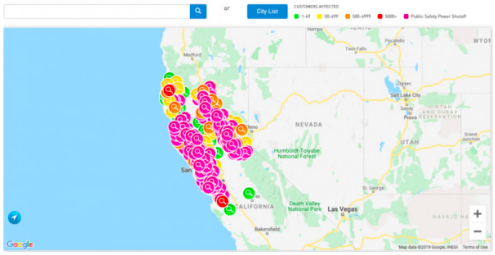
E&E LEGAL
Energy & Environment Legal Institute

Letters

Fall 2019

CA State of Emergency: Millions in the Dark, Wildfires Spread, Gas Prices Soar

by Katy Grimes, E&E Legal Senior Media Fellow
As Appearing in the *California Globe*



Gov. Newsom Struggles To Stay In Control

More than 2.5 million Californians are without power in 36 counties, while parts of the state burn. Utilities warn the power outages could go on for up to five days.

Sunday, Governor Gavin Newsom declared a statewide emergency due to the effects of high-winds which have resulted in fires and evacuations across the state, Gov. Newsom said in a press statement,"We are deploying every resource available, and are coordinating with numerous agencies as we continue to respond to these fires. It is critical that people in evacuation zones heed the warnings from officials and first responders, and have the local and state resources they need as we fight these fires."

The Kincade Fire in Sonoma County has burned more than 30,000 acres, destroyed homes and structures, and led to the evacuation of roughly 200,000 people. The Tick Fire in Southern California has also destroyed structures, threatened homes and critical infrastructure, and caused the evacuation of tens of thousands of residents, the press statement said.

PG&E maps out the power outages, as well as offering a city list where you can look up your city's status.

Sacramento Municipal Utilities District (SMUD) is also experiencing power outages, and posted its own map for ratepayers:

Many California residents have purchased expensive generators to keep refrigerators and freezers on, but generators rely mostly on natural gas. Democrats in the California Legislature want to ban natural gas to homes and require only electric appliances. So California residents won't even be able to protect keep our power on in this "new normal."

As Governor Newsom struggles to stay in control, he continues blame "climate change" and "extreme weather," as well as to criticize PG&E for its failure to invest in its infrastructure and technology, never acknowledging that state government is in charge of regulating these utilities to make sure this never happens.

"These are difficult calls," he said at a press conference Saturday. "But a society as industrious and entrepreneurial

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Milloy Files Share Holder "Greenwashing" Proposals with ExxonMobil & Xcel Energy

On December 16, Junkscience.com founder and E&E Legal Senior Policy Fellow Steve Milloy filed separate "greenwashing" shareholder proposals with ExxonMobil and Xcel Energy. The following is a summary of the proposals he filed.

Xcel Energy

Xcel Energy announced in 2019 it would be the first electric utility to derive 100% of its electricity from sources that don't emit CO2 by 2050. He suggests that management should explain to shareholders what this will accomplish and what it will cost.

For example, Xcel Energy announced in 2019 it would be the first electric utility to derive 100% of its electricity from sources that don't emit carbon dioxide (CO2) by 2050.
But achieving a power grid that is even 79% 'carbon-free' would cost Minnesota $80.2 billion through 2050. Going to 100% 'carbon free' would cost exponentially more."

What would these expenditures accomplish?

According to the above report, spending all this money would accomplish nothing for the climate. A 100% 'carbon-free' electricity grid would reduce global temperatures by about 0.00073 degrees Celsius by 2100, an amount far too small to even be measured.

Xcel Energy should report to shareholders what are the specific actual benefits produced by its voluntary, highly touted and costly global climate-related activities. Are the touted benefits real and worthwhile? Or are they just greenwashing? Shareholders want to know.

ExxonMobil

ExxonMobil says it plays "an essential role in addressing the risks of climate change." But the oil ExxonMobil sells (when burned) emits 30 times more CO2 than the amount of emissions ExxonMobil claims to avoid emitting at its facilities. So what is actually being accomplished by the billions of dollars ExxonMobil spends "addressing the risks of climate change"?

Such insincere "green" posturing and associated touting of hypothetical or imaginary benefits to public health and the environment may harm shareholders by wasting corporate assets, and deceiving shareholders and the public by accomplishing nothing real and significant for the public health and environment.

