



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

FILED

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H2211015

In the matter of:

The Involvement of Pacific Gas and Electric
Company's Electric Facilities in the 2020 Zogg
Fire

H.22-11-015

**JOINT MOTION FOR APPROVAL OF SETTLEMENT
AGREEMENT OF SAFETY AND ENFORCEMENT DIVISION
AND PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)**

Pursuant to Rules 11.1 and 12.6 of the California Public Utilities Commission's (CPUC or Commission) Rules of Practice and Procedure and Resolution (Res.) M-4846, Pacific Gas and Electric Company (PG&E) and the Safety and Enforcement Division (SED) request that the Commission approve a settlement agreement to resolve all issues in the scope of this proceeding. This Settlement Agreement is attached as Exhibit A. PG&E and SED are collectively referred to as "Parties" in this motion.

The Settlement Agreement is in the public interest and represents a fair and equitable resolution of the issues. Pursuant to the Settlement Agreement, PG&E agrees to pay \$150 million, which includes a \$10 million fine to the General Fund of the State of California and specified shareholder-funded initiatives totaling \$140 million (Shareholder-Funded Initiatives). PG&E also agrees to implement specified enhancements to PG&E's vegetation management (VM) processes. Approval of the settlement will resolve the issues in dispute in the proceeding and reduce the administrative and resource burden on the Commission and Parties that would otherwise result from an evidentiary hearing, any further enforcement proceedings, and/or any subsequent appeals.

I. BACKGROUND

On October 25, 2022, SED issued a proposed Administrative Enforcement Order (Proposed Order) under the Commission Enforcement Policy adopted by Res. M-4846, related to

the Zogg Fire. The Proposed Order is attached as Exhibit B.¹ 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 Public Utilities Code (PUC) § 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 CEMA 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 | PUC § 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.

The Parties agreed to engage in confidential settlement discussions pursuant to Rule 12.6. 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

¹ The Proposed Order includes SED’s Investigation Report of the Zogg Fire. Only Attachments D and E to the SED Investigation Report are included in this Motion. Pursuant to the Memorandum of Understanding between SED and the California Department of Fire and Forestry Protection (CAL FIRE), Attachments A-C, which represent CAL FIRE’s Investigation Report and supporting attachments, cannot be disclosed without CAL FIRE’s authorization. To date, CAL FIRE has not authorized disclosure of its Investigation Report.

of disputed issues when appropriate. The assigned Administrative Law Judge granted that motion, and a subsequent motion to extend the stay to February 28, 2023.

II. DISCUSSION

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.² In Decision (D.) 22-04-058, 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.³

The Settlement Agreement was the result of arms-length negotiation between SED and PG&E, which was guided by the factors set forth in the Penalty Assessment Methodology. As set forth below, consideration of those factors supports a Commission finding that the settlement is reasonable and in the public interest. The Settlement Agreement includes stipulated facts, as well as facts in dispute, which provide a record basis for the Commission's determination.

A. Severity or Gravity of the Offense

The Commission has 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.⁴

The Zogg Fire, which burned more than 56,000 acres, resulted in four deaths, destruction of 204 structures, damage to 27 structures, and damages in excess of \$50 million.⁵ As set forth

² Resolution M-4846 (Nov. 6, 2020), Enforcement Policy, Appendix I.

³ D.22-04-058 at 3-4; *see also* D.22-04-057 at 2-4.

⁴ D.20-05-019 at 20; Enforcement Policy at 16.

⁵ Settlement Agreement, II.A.7.

in the Proposed Order, SED asserts that two of the alleged violations, the alleged failure to perform a separate 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.⁶ SED states the other two alleged violations, while unrelated to the cause of the Zogg Fire, were violations of GO 95 discovered in the course of its investigation.⁷ 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.⁸ Nonetheless, the Settlement Agreement acknowledges and reflects the significant physical and economic harm arising from the Zogg Fire.

B. The Conduct of the Utility

In evaluating the conduct of the utility, the Commission considers the utility's conduct in: (1) preventing the violation; (2) detecting the violation, and (3) disclosing and rectifying the violation.⁹

This factor is the primary area of disagreement between the Parties. Without waiving the protections of Rule 12.6 of the Commission's Rules of Practice and Procedure, the Parties represent that they considered, among other things, PG&E's conduct in preventing the alleged violations, detecting the alleged violations, and disclosing and rectifying the alleged violations.

As set forth in the Proposed Order, SED alleges that key elements demonstrate egregious conduct, including (1) PG&E's failure to take action to prevent and rectify a violation; and (2) PG&E's prior history of violations.¹⁰ SED argues that PG&E's failure to take reasonable action to correct or prevent the violations contributing to the Zogg Fire, given PG&E's prior history of

⁶ Proposed Order at 10.

⁷ *Id.*

⁸ Request for Hearing at 3, 5.

⁹ Enforcement Policy at 17.

¹⁰ Proposed Order at 10.

similar violations, warrants the maximum daily penalty.¹¹ As detailed in its Hearing Request, PG&E disputes the alleged violations and proposed penalties set forth in the Proposed Order.¹² Pursuant to the 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.

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.¹³

PG&E is the largest electric utility in the state of California in terms of customers and revenue. According to PG&E, its financial condition limits its capacity to pay additional penalties. PG&E's 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, SED took PG&E's financial resources into consideration and believes that the proposed settlement totaling \$150 million is appropriate given the importance of following proper VM and recordkeeping procedures.

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

¹¹ *Id.*

¹² Request for Hearing at 2-8.

¹³ Enforcement Policy at 19.

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.¹⁴

The Commission must evaluate penalties in the totality of the circumstances, with an emphasis on protecting the public interest. 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 and is reasonable. While PG&E disputes SED's alleged violations and proposed penalties in the Proposed Order, 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. The Parties have negotiated in good faith and submit that the totality of the circumstances in furtherance of the public interest supports approval 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 of the Commission's Rules of Practice and Procedure, the Parties represent that they took into account, among other things, the efforts PG&E has

¹⁴ Enforcement Policy at 19.

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.

Third, it is in the public interest to resolve this proceeding now. Approving the settlement would obviate the need for the Commission to hold evidentiary hearings to adjudicate the disputed facts, alleged violations, and appropriate penalty amounts related to the Zogg Fire. Approval of the settlement promotes administrative efficiency, preventing further expenditure of substantial time and resources on litigation of a matter that the Parties have satisfactorily and reasonably resolved.

E. The Role of 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.¹⁵

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

SED considered the following settlements in evaluating this incident and the Settlement Agreement:

¹⁵ Enforcement Policy at 21.

- 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.¹⁶ 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.
- 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.

