

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Safety and Enforcement Division

**Resolution SED-7
November 16, 2023**

DRAFT RESOLUTION

**RESOLUTION SED-7 APPROVING ADMINISTRATIVE CONSENT ORDER
AND AGREEMENT OF THE SAFETY AND ENFORCEMENT DIVISION
AND PACIFIC GAS AND ELECTRIC COMPANY REGARDING THE 2021
DIXIE FIRE PURSUANT TO RESOLUTION M-4846**

SUMMARY

In this Resolution, the California Public Utilities Commission (Commission) approves an Administrative Consent Order and Agreement (ACO) between the Commission's Safety and Enforcement Division (SED) and Pacific Gas and Electric Company (PG&E) to resolve all issues involving the 2021 Dixie Fire. PG&E agrees to a \$45 million penalty, consisting of a \$2.5 million fine to the General Fund of the State of California, a \$2.5 million payment to tribes impacted by the Dixie Fire for remediations of the impacts of the Dixie Fire on tribal lands, and \$40 million in shareholder funding for capital expenditures for the initiative to transition from hard copy records to electronic records for distribution patrols and inspections. This Resolution includes an analysis of the Penalty Assessment Methodology.

BACKGROUND AND DISCUSSION

Resolution ESRB-4, issued in June 2014, directs all investor-owned electric utilities, including PG&E, to take remedial measures to reduce the likelihood of fires started by or threatening utility facilities.

In 2021, the Dixie Fire occurred in PG&E's service territory. SED conducted an investigation of the Dixie Fire and in its investigation report identified possible violations by PG&E of provisions of the California Public Utilities Code and the Commission's General Orders. SED's investigation report is attached as Attachment A.

Resolution M-4846, issued in November 2020, adopted the Commission Enforcement and Penalty Policy (Enforcement Policy) and authorized Commission staff to negotiate and propose an Administrative Consent Order to resolve an enforcement matter, subject

to review and consideration by the Commission.¹ SED and PG&E executed the attached ACO,² pursuant to and consistent with the Enforcement Policy, which resolves all issues related to SED’s investigations of the 2021 Dixie Fire and any enforcement action SED might have brought related to or arising from the 2021 Dixie Fire. In accordance with the Enforcement Policy, the proposed settlement between SED and PG&E (collectively, Parties) is memorialized in the attached Administrative Consent Order and Agreement.

The Enforcement Policy provides that “the following general considerations should be evaluated as part of any proposed settlement to be submitted for Commission review: (1) Equitable factors; (2) Mitigating circumstances; (3) Evidentiary issues; and (4) Other weaknesses in the enforcement action[.]”³ The Parties explicitly considered these factors in their confidential settlement communications under Rule 12.6 of the Commission’s Rules of Practice and Procedure. SED acknowledges PG&E’s cooperation with SED on the negotiation of the Administrative Consent Order and Agreement, and SED explicitly considered a range of evidentiary and other matters that would bear upon its pursuit of enforcement actions seeking penalties or citations on disputed issues of fact and law. When taken as a whole, the Parties agree that the ACO amounts are within the range of reasonable outcomes had the matters proceeded to formal litigation.

The Penalty Assessment Methodology sets forth five factors that staff and the Commission must consider in determining the amount of a penalty for each violation: “[s]everity or gravity of the offense, conduct of the regulated entity, financial resources of the regulated entity, including the size of the business, totality of the circumstances in furtherance of the public interest, and the role of precedent.”⁴ These factors are addressed here.

A. Severity or Gravity of the Offenses

The Commission has stated that the severity of the offense includes several considerations, including economic harm, physical harm, and harm to the regulatory process.

1. Physical and Economic Harm

The Commission has described the physical and economic harm criteria as follows:

Economic harm reflects the amount of expense which was imposed upon the victims. In comparison, violations that cause actual physical harm to people or property are generally

¹ Resolution M-4846, Findings and Conclusions #8; Enforcement Policy, p. 11.

