allows as comprehensive a socialization of costs as possible? It is not necessarily that those costs need to be socialized to ratepayers.

Cara Martinson: We want the ability for the utilities to have certainty when it comes to costs, but we feel very strongly that the actions that led to the event are important in that determination. If there is negligence, or if there is a determination by their regulators that they did not act reasonably and prudently, that has an ability to impact certainty and that is okay.

Commissioner Michael Kahn: I don't understand your efficiency argument. Under the current inverse condemnation law, if a spaceship drops something from the sky onto a utility line and burns up a community. For everybody who bought and collected homeowners' insurance, the insurance companies can then get reimbursement for all the costs from the utility for the cost of the spaceship falling on the line despite the fact that they already had insurance. What's efficient about allowing people who bought insurance for their house burning down collecting it then against the utility?

Cara Martinson: I think we are talking primarily about people who are underinsured or not insured.

Commissioner Michael Kahn: But that is not the way that it is working. The way is works under inverse condemnation is, if you have insurance and the spaceship caused the utility line to cause a fire, the insurance company gets to collect money back from the utility. I don't understand why you think that is efficient.

Cara Martinson: I think my point about efficiency and the speed at which claims are settled is that it is a strict legal standard, so it brings folks to the table to negotiate rather than deliberate in court under different circumstances.

Commissioner Michael Kahn: I'm going to need your good thinking in the counties about why it makes any sense or why it is efficient in a strict liability context for insurance companies to be reimbursed. My second question is on your comment about equitability. You mentioned that utilities don't have overlapping jurisdiction; they have separate.

Take my hypothetical: let's say a spaceship drops and hits a PG&E line on the border with SCE and it burns down the SCE community. In that situation as I understand it, PG&E's ratepayers have to pay because they are the utility that caused it. Why is that fair?

Cara Martinson: To some of my final points, we are interested in and open to how we can more equitably socialize those costs across all of California. This is not a straightforward issue; the issue of catastrophic wildfire is of significance statewide. If we are to create a fund potentially that we believe will help with efficiency for claims, pass through of costs associated with prudent behavior, there's an argument that the pass through can be made through more socialized across a greater territory, regardless of which IOU caused the fire.

Commissioner Michael Kahn: The way it works now is the ratepayers of the utility pay regardless of who is harmed or what happens to them. Is that equitable?

Cara Martinson: I think we are interested in keeping the legal standard in place and making it more equitable.

Commissioner Michael Kahn: I don't see how you leave it in place and make it more equitable. It seems like inherent in its construct is the equability component. I'm trying to figure out how you leave some of it in place and yet be equitable.

Chair Carla Peterman: Given that you all express some interest in a fund that has contributions from different entities, what does it matter whether inverse condemnation interpretation stays the same or not? How does your approach to it affect the ability to move forward with that fund?

Cara Martinson: I think it goes back to all of our comments with regard to what a prudent manager standard is. We feel that negligence shouldn't be socialized. That's why keeping inverse condemnation in place is very important to us.

Chair Carla Peterman: Mr. Skopec, the idea of negligence has been mentioned a couple times. You can clarify whether your proposal would apply to cases where the utility is negligent because I did not realize that was under consideration.

Commissioner Pedro Nava: I think we all understand that inverse condemnation is a really big stick; it bears heavy on the utilities. What I am struck by is the basis for applying inverse condemnation on the utilities is the idea of a monopoly. Since you have a monopoly, you can go to the PUC and theoretically recover those costs and pass them to the ratepayers.
But have we had any conversation about how that makes sense given how the energy markets are changing? If, for example, utilities decide that they don't want to procure energy. A monopoly was you got energy, you sold it, everyone benefited from it. You needed it for economic development and growth. Is that likely to be impacted by changes in the energy markets that we see where we have communities developing their own sources of energy, but they need the transmission and the utilities to move it from one place to another? Does that still constitute a monopoly?

> **Dan Skopec:** It is a good question because it is very confusing what is happening in the California energy environment today. You are right that many community choice aggregators (CCA) and direct access providers are starting to provide commodity service to customers to a much larger extent.
>
> But regardless of whether there is a CCA or direct access provider in our service territory, we still maintain the transmission distribution grid, we still bill for that, and so then we would still bear the liability. Those entities that provide commodity service don't carry that liability, at least under the current construct. I believe one of the PUC Commissioners mentioned this point at a recent public hearing, that maybe a CCA should bear some of the liability, but currently they wouldn't.

Commissioner Michael Wara: Let's say, hypothetically, that the Legislature passed a law that modified the application of inverse condemnation to investor-owned, perhaps publicly-owned, utilities. It is my presumption that after a fire happens and new rules apply, there would be lawsuits and they would result in protracted litigation around what was or not constitutional from the legislation. How would that impact the investment certainty that we want to create for utilities and fire victims? Is it unimportant? Would it lower the value of an inverse condemnation modification or not?

> **Dan Skopec:** It is important, but if inverse condemnation were eliminated, we would still be liable if we were found negligent and negligence is still a high standard. I did want to comment on the point of utility incentive. We still have a very high incentive to never start a fire again because of that.
>
> If inverse condemnation were modified, it may create a new standard and potentially could diminish some of the costs of the current system, but you would still have lawsuits and would still be potentially liable depending on whether you were negligent. If, in your scenario, a law was passed and lawsuits were filled, then the claimants against any utility fire would probably be delayed while the lawsuits about the

constitutionality of that law took place. It would create uncertainty for a period time until that was settled.

Whether inverse condemnation was repealed or not, we would have a negligence standard; we would still be held to a very high standard. That is why some of the other issues we have been talking about today – prudent manager, cost recovery, insurance fund – are still important. I wouldn't remove any of those from consideration regardless of what happens to inverse condemnation.

Joy Mastache: I tend to agree with comments from Mr. Skopec. There are still liability standards and there are still costs to ratepayers regardless of whether the strict liability is applied or if you're looking at a negligence standard or your accessing a fund of private financing that has to be repaid at some point.

Cara Martinson: I don't think changing inverse condemnation would provide any certainty and we would end up in court. I think a legal standard of strict liability versus a negligent standard; one is very simple compared to the other. The other issue is that often times when victims sue against utilities, they settle because that legal standard is very clear and they don't have the resources to engage in litigation, which takes time and expense, to prove negligence in court.

Rex Frazier: Commissioner Wara, of course, every plaintiff group that presently enjoys the ability to file a cause of action for inverse condemnation would be in court the next day. There is no doubt about it.

It is a constitutional right as defined by the appellate districts where the service territories are. Plaintiff groups, if courts tell them they have a constitutional right they can exert, they are going to do so. So the notion that people will sit back and say, "Sure, let's give away a constitutional right. It's only for property; no big deal." Of course they are going to seek to protect that constitutional right they feel entitled to, whether that be freedom of speech, right to privacy, or any other constitutional right. Because it is related to private property doesn't mean it is any less worthy of protection.
So we spent all of last year, back and forth, and ultimately on legal grounds the Legislature was convinced it is a waste of time to do this through the Legislature. On fairness grounds, there simply was no interest from the Legislature in changing this legal standard. We wasted a lot of time last year instead of starting to focus on what caused this.

Inverse condemnation did not cause the present situation because it has been around for 20 years. So, why didn't we have these problems 20 years ago? The problem was that SDG&E was caught by surprise because they had a standard applied to them that they didn't know existed. And then we had Tubbs.

And all of a sudden, investors were worried about potentially springing unlimited liability that they didn't have a plan for. And that is the solution we need to focus on; going back and forth about inverse condemnation takes us nowhere other than arguing. The Governor told us let's try to do this quickly before Moody's or S&P's decide they want to take further steps against Edison and SDG&E. If all we do is argue about inverse condemnation, we are not going to help the IOUs we are concerned about.

What we need to do is develop a clear standard where utilities know how they can fund they liabilities when they are found to be prudent or not, and certainly if we are going to continue to have large fires, develop some fund of excess liability.

Chair Carla Peterman: I want to make two points. We have no intention of arguing over inverse condemnation, but the Legislature through SB 901 did create this Commission and within the Scope of this Commission is looking at this question. My sense is there is an interest in taking more time to continue having this discussion.

Mr. Frazier mentioned that inverse condemnation has been around for 20 years and that's not the problem. Ms. Martinson answered what she sees as the harm of changing the inverse condemnation interpretation. Mr. Skopec, what do you see as a harm in maintaining inverse condemnation?

Dan Skopec: Maintaining inverse condemnation, as opposed to a negligence standard, probably adds to the cost of the problem. But if you didn't have inverse condemnation and you only had a negligence standard, utilities could still be liable for billions of dollars in damages depending on the circumstances.

So regardless of whether inverse condemnation is reformed or not, we have to address prudent manager, cost recovery, and establishment of a wildfire fund. I agree with what Mr. Frazier said about the process last year and I understand it's very difficult to change this right. I think there are reasonable reforms that could be considered for inverse condemnation, but I don't want us to believe that that would solve the problem.

I will note that one of the reasons why this hasn't been a problem for 20 years is because no utility has outstripped its insurance. We carried $1.1 billions in insurance and we thought that was a lot. It turned out to be not as much as necessary, and with these recent wildfires we see it is not anywhere near what is necessary. Is that because of climate change? Is that because of drought? Is that because we have too much houses built in areas where they shouldn't have been built? I don't know the answer to that, but I know that the cost of these damages is exceeding the amount insurance utilities are able to carry at this time and a solution is necessary. I think all three areas we have discussed today – liability reform, prudent manager reform, and insurance fund – are necessary.

Commissioner Michael Wara: The other question I have revolves around the prudent manager and the relationship between inverse condemnation and the cost recovery process. I think about the deemed prudence model as emanating from AB 57, and the approach that was taken to restore the credit worthiness of the utilities after the electricity crisis. That process around procurement and creating greater certainty for procurement and credit worthiness of utility signed PPAs. To me, that seems like a very different process to deem prudence as compared to operations in field of an electric utility. Thousands of people are operating across hundreds of thousands of miles of over headline in the case of PG&E, for example. What worked for AB 57 might be an imperfect fit.

Having read through the three IOU wildfire mitigation plans, one could imagine evaluating the performance of a utility relative to those plans and reaching a conclusion of compliance or not, depending on the ability to monitor and audit, depending the circumstances you weigh as more important or not. There is a tremendous amount of discretion. How we reduce that discretion in a way that is fair both to ratepayers and to utilities?