The precedents reflect outcomes that included a mix of fines, shareholder funding of programs, and/or remedial action plans. The Parties believe that the Settlement Agreement

¹⁶ D.20-05-019 further modified the settlement to provide that any realized tax savings associated with the shareholder-funded expenses would be returned to ratepayers. Here, consistent with the Administrative Consent Order approved by the Commission in Resolution SED-5, the Parties have considered the potential tax treatment applicable to the settlement amounts and expressly agree that the total settlement amount of \$150 million is fair, just, and reasonable without any adjustment to account for any tax benefits or liabilities that may be realized by PG&E or its shareholders. Settlement Agreement, IV.I.

results in a reasonable outcome considering these precedents and the criteria discussed in this section.

III. CONCLUSION

As demonstrated above, the Settlement Agreement is reasonable in light of the factors set forth in the Penalty Assessment Methodology and is in the public interest. The Parties respectfully request that the Commission approve the Settlement Agreement without modification.

Respectfully Submitted,

By: /s/ Emily Fisher

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Dated: February 21, 2023

Respectfully Submitted,

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Dated: February 21, 2023

Attorney for
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EXHIBIT A

***SETTLEMENT AGREEMENT BETWEEN PACIFIC GAS AND ELECTRIC
COMPANY AND THE SAFETY AND ENFORCEMENT DIVISION OF THE
CALIFORNIA PUBLIC UTILITIES COMMISSION RESOLVING THE
INVESTIGATION INTO THE ZOGG FIRE PURSUANT TO A PROPOSED
ADMINISTRATIVE ENFORCEMENT ORDER
(RESOLUTION M-4846)***

SETTLEMENT AGREEMENT BETWEEN PACIFIC GAS AND ELECTRIC COMPANY AND THE SAFETY AND ENFORCEMENT DIVISION OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION RESOLVING THE INVESTIGATION INTO THE ZOGG FIRE PURSUANT TO A PROPOSED ADMINISTRATIVE ENFORCEMENT ORDER (RESOLUTION M-4846)

Pacific Gas and Electric Company (“PG&E”) and the Safety and Enforcement Division (“SED”) of the California Public Utilities Commission (“CPUC” or “Commission”) are hereinafter collectively referred to as the Settling Parties. On the following terms and conditions, the Settling Parties hereby agree to settle, resolve, and dispose of all claims, allegations, liabilities, and defenses within the scope of the investigation into the Zogg Fire by SED and the Commission.

This Settlement Agreement is entered into as a compromise of disputed claims and defenses in order to minimize the time, expense, and uncertainty of an evidentiary hearing, any further enforcement proceedings, and/or any subsequent appeals. The Settling Parties agree to the following terms and conditions as a complete and final resolution of all claims made by SED relating to the Zogg Fire and all defenses raised by PG&E in response thereto. SED’s claims are set forth in a proposed Administrative Enforcement Order (“Proposed Order”) captioned “In the matter of: The Involvement of Pacific Gas and Electric Company’s Electric Facilities in the 2020 Zogg Fire,” issued October 25, 2022. On November 21, 2022, PG&E submitted a timely request for an evidentiary hearing on the Proposed Order (“Request for Hearing”). This Settlement Agreement constitutes the sole agreement between the Settling Parties concerning the subject matter of the Zogg Fire and the Proposed Order.

The Parties expressly agree and acknowledge that neither this Settlement Agreement nor any act performed hereunder is, or may be deemed, an admission or evidence of the validity or invalidity of any allegations or claims of the SED, nor is the Agreement or any act performed hereunder to be construed as an admission or evidence of any wrongdoing, fault, omission, negligence, imprudence, or liability on the part of PG&E. This is a negotiated settlement of a disputed matter, and PG&E specifically and expressly denies any fault, negligence, imprudence, or violation with respect to the Zogg Fire and the Proposed Order.

I. PARTIES

The parties to this Settlement Agreement are SED and PG&E.

A. SED is a division of the Commission charged with enforcing compliance with the Public Utilities Code and other relevant utility laws and the Commission’s rules, regulations, orders, and decisions. SED is also responsible for investigations of utility incidents, including wildfires, and assisting the Commission in promoting public safety.

B. PG&E is a public utility, as defined by the California Public Utilities Code. It serves a population of approximately 16 million in a 70,000-square-mile service area within Northern and Central California.

II. RECITALS

A. Stipulated Facts

The Settling Parties have stipulated to the facts set forth below for purposes of this Settlement Agreement.

1. In the aftermath of the 2018 Carr Fire, PG&E contracted with Mountain G Enterprises, Inc. (“Mountain G”) to conduct post-Carr Fire restoration work in Shasta County, including in the area of interest.¹ During the post-Carr Fire restoration work, PG&E engaged California Forestry and Vegetation Management (“CFVM”) to perform quality control (“QC”) inspections of certain areas within the Carr Fire footprint. Records maintained by Mountain G reflect that the area of interest was subject to such a QC inspection on August 23, 2018.² The “area of interest” refers to the three spans of conductor between Poles 103320099 and 101457898 on the Girvan 1101 12kV Distribution Circuit. Based on PG&E’s review of records maintained by Mountain G in connection with the post-Carr Fire restoration work, the CFVM inspector who performed the QC inspection of the area of interest in August 2018 identified two gray pines that the QC inspector determined fell within the scope of the post-Carr Fire tree work standard.³ Based on PG&E’s review of Mountain G records, the two gray pines do not appear to have been worked as part of the post-Carr Fire restoration work.⁴ PG&E’s records indicate that neither of those trees were identified for work on three subsequent routine vegetation management (“VM”) patrols in October 2018, April 2019, and March 2020.⁵
2. PG&E has stated that the post-Carr Fire work in the Zogg Mine Road area was interrupted in late September and October 2018 due to interactions with an armed resident who was unhappy with tree crews in the area and believed that PG&E crews were marking trees for work unnecessarily.⁶ PG&E has also stated that records indicate post-Carr Fire work on Zogg Mine Road was stopped in October 2018 so that security support could be obtained. PG&E has also stated based on records that inquiries were made in October 2018 about attempting to secure help from law enforcement to protect tree crews against the resident who had reportedly brandished a firearm.⁷

¹ Proposed Order at 2.

² Proposed Order at 3.

³ Proposed Order at 3.

⁴ Proposed Order at 3.

⁵ SED Investigation Report at 15-16.

⁶ Proposed Order at 3.

⁷ Proposed Order at 3.

