

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

In the matter of:

Pacific Gas and Electric Company  
2022/2023 Public Safety Power Shutoff  
Events

[PROPOSED] ADMINISTRATIVE  
ENFORCEMENT ORDER  
(Number CPUC-19-AEO)

**[PROPOSED] ADMINISTRATIVE ENFORCEMENT ORDER**

**YOU ARE GIVEN NOTICE THAT:**

1. The California Public Utilities Commission's (Commission) Safety and Enforcement Division (SED or Division) has found that Pacific Gas and Electric (Respondent or PG&E) violated Resolution ESRB-8, Decision (D.) 19-05-042, D.20-05-042, D.21-06-014, and D.21-06-034 in relation to their Public Safety Power Shut-off (PSPS) events in 2022 and 2023.
2. SED issues this proposed Administrative Enforcement Order (Proposed Order) to PG&E pursuant to the Commission Enforcement Policy adopted by Resolution M-4846 (Enforcement Policy) and Public Utilities Code section 701. Pursuant to the Enforcement Policy and statutory authority, SED is authorized to issue a Proposed Order to a regulated entity that has violated a statute, Commission order, resolution, decision, general order, or rule. That Proposed Order may include a directive to pay a penalty and/or order appropriate corrective actions.
3. Based on SED's investigation and findings, PG&E is assessed a \$57,220 fine payable to the State of California General Fund.

**RIGHT TO HEARING**

4. Respondent is required to respond to this Proposed Order by 5:00 p.m. on **June 9, 2025**. 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. Instructions on how to agree with or request a hearing of a Proposed Order are included at the end of this Proposed Order (Appendix A).

5. 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).
6. A requested hearing shall be conducted by an Administrative Law Judge in accordance with the hearing provisions in the Citation Appellate Rules. After 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 were used to determine the penalty amount. The requirement that the penalty be paid shall be stayed during the hearing and rehearing process.
8. Unless otherwise specified, "days" means calendar days.

## FINDINGS

9. Findings *of Fact*:

PG&E initiated its PSPS process five times between 2022-2023, initiating de-energization in two events. PG&E submitted post event reports following each event. The reports summarize PG&E's compliance with Commission PSPS rules. In response to these reports, SED initiated its investigation into PG&E's compliance during its five PSPS events, summarizing its findings in two Notice of Violations (NOVs).

Appendix B to this AEO contains the NOVs issued by SED to PG&E, incorporating its findings of facts as a result of its investigation. The NOV for PG&E's 2022 PSPS violations was issued on June 19, 2024, and the NOV for PG&E's 2023 PSPS violations was issued on December 4, 2024. The NOVs include a discussion of the Commission orders and decisions that PG&E violated, and the facts that form the basis for each alleged violation. PG&E submitted two responses to SED's two NOVs (PG&E's NOV Response), contained in Appendix C to this ACO, on July 26, 2024, which includes more information from PG&E's 2022 PSPS events and on January 6, 2025, which includes more information from PG&E's 2023 PSPS events.

SED dismisses the following five violations alleged in the NOV after evaluating the PSPS guidelines and PG&E's NOV.

## 2022 Post Event Report

- Violation B.1 – For the October 22, 2022, event, SED dismissed the NOV violation of the Commission’s requirement that notification methods to affected customers be in multiple formats.
- Violation D.1 – For the October 22, 2022, event, SED dismissed the NOV violation of the Commission’s requirement that requires PG&E to include in their 10-day post-event reports “the names of all entities invited to the utility’s emergency operations center for a [PSPS] event.”
- Violation F.1 – For the October 22, 2022, event, SED dismissed the NOV violation of the Commission’s requirement that PG&E provide notification of the cancellation of the de-energization event, or removal from scope, by notifying all affected entities.

## 2023 Post Event Report

- Violation 2 – For the December 15, 2023, event, SED dismissed the NOV violation of the Commission’s requirement that PG&E provide backup generator information in its post event report.
- Violation 5 – For the August 30, 2023, event, SED dismissed the NOV violation of the Commissioner’s requirement that PG&E provide notification of the cancellation of a de-energization event, or removal from scope, by notifying customers within two hours of the decision to cancel.

## **PENALTIES**

10. The Commission has broad authority to impose penalties on any public utility that violates or fails to comply with “any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission.” In assessing penalties, SED follows the Penalty Assessment Methodology as set forth by the Commission and outlined in Resolution M-4846.
11. Over the course of SED’s investigation, PG&E was found to violate several of the Commission’s PSPS requirements as laid out in Resolution ESRB-8, Decision (D.) 19-05-042, D.20-05-042, D.21-06-014, and D.21-06-034 in relation to their Public Safety Power Shut-off (PSPS) events in 2022 and 2023. These findings are

laid out in the SED's NOV, attached in Appendix B.

## 12. Penalty Assessment

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.<sup>1</sup> As discussed below, consideration of those factors supports a Commission finding that the AEO is reasonable and in the public interest. The attached NOVs, Appendix B to this AEO, provides facts which provide a record basis for the Commission's determination. PG&E's NOV Responses at Appendix C provides additional details, which also provides a record basis for the Commission's determination and supports the reasonableness of the AEO. As listed in Section II.A above, six NOV violations were dismissed as a result of more information provided by PG&E in its NOV response.

### 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.<sup>2</sup> PG&E's violations occurred over the course of four PSPS events, October 22, 2022, August 30, 2023, September 20, 2023, and December 15, 2023. The event on September 30, 2023, did not result in de-energization, nor was PG&E found to violate any of the Commission's PSPS rules.

Similarly, the events on October 22, 2022, and December 15, 2023, also did not result in de-energization. However, PG&E was found to be in violation of D.21-06-14 in both events which requires utilities to attach a copy of its Post-Event Report in its service on R.18-12-005. For the December 2023 event, PG&E failed to report any advance notification failures.

For the October 22, 2022, event, PG&E failed to report the HFTD tier classifications for some affected areas, failed to inform customers of the location of its CRCs in its

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<sup>1</sup> Resolution M-4846 (Nov. 5, 2020), Enforcement Policy, Appendix I; *see* D.22-04-058 at 3–4 (affirming 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).

<sup>2</sup> D.20-05-019, p. 20.

notification script, and failed to report the unique customer counts for notification attempts made and successful positive notifications to MBL customers.

The PSPS events on August 30, 2023, and September 20, 2023, did result in de-energizations. PG&E was found to be in violation of the Commission's customer advanced and post de-energization notification requirements; missing 4,272 customer notifications for both events. It also again failed to attach its Post-Event Report during its service on R.18-12-005. Lastly, PG&E failed to provide all necessary information in its geodatabase file, as required in the Post Event Report Template Section 3.3.

## **II. Conduct of the Regulated Entity**

The second factor to be considered is PG&E's conduct. PG&E was forthcoming in providing SED with information regarding the notification failures in both the Post-Event Reports and PG&E's NOV Response. As a result of the information PG&E presented in its post-event reports, NOV response, and settlement discussions, SED dismissed five violations from the NOV.

## **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 one of the largest electric utilities in the State of California in terms of customers and revenue. This amount is enough to emphasize the importance of the notification requirements relative to its size.

## **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.

Based on the totality of the circumstances, the fine included in this Proposed Order is reasonable. PG&E was fined \$106,000,000 for PSPS violations in 2019.<sup>3</sup> In 2020, SED

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<sup>3</sup> The \$106 million penalty was offset by \$86 million in bill credits provided to customers by PG&E, resulting in a net penalty of \$20 million. Decision (D.) 21-09-026, *Decision on Alleged Violations of Pacific Gas and Electric Company with Respect to its Implementation of the Fall 2019 Public Safety Power Shutoff Events* (Decision), September 29, 2021 at 2; issued in Rulemaking (R.) 18-12-005.

issued a proposed AEO for PSPS violations against PG&E, which was settled for \$8,000,000.<sup>4</sup> PG&E and SED entered into an Administrative Consent Order (ACO) to resolve PG&E's 2021 PPS violations for \$1,753,100.<sup>5</sup> PG&E's 2019 finable violations included broader failures to follow the PPS guidelines across three PPS events, including failure to notify over 1,100 medical baseline customers. The violations in 2019 far exceeded the violations contained in this AEO. PG&E's 2020 and 2021 PPS Violations also included finable violations including a failure to notify customers prior to de-energization, at re-energization, and at the completion of re-energization for all seven of its PPS events during that year.

