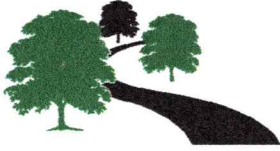


MUSSEY GRADE ROAD ALLIANCE



*"Preserving Historic
Mussey Grade"*

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The Honorable Governor Jerry Brown
The State Capitol, Suite 1173
Sacramento, California 95814

VIA EMAIL AND US MAIL

The Honorable Senate President pro Tempore Toni Atkins
The State Capitol, Room 205
Sacramento, California 95814-4900

The Honorable Speaker of the Assembly Anthony Rendon
The State Capitol, Room 219
Sacramento, California 95814

July 9, 2018

Re: Opposition to Senate Bill 1088 and Provisions of Senate Bill 901

Dear Governor Brown, Senate President Pro Tempore Atkins, Speaker of the Assembly Rendon and Colleagues,

We are extremely concerned with provisions of Senate Bills 1088 and 901 that could gravely and substantially increase, rather than decrease, risk of catastrophic wildfire in California by eliminating the utilities' financial stake in safe planning, construction, maintenance and operation of their systems. We urge you to not give a free pass to utilities and to not place additional burdens on fire victims, who want to be made whole.

We are members a community group, the Mussey Grade Road Alliance (MGRA or Alliance), from San Diego County that has been intervening at the California Public Utilities Commission (CPUC) and fighting for power line wildfire safety since 2006, and who were affected by the 2003 and 2007 firestorms.

In our work before the Commission, the MGRA interventions led to changes in CPUC regulation that required utilities to collect power line fire data, required utilities to prepare fire-prevention plans, and initiated the creation of state-wide utility fire hazard maps.¹ MGRA also opposed SDG&E's (WEBA/WEMA) plans to recover uninsured liability losses from the October 2007 fires, which totalled \$379 million in the second proceeding. We argued that the utility was not reasonable or prudent in the maintenance and operation of its infrastructure prior to the fires.

We note that a number of provisions of SB 1088 are being transferred to SB 901 as amendments, and therefore our comments should be applied to both pieces of legislation. We find the following issues being considered in these bills to be of utmost concern:

- SB 1088 requires that the CPUC find any utility's actions "reasonable and prudent" if that utility prepares a "safety, reliability, and resiliency plan" and it is accepted by the CPUC after a brief review. The CPUC has determined that if utilities are "reasonable and prudent" they can pass costs on to ratepayers. However, there is no way a high-level plan could possibly cover contingencies required for safe operation.
- These proposed changes would shift burden of care from utility linemen in the field to CPUC regulators and inspectors. The CPUC does not have and in fact could never have sufficient resources to inspect over 200,000 miles of power lines and millions of components.
- As we testified in the WEBA proceeding, protecting investors and utility management from consequences of bad actions introduces "moral hazard", and makes it more likely that utilities will cut corners and create greater risk of catastrophic fires.
- With few exceptions, CPUC fines against utilities have been tiny compared to both fire losses and utility profits. For instance, the CPUC fined SDG&E \$14 million for the October 2007 fires which caused over \$2 billion worth of damages. By themselves, these fines do not provide a strong enough economic incentive for safe operation.
- A recent amendment to SB 1088 would prevent costs being passed onto ratepayers in the case of negligence. However, this bill does not state how negligence would be determined. In the case of the 2007 fires, civil claims were settled so there was no court determination of negligence. Additionally, the current language might allow utilities to argue only a small part of their loss was due to negligence and the rest to "inverse condemnation".
- Utility-caused wildfires are not "natural" disasters, even if climate change contributes to their severity. Such fires do not start without a source, and if utility equipment is old, poorly inspected or poorly maintained it is more likely to be a source of ignition.
- Attempts by utilities, their financial backers, and their allies to blame threats to utility viability on California's interpretation of "inverse condemnation" are misleading. The CPUC has held that utilities that have operated in a "reasonable and prudent" fashion can

¹ CPUC Decision D.12-01-032.

collect losses from ratepayers.² SDG&E was unable to prove its case in WEMA, which is why it was held responsible for \$379 million in liability losses. PG&E and SCE will have the opportunity to make their case for “reasonable and prudent” operation in future proceedings regarding the 2017 fires.

- Applying inverse condemnation to monopoly utilities serves the laudable purpose of reducing the burden of loss recovery that fire victims face. We do not think a change to current law is warranted.
- The Legislature is being asked to step into the regulatory role of the CPUC, without having sufficient factual grounding in the complex issues involving utility wildfire in California.
- We are very concerned that ratepayers in the end will be made to pay for uninsured utility catastrophic fire losses by the changes that the proposed legislation in SB 901 and SB 1088 would make. The under-insurance problem of PG&E, which we understand was insured for \$800 million, is illustrative of the costs that could, in the future, result in ratepayers paying billions. We are equally worried that the legislation being proposed, and to be refashioned in conference, could conceivably bail out PG&E in connection with the Wine Country fires.

Whether or not bailing out utilities facing bankruptcy is in the interest of Californians is an issue that can be argued by utilities, regulators, economists, politicians, consumer advocates, and citizens. This debate becomes not just about economic and political issues but about a ***critical and dangerous safety issue*** if utilities are almost completely decoupled from the consequences of bad actions. This is what SB 1088 and amendments to SB 901 threaten to do.

Electrical utilities can only be safe if every executive supports safety as their number one priority and this is communicated down to every employee and lineman in the field. The case of San Diego Gas & Electric Company provides an interesting example. In the aftermath of the 2007 fires, and with hundreds of millions of dollars in potential recovery pending before the CPUC, SDG&E undertook a massive ratepayer-funded initiative to improve the safety of its system in wildfire-prone areas. MGRA supported these safety improvements in our testimony in SDG&E’s general rate case (while calling into question the transparency of their prioritization and actions). SDG&E’s legal obligations under state law, their obligation as utility professionals, their moral obligation to the safety of their customers, and the financial well-being of their investors came into better alignment because SDG&E had, and continues to have, so much at stake.

Under potential changes to the Public Utilities Code under SB 901 and SB 1088, this alignment could be eliminated.

We urge you to oppose any bill or amendment that would eliminate utility financial responsibility for safety in exchange for a utility-authored and unenforceable “safety, reliability, and resiliency” plan or that would make it harder for victims of utility fires to be made whole.

² CPUC Decision D.17-11-033, pp. 9-10.


Thank you for your consideration,

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