3. PG&E has stated that a PG&E VM regional manager recalls at some point making a decision to rely on PG&E's routine VM patrols of the area to address any remaining tree work on Zogg Mine Road relating to the post-Carr Fire efforts.⁸
4. PG&E's records indicate that PG&E performed routine VM patrols in the area of interest in October 2018, April 2019, and March 2020, and that the subject tree was not identified for removal as a result of any of those inspections.⁹ PG&E has stated there were four gray pines in the immediate area.¹⁰
5. The wildland fire known as the Zogg Fire started on September 27, 2020.¹¹ The origin of the fire was approximately three miles east of the intersection Zogg Mine Road and Jenny Bird Lane.¹²
6. The Zogg Fire was caused when a gray pine tree fell in a southerly direction and struck energized conductors which were owned and operated by PG&E.¹³
7. The Zogg Fire burned more than 56,000 acres and caused the deaths of four people, as well as destroyed 204 structures and damaged 27 others.¹⁴
8. On October 25, 2022, SED issued the Proposed Order to PG&E, pursuant to the Commission Enforcement Policy adopted by Resolution M-4846.

B. PG&E's Request for Hearing

PG&E submitted a timely Request for Hearing of 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.

C. Violations Alleged by SED

As set forth in the Proposed Order, SED alleges the following violations and proposed penalties related to the Zogg Fire. As set forth in the Request for Hearing, PG&E disputes each violation and/or proposed penalty.

⁸ Proposed Order at 3.

⁹ SED Investigation Report at 15-16.

¹⁰ Request for Hearing at 5.

¹¹ Proposed Order at 6.

¹² Proposed Order at 6.

¹³ Proposed Order at 6.

¹⁴ Proposed Order at 6.

| No. | Violation | Fine | Justification/Explanation |
|-----|----------------------------|--------------|--|
| 1 | GO 95, Rule 31.1 | \$33,300,000 | Failure to perform a CEMA patrol in 2019. SED believes a CEMA patrol could have potentially identified the tree that caused the fire. |
| 2 | GO 165, Section III-B | \$81,850,000 | Failure to perform an intrusive inspection on pole SAP ID 101457903. Failure to perform an intrusive inspection is a potential hazard to public safety. SED believes this violation was unrelated to the cause of the fire. |
| 3 | GO 95, Rule 31.1 | \$50,000 | Failure to retain hard copy 2018-2019 Vegetation Control map. SED believes this recordkeeping violation was unrelated to the cause of the fire. |
| 4 | Public Utilities Code §451 | \$40,200,000 | Failure to remove trees identified for removal by inspectors due to poor recordkeeping. SED believes this violation directly caused the fire, since one of the trees identified for removal was the tree that caused the fire. |

III. AGREEMENT

To settle this investigation and Administrative Enforcement Order proceeding, PG&E shall (1) pay a monetary penalty of \$10,000,000.00 to the California State General Fund; (2) implement specified enhancements to PG&E’s VM program as set forth below; and (3) not seek rate recovery of expenses in the amount of \$140 million to be incurred by PG&E for specified initiatives, as explained in further detail below.

A. 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.

B. PG&E’s VM Enhancements

PG&E will implement the following system(s) by February 28, 2024, for overhead electric distribution routine and tree mortality vegetation management 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 de-designation is logged into a database that includes the reason for the de-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 semi-annual basis through 2025, with the first audit report occurring by August 31, 2024.

C. 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) |
|--|-----------------------------------|---|
| <u>Transition to Internal PG&E Vegetation Management Inspectors:</u> Transition contractor inspector workforce to internal PG&E Vegetation Management employees to oversee work and perform tree assessments | 3 | \$55-65 |

| | | |
|--|---|---------|
| <u>Enhance Pre-Inspector (PI) Training:</u> (i) Enhance PI training program; (ii) Develop and implement PI competency assessment center | 3 | \$5-15 |
| <u>Expand Constraint Management:</u> (i) Fund customer accommodation options (<i>e.g., Right Tree, Right Place</i>) 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 |
| <u>Improve Data Management Capabilities:</u> Invest in creation of VM Data Asset Management Plan, including building a roadmap to support data quality continuous improvement | 3 | \$15-25 |
| <u>Technology Enhancements:</u> Deploy new VM technology product and process enhancements supporting operational and constraint management improvements | 3 | \$15-25 |
| <u>Wildfire Risk Community Investments:</u> (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 |
| <u>General Order 95 Update:</u> Fund SED procurement of consultant to review and update General Order 95 | 3 | \$3 |

D. Effective Date

This Settlement Agreement shall become effective (“Effective Date”) when Commission approval of this Settlement Agreement becomes final and is no longer subject to judicial review.

IV. OTHER MATTERS

A. The Settling Parties agree to seek expeditious approval of this Settlement Agreement and the terms of the settlement, and to use their reasonable efforts to secure Commission approval of it without change, including any other written filings, appearances, and other means as may be necessary to secure Commission approval.

B. The Settling Parties agree to actively and mutually defend this Settlement Agreement if its adoption is opposed by any other party in proceedings before the Commission. In accordance with Rule 12.6 of the Commission's Rules of Practice and Procedure, if this Settlement Agreement is not adopted by the Commission, its terms are inadmissible in any evidentiary hearing unless their admission is agreed to by the Settling Parties. In the event the Commission rejects or proposes alternative terms to the Settlement Agreement, Settling Parties reserve all rights set forth in Rule 12.4 of the Rules of Practice and Procedure. The provisions of Paragraph IV. A and B shall impose obligations on the Settling Parties immediately upon the execution of this Settlement Agreement.

C. PG&E's waiver of its due process rights to an evidentiary hearing on the matters set forth herein is conditioned on a final Commission resolution or order approving this Settlement Agreement without modification, or with modifications agreeable to the Settling Parties.

D. SED shall not assert that any violations or conduct underlying the violations alleged or identified by SED herein are the basis for future disallowances, violations, or penalties.

E. SED agrees to release and refrain from instituting, directing, or maintaining any violations or enforcement proceedings against PG&E related to the Zogg Fire based on the information: (a) known, or that could have been known, to SED at the time that SED executes this Settlement Agreement, or (b) substantially similar to the alleged PG&E violations set forth in the Proposed Order referenced in this Settlement Agreement. SED expressly and specifically waives any rights or benefits available to it under California Civil Code Section 1542.

F. Nothing in this Settlement Agreement constitutes a waiver by SED of its legal obligations, authority, or discretion to investigate and enforce applicable safety requirements and standards (including, without limitation, provisions of General Order 95 and General Order 165) as to other conduct by PG&E unrelated to the Proposed Order or the Zogg Fire that SED may identify as the basis for any alleged violation(s). SED shall retain such authority regardless of any factual or legal similarities that other PG&E conduct, and any alleged violation(s), may have to PG&E's conduct/alleged violations related to the Zogg Fire. Accordingly, any such similarities shall not preclude SED from using other conduct and alleged violation(s) as a basis for seeking future disallowances.