While PG&E similarly failed to notify customers for the August 30, 2023, and September 20-21, 2023 events, the number of customer notifications that was required is substantially smaller. During the 2021 PPS season PG&E missed 146,110 customer notifications while missing 4,298 customer notifications combined in 2022 and 2023.

## **V. The Role of Precedent**

The final factor is an examination of fines in other Commission Decisions with similar factual situations.

- In 2021, PG&E initiated five PPS events. Over the course of those five events, PG&E failed to provide 146,110 customer notifications. SED and PG&E settled on an ACO agreeing that PG&E violated PPS notification requirements under Commission Decision (D.) 19-05-042 and assessed a fine of \$1,753,100. Commission approved the ACO in Resolution SED-12.
- In 2021, San Diego Gas and Electric (SDG&E) initiated two PPS events. During the two events, SDG&E failed to provide notifications to 6,983 customers. SED and SDG&E settled on an ACO agreeing that SDG&E violated the PPS notification requirements under Commission Decision (D.) 19-05-042 and assessed a fine of \$70,830. Commission approved the ACO in Resolution SED-9.
- In 2021, PacifiCorp initiated one PPS event. During this event, PacifiCorp failed to notify 1,753 customers. SED and SDG&E settled on an ACO agreeing that PacifiCorp violated the PPS notification requirements

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<sup>4</sup> Resolution ALJ-445, issued October 16, 2023.

<sup>5</sup> Resolution SED-12, issued November 7, 2024.

under D.19-05-042 and assessed a fine of \$18,030. Commission approved the settlement in Resolution SED-10.

- In 2020, SDG&E initiated five PSPS events. During one event on September 8-9, 49 customers never received notifications during de-energization or re-energization. SED issued a proposed AEO alleging SDG&E violated the PSPS notification requirements under D.19-05-042 and assessed a fine of \$24,000. SED also imposed eight corrective actions to ensure future compliance with the Commission’s PSPS rules. SDG&E accepted the proposed AEO. The Commission adopted the proposed AEO in Resolution M-4863.
- In 2020, Pacific Gas and Electric (PG&E) initiated seven PSPS events. SED found that PG&E failed to provide any customer notifications during de-energization. SED issued a proposed AEO alleging PG&E violated the PSPS notification requirements under Commission decision D.19-05-042 and assessed a fine of \$12,000,000. SED also included six corrective actions to ensure future compliance with the Commission’s PSPS rules. PG&E requested hearing of the proposed AEO. SED and PG&E subsequently settled the matter with an \$8 million penalty consisting of a \$500,000 fine to the General Fund and \$7,500,000 for the Independent Safety Monitor between 2023 and 2026. PG&E also had to comply with the six corrective actions. The Commission approved the settlement in Resolution ALJ-445.

Based on the above factors, Respondent shall be subject to a penalty of \$57,220. This penalty shall consist of a \$57,220 fine payable to the State of California General Fund. This penalty is reasonable and within the range allowed by statute and calculated in accordance with the Commission’s Penalty Assessment Methodology, under Resolution M-4846.

13. 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 Avenue, Room 3000  
San Francisco, CA 94102

14. In the event the payment specified in paragraph 3 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.

15. All written submittals from Respondent pursuant to this Order shall be sent to:

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  
Safety and Enforcement Division  
[Anthony.noll@cpuc.ca.gov](mailto:Anthony.noll@cpuc.ca.gov)  
(916) 247-9372

16. 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.
17. If the Division determines that any report, plan, schedule, or other document submitted for approval pursuant to the Proposed Order or Final Order fails to comply with the Order, the Division may 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
18. If Respondent is unable to perform any activity or submit any document within the time required under the Proposed Order or 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.

19. 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.
20. All plans, schedules, and reports that require the Division approval and are submitted by Respondent pursuant to this Order are incorporated into this Order upon approval by the Division.
21. 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 or Final 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 Order.
22. 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 this 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 the 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 or Final Order and for ensuring that its subsidiaries, employees, contractors, consultants, subcontractors, agents, and attorneys comply with this Proposed Order or Final Order.
23. Nothing in this Proposed Order or Final Order shall relieve Respondent from complying with all other applicable laws and regulations. Respondent shall conform all actions required by this Proposed Order or Final Order with all applicable federal, state, and local laws and regulations.
24. 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 or Final 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.

25. 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: \_\_\_\_\_

BY: \_\_\_\_\_

*Leslie L. Palmer*  
*Director, Safety and Enforcement Division*

**Appendix A: Request for Hearing Instructions**

**Appendix B: Notice of Violations**

**Appendix C: PG&E's NOV Response**

**Appendix D: Enforcement Policy**

**Appendix A**  
**(Request for Hearing Instructions)**

## **INSTRUCTIONS TO AGREE TO COMPLY WITH/ REQUEST A HEARING ON PROPOSED ADMINISTRATIVE ENFORCMENT ORDER**

Respondent is required to respond to this Proposed Order by: **5:00 PM on June 9, 2025**. By way of such response, Respondent, must either:

1. Agree to pay any penalty required by this Proposed Order and to comply with all corrective actions upon adoption of a final order by the Commission.<sup>6</sup>

**OR**

2. Request a hearing on the Proposed Order.<sup>7</sup>

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).

A requested hearing shall be conducted by an Administrative Law Judge in accordance with the hearing provisions in the Citation Appellate Rules. After 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.

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<sup>6</sup> Please see “Agreement to Comply with Administrative Enforcement Order” form.

<sup>7</sup> Respondent may request a hearing of this Proposed Order by completing and submitting a Request for Hearing Form. Please see the attached document, “Directions for Requesting Hearing of Proposed Administrative Enforcement Order” for information on the process and the attached “Request for Hearing of Proposed Administrative Enforcement Order Form.”

**AGREEMENT TO COMPLY WITH PROPOSED  
ADMINISTRATIVE ENFORCEMENT ORDER**

I (we) \_\_\_\_\_ hereby agree to comply with this Proposed Administrative Enforcement Order (Proposed Order) dated \_\_\_\_\_, and have (check all applicable):

- Corrected/mitigated the violation(s) noted in the Proposed Order on \_\_\_\_\_ and no later than \_\_\_\_\_.
- Performed all work to make permanent corrections to any mitigated, or otherwise remaining concerns related to the violation(s) will be completed as noted in the Compliance Plan submitted to the Director of the Safety and Enforcement Division.
- Agree to pay a fine in the amount of \$ \_\_\_\_\_ as included in the Proposed Order upon the Commission's adoption of the Proposed Order.

**Signature of Electrical Corporation's Treasurer, Chief Financial Officer, or President/Chief Executive Officer, or delegated Officer thereof**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed Name and Title)

The Fine 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  
ATTENTION: Fiscal Office  
505 Van Ness Avenue, Room 3000  
San Francisco, CA 94102-3298**

**NOTE:** A copy of the completed Payment Form must be sent to the Director of the Safety and Enforcement Division, via email or regular mail, to the address provided on the Citation

## **DIRECTIONS FOR SUBMITTING A REQUEST FOR HEARING OF A PROPOSED ADMINISTRATIVE ENFORCEMENT ORDER**

Within 30 calendar days of the Respondent being served with a **PROPOSED ADMINISTRATIVE ENFORCEMENT ORDER**, Respondent may request a hearing. The filing of a timely Request for Hearing shall **NOT** excuse Respondent from curing the violations identified in the Proposed Order.

