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**Via Electronic Transmission**

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**Subject: Comments of The Public Advocates Office and  
The Utility Reform Network on Draft Resolution M-4864**

Dear Director Peterson,

Pursuant to Rule 14.5 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) and The Utility Reform Network (TURN) submit these comments on *Draft Resolution M-4864: Authorizing Pacific Gas and Electric Company to Exit Step 1 of the "Enhanced Oversight and Enforcement Process" Adopted in Decision 20-05-053* (Draft Resolution M-4864). Please contact Nat Skinner ([Nathaniel.Skinner@cpuc.ca.gov](mailto:Nathaniel.Skinner@cpuc.ca.gov)) or Katy Morsony ([kmorsony@turn.org](mailto:kmorsony@turn.org)) with any questions relating to these comments.

We urge the Commission to adopt the recommendations discussed herein.

Sincerely,

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## I. INTRODUCTION

Commission Decision (D.) 20-05-053, which approved Pacific Gas and Electric Company's (PG&E's) reorganization and exit from bankruptcy, created an Enhanced Oversight and Enforcement Process (EOE process). The EOE process has six steps with escalating remedies. D.20-05-053 identifies triggering events for each step and conditions that PG&E must satisfy to exit the process.<sup>1</sup>

In April 2021, the Commission issued Resolution M-4852, which placed PG&E into Step 1 of the EOE process for its failure to sufficiently prioritize its Enhanced Vegetation Management Program (EVM) based on risk.<sup>2</sup> Resolution M-4852 required PG&E to file a corrective action plan addressing 14 elements. PG&E timely filed its corrective action plan on May 6, 2022 and subsequently filed updates to this plan every 90 days.

On October 14, 2022, the Commission issued Draft Resolution M-4864 which would authorize PG&E to exit Step 1 of the EOE process. Cal Advocates and TURN concur that PG&E has complied with the requirements imposed by Resolution M-4852.<sup>3</sup> However, recent catastrophic wildfires associated with PG&E-owned equipment,<sup>4</sup> as well as PG&E's recent history of failures related to vegetation management, asset inspection, and asset maintenance, warrant placing PG&E further into the EOE process.<sup>5</sup>

Cal Advocates and TURN urge the Commission to examine these issues and take appropriate steps to require PG&E to meet its obligation to provide safe and reliable service. Adopting Draft Resolution M-4864 without simultaneously addressing the other well-documented safety problems at PG&E would fall short of the Commission's duty to require PG&E to provide safe and reliable service.

Specifically, Cal Advocates and TURN make the following recommendations:

- The Commission should amend Resolution M-4864 or issue a concurrent resolution to move PG&E into Step 2 of the EOE process for its involvement in the 2021 Dixie Fire.
- The Commission should open an Order to Show Cause (OSC) to examine PG&E's role in the 2021 Dixie Fire.

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<sup>1</sup> D.20-05-053, Appendix A.

<sup>2</sup> *Resolution M-4852: Placing Pacific Gas and Electric Company into Step 1 of the "Enhanced Oversight and Enforcement Process" Adopted in Decision 20-05-053*, April 15, 2021.

<sup>3</sup> Draft Resolution M-4864, p. 2.

<sup>4</sup> In particular, the Dixie Fire and the Zogg Fire.

<sup>5</sup> Discussed in further detail in Section II.B.2 of these comments.

- The Commission should open an Order Instituting Investigation (OII) to examine PG&E’s conduct related to vegetation management, asset inspections, and asset maintenance.
- If either the proposed OSC or OII finds that PG&E’s conduct is a triggering event, the Commission should move PG&E into Step 4 of the EOE process.

