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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-439
Administrative Law Judge Division
May 18, 2023

RESOLUTION

RESOLUTION ALJ-439 Resolving Request for Hearing (H.) 22-11-015 on Administrative Enforcement Order regarding the Involvement of Pacific Gas and Electric Company's Electric Facilities in the 2020 Zogg Fire.

SUMMARY

RESOLUTION ALJ-439 grants the Joint Motion of Pacific Gas and Electric Company and the Safety and Enforcement Division for Approval of Settlement Agreement which resolves all issues in the scope of this proceeding. A copy of the Joint Motion is attached as Appendix A to this Resolution.

This proceeding is closed.

BACKGROUND

Pursuant to the authority created by the California Public Utilities Commission (Commission) with the adoption of Resolution M-4846 (Commission Enforcement Policy), on October 25, 2022, the Safety and Enforcement Division (SED) issued a proposed Administrative Enforcement Order (Proposed Order) to Pacific Gas and Electric Company (PG&E) regarding its misconduct that contributed to the Zogg Fire, a wildfire that began on September 27, 2020 in the Shasta and Tehama Counties in California that burned more than 56,000 acres, resulted in four deaths, destroyed 204 structures, damaged 27 structures, and caused damages in excess of $50 million. The Proposed Order sets forth two alleged violations of General Order (GO) 95 Rule 31.1, one alleged violation of GO 165 Section III-B, and one alleged violation of Pub. Util. Code § 451. In addition to proposing certain corrective actions, the Proposed Order directs PG&E to pay penalties totaling $155,400,000 for the alleged violations, as summarized in the chart below:

Violation No.	Alleged Violation	Start and End Dates	Daily Fine	Total Fine
1	GO 95, Rule 31.1: Failure to perform Catastrophic Expense Memorandum Account patrol in 2019	10/31/19 – 9/27/20	$100,000	$33,300,000
2	GO 165, Section III-B: Failure to perform intrusive inspection	3/31/07 – 9/22/11	$50,000	$81,850,000
3	GO 95, Rule 31.1: Failure to retain hard copy vegetation control map	3/27/19 – 3/27/19	$50,000	$50,000
4	Pub. Util. Code § 451: Failure to remove trees due to poor recordkeeping	8/23/19 – 9/27/20	$100,000	$40,200,000
			Total	**$155,400,000**

On November 21, 2022, PG&E submitted a timely Request for Hearing on the Proposed Order on the grounds that the Proposed Order does not identify facts sufficient to support the alleged violations and imposes penalties that are excessive even if the violations could be proven. As a result, the Parties agreed to engage in confidential settlement discussions pursuant to Rule 12.6 of the Commission's Rules of Practice and Procedure. The Parties filed a Motion Requesting a Stay of the proceeding until January 31, 2023, to allow the Parties the opportunity to seek a mutually agreed settlement of the proceeding that would be in customers' interests and consistent with the policies of the Commission promoting settlement of disputed issues when appropriate. The assigned Administrative Law Judge (Robert M. Mason III) granted that Motion, and a subsequent Motion to extend the stay to February 28, 2023.

The Settlement Agreement

On February 23, 2023, the Parties filed their Joint Motion for Approval of Settlement Agreement. The terms of the Settlement Agreement are as follows:

Monetary Penalty

PG&E shall pay a monetary penalty of $10,000,000.00 to the California State General Fund within thirty (30) days of the Effective Date of this Settlement Agreement.

PG&E's Vegetation Management Enhancements

PG&E will implement the following system(s) by February 28, 2024, for overhead electric distribution routine and tree mortality vegetation management (VM) work within High Fire Risk Areas (HFRAs), which is inclusive of High Fire Threat Districts (HFTDs). Nothing in this Settlement Agreement precludes PG&E from seeking rate recovery for costs incurred implementing these VM enhancements.

(i) A system that assigns a date for every tree that is prospectively marked for removal after implementation of the system (the results of prior inspections are not required to be uploaded to the system), allowing for adjustment of any specific tree's date due to external factors (*e.g.*, permitting requirements, weather conditions, customer objections).

(ii) A system to ensure that every tree designated for removal is physically or electronically marked and logged into a database with GPS coordinates, and that the entry includes the reason(s) why the tree was designated for removal.

(iii) A system to ensure that any time a tree is de-designated for removal, such designation is logged into a database that includes the reason for the designation.