To request a hearing, the Respondent must file a Request for Hearing (Including a complete title page complying with Rule 1.6 of the Commission's Rules of Practice and Procedure) along with copies of any materials the Respondent wants to provide in support of its request with the Commission's Docket Office and must serve the Request for Hearing, at a minimum, on:

- 1) The Chief Administrative Law Judge (with an electronic copy to [Administrative Enforcement Appeals Coordinator@cpuc.ca.gov](mailto:Administrative_Enforcement_Appeals_Coordinator@cpuc.ca.gov))
- 2) The Director of the Safety and Enforcement Division
- 3) The Executive Director
- 4) The Deputy Executive Director for Safety and Enforcement
- 5) The General Counsel
- 6) The Director of the Public Advocates Office of the California Public Utilities Commission

at the address listed below within 30 calendar days of the date on which the Respondent is served the Proposed Administrative Enforcement Order. The Respondent must file a proof of service to this effect at the same time the Respondent files the Request for a Hearing. The Request for a Hearing must at a minimum state: (a) the date of the Proposed Administrative Enforcement Order; and (b) the rationale for Request for Hearing with specificity on all grounds. Sample Forms are provided below.

***California Public Utilities Commission  
505 Van Ness Ave.  
San Francisco, CA 94102  
Attn: <Insert Title>***

**NOTE:** Submission of a *Request for Hearing* in no way diminishes Respondent's responsibility for correcting the violation(s) described in the Proposed Administrative Enforcement Order, or otherwise ensuring the safety of facilities or conditions that underlie the violation(s) noted in the Proposed Administrative Enforcement Order.

Ex Parte Communications as defined by Rule 8.1(c) of the Commission's Rules of

Practice and Procedure are prohibited from the date the Proposed Administrative Enforcement Order is issued through the date a Final Order is issued.

After receipt of the Respondent's Request for Hearing, a hearing will be convened before an Administrative Law Judge. At least ten days before the date of the hearing, the Respondent will be notified and provided with the location, date, and time for the hearing. At the hearing,

- (a) Respondent may be represented by an attorney or other representative, but any such representation shall be at the sole expense of the Respondent.
- (b) Respondent may request a transcript of the hearing but must pay for the cost of the transcript in accordance with the Commission's usual procedures.
- (c) Respondent is entitled to the services of an interpreter at the Commission's expense upon written request to the Chief Administrative Law Judge not less than five business days prior to the date of the hearing.
- (d) Respondent is entitled to a copy of or electronic reference to "Resolution ALJ-377, Citation Appellate Rules and General Order 156 Appellate Rules (Citation Appellate Rules)"; and
- (e) Respondent may bring documents to offer in evidence (Rule 13.6 (Evidence) of the Commission's Rules of Practice and Procedure applies) and/or call witnesses to testify on Respondent's behalf. At the Commission's discretion, the hearing in regard to the Respondent's appeal can be held either virtually or in a CPUC hearing room at either of the following locations:

**San Francisco:**

505 Van Ness Avenue  
San Francisco, CA 94102

**Los Angeles:**

320 West 4<sup>th</sup> Street, Suite 500  
Los Angeles, CA 90013

The hearing(s) held in regard to the Respondent's Proposed Administrative Enforcement Order will be adjudicated in conformance with all applicable Public Utilities Code requirements.

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

In the matter of:

Insert title of Proposed Administrative  
Enforcement Order

Proposed Administrative  
Enforcement Order  
(Order Number)

**REQUEST OF [NAME OF RESPONDENT] FOR HEARING ON  
PROPOSED ADMINISTRATIVE ENFORCEMENT ORDER**

Statements supporting the Request for Hearing.

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

In the matter of:

Insert title of Proposed Administrative  
Enforcement Order

Proposed Administrative  
Enforcement Order  
(Order Number)

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this date served a copy of **TITLE** to all known parties by either United States mail or electronic mail, to each party named on the official service list attached in\_\_\_\_\_.

An electronic copy was sent to the assigned Administrative Law Judge.

Executed on **MONTH, DATE** at San Francisco, California.

/s/

\_\_\_\_\_  
PRINTED NAME

**Appendix B**  
**(Notice of Violations)**

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



June 19, 2024

Meredith E. Allen  
Senior Director, Regulatory Relations  
Pacific Gas and Electric Company (PG&E)  
P.O. Box 770000  
San Francisco, CA 94177

**SUBJECT:** Notice of Violation – Pacific Gas & Electric 2022 Public Safety Power Shutoff Events

Ms. Martinez:

On behalf of the Wildfire Safety and Enforcement Branch (WSEB) within Safety and Enforcement Division (SED) of the California Public Utilities Commission (CPUC or Commission), Cindy Chen of my staff conducted compliance assessment of Pacific Gas and Electric's (PG&E) 2022 Public Safety Power Shutoff (PSPS) post event reports. In 2022, PG&E initiated one PSPS event from October 22 to 24. SED performed reviews on the submitted post event report and the post season report, including consideration of stakeholder comments, to evaluate PG&E's compliance with the reporting requirements under Resolution ESRB-8, Decision (D.)19-05-042, D.20-05-051, D.21-06-014, D.21-06-034 and the Administrative Law Judge's Ruling on Post Event Report Template.

Our assessment revealed PG&E did not comply with certain provisions of Commission Resolution ESRB-8, D.19-05-042, D.21-06-014, D.21-06-034, D.21-06-034 and the Ruling on Post Event Report Template.

A. **Resolution ESRB-8** states in part the report should include “[t]he local communities’ representatives the IOU contacted prior to de-energization, the date on which they were contacted, and whether the areas affected by the de-energization are classified as Zone 1, Tier 2, or Tier 3 as per the definition in General Order 95, Rule 21.2-D.” (ESRB-8 at 5)

A.1 PG&E reported the local communities’ representatives it contacted and the date on which they were contacted, but PG&E did not report the HFTD Tier classification for some affected areas. Instead they reported “N/A.” PG&E did not explain why those affected areas did not have a

HFTD classification or why those areas were non-HFTD.

- B. **D19-05-042 Appendix A** states in part “[i]n order to be effective, notifications should be delivered in multiple formats across several media channels, both to increase the potential a message successfully reaches an impacted population and to provide a sense of corroboration that will encourage individuals to take protective actions. Customer notifications should include, but are not limited to, telephonic notification, text message notification, social media advisories, emails, and messages to agencies that service disadvantaged communities within an impacted area to allow them to amplify any pertinent warnings.” (D19-05-042 at A18, A19)
- B.1 In the post season report filed on March 1, 2023, PG&E reported after the season, PG&E noted its notification platform used to send automated agency notifications was not enabled to send text messages during the 2021 and 2022 PSPS outages. Agencies did receive other methods of communication via automated calls, emails, website, PSPS Portal updates, and social media. PG&E did not comply with the guideline requirements about the notification methods which should be in multiple formats.
- C. **D.19-05-042 Appendix A** states in part “[i]n addition to submitting a report to the Director of the Commission’s Safety and Enforcement Division within 10 business days of power restoration, electric investor-owned utilities must serve their de-energization report on the service lists of this proceeding and Rulemaking 18-10-007 or their successor proceedings. Service should include a link to the report on the utility’s website and contact information to submit comments to the Director of the Safety and Enforcement Division.” (D.19-05-042 at A22)
- C.1 PG&E initially served the PG&E PSPS Event 10/22/22 post-event report to the service list on November 7, 2022. However, the service did not include the post event report. On November 10, PG&E re-served a complete report without including a link to the report on PG&E’s website nor the contact information to submit comments. PG&E was late by three days in serving the report. PG&E’s service email did not include a link to the report on the utility’s website nor the contact information to submit comments.
- D. **D.21-06-014** states in part “PG&E, SCE, and SDG&E must include in the 10-day post-event reports the names of all entities invited to the utility’s emergency operations centers for a Public Safety Power Shutoff event, the method used to make this invitation, and whether a different form of communication was preferred by any entity invited to the utility’s emergency operations center.” (D.21-06-014 at 289)
- D.1. PG&E reported it invited state agencies through email including Cal OES and CPUC to virtually embed themselves into PG&E’s

Emergency Operations Center. However, CPUC did not receive any invitation.