G. Nothing in this Settlement Agreement constitutes a waiver by PG&E of its legal rights to defend the prudence of its conduct in connection with the Zogg Fire, including but not limited to with respect to the relevance and applicability of GO 95 and 165, in any pending or future proceedings.

H. The Settling Parties have bargained in good faith to reach this Settlement Agreement. The Settling Parties intend the Settlement Agreement to be interpreted as a unified, interrelated agreement. The Settling Parties agree that no provision of this Settlement Agreement shall be construed against any of them because a particular party or its counsel

drafted the provision. The representatives of the Settling Parties signing this Settlement Agreement are fully authorized to enter into this Settlement Agreement.

I. The terms of this Settlement Agreement reflect the Settling Parties' integrated agreement inclusive of the anticipated tax treatment of these amounts. Having considered the potential tax treatment applicable to these amounts, the Settling Parties expressly agree that these amounts are fair, just, and reasonable without any adjustment to account for any tax benefits or liabilities that may be realized by PG&E or its shareholders.

J. The rights conferred and obligations imposed on any of the Settling Parties by this Settlement Agreement shall inure to the benefit of or be binding on that Settling Party's successors in interest or assignees as if such successor or assignee was itself a party to this Settlement Agreement.

K. Should any dispute arise between the Settling Parties regarding the manner in which this Settlement Agreement or any term shall be implemented, the Settling Parties agree, prior to initiation of any other remedy, to work in good faith to resolve such differences in a manner consistent with both the express language and the intent of the Settling Parties in entering into this Settlement Agreement.

L. This Settlement Agreement is not intended by the Settling Parties to be precedent for any other proceeding, whether pending or instituted in the future. The Settling Parties have assented to the terms of this Settlement Agreement only for the purpose of arriving at the settlement embodied in this Settlement Agreement. Each Settling Party expressly reserves its right to advocate, in other current and future proceedings, or in the event that the Settlement Agreement is rejected by the Commission, positions, principles, assumptions, arguments and methodologies which may be different than those underlying this Settlement Agreement, and the Settling Parties expressly declare that, as provided in Rule 12.5 of the Commission's Rules of Practice and Procedure, this Settlement Agreement should not be considered as a precedent for or against them.

M. The Settling Parties are prohibited from filing a petition for modification of a Commission decision approving this Settlement Agreement regarding any issue resolved in this Settlement Agreement.

N. This Settlement Agreement may be executed in counterparts.

O. The Settling Parties hereby agree that this Settlement Agreement is entered into as a compromise of disputed violations and defenses in order to minimize the time, expense, and uncertainty of an evidentiary hearing, any further enforcement proceedings, and/or any subsequent appeals, and with the Settling Parties having taken into account the possibility that each Party may or may not prevail on any given issue, and to expedite timely action on safety measures and programs that benefit California consumers.

P. Nothing in this Settlement Agreement relieves PG&E from any safety responsibilities imposed on it by law or Commission rules, orders, or decisions.

Q. In reaching this Settlement Agreement, the Settling Parties expect and intend that neither the fact of this settlement nor any of its specific contents will be admissible as evidence of fault or liability in any other proceeding before the Commission, any other administrative body, any court, or any alternative dispute resolution proceeding, such as a mediation or arbitration. In this regard, the Settling Parties are relying on Evidence Code Section 1152(a) and Public Utilities Code Section 315. Furthermore, such use of this Settlement Agreement or any of its contents in any other proceeding before the Commission, any other administrative body, or any court would frustrate and interfere with the Commission's stated policy preference for settlements rather than litigated outcomes. See Pub. Util. Code § 1759(a).

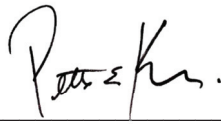
R. The Settling Parties agree that by entering into this settlement PG&E does not admit to any violations of the General Order provisions or related statutory requirements, and SED does not concede that any of PG&E's defenses have merit.

IN WITNESS WHEREOF, the Settling Parties hereto have duly executed this Settlement Agreement.

[Signatures immediately follow this page]

Dated: February 13, 2023

Pacific Gas and Electric Company

By:  _____

Peter Kenny
Senior Vice President,
Major Infrastructure Delivery
Pacific Gas and Electric
Company

[This space intentionally left blank]

Dated: _____

Safety and Enforcement Division
California Public Utilities Commission

**Leslie L
Palmer**

 Digitally signed by Leslie L. Palmer
Date: 2023.02.13 17:23:50 -0800

By: _____

Leslie L. Palmer
Director, Safety and
Enforcement Division
California Public Utilities
Commission

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EXHIBIT B

CALIFORNIA PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the matter of:

The Involvement of Pacific Gas and Electric Company's Electric Facilities in the 2020 Zogg Fire

ADMINISTRATIVE ENFORCEMENT ORDER [Proposed]

YOU ARE GIVEN NOTICE THAT:

1. Pacific Gas and Electric Company is alleged to have violated Commission General Order 95, Rule 31.1 (two counts), Commission General Order 165, Section III-B, and Public Utilities Code section 451.
2. The California Public Utilities Commission's Safety and Enforcement Division (SED or Division) issues this proposed Administrative Enforcement Order (Proposed Order) to Pacific Gas and Electric Company (PG&E or Respondent) pursuant to the Commission Enforcement Policy adopted by Resolution M-4846 (Policy). Pursuant to the Policy, SED is authorized to issue a Proposed Order to a regulated entity that has violated a Commission order, resolution, decision, general order, or rule. That Proposed Order may include a directive to pay a penalty.
3. This Proposed Order is issued based on SED's investigative report (SED Investigation Report) and the investigative report of the California Department of Forestry and Fire Protection (CAL FIRE).¹

RIGHT TO HEARING

4. Respondent is required to respond to this Proposed Order by 5:00 p.m. on November 21, 2022. By way of such response, Respondent, must either: 1) agree to pay any penalty required by this Proposed Order upon adoption of the Proposed Order by the Commission (Final Order) or 2) request a hearing on the Proposed Order. The right to a hearing is forfeited if a Request for Hearing is not timely filed. If a timely Request for Hearing is not filed, this Proposed Order will become final and effective upon adoption by the Commission (Final Order).

¹ The SED Investigation Report and supporting documents are attached as Exhibit A to this Proposed Order. Pursuant to the non-disclosure agreement (NDA) between CAL FIRE and SED, SED cannot disclose the CAL FIRE investigation report on the Zogg Fire, including supporting documents to that report, without CAL FIRE's permission. At this time, CAL FIRE has not given SED permission to disclose this confidential information.