(iv) A process to audit the systems described above to ensure that the systems designed above are followed; reporting these audit results to SED on a semiannual basis through 2025, with the first audit report occurring by August 31, 2024.

Shareholder-Funded Initiatives

PG&E will invest shareholder funds for each initiative described in the chart below ("Initiatives") in an amount within the range identified for each initiative. PG&E and SED agree on the estimates of duration and ranges for funding for each of the Initiatives. The actual duration and funding level for each of the Initiatives may be modified upon agreement by PG&E and SED, as long as shareholder-provided settlement funds for the Initiatives total $140 million. PG&E shall submit reports to SED annually regarding progress and spending for each of the Initiatives, until PG&E has incurred the total $140 million in connection with this work. SED understands that the estimates provided by PG&E for each of the Initiatives are high-level estimates only, subject to revision, and do not constitute a promise by PG&E to complete any Initiative within the estimated range or time period provided. If PG&E becomes aware that it will not expend the total $140 million in shareholder settlement funds or funds within the estimated range for any specific initiative, it shall inform SED as part of its annual report, and PG&E and SED shall make a good faith effort to reach agreement on the method and timing of expending any remaining funds. Nothing in this Settlement Agreement precludes PG&E from seeking rate recovery for costs incurred in excess of $140 million for the combined initiatives.

Shareholder-Funded Initiatives	Estimated Duration (Years)	Estimated Ranges of Shareholder Funding (millions)
Transition to Internal PG&E Vegetation Management Inspectors: Transition contractor inspector workforce to internal PG&E Vegetation Management employees to oversee work and perform tree assessments	3	$55-65
Enhance Pre-Inspector (PI) Training: (i) Enhance PI training program; (ii) Develop and implement PI competency assessment center	3	$5-15
Expand Constraint Management: (i) Fund customer accommodation options (*e.g.*, Right Tree, Right Place) to support timely resolution of customer refusals; (ii) Increase field safety support to strengthen worker and employee safety, constraint resolution in the field	5	$5-15
Improve Data Management Capabilities: Invest in creation of VM Data Asset Management Plan, including building a	3	$15-25

roadmap to support data quality continuous improvement		
Technology Enhancements: Deploy new VM technology product and process enhancements supporting operational and constraint management improvements	3	$15-25
Wildfire Risk Community Investments: (i) Support and fund scholarships with California community colleges relating to VM work; (ii) Invest in Fire Safety councils, educational institutions, and industry associations	5	$15
General Order 95 Update: Fund SED procurement of consultant to review and update General Order 95	3	$3

DISCUSSION

On November 6, 2020, the Commission adopted Resolution M-4846 (Commission Enforcement Policy) to aid the efforts of staff in investigating and resolving violations of the Commission's orders, rules, policies, and directives by giving staff the authority to draft proposed Administrative Consent Orders and Administrative Enforcement Orders, subject to Commission review and disposition. The Penalty Assessment Methodology appended to the Commission's Enforcement Policy sets forth five factors that staff and the Commission must consider in determining the amount of a penalty for each violation: (1) severity or gravity of the offense; (2) conduct of the regulated entity; (3) financial resources of the regulated entity; (4) totality of the circumstances in furtherance of the public interest; and (5) the role of precedent. In Decision (D.) 22-04-058, 4, the Commission affirmed that consideration of the Penalty Assessment Methodology provides a basis for the Commission to determine that a negotiated settlement under the Commission's Enforcement Policy is reasonable and in the public interest. (*See* discussion in D.22-04-058, at 4 and 6.) As this Resolution explains, the Joint Motion satisfies all five of the foregoing criteria.

Severity or Gravity of the Offense

In D.20-05-019, 20, the Commission stated that the severity of the offense includes several considerations, including economic harm, physical harm, and harm to the regulatory process. Violations that caused actual physical harm to people or property are considered particularly severe. A high level of severity is also accorded to the disregard of a statutory or Commission directive, regardless of the effect on the public, since such compliance is absolutely necessary to the proper functioning of the regulatory process.