> **Dan Skopec:** It is a great question and gets to the heart of the challenge of prudent manager. AB 57 was a key piece of legislation that broke the back of the whole sale market following the energy crisis and allowed the utilities to enter into long-term contracts with insurance for cost recovery.
>
> It is a good analogy; it is not a perfect analogy because we are not talking about prudency of contracts, but prudency of operations in service territories, which are far more complex. Nonetheless, we need a prudency standard that we can rely on, that investors can rely on, that the public can understand, that utilities have to meet. That may mean that the PUC may need to do things differently. Their typical stance in these positions is an after-the-fact reasonable review. As PUC President Picker says, "We are an audit agency." It is not exactly accurate, but that is a more natural position for the regulator to be in. But I don't think we have that luxury anymore. Because with that type of after-the-fact reasonable standard, we are left hanging for potentially years with no assurance. The fact of the matter is we cannot finance that kind of unknown.
>
> SDG&E was able to create a regulatory asset where we were able to indicate to our auditors and our investors that we had a likelihood of recovery. So the cost of our liability didn't need to be written off. That premise is gone now. Without a prudency standard and without the ability to access a wildfire fund at a dedicated rate component to issue securitized debt, we can't finance liabilities that could happen from a catastrophic fire. It is not the natural position for a regulatory agency to have this upfront prudence review, but it is necessary at this moment.

Commissioner Michael Kahn: What happens if SDG&E is negligent and causes a fire that exceeds its ability to pay? Who pays the difference? What happens? Today or in your conceptualization? What happens if SDG&E can't pay, who pays? What would you advocate?

What would happen is SDG&E is negligent and you couldn't pay and you were bankrupt, what would happen?

Dan Skopec: What you described. If our liabilities exceeded our ability to pay, it would lead to bankruptcy.

Commissioner Michael Kahn: But who then would pay? Would no one pay? Or does it default in your view to the ratepayers?

Dan Skopec: I think the PG&E bankruptcy will answer that question. That is an unknown.

Commissioner Michael Kahn: That is not what I am asking. I thought we were having a conversation about what you want the future to look like. What would you like the future to look like if you can't pay negligence? Should the people then not get a recovery? Or should someone else pay? Who should pay? I would appreciate if you didn't answer by saying, "There should be some magic insurance fund." I am looking for, "Who would actually pay?"

Dan Skopec: I misunderstood, when you said, "If you can't pay." I thought you meant you had no assets.

Commissioner Michael Kahn: No, if you have no assets and it's a negligence standard, what happens? Who pays?

Dan Skopec: The position we have advocated is we would have access to either a wildfire fund or the ability to securitize debt with a dedicated rate component, which means the ability to assess a rate on ratepayers to finance that liability, while a reasonableness review is happening. If that reasonableness review determines that the utility was negligent not prudent and didn't follow with its wildfire mitigation plan substantially, then the shareholders would be responsible.

Commissioner Michael Kahn: And suppose the shareholders didn't have enough money? What happens when the shareholders run out of money? I'm trying to determine whether, if at the end of that, no one gets paid or somebody else defaults.

Dan Skopec: I believe that is the situation PG&E is today and I think that is the answer to your question. It would lead to bankruptcy.

Commissioner Michael Kahn: I understand that. If there is a bankruptcy, does that mean no one pays, or does the ratepayer pay, or does the taxpayer pay?

Dan Skopec: I can't tell you that because I don't know what is going to happen with the PG&E bankruptcy. I think there is going to be a process by which all of this is considered. The bankruptcy process to me is unclear to me how it would work.

Commissioner Michael Kahn: I need your help as we are supposed to recommend legislation. If we recommend legislation that says inverse condemnation goes away and it should be a negligence standard and a prudency standard, say we do everything you want. I want to know what happens if you are negligent anyway and you can't pay. What happens?

I don't want to hear about the PG&E bankruptcy. We have been told the PG&E bankruptcy is not our problem. We are trying to advise utilities. What does SDG&E want to happen if it is negligent and it can't pay and shareholders are bust?

Dan Skopec: Two elements that we have indicated are access to the wildfire fund and the ability to securitize that debt to a dedicated rate fund.

Commissioner Michael Kahn: Securitizing that debt; that is a fancy way of saying the ratepayers?

Dan Skopec: Yes, but we still have the review for negligence and, if at the end of the day you were determined to be negligent, then shareholders would have to pay.

Commissioner Michael Kahn: I am assuming SDG&E is on in my hypothetical. What we are seeing in these wildfires is the liability can be humongous. There is no SDG&E. I am trying to understand is the ratepayer paying, or the taxpayer paying, or does no one get paid?

Dan Skopec: As I understand it, that would lead to bankruptcy.

Commissioner Michael Kahn: I know that. After bankruptcy, who pays?

Dan Skopec: I can't answer your question. To me, that's the bankruptcy proceeding, and it is unclear to me how it would play itself out. Sorry, Commissioner.

Chair Carla Peterman: I wanted to ask a follow up question for the representative at SMUD. It was asserted that inverse condemnation incentives safety. I welcome your perspective on that.

Joy Mastache: From a utility perspective, safety and liability are our jobs and we don't need the inverse condemnation incentive as it is being represented.

Dan Skopec: I mentioned briefly before, but whether it's inverse condemnation or a negligence standard, we could be liable for billions in damages. After our 2007 fires, our management made very clear we are going to do everything possible to never start another fire again.

Commissioner Peterman, I think you have had the ability to come to San Diego and see some of the investments we have made. We have made significant investments to fire harden our system, improve our situation awareness, mitigate the impact of de-energization, which is an important tool to work with our counties, CAL FIRE, and fire agencies to fight fires and prevent fires much better. We have that incentive whether it is inverse condemnation or not. We live in the communities we serve. We never want to start a fire again. Our franchise is rented by the State of California and we could lose that franchise if we are not a prudent operator. So, the incentive is very clear.

Chair Carla Peterman: Your utility has been lauded for pioneering efforts in wildfire prevention and mitigation. Given your experience, do you feel you are risk free?

Dan Skopec: I would like to say yes, but unfortunately the answer is no. I don't think we can ever be 100% risk free. The environment that exists when the Santa Ana winds pick up is very dangerous. I can list off all the mitigation efforts we have made, but we will never be 100% risk free. What that means is we have to start to compromise reliability for safety and that is what de-energization allows us to do. For most of the summer and certainly into the fall, San Diego backcountry is a tinderbox. The environment exists for fire all the time in the summer and fall; it is just a matter of improvements.

Joy Mastache: Utilities like SMUD and SDG&E have long been doing a lot of different activities, efforts, and programs to improve their systems and safety because, as pointed out, we are responsible to our communities. We do have a liability regardless, but I think it is more than that – it is responsibility to provide that service. I think we have many examples of what utilities such as SMUD have been taking for many years before this issue has occurred.

Chair Carla Peterman: Any final questions for this group? If you have any public comment on this topic, we welcome it now.

Commissioner Michael Kahn: Ms. Martinson, do you agree with last two comments? Do you think that publicly-owned and privately-owned utilities are sufficiently incentivized to keep the public safe, or do you think we need the additional protection of inverse condemnation to incentivize them?

Cara Martinson: I think inverse condemnation provides an additional incentive for safety. From my experience, touring the weather center SDG&E and that investment happened after 2007 and those wildfires because there was excess liability. So I think it is clear that that standard does provide incentives. This is, from our local governments' perspective, part of a larger conversation. Fuels management is a key component. We have over 100 dead, dying trees in the southern Sierra. It takes partnership with the State, local government, and utilities to address safety, but keeping that legal standard in place does provide extra incentive in our opinion.

Commissioner Michael Kahn: Do you think that the public utilities are more incentivized that the private utilities, or do you think they are equally incentivized?

> **Cara Martinson:** Obviously, our municipal utilities are a much smaller scale and smaller territories, so potentially less risk but the standard applies to both. I think a difference is the public entity does not have shareholders. That difference in structure can potentially influence where investments are made, but I think the standard applies equally to both entities.

Commissioner Michael Kahn: Mr. Skopec, your utility is held as a standard. You are doing the best you can, but it is by comparison to the other two utilities. Do you have an opinion as to why your utility has reacted better than purportedly the other utilities?

> **Dan Skopec:** Wildfires have always been a part of California's history; they have always been a part of San Diego's history. But we had two events that changed our thinking in San Diego writ large. The first is the 2003 Cedar Fire, at the time was the largest in the state. It was not caused by SDG&E powerlines, but it was devastating. It was a one in a 100 years fire. Four years later, we had another equally devastating fire. We had two one in a century fires in four years. That really woke everyone up. Whether it was climate change, drought, or our living conditions, we had to approach fire differently. It wasn't just SDG&E, the County of San Diego, the local fire agencies, the land use planners needed to do a lot of things.
>
> Our management was very clear from the moment that 2007 fire happened, we knew we never wanted to be responsible for a fire again. To us, inverse condemnation is not the motivation. We never want to be the responsible for a fire that harms our citizens and community and potentially makes us liable for amounts that could bankrupt our company.

Chair Carla Peterman: Your utility also has the highest residential rates of the IOUs. I know affordability is a general concern for you. Could you please speak to how we should be thinking of affordability with this nexus of this strict liability standard?

> **Dan Skopec:** It is a challenging issue. In California, we are a leader in addressing climate change. Most of the emphasis on climate change is on reducing greenhouse gas emissions. I would say 90 to 95% of state government are focused on that, but there are some agencies focused on adaptation.
>
> This is an issue of adaptation. Climate adaptation is something many of us thought would come in next decade or two decades. We need to focus on emissions now, but we can worry about adaptation later. But everyone who studied climate change knew that climate adaptation was going to be expensive. It is going to be expensive if we lose the snow pack, have coastal flooding, continue to have drought, wildfires, heatwaves. All of this takes money. You are right that this has impacted our rates, but relative to

the impact of the devastation of fire to our community, we think it is a worthwhile investment.

Chair Carla Peterman: As you fill out comments, it is helpful to understand examples of rate impacts. We want to go into these considerations with eyes wide open. We heard from our representative at SMUD about rate increases, and that is good information for us to have. If you have any data based on what you have already invested in impact rates, that would be useful.

PUBLIC COMMENT 3: Julia Donoho, AIA Esq. GC, Legal Constructs.

I was very encouraged by the idea of the wildfire insurance fund. I am dealing with homeowners on a daily basis. We don't recover from these fires from any of these big policy changes necessarily; we recover one homeowner at a time. We don't get our communities back by any government strategies necessarily unless each homeowner tries to rebuild. It is only when each law has someone who cares about building them up that we get it done. The financial impacts on everybody is tremendous.

I would like to answer Commissioner Kahn's question. Who pays? The homeowner pays. I see over and over, on a daily basis, homeowners who don't have enough money to rebuild. Some of them can't pay off their mortgage; they are upside down and bankrupt. The homeowners are bankrupt if we don't solve this problem.