5. Respondent must comply with the corrective action requirements of this Proposed Order by the date specified in paragraph 13 below, regardless of whether a Request for Hearing is filed. Neither an agreement to pay the penalty assessed in this Proposed Order nor the filing of a timely Request for Hearing shall excuse Respondent from curing the violations identified in this Proposed Order.
6. A requested hearing shall be conducted by an Administrative Law Judge in accordance with the hearing provisions in the Citation Appellate Rules. After the hearing, this Proposed Order or any Administrative Law Judge modifications to the Proposed Order shall become a Final Order, effective upon Commission approval of the draft resolution prepared by the Administrative Law Judge. The draft Administrative Law Judge resolution approved by the Commission is subject to rehearing pursuant to Public Utilities Code section 1731 and to judicial review pursuant to Public Utilities Code section 1756.
7. This Proposed Order includes a requirement that Respondent pay a penalty. The factors set forth in the Penalty Assessment Methodology (Policy, Appendix I) were used to determine the penalty amount.
8. Unless otherwise specified, “days” means calendar days.

FINDINGS

9. **Factual Background:**

9.1 Pre-Fire Tree Inspection and Removal

In the aftermath of the 2018 Carr Fire, PG&E contracted with Mountain G Enterprises, Inc. (Mountain G) to conduct ²Mountain G kept a database of its vegetation management work using a smartphone and computer tablet application called “Collector,” from which Mountain G would upload data to a database known as ArcGIS.⁴ Mountain G would use the Collector app to identify trees that required work, including information about the tree, such as location, species, and removal class.⁵ According to PG&E, pre-inspectors also spray⁵painted trees identified for

² PG&E Response to Judge Alsup Request for Follow Up by PG&E Concerning Its October 26 Submission, ECF Docket No. 1265 (“PG&E 1265 Responses”), p. 23.

³ PG&E 1265 Responses, p. 23.

⁴ PG&E 1265 Responses, p. 23.

⁵ PG&E 1265 Responses, p. 23.

removal.⁶Carr Fire work was the first “significant use” of the app by PG&E, and PG&E admitted to United States District Court Judge William Alsup that “tree removal contractors were not consistent in recording completed trees in the app during this project.”⁷

Mountain G performed vegetation management work in August 2018 in the area near Zogg Mine Road in Shasta County. On August 23, 2018, Mountain G identified two gray pine trees (Tree IDs 6557 and 6558) for removal under Priority 2 (P2).⁸ However, PG&E did not remove the two gray pines.^{9, 10} In response to questions propounded on PG&E by U.S. District Court Judge William Alsup, PG&E stated that “work in the Zogg Mine Road area was interrupted in October 2018 due to interactions with a resident of Zogg Mine Road, who believed that PG&E crews were cutting trees unnecessarily and had previously brandished a firearm to tree crews attempting to work in the area and was threatening to do so again.”¹¹ PG&E also indicated that it made inquiries into obtaining security support from law enforcement.¹² However, PG&E did not indicate whether this security support was ever obtained, whether the crews working in the Zogg Mine Road area ever resumed work, or even definitively that this interaction with the armed resident was the reason why Trees 6557 and 6558 were not removed. PG&E stated in response to a data request that “a PG&E VM [vegetation management] regional manager recalls at some point making a decision to rely on PG&E’s routine VM patrols of the area for any remaining work on Zogg Mine Road from the post-Carr Fire effort.”¹³

According to an inspection performed by McNeil Arboriculture Consultants LLC¹⁴ after the Zogg Fire, the tree that fell and struck the power lines had significant obvious flaws that should have been apparent to anybody

⁷ PG&E 1265 Responses, pp. 23-24.

⁸ PG&E has described the P2 classification as “a designation inspectors were instructed to apply to trees that the inspector believed required work but did not pose an immediate risk to PG&E’s facilities.” PG&E Data Request SED-002-Zogg Fire, Question 1 Response.

⁹ SED Investigation Report, p. 17.

¹⁰ PG&E 1265 Responses, p. 24.

¹¹ PG&E 1265 Responses, p. 25.

¹² PG&E 1265 Responses, p. 25.

¹³ PG&E Data Request SED-006-Zogg Fire, Question 5 Response.

¹⁴ Exhibit 37-1 to the CALFIRE Investigation Report (“Arborist Report”).

conducting a visual inspection.¹⁵ First, there was no root or evidence of root on the uphill side of the tree that would have supported the trunk against a downhill failure, which may have been the result of a large boulder to one side of the tree that impeded root growth.¹⁶ Second, there was a large cavity on the upslope side of the tree where the roots should have been, which extended 14 to 15 inches into the trunk and about four and a half feet up the trunk from the ground.¹⁷ According to the Arborist Report, the cavity was too large to have been caused by the Zogg Fire or the earlier Carr Fire, and therefore predated those fires and was present for years during PG&E inspections.¹⁸ There were also no other nearby trees with cavities burned into them, reinforcing the Arborist Report's conclusion that the cavity was not caused by a recent wildfire.¹⁹ In addition, according to CALFIRE estimates, the tree was leaning 23 degrees from center as of 2019.²⁰

According to the Arborist Report, these factors “strongly suggest predisposition of the tree to failure toward the electrical conductors.”²¹ The Arborist Report also concluded that “the lean of the tree should have been obvious to a pre-inspector from any point under or nearly under the conductors,” and that such an inspection should have determined that failure of the tree was probable.²²

9.2 Identifying the Tree

Due to PG&E's poor recordkeeping, it is not clear which Tree ID is associated with the tree that fell and struck the conductors. Also, while PG&E stated that “[i]t is PG&E's expectation that the two Gray Pines . . . would have been marked with spray paint,”²³ PG&E has not been able to confirm that the trees actually were spray painted. In addition, by cross-referencing the GPS coordinates of Tree IDs 6557 and 6558 from PG&E's records, CAL FIRE's GPS coordinates of the ignition area, PG&E's plotted

¹⁵ Arborist Report, p. 1.

¹⁶ Arborist Report, pp. 3-4.

¹⁷ Arborist Report, pp. 4-5.

¹⁸ Arborist Report, p. 5.

¹⁹ Arborist Report, p. 5.

²⁰ CALFIRE Report Attachment 33-1, p. 1; Arborist Report, p. 2.

²¹ Arborist Report, p. 13.

²² Arborist Report, pp. 13-14.

²³ PG&E Data Request SED-006-Zogg Fire, Question 2 Response.

facilities map, and the location of the tree that fell, point of contact, and PG&E pole from the Arborist Report, SED has determined with a high degree of certainty that the tree that fell and struck the power lines was either Tree ID 6557 or 6558. In addition, based on PG&E's aerial photos and the position of the marked trees to the power lines, there were no other Gray Pines in the area other than Trees 6557 and 6558 that could have been the tree that fell.²⁴



Figure 1: Diagram of the Base of the Subject Tree, Tree ID 6557, Tree ID 6558, Ignition Area, and PG&E Facilities.²⁵ The lines marked in blue show approximate conductor path and continue east and west in both directions. The pinned locations of Tree IDs 6557 and 6558 are based on GPS coordinates from PG&E VM records. The location of the Subject Tree is based on CalFire's GPS records. All locations represent the approximate locations of the base of the

²⁴ SED Investigation Report, pp. 19-21, Figures 8 and 9.