The Parties dispute both the existence and the severity of PG&E's alleged offense. In the Proposed Order, SED asserts that two of the alleged violations, the alleged failure to perform a separate Catastrophic Expense Memorandum Account (CEMA) patrol in 2019 and the alleged failure to remove trees identified for removal due to poor recordkeeping, were related to the cause of the fire. SED states the other two alleged violations, while unrelated to the cause of the Zogg Fire, were violations of GO 95 discovered during its investigation. Even though PG&E disputes the alleged violations and proposed penalties set forth in the Proposed Order, and disputes that there is evidence sufficient to support a finding that any of the alleged violations directly contributed to ignition of the Zogg Fire, the Settlement Agreement nonetheless acknowledges and reflects the significant physical and economic harm arising from the Zogg Fire.

Conduct of the Utility

The Commission Enforcement Policy[1] requires the Commission to consider the utility's conduct in (1) preventing the violation; (2) detecting the violation; and (3) disclosing and rectifying the violation. Utilities are expected to take reasonable steps to ensure compliance with applicable laws and regulations. Additionally, in evaluating a utility's actions to prevent a violation, "the Commission will consider the utility's past record of compliance with Commission directives." (Decision 98-12-075, 37.)

The Parties disagreed about PG&E's conduct. As set forth in the Proposed Order, SED alleges that PG&E's conduct was egregious and warrants the imposition of the maximum daily penalty. First, SED alleges that PG&E failed to take action to prevent and rectify a violation. SED alleges that PG&E failed to remove two trees previously flagged for removal due to a combination of poor recordkeeping, poor communication, and lack of caution. According to an inspection performed by McNeil Arboriculture Consultants, LLC after the Zogg Fire, which SED cites, the author claims that the tree that fell and struck the power lines had obvious flaws (*e.g.* lack of evidence of root support to prevent a downhill failure and a large cavity where the root support should have been located). Second, SED alleges that PG&E has a history of non-compliance with Commission directives. In its investigations of fires related to PG&E facilities since

[1] Resolution M-4846, Attachment at 17.

2017, SED found vegetation management and/or inspection and equipment recordkeeping violations that contributed to the ignition of several catastrophic wildfires, including the Kincade Fire which burned over 75,000 acres of land, destroyed approximately 374 structures, damaged approximately 60 buildings, and injured four firefighters before it was fully contained on November 6, 2019. (*See Administrative Consent Order and Settlement re: Kincade Fire*, 1.) In its Request for Hearing, PG&E disputes these alleged violations and proposed penalties.

The details of this factor, as well as the Parties' evaluation of their respective litigation risks, were part of the negotiation process. While such negotiations are confidential, PG&E's claimed conduct in preventing the violation, detecting the violation, and disclosing and rectifying the violation were necessarily considered as part of the negotiating and resolving of the Proposed Order. While PG&E disputes the alleged violations and proposed penalties set forth in the Proposed Order, with this Settlement Agreement, PG&E agrees to implement the specified VM enhancements and Shareholder-Funded Initiatives that will further strengthen PG&E's VM program and enhance the safety of PG&E's electric system.

<u>Financial Resources of the Utility</u>

The Enforcement Policy[2] described this criterion as follows:

> Effective deterrence also requires that staff recognize the financial resources of the regulated entity in setting a penalty that balances the need for deterrence with the constitutional limitations on excessive penalties…. If appropriate, penalty levels will be adjusted to achieve the objective of deterrence, without becoming excessive, based on each regulated entity's financial resources.

The guidance adopted by the Enforcement Policy is consistent with that provided in prior Commission precedent. (D.98-12-075, 39.)

While PG&E is the largest electric utility in the state of California in terms of customers and revenue, it asserts that its current financial condition limits its capacity to pay additional penalties. PG&E claims that its current financial situation is characterized by its sub-investment grade corporate credit ratings, weak credit metrics, and a restriction on the ability of its parent company to pay dividends to its common shareholders. In determining the reasonableness of the settlement, this Resolution finds that it is appropriate to take PG&E's current financial circumstances into consideration and concludes that the proposed settlement totaling $150 million is appropriate when we balance PG&E's present ability to weather a penalty against the importance of encouraging PG&E to expend resources to follow proper VM and recordkeeping procedures.

[2] *Id* at 19.

Totality of Circumstances in Furtherance of Public Interest

The Enforcement Policy[3] described this criterion as follows:

> Setting a penalty at a level that effectively deters further unlawful conduct by the regulated entity and others requires that staff specifically tailor the package of sanctions, including any penalty, to the unique facts of the case. Staff will review facts that tend to mitigate the degree of wrongdoing as well as any facts that exacerbate the wrongdoing. In all cases, the harm will be evaluated from the perspective of the public interest.

