

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

Resolution ALJ-445
Administrative Law Judge Division
October 12, 2023

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H2207010

RESOLUTION

RESOLUTION ALJ-445 Resolving Request for Hearing (H.) 22-07-010 on Administrative Enforcement Order regarding Pacific Gas and Electric Company's Execution of 2020 Public Safety Power Shutoff Events.

SUMMARY

RESOLUTION ALJ-445 grants the Joint Motion of the Safety and Enforcement Division and Pacific Gas and Electric Company for Approval of Settlement Agreement which resolves all issues in the scope of this proceeding. A copy of the Settlement Agreement is attached as Appendix A to this Resolution.

This proceeding is closed.

BACKGROUND

Pursuant to the authority created by the California Public Utilities Commission (Commission) with the adoption of Resolution M-4846 (Commission Enforcement Policy), on June 15, 2022, the Safety and Enforcement Division (SED) issued a proposed Administrative Enforcement Order (Proposed Order) to Pacific Gas and Electric Company (PG&E) regarding its failures to comply with Commission direction in PG&E's execution of 2020 Public Safety Power Shutoff (PSPS) events.

Investor-owned utilities like PG&E have the authority to shut off the electric power to protect public safety as a preventative measure of last resort through PSPS events. In 2020, PG&E initiated seven PSPS events and submitted seven post-event reports to the Commission. SED reviewed the reports and comments submitted on those reports to evaluate PG&E's compliance with the reporting requirements established by the Commission.

The Proposed Order sets forth three alleged violations of Resolution ESRB-8, eight alleged violations of Decision (D.) 19-05-042, and one alleged violation of D.20-05-051.

In addition to proposing certain corrective actions, the Proposed Order directs PG&E to pay penalties totaling \$12,000,000 for the alleged violations.

On July 15, 2022, PG&E submitted a timely Request for Hearing on the Proposed Order on the grounds that the proposed penalty is excessive and inconsistent with the Commission's Penalty Assessment Methodology. On July 21, 2022, the Parties filed a Joint Motion for Stay to allow the Parties the opportunity to seek a mutually agreed settlement of the proceeding that would be in customers' interests and consistent with the policies of the Commission promoting settlement of disputed issues when appropriate. The assigned Administrative Law Judge, Robert W. Haga, granted that Motion, and a subsequent Motion to extend the stay. On August 5, 2022, the Public Advocate's Office of the Public Utilities Commission (*see*, Pub. Util. Code § 309.5) filed a Motion for Party Status that was denied by Ruling on August 14, 2023.

THE SETTLEMENT AGREEMENT

On October 13, 2022, the Parties filed their Joint Motion for Approval of Settlement Agreement. The terms of the Settlement Agreement are as follows:

PG&E shall (1) pay a monetary penalty of \$500,000 to the California State General Fund; and (2) fund an additional \$7,500,000 for the Independent Safety Monitor (ISM) during the period from 2023 to 2026. These amounts shall be funded by PG&E shareholders, and PG&E shall not seek to recover any of these costs in rates.

The Settlement Agreement reflects Parties' integrated agreement inclusive of anticipated tax treatment of the Settlement Agreement amounts. Having considered the potential tax treatment applicable to these amounts, Parties expressly agree that the Settlement Agreement 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.

MONETARY PENALTY

PG&E shall pay a monetary penalty of \$500,000 to the California State General Fund within thirty (30) days of the Effective Date of this Settlement Agreement.

ADDITIONAL FUNDING OF THE INDEPENDENT SAFETY MONITOR

PG&E shall fund an additional \$7,500,000 to the ISM during the period 2023 to 2026 with shareholder funds. This amount is in addition to the \$5 million per year that PG&E is funding with shareholder funds pursuant to Resolution M-4855. PG&E and the Safety Policy Division (SPD) of the Commission shall consult to determine to which activities these additional funds shall be allocated over the remaining term of the ISM. Allocation of these funds shall not be used to expand the current scope of the ISM

engagement or increase the duration of the ISM engagement unless approved pursuant to Resolution M-4855.

