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## Will Ratepayers Or Shareholders Pay For California Fires?

By **Mike Danko and Caroline Corbitt**

The Northern California wildfires destroyed more than 5,000 homes. Homeowners have filed suit, contending that PG&E Corporation is responsible for sparking the fires. Damages are likely to exceed \$10 billion — well in excess of PG&E's available insurance.

If the victims prevail, who will foot the bill: PG&E's ratepayers or its shareholders? If PG&E's management gets its way, it will be the ratepayers. If the plaintiffs' lawyers succeed, it is likely to be the shareholders.

PG&E's power lines have a long history of starting wildfires. PG&E's power lines were determined to have caused the 1990 Campbell fire in Tehama County, the 1992 Fawn Hill fire in Placer County, the 1994 Trauner fire in Nevada County, the 1995 Sailor fire in Placer County and a 2,100 acre wildfire in Sonoma County in 1996. More recently, in 2015, PG&E power lines started the 70,000 acre Butte fire in Calaveras County that killed two and burned more than 500 homes to the ground.[1]

It is not surprising, then, that PG&E's management ranks wildfires as the number one "enterprise risk" it must control.[2] But despite the utility's raising hundreds of millions from ratepayers each year to do just that, it seems that power line-induced wildfires continue apace.

### Ratepayers vs. Shareholders

PG&E argues that when it is sued by its wildfire victims, the utility should be permitted to recover the costs of settlement from ratepayers rather than pay the costs out of corporate profits.[3] PG&E notes that the state is getting warmer and drier, and the housing developments it serves are intruding further into forested areas.[4] PG&E thus argues that wildfires should be deemed an inevitable cost of supplying electricity to the public — one that should be borne by the users of the system as a whole.[5]

Furthermore, PG&E notes that property owners usually sue PG&E for "inverse condemnation," a legal doctrine that requires a utility to compensate those whose property it takes (or destroys) for public benefit.[6] If the law considers a utility-induced wildfire to be a "taking" for a public benefit, why shouldn't the public, rather than the utility's shareholders, pay the cost?

But victims also sue in tort, alleging that wildfires may be caused by a utility negligently failing to trim trees near its wires or inspect its equipment. If plaintiffs prove that a wildfire was the result of utility shortcuts that place profits over safety, shouldn't the victims' compensation come from the utility's profits?

### Recent CPUC Decision Denies Wildfire Pass-Through Costs to Ratepayers

The decision as to who will pay for a wildfire is ultimately made by the California Public Utilities Commission (CPUC). At the end of November, the CPUC issued its decision on whether ratepayers or shareholders would pay for three 2007 wildfires in Southern California whose origins are attributed to San Diego Gas & Electric Co. power lines. Damages from those fires totaled more than \$2 billion and exceeded San Diego Gas & Electric's insurance by \$379 million.

The CPUC ruled that the \$379 million not covered by the utility's insurers must be borne by the shareholders because San Diego Gas & Electric had not shown that it had managed its facilities "prudently." [7] The utility will not be permitted to pass on the costs of settlements to ratepayers.

### PG&E's Wildfire Record

As recently as this November, PG&E's CEO stated that PG&E's costs resulting from the Northern California fires "should be shared by all customers." [8] It is too early to tell whether the CPUC will allow that. But PG&E's record will undercut any argument that PG&E has acted "prudently" when it comes to wildfire risk.

For example, after the 1994 Trauner wildfire, PG&E faced a criminal trial. The evidence suggested that PG&E used money raised from ratepayers for tree-trimming to pay management bonuses. Ultimately, PG&E was convicted of 739 counts of criminal negligence. [9]

PG&E acknowledged after its criminal convictions for the Trauner fire that its vegetation management program needed to change. But it seems that PG&E implemented no real changes: An internal PG&E analysis that plaintiffs' lawyers discovered in the Butte litigation shows that under its risk management program, PG&E knew that additional catastrophic wildfires were a statistical likelihood, if not a certainty.