I agree with the woman from CSAC that there are unintended consequences to getting rid of inverse condemnation. I am very concerned with the idea that we have to do that to solve this problem. I think there are other ways and I appreciate that you are looking at all options.
We really need to reform the insurance industry. There are some real problems and I would like to speak on that later.

PRESENTATION 2: Utility Insurance

- David Heller, Vice President Enterprise Risk Management and General Auditor, Edison International
- Russell Mills, Director, Treasury & Risk Management and Treasurer, Sacramento Municipal Utility District (SMUD)
- Bob Marshall, General Manager, Plumas-Sierra Rural Electric Cooperative
- Joshua Jiang, Managing Director, Marsh & McLennan Companies

Chair Carla Peterman: These gentlemen are going to give us an overview of the utility insurance market. We had some questions in our last session on whether the availability of it has changed and whether the costs have changed and how this market compares to other parts of the country. We look forward to hearing your different perspectives.

David Heller: Edison is the parent company of Southern California Edison (SCE), an IOU serving about 15 million residents throughout a 50,000 square mile surface area. My responsibility at Edison includes insurance and I appreciate the opportunity to offer some perspective on the

deteriorating state of the insurance market covering wildfire liability in California as it impacts IOUs and offer our thoughts around risk financing solutions that will help stabilize the insurance markets.

Unfortunately, both the insurance and reinsurance markets for fire wildfire liability are hardening, meaning the number of insurance companies willing to provide this coverage is decreasing and the pricing is increasing. Hardening in the wildfire liability markets is also impacting contractors, who perform work for utilities in areas that carry potential wildfire risk. These contractors are also no longer able to obtain the same level of wildfire insurance that they previously had.

The hardening of the market is due to three key factors: 1) the increased risk driven by increased residential and commercial development in the high fire areas in the wildland-urban interface, 2) increased density and property values, drought, lack of fuels management, dramatic changes in environmental conditions in which we build our infrastructure or climate change, the increased frequency and severity of wildfire events, and 3) the unique application of inverse condemnation to California IOUs.

Insurance companies, like all businesses, need to be profitable. Based on the last several years, insurance companies are not profitable. Through inverse condemnation, insurers face risk different than virtually any other state. The inverse condemnation doctrine in California exposes insurers much to greater risk than to other states due to utilities being held to a strict liability standard without regard to fault. The insurance market deteriorated after the 2017 fires and worsened after the 2018 fires, adding substantial costs to Edison and our customers in the form of higher insurance premiums amid a tightening insurance market. For example, in 2017, our total wildfire and general liability insurance expense was $75 million annually. Whereas in 2018, for wildfire liability alone, excluding general liability, we paid approximately $235 million – a greater than threefold increase.

Many insurers believe that California presents an uninsurable risk given the State's four large wildfires in recent years. Importantly, Edison is taking aggressive action to mitigate increased wildfire risk by, among other things, insulating our electric wires with cover conductors, deploying cameras and weather stations. To address situational awareness, and proactively turning off power when wildfire propagation is the highest. These mitigations should help bring some stability to the insurance market, but alone will not be sufficient to address the ongoing turmoil in the financial markets given that our State is more or less exposed to a year-round risk to catastrophic wildfires. It is also clear that the existing commercial insurance markets do not have the overall capacity to insure these catastrophic events. While wildfires can cause damage in the tens of billions of dollars, the commercial insurance markets can only cover up to $1.5 billion.

For damage above commercial insurance, there is a critical need for an alternative risk financing vehicle, such as a catastrophic wildfire insurance fund sanctioned by the State that would achieve broad risk and cost-sharing, capitalized with initial and ongoing contributions from all

utilities, covered by customer rates just like insurance premiums. Importantly, this fund needs procedural safeguards to incentivize utilities to take the right preventative measures with respect to wildfires. First, the PUC retains its authority to investigate and penalize utilities for violations and regulations. Second, the fund, which responds to claims like insurance, should not cover punitive damages, fines, penalties, woeful misconduct, and similar, which must be paid for by utility shareholders.

Put simply, there has be a better way to collectively manage increased wildfire risk and take utilities out of the role of serving as the insurer of last resort. This is clearly not our mandate and impedes our ability to serve as leading implementers of State clean energy initiatives and policies. By hardening the grid and taking other steps to reduce the frequency and severity of wildfire events, along with establishing appropriate risk financing mechanisms such as a catastrophic wildfire fund, our State will be able to address the deteriorating insurance market for the benefit of customers and the communities we serve.

Russell Mills: With those assets in high risk areas and the existence of strict liabilities, SMUD carries specific policies for wildfire risk even though our service territory is mostly in low risk areas. We do have assets in low populated areas, but we do have a densely populated territory in the lower line region. Last year, we increased our wildfire insurance coverage roughly twofold when you take into account the reinsurance and that we would have to cover part of the claim ourselves. For that, we incurred a fourfold increase in premium costs. This amounted to roughly 1.5% extra on top of our customers' bills just for insuring wildfires to a higher amount. For SMUD, there was capacity available, but this is hardening. We are about to go into negotiating renewals, and we don't know how that is going to turn out. We are anticipating higher policy premiums for the same coverage.

We recognize that having an alternate way of funding, a mechanism we can access, is important to solving this dilemma. A factor for SMUD and all utility's financing plans is the cost of funding. Typically, it is driven by how long you finance and interest rates, but also credit ratings. Ratings agencies have started to comment on the large risk outside of just IOUs and include POUs now. They have asked a lot of questions about our insurance coverages and we think about coverages going forward. We have responded to questions from all three rating agencies and to investors about our risk profile. We have also shown the proactive steps that we take including carrying additional liquidity and increasing insurance coverage. We also have the operational items that my colleague has already described – expanded technology vegetative management, regular ground and aerial patrols of all the facilities, and ignition-resistant construction of powerline facilities.

As fire events continue to occur, we are subject to potential ratings migration that will increase our ratepayers' burden from the higher costs of borrowing. Finding an alternate way of preparing financially is necessary. We have expanded our commercial paper to have flexibility and short-term borrowing options for access to capital funding and for the insurance increases. Those measures are great, but as we have seen the size and amounts of the 2017 and 2018

fires, we could find SMUD and other POUs and IOUs in need of supplemental funding alternatives.

We are participating and are engaged in finding solutions for utilities, including the AB 235 proposal. We feel that any proposed solution needs to balance the benefits to ratepayers with the costs prescribed. Considerations for mandatory participation, or opting in and opting out, are very important. We think there can be an equitable way of structuring it so that utilities only pay for the benefits they receive and give the ratepayers cost-effective financial protection. SMUD has estimated that AB 235, as proposed, may raise our rates significantly, as much as 5% depending on the amount we pay into the fund to participate and the possibility of multiple events happening over the years. From a risk management perspective, this fund as a supplement to coverage will be necessary for us. In closing, we back a solution that everyone could opt into, or if it is mandatory, ensure that the benefits are matched with the assumed costs to avoid lower-risk area ratepayers subsidizing higher-risk areas in perpetuity. All utilities are not the same, yet we do all need a mechanism for funding alternatives.

Bob Marshall: We are a member-owned, cooperative utility that serves the northeast Sierra. We serve Plumas, Lassen, Sierra Counties and a small portion of Washoe County. There are three co-ops in California, and we serve roughly one-tenth of 1% of California's load. We have 18,000 meters, 1,500 miles of overhead lines – about half of it in U.S. Forest Service lands. We serve six customers per mile. For comparison, Turlock Irrigation District has the same load and line and they have 12 times the customers and 12 times the load. We have 30% unemployment in our districts. We serve where no one else wanted to serve. We are basically the leftovers of where utilities passed on serving power outages in rural areas and back in 1938 and, in 1939, we took over. Since then, we have rates lower than PG&E and better reliability.

We have done our work on wildfire prevention. In 1989, the Forest Service blamed us for the Layman Fire and we eventually settled. Our insurance cooperative that we were a part of said, "You need to groom those lines." Since 1995, we have spent millions grooming our lines. This last winter was a monster. There were days I worked from home because there were trees across my driveway and I couldn't get out. But in our entire system all winter, we two 15-minute outages and that was it. We have invested in back-up power and low carbon cogen power. We have built a transmission line to the Nevada grid. We are the smallest generation transmission distribution utility in the lower 48 states. So, we have done our homework. We turn our backup line in the national forest off in the summertime. We put almost our entire western half of our trees in single shot. We are even looking into a program for buying everyone a Generac in Tier 3 wildfire risk areas.

When the omnibus bill passed in 2017, federal strict liability was kept. That was a godsend for us. Rural electric cooperatives serve more than half of the United States and 90% of the land mass, own half of the distribution poles, and have 10% of the load nationwide. The rural electrics formed the giant insurance cooperative called Federated Rural Electric Exchange. They have always taken care of us, even though in the past they pushed us to improve our service and lines. Last year, we went up for renewal and got $35,000 costs for $15 million of umbrella

coverage. This year, no one would touch it except for Lloyd's of London, who was $7 million for a massive deductible. That would have been a 10% to 15% rate increase for something that didn't provide very much cover.

We are pretty lucky. We have a great track record and Federated inspects our lines and gives us feedback. We have done our job. PUC has inspected our lines, looked at our underground, and said, "Great job. Keep doing what you are doing." The last time they found a few missing high voltage signs on some poles, and that was it. But no one would insure us. Now, Federated has kept their base coverage for us. I just came from the National Rural Electric Cooperative Association meeting in Orlando where we discussed how to keep Federated's reinsurers from dumping half of our $20 million in remaining coverage. We want to bring them up, show them we are different and have lower risk than you think just because we are in California.

What struck me is that Federated is open to rural electrics in one or two rural utilities, that is it. There are a lot of small utilities that have lines into the woods, and I don't know if they will be able to get coverage. So we have been hearing alternatives like undergrounding. We did calculations and the four rural utilities with a lot of undergrounding would double or triple our rates for every one of us. NEPA, CEQA, archeology – it is a nightmare. Ours is a little flatter than Trinity, but you are digging in granite is virtually impossible where we are at.

Our view on insulated wires is that they are brought to you by companies that want you to buy more. The problem isn't that a tree hits a line and burst into flames, generally speaking. For us, it's more people who think they can cut a tree away from the lines, then it hits the line, and the fire goes.

We believe strongly that if we cause a fire, we are on the hook for it. We have to have enough insurance to cover it. Our insurance cooperative makes sure we have acceptable risk. We have drunks who drive into our poles then march off. We can't control that, people being dumb with our system. We can only do the best we can and hope.