DISCUSSION

On November 6, 2020, the Commission adopted the Commission Enforcement and Penalty Assessment Policy (Commission Enforcement Policy) in Resolution M-4846 to, among other things, establish guiding principles, encapsulate and standardize existing enforcement tools, and authorize staff to propose Administrative Consent Orders, and Administrative Enforcement Orders, subject to Commission review and disposition. The Penalty Assessment Methodology of the Commission Enforcement Policy sets forth five factors for staff and the Commission must consider in determining the amount of a penalty for each violation: (1) severity or gravity of the offense(s); (2) conduct of the regulated entity; (3) financial resources of the regulated entity; (4) totality of the circumstances in furtherance of the public interest; and (5) the role of precedent. In 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. (See D.22-04-058 at 4, 6.) As this Resolution explains, the Joint Motion satisfies all five of the foregoing criteria.

SEVERITY OR GRAVITY OF THE OFFENSES

The Commission has stated the severity of the offense includes several considerations, including economic harm, physical harm, threatened physical harm, harm to the regulatory process, and the number of violations and consumers affected. (See D.22-04-058, *citing* Res. M-4846, Attachment at 16.) Violations that caused actual physical harm to people or property are considered particularly severe. A high level of severity is also accorded to the disregard of a statutory or Commission directive, regardless of the effect on the public since such compliance is absolutely necessary to the proper functioning of the regulatory process. (D.20-05-019 at 20, *citing* D.98-12-075 at 36.)

PG&E admits that its implementation of PSPS events in 2020 was not perfect and that it was not compliant with Commission guidelines. However, the Parties dispute the severity of PG&E's offense. SED claims no notifications to any customers were made at de-energization, and there were a troubling number of customers affected by the lack of reporting. There is no evidence of physical or economic harm because of the lack of notification, and that PG&E did provide notifications at the beginning of re-energization and at the completion of re-energization. PG&E argues that while it did not notify customers at the moment it began de-energization, it had provided multiple prior notifications to customers approximately 48 and 24 hours before de-energization, and that most customers were notified between one and 12 hours before de-energization commenced. PG&E claims that more than 99 percent of the 650,000

customers who were de-energized during 2020 PSPS events did receive advance notice, and those that did not were because of forces beyond its control. PG&E argues the severity of the offense does not merit a \$12 million penalty. The Settlement Agreement acknowledges PG&E did not send customer notifications at the moment PG&E began to shut off power, which is not compliant with Commission Guidelines. It also states there were no allegations of Rule 1.1 violations and no allegations of other ethical violations, or any deliberate misconduct associated with these actions.

CONDUCT OF THE UTILITY

In evaluating a utility's conduct, the Commission considers the degree of culpability; actions taken to prevent and detect a violation; disclosure, good faith, and actions taken to correct the violation; whether any attempt to conceal the violation occurred; and history of violations:

This factor recognizes the important role of the regulated entity's conduct in: (1) preventing the violation; (2) detecting the violation; and (3) disclosing and rectifying the violation. (Res. M-4846, Attachment at 18.)

SED alleged, and PG&E does not contest, that PG&E did not provide notifications to customers when de-energization was initiated, in violation of D.19-05-042. PG&E argued that PG&E had shown great progress and thoughtful, dedicated efforts to serving its customers, and despite challenges outside its control, provided multiple advanced notifications prior to de-energization to over 99 percent of customers affected by 2020 PSPS events. In addition, PG&E represents that it has continued to improve its PSPS program, including completing five of the six corrective actions described in the Proposed Order and is in the process of implementing the sixth.

The details of this factor, as well as the Parties' evaluation of their respective litigation risks, were part of the negotiation process. While such negotiations are confidential, PG&E's claimed conduct in preventing the violation, detecting the violation, and rectifying the violation were necessarily considered as part of the negotiating and resolving of the Proposed Order. While PG&E disputes the proposed penalties set forth in the Proposed Order, with this Settlement Agreement, PG&E agrees to implement the corrective actions set forth in the Proposed Order to further strengthen PGE's PSPS program.

FINANCIAL RESOURCES OF THE UTILITY

The Commission's Enforcement Policy takes into consideration the financial capabilities of the utility. It states:

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. (Res. M-4846, Attachment at 19.)

The guidance adopted by the Enforcement Policy is consistent with Commission precedent. (*See, e.g.*, D.98-12-075 at 39.)