For example, ExxonMobil claimed in its 2019 "Energy and Carbon Summary" report that it:

- Plays "an essential role in protecting the environment and addressing the risks of climate change";
- Reduced its operational emissions by an average of about 20 MILLION tons annually since 2000.
- Spent $9 billion since 2000 on efforts to reduce emissions.

So, what are the actual benefits to shareholders and the climate of ExxonMobil's multibillion-dollar bid to reduce its CO2 emissions. By how much, in what way, and when will any of these activities reduce, alter or improve climate change, for example?

ExxonMobil should report to shareholders what are the actual benefits being produced by its voluntary and highly touted environmental activities. Are they real and worthwhile, or just greenwashing? ❒

E&E Legal Joins AEA, CEI, and other Free-Market Groups In Opposing EV Tax Extensions

On December 10, E&E Legal joined the American Energy Alliance (AEA), Competitive Enterprise Institute (CEI) and more than 30 other free-market organizations in a letter to Majority Leader Mitch McConnell objecting "to any deal that extends, expands, or enlarges the electric vehicle tax credit," as the letter says. The joint correspondence goes on to say:

The electric vehicle tax credit is not necessary to support the vehicle market in the United States. It is a $9.7 billion subsidy that, for all practical purposes, serves the wealthy. A recent study found that 79 percent of electric vehicle tax credits were claimed by households with an adjusted gross income of more than $100,000 a year.

The effort was coordinated by AEA, and in their press release they noted, "The electric vehicle tax credit was meant to nurture an infant industry, not provide corporate welfare in perpetuity. The electric vehicle tax credit should be eliminated, but at the very least, Senate Republicans can forcefully reject extending, expanding, or enlarging this dreadful subsidy. ❒

More fiddling while forests burn

by Greg Walcher, Senior Policy Fellow
As appearing in *The Daily Sentinel*

What if someone said they planned to burn down your house, but it's for your own good? They need to study how houses burn, so they can build better computer models to predict future home fires. In the future, therefore, that might help you.

Asinine as that sounds, it is precisely what the U.S. Forest Service (USFS) proposes to do, first in southern Utah and northern New Mexico, then in Georgia and South Carolina. It is part of an incredible scheme called the Fire and Smoke Model Evaluation Experiment (FASMEE). The agency says it needs to study the behavior of giant, fast-moving forest fires, so it plans to set several of them, on purpose, starting this month.

The USFS plan to "study" massive fires might have a shred of credibility if the agency had no opportunity to study these disastrous wildfires before. But the agency has seen over 100 million acres of forests burn over the past 20 years, while doing virtually nothing to reduce the fuel loads or thin the forests to a more natural condition. There are volumes of studies about these catastrophic fires and the massive loss of resources, wildlife, property, and lives they have caused. Several agencies (including USFS) host websites on the subject, and have published numerous studies. Dare we wonder if there is such a thing as "settled science," a time to stop studying and start acting?

Officials now claim they need to study the effects of these fires on climate change, but in doing so they will release massive amounts of carbon into the air, instead of producing healthy trees that absorb it. The goal of this bizarre plot, or in federal terms, the "expected outcomes," include "Improved scientific knowledge of the physically coupled fuels–fire–smoke–chemistry system." As if forest scientists do not understand the chemistry of smoke? Another goal is to create "Exportable methodologies for measuring fuels for fire spread, fuel consumption, and fire emissions models." That is, bureaucrats and academics (yes, a university is also involved) are collaborating on better computer models.

It is difficult to escape the observation that the forests need better management, not computer models. Voltaire once wrote that "men argue; nature acts." It is an apt description of how our generation has squandered the greatest legacy of the conservation movement — the national forests. Devastating forest fires are constantly in the news, but a crucial fact rarely mentioned is that these fires are not natural. They are caused by mismanagement, and no management. Indeed, our generation has all but stopped the professional management of public forests, and we are witnessing the disease, death, rotting, collapse, and burning of billions of trees covering millions of acres of previously healthy forests.

Centuries of nature's uncomfortable balance is easily upset when people and cities move in. So our job is to mimic the role of nature, to maintain the most "natural" conditions possible. We have failed miserably.

Nature had previously kept the growth of forests in check with periodic fires, sparked by lightning. Natural fires burn the brush, grasses, saplings, and small trees so the forest does not grow too dense — but mostly leave older and larger trees undamaged. After Americans began to settle the West, dependent on the forests for wood, they viewed forest fires as crises. Preventing, and extinguishing, fires became a primary goal of forest management for a century. Yet national forests still were not overly dense because the natural role of fire was replaced with continual forest thinning. Forests were logged to provide lumber, recreation, healthy watersheds, species protection, and fire prevention. Then in recent decades, logging became unpopular. Timber sales were all but eliminated in national forests, and completely in national parks and wilderness areas. Logging on federal land plummeted – over 84% since the 1980s. And that management tool was replaced with — nothing.