When you look into a voluntary pool, I beg you not to make this mandatory. With all that we do for our lines, any massive statewide pool with the disparity of size – from very small utilities to very large utilities – it is very hard to have equitable balance.

The bottom line is that we are trying to self-insure because we can't get commercial insurance because of the strict liability issue. I know that someone needs to pay for that and the driving issue at the heart of this is climate change; but this is not socializing the damage, it is dumping the costs on us. Adding millions of dollars of cost to a small utility is going to put a lot of us out of business. We believe the answer is reformation of the law; however, even a cap would be tremendous.

Joshua Jiang: Today, I will talk about the current state on the availability and the affordability of the liability insurance, which address wildfire liability stemming from property damage, business interruption, and bodily injury for California utilities. Specifically, my remarks today

are solely intended to inform the Commission on understanding the current state of the liability insurance market for this type of risk.

Marsh is the world's largest insurance broker. I have been with Marsh for over 22 years. My current and past clients include Fortune 100 technology and telecom companies, large manufacturing and chemical firms, and California IOUs. I have clients that manage and transfer key risk, including general liability and excess liability insurance, covering wildfire liability for California utilities. For liability risks that are transferred, Marsh works with its overseas offices to access insurance capacity globally, including carriers throughout the United States, Lloyd's of London, European, and Bermuda insurance marketplace.

Next, let me explain how corporate liability coverage is typically structured. Unlike homeowner insurance, which one carrier, subject to state regulation, offers coverage for each home, most corporate liability is built with support of many carriers on a vertical tower with similar coverage but varying price. Those carriers are typically non-admitted, which enable them to provide pricing and coverage terms not subject to state regulations. On average, 10 to 50 global insurers are typically involved in a vertical tower. Each insurer will offer between $10 million to $50 million liability limit at different attachment points. Those carriers attaching lower will get higher premiums or rate online for the capacity they put up due to the higher likelihood that they will pay a higher claim. Those carriers at a higher attachment point will receive less premium than those below due to the lower frequency and severity of the anticipated claims. Those towers are typically showing low frequency, high severity liability claims.

Per Chubb, one of the largest commercial insurers, their Bermuda division puts out an annual liability limit benchmarking report. The utility sector generally purchases a median liability of $415 million with a maximum liability limit of $1.25 billion. The larger the company – in terms of customers, revenue, service territory, and a number of other risk factors – the higher the liability limit they typically purchase. The maximum global liability insurance capacity has been consistent at around $1 billion to $1.5 billion. Total liability limit available to each industry sector is usually less than the total market limit due to carriers who do not deploy their maximum capacity for any one industry sector or any one kind.

For California utilities, two additional forms of property damage only for liability insurance capacity are also available: reinsurance and cap bonds. Reinsurance can be used in two different forms. One is using reinsurance to increase the capacity the liability insurer can offer, which is insurance for insurance companies. Secondly, California utilities can access reinsurance directly through a captive to purchase liability coverage related to wildfire property damage. Cap bonds, or insurance-linked securities, are a relatively new form of capacity available for California utilities. Cap bonds provide a way to access capital market directly in the case of catastrophe, such as a hurricane, earthquake, and now wildfire. Reinsurance and cap bond capacity usually sit on top of existing liability to provide a limit in excess of $1 billion. The total capacity for those two markets is uncertain at this point, as both markets are experiencing reduced capacity and an increase in pricing.

The overall liability insurance marketplace has been soft for the past decade, meaning the marketplace has been competitive carriers have been willing to insure all types of risk at a reasonable price; however, a key exception is the California wildfire exposed risk. Insurance on California wildfire liability risk is especially troubling for California utilities given the application of inverse condemnation, the expansion of the wildland-urban interface, climate conditions, the frequency and severity of utility losses, and the deep public aura of regulator utilities. Today, the liability insurance market covering wildfire for California utilities is in distress. Most of the insurance and reinsurance is disappearing with the remaining participants seeing dramatically increasing pricing. The California utility sector faces both a capacity reducing, meaning less insurance limits are being offered, and dramatically increased pricing. The 2017-2018 wildfires have further accelerated this trend.

Currently, the liability insurance capacity is a moving target. Most traditional liability insurers have already decided to exclude wildfire liability insurance or discontinue writing liability insurance for California utilities going forward. A few remaining large carriers with strong parents and balance sheets are still offering large capacity limits, but at a premium level pricing at a 1 in 2 or 1 in 3 loss ratio. Attachment points on liability vertical towers no longer seem to matter given the severity of those losses as carriers want to charge the same rate for the capacity even at a higher attachment point. If wildfire losses of the last few years continue for the California utilities, a collapse of the insurance market will follow. We expect the liability insurance market to continue being distressed until meaningful regulatory reform, new and improved technology and mitigation tools can be implemented to reduce wildfire frequency and severity.

Commissioner Michael Wara: I want to ask the folks on the buy side who procure insurance: what deductible do you carry? We have heard the discussion of points and the layers in the stack. Where the level of self-insurance is might be important for determining cost of the coverage and the amount of coverage the company can retain in total. I am curious how you think about that, particularly in the context of the disasters that have unfolded across the state over the last several years. Has your thinking changed?

> **Russell Mills:** Last year, we increased our coverage from $100 to $300 million. That is the total claim. The deductible is about $185 million that we are actually covered for, so we are liable out of pocket for the other $115 million. We paid a fourfold premium increase. I think it highlights that having other funding sources are necessary when you see the size of the fires and the liability that could occur. So $300 million, take $100 million out of that, is dwarfed in comparison by the size of the Camp Fire, for example.
>
> We look at it as something necessary in having some sort of coverage, but we also recognize the need for other funding alternatives. We have increased commercial paper capacity and we think having some opt-in/opt-out wildfire insurance fund is prudent as well.

David Heller: Before the 2017 fires, we took a $10 million retention. I'm not sure what it's going to be today because the markets have changed so much. You don't get typical reduction in premium as you go higher in the tower now. Typically, you would take a self-insured retention to the extent it made economic sense; you would take a higher retention if there was a credit given to you for doing so in your premium. That is not the case now.

We also have two industry mutuals that are excess of $10 million; they don't cover the whole next $100 million layer, but a substantial part of it. They are ostensibly always going to write us, but they are going to want their loss ratios to get in line with what their particular governance is, so you are going to pay equally for that.

The other thing we are seeing that for the first time is a co-insurance feature. The way co-insurance works is, let's say we buy $100 million in the first layer, but in the first layer the co-insurance might say for every dollar of loss that is paid, we pay 25 cents and the carrier pays 75, so the co-insurance is 25%. That has not been the case in the markets prior to this year.

Bob Marshall: It's a negligible deductible for us. The deductible isn't the issue. It is the top end that is the issue. Our insurance cooperative has not encouraged or pushed us toward a high deductible.

Commissioner Michael Wara: Let's assume there is an insurance catastrophe fund similar perhaps to Assemblymember Mayes'proposal or something different to that. Do you have thoughts about where the attachment point for that should be? Because that is really an important issue. Presumably, and I am interested in hearing your perspective as well, a higher attachment point for this kind of a fund would be above whatever commercial insurance you are procuring would perhaps open up the availability of more affordable coverage if we are talking about only insuring the catastrophic events.

Is it your thinking that that might enable states to procure carbon? Because the if the market is in crisis, the State of California is going to have hard time perhaps buying coverage as well. I am curious what your thoughts are on that and on the market perspective.

Bob Marshall: So there is a problem with the size issue. You have a lot of different sized utilities. Some of the small utilities having somewhat common sizing, there are still huge swings on exposure and load. What makes sense for a big muni or the biggest IOUs, the size issue would complicate that for us.

David Heller: I will echo that point of view; we think size does matter in this equation as a larger MOU (municipal-owned utility)/POU (publicly-owned utility). We think that having an attachment point that is relative to our coverage will help us determine how much participation, assuming it is opt in/opt out and you have some scalability too. If it is mandatory and the attachment point is prescribed based on our size, I think we still

see the benefit of having an alternative funding mechanism, but we would have to look at how it is actually structured.

Russell Mills: We have given this a lot of thought as you might imagine. We do see as a catastrophic wildfire fund that we clearly have to scale. There are many solutions to scaling based on the size of the entity involved including putting smaller entities into a fund of their own, so they get size and breath.

We also see it as a property damage only fund. I think this is important relative to your question about whether the insurance markets recover. If you complete the inverse condemnation doctrine by allowing cost recovery to a fund, remember that inverse condemnation is only allowed for property damage and attorney's fees. So if the fund covered property damage and attorney's fees, and all of the other potential tortious conduct is left to traditional, commercial insurance markets, in theory, we think those would recover over time because they now can underwrite the leftover bodily injury and other tortious action as they do in any other industry. And the inverse part that is property damage is left to the fund.

Chair Carla Peterman: You listed lots of reasons why the insurance industry is concerned. If our utilities do everything possible and there are still wildfires, is there still going to be an insurance market?

Joshua Jiang: Not when these fires happen every year because we are in a business to make a profit and no amount of premium is large enough if they are writing a check every year. Some of the examples given earlier, such as the spaceship hitting the line, or anything else related to that and things outside of your control.

Especially if a utility did everything prudent to protect and harden their systems and a wildfire still happens, how can insurers assess how much to charge a utility company from that perspective?

On the limit question, in general each industry has been very typical, so the size of the losses is unprecedented. So I do not think there is enough insurance capacity in the world to cover some of the recent losses that we have had estimates are north of $10 billion easily.

Commissioner Michael Kahn: I want to focus on a couple of parameters that you are articulating. You said the market only bears $1.5 billion dollars. As I understand what you are saying, you can't buy insurance for a $5 billion dollar or a $10 billion dollar liability even if you wanted to, is that what you are saying?

Russell Mills: That is exactly what I am saying and I think others agree. I also want to point out this was true before the 2017 fires.

Commissioner Michael Kahn: I understand, but we need to have some basic facts that we can work with. Fact 1: It is not possible to buy insurance for this scale of the problems of recent wildfires under current law. Is that right?

Russell Mills: That is absolutely correct.

Commissioner Michael Kahn: And the limit, all we can buy no matter how much we can pay, is $1.5 billion. Is that right?

Russell Mills: Approximately. There might be some cap bonds above that, but cap bond capacity is not going to add substantially to that number.

Commissioner Michael Kahn: Fact 2: Under current law, your exposure with strict liability – and it seems like you don't like this very much – is unlimited. So presumably after the insurance goes and you exhaust all your stockholders' money, that is the end of it, right?