While PG&E is the largest electric utility in the state of California in terms of customers and revenue, it claims that its recent reemergence from Chapter 11 bankruptcy proceedings and agreements to pay monetary penalties relating to fires has affected its current financial situation and limits its capacity to pay additional penalties. PG&E asserts its current financial situation is characterized by its sub-investment grade corporate credit ratings, weak credit metrics, and a restriction on the ability of its parent company to pay dividends to its common shareholders. The Parties believe the \$8 million combination of amounts for which PG&E will pay penalties or not seek rate recovery under the settlement is appropriate in light of PG&E's current financial condition. In determining the reasonableness of this settlement, this Resolution finds that it is appropriate to take PG&E's current financial circumstances into consideration and concludes the proposed settlement totaling \$8 million (\$500,000 in penalties and \$7.5 million in additional shareholder funded costs for funding the ISM) is appropriate when we balance PG&E's present ability to pay a reasonable penalty and the importance of the ISM oversight of PG&E's implementation of highest-priority and risk-driven safety mitigations, safety-related recordkeeping and record management systems, including wildfire related issues. (*See*, Res. M-4855.)

TOTALITY OF CIRCUMSTANCES IN FURTHERANCE OF PUBLIC INTEREST

The Commission established that evaluation of the totality of the circumstances in furtherance of the public interest should include several factors, including: deterrence of further unlawful conduct; mitigating or exacerbating facts; harm from the perspective of the public interest; and ensuring a regulated entity does not have incentives to make economic choices that cause or unduly risk a violation.

The Commission has described this criterion as follows:

Setting a penalty at a level that effectively deters further unlawful conduct by the regulated entity and others requires that staff specifically tailor the package of sanctions, including any penalty, to the unique facts of the case. Staff will review facts that tend to

mitigate the degree of wrongdoing as well as any facts that exacerbate the wrongdoing. In all cases, the harm will be evaluated from the perspective of the public interest.

An economic benefit amount shall be estimated for every violation. Economic benefit includes any savings or monetary gain derived from the act or omission that constitutes the violation. (Res. M-4846, Attachment at 19.)

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

This Resolution concludes that when all the circumstances are considered, the public interest will be furthered by the adoption of the Settlement Agreement. First, the Settlement Agreement resolves the issues identified in the Proposed Order. The Proposed Order includes penalties totaling \$12 million. Pursuant to the Settlement Agreement, PG&E agrees to pay a total of \$8 million, consisting of a \$500,000 penalty to the State's General Fund and \$7.5 million in shareholder-funded costs for funding of the ISM. PG&E agrees to not seek rate recovery for either the penalty or the ISM payment. By reaching a settlement, the Settling Parties have implicitly agreed that total shareholder cost of \$8 million is not constitutionally excessive. The allocation of the total amount between penalty and ISM funding is tailored to the unique facts of the case and are appropriate here.

Second, the increase in funding for the ISM will further the public interest. The commission ordered the establishment of the ISM in D.20-05-053 to report to the Commission regarding: (a) PG&E's implementation of its highest priority and risk-driven safety mitigations with requisite quality and effectiveness; and (b) PG&E's safety-related recordkeeping and record management systems, including wildfire-related activities. (Res M-4855 at 18, 25.) The Settlement Agreement supports the Commission's ongoing oversight of PG&E activities related to electric safety by providing an additional \$7.5 million in shareholder funds for the ISM from 2023 to 2026 - in addition to the \$5 million per year that PG&E is already funding with shareholder funds pursuant to Res. M-4855.

Finally, it is in the public interest to resolve this proceeding now. Approving the Settlement Agreement will remove the need for the Commission to hold a hearing to adjudicate the disputed facts, alleged violations, and appropriate penalty. Approval of the Settlement Agreement promotes administrative efficiency and prevents the further expenditure of substantial time and resources on litigation of a matter that the Parties have satisfactorily and reasonably resolved.

THE ROLE OF PRECEDENT

The Commission's Enforcement Policy 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 reasonable 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. (Res M-4846, Attachment at 21.)