² The ACO is attached as Attachment B.

³ Enforcement Policy, p. 15.

⁴ Enforcement Policy, pp. 16-21.

considered the most severe, followed by violations that threaten such harm.⁵

The Dixie Fire burned over 960,000 acres of land, destroyed approximately 1,300 structures, and damaged 94 others, before it was fully contained. For purposes of this ACO, PG&E does not contest CAL FIRE's determination that the Dixie Fire was caused by a Douglas fir tree contacting PG&E's electrical transmission lines. The ACO acknowledged and reflected the significant physical and economic harm arising from the Dixie Fire.

2. Harm to the Regulatory Process

As part of the severity of the offense factor, the Commission has described the harm to the regulatory process criterion as follows:

“Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the Commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees.” (Public Utilities Code § 702).

Such compliance is essential to the proper functioning of the regulatory process. For this reason, disregarding a statutory or Commission directive, regardless of the effects on the public, will be accorded a high level of severity.⁶

PG&E complied with SED during the investigation of the Dixie Fire and in the negotiation and presentation of the ACO. There were no allegations of Rule 1.1 violations and no allegations of other ethical violations or any deliberate misconduct associated with the Dixie Fire. Accordingly, this was not a significant factor in determining the basis for the penalty imposed pursuant to the ACO.

B. The Conduct of the Utility

In evaluating the conduct of the utility, the Commission has described the following considerations in evaluating the utility's conduct: (1) actions taken to prevent a violation; (2) actions taken to detect a violation; (3) actions taken to disclose and rectify a violation; (4) actions taken to conceal, hide or cover up a violation; and (5) prior history of violations.⁷

⁵ Enforcement Policy, p. 16.

⁶ Enforcement Policy, p. 17.

⁷ Enforcement Policy, p. 17.

This was the primary area of disagreement between the parties. SED alleged that PG&E violated Public Utilities (PU) Code section 451 and Commission General Order (GO) 95, Rule 18.B. in its recordkeeping and maintenance of the Bucks Creek 1101 Circuit, and that PG&E failed to prevent, detect, disclose and take appropriate action to rectify those violations. SED alleged that PG&E violated GO 95, Rule 31.1 in its maintenance of the subject tree as a hazard tree and inspection of the line on the Cresta Dam. SED further alleged that PG&E failed to properly update its procedures to reflect the required Minimum Distance Requirements for vegetation clearance prior to the Dixie Fire. PG&E contends that it followed the requirements of PU Code section 451 and GO 95 when maintaining the Bucks Creek 1101 Circuit, and that there was no evidence the subject tree presented any potential hazard. PG&E further contends it properly followed its procedures when responding to the outage at the Cresta Dam.

Accordingly, the details of this factor, such as the parties' evaluations of their respective litigation risk, were the focus of negotiations subject to the confidentiality provisions of Commission Rule 12.6, and are not described here. This is consistent with the Enforcement Policy, which states:

The Policy does not list the full range of considerations that may be relevant to negotiating a proposed settlement. However, the following general considerations should be evaluated as part of any proposed settlement to be submitted for Commission review: 1. Equitable factors; 2. Mitigating circumstances; 3. Evidentiary issues; and 4. Other weaknesses in the enforcement action that the division reasonably believes may adversely affect the ability to obtain the calculated penalty.⁸

Nevertheless, PG&E's conduct in preventing the violation, detecting the violation, and disclosing and rectifying the violation were expressly considered in negotiating and resolving the ACO.

In response to the Dixie Fire and pursuant to the ACO, PG&E shareholders will fund \$40 million over five years to transition from hard copy records to electronic records for patrols of PG&E's overhead distribution facilities and patrols and inspections of PG&E's underground distribution facilities, to facilitate compliance with GO 95 and 165. SED will monitor PG&E's progress in meeting this initiative and total spending in connection with this work.

⁸ Enforcement Policy, p. 15.