Russell Mills: No, the way it would work is, after we burn through our insurance, we would submit to the Public Utilities Commission for cost recovery and go through a prudency review. If we were prudent, under current law, Section 451 of the Public Utilities Act, we would get a cost recovery for those expenses related to the wildfire that were deemed to be prudent.

Commissioner Michael Kahn: The ratepayers would pay?

Russell Mills: The ratepayers would pay for it.

Commissioner Michael Kahn: The ratepayers would have unlimited liability?

Russell Mills: That is correct. If we were imprudent under current law, which happened in the 2007 SDG&E fire, then it goes to shareholders.

Commissioner Michael Kahn: In that case, if it's unlimited, then you run out of money.

Russell Mills: It's over.

Commissioner Michael Kahn: So it doesn't sound like insurance is the solution to this problem.

Russell Mills: Commercial insurance is not the solution.

Commissioner Michael Kahn: Nobody has commented on the economic effect of eliminating inverse condemnation. I think if you agree with SDG&E's notion, there should be some certainty and prudency standard with a limit to liability of the utility. Do you agree with that?

Russell Mills: Absolutely, there has to be a clear definition of prudency.

Commissioner Michael Kahn: I would guess that PG&E would agree with that. If the utilities' goal were achieved, what would be the effect on insurance? Would they be able to get $1.5 million dollars at a reasonable cost if the law were changed?

Joshua Jiang: It's hard to say right now. Over the last few years, every time a big fire happens, you have to wait 1.5 years to wait for the CAL FIRE reports to come out to determine liability. The question for insurers is when you have two big fires two years in a row, that kind of frequency and severity is not acceptable. Whether it's inverse or not, an insurer would view that – similar to other liability risks that have happened in the past – to be uninsurable.

Commissioner Michael Kahn: So we may be facing a problem in which we not only have a problem above the $1.5 million, but we may have a problem up to the $1.5 billion because I'm sure the insurance carriers will sell us $1.5 billion in insurance for a $1.5 billion premium. Is that right?

Joshua Jiang: Probably $1.6.

Commissioner Michael Kahn: So we're not solving the $1.5, but you're not giving me any comfort here. Everyone has been talking about this magic fund, this catastrophic insurance fund. I want to know whether anyone here is advocating for a cap. I know there is disagreement around how it is funded and people in the low-risk areas don't want to pay a premium equal to people in the high-risk areas, etc. But nobody has talked about a cap. In a catastrophic fund, I assume you want the Governor or Legislature to do something. Has anyone shaped this in terms of what a cap should be? If so, I would like advice about that.

Russell Mills: Yes, we have done modeling. I don't have them with me today, but we are happy to share that model with the Commission. We used outside modelers; there are about three that do this for insurance purposes. We used AIR. That work has informed our assumptions about the viability of this fund. One of those assumptions has to be what is the stop loss for the fund.

The way we have run it is a $20 billion dollar per occurrence and a $30 billion in the aggregate. I want to emphasize though that these are assumptions – if you want to run $15, $30, $50, you can run the model and see the cash flows that come out of it. But one of those assumptions has to be a stop loss. You cannot have infinite liability.

Commissioner Michael Kahn: I want to be sure we understand. So we have parameters: 1) the cap, 2) what we are insuring for – so presumably if the entire concept of inverse condemnation went away, but we still had the certainty you're talking about, over time the cost would go down.

Russell Mills: Yes, we will provide you more information about our assumptions and you can play with the assumptions. Yes, 1) a cap in the fund, 2) what is insured, and we are advocating for property damage only because that solves inverse condemnation problem and that is where the issue is, and 3) the retention, which would have to scale for the size of the company.

Commissioner Michael Kahn: There seems to be disagreement here as to where it attaches. We don't know that yet.

Russell Mills: We don't, but what we do agree on amongst the industry is that it should be a catastrophic fund and that the catastrophic fund should be different for us versus SMUD versus a co-op. So there are some general parameters that we agree on and use that as a construct to work out how fund structure would work.

Commissioner Michael Kahn: It would be a lot more helpful to me and my colleagues if someone is proposing a catastrophic fund could help us understand the three parameters: 1) What is covered? 2) What's the cap? 3) How will it interact with current ability to buy insurance?

And there is another issue 4) How will it be paid – ratepayers, or taxpayers, or the like? I understand you will all have different views about that.

Russell Mills: Regardless of the funding source, it needs to be broadly socialized to pencil out, so that it is all ratepayers or all taxpayers. That is key to making this work. It is socializing the cost.

Chair Carla Peterman: Should this be voluntary?

Russell Mills: I don't know. It could be opt-in, but you certainly need critical mass to pencil out. Once you have critical mass, it does not be necessarily have to be mandatory, especially for smaller entities.

Commissioner Michael Kahn: This goes back to whole question of equity. I make the observation to our staff: thank you for inviting the gentleman from Plumas. It puts in sharp relief the differentiation of how this falls. The equity issue is a very difficult, and I appreciate the mix of perspectives here.

Commissioner Pedro Nava: As we have this conversation about what is available, who can get it, what it is going to cost, do we as a Commission ought to also talk about the structure of the entity that will administer the fund or do we leave that to somebody else? I understand they have had the legislative hearings, but I am wondering or not it is part of our responsibility to look at what is being proposed and come up with our suggestions as to how the fund should be structured, paid for, and administered. I don't know how anybody else feels, but if you are

giving this amount of responsibility to this body, shouldn't it have greater weight on this issue than volunteer appointees?

This is really a significant issue for the people of California. In part, what we are talking about and dealing with the wildfires, utilities, ratepayers – it's all Californians. I understand as you come up with the plan to contribute into this fund, you have to think about the participants. But it also strikes me that it ought to be spread across all taxpayers. You are going to have people who complain about it because they don't want to have to pay another 50 cents. I remember there was a proposal to add 25 cents to people's water bills and they went nuts and couldn't stand it. But the fact of the matter is this is a California problem. It isn't a utility problem or a ratepayer problem. It's the State's fund.

As Californians, we should all share the benefits, but we should understand we have to share some of the liabilities as well. It's an open question to my fellow Commissioners. It's easy to do a 3,000-foot view and have a conversation about, "We should have a wildfire catastrophe fund." But the devil is in the details. Maybe we are in a pretty good position to take a fairly deep dive into how to structure this fund.

Let's assume we all agree that a catastrophic wildfire fund is a good idea. No matter how much money you have, we are not going to buy more than $1.5 or $1.6 billion in insurance coverage. There is a tremendous gap that we need to bridge to resolve this issue of reliability, stability, and the future of energy in California.

Chair Carla Peterman: In our next two meetings, we can do a deeper dive on some of these points. I think our responsibility is to provide recommendations for something that is sustainable. To the extent that the entity's structure matters, I think it is reasonable for us to define it. Are there existing entities that can take on this role versus creating something new? Commission Nava, I think you know very well the organizational tools we have.

We have the opportunity to provide input both the 30,000 foot level and in the weeds. It is not our responsibility to put together a full legislative package, but whatever we can do to inform the Legislature this year is helpful.

I would caution against chasing a moving target. I would rather not look explicitly upon the Mayes' bill but have us think about the elements that make something workable so that the Legislature has something to go back to that we have created that puts some of these markers in the sand.

Commissioner Michael Kahn: Thank you for raising that. We have an absolute obligation to identify what is not working. What I am hearing is that insurance currently is not working and is not available to solve the problem. If that is the fact, we need to tell the Legislature and the Governor what is not working. Whether inverse condemnation is working or not is debatable, but we need to wrap our minds around it. We need to figure out what is not working in an objective fashion so that the Legislature and the Governor know what they have to address.

As to what to do to fix, we need to be as helpful as we can with parameters of what the elements of the fix are. Commissioner Nava has suggested a fairness principle and a risk-rating principle. We need to think about that. As to the ultimate fix and mechanisms to fix, that I think is a bridge too far. We can't figure out the insurance market. On the other hand, if we agree that we need parameters and these are the issues we face, it does seem to me we can be unequivocal about that. This is not for the faint hearted or the volunteer.

The State has had redistricting commissions and other commissions where the obligation of the commissioners is to fix something. We need to say what is broken and needs to be fixed. We should articulate things that are important, such as equity and the like, and get guidance. If we are smart enough to figure something out, great. If we are not, we need to tee it up unequivocally. The State has an unprecedented problem and we need to face it. That is what the Commission is for.

Chair Carla Peterman: Final questions?

Commissioner Michael Wara: I heard a number of people say this, but I would like to confirm: without a change in the physical risk environment and better outcomes in the world, this is uninsurable? This is in our charge. One thing I thought I heard is that there may be no way to spread risks through a private insurance mechanism unless industry practices change in such a way that there are fewer utility ignitions. Is that correct?

> **Joshua Jiang:** For California utilities specifically, if the frequency and severity stay the way it is, then I don't think the liability insurance market for this coverage will exist. When you have one occurrence every year, that will burn through the entire tower and not every insurance company can pay the entire claim. That is just not sustainable.
>
> **Bob Marshall:** Other states like New Mexico, Colorado, Wyoming, Montana all have climate change hitting them and having huge issues going on. My brethren out there are able to get cost-effective insurance. The only difference is strict liability. Everyone is getting hit by it. How do we fix this? We have neighbors who have coasts and all types of vegetation and they are able to afford insurance and they are seeing catastrophic wildfires and premiums go up, but they are getting coverage. That is the huge difference between us and them.

Chair Carla Peterman: Given this comment, what is the situation in New Mexico? There are there other states with catastrophic funds. But what I am hearing is in those states, there is some commercial insurance available. Are these other states that have catastrophic funds, but no access to commercial insurance?

> **Joshua Jiang:** I am not as familiar with that part of it. I want to address the question related to availability to the other states and why is California different. If anyone compared our home prices to New Mexico and our population density to any of those

other states, I can guarantee you that the same fire over there with the same acreage will have dramatically different damages. That is what I talked about earlier about where people play on the tower and where the losses happen. Show me another state with similar fires that have caused 15 billion-dollar losses.

Commissioner Michael Kahn: What he said, with all due respect, is nothing we can rely on. If we are going to make observations about other states, we need to get data that is reliable. We cannot go to the Legislature and say what other people are doing without reliable data.

PUBLIC COMMENT 4: Julie Donoho, AIA Esq. GC, Legal Constructs.