## II. COMMENTS

### A. **The Commission should amend Resolution M-4864 or issue a concurrent resolution to move PG&E into Step 2 of the EOE process for its involvement in the 2021 Dixie Fire.**

The Dixie Fire ignited on July 13, 2021 when a damaged and decayed Douglas-Fir tree fell and contacted PG&E distribution lines.<sup>6</sup> The fire burned nearly one million acres, caused one fatality, and destroyed 1,311 structures.<sup>7</sup> It was the largest individual wildfire in California history, and the second largest in US history.<sup>8</sup>

The California Department of Forestry and Fire Protection (CAL FIRE) investigated the Dixie Fire and found PG&E to be in violation of five distinct California codes.<sup>9</sup> Of particular note was PG&E’s failure to identify and remove the damaged and decayed tree, which PG&E “should have ... discovered and removed” in the prior 13 years.<sup>10</sup> When the tree fell and contacted PG&E lines, the utility demonstrated “no sense of urgency” despite the history of extreme fire danger and poor access in the surrounding region.<sup>11</sup> PG&E’s delayed response allowed the tree to remain in contact with energized lines for approximately 10 hours,<sup>12</sup> and was a “direct and negligent factor in the ignition of the fire.”<sup>13</sup>

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<sup>6</sup> CAL FIRE Investigation Report into the July 13, 2021 Dixie Fire, p. 5.

<sup>7</sup> CAL FIRE Dixie Fire incident webpage, <https://www.fire.ca.gov/incidents/2021/7/13/dixie-fire/>

<sup>8</sup> CAL FIRE Investigation Report into the July 13, 2021 Dixie Fire, p. 6. Other fire complexes (where multiple wildfires merge) have been larger, but the Dixie Fire was the largest *individual* fire in California history.

<sup>9</sup> CAL FIRE Investigation Report into the July 13, 2021 Dixie Fire, pp. 1-3.

<sup>10</sup> CAL FIRE Investigation Report into the July 13, 2021 Dixie Fire, pp. 45-46.

<sup>11</sup> CAL FIRE Investigation Report into the July 13, 2021 Dixie Fire, p. 45.

<sup>12</sup> CAL FIRE Investigation Report into the July 13, 2021 Dixie Fire, p. 45.

<sup>13</sup> CAL FIRE Investigation Report into the July 13, 2021 Dixie Fire, p. 45.

One of the triggering events for Step 2 of the EOE process is:<sup>14</sup>

- ii. A gas or electric incident occurs that results in the destruction of 1,000 or more dwellings or commercial structures and appears to have resulted from PG&E's failure to follow Commission rules or orders or prudent management practices;

Cal Fire's report shows that the Dixie Fire meets this threshold. The Dixie Fire destroyed 1,311 structures and it is likely that at least 1,000 of these were residential or commercial structures.<sup>15</sup> CAL FIRE's investigation of the Dixie Fire determined that PG&E failed to follow vegetation management codes, and when that failure resulted in a vegetation contact with its lines, PG&E failed to respond with any urgency.<sup>16</sup> PG&E's actions clearly demonstrate a failure to follow "prudent management practices."

PG&E's negligence directly contributed to the largest individual wildfire in California history.<sup>17</sup> PG&E's negligence resulted in destroyed homes, caused unhealthy air quality over much of the western United States,<sup>18</sup> and resulted in at least one fatality.<sup>19</sup> Such devastation indubitably warrants enhanced oversight, particularly given the context of PG&E's lengthy criminal history.<sup>20</sup>

In light of this triggering event, the Commission should immediately act to place PG&E into Step 2 of the EOE process, either by amending Draft Resolution M-4864 or by issuing a concurrent resolution. Notably, the EOE process does not list optional or example triggers. D.20-05-053 plainly states that "a Commission Resolution *would place* PG&E in the appropriate step based upon the occurrence of a specified triggering event."<sup>21</sup> A triggering event has occurred; the Commission must follow the requirements of its own decisions.

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<sup>14</sup> D.20-05-053, Appendix A, p. 3.

<sup>15</sup> CAL FIRE reports that the 2021 Dixie Fire destroyed "763 residential homes, 12 multifamily homes, 8 commercial residential homes, 148 nonresidential commercial structures, and 466 detached structures" (CAL FIRE Investigation Report, p. 5). This means that the fire destroyed *at least* 931 "dwellings or commercial structures." The total is higher if any of the 466 detached structures were either dwellings (such as accessory dwelling units) or were associated with a business (such as livestock barns or warehouses). Additionally, the multifamily homes and "commercial residential homes" may comprise more than one dwelling each.

<sup>16</sup> CAL FIRE Investigation Report into the July 13, 2021 Dixie Fire, p. 45.

<sup>17</sup> CAL FIRE Investigation Report into the July 13, 2021 Dixie Fire, p. 6.