E. **D.21-06-034** states in part “[p]rior to a PSPS event, immediately after the utility decides on which [Community Resource Centers (CRC)] locations to open during the PSPS event, the utility must provide notice to customers of the locations of the CRCs, the services available at each CRC, the hours of operation of each CRC, and where to access electricity during the hours the CRC is closed. This notice must be provided in all available means, including, but not limited to, text messages and on the utilities’ websites.” (D21-06-034 at A2)

E.1. PG&E’s notification scripts did not indicate it informed customers of the locations of the CRCs, the services available at each CRC, the hours of operation of each CRC, and where to access electricity during the hours the CRC is closed.

F. **D.21-06-034** states in part “[e]ach electric investor-owned utility must make every attempt to provide notification of the cancellation of a de-energization event, or removal from scope, by notifying all affected entities, including public safety partners, within two hours of the decision to cancel.” (D.21-06-034 at A11)

F.1. PG&E did not provide notification of the cancellation of a de-energization event, or removal from scope, by notifying all affected entities, including public safety partners, within two hours of the decision to cancel. See details in Table 1 below:

**Table 1**

Event	Recipients	Accounts	PG&E’s Explanation
Oct. 22 – 24	Public Safety Partners	11	9: About 20 min. delay. The process to share information across multiple channels including PPS portal, website, agency, and customer notifications takes two hours to complete. PG&E made every attempt. 2: Two cities did not receive cancellation notification due to human error.
	Critical Facilities	149	49: About 20 min. delay. PG&E made every attempt. 9: Additional time to review file and delay in publishing files into PPS Portal. 91: Various internal process issues.
	Customers	4,038	1,277: About 20 min. delay. PG&E made every attempt. 2,760: Various internal process issues. 1: One customer did not receive cancellation notice due to technical error.

G. **Post Event Report Template issued by Administrative Law Judge’s (ALJ) ruling on October 18, 2021**, requires “notification attempts made” and “successful positive notification” must include the unique number of customer counts. When the actual notification attempts made is less than the number of customers that need positive notifications, the utilities must explain the reason.

G.1 PG&E did not report the unique customer counts for notification attempts made and successful positive notifications.

Please advise me no later than July 19, 2024, of corrective measures taken by PG&E to remedy and prevent the future recurrence of the identified violations, or provide additional data that refutes the violations detailed in this Notice of Violation. Based on your response, this Notice of Violation may lead to an enforcement action. If you have any questions, you can contact Cindy Chen at (415) 660-8312 or email [Cindy.Chen@CPUC.CA.gov](mailto:Cindy.Chen@CPUC.CA.gov).

Sincerely,

  
\_\_\_\_\_  
Ronald DeMayo

Program and Project Supervisor  
Public Safety Power Shutoff Section  
Wildfire Safety and Enforcement Branch  
Safety and Enforcement Division  
California Public Utilities Commission

Cc: Lee Palmer, Director, Safety and Enforcement Division, CPUC  
Anthony Noll, Program Manager, WSEB, SED, CPUC  
Cindy Chen, Senior Public Utilities Regulatory Analyst, WSEB, SED, CPUC

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



December 4, 2024

Meredith E. Allen  
Senior Director, Regulatory Relations  
Pacific Gas and Electric Company (PG&E)  
P.O. Box 770000  
San Francisco, CA 94177

**SUBJECT:** Notice of Violation – Pacific Gas and Electric Company  
2023 Public Safety Power Shutoff Post Event Reports

Ms. Allen:

On behalf of the Wildfire Safety and Enforcement Branch (WSEB) within Safety and Enforcement Division (SED) of the California Public Utilities Commission (CPUC or Commission), Cindy Chen of my staff conducted compliance assessments of Pacific Gas and Electric Company's (PG&E) 2023 Public Safety Power Shutoff (PSPS) post event reports. In 2023, PG&E initiated four PSPS events and submitted four post event reports (see below).

PG&E 2023 PSPS Summary<sup>1</sup>

Report #	Dates	Total Customers Notified	Total Customers De-energized	Medical Baseline Customers De-energized	Number of Counties De-energized	Number of Tribes De-energized
1	Aug. 30 – Aug. 31	8,445	3,928	324	7	2
2	Sep. 20 – Sep. 21	5,355	1,171	127	3	0
3	Sep. 30	0	0	0	0	0
4	Dec. 15	916	0	0	0	0

SED reviewed the submitted post event reports and the amendment to the post event reports contained in the post season report filed on March 1, 2024, and considered stakeholder comments to evaluate PG&E's compliance with the reporting requirements under Resolution ESRB-8, Decision (D.)19-05-042, D.20-05-051, D.21-06-014, D.21-

<sup>1</sup> PG&E 2023 Post Event Reports and 2023 Post Season Data Report

06-034 and Administrative Law Judge’s Ruling on Post Event Report Template.

Our assessment revealed PG&E did not comply with certain provisions of Commission decisions D.19-05-042, D.21-06-014, D.21-06-034 and the Ruling on Post Event Report Template.

1. *D.19-05-042 Appendix A states in part “The electric investor-owned utilities should, whenever possible, adhere to the following minimum notification timeline:*

- *48-72 hours in advance of anticipated de-energization: notification of public safety partners/priority notification entities*
- *24-48 hours in advance of anticipated de-energization: notification of all other affected customers/populations*
- *1-4 hours in advance of anticipated de-energization, if possible: notification of all affected customers/populations.*
- *When de-energization is initiated: notification of all affected customers/populations*
- *Immediately before re-energization begins: notification of all affected customers/populations*
- *When re-energization is complete: notification of all affected customers/populations” (D.19-05-042 at A8)*

In 2023, PG&E reported the following advance and post de-energization notification failures for two events:

**Table 1: Reported Notification Failure Summary**

<b>Notification Type</b>	<b>Aug. 30 - 31</b>	<b>Sep. 20-21</b>	<b>Subtotal</b>
48-72 hours	17	0	17
24-48 hours	348	0	348
1-4 hours	0	0	0
No advance notice at all	0	0	3,608
Subtotal – advance failure	<b>365</b>	<b>0</b>	<b>365</b>
De-energization Initiation	3,910	342	4,252
Imminent re-energization	9	4	13
Re-energization complete	10	4	14
Subtotal – post failure	<b>3,929</b>	<b>350</b>	<b>4,279</b>
<b>Grand Total</b>	<b>4,294</b>	<b>350</b>	<b>4,644</b>

**Table 2: August 30 - 31 Event Notification Failures**

Recipients	Notification Failure	Customer Counts	PG&E's Explanation
Critical Facilities and Infrastructure	48-72 hours	17	1: 42 hours ahead. Transmission customers were not in scope 72-48 hours ahead. 7: 38 hours ahead due to changing weather conditions. 9: 15 hours ahead due to changing weather conditions.
	24-48 hours	9	15 hours ahead due to changing weather
	De-energization Initiation	134	133: internal process error. Notification were delayed by 2-8 hours. 1: internal system misaligned.
	Imminent re-energization	1	System misaligned.
	Re-energization complete	1	System misaligned.
Customers	24-48 hours	339	Changing weather conditions.
	De-energization initiation	3,776	3,768: delayed due to internal process error. 8: not notified at all. 2 were on remote grid and experienced an outage on the secondary. The internal outage platform only tracks primary outages; 6 were due to system misaligned.
	Imminent re-energization	8	2 were on remote grid and experienced an outage on the secondary. The internal outage platform only tracks primary outages 6: system misaligned.
	Re-energization complete	9	2 were on remote grid and experienced an outage on the secondary. The internal outage platform only tracks primary outages 6: system misaligned. 1: No contact info. This customer discontinued service with PG&E during the PSPS event.