This is a learning curve for all of us. I would like to bring up the comment of mass tort. I think understanding the homeowners' point of view and the homeowners' insurance point of view was missing from the last panel. THEN we were talking about the utility insurance's point of view. I think it all comes down to what is happening under mass tort. I have been working with some of the folks in Santa Rosa who are doing mass tort and clients who wanted to do mass tort. At first mass tort seemed like a great idea, but it is a five-year process to go through and covers about seven causes of action: nuisance, trespass, public utility commission, inverse condemnation, negligence, health and safety code violations. They are trying to hit on all bases. If you go back to Cedar Fire, the homeowners sued in mass tort, and the insurance companies came back afterwards and subrogated and said, "You have to pay us something." Then there was a negotiation. When you get your first insurance payment, it is called ATB. The second one is the replacement cost if you rebuild, but it is usually not enough to get your house back. So then you sue and get emotional damages in the mass tort. So if you go for all of that and insurance says, "We want our piece back," that is where subrogation comes in. In the Cedar Fire, insurance companies negotiated for half of that. They didn't get the whole amount back. They negotiated an amount and they all moved on.

This time in Santa Rosa, the insurance companies are saying no and going to PG&E themselves. So the inverse condemnation is creating an option for insurance companies to recover everything that they paid out, which is not what we should be doing. If you want to socialize risk, take away that option from them. Make the catastrophic coverage not have that subrogation option. That is where you could really make a change.

Some of the homeowners lost family members. They had no warning. Overnight, they were about to die or lost everything in very short order. By morning, the town was devastated. The stories go on: post-traumatic stress disorder, physical injuries, all sorts of losses. Those deserve an opportunity to recover if PG&E is at fault. But maybe insurance companies shouldn't have the ability to subrogate first; it takes away the possibility for the homeowner to even want to do it as it is a five year, very difficult process. The attorneys don't want to take their claims as much because theirs are much smaller now and the big suits are insurance companies. I have had trouble recommending anyone to go through with it because it is a lot of work and the recovery the homeowners are going to get are much smaller now. It changes the equation, but

big insurers will get all their money back if they are successful. Our ratepayers are paying. That is one area where you could have some success and should dive into.

Chair Carla Peterman: We will be taking on the issue of residential insurance at the next meeting.

PRESENTATION 3: Community Needs Around Wildfire Damages

- Barry Tippin, City Manager, Redding
- Shari McCracken, Chief Administrative Officer, Butte County Board of Supervisors
- Patrick J. Minturn, Director, Shasta County Public Works Department

Chair Carla Peterman: We have assembled this panel because at each location we go around the state we want to hear representatives from the local community who have had to deal with costs and liabilities related to wildfire. We have heard a little bit from the representative from the association of counties about some of the initial costs that you face. This is your opportunity to share with us some of your insights.

Barry Tippin: Thank you for coming up and taking on this very important issue as a state. We are facing some unprecedented conditions. I think it is good we are taking a holistic view to address these issues and hopefully a better fashion going forward. I think we all recognize that in these events there is an extreme amount of community impact that ranges from financial to emotional. While I won't delve much into the emotional impact, I think it is important that we don't dismiss that. As a functioning government, we have to forge ahead and continue rebuilding and recapturing a society that was once accepted as the norm. We also have people who are struggling in many different ways. There are great facets of difference between individuals; some who roll with it and are able to rebuild or are better equipped, to another who may be fully insured but is still struggling with the loss and the post-traumatic stress disorder. I won't focus on those elements, but I don't want to lose sight that that isn't at the forefront when you talk about rebuilding a community. I am going to focus on the different financial resources that could be available as we move through recovery and our unmet needs as we move to that.

It is important to note that our State is pretty amazing in its response to emergencies; we should not forget that. When that emergency hits, the ability for our State to mobilize mutual aid and get after the threat is fascinating and unparalleled throughout this nation or perhaps throughout the world. During that initial emergency, especially as it moved into populous areas, the response from CAL FIRE, Cal OES, and all the other agencies was phenomenal. And the resources were wide-ranging and almost unending to deal with that emergency, from technology to help with recovery efforts and identify hotspots.

But as you move to post-emergency threat, and you start to look around and think, "What's next?" That is when recovery becomes more difficult. In the immediate aftermath, the promises are vast: we can do this, we can do that. The reality is the details really prevent actual receipt of those funds and the promises that were made aren't quite correct.

For example, if you look at indirect damages caused by the fire over the period of three or four weeks, you start to realize as a government entity that there is no funding. Cal OES recognized that erosion control was important because they are heading into the rainy season, yet there were no funding sources, especially for residential or urbanized areas. Thankfully, the Water Board gave a grant to the Western Resource Conservation District and local non-profits stepped up and provided erosion control in and around private properties. We had some community engagement to deal with these issues, but we were unable to find any source that would deal with the post-fire damage: erosion control, storm drain issues, flood prevention. No funding sources for dealing with that so we are using our own resources, and this was all unexpected. Storm drain utilities have no rates and you can't change them because of Proposition 218. We had four people for 62 square miles running our storm drain utility. Surface water and pollution that comes from hillsides into your systems was another problem. People forget about these issues post-immediate threat.

You find programs that seem viable. We had our fire in July and August, so we rapidly put in our grants for reforestation, wildfire mitigation, erosion control. We got a notice of intent that is great, but we are still waiting to find out if we are getting any grants. At this point, I would expect that we would get a grant for erosion control after the rainy season is over and I am not sure we will need it at that time. Relooking at some of these programs and their timing is critical.

We also need to rethink NEPA clearance. We have emergency restoration approval through FEMA for river trail bridges that serve as emergency access routes. We are still waiting for this clearance; we have a contract ready to go, but it has been four months. Unlike Caltrans, Cal OES does not have any delegation of authority to do NEPA on behalf of the federal government. When you look at the process and the financial and unmet needs, that is dependent on the scope and scale of the disaster as well as the economic base. If you look at Redding, the difference between what the County may face and what the City may face are different. This is largely due to two factors: there were more homes were destroyed in the County than the City, and rebuilding spurs the economy in the City, such as through sales tax and transient occupancy tax, that the county does not get to realize. There is a significant amount of upfront cash required for restoration, even if you have a national declaration, which will provide 94% reimbursement between state and federal governments. Most of that you will not see for a year or more, so you have to find ways to fund those activities in restoration prior to seeing a dime. We are fortunate to have seen $100,000 reimbursement from FEMA, so we only have about $12 million to go. Cal OES has worked well with us and has provided recommendations and mentorship, but this is still a long, arduous process.

Lastly, debris removal should be addressed. I can't say enough about how CalRecycle were helpful and gave good guidance. I commend Mr. Minturn and Brian Crane for their proactive work working with CalRecycle and Cal OES to accomplish it in quick order. However, theoretically you are sitting there with a 6.25% share of debris removal. I think ours go for $100 million, so you are looking at a $6.5 million share. The State says not to worry about it and that

it is not going to get billed and history will tell you that that probably is true, but try to find that in a budget document or in a statute and you can't. It makes us nervous that we don't have that sort of financial debt that is going to be called soon. I don't think it will be based on past history, but if we are going to solidify our response, from emotional to causation to insurance issues, we should also be looking at the complete package of financial stability within the government system and those are what I think would be important.

Chair Carla Peterman: Let me ask a quick clarifying question to get a sense of the magnitude of the cost. You mentioned expectations for FEMA for $12 million. Out of what? Was that the lion's share?

> **Barry Tippin:** Yes, that is the lion's share. We were very fortunate in the City in that the fire came up and into our subdivisions from the exterior, but it didn't jump. Unlike Santa Rosa, we did not have significant jump into and through the City. It jumped into neighborhoods and leapfrogged over streets. Our major damage – and I hesitate to say this – was our electric utility. We lost probably $8 to $9 million worth of electrical infrastructure. That is the lion's share of our costs. The rest is bridges on our river trail and various aspects of the fire apparatus costs over time.

Shari McCracken: I am here to discuss local impacts from the Camp Fire to our communities and to talk about gaps in response and recovery efforts that we have experienced as we work with our state and federal partners. This really is the human side of the story today. Obviously, we are still knee deep in fire response. We aren't even in recovery yet.

The Camp Fire had similar impacts to those discussed by Mr. Tippin with two exceptions: though it is hard to quantify, there is a greater feeling of uncertainty and less hope for rebuilding; and the order of magnitude of the destruction is testing every level of government. It is showing us all – federal, state, local – where are limitations are and that there is a lot of work to do, especially in rural areas.

You have heard the staggering statistics: 19,000 structures; 14,000 households displaced; 30,000 people displaced; 85 people lost their lives. You have heard about the insurance cap at $1.2 billion. The state cost of partial debris removal program alone was $1.8 billion. Know that my statements are not a reflection of individuals. I have truly valued working with our state and federal partners through many disasters and I appreciate that my staff and I have a lot to learn. This is a big disaster for a small government to manage. The impacts are varied and we are not sure how it will reshape Butte County. The county will not be what it was.

The housing impacts are the most pressing. We had a 1 to 2% vacancy rate throughout the County. We now have 30,000 people with nowhere to live. The areas that burned was where a lot of our affordable housing was. It is taxing FEMA and taxing the State trying to find places for people to live. We are losing people to other areas daily due to lack of housing. I think that this will be the first time in our census that we will have a lower population county wide compared with the past.

The economic impacts are still to be determined. We lost 1,400 businesses; that's huge in a rural county. The related jobs that were tied to those businesses. It is going to hit our region's economy, not just the local one. The loss of population will also affect businesses. No housing, people leave, businesses are unable to sustain.

The damage to public and private infrastructure is staggering. Utilities still only have temporary fixes in. PG&E has only put up temporary lines. The town's sole source of clean drinking water that serves 10,000 households has to be completely replaced. They are predicting 2 to 3 years before there is clean drinking water in the town of Paradise. None of our roads, including our state highways, were built to handle the level of traffic from heavy trucks and fire equipment that we have experienced and that will extend to other counties. As thousands of debris trucks for the next year go up and down to landfills, the lives of our landfills will be shortened and it is not easy to put in new landfills in California. We have over 100 private bridges and private roads that will also be a challenge. My guess is a lot of those aren't insured. We have yet to discover the extent of damage to private wells and septic tanks. The watershed impacts are huge and we are finding that jurisdictional responsibilities are unclear. Testing and monitoring in the State has stepped up, but they don't have funding to do it. Hazard trees are a threat to the public right of way. In the county jurisdiction, there are 110,000 trees that need to come down. That is $110 million dollars if we get a deal for economies of scale for cutting trees. There is nowhere for that timber to go. We have log decks that are building up and could burst into flames this summer. It is a vicious cycle.

The public health and safety impacts are long-term. Debris clean up could take up to 18 months, meanwhile the toxins are sitting there. Who knows what the long-term issues are, especially from breathing in the smoke? Trauma – primary trauma from fire survivors and first responders, secondary trauma from all those supporting the incident. We have increases in domestic violence, drug overdoses, crime, symptoms of massive trauma. Mental health services are already in short supply for the size of our population and demand is increasing. Medical services are hard to come by. Even more difficult, one of our hospitals is gone and all of the jobs tied to that.