<sup>18</sup> CAL FIRE Investigation Report into the July 13, 2021 Dixie Fire, pp. 5-6.

<sup>19</sup> CAL FIRE Dixie Fire incident webpage, <https://www.fire.ca.gov/incidents/2021/7/13/dixie-fire/>

<sup>20</sup> See generally *U.S. v. Pacific Gas and Electric Company*, N.D. Cal. 3:14-cr-00175-WHA, Doc. No. 1524-1, PG&E Monitor Report, November 21, 2021 (Nov. 23, 2021).

<sup>21</sup> D.20-05-053, Appendix A, p. 1, emphasis added.

**B. The Commission should examine PG&E’s record of negligence, unsafe conduct, and repeated violations of law.**

From 2020 through 2022, PG&E’s equipment was implicated in at least two major catastrophic wildfires.<sup>22</sup> PG&E additionally has a lengthy history of failing to comply with its regulatory requirements related to vegetation management, asset inspection, and maintenance.

Step 4 of the EOE process includes a triggering event based on repeated violations, gross negligence, or serious violations of law, which threaten public health and safety. It includes a separate triggering event related to willful misconduct or repeated violations of Commission orders leading to a catastrophic event.<sup>23</sup>

There is reasonable cause to believe PG&E’s conduct in recent years has met the underlying conditions for one or both of these triggering events.

**1. The Commission should open an Order to Show Cause to examine PG&E’s role in the 2021 Dixie Fire.**

As discussed in section II.A of these comments, CAL FIRE’s investigation into the Dixie Fire found that the fire resulted from PG&E’s failure to follow vegetation management codes and its failure to respond to the fault in a prudent and timely manner. CAL FIRE’s investigation into the 2021 Dixie Fire indicates that PG&E:

- Violated regulatory requirements by failing to remove a damaged and decayed tree before it fell on PG&E’s lines and caused the initial fault, and
- Committed gross negligence in failing to respond to the fault in a prudent and timely manner, either by visiting the site of the ignition immediately, or de-energizing the line until PG&E could verify that the area was safe.

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<sup>22</sup> The Dixie Fire and Zogg Fire.

<sup>23</sup> D.20-05-053, Appendix A, p. 6:

- iii. The Commission determines through an Order to Show Cause, Order Instituting Investigation, or other appropriate process, that PG&E repeatedly violated its regulatory requirements, committed gross negligence, or committed a serious violation of the law, such that such conduct in the aggregate represents a threat to public health and safety;
- iv. PG&E causes an electric or gas safety incident that results in the destruction of 1,000 or more dwellings or commercial structures and the Commission determines through an Order to Show Cause, Order Instituting Investigation, or other appropriate process, that such event results from the willful misconduct or repeated and serious violations of Commission rules, orders or regulatory requirements.

The Dixie Fire was a devastating incident that destroyed well over 1,000 structures, and resulted from PG&E's failures to comply with its regulatory requirements. The Commission should immediately open an Order to Show Cause why PG&E should not be sanctioned for its role in the 2021 Dixie Fire. Since CAL FIRE has already presented findings that PG&E's conduct was neither prudent nor reasonable, an OSC is appropriate.

If the Commission finds that the Dixie Fire resulted from PG&E's "willful misconduct or repeated and serious violations of Commission rules, orders or regulatory requirements,"<sup>24</sup> as CAL FIRE's findings demonstrate, then the Commission should move PG&E into Step 4 of the EOE process, consistent with the requirements of D.20-05-053.

**2. The Commission should open an Order Instituting Investigation (OII) to examine PG&E's conduct related to vegetation management, asset inspections, and asset maintenance.**

The Commission should open an OII to further investigate PG&E's history of vegetation management, asset inspection, and asset maintenance failures throughout the past three years. PG&E's history of violations related to vegetation management led to the Zogg Fire, which ultimately caused the deaths of four individuals.<sup>25</sup>

If the Commission finds through an OII that PG&E "repeatedly violated its regulatory requirements, committed gross negligence, or committed a serious violation of the law, such that such conduct in the aggregate represents a threat to public health and safety,"<sup>26</sup> then the Commission should move PG&E into Step 4 of the EOE process.