The resulting unnatural overgrowth is a tinderbox that, when ignited, obliterates the entire landscape in ways that are well documented and understood. Yet political leaders argue, while nature runs the only other course.

The Utah fire "experiment" is not only a waste of tax money. It is an unconscionable waste of valuable forest resources, pollution of the air, and destruction of wildlife habitat. This week I spoke at a State Policy Network conference on a panel called "Fiddling While Forests Burn." The clear conclusion was that torching a mountainside in Utah will not address any of the major problems confronting our national forests — it will just add a few more statistics. ❐

R.I. Judge Ignores Rule of Law in Climate Change Lawsuit

by Craig Richardson, President
As appearing in the *InsideSources*

If air conditioning utility bills are causing consumers a touch of heartburn this summer, they will certainly find no relief in a disturbing new development regarding unfounded litigation against the energy industry and a terrible ruling from a R.I. federal judge.

With little legal precedent to support his decision, Chief Judge William Smith of the U.S. District Court in Rhode Island remanded a politically driven climate change lawsuit case back to state court, effectively allowing the baseless claim that a few companies are solely responsible for all of the Earth's climate change to be adjudicated at the state level.

In handing down this decision — which will most assuredly be overturned — Judge Smith has ruled that immensely complicated, multinational issues surrounding Earth's climate change may now be decided in state courthouses, using local "nuisance ordinances" to potentially impose massive fines on just a handful of American energy companies. This is an obvious shakedown effort by the Greens and their political and financial benefactors who brought these frivolous suits in the first place.

Unfortunately, two other federal judges have joined Smith in allowing these cases to remain at the state court level. Judge Ellen Hollander ruled that a case filed by the city of Baltimore should stay in state court. Similarly, Judge Vince Chhabria ruled that a suit by a few cities and counties in California belong in state court.

These rulings ignore precedent set by other federal courts as well the U.S. Supreme Court — under the Obama administration. These courts have ruled against attempts to have climate-related issues adjudicated at the state level, saying an issue as complex and far-reaching as global climate change cannot be arbitrated by individual state courts.

A unanimous Obama-era Supreme Court decision noted how such an effort would create a massive quagmire of litigation, flood our nation's court system and would establish individual state judges as mini-EPA directors who would invariably issue conflicting rulings and issue arbitrary fines in determining who is responsible for climate change.

Judge Smith also ignored his own state's Supreme Court decision 11 years ago in which the court unanimously rejected a similar public nuisance suit filed against three former lead paint manufacturers. Additionally, a virtually identical climate case was tossed out just last year by Judge John F. Keenan of the U.S. District Court in New York City, who correctly ruled that local nuisance ordinances cannot ever be used to impose fines or extract punishments from companies regarding an issue as vast as climate change.

Citing past legal precedent, he ruled: "The Court agrees that the City's claims are governed by federal common law. … Where the interstate or international nature of the controversy makes it inappropriate for state law to control … our federal system does not permit the controversy to be resolved under state law."

We also remember last year when a judge in San Francisco's 9th Circuit Court appropriately tossed out a lawsuit brought by the cities of Oakland and San Francisco politicians, who launched a lawsuit seeking unspecified billions of dollars in fines from oil and gas companies, including BP, Chevron, Conoco Phillips and ExxonMobil. As the judge observed, the alleged damage "hasn't happened yet and may never happen to the extent you're predicting it will happen."

While a few judges have ruled to keep these cases in state courts, other courts — even those in California and New York — have correctly ruled that matters of climate change fall under the jurisdiction of the executive and legislative branches of our government, not a collection of state courts and hodgepodge of judges.

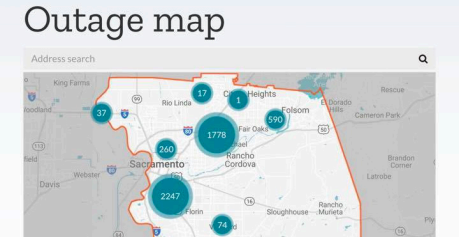
Sadly now, emboldened by Judge Smith's flawed decision, Oakland, San Francisco and other cash-strapped local municipalities are demanding a do-over of their failed attempts to bilk energy producers — and ultimately consumers who will foot the bill — for their own municipal mismanagement, all under the pretense of protecting the Earth's environment. But no matter how hard politicians in these cities attempt to shake down a few energy companies in the name of saving the planet, they will see their unsupported arguments tossed out of court.