Shortly after PG&E completed that analysis, PG&E power lines sparked the 2015 Butte wildfire that, as noted above, destroyed 500 homes. The Butte fire, like those before it, was determined to originate from PG&E's failure to trim trees away from its power lines, despite PG&E's having raised hundreds of millions of dollars from ratepayers for exactly that purpose. [10] But even after



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the Butte fire, PG&E seems to have refused to fix its wildfire risk mitigation program, and has instead chosen to accept the risk of catastrophic wildfires as a cost of doing business that it hopes to pass on to ratepayers.[11]

The Sacramento judge hearing the Butte wildfire case recently ruled that, under the doctrine of inverse condemnation, PG&E is liable to the property owners for the damage the that fire caused.[12] Perhaps more significantly, the judge also denied PG&E's motion for summary adjudication of plaintiffs' punitive damages claim, ruling that it will be for the jury to decide whether PG&E's conduct leading up to the fire evidenced a conscious disregard of public safety.[13]

Yet PG&E continues to defend its wildfire prevention program as it is currently structured. Presumably, the loss of life and property damage caused by PG&E-induced wildfires in the years leading to the Northern California fires would have led a "prudent" utility to fix its wildfire risk management program before another devastating wildfire was sparked. But it will be up to the CPUC to decide whether it will be PG&E's ratepayers or shareholders who will pay for the loss.

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[1] Cal Fire Investigation Report, Case No. 15CAAEU024918, available at [http://calfire.ca.gov/fire\\_protection/downloads/FireReports/Butte/\(Butte\)%2015-CA-AEU-024918\\_Redacted.pdf](http://calfire.ca.gov/fire_protection/downloads/FireReports/Butte/(Butte)%2015-CA-AEU-024918_Redacted.pdf).

[2] Safety and Enforcement Division Risk Assessment Section Staff Report Pacific Gas and Electric Company (PG&E) 2017-2019 General Rate Case Application A.15-09-001 (March 25, 2016), available at [www.cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=10624](http://www.cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=10624).

[3] PG&E Notice of Ex Parte Communication Re: Application 15-09-010 (Oct. 9, 2017), available at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M198/K354/198354727.PDF>.

[4] Id.

[5] Id.

[6] Id.

[7] San Diego utility customers won't have to foot costs from 2007 wildfires, Los Angeles Times (Nov. 30, 2017), available at <http://www.latimes.com/business/la-fi-san-diego-wildfires-20171130-story.html>; Proposed Decision of Administrative Law Judges Tsen and Goldberg: Decision Denying Application 15-09-010, available at <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M197/K874/197874842.PDF>.

[8] Can utilities make customers pay wildfire costs? Regulators delay decision, San Francisco Chronicle (Nov. 7, 2017), available at <http://www.sfgate.com/bayarea/article/Can-utilities-make-customers-pay-wildfire-costs-12339678.php>.

[9] PG&E Guilty In 1994 Sierra Blaze / 739 counts of negligence for not trimming trees, San Francisco Chronicle (June 20, 1997), available at <http://www.sfgate.com/news/article/PG-E-Guilty-In-1994-Sierra-Blaze-739-counts-of-2821364.php>.

[10] California Public Utilities Commission, Citation Issued Pursuant to Decision 16-09-055 (April 25, 2017), available at [http://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Public\\_Website/Content/News\\_Room/E1704001E2015091601Citation20170425.pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/News_Room/E1704001E2015091601Citation20170425.pdf).

[11] See Safety and Enforcement Division Risk Assessment Section Staff Report Pacific Gas and Electric Company (PG&E) 2017-2019 General Rate Case Application A.15-09-001 (March 25, 2016), available at [www.cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=10624](http://www.cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=10624).

[12] Ruling on PG&E's Motion for Summary Adjudication as to Punitive Damages (Aug. 10, 2017), Butte Fire Cases JCCP 4853, Superior Court of California Sacramento County.

[13] Id.

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