²⁵ Google Earth aerial view dated June 27, 2018.

marked trees within 15 feet.

9.3 Day of the Fire

On September 27, 2020, a gray pine tree in the location of Tree IDs 6557 and 6558 failed and fell onto the overhead conductors of PG&E's Girvan 1101, 12 kV circuit.²⁶ At 1440 hours (2:40 pm), a SmartMeter located at 8564 Zogg Mine Road recorded a "Last Gasp" event (a recorded log event when a SmartMeter experiences a drop in voltage to a level below what is required for its continued operation).²⁷ The impact of the tree on the conductors caused a fire to begin at approximately 1442 hours (2:42 pm), when footage from a Firewatch camera owned by the University of Nevada, Reno, detected smoke approximately three miles east of the intersection of Zogg Mine Road and Jenny Bird Lane.²⁸ At 1443 hours (2:43 pm), three SmartMeters located upstream to the Jenny Bird Lane intersection recorded a loss of voltage on one of the conductors. At 1444 hours (2:44 pm), one of those meters recorded a Last Gasp event.²⁹

At approximately 1446 hours (2:46 pm), two geostationary weather satellites operated by the National Oceanic and Atmospheric Administration (NOAA) detected a fire in the area north of the town of Igo in Shasta County.³⁰ At 1500 hours (3:00 pm), a PG&E troubleman who was responding to reports of voltage loss from SmartMeters observed fire and smoke from his location on Knighton Road in Redding and reported the fire to PG&E's Distribution Control Center.³¹

The Zogg Fire burned 56,338 acres and caused four fatalities and one injury. The fire also destroyed 204 structures, and damaged 27 others.³²

PG&E's failure to remove the trees marked for removal as a result of poor recordkeeping constitute a violation of Public Utilities Code section 451.

²⁶ SED Investigation Report, p. 3.

²⁷ SED Investigation Report, p. 5.

²⁸ SED Investigation Report, p. 5.

²⁹ SED Investigation Report, p. 5.

³⁰ SED Investigation Report, p. 5.

³¹ SED Investigation Report, p. 5.

³² SED Investigation Report, p. 3.

9.4 Post-Incident Investigation

SED's investigation following the Zogg Fire focused on three conductor spans between poles SAP³³ IDs 103320099, 101457905, 101457903, and 101457898.³⁴ On February 25, 2002, PG&E conducted a visual inspection of pole SAP ID 101457903.³⁵ However, pursuant to GO 165, Section III-B, utilities are required to conduct *intrusive* inspections within 10 years on wood poles older than 15 years that have not been subject to an intrusive inspection and at a 20-year interval after the first intrusive inspection. Pole SAP ID 101457903 was installed in 1974 and was thus over 15 years old. As a result, PG&E was obligated instead to conduct an intrusive inspection on pole SAP ID 101457903.³⁶ By failing to do so, PG&E violated GO 165, Section III-B.

On April 11, 2018, PG&E conducted a patrol pursuant to the scope of the Catastrophic Event Memorandum Account (CEMA) in the area around the ignition point of the Zogg Fire.³⁷ Pursuant to PG&E's own vegetation management (VM) schedule, PG&E is obligated to conduct separate routine VM patrols and CEMA patrols every year, typically 6 months apart.³⁸ However, while PG&E did conduct a routine VM patrol, it did not conduct a separate CEMA patrol of the Zogg Mine Road area in 2019, resulting in a violation of GO 95, Rule 31.1.³⁹

PG&E's Vegetation Control (VC) program is PG&E's system-wide program for patrolling, prescribing work, and conducting work for vegetation around poles and towers to maintain compliance with California Public Resources Code § 4292, as well as PG&E standards.⁴⁰ PG&E performed annual VC inspections in the area around the origin area of the Zogg Fire.⁴¹ PG&E Inspection Mapping Procedure, Part 1.2 Index Map,

³³ SAP refers to the System Analysis Program, PG&E's system asset management program. All further references to pole IDs refer to the internal SAP identification system.

³⁴ SED Investigation Report, p. 4.

³⁵ SED Investigation Report, p. 12.

³⁶ SED Investigation Report, p. 13.

³⁷ SED Investigation Report, p. 16.

³⁸ SED Investigation Report, pp. 16-17.

³⁹ SED Investigation Report, p. 17.

⁴⁰ SED Investigation Report, p. 21.

⁴¹ SED Investigation Report, p. 21.

requires that hard copy maps be retained for 10 years.⁴² SED reviewed PG&E’s VC records from 2015 to 2020.⁴³ Based on SED’s review, PG&E failed to retain the hard copy VC map from its 2018-2019 inspection, resulting in a violation of GO 95, Rule 31.1.⁴⁴

PENALTIES

10. The Commission has broad authority to impose penalties on any public utility that “fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission.” (PU Code § 2106). As described above, SED has identified several instances where PG&E fell short of its duties under GO 95, Rule 31.1, GO 165, Section III-B, and Public Utilities Code § 451. In assessing penalties, we follow the Penalty Assessment Methodology as set forth by the Commission and outlined in Resolution M-4846. This methodology evaluates the reasonableness of a penalty using a five-factor analysis.

| No. | Violations | | |
|-----|-----------------------|---------------|---|
| 1 | GO 95 | Rule 31.1 | Failure to perform a CEMA patrol in 2019. ⁴⁵ |
| 2 | GO 165 | Section III-B | Failure to perform an intrusive inspection on pole SAP ID 101457903. ⁴⁶ |
| 3 | GO 95 | Rule 31.1 | Failure to retain hard copy 2018-2019 Vegetation Control map. ⁴⁷ |
| 4 | Public Utilities Code | §451 | Failure to remove trees identified for removal by inspectors due to poor recordkeeping. |

As discussed below, given PG&E’s failure to provide safe and reliable service to its ratepayers, failure to adequately inspect its pole, and failure to follow mandatory vegetation management protocols, SED recommends a fine of \$155,400,000, calculated as follows:

⁴² SED Investigation Report, p. 22.

⁴³ SED Investigation Report, p. 22.

⁴⁴ SED Investigation Report, p. 22.

⁴⁵ SED Investigation Report, p. 17.

⁴⁶ SED Investigation Report, p. 12.