Also surrounding jurisdictions that are suffering collateral damage. They had to bring in 30,000 people without homes and 50,000 who were evacuated. Their populations grew 20% in one day. Demand for services are skyrocketing. Revenue is not. There is no additional housing stock. We have people crammed into single family homes, apartments, on the street, in RVs, camping. FEMA and Cal OES are not tasked with or resourced for helping surrounding jurisdictions; they just help within the disaster footprint. This is something we haven't seen in the past. Normally, our surrounding jurisdictions can handle it. It's not that big of an impact.

There also other unknown impacts. Who knows what the long-term impacts will be for residents, working in the field during the event, to our economy, to our environment? Census issues will impact funding in the future. State and federal assistance will be long gone by the time we figure this out.

As to gaps in emergency response, because this was so large scale, there are not enough human resources for mutual aid in California to support a disaster of this size and length. Mutual aid is awesome for a few weeks. Four to five months later, there are no resources, especially medical personnel, animal control, and the human sheltering is not sustainable. We are on four months and five days and we are still sheltering people. The Red Cross doesn't have enough volunteers across the nation. We literally ran out of supplies during this event. We went in and out of the state that were not enough. Technology failed us – cell towers, phone lines, network lines. If you are planning evacuation routes, make sure you know what is at the bottom not just in the fire areas; it bottlenecked in Chico and caused a five-hour backup. Donations management is a nightmare when everyone wants to give, but there is nowhere to put the stuff. Debris removal, as Mr. Tippin mentioned, in federal law it says "may," it should be "shall" for an event of this size. The hoops we had to jump through to justify debris removal was insane. Local emergency management staffing was not sufficient. Butte County has one person, our emergency manager.

For disaster recovery challenges, I echo Mr. Tippin. Our resources are stretched thin; we are not doing our day jobs. FEMA's model for interim housing for 1,500 to 1,600 households or 4,000 or 5,000 people. There is not a mobile home on the ground yet. FEMA's model is to have a big piece of land with utilities right there and 1,000 mobile homes. You don't have that in rural America. There is not big land in our cities. The amount of money they have spent to date to not have a mobile home on the ground probably could have built affordable housing and would have been a reinvestment. At the local level, every local jurisdiction should support interim housing. We have public outcry, political pressure, perceived negative impacts. "Don't put those people there." I'm not sure who they think "those people" are. It is us. It has been a nightmare, so I tell the jurisdictions be ready, be strong, especially to elected officials.

Infrastructure is critical for recovery – water systems, septic solutions, roads – and funding is vital. The model the state uses is: "Go fix it, Butte County, and we will reimburse you later." We don't have $30 million or $50 million or $100 million. We are inventing things that have never been done or allowed before in previous events. Finally, manage local expectations surrounding state and federal assistance. Our partners have to listen to local jurisdictions on what our needs are. Task forces in Sacramento should not be making decisions on our behalf without our input. Changes in direction in the middle of a disaster are not helpful, things we thought we had in writing and then there was a 180. The public doesn't trust government right now because of the 180 turns we have had to do. We are told constantly, "Don't make the decision based on cost. Just do what is right," but we have to take costs into consideration. We don't have unlimited resources.

What's next? We must work together to identify gaps and solutions in the emergency response system. We need a new playbook for large scale disasters. Systems are too complex; information is fragmented. We can't figure this out in the middle of the disaster. No one knows with something this big. Legislation should be in place that is not event specific so that legislation doesn't have to get written every time there is a new disaster. Building standards in

the high fire severity areas and at the wildland-urban interface are needed to protect the structures. The fires start in the trees; they don't start in the homes. We need to build resilient homes as we manage forests and do fuel reduction. We also need to ensure local capacity. FEMA and the State cannot do their jobs without local capacity and local government to work with them. We have a real discrepancy across California on what you have in emergency management. A paradigm shift is needed to look at investing in permanent, affordable solutions, not just spending a bunch of money on interim solutions. Insurance is big. Government would rather everyone were insured so insurance could cover it, but in California there are people to choose whether to have a roof over their head and they can't afford insurance. Thank you for listening to my very long list of impacts.

> **Chair Carla Peterman:** I don't know if our Commission will take on all these issues, but we will definitely refer this video to somebody.

Patrick J. Minturn: I wanted to speak briefly about land use and its history in the Carr Fire area. You heard Mr. Tipping talking about the fire taking out 200 homes in the City of Redding. But it came out of an unincorporated area, a rural, residential area with about 800 homes lost. The center of the unincorporated area was in the town of Shasta and there were high fuel loads in that area, a lot of brush.

So the history is useful to understand how we got here, how we ended up with thousands of homes and ten thousand people in this relatively rural area. The history of the area goes back to the Gold Rush in 1880. While gold was found everywhere else in California, here it was massive sulfide deposits of copper and mining took off in here is 1850. The town of Shasta quickly became one of the largest cities north of Sacramento with a population of 3,500 people. That boom went on for about 60 years, creating patents, grant deeds, thousands of parcels, dirt roads, and mines. Thousands of people came to work in those mines. The total population was probably about 10,00 people. The mines dug into the sulfide bearing deposits of sulfur and dug out the ore. That opened up acid mine drainage as water combined with sulfur and oxygen to dissolve the metals and killed all the fish. Also the ore was roasted in smelters that created smelter fumes, which created problems for public health, and huge smoke stacks were constructed. It also killed off all vegetation in the entire area for miles around, trees, brush, anything.

Eventually in the 1910s, the agriculture interests brought on lawsuits claiming that their crops were being damaged. The courts upheld that and an injunction was issued and in the 1910s, all the smelters shut down. This created economic problems because you had all this infrastructure there and all these homes, tens of thousands of parcels, roads, crude water systems. Some people moved away, but there was still a large population.

Around that time, local agencies started having some control over local land use. By 1929, the county was able to condition development and gradually brush grew up in the watershed – deep, dense brush, not trees because the soil still had some residual contaminants. That created a severe fire hazard. It wasn't too bad, for many years it was managed. Gradually in the

town, it emptied out and there was consolidation of existing parcels. The town of Shasta shrunk.

In the 1960s, public water was brought in and the Trinity Project was constructed. The original plan was to build a dam in Trinity County. But local input encouraged them to build Whiskeytown Lake, and a local amenity for a national recreation area. Four water districts were created in the local area and that brought water to the existing parcels where people were living. There were 151 homes, and over the next 60 years about 60 homes were added, so not a lot of growth, 500 parcels and a lot were consolidated. The county took over the road system and build a community center, but all of those was destroyed in the fire. There have been some efforts to manage the brush, but they haven't been very successful. Trees have grown up, there were some controlled burns, but it was a massive challenge. The iron mountain mine was shut down. The EPA came in and it was the worst polluted surface water in the United States. Now it has been completely captured and treated. The area has recovered well.

There has been large lot development and water systems, but the total population within the area when the fire broke out was similar to what it was 150 years earlier. The new lots are more of an upscale area now. The test scores in the school district are some of the highest in Shasta County and top 10 percentile statewide. So it has become an attractive area. The fuel loads were inevitable that that was going to happen. Now the fire is going through and efforts are being made with non-profits to manage the forestry. It's an exciting time, debris is all cleaned up and rebuilding has begun. I encourage state and federal agencies to continue to work with counties in furtherance of the rebuild.

Commissioner Michael Kahn: I have some observations. Governor Brown said fires are the "new normal" and we have to accept them. I have to say, Ms. McCracken, I am incredibly impressed by your bravery, we went through Paradise today and toured it. It is unimaginable. Those of us who are lucky enough not to live there can see it on television and don't have any notion of the scope and devastation. Your description of it, although it resonated, didn't do the horror of it justice.

I do think we need to do more than just listen. I would suggest three things that the Commission should think about doing. First, Mr. Tippin and Ms. McCracken, there is no way we can possibly respond to all of your needs. It just can't be done. But it is very important nevertheless to help us if in prioritizing what is most important and suggesting to us what the Legislature and Governor can address. They really want to know your most important needs. You can give them a list of a hundred things, but the first few are the ones they will maybe be able to address. So I don't think we should give up hope, but Ms. McCracken you made that observation that it needs to come from you. We could use understanding of what your most immediate, true needs are so maybe we can help.

Second, because it is the new normal, underscore the word "new," I am sorry to tell you that you are the first and, therefore, the people who must teach us the lessons. It would be terrible if, from this, we didn't learn lessons. You parted a lot of wisdom to us in a short amount of

time. I know you're looking at $1.8 billion with debris and you're looking at $6.5 million bill that you don't have to pay. So you may be thinking making a list of lessons learned is not really high on my list, but that's really important for you to do. Nobody can imagine what you have been through. But what they can do over time is know what are the lessons learned. We can't do this for you. The Commission needs to start moving the state in the direction of figuring out lessons learned because it is the new normal.

Third, I had the benefit of being taken around by somebody at CAL FIRE who showed me the terrain and the origins of the fires. We had a very robust conversation, which mirrored the conversation at our last hearing. You may have had the lightning strike you, but it can happen anywhere in the state. I actually don't think that the State has absorbed that information. I don't think that the communities that the report that the Governor has commissioned and CAL FIRE has identified – it is just not real to them. I think CAL FIRE and people who understand the combination of wind, climate, and the like understand these things. My hypothesis is that there is a real threat to a lot of communities.

I think in order for us to step up to the lessons learned, we have to understand what happened and how it can apply. If I am right, we need to let the Legislature understand that it is the new normal. The new normal is not just a fire that randomly hits a few homes, but other communities who are devastated – other Shasta's, other Paradise's. If people of various communities could visit Paradise and actually think this could happen to them, the reaction would be very different. If that is true – that you had an ignition site 7.5 miles away that went through a forest that jumped a river and hit a city that had never been ignited before and it could happen to other places – that is very sobering news. We need to think about if it is true and identify that. This academic and financial exercise becomes way different, and Mr. Tippin, thank you for reminding us of it, but it is a much more human, horrible thing once you say to yourself: our city could have this happen too. Financial issues are huge and legal issues are immense and, I'm sure Pedro will agree with me on this, the human issues are way, way graver.

Commissioner Pedro Nava: Mr. Tippin, you wisely made reference to the other kinds of costs that aren't connected to infrastructure and the human cost.