Mayors who support such litigation also ignore how their own municipalities rely on fossil fuels for city-run airports, port facilities, bus terminals and city-sponsored industry. If a handful of energy producers are supposedly responsible for an entire planet's worth of climate change, aren't the cities that pump thousands of tons of carbon into the atmosphere also responsible?

Such epic hypocrisy exposes the blatant legal chicanery of these politicians and their deceitful attempts to backfill their cash-strapped municipal budgets with big checks from oil and natural gas producers. In reality, small-business owners and consumers would eventually bear the costs of tens of billions of dollars in fines imposed on the energy industry.

Ultimately, this litigation would do nothing to change the Earth's climate or climate policy and can only unleash an economic Frankenstein monster upon our communities. It's imperative that serious-minded judges adhere to the rule of law and dismiss these meritless lawsuits to protect the American people from such deeply dishonest climate change racketeering. ❐

CA Meltdown (Cont.)



and innovative as ours should not have to face a choice between public safety and public blackouts. We can do both together. And that is what path we are on."

SMUD power outages map "Power shutoffs continue to put California's most vulnerable residents at risk," said Governor Gavin Newsom in a press statement. "These proactive steps will help us protect medically vulnerable residents and ensure that there is a continuity of care for individuals in health and community care facilities across the state."

The Governor's press office sent out a statement Saturday announcing "a new Public Safety Power Shutoff Planning Team within the California Health and Human Services Agency (CHHS) and tools to help ensure that medically vulnerable Californians have their needs met during power shutoffs. CHHS has also established a partnership with Service Employees International Union (SEIU) and United Domestic Workers (UDW), to ensure that In-Home Supportive Services (IHSS) providers are equipped with the information they need to care for some of California's most vulnerable consumers."

Govt. Created Energy Blackouts Coming to a City Near You

I've covered the issue of power outages for years. In 2016 I wrote:

Most countries around the world think that it's a good thing to have cheap energy. But in California, we have plenty of cheap energy available, just not the political will to access it.

CA depends on natural gas-driven turbines and hydroelectric generators to provide just 38 percent of its oil needs. The state imports 12 percent of its oil from Alaska, and another 50 percent from foreign nations, relying heavily on Canada.

So why are utilities warning of potential rolling blackouts again?

That was three years ago.

California's natural gas shale formation is one of the largest in the world. And, California has been a pioneer in renewable energy, albeit still unreliable and unproven. Yet warnings have been steadily leveled that Californians will have ongoing rolling blackouts.

While California sits on one of the largest known deposits of recoverable oil and gas, production is falling steadily, as the state outlaws extraction of its vast onshore and offshore deposits, which are fully accessible through conventional and hydraulic fracturing technologies.

The state is awash in ultra cheap natural gas, yet in California, our corrupt government finds ways to create an energy shortage, and charge rate payers the highest rates in the country.

This is one reason California electricity costs more than twice the national median—thanks to a government-created shortage.

Another reason is that the California Public Utilities Commission, the state's energy "regulator," has an historic dubious relationship with Wall Street, making promises to keep the profits higher of the state's publicly held utilities, than utility profits elsewhere. Those profits come out of ratepayers' pockets.

$5 Billion Cover-Up at San Onofre

Another of the problem areas is the California Public Utilities Commission $5 billion cover up and scandal over the 2012 closure of the San Onofre Nuclear Generating Station, due to the failure of the steam generators. San Diego attorneys Mike Aguirre and Mia Severson exposed the attempt to make the public pay big for utility and regulatory executives' mistakes at the failed San Onofre nuclear power plant.

Southern California Edison executives purchased new steam generators from Mitsubishi, but were warned that they were bigger and run hotter, and could fail. SCE executives purchased and installed the generators anyway, knowing of a flaw in the generator design, according to records. Built to last 40 years, the generators at San Onofre failed after 2 years. And, the generators' cost had not yet been included in rates. So SCE was faced with broken generators they could not charge ratepayers for.