**Table 3: September 20 - 21 Event Notification Failures<sup>2</sup>**

Recipients	Notification Failure	Customer Counts	PG&E's Explanation
Critical Facilities	De-energization initiation	11	Human error.
Customers	De-energization initiation	331	41: 7-8 hours delayed due to internal process error. 286: human error. 4: under investigation.
	Imminent re-energization	4	3: not listed as active customers. 1: system misaligned.
	Re-energization complete	4	System misaligned.

2. *D.21-06-014 states in part “Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company must provide the following information on backup power (including mobile backup power) in 10-day post-event reports with the name/email address of a utility contact for customers for each topic: (1) a description of the backup generators available for critical facility and infrastructure customers during a de-energization, (2) the capacity and estimated maximum duration of operation of the backup generators available, both before and during a de-energization, for critical facility and infrastructure customers, (3) the total number of backup generators provided to critical facility and infrastructure customers before and during the de-energization, and (4) how the utility deployed this backup generation to the critical facility and infrastructure customer’s site before or during a de-energization, (5) an explanation of how the utility prioritized distribution of available backup generation before and during the de-energization, (6) an explanation of how the utility prioritized distribution of available backup power to customers before and during the de-energization, and (7) identification of the critical facility and infrastructure customers that received backup generation before and during the de-energization.” (D.21-06-014, OP55 at 300)*

For the December 15 event, PG&E did not report any information on the required six topics stating PG&E did not de-energize customers, therefore, the reporting requirements do not apply. <sup>3</sup>Although PG&E did not shut off power during this event, there were critical facilities in scope. PG&E should still provide the backup generator information on the post event report.

<sup>2</sup> Some of the causes were inferred by SED as PG&E’s explanation in the post event report and the post season report were not clear, particularly, the imminent re-energization and re-energization complete notification.

<sup>3</sup> PG&E Dec. 15, 2023 Post Event Report, p36-37.

3. **D.21-06-014** states in part *“Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company must file and serve its post-event report in R.18-12-005. Service should include the report as an attachment, a link to the report on the utility’s website, and instructions for how the public may submit comments, both formal and informal, to the Commission on the report”.* (D.21-06-014, OP 63 at 303)

Three out of the total four reports that PG&E served in 2023 were incomplete and did not contain the report as an attachment. PG&E claimed that the size of the attachment was too large to serve. PG&E stated it would file its reports via archival grade DVDs instead.. However, PG&E was able to send the complete report via email to the Director of SED. Additionally, the service did not include the instructions for how the public may submit comments, both formal and informal, to the Commission on the report.

4. **D.21-06-034** states in part *“Prior to a PSPS event, immediately after the utility decides on which [Community Resource Centers (CRC)] locations to open during the PSPS event, the utility must provide notice to customers of the locations of the CRCs, the services available at each CRC, the hours of operation of each CRC, and where to access electricity during the hours the CRC is closed. This notice must be provided in all available means, including, but not limited to, text messages and on the utilities’ websites.”* (D21-06-034 at A2)

PG&E’s text and email notification script did not mention where to access CRC information. PG&E’s phone/voice notification script states; “For more information, including medical device charging resources, food replacement and other support, visit [pge.com/pspsupdates](http://pge.com/pspsupdates) or call 1-800-743-5002.” PG&E did not clearly specify in the notification the location of the CRCs, the services available at each CRC, the hours of operation of each CRC, and where to access electricity during the hours the CRC is closed.

5. **D.21-06-034** states in part *“[e]ach electric investor-owned utility must make every attempt to provide notification of the cancellation of a de-energization event, or removal from scope, by notifying all affected entities, including public safety partners, within two hours of the decision to cancel.”* (D.21-06-034 at A11)

For the Aug. 30 – 31 event, PG&E did not provide a notification of the cancellation of a de-energization event, or removal from scope, by notifying five customers within two hours of the decision to cancel. PG&E responded that the customers were descoped and that they no longer had valid contact information.

**6. *Post Event Report Template issued by Administrative Law Judge’s (ALJ) ruling on October 18, 2021, Section 3.2 requires the utilities to submit a zipped geodatabase file that includes PSPS event polygons of de-energized areas. The file should include items that are required in Section 3.3.***

For the following two events, PG&E’s geodatabase file did not include all the items that are required in Section 3.3. The missing items are: 1) County, 2) General Order (GO) 95, Rule 21.2-D Zone 1, Tier 2, or Tier 3 classification or non-High Fire Threat District, 3) Residential customers de-energized, 4) Commercial/Industrial customers de-energized, 5) AFN other than MBL customers de-energized, and 6) Distribution or transmission classification. After SED’s request, PG&E refiled amended geodatabase file on October 27, 2023.

- August 30-31
- September 20-21

**7. *Post Event Report Template issued by Administrative Law Judge’s (ALJ) ruling on October 18, 2021, Section 5.3 requires the utilities to report the notification to MBL and Access and Functional Needs customers per the following table.***

<b>Designation</b>	<b>Total number of customers</b>	<b>Notification attempts made</b>	<b>Timing of attempts</b>	<b>Who made the notification attempt</b>	<b>Successful positive notification</b>
Medical Baseline (MBL)					
MBL behind a master meter					
Etc.					

*“Notification attempts made” and “Successful positive notification” must include the unique number of customer counts. When the actual notification attempts made is less than the number of customers that need positive notifications, the utilities must explain the reason. In addition, the utilities must explain the reason of any unsuccessful positive notifications.*

For the December 15 event, PG&E reported 44 MBL customers and seven Self-Identified Vulnerable (SIV) customers. PG&E achieved successful positive notifications to 39 MBL customers and six SIV customers.<sup>4</sup> PG&E did not follow the Template to explain why PG&E did not send positive notifications to the remaining 5 MBL customers and one SIV customer.

**8. *Post Event Report Template issued by Administrative Law Judge’s (ALJ) ruling on***

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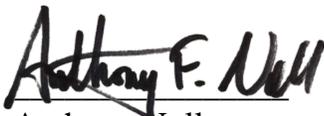
<sup>4</sup> PG&E December 15, 2023 Post Event Report, p22

*October 18, 2021, Section 5.5 requires the utilities to report a breakdown of the notification failure and an explanation of what caused the failure.*

For the December 15 event, PG&E did not report any advance notification failures. Instead, PG&E reported “PG&E did not de-energize customers, therefore, cancellation notifications are the only applicable notice type to be reported”.<sup>5</sup> While PG&E did not de-energize any customers in this event, advance notices were sent starting from December 13 at 08:00, and the cancellation notices were sent starting from December 14 at 20:04<sup>6</sup>. PG&E must identify and report any advance notification failures for the non-de-energization PSPS event, as well as the explanation of what caused the failure.

Please advise me no later than January 6, 2025, of corrective measures taken by PG&E to remedy and prevent the future recurrence of the identified violations, or provide additional data that refutes the violations detailed in this Notice of Violation. Based on your response, this Notice of Violation may lead to an enforcement action. If you have any questions, you can contact Cindy Chen at (415) 660-8312 or email [Cindy.Chen@CPUC.CA.gov](mailto:Cindy.Chen@CPUC.CA.gov).