⁴⁷ SED Investigation Report, p. 22.

| Violation No. | Start Date | End Date | Total No. of Days | Daily Fine | Total Fine |
|----------------------|--------------------------------|--------------------|--------------------------|-------------------|----------------------|
| 1 | October 31, 2019 ⁴⁸ | September 27, 2020 | 333 | \$100,000 | \$33,300,000 |
| 2 | March 31, 2007 ⁴⁹ | September 22, 2011 | 1,637 | \$50,000 | \$81,850,000 |
| 3 | March 27, 2019 ⁵⁰ | March 27, 2019 | 1 | \$50,000 | \$50,000 |
| 4 | August 23, 2019 ⁵¹ | September 27, 2020 | 402 | \$100,000 | \$40,200,000 |
| | | | | Total: | \$155,400,000 |

I. Severity or Gravity of the Offense

The severity of the offense considers the physical and economic harms of the offenses, harm to the regulatory process, and the number of people affected by the offense. Violations that caused actual physical harm to people or property are considered particularly severe.⁵² The consequences of this fire were dire; the fire caused four deaths, the serious injury of one firefighter, the destruction of 204 structures, damage to 27 structures,

⁴⁸ PG&E was obligated to perform a separate CEMA inspection in 2019 and PG&E typically performs the routine and CEMA inspections six months apart. Given that the routine inspection occurred in April 2019, the violation begins on the last day of October 2019. Because PG&E conducted no CEMA patrols between April 2019 and the start of the Zogg Fire, the end date is the date of the initial ignition of the Zogg Fire.

⁴⁹ GO 165, Section III-B requires utilities to perform an intrusive inspection on poles that have not been subjected to an intrusive inspection within 10 years. GO 165 became effective on March 31, 1997 and pole SAP ID 101457903 was already 15 years old at that point. Therefore, PG&E was required to perform an intrusive inspection by March 31, 2007. The end date is September 22, 2011 because that is the date PG&E first performed an intrusive inspection on pole SAP ID 101457903.

⁵⁰ The start date of March 27, 2019 was the date the area was inspected, which is the first date the VC map should have been completed.

⁵¹ The start date of August 23, 2019 is one year after the date that Mountain G logged Tree IDs 6557 and 6558 for removal. The end date is the date of the initial ignition of the Zogg Fire.

⁵² D.20-05-019, p. 20.

damages in excess of \$50 million, and burned approximately 56,338 acres of grass, brush, and trees. The severity of this offense favors imposing the maximum daily penalty.

| No. | Violation | Fine | Justification/Explanation |
|------------|----------------------------|--------------|--|
| 1 | GO 95, Rule 31.1 | \$33,300,000 | Failure to perform a CEMA patrol in 2019. SED believes a CEMA patrol could have potentially identified the tree that caused the fire. |
| 2 | GO 165, Section III-B | \$81,850,000 | Failure to perform an intrusive inspection on pole SAP ID 101457903. Failure to perform an intrusive inspection is a potential hazard to public safety. SED believes this violation was unrelated to the cause of the fire. |
| 3 | GO 95, Rule 31.1 | \$50,000 | Failure to retain hard copy 2018-2019 Vegetation Control map. SED believes this recordkeeping violation was unrelated to the cause of the fire. |
| 4 | Public Utilities Code §451 | \$40,200,000 | Failure to remove trees identified for removal by inspectors due to poor recordkeeping. SED believes this violation directly caused the fire, since one of the trees identified for removal was the tree that caused the fire. |

II. Conduct of the Regulated Entity

The second factor to be considered is PG&E’s conduct. In evaluating PG&E’s conduct in this matter, key elements demonstrating egregious conduct include 1) PG&E’s failure to take action to prevent and rectify a violation, and 2) PG&E’s prior history of violations.

PG&E failed to remove two trees previously flagged for removal due to a combination of poor recordkeeping, poor communication, and lack of caution. Juxtaposing PG&E’s failure to remove the trees with the Arborist Report – showing that the tree was clearly likely to fall – demonstrates a high degree of culpability in PG&E’s conduct.

PG&E's conduct in this matter is even more egregious in view of the utility's past record of non-compliance with Commission directives.⁵³ PG&E has a prior history of violations related to vegetation management, inspections, and recordkeeping practices. In investigations of fires related to PG&E facilities since 2017, SED has identified vegetation management and/or inspection and equipment recordkeeping violations as critical factors contributing to the ignition of several catastrophic wildfires, including the Kincade Fire.⁵⁴ PG&E's failure to take reasonable action to correct or prevent the violations contributing to the Zogg Fire, given PG&E's prior history of similar violations, warrants the maximum daily penalty.

III. Financial Resources of the Regulated Entity, Including the Size of the Business

The third factor under the methodology is the financial resources of the utility. Here, the Commission must not impose excessive fines or penalties while ensuring that the fine/penalty is an effective deterrent against future behavior. An effective fine or penalty is one that reflects the severity of the harm (the first factor examined above) and is also proportionate to the offending entity and those similarly situated to deter future similar offense of violations, without putting them out of business or otherwise impacting the entity in a catastrophic way.

PG&E is the largest electric utility in the state of California in terms of customers and revenue. Given the size and scope of PG&E's territory and the importance of following proper vegetation management and recordkeeping procedures, this penalty is appropriate.

IV. Totality of the Circumstances in Furtherance of the Public Interest

The fourth factor under Resolution M-4846 is an evaluation of the penalty in the totality of the circumstances, with an emphasis on protecting the public interest. PG&E chose to engage in conduct that disregarded warnings and placed the public in danger; chiefly, failing to perform and

⁵³ See Resolution M-4846, p. 18 (stating that "in evaluating the regulated entity's advance efforts to ensure compliance, the entity's past record of compliance with Commission directives should be considered").

⁵⁴ See Administrative Consent Order and Settlement re: Kincade Fire, p. 1, stating that the "[Kincade Fire] 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. In July 2020, CAL FIRE issued a press release stating that it had determined that the Kincade Fire was caused by PG&E's electrical transmission lines").

the public only became aware of this conduct due to the disastrous consequences of PG&E's conduct.

As noted above, this is not the first time PG&E has been subject to disciplinary action for inadequate or improper management of its electric facilities. PG&E is cognizant of the danger of failing to perform adequate vegetation management and the potentially catastrophic outcomes when trees fall on power lines. Accordingly, the fine included in this Proposed Order is reasonable under the circumstances.

