Governor Brown Signs Legislation on Wildfire Prevention & Recovery

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On September 21, 2018, Governor Brown signed Senate Bill (SB) 901, which addresses a number of wildfire-related items relating to public utilities. In his signing statement, Governor Brown explained that this new bill boosts the state's forest management activities, updates requirements for the maintenance and operation of utility infrastructure to reflect changing climate conditions, and protects ratepayers and utility workers.

While the bill introduces a series of new changes, it is particularly noteworthy for what it does not include from Governor Brown's initial June 2018 proposal for wildfire liability reform. At least for the time being, lawmakers abandoned one of the most controversial aspects of Governor Brown's proposal for the bill: changing utility fire liability rules and the state's interpretation of inverse condemnation. SB 901 does not make any changes to the state's legal doctrine of inverse condemnation. However, as relevant to investor-owned utilities, SB 901 does makes several changes relevant to investor-owned utilities (IOUs) that are within jurisdiction of the California Public Utilities Commission (CPUC) including doubling of the maximum statutory penalty possible:

Addresses cost recovery before the CPUC

- **New Reasonableness Standard for Recovery of Wildfire Costs -** Authorizes the CPUC to use a more detailed reasonableness standard in determining whether an electrical utility will be allowed to recover in rates expenses related to damages stemming from a wildfire caused by the utility's equipment. Specifically, SB 901 authorizes the CPUC to permit utilities to recover costs associated with wildfires occurring after December 31, 2018 and to consider 12 specified factors to determine whether the expenses are allowed or disallowed. The new reasonableness standard refines and puts a wildfire-specific nuance into the existing generalized CPUC-wide prudent manager standard, but only in the context of wildfire costs by electric corporations.
- **Rules for 2017 Wildfires -** Specifies that for applications by an electrical corporation to recover costs and expenses arising from catastrophic wildfires ignited in 2017, the CPUC is required to continue to determine just and reasonableness without specifying the 12-enumerated factors identified for the fires in 2019 and beyond. In

the case of the 2017 wildfires, the bill requires the CPUC to consider the electric utility's financial status and determine the maximum amount the corporation can pay without harming ratepayers, also known as a financial stress test, and requires the CPUC to limit the disallowance from the 2017 wildfires to the threshold determined by the stress test. SB 901 provides that any excess costs above the threshold may be allocated for recovery from ratepayers.

- **Financing via Rate Recovery Bonds -** Allows (but does not require) the CPUC to authorize, under specified circumstances, the use of financing to reduce the bill shock associated with damages paid by utilities for wildfires for the amounts borne by ratepayers of the 2017 wildfires or of future fires. Upon a finding that certain wildfire damage costs are just and reasonable, the CPUC may authorize an electrical corporation to issue rate recovery bonds in order to finance such costs over a specified period of time. This financing provision is applicable only to electric corporations and does not cover the cost of fines and penalties.
- **Increased Penalties -** Increases the amount of a penalty that the CPUC can assess for violations of CPUC orders, laws, and decisions from up to $50,000 to up to $100,000 per violation per day. Unlike the above provisions applicable only to electrical corporations, the increased penalties would be applicable to all types of utilities before the CPUC.

Expands the requirements of the existing wildfire mitigation efforts of electric utilities

- **Wildfire Mitigation Plans -** Requires wildfire mitigation plans of electric IOUs to be approved within three months of its submission, unless the CPUC makes a written determination justifying the need to extend the deadline.
- **Collaboration with CalFire -** Requires the CPUC to enter into a memorandum of understanding with CalFire to address several wildfire-related issues, such as: the development of consistent approaches and data sharing related to fire prevention, safety, vegetation management, and energy distribution systems.
- Independent Evaluators - Requires the development of a list of approved independent evaluators with experience in assessing the safe operation of electrical infrastructure.

SB 901 also makes comprehensive changes to forestry management and fuel reduction under the Forest Practice Act in order to mitigate the risk of wildfires across the state. These widespread changes were negotiated in weeks of conversation by Assembly and Senate staff, CalFire, the Governor's Office, the Board of Forestry and Fire Protection, and many stakeholders. Lastly, SB 901 allocates $200 million per year for five years from the state's Greenhouse Gas Reduction Fund in order to provide funding to CalFire for forest health and fire prevention and prescribed burns and other fuel reduction activities.

Nossaman attorneys and policy advisors are available to assist utilities seeking to understand or comply with the requirements newly imposed by SB 901.