Then-PUC President Michael Peevey, and executives of Southern California Edison colluded in secret to saddle ratepayers with $3.3 billion of the $5 billion shutdown cost. The $5 billion recovery settlement was negotiated in secret in Poland, away from prying eyes and open records laws in California.

Newsom Lashes Out and Blames

Newsom also lit into PG&E. "It's more than just climate change. It's about the failure of capitalism to address climate change," he told reporters Friday as he spoke about the utility's continued use of rolling blackouts.

Newsom also blamed on oil companies on the state's highest-in-the-nation gas prices.

"CA drivers have paid an average of 30 cents more per gallon. There's no identifiable evidence to justify that. I'm demanding an investigation. If oil companies are engaging in false advertising or price fixing — legal action should be taken," Newsom tweeted.

No identifiable evidence to justify" the fact that Californians pay the highest gas prices in the country?

Gov. Newsom asked California Attorney General Xavier Becerra last week to launch an investigation into oil companies' conspiracy to keep gas prices artificially high. Newsom based his request on a report suggesting California drivers are paying $1 more per gallon of gasoline than the rest of the country, according to The Associated Press.

As for the blackouts, PG&E said the utility is keeping tabs on wind conditions. ❐

How California and Foreign Carmakers Got in Bed to Keep Crony, Obama-Era Rule

by Steve Milloy, Senior Policy Fellow
As appearing in the *Daily Signal*

I'm old enough to remember when businesses fought overregulation because it was bad for their bottom lines. That has changed. Now, overregulation is a profit center.

There is no better example of this than the ongoing effort to stop the Trump administration from rolling back the ridiculous automobile fuel economy standards issued by the Obama administration in 2012.

The Obama standards require that carmakers achieve an average fleet fuel economy of 54.5 miles per gallon by 2025—up from about 27 miles per gallon in 2012 and about 35 miles per gallon now.

Carmakers had originally rolled over for the Obama administration on the stiff standards because, well, 2025 was a long way off and the government had just bailed them out as a result of the financial crisis of 10 years ago.

The Obama standards are impossible to achieve through any existing or foreseeable (and affordable) technology. The only way automakers can meet these standards is to sell a much greater number of electric vehicles and hybrid vehicles—i.e., smaller, more inconvenient, and less powerful cars with limited consumer appeal and demand.

The Trump administration is now in the process of rolling back the so-called corporate average fuel economy (CAFE) standards issued by the Obama administration in favor of essentially a freeze on the standards at current fuel economy levels (about 35 miles per gallon).

The rollback is estimated to reduce car prices by an average of about $2,300 and reduce traffic accidents and injuries. After all, newer cars are safer cars, and the average age of a car on U.S. roads is about 12 years.

You would think that carmakers would applaud such a move since it would allow them to sell more of the highly profitable SUV and crossover vehicles that consumers want.

But that's not exactly how things work in the era of the overregulatory state.

In 2012, the Obama administration also granted the environmentally-woke state of California the right to set its own fuel economy standards for new cars. Because California is such a large market for cars and many blue states follow its lead, California (vs. the federal government) has become the de facto fuel economy standard setter for the nation.

Upset that the Trump administration has proposed to revoke California's unconstitutional power, California has mustered a coalition of mostly foreign carmakers (BMW, Ford, Honda, and Volkswagen) to oppose the rollback of the Obama standards.

What's at work is an unholy combination of power, greed, and green posturing.

Because the state has the fifth-largest economy in the world, Greens see California as a wholly-owned power center of theirs that can drive national, if not international, environmental governance. They are obviously loathe to give up such power.

Automakers don't mind regulations as long as they help sell more expensive cars. Emissions control technology is just one more product for a carmaker to mark up.

Both the automakers and the California government are camouflaging their true motives by pretending that higher fuel economy standards are saving the planet from climate change.

Nothing could be further from the truth.

Even if you believe what the United Nations claims about carbon dioxide emissions causing harmful global warming, the Trump administration proposal would only increase atmospheric carbon dioxide levels by an estimated 0.08% more from the estimated Obama rules.

That difference in carbon dioxide level translates into an estimated temperature difference of about 0.003 degrees Celsius—a difference that is not even detectable. The proposal would also have no detectable impact on U.S. air quality.

California (i.e. the radical green movement) doesn't care about consumers, the environment, or anything else but holding onto its illegally-gotten power over the car market.

Foreign carmakers have so far opted to side with that un-American agenda. Consumers may want to keep that in mind. ❐

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