



Landmark Legislation Creates New Wildfire Fund and Overhauls California's Approach to Catastrophic Wildfires

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On July 12, 2019, Governor Newsom signed Assembly Bill (AB) 1054, which introduces major changes to the way California addresses wildfires in an emergency effort to financially stabilize the State's electric utilities following catastrophic losses from wildfires in 2017 and 2018. The legislation creates a new fund to facilitate payment of wildfire-related liabilities (Wildfire Fund), overhauls the cost recovery review for electric utilities before the California Public Utilities Commission (CPUC), and establishes safety certification protocols that electric utilities must meet to participate in such funds. Passed as an urgency statute, AB 1054 is effective immediately.

Wildfire Fund Mechanism

AB 1054 creates an independent Wildfire Fund to pay eligible claims arising from covered wildfires. The Wildfire Fund is structured to operate in one of two ways described below, depending on whether the large electric utilities not currently in a bankruptcy proceeding elect (within 15 days of the effective date of AB 1054) to commit to making an initial contribution and annual contributions. The initial contribution for each company is equal to \$7.5 billion multiplied by the Wildfire Allocation Metric (which is calculated based on the proportion of the service areas of the three largest electrical corporations in high fire-threat areas), and annual contributions for each company are equal to \$300 million multiplied by the Wildfire Allocation Metric. The initial and annual contributions must come solely from shareholders and would not be recoverable from ratepayers.

- **Liquidity Fund Option** – If the electric utilities choose not to make the initial and annual contributions, the Wildfire Fund will function only as a line of credit (revolving liquidity fund) that will pay eligible claims of third-party damages from wildfires ignited by electric utility infrastructure if utilities meet certain conditions. The

electric utilities would then be allowed by the CPUC to recover in rates those expenses that are deemed to be just and reasonable. Once the CPUC issues a decision addressing the recovery or disallowance of those wildfire costs, the electric utility must reimburse the Wildfire Fund for the full amount it received.

- **Insurance Fund Option** – If the electric utilities do commit to making the initial and annual contributions, then the Wildfire Fund may be used to pay out the same eligible claims as the Liquidity Fund Option. However, under this Insurance Fund Option, there would be a cap to the amounts that electric utilities must reimburse the Wildfire Fund. For expenses deemed just and reasonable, there is no requirement for reimbursement. For costs that are disallowed as not just and reasonable, AB 1054 nonetheless establishes a specified limit on the amounts that electric utilities must reimburse the Wildfire Fund, except that there is no limit to costs (1) associated with conduct that constitutes conscious or willful disregard of the rights and safety of others or (2) where the utility fails to hold a valid safety certification from the CPUC. The law also sets forth requirements for reviewing claims that are resolved through settlements before they are paid.

To receive the safety certification from the CPUC, the electric utility must establish a safety committee of its board of directors, implement the findings of its most recent safety culture assessment, and adopt a compensation structure designed to promote safety, among other requirements. There are further provisions addressing the eligibility of electric utilities currently in bankruptcy proceedings to participate in the Wildfire Fund, most notably Pacific Gas and Electric Company.

For both of the two options above, \$10.5 billion of the Wildfire Fund is to be financed by extending an existing \$2.50-per-month charge on customers' bills that was set to expire soon. The Insurance Fund Option would increase the size of the Wildfire Fund to an estimated \$21 billion total by including the \$7.5 billion initial contributions and \$300 million in annual contributions from electric utilities (amounting to \$3 billion if continuously made over 10 years).

The new law allows, but does not require, regional electric utilities (those with fewer than 250,000 customer accounts in California) to participate in the Wildfire Fund at their option and sets proportionate requirements for participating regional electric utilities.

Revised CPUC Cost Recovery Framework for Wildfire Liabilities

AB 1054 establishes a Wildfire Safety Division at the CPUC and revises the manner in which the CPUC reviews applications by electric utilities to recover wildfire-related costs from ratepayers, creating a new process known as a catastrophic wildfire proceeding. In such proceedings, the electric utility bears the burden to demonstrate that its conduct was reasonable in order to pass wildfire costs onto ratepayers, unless it has a valid safety certification for the time period in which the covered wildfire that is the subject of the application ignited. If the utility has that valid safety certification, AB 1054 creates a presumption that the electric utility's conduct was reasonable and shifts the burden to other parties to demonstrate a serious doubt as to the reasonableness of the utility's conduct. Once serious doubt has been raised, the utility would have the burden of dispelling the doubt and proving the conduct to have been reasonable.

The new law also allows electric utilities to request a financing order from the CPUC to authorize the recovery of costs and expenses related to catastrophic wildfires under specified conditions through the issuance of bonds. The bill also expands the definition of change of control with respect to electric utilities, which requires CPUC authorization.

Expanded Wildfire Mitigation Requirements

AB 1054 expands on the existing requirements for electric utilities to make and implement wildfire mitigation plans. Under the new law, such plans must cover at least a three-year period and be reviewed by the CPUC at least once every three years. AB 1054 establishes mechanisms for electric utilities to recover the costs of implementing their wildfire mitigation plans, but provides that the first \$5 billion in safety investments in the aggregate by the State's three largest electric utilities must be made without return on equity that would have otherwise been borne by ratepayers.

The new law also establishes the California Wildfire Safety Advisory Board, which will provide advice and recommendations related to wildfire safety, including on the content and sufficiency of the wildfire mitigation plan of electric utilities.

Further legislation on a variety of other wildfire-related issues is expected towards the end of the Legislative session. When asked at a press release event signing AB 1054 whether inverse condemnation issues would be addressed in 2020, the Governor responded that anything is possible and that AB 1054 is not the end of the discussion.

Nossaman attorneys and policy advisors are available to answer questions and discuss the new requirements and changes in the law imposed by AB 1054.