I met a fat, little dog today when I went on the Sundial Bridge. I talked to a woman on the bridge and she apologized because her dog was fat. She explained that because of the fires and she has respiratory problems, she couldn't take the dog out for regular exercise. That is an example of the kinds of impacts that occur in communities when you are overwhelmed by the disasters. Commissioner Kahn was right about the lessons to be learned.

We are all Californians. It is a California problem we need to address. The amount of people you have that don't have anywhere to live will move someplace else and you have to think about the impacts in these other communities where people are moving to and they don't have infrastructure to deal with additional population. That's beside the fact that people love the places that they live – places of strength, culture, beauty, resilience. They confronted difficulties and challenges and they survived them and they are the very fiber of what makes this state so

incredibly diverse and rich. This is an issue that has to be addressed for all of us here in California.

When I was talking earlier about how to structure the catastrophe fund, I think that the people of California need to pay into it. We are all residents and citizens of this state. We all have the same humanity, or we should, that connects us so that your burden is my burden.

I live in Santa Barbara. We had a fire in Santa Barbara, and we had mudslides where people lost their lives, some disappeared, others were buried in the mud. The response by the emergency folks in this state is exemplary. The model that we have here is emulated in other places all across the country and that's because our shared vision and obligation to help our neighbors. Other cities will have to confront similar problems. How do you get money upfront and wait to be reimbursed when you don't have the money? In a community like this Mercy Hospital, the City, and the County are the largest employers and one of the next biggest job providers is Walmart. That is a reality that Sacramento and legislators must understand. Part of what you are confronted with is modest legislative representation when compared with Los Angeles or San Francisco. However, everybody who lives in a place like this is just as important and deserve the same resources, attention, and dedication to maintaining those places that make it special. Thank you for the heroic measures that you have taken. Thank you for taking the time to share your perspectives with us. We all need to understand and identify what you went through and what you are going through.

Chair Carla Peterman: Thank you for coming and your comments. We will all have to reflect on what you had to say. I have one specific question on insurance and where the gaps are. In a few weeks, we will speak about the availability of residential insurance. Could you speak to the facilities that you operate and what does that market look like? We are trying to look at what does a big pool look like and does that need to include other costs?

> **Barry Tippin:** For most of our infrastructure, we are self-insured and carry excess liability insurance with a deductible of up to $500,000 and goes up to $40 million beyond that. We have about $100 million in extra coverage for our power plant in case of catastrophic loss, and vehicle insurance, and property insurance of lesser value. Most of the catastrophic stuff is self-insured. Interestingly, we are now receiving claims that the City is responsible for damage within city boundaries because of the Carr Fire, which will have to go against our excess liability insurance and presumably we have adequate immunity in statute. Hopefully our overall obligation would be $500,000 in that regard.

Chair Carla Peterman: You have a publicly-owned utility in your city, Redding. Did you have any other considerations around the liability standard for utilities?

> **Barry Tippin:** For complete transparency, amongst my many duties at the City for 15 years I spent six years as the director of the electric utility as well. I think the points made on strict liability are important. As a publicly-owned utility, we are diligent in the

expenditure of our resources for improvement items. We don't have smart meters. We have great liability and we have redundancy. We have a 115 kv loop that goes around the entire city. The idea that we have to better pinpoint where our outages are just aren't real for us. We are also flat-rate based, we pay 15.2 cents per kilowatt hour, so we don't have a time of use. Investments of $40 million to the expense of the ratepayer doesn't make a lot of sense.

On the contrary, we spend significant money on tree trimming in and around our lines to make sure we can identify hotspots by annual inspection through infrared, on foot, and by helicopter to reduce negligence issues. The idea of strict liability for an electric utility is concerning for us as well, because we spend quite a bit of time and energy in making sure we don't have those instances.

Chair Carla Peterman: Given your previous role, would you say that you have a prudent manager standard? You have done the best you can, but do you have a sense of what is prudent?

Barry Tippin: We work very well with CMUA. We follow much of what is out there from PUC guidelines. We don't consider PUC to have regulatory oversight of us, but we follow much of the same standards. In fact, I would say that most public utilities either meet or exceed standards our investor-owned utility brethren.

Shari McCracken: We are the same as Redding. We are self-insured with excess coverage. I will speak to the fact that our roads are not insured and our roads are heavily damaged. Even though our facilities are insured, it doesn't pay to cut trees down. We find a lot of residential insurers have the same issues. There is not money in there for all these burnt trees that are standing.

Patrick Minturn: I want to reiterate that we were insured for the fire hall and community center, but our roads are not insured. There are issues with damaged road facilities. Also upgrades to meet modern environmental and hydraulic standards always seems to be bill more than reimbursement.

Chair Carla Peterman: I know there were some requests for information. Our Executive Officer will follow up with you on the nature of that. I know you have a lot on your plate so we don't want you to unnecessary, additional things, but we will organize to make it complementary to the feedback you are already giving the City.

Item 9 | Final Public Comment

PUBLIC COMMENT 5: Cedric Twight, Sierra Pacific Industries.

I am a Shasta County wildland-urban interface resident living in the high fire severity zone. I know you are going to speak on residential insurance next. I would like to touch on and share

an idea that could possible provide an equitable solution for folks that take personal responsibility for their own places of living in the high fire severity areas.

I'm faced with the doubling the cost of my insurance because I am in the high fire severity box. But my house – and I have had fire professionals over – is not threatened by vegetation and was built using fire resistant construction techniques. What I would like to see done is a mandatory provision. When you get your 4291 inspection and you have a fire professional out there, give them the authority to move the residence from a high fire severity rating down to a high or even moderate. I don't believe my particular residence is anything more than moderate. Granted this won't apply to everyone, but if you are going to do your due diligence and put the effort into it, it would be nice not to incur those expenses.

PUBLIC COMMENT 6: Dylan Gibbons, California Special Districts Association (CDSA).

We are the folks representing utility districts, water districts, fire districts, health care districts, resource conservation districts, pretty much everything that ends in "district" except for school districts. In a lot of the communities have been impacted, our members are the ones rebuilding those communities and are the ones who have been impacted.

When you have an irrigation district, it is not going to be reimbursed when the State does their property tax backfill because they are an enterprise district. They receive rates. When you lose all of your ratepayers in a day, that has a significant impact. Yet that water district is still going to be there to rebuild those communities. We look forward to working with this Commission and serving as a resource to bring our members together and provide data that you are looking for.

PUBLIC COMMENT 7: Dan Greaney.

Dan has a recommendation for a fee on carbon emissions that could socialize the climate change piece of the fire costs and subsidize or fund or reduce the insurance risk.

PUBLIC COMMENT 8: Julie Donoho, AIA Esq. GC, Legal Constructs.

I am an architect, attorney, and general contractor. There are 100 of us who are architects and attorneys in the country. During the fire in Santa Rosa, I acted as the chair for the firestorm recovery committee. I would like to say something about the American Institute of Architects (AIA). We have chapters in 22 regions in California and we have a state chapter in Sacramento. We created a disaster toolkit and I think we were quite effective in Santa Rosa with permit streamlining, talking to officials and homeowners about the rebuilding process. We had table with the North Coast Builders Exchange so the homeowners' first experience was not just with government people, but also talk to how to get back and give them hope from the beginning. I would like that to continue statewide in other disasters. I think it was very important and very powerful for people.

We also focused on temporary housing, infill housing, worker housing, and accessory dwelling units (ADUs). We have ADUs in our community that weren't happening before. We worked through the issues that were blocking it. We brought materials and suppliers to town and it was a useful resource. Creating resilient communities is important issue for AIA nationwide and globally. This problem is not just happening in California; it is happening everywhere. I served on the national board of the AIA and it takes this seriously and can help in any way.

On my committee, we did energy, sustainability, but my focus was on whole neighborhood rebuilding. How do we increase the statistics on rebuilding whole neighborhoods? When I went to Lake County we had 20%. I thought we have got to do better in Santa Rosa. We found that because of the insurance and the obstacles to rebuilding, it was easier in the master plan communities. But now we have motivated people to do that. We brought people to San Diego and brought a contractor, started to use those resources, brought a contractor who drove a competitive advantage and interest. We got 80 people to sign up in 185 homes in a neighborhood, then everybody wanted a sign on their lot. That neighborhood is already looking like 60 to 70%. It will be by the end of the year it is going to have phenomenal statistics. Then we met with 10 major contractors and talked about Coffey Park. We drove that train to get more people building. We are still working on the larger community.

Insurance was the huge obstacle. I have two points. First, we have consumer protection laws. BPC 7159 is put in place to protect consumers from contractor fraud. The CLSB tries to protect this as much as they can, but it doesn't have a lot of teeth in keeping fraudulent contractors from coming back into multiple communities. The ones that try to meet the spirit of these contracts aren't working. We really need to look at how these contracts are protecting consumers or not. We need something in place that protects consumers and provides a good construction contract for a vulnerable population. So we need to revisit BPC 7159. That is a contractor issue and homeowner issue.

Second, we need truth in insurance. I have dealt with a lot of homeowners and their insurance and nobody knows what they are buying. None of their agents knew what they were selling. I can show you three different insurance companies that gave people a $300,000 coverage, one pays out at $600,000, one pays at $800,000, and another pays at $1.2 million. The agents and homeowners had no idea what they were buying. We need truth in insurance like we have truth in lending. When you pay for insurance, you need to know what is paying for. Will it cover your equity? Will it cover your mortgage? Will it cover mortgage and equity? Will it cover rebuilding?

After the Oakland Fire in 1991, we took away guaranteed replacement cost value. In California you can't buy guaranteed replacement cost value, but there are many other schemes of insurances. People don't understand the differences. The system in place creates confusion. People don't intentionally uninsure. They say, "Insure my house" and they pay their premium. They have no way of telling them when they are purchasing what they are actually getting.

PUBLIC COMMENT 9: Roger Jaegel.

I am a resident of Redding who was evacuated twice during the Carr Fire and I was one of the lucky ones who came back to a home that was unaffected by the fire. In the past, I was a Trinity County supervisor and I have followed this issue for about 20 years. I have an op-ed that I submitted to the Record Searchlight about 11 years ago that I would like to leave with the Commission. It is still very pertinent to what you are trying to do. You are doing extremely important work.

Chair Carla Peterman: Is there anyone else who would like to provide comments? Commissioners, any final comments?

Commissioner Pedro Nava: Chairman, thank you for the way you conducted the meeting. And I express gratitude to the County for their hospitality and a place to meet.

Item 10: Meeting Adjourned

Chair Carla Peterman: We will be announcing on the website soon location and date of the next meeting, but it will be in early April somewhere in the State.

> **Evan Johnson:** It will be in early April in Santa Rosa.
>
> **Chair Carla Peterman:** See you there.