Sincerely,



Anthony Noll

Program Manager  
Wildfire Safety and Enforcement Branch  
Safety and Enforcement Division  
California Public Utilities Commission

Cc: Lee Palmer, Director, Safety and Enforcement Division, CPUC  
Ronald DeMayo, Program and Project Supervisor, WSEB, SED, CPUC  
Cindy Chen, Senior Public Utilities Regulatory Analyst, WSEB, SED, CPUC

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<sup>5</sup> PG&E December 15, 2023 Post Event Report, p23

<sup>6</sup> PG&E December 15, 2023 Post Event Report, p18-19

**Appendix C**  
**(PG&E's NOV Response)**

Ronald DeMayo  
Program and Project Supervisor  
Public Safety Power Shutoff Section  
Wildfire Safety and Enforcement Branch  
Safety and Enforcement Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA, 94102

Re: Notice of Violation – 2022 Public Safety Power Shutoff Event

Dear Mr. DeMayo:

Pacific Gas and Electric Company (PG&E) submits the following in response to the Notice of Violation (NOV) regarding the 2022 Public Safety Power Shutoff Event, issued on June 19, 2024, by the Wildfire Safety and Enforcement Branch (WSEB) within the Safety and Enforcement Division (SED) of the California Public Utilities Commission (CPUC or Commission).

If you have any questions, please do not hesitate to call.

Sincerely,

Mark Quinlan  
Senior Vice President  
Wildfire, Emergency & Operations

## **Pacific Gas and Electric Company's Response to Notice of Violation – 2022 Public Safety Power Shutoff Event Submitted July 19, 2024**

In 2022, PG&E initiated one Public Safety Power Shutoff (PSPS) event from October 22 to October 24. On June 19, 2024, the California Public Utilities Commission's (CPUC) Wildfire Safety and Enforcement Branch (WSEB), within the Safety and Enforcement Division (SED) issued a Notice of Violation (NOV) to Pacific Gas and Electric Company (PG&E). The NOV alleges seven violations from WSEB's review of PG&E's PSPS 2022 Post-Event Report.

WSEB found that PG&E failed to comply with certain guidelines in Resolution ESRB-8, D.19-05-042, D.21-06-014, D.21-06-034, and the Ruling on Post-Event Report Template from WSEB's review of PG&E's 2022 PSPS Post-Event Report. PG&E is submitting the following response, and includes, if appropriate, corrective actions that were taken, or actions that will be taken, to align with the CPUC's PSPS guidelines or reporting requirements for PSPS events moving forward.

### **Section A**

**PG&E reported the local communities' representatives it contacted and the date on which they were contacted, but PG&E did not report the HFTD Tier classification for some affected areas. Instead, they reported "N/A." PG&E did not explain why those affected areas did not have a HFTD classification or why those areas were non-HFTD.**

We acknowledge that there were instances where High Fire Threat District (HFTD) Tier classifications were not identified for all local communities' representatives contacted prior to de-energization, based on unclear reporting guidance in the Post-Event Report Template<sup>1</sup> and Resolution ESRB-8.<sup>2</sup> ESRB-8 and the Post-Event Report template guidance only call for reporting impacted areas within HFTD. The vast majority of instances where PG&E designated "N/A" were areas not within a HFTD and therefore based on the Post-Event Report template and ESRB-8 guidance, PG&E followed the letter of the reporting guidelines by only reporting on HFTD.

After reviewing all local communities' representatives contacted within Appendix E of our October 22-24, 2022, PSPS Post-Event Report, "N/A" was listed in some instances due to those affected areas being within PG&E's designated High Fire Risk Areas (HFRA) which PG&E utilizes in addition to HFTD to determine PSPS scope or due to a local community representative's contact address being located outside of HFTD.<sup>3</sup>

PG&E used the template issued by SED in October 2021 as a starting point. The report template guidance on this requirement only specified the requirement to report on impacted areas within HFTD which we did in our Post-Event Report. However, moving forward, we have updated our

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<sup>1</sup> <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/safety-and-enforcement-division/templates-psps-post--and-pre-event-reports/template-psps-post-event-reports-as-of-oct-2021.docx>

<sup>2</sup> <https://docs.cpuc.ca.gov/publisheddocs/published/g000/m218/k186/218186823.pdf>

<sup>3</sup> [https://www.pge.com/pge\\_global/common/pdfs/outages/public-safety-power-shutoff/safety-outage-decision-making-guide.pdf](https://www.pge.com/pge_global/common/pdfs/outages/public-safety-power-shutoff/safety-outage-decision-making-guide.pdf)

internal guidance to ensure that future post-event reports will identify the correct HFRA classification when an area is outside of a HFTD Tier.

### **Section B**

**In PG&E's post season report filed on March 1, 2023, PG&E reported that after the season, PG&E noted its notification platform used to send automated agency notifications was not enabled to send text messages during the 2021 and 2022 PSPS outages. Agencies did receive other methods of communication via automated calls, emails, website, PSPS Portal updates, and social media. PG&E did not comply with the guideline requirements about the notification methods which should be in multiple formats.**

We disagree with this violation as there is no specific requirement to send notifications by text message to agencies. The cited language from Appendix A to Decision 19-05-042 concerning text messages is in reference to the guidelines for how to notify customers, not for how to notify agencies. Although agencies already receive notifications with multiple methods of communication via calls, emails, website and PSPS portal, the issue noted in our Post-Season Report regarding text messaging has since been resolved by making a correction to the datafile that is uploaded to our system that sends the text messages. This fix was then tested to ensure successful resolution.

### **Section C**

**PG&E initially served the PG&E PSPS Event 10/22/22 post-event report to the service list on November 7, 2022. However, the service did not include the post event report. On November 10, PG&E re-served a complete report without including a link to the report on PG&E's website nor the contact information to submit comments. PG&E was late by three days in serving the report. PG&E's service email did not include a link to the report on the utility's website nor the contact information to submit comments.**

We agree with this violation. We have since created a job aid to clearly define the steps required in filing a compliant report and trained the individuals who are responsible for the filing. We have noted in those guidelines to include the report as an attachment and a link to the Post-Event Report in the service email.

### **Section D**

**PG&E reported it invited state agencies through email including Cal OES and CPUC to virtually embed themselves into PG&E's Emergency Operations Center. However, CPUC did not receive any invitation.**

We disagree with this violation. While we cannot find a written record of an event-specific invitation to the CPUC, SED has had a standing invitation to embed in our EOC and has engaged with us on this matter and accepted the offer in prior years. CPUC staff has and always will be welcome to embed virtually or in-person in PG&E's EOC.

## **Section E**

**PG&E’s notification scripts did not indicate it informed customers of the locations of CRCs, the services available at each CRC, the hours of operation of each CRC, and where to access electricity during the hours the CRC is closed.**

We respectfully disagree with this violation. We notified customers of CRC information including locations, services available and hours of operation by posting on our public facing website, to which customers are directed in each notification. During PSPS outages, given the detailed volume of CRC information and the dynamic nature of information associated with CRCs being subject to change, our notifications effectively direct agencies, customers, and the general public to [pge.com/pspsupdates](http://pge.com/pspsupdates) through automated notifications, news releases, social media, community-based organizations, and other avenues. PG&E also directs visitors from the [pge.com](http://pge.com) homepage to [pge.com/pspsupdates](http://pge.com/pspsupdates).

On [pge.com/pspsupdates](http://pge.com/pspsupdates), PG&E prominently highlights the dedicated Community Resource Center (CRC) page. The CRC page includes:

- Open CRC locations
- Hours of operation
- Services available at each site
- A note that the PSPS outage map can be used to find local CRC locations and identify where to access electricity during the hours CRCs are closed.

We proactively coordinate with customers for input regarding PSPS notifications. Based on feedback received, customers generally had low awareness of the terms “Community Resource Centers” and “CRC.” This is why PG&E highlights resources provided at CRCs, such as charging stations, as information that is available at [pge.com/pspsupdates](http://pge.com/pspsupdates). We have also incorporated feedback from customers, particularly the Access and Functional Needs population, that PG&E limit the amount of information in automated notifications to maximize effectiveness. We will continue to engage our customers when refining our notifications.