**a) Zogg Fire**

The Zogg Fire ignited on September 27, 2020 when a pine tree fell and contacted PG&E distribution lines.<sup>27</sup> The fire burned over 56,000 acres and caused four civilian fatalities.<sup>28</sup> On October 25, 2022, the Commission's Safety and Enforcement Division (SED) issued a proposed Administrative Enforcement Order (AEO) in the matter of PG&E's involvement in the Zogg Fire. The AEO alleges that PG&E violated General Orders and Public Utilities Codes related to inspections and vegetation management.<sup>29</sup> The AEO cites PG&E's history of violations related

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<sup>24</sup> D.20-05-053, Appendix A, p. 6.

<sup>25</sup> CAL FIRE Investigation Report into the July 13, 2021 Dixie Fire, p. 5.

<sup>26</sup> D.20-05-053, Appendix A, p. 6.

<sup>27</sup> CAL FIRE Investigation Report into the July 13, 2021 Dixie Fire, p. 5.

<sup>28</sup> CAL FIRE Investigation Report into the July 13, 2021 Dixie Fire, p. 5.

<sup>29</sup> Proposed Administrative Enforcement Order in the matter of: *The Involvement of Pacific Gas and Electric Company's Electric Facilities in the 2020 Zogg Fire*, October 25, 2022, p. 1. Available at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/safety-and-enforcement-division/acos-and-aeos/zogg-fire-sed-administrative-enforcement-order-2022-10-25.pdf>

to vegetation management, pole inspections, and recordkeeping practices,<sup>30</sup> which contributed to the ignition of the devastating Zogg Fire.

The AEO additionally cites an arborist’s inspection of the tree that fell on PG&E’s lines. According to the arborist, the tree had “significant obvious flaws” that predated the Zogg Fire and were present for years during PG&E inspections.<sup>31</sup> Furthermore, the tree had a significant lean, from which a PG&E vegetation inspector “should have determined that failure of the tree was probable.”<sup>32</sup> SED’s proposed enforcement action against PG&E indicates that PG&E repeatedly violated its regulatory requirements in a manner that created a substantial – and realized – threat to public health and safety.

**b) Failures in vegetation management, asset inspection, and asset maintenance**

Beyond the specific case of the Zogg Fire, PG&E has a troubling history of failing to comply with its regulatory requirements. From 2020 through 2022, various entities have noted PG&E’s many compliance failures, including:

- PG&E’s repeated failures to comply with GO 95 requirements regarding maintenance timeframes,<sup>33</sup> resulting in a substantial backlog of maintenance. Overdue maintenance contributed to at least eleven ignitions in the High Fire-Threat District in 2021.<sup>34</sup> PG&E has proposed a plan that would not resolve its maintenance backlog until 2032.<sup>35</sup>

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<sup>30</sup> Proposed Administrative Enforcement Order in the matter of: *The Involvement of Pacific Gas and Electric Company’s Electric Facilities in the 2020 Zogg Fire*, October 25, 2022, p. 11.

<sup>31</sup> Proposed Administrative Enforcement Order in the matter of: *The Involvement of Pacific Gas and Electric Company’s Electric Facilities in the 2020 Zogg Fire*, October 25, 2022, pp. 3-4. Available at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/safety-and-enforcement-division/acos-and-aeos/zogg-fire-sed-administrative-enforcement-order-2022-10-25.pdf>

<sup>32</sup> Proposed Administrative Enforcement Order in the matter of: *The Involvement of Pacific Gas and Electric Company’s Electric Facilities in the 2020 Zogg Fire*, October 25, 2022, p. 4.

<sup>33</sup> “Because of its backlog, PG&E is not currently complying with relevant GOs. As seen in Table 4.6.4-3, over 54 percent of the distribution tags that were open on June 7, 2022, were overdue.” Energy Safety, *Draft Decision on 2022 Wildfire Mitigation Plan Update: Pacific Gas and Electric Company*, October 6, 2022, p. 93.

<sup>34</sup> “In 2021, the AFA [Asset Failure Analysis] Team identified or affirmed the Apparent Causes of 11 equipment-caused CPUC reportable ignitions with pre-existing work tags on the asset which were determined to be relevant to the ignition.” PG&E’s response to data request CalAdvocates-PGE-2022WMP-08, question 5.