The Commission must evaluate penalties in the totality of the circumstances, with an emphasis on protecting the public interest.

The Resolution concludes that when all the circumstances are considered, the public interest will be furthered by the adoption of this Settlement Agreement. First, the Settlement Agreement resolves the issues identified in the Proposed Order. The Proposed Order includes penalties totaling approximately $155 million. Pursuant to the Settlement Agreement, PG&E agrees to pay a total of $150 million, consisting of a $10 million penalty to the State's General Fund and $140 million in permanent disallowances. By reaching a settlement, the Settling Parties have implicitly agreed that a total shareholder cost of $150 million is not constitutionally excessive. The allocation of the total amount between penalty and disallowance is discretionary and is appropriate here: the Shareholder-Funded Initiatives specified in the Settlement Agreement are targeted to PG&E's VM program to help mitigate the risk of similar incidents or harm to the public in the future. SED will monitor PG&E's implementation of the Initiatives to ensure that their benefits are realized. Moreover, without waiving the protections of Rule 12.6, the Parties represent that they considered, among other things, the efforts PG&E has undertaken in recent years to evolve and enhance its VM program and to reduce the risk of ignitions associated with its infrastructure.

Second, the VM enhancements and Shareholder-Funded Initiatives set forth in the Settlement Agreement will directly further the public interest. The Settlement Agreement and Shareholder-Funded Initiatives facilitate the Commission's ongoing oversight of PG&E's activities related to electric safety and support continued improvement of PG&E's VM program. In addition, the Shareholder-Funded Initiatives will support community investment in wildfire mitigation measures, through funding of fire safe councils and scholarships with California community colleges to support training in VM work.

Finally, it is in the public interest to resolve this proceeding now. Approving the Settlement Agreement will obviate the need for the Commission to hold evidentiary hearings to adjudicate the disputed facts, alleged violations, and appropriate penalty

[3] *Ibid*.

amounts related to the Zogg Fire. Approval of the Settlement Agreement will promote administrative efficiency, and prevent the further expenditure of substantial time and resources on litigation of a matter that the Parties have satisfactorily and reasonably resolved.

The Role of Precedent

The Enforcement Policy[4] described the role of precedent as follows:

> Penalties are assessed in a wide range of cases. The penalties assessed in cases are not usually directly comparable. Nevertheless, when a case involves reasonably comparable factual circumstances to another case where penalties were assessed, the similarities and differences between the two cases should be considered in setting the penalty amount.

While not binding precedent, prior settlements can be useful for comparison, with the acknowledgement that settlements involve compromise positions.

This Resolution considered the following precedents in reaching it conclusion on an acceptable penalty determination:

- In October 2017 and November 2018, multiple wildfires occurred across PG&E's service territory in Northern California. The 2017 and 2018 wildfires were unprecedented in size, scope, and destruction. The Commission's decision in this proceeding states that at the peak of the 2017 wildfires, there were 21 major wildfires that, in total, burned 245,000 acres and causing 44 fatalities, 22 of which are attributed to fires started by PG&E facilities. PG&E's equipment failure started the 2018 Camp Fire, which burned approximately 153,336 acres, destroyed 18,804 structures, and resulted in 85 fatalities. The Commission issued an Order Instituting Investigation into these wildfires. SED, the Office of the Safety Advocate, the Coalition of California Utility Employees, and PG&E agreed to a settlement of $1.675 billion. The settlement included disallowances and system enhancement initiatives and corrective actions. The Commission approved a modified version of this settlement in D.20-05-019, which increased the total settlement to $1.937 billion, including disallowances and corrective actions. The decision also imposed a $200 million fine payable to the General Fund, with the obligation to pay permanently suspended given the unique circumstances of PG&E's bankruptcy.

[4] *Id* at 21.

- What became known as the Kincade Fire ignited on October 23, 2019, in Sonoma County. According to the California Department of Forestry and Fire Protection (CAL FIRE) the fire burned more than 77,000 acres and destroyed nearly 374 structures and caused four non-fatal injuries with zero fatalities. CAL FIRE determined that the fire was caused by PG&E's electrical transmission lines. SED alleged that PG&E had violated General Order 95 and PUC § 451. SED and PG&E agreed to a settlement of $125 million for the 2019 Kincade Fire, including a $40 million fine payable to the General Fund and $85 million in shareholder-funded costs for removal of permanently abandoned transmission lines. The Commission approved the settlement in Resolution SED-6, as modified by Resolution SED-6A.