## **Section F**

**PG&E did not provide notification of the cancellation of a de-energization event, or removal from scope, by notifying all affected entities, including public safety partners, within two hours of the decision to cancel. See details in Table 1 below:**

<b>Event</b>	<b>Recipients</b>	<b>Accounts</b>	<b>PG&amp;E’s Explanation</b>
	Public Safety Partners	11	9: About 20 min. delay. The process to share information across multiple channels including PPS portal, website, agency, and customer notifications takes two hours to complete. PG&E made every attempt. 2: Two cities did not receive cancellation notification due to human error.

Oct. 22 – 24	Critical Facilities	149	49: About 20 min. delay. PG&E made every attempt. 9: Additional time to review file and delay in publishing files into PSPS Portal. 91: Various internal process issues.
	Customers	4,038	1,277: About 20 min. delay. PG&E made every attempt. 2,760: Various internal process issues. 1: One customer did not receive cancellation notice due to technical error.

We respectfully disagree with this violation as the notification of cancellation requirement is not based on a strict liability standard but requires that the utilities should “make every attempt” to notify customers within two hours of the decision to cancel.<sup>4</sup> In Table 1 referenced in the NOV, the explanations summarized by WSEB for the delayed cancellation notifications do not accurately reflect the factual information provided to SED in PG&E’s 10/22 Post-Event Report for some of the customers who received cancellation notifications.<sup>5</sup> On page 46 Table 6B and page 48 Table 6C of our 10/22 Post-Event Report, we explained that in anticipation of the decision to cancel based on forecasted weather, we prepared and generated the files needed to send cancellation notifications based on the initially forecasted weather; however, when weather conditions rapidly changed, the change in weather led to different areas and customers being descoped from our initial forecast and the already-prepared notification files. The sudden change in real-time weather, that is described in our Post-Event Report,<sup>6</sup> and change in descoped areas resulted in the need to create new files to ensure accurate cancellation notifications would be sent to the newly descoped customers. Therefore, in accordance with D.21-06-034, and due to factors outside our control (rapidly changing weather), we made every attempt to notify certain customers within two hours of the decision to cancel.

In regard to the process and systems-related reasons for some of the delayed cancellation notifications, as part of continuous improvement, PG&E has completed the following:

- Further automating the process to develop, quality check, and distribute notifications.
- Analyzing notification file production and distribution times to identify potential efficiencies.
- Having the ability to pinpoint root causes of notification delays or failures to adjust processes more quickly.

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<sup>4</sup> See D.21-06-034 at A11.

<sup>5</sup> See pg. 48 of PGE’s 10/22 Post-Event Report explaining delayed notification for 982 general customers, 59 critical customers.

<sup>6</sup> See pg. 15 of PGE’s 10/22 Post-Event Report.

**Section G**

**PG&E did not report the unique customer counts for notification attempts made and successful positive notifications.**

We agree with this violation as Table 5 was inadvertently populated incorrectly in 2022. We have since updated our reporting guide to ensure the accuracy of this table in future reports.

**Table 5: Notifications to Customers where Positive or Affirmative Notification was Attempted**

Designation	Total Number of customers	Notification Attempts Made	Timing of Attempts	Who made the Notification Attempt	Successful Positive Notification
MBL	460	460 Watch Notifications	10/20/2022 4:14 PM PST	PG&E	444 Watch Notifications
		361 Warning Notifications	10/21/2022 9:05 AM PST		263 Warning Notifications
		821 Overall Notifications	10/20/2022 4:14 PM PST		707 Overall Notifications
MBL behind a master meter	1	1 Watch Notifications	10/20/2022 4:15 PM PST	PG&E	1 Watch Notifications
		0 Warning Notifications	n/a		0 Warning Notifications
		1 Overall Notifications	10/20/2022 4:15 PM PST		1 Overall Notifications
SIV	78	78 Watch Notifications	10/20/2022 4:14 PM PST	PG&E	74 Watch Notifications
		71 Warning Notifications	10/21/2022 10:41 AM PST		54 Warning Notifications
		149 Overall Notifications	10/20/2022 4:14 PM PST		128 Overall Notifications

Table 5 Definitions:

**Total Number of Customers:** Total unique count of service point IDs.

**Successful Positive Notification:** These are customers who confirmed receipt, this is a unique count of service point IDs that notification result file indicates contact\_stage = "Received."

**Notification Attempts Made:** the unique count of service point IDs that were issued a notification.

### **Conclusion**

PG&E is committed to improving PSPS reporting and execution. As outlined in our 2023 and 2024 Pre- and Post-Season Reports, PG&E incorporated or had already begun incorporating improvements to address the feedback and findings from this NOV. Based on this response and the identified corrective actions, we do not believe the items noted in the NOV merit financial penalties or further enforcement action. We welcome further dialogue with WSEB on these issues.

Anthony Noll  
Program Manager  
Safety and Enforcement Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA, 94102

Re: Notice of Violation – 2023 Public Safety Power Shutoff Post Event Reports

Dear Mr. Noll

Pacific Gas and Electric Company (PG&E) submits the following in response to the Notice of Violation (NOV) regarding the 2023 Public Safety Power Shutoff post event reports, issued on December 4, 2024, by the Wildfire Safety and Enforcement Branch (WSEB) within the Safety and Enforcement Division (SED) of the California Public Utilities Commission (CPUC or Commission).

If you have any questions, please do not hesitate to call.

Sincerely,

Mark Quinlan  
Senior Vice President  
Wildfire, Emergency & Operations

## **Pacific Gas and Electric Company’s Response to Notice of Violation – 2023 Public Safety Power Shutoff Post Event Reports Submitted January 6, 2025**

In 2023, Pacific Gas and Electric (PG&E) initiated four Public Safety Power Shutoff (PSPS) events and submitted four post event reports.<sup>1</sup> On March 1, 2024, PG&E submitted the 2023 Post-Season report and amendments to the post-event reports. On December 4, 2024, the California Public Utilities Commission’s (CPUC) Wildfire Safety and Enforcement Branch (WSEB), within the Safety and Enforcement Division (SED), issued a Notice of Violation (NOV) to PG&E. The NOV alleges eight violations stemming from PG&E’s PSPS 2023 Post-Event Reports.

WSEB’s review of PG&E’s 2023 Post-Event Reports found that PG&E failed to comply with certain guidelines in Resolution ESRB-8, D.19-05-042, D.20-05-051, D.21-06-014, D.21-06-034, and the Administrative Law Judge’s Ruling on Post-Event Report Template. PG&E is submitting the following response, and includes, if appropriate, corrective actions that were taken, or actions that will be taken, to align with the CPUC’s PSPS guidelines or reporting requirements for PSPS events moving forward.

### **Section 1**

*D.19-05-042 Appendix A states in part “The electric investor-owned utilities should, whenever possible, adhere to the following minimum notification timeline:*

- 48-72 hours in advance of anticipated de-energization: notification of public safety partners/priority notification entities*
- 24-48 hours in advance of anticipated de-energization: notification of all other affected customers/populations*
- 1-4 hours in advance of anticipated de-energization, if possible: notification of all affected customers/populations.*
- When de-energization is initiated: notification of all affected customers/populations*
- Immediately before re-energization begins: notification of all affected customers/populations*
- When re-energization is complete: notification of all affected customers/populations” (D.19-05-042 at A8)*

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<sup>1</sup> PG&E’s 2023 PSPS events took place: (1) Aug. 30 – Aug. 31; (2) Sep. 20 – Sep. 21; (3) Sep. 30; and, (4) Dec. 15.