C. Financial Resources of the Utility

The Commission has 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.²

PG&E provided SED with information about its financial resources over the course of its negotiations leading to the ACO, and SED took that into consideration. According to PG&E, its current financial situation is characterized by the parent company's sub-investment grade credit ratings by both S&P and Moody's and a heavily discounted common stock valuation (around 20% below the regulated utility peer group), and an agreement by the parent company to not pay common dividends until it has recognized \$6.2 billion in non-GAAP core earnings, as defined by the Plan of Reorganization of 2020.

The Commission itself is aware of most of the details of PG&E's significant financial obligations, but for clarity they are summarized here. PG&E has entered into settlement agreements in other venues pursuant to which it has total financial obligations of \$25.5 billion to settle claims related to the 2017 and 2018 wildfires as part of its Plan of Reorganization. In addition, the Commission's approval of the Settlement of the 2017 and 2018 Wildfire OII, with modifications, imposed additional penalties on PG&E of \$2.137 billion (with \$200 million permanently suspended). Further, PG&E has entered into settlement agreements with the Sonoma District Attorney under which it has total financial obligations of \$20.25 million to settle the civil complaint relating to the Kincadee Fire and with the District Attorneys of Plumas, Lassen, Tehama, Shasta, and Butte Counties under which it has total financial obligations of \$34.75 million to settle civil complaints relating to the Dixie and Fly Fires filed by those district attorneys. Most recently, the Commission approved a settlement agreement between SED and PG&E in connection with the Zogg Fire.¹⁰ In that agreement, PG&E agreed to pay a \$150 million penalty, consisting of a \$10 million penalty to the State's General Fund and \$140 million in permanent disallowances targeted to PG&E's vegetation management program to help mitigate the risk of similar incidents or harm to the public in the future.

² Enforcement Policy, p. 19.

¹⁰ See, Resolution ALJ-439, issued May 24, 2023.

The \$45 million combination of amounts for which PG&E will pay penalties or not seek cost recovery pursuant to the ACO is reasonable and appropriate in light of PG&E's financial condition.

D. Totality of Circumstances in Furtherance of Public Interest

The Commission has 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.

An economic benefit amount shall be estimated for every violation. Economic benefit includes any savings or monetary gain derived from the act or omission that constitutes the violation.¹¹

In SED's estimation, PG&E derived relatively minimal "economic benefit" in the form of cost savings or monetary gain as a result of the act or omission that constituted the violation. The package of sanctions, including remedial actions and a monetary penalty, were tailored to the unique facts of this case.

The totality of the circumstances in furtherance of public interest supports approval of the ACO. First, it provides a significant resolution of the issues identified here. PG&E agrees to pay \$2.5 million in penalties, \$2.5 million remediation payment to affected Tribes, and not seek rate recovery for \$40 million in shareholder-funded costs for PG&E to transition to electronic records for overhead patrols to facilities compliance with GO 95 and 165. By reaching a settlement, SED and PG&E have implicitly agreed that the total shareholder costs of \$45 million is not constitutionally excessive.

Second, with an appropriate resolution having been reached, it is in the public interest to resolve this proceeding now. The ACO obviates the need for SED to initiate an enforcement proceeding and for the Commission to adjudicate the disputed facts, alleged violations, and appropriate penalty. Approval of the ACO promotes administrative efficiency so that the Commission and parties are not required to expend substantial time and resources on continued litigation for a matter that has been satisfactorily resolved.

¹¹ Enforcement Policy, p. 19.

E. Consistency with Precedent

The Commission has 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.

The ACO is reasonable when compared to the outcome of other settlements and outcomes in Commission proceedings. The following are examples of approved settlements and enforcement decisions involving electric utilities and safety issues.