While the Parties considered precedent, they determined the factual circumstances presented here are not reasonably comparable to other cases where penalties were assessed. Parties state recent penalties for PSPS events ranged from the \$24,000 penalty to SDG&E for its 2020 PSPS events (Res. M-4862) to the \$106 million penalty (offset against \$86 million in bill credits) to PG&E for violating guidelines during fall 2019 PSPS events. (D.21-09-026.) Though the precedents reflect outcomes that bear some similarities to those in the Settlement Agreement considered here, the settlement package, including the \$500,000 penalty to the State's General Fund and \$7.5 million in shareholder-funded costs for funding of the ISM, was tailored to the unique facts of this case. Further, the level of sanctions imposed here is within the range previously imposed by the Commission. Accordingly, the Resolution finds that the Settlement Agreement results in a reasonable outcome when the totality of the circumstances are considered.

COMMENTS

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

FINDINGS

1. PG&E initiated seven PSPS events in 2020.
2. PG&E submitted seven post PSPS event reports to the Commission in 2020.
3. SED reviewed the reports and considered stakeholder comments to evaluate PG&E's compliance with the reporting requirements under Res. ESRB-8, D.19-05-042 and D.20-05-051.
4. On June 15, 2022, the SED issued a proposed Administrative Enforcement Order (Proposed Order) to PG&E for allegedly violating the requirements set forth in

Res. ESRB-8, D.19-05-042, and D.20-05-051 relating to PG&E's execution of 2020 PSPS events.

5. On July 15, 2022, PG&E submitted a timely Request for hearing on the Proposed Order.
6. On July 21, 2022, the Parties filed a Joint Motion for Stay to allow the Parties the opportunity to seek a mutually agreed settlement of the proceeding.
7. On October 13, 2022, SED and PG&E filed their Joint Motion for Approval of Settlement Agreement.
8. It is reasonable to conclude that based on the analysis under the Penalty Assessment Methodology, the agreed-upon fines, and additional funding of the Independent Safety Monitor over the period 2023 to 2026 are reasonable.
9. It is reasonable to consider the disputed facts and the role of precedent in determining a negotiated penalty amount.
10. It is reasonable to conclude that it is appropriate to take PG&E's current financial circumstances into consideration in finding that the proposed settlement totaling \$8 million is appropriate.
11. It is reasonable to conclude that when all the circumstances are considered, the public interest will be furthered by the adoption of this Settlement Agreement.
12. It is reasonable to conclude that the Settlement Agreement will result in a reasonable outcome when the Commission weighs it against prior precedents.

THEREFORE, IT IS ORDERED that:

1. The Joint Motion for Approval of the Settlement Agreement of the Safety and Enforcement Division and Pacific Gas and Electric Company is granted, and the Settlement Agreement approved herein.
2. Pacific Gas and Electric Company (PG&E) shall pay a \$500,000 fine to the General Fund of the State of California as follows: PG&E shall make one lump sum payment of \$500,000 by check, money order, or other form of payment acceptable to the Commission, payable to the California Public Utilities Commission (Commission), and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102, within 30 days of the effective date of this Resolution. PG&E shall write on the face of the check or money order "For deposit to the General Fund pursuant to Resolution ALJ-445."

3. Pacific Gas and Electric Company shall pay an additional \$7,500,000 to the Independent Safety Monitor during the period 2023 to 2026 with shareholder funds. This amount is in addition to the \$5,000,000 per year that PG&E is funding with shareholder funds pursuant to Resolution M-4855.
4. Pacific Gas and Electric Company shall consult with the Safety Policy Division of the Commission to determine which activities the additional \$7.5 million shall be allocated over the remaining term of the Independent Safety Monitor (ISM). Allocation of these funds shall not be used to expand the current scope of the ISM engagement or increase the duration of the ISM engagement unless approved pursuant to Resolution M-4855.
5. Pacific Gas and Electric Company (PG&E) shall provide the Safety and Enforcement Division (SED) of the Commission with quarterly updates on the disbursement of the additional \$7.5 million to the Independent Safety Monitor (ISM). If the \$7.5 million has not been fully expended for ISM activities performed through the end of 2026, PG&E will reach an agreement with SED on the method of expending any remaining funds.
6. This proceeding is closed.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on October 12, 2023, the following Commissioners voting favorably thereon:

/s/ RACHEL PETERSON

Rachel Peterson
Executive Director

ALICE REYNOLDS

President

GENEVIEVE SHIROMA

JOHN REYNOLDS

KAREN DOUGLAS

Commissioners

Commissioner Darcie L. Houck
being necessarily absent did not
participate in the vote of this item.

APPENDIX A

Attachment 1:

[H2207010 Settlement Agreement.pdf](#)