<sup>35</sup> PG&E’s 45-day Response, critical issue RN-PG&E-22-05, pp. 42-43.



- PG&E’s extremely high failure rates in asset inspections in both 2021 and 2022. These failure rates have increased across the board from 2021 to 2022.<sup>36</sup>
- CAL FIRE’s multiple notices of violation to PG&E for its failures to secure permits to perform vegetation management work.<sup>37</sup>
- PG&E’s lack of confirmation on whether it had properly performed intrusive inspections on 41,343 poles in compliance with GO 165.<sup>38</sup>
- PG&E’s failure to inspect 54,755 poles in compliance with GO 165.<sup>39</sup>
- PG&E’s historical use of cellon gas in over half a million poles that led to inaccurate intrusive inspections that did not comply with GO 165, causing a pole to fail in a customer’s backyard.<sup>40</sup>
- Energy Safety’s multiple Notices of Defect and Notices of Violation to PG&E related to its failures to comply with its approved WMPs.<sup>41</sup>

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<sup>36</sup> Energy Safety, *Draft Decision on 2022 Wildfire Mitigation Plan Update: Pacific Gas and Electric Company*, October 6, 2022, p. 101.

<sup>37</sup> CAL FIRE issued four separate notices of violation regarding PG&E’s work associated with the CZU Lightning Fire, dated October 30, 2020, November 11, 2020, November 18, 2020, and November 30, 2020. PG&E’s responses to Data Request CalAdvocates-PGE-NonCase-MGN-12142020, Question 3, Attachments 1 through 4, January 8, 2021.

CAL FIRE notice of violation *NOV #2 – Wunderlich Park – Monta Vista Transmission ROW*, December 16, 2021. Received as PG&E’s response to Data Request CalAdvocates-PGE-2022WMP-22, Question 13, Attachment 1, July 5, 2022.

<sup>38</sup> PG&E’s response to Data Request CalAdvocates-PGE-R1810007-32, Question 2, January 27, 2021.

<sup>39</sup> PG&E’s self-report letter to the WSD, May 7, 2021. Per PG&E’s self-report, approximately 50,000 of these poles were inspected in 2019 under PG&E’s Wildfire Safety Inspection Program, which did not address all requirements of GO 165. Per PG&E’s response to informal data request sent by Nathaniel Skinner on May 7, 2021, Question 3, May 21, 2021, PG&E was unable to find *any* GO 165 inspection records for 182 of these poles.

<sup>40</sup> On May 7, 2021, PG&E self-reported a safety issue concerning cellon-treated wood poles. Cellon gas is a fumigant preservative, the use of which led to inaccurate measurements of internal rot and shell thickness. In effect, the poles did not have valid internal inspections. On July 8, 2020 a cellon-treated pole failed in a customer’s backyard. There was no injury or ignition. PG&E has approximately 543,560 cellon-treated poles. PG&E’s self-report letter to the WSD, May 7, 2021.

<sup>41</sup> Notices of Defect NOD\_MJ4\_PGE\_20211207\_01, NOD\_PGE\_ELZ\_20211214-01, and NOD\_MJ4\_PGE\_20211203\_01, issued March 11, 2022. Notices of Violation NOV\_PGE\_QP\_20210304-01, NOV\_PGE\_QP\_20210507-01, and NOV\_PGE\_QP\_20210601-01, issued December 23, 2021.

This array of problems indicates that PG&E is suffering a systemic failure of safety management, causing issues in vegetation management, asset inspections, and asset maintenance. Taken in isolation, any one of these issues would not necessarily warrant enhanced oversight and enforcement of PG&E. However, in aggregate, the number and breadth of these issues suggest a systemic failure in PG&E's internal management practices. While PG&E self-reported several of these issues, and has responded in a timely fashion to the notices of defects and violations, it is not clear that PG&E has identified or mitigated the systemic failures in its practices. Indeed, the sheer number of PG&E's failures (evidenced in the list above and in connection with recent devastating wildfires) points to a broad and pervasive failure of PG&E's management, representing a clear and present threat to public health and safety.

### III. CONCLUSION

Cal Advocates and TURN respectfully request that the Commission adopt the recommendations discussed herein.

Respectfully submitted,

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