**1. Zogg Fire Administrative Enforcement Order
(Resolution ALJ-439)**

The Zogg Fire ignited on September 27, 2020, when a tree fell on energized conductors owned and operated by PG&E in Shasta County. The fire burned more than 56,000 acres, caused four fatalities and one injury, destroyed 204 structures, and damaged 27 structures. SED issued an Administrative Enforcement Order alleging that PG&E had violated PU section 451, GO 95, and GO 165. PG&E disputed each violation and/or proposed penalty. SED and PG&E agreed to a settlement of \$150 million for the Zogg Fire, including a \$10 million penalty payable to the General Fund and \$140 million in shareholder funds for new wildfire initiatives designed to mitigate the risk of similar events occurring in the future. The Commission approved the settlement in Resolution ALJ-439.

**2. Kincade Fire ACO Settlement (Resolution SED-6 and
SED-6A)**

The Kincade Fire ignited on October 23, 2019, in Sonoma County. According to CAL FIRE, the fire burned more than 77,000 acres, 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 PU Code section 451 and GO 95. SED and PG&E entered into an ACO and agreed to a settlement of \$125 million for the Kincade Fire, including a \$40 million penalty payable to the General Fund and an \$85 million permanent disallowance for cost recovery for removal of abandoned transmission lines within PG&E's service area. The Commission approved the settlement in Resolution SED-6, as modified by Resolution SED-6A.

3. The 2017 and 2018 Wildfire Settlement (D.20-05-019)

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 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 imposed penalties totaling \$2.137 billion on PG&E, which consisted of \$1.823 billion in disallowances for wildfire-related expenditures, \$114 million in System enhancement Initiatives and corrective actions, and \$200 million fine payable to the General Fund (which was permanently suspended).

4. Long Beach Power Outages OII Decision (D.17-09-024)

In this proceeding, the CPUC approved a settlement between Southern California Edison Company ("SCE") and SED related to multiple power outages on SCE's secondary network system, which serves Long Beach. The electric facility failures caused fires in several underground structures and explosions. No fatalities or injuries resulted from the power outages. SED alleged, among other things, that (1) SCE violated PU Code §§ 451 and 768.6 and GO 128, for failing to properly maintain, inspect, and manage the electrical system in Long Beach; (2) SCE violated a commitment to an earlier settlement by failing to provide accurate estimates of service restoration times during outages; and (3) the violations that caused or contributed to the power outages that resulted in fires, explosions, and property damage endangered the safety of the public. Under the settlement, SCE admitted to violations of Rule 17.1 of GO 128 and PU Code § 451. SCE agreed to pay a penalty of \$4 million to the General Fund. SCE also agreed to perform \$11 million worth of corrective actions, designed to prevent future outages, at shareholder expense.

5. Malibu Canyon Fire OII Decision – Settlement 1 (D.12-09-019)

In this proceeding, the CPUC approved a settlement between AT&T, Sprint, Verizon Wireless (the "Settling Respondents"), and SED related to three utility poles that fell during a Santa Ana windstorm and ignited the Malibu Canyon Fire. The poles were jointly owned by SCE, AT&T, Sprint, Verizon Wireless, and NextG. The power lines on the poles were owned and operated by SCE. There were no reported injuries or fatalities. SED alleged, among other things, that (1) one of the felled poles that ignited the Malibu Canyon Fire was overloaded in violation of GO 95 and PU Code § 451; (2) the safety factor of replacement poles did not meet the requirements of GO 95 for new construction; and (3) the Settling Respondents violated Rule 1.1 by submitting accident reports, data responses, and written testimony that contained incorrect information. The Settling Respondents denied all of SED's allegations. Ultimately, the Settling Respondents agreed to pay \$12 million (divided equally between the three Settling Respondents). Of

the \$12 million, \$6.9 million was to be allocated to the General Fund and \$5.1 million to the Enhanced Infrastructure and Inspection Fund (“EIIF”), established pursuant to the settlement agreement. Funds paid to the EIIF were to be used to strengthen utility poles in Malibu Canyon and to conduct a statistically valid survey of joint-use poles in the service territory for compliance with GO 95. Any funds leftover from the EIIF would revert to the General Fund.