- Four wildfires ignited across parts of Southern California Edison's (SCE) service area in December 2017. In November 2018, the Woolsey Fire began in Ventura County. Together these five wildfires burned more than 385,000 acres, damaged and destroyed nearly 3,000 structures, and caused five fatalities. SED alleged that SCE had multiple violations of General Order 95. SED and SCE agreed to a settlement of $550 million for five wildfires in 2017 and 2018, including a $110 million fine payable to the General Fund, $65 million of shareholder-funded safety measures, and $375 million of permanent disallowances of cost recovery. The Commission approved the settlement in Resolution SED-5, as modified by Resolution SED-5A.

These precedents reflect outcomes, which included a mix of fines, shareholder funding of programs, and/or remedial action plans, are similar to those in the instant Settlement Agreement. As described above, the settlement package, including the $10 million monetary penalty, the $140 million of Shareholder-Funded Initiatives, and implementation of the specified VM enhancements, was tailored to the unique facts of the case. PG&E acknowledges that there are areas in which it can work with the Commission to further enhance the safety and reliability of its electric facilities and mitigate the risks of wildfire in its service territory. Accordingly, like the Commission found in these previous incidents, the Resolution finds that the Settlement Agreement results in a reasonable outcome when the totality of the circumstances are considered.

COMMENTS

No public review and comment is required for this Resolution because public review and comment are waived pursuant to Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure.

FINDINGS

1. The Zogg Fire was a wildfire that began on September 27, 2020 in the Shasta and Tehama Counties in California that burned more than 56,000 acres, resulted in four deaths, destroyed 204 structures, damaged 27 structures, and caused damages in excess of $50 million.

2. On October 25, 2022, the Safety and Enforcement Division (SED) issued a proposed Administrative Enforcement Order (Proposed Order) to Pacific Gas and Electric Company (PG&E) regarding its misconduct that contributed to the Zogg Fire.

3. On November 21, 2022, PG&E submitted a timely Request for Hearing on the Proposed Order.

4. SED and PG&E filed a Motion Requesting a Stay of the proceeding until January 31, 2023, to allow the Parties the opportunity to seek a mutually agreed settlement of the proceeding.

5. On February 23, 2023, SED and PG&E filed their Joint Motion for Approval of Settlement Agreement.

6. It is reasonable to conclude that based on the analysis under the Penalty Assessment Methodology, the agreed-upon fines, safety measures, and disallowances are reasonable.

7. It is reasonable to consider the disputed facts and the role of precedent in determining a negotiated penalty amount.

8. It is reasonable to conclude that it is appropriate to take PG&E's current financial circumstances into consideration in finding that the proposed settlement totaling $150 million is appropriate.

9. It is reasonable to conclude that when all the circumstances are considered, the public interest will be furthered by the adoption of this Settlement Agreement.

10. It is reasonable to conclude that the Settlement Agreement will result in a reasonable outcome when the Commission weighs it against prior precedents.

THEREFORE, IT IS ORDERED that:

1. The Joint Motion for Approval of the Settlement Agreement of the Safety and Enforcement Division and Pacific Gas and Electric Company is granted and the Settlement Agreement approved herein.

2. Pacific Gas and Electric Company (PG&E) shall pay a $10 million fine into the General Fund of the State of California as follows: PG&E shall make one lump sum payment of $10 million by check, money order, or other form of payment acceptable to the Commission, payable to the California Public Utilities Commission (Commission), and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102, within 30 days of the effective date of this Resolution. PG&E shall write on the face of the check or money order "For deposit to the General Fund pursuant to Resolution ALJ-439."

3. Pacific Gas and Electric Company shall pay for and implement the shareholder-funded initiatives totaling $140 million, as specified in the Settlement Agreement.

4. Pacific Gas and Electric Company shall implement the enhancements to its vegetation management processes, as specified in the Settlement Agreement.

5. This proceeding is closed.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on May 18, 2023, the following Commissioners voting favorably thereon:

/s/ RACHEL PETERSON

Rachel Peterson
Executive Director

ALICE REYNOLDS
President
GENEVIEVE SHIROMA
DARCIE L. HOUCK
JOHN REYNOLDS
KAREN DOUGLAS
Commissioners

APPENDIX A: Joint Motion for Approval of Settlement Agreement