V. The Role of Precedent

The final factor is an examination of fines in other Commission Decisions with similar factual situations. While not binding precedent, prior settlements are useful for comparison, with the acknowledgement that settlements were reached as a compromise position and thus typically contain a dollar figure lower than the original fine/penalty amount. SED considered the following settlements:

- SED, the Office of the Safety Advocate, the Coalition of California Utility Employees, and PG&E agreed to a settlement of \$1.675 billion, including corrective actions and disallowances of cost recovery, for 18 wildfires between 2017 and 2018.⁵⁵ The seventeen 2017 fires burned 245,000 acres, destroyed 8,900 structures, and caused 44 fatalities. The 2018 Camp fire burned 153,336 acres, destroyed 18,804 structures, and caused 85 fatalities.
- SED and Southern California Edison agreed to a settlement of \$550 million, including payment to the General Fund, disallowance of cost recovery, and contribution from shareholders to safety measures, for five wildfires in 2017 and 2018. These fires collectively burned more than 385,000 acres, damaged and destroyed nearly 3,000 structures, and caused five fatalities.
- SED and PG&E agreed to a settlement of \$125 million, including payment to the General Fund and disallowance of cost recovery, for the 2019 Kincade Fire. The Kincade Fire burned more than 77,000 acres and destroyed nearly 374 structures and caused four non-fatal injuries with zero fatalities.

⁵⁵ This settlement was ultimately approved by the Commission but was increased to a total settlement value of \$1.937 billion, including disallowances and corrective actions, in D.20-05-019.

Considering the above examples, a fine of \$155,400,000 is reasonable and appropriate under Resolution M-4846.

11. This penalty is due within 30 days of adoption of the Final Order. Respondent's payment shall be by check or money order and shall be made payable to the California Public Utilities Commission. Respondent shall write on the face of the check or money order: "For deposit to the State of California General Fund." Respondent shall deliver payment to:

California Public Utilities Commission's Fiscal Office
505 Van Ness Ave. Room 3000
San Francisco, CA 94102

12. In the event the payment specified in paragraph 10 is not timely received by the Commission, a late payment will be subject to interest in the amount of 10% per year, compounded daily and to be assessed beginning the calendar day following the payment-due date. The Commission may take all necessary action to recover any unpaid penalty and ensure compliance with applicable statutes and Commission orders.

The penalty amount shall not be placed in rates or be otherwise paid for by ratepayers.

CORRECTIVE ACTION

13. Respondent shall conduct the following actions in the manner specified, and in accordance with a schedule specified by the Division as follows:
 - (a) PG&E must submit a Corrective Action Plan within 30 days following the adoption of a Final Order to the Office of Energy Infrastructure Safety (OEIS) that includes the following:
 - 1) A system that assigns a date by which every tree marked for removal must be removed.
 - 2) A system to ensure that every tree designated for removal by a vegetation management inspector is spray painted, logged into a database with GPS coordinates, and that the entry include detail as to why the tree was designated for removal.
 - 3) A system to ensure that any time a tree is de-designated for removal, such a de-designation is logged into a database that includes the reason for the de-designation.

- 4) A system to audit the systems described above to ensure that the systems designed above are followed and that these audit results are reported to OEIS on a quarterly basis.
 - 5) Any other systems requested by OEIS to ensure that another wildfire does not occur for similar reasons as the Zogg Fire.
14. Within 45 days following adoption of a Final Order, Respondent shall submit to the Division written certification that it has followed the steps set forth in Paragraph 13, above. The certification shall include confirmation of its compliance (accompanied by all supporting documentation) or noncompliance with all requirements set forth in Paragraph 12. Any notice of noncompliance required under this paragraph shall state the reasons for noncompliance and when compliance is expected and shall include a detailed plan for bringing the Respondent into compliance. Notice of noncompliance shall in no way excuse the noncompliance.
 15. Respondent shall be subject to an additional penalty amount for each failure to comply with the actions required by Paragraph 13. The penalty amount shall be within the range allowed by statute and calculated in accordance with the Commission's Penalty Assessment Methodology, attached as Appendix I to the Policy.
 16. All written submittals from Respondent pursuant to this Proposed Order shall be sent to:

Division Director Lee Palmer
Safety and Enforcement Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

All other communications from Respondent shall be to:

Anthony Noll, Program Manager,
Anthony.noll@cpuc.ca.gov,
916-247-9372.
 17. All approvals and decisions of the Division will be communicated to Respondent in writing by the Division Director or a designee. No informal advice, guidance, suggestions, or comments by the Division regarding reports, plans, specifications, schedules or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required or to bind the Commission.

18. If the Division determines that any report, plan, schedule, or other document submitted for approval pursuant to the Proposed Order or Final Order is not in compliance, the Division may:
 - (a) Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Division a revised document incorporating the recommended changes.
19. If Respondent is unable to perform any activity or submit any document within the time required under the Proposed Order or the Final Order, Respondent may, prior to expiration of time, request an extension of time in writing. The extension request shall include a justification for the delay and a detailed plan for meeting any new proposed compliance schedule. All such requests shall be in advance of the date on which the activity or document is due.
20. If the Division determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule. Respondent shall comply with the new schedule.
21. All plans, schedules, and reports that require Division approval and are submitted by Respondent pursuant to the Proposed Order are incorporated into the Final Order upon approval by the Division.
22. Neither the State of California, nor its employees, agents, agencies (including the Commission), representatives, or contractors, shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties in carrying out activities pursuant to this Proposed Order, nor shall the Commission be held as a party to a contract entered into by Respondent or its agents in carrying out activities pursuant to this Proposed Order.
23. A Final Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations. Respondent shall provide a copy of a Final Order to all contractors, subcontractors, laboratories, and consultants that are retained to conduct any work or activities performed under a Final Order, within 15 days after the effective date of a Final Order or the date of retaining their services, whichever is later. Respondent shall condition any such contracts upon satisfactory compliance with the Final Order. Notwithstanding the terms of any contract, Respondent is

responsible for compliance with this Proposed Order and for ensuring that its subsidiaries, employees, contractors, consultants, subcontractors, agents, and attorneys comply with this Proposed Order.

24. Nothing in this Proposed Order shall relieve Respondent from complying with all other applicable laws and regulations. Respondent shall conform all actions required by this Proposed Order with all applicable federal, state, and local laws and regulations.
25. This is an action to enforce the laws and regulations administered by the Commission. The method of compliance with this enforcement action consists of payment of an administrative penalty and compliance actions to enforce a permit or order issued by the Commission. The Commission finds that issuance of this Proposed Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code § 2100 et seq.) pursuant to section 15321(a)(2); chapter 3, title 14 of the California Code of Regulations exempting actions to enforce or a permit prescribed by a regulatory agency.
26. The Respondent shall not have any ex parte communications with Commission decisionmakers and will only communicate with the Commission through Request for Hearings or other appropriate procedural avenues.

IT IS ORDERED.

Dated: October 25, 2022

Safety and Enforcement Division
California Public Utilities Commission

By: Leslie L Palmer  Digitally signed by
Leslie L. Palmer
Date: 2022.10.25
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Leslie L. Palmer
Director, Safety and
Enforcement Division
California Public Utilities
Commission