**6. Malibu Canyon Fire OII Decision – Settlement 2
(D.13-09-026)**

In the above-referenced Malibu Canyon Fire proceeding, the CPUC also approved a settlement between NextG Networks of California, Inc. (“NextG”) and SED. SED alleged the same violations of GO 95, PU Code § 451, and Rule 1.1. Under the settlement, NextG admitted noncompliance with GO 95, PU Code § 451, and Rule 1.1. NextG agreed to pay \$14.5 million in penalties. The penalties were comprised of \$8.5 million in fines to the General Fund and \$6 million allocated for a safety audit of all NextG poles and pole attachments in California. The settlement required NextG to complete the audit and any remedial work required following the audit within three years from the start date of the audit. NextG agreed to pay any money left over from the \$6 million to the General Fund; that money could not be used for any remedial work related to substandard facilities identified in the audit.

**7. Malibu Canyon Fire OII Decision – Settlement 3
(D.13-09-028)**

In the above-referenced Malibu Canyon Fire proceeding, the CPUC also approved a settlement between SCE and SED. SED alleged the same violations of GO 95, PU Code § 451, and Rule 1.1. SCE admitted that: (1) one of the poles was overloaded in violation of GO 95; (2) it failed to take prompt action to prevent the pole from overloading, in violation of PU Code § 451; and (3) it withheld relevant information from SED and the CPUC in violation of Rule 1.1. Under the settlement, SCE admitted noncompliance with GO 95, PU Code § 451, and Rule 1.1. SCE agreed to pay \$20 million to the General Fund and provide \$17 million to assess utility poles in the Malibu area for compliance with GO 95 safety factors and SCE’s internal standards. SCE agreed to remediate all substandard utility poles. All \$37 million in fines were comprised of shareholder penalties.

8. The Witch/Rice and Guejito Fire Settlements (D.10-04-047)

In late October 2007, several severe fires occurred in the San Diego area. The Rice Fire ignited in Fallbrook, California, and the Witch Fire ignited in southern San Diego County near State Highway 78 and Santa Ysabel. The Guejito Fire started in the San Pasqual area of the county. In San Diego County, the fires burned more than 197,000 acres, over 1,100 residences were destroyed, and two people were killed. Under the terms of the approved settlement, San Diego Gas & Electric Company (“SDG&E”) paid \$14.35 million to the General Fund; CoxCom Inc., and Cox California Telcom LLC Agreement, CoxCom Inc. and Cox California Telcom LLC paid \$2 million to the General Fund;

SDG&E was also required to reimburse SED up to an additional \$400,000 in order to implement a computer work module; and SDG&E was required to remit any unused balance of the \$400,000 to the General Fund.

COMMENTS ON DRAFT RESOLUTION

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived or reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

FINDINGS AND CONCLUSIONS

1. Resolution M-4846 authorized Commission staff to negotiate and propose an Administrative Consent Order to resolve an enforcement matter, subject to review and consideration by the Commission.
2. SED and PG&E have engaged in settlement negotiations and, consistent with Resolution M-4846 and the Enforcement Policy, have memorialized their proposed settlement in the attached Administrative Consent Order and Agreement.
3. SED and PG&E have agreed that the attached Administrative Consent Order and Agreement resolves all issues related to SED's investigations of and any enforcement action SED might have brought related to or arising from the 2021 Dixie Fire.
4. The agreed-upon fines and remedial actions appropriately resolve all issues related to SED's investigations and any enforcement action SED may have brought, are reasonable in light of the circumstances, consistent with the law, and in the public interest.
5. Based on the analysis under the Penalty Assessment Methodology, the agreed-upon fines, safety measures and disallowances are reasonable in light of the circumstances.

THEREFORE, IT IS ORDERED that:

1. The Administrative Consent Order and Agreement between SED and PG&E relating to the 2021 Dixie Fire is adopted.
2. 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 November 16, 2023; the following Commissioners voting favorably thereon:

Rachel Peterson
Executive Director