In 2023, PG&E reported the following advance and post de-energization notification failures for two events:

**Table 1: Reported Notification Failure Summary**

Notification Type	Aug. 30 – 31	Sep. 20-21	Subtotal
48-72 hours	17	0	17
24-48 hours	348	0	348
1-4 hours	0	0	0
No advance notice at all	0	0	3,608 <sup>2</sup>
Subtotal – advance failure	<b>365</b>	<b>0</b>	<b>365</b>
De-energization Initiation	3,910	342	4,252
Imminent re-energization	9	4	13
Re-energization complete	10	4	14
Subtotal – post failure	<b>3,929</b>	<b>350</b>	<b>4,279</b>
<b>Grand Total</b>	<b>4,294</b>	<b>350</b>	<b>4,644</b>

**Table 2: August 30 - 31 Event Notification Failures**

Recipients	Notification Failure	Customer Counts	PG&E's Explanation
Critical Facilities and Infrastructure	48-72 hours	17	1: 42 hours ahead. Transmission customers were not in scope 72-48 hours ahead. 7: 38 hours ahead due to changing weather conditions. 9: 15 hours ahead due to changing weather conditions.
	24-48 hours	9	15 hours ahead due to changing weather
	De-energization Initiation	134	133: internal process error. Notification was delayed by 2-8 hours. 1: internal system misaligned.
	Imminent re-energization	1	System misaligned.
	Re-energization complete	1	System misaligned.
Customers	24-48 hours	339	Changing weather conditions.
	De-energization initiation	3,776	3,768: delayed due to internal process error. 8: not notified at all. 2 were on remote grid and experienced an outage on the secondary. The internal outage platform only tracks primary outages; 6 were due to system misalignment.
	Imminent re-energization	8	2 were on remote grid and experienced an outage on the secondary. The internal outage platform only tracks primary outages 6: system misaligned.

<sup>2</sup> PG&E is not aware of what this number is, nor does it correlate to the rest of this table; therefore, it is assumed to be an error.

	Re-energization complete	9	2 were on remote grid and experienced an outage on the secondary. The internal outage platform only tracks primary outages 6: system misaligned. 1: No contact info. This customer discontinued service with PG&E during the PSPS event.
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**Table 3: September 20 - 21 Event Notification Failures**

Recipients	Notification Failure	Customer Counts	PG&E's Explanation
Facilities	De-energization initiation	11	Human error.
Customers	De-energization initiation	331	41: 7-8 hours delayed due to internal process error. 286: human error. 4: under investigation.
	Imminent re-energization	4	3: not listed as active customers. 1: system misaligned.
	Re-energization complete	4	System misaligned

### **Section 1**

The advanced notification guidelines provided in D. 19-05-042 are not a strict liability standard and state that “*the electric investor-owned utilities **should, whenever possible, adhere to the following minimum notification timeline . . .***”<sup>3</sup>. As explained in our Post Event reports and summarized here, we respectfully disagree with the alleged violation associated with the below referenced notification failures because due to factors outside our control, at the time of the required notifications, these customers were either not initially in scope but came into scope later due to changing weather conditions, did not have contact information, or were not an active customer.

PG&E Explanation	Notification Count
Changing Weather Conditions	364
Transmission Not Yet in Scope	1
No Contact Information	1
Not Active Customer <sup>4</sup>	6
Total Notification Violations PG&E Disagrees with:	372

<sup>3</sup> See D.19-05-042 Appendix A

<sup>4</sup> As noted in [PG&E September 20, 2023 PSPS Post-Event Report](#) four notification causes were listed as “Under Investigation”. Further root cause analysis was conducted, resulting in three determined to be Not Active Customers and the one notification item designated as System Misaligned.

We agree with the alleged violations associated with following notification failures which were related to process error, human error, system misalignment, and/or remote grid customers.<sup>5</sup>

PG&E Explanation	Notification Count
Process Error	3,942
Human Error	297
System Misaligned	27
Remote Grid	6
Total Notification Violations PG&E Agrees with:	4,272

The notification failures described above have been addressed through lessons learned, additional controls, and ongoing improvement efforts to prevent recurrence.<sup>6</sup> Many of the failures listed in the table above have been successfully contained and have not occurred again including the six remote grid failures as well as the largest process error which resulted in 3,768 of the notification failures.<sup>7</sup>

The process error was attributed to a delay in launching PG&E's notifications file within the required timeframe. PG&E's internal outage platform automation was active, and notification files were generated on time, however, PG&E identified a gap in communication with our vendor during a staff shift change. Due to this shift change, PG&E did not notify the vendor that the notification automation was active. Once recognized, PG&E immediately requested the vendor to launch all delayed notifications. PG&E has since updated its internal guidance documents and training materials to ensure the Customer Notification Lead notifies the vendor when our internal outage platform automation is turned on.

Human error issues were attributed to PG&E incorrectly labeling PSPS outages in our outage management system, resulting in PSPS notifications not going out to these customers. Ongoing training is being conducted to avoid this human error from recurring.

PG&E's system misalignments were attributed to disagreements on outage and customer status between PG&E's internal outage platform and PG&E's pre-outage PSPS planning systems. PG&E is working to mitigate system misalignments identified in real time during events.

Remote Grid customers are not able to receive automated notifications at de-energization and beyond because they are no longer mapped to an overhead circuit. PG&E created a Remote Grid procedure which enables PG&E to send manual notifications in lieu of automated notifications at de-energization and beyond for these Remote Grid customers.

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<sup>5</sup> Refer to Section 5.5 of PG&E's [PG&E August 30, 2023, PSPS Post-Event Report](#) and [PG&E September 20, 2023 PSPS Post-Event Report](#).

<sup>6</sup> Refer to Section 5.6 – Explain how the utility will correct the notification failures of both the [PG&E August 30, 2023, PSPS Post-Event Report](#) page 56, and [PG&E September 20, 2023 PSPS Post-Event Report](#), pages 53-54.

<sup>7</sup> Refer to [PG&E's August 30, 2023, PSPS Post-Event Report](#), Page 53, Table 9H: Explanation of Delayed Power-Off Notifications to All Other Affected Customers for a detailed explanation.

## **Section 2**

**For the December 15 event, PG&E did not report any information on the required six topics stating PG&E did not de-energize customers, therefore, the reporting requirements do not apply. Although PG&E did not shut off power during this event, there were critical facilities in scope. PG&E should still provide the backup generator information on the post event report.**

Section 6.6c of the Post Event Report template requires the Investor Owned Utility (IOU) to report on the total number of back-up generation provided to critical facilities and infrastructure during an event. We disagree with this asserted violation as PG&E did not receive any requests for backup generation during this event and therefore, for reporting purposes there was no back-up generation data to report. PG&E has updated its PSPS guidance document and reporting templates to report even when no backup generation is requested or provided during an event.

## **Section 3**

**Three out of the total four reports that PG&E served in 2023 were incomplete and did not contain the report as an attachment. PG&E claimed that the size of the attachment was too large to serve. PG&E stated it would file its reports via archival grade DVDs instead. However, PG&E was able to send the complete report via email to the Director of SED. Additionally, the service did not include the instructions for how the public may submit comments, both formal and informal, to the Commission on the report.**

We respectfully disagree with this alleged violation. Regarding the August 30, 2023 and September 20, 2023 Post Event Reports, we initially filed and served both reports under a Motion for Leave to File Under Seal the Confidential Version of the event reports ('Motion for Leave') on the basis that PG&E's PSPS event polygons geodatabase files were confidential.<sup>8</sup> Following direction from SED on October 16, 2023, we withdrew the Motion for Leave and re-filed and served amended Post Event Reports, specifically the PSPS event geodatabase files on October 27, 2023.<sup>9</sup>

In review of all four PSPS Post Event Report filings, other than the two reports explained above, PG&E is unable to determine a third Post Event report as referenced in the NOV. PG&E's records reflect that the 9/30/23 and 12/15/23 PSPS Post Event Reports were served and filed with the reports attached as PDFs.

As to the assertion that PG&E did not include instructions for how the public may submit comments, we acknowledge that explicit instructions on how to file comments were not provided in the Post Event report filings. Moving forward we will include prescriptive language on instructions to file comments.

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<sup>8</sup> See 8/30/23 PSPS Post Event Report email service and filing dated Sept. 15, 2023, and 9/20/23 PSPS Post Event Report email service and filing dated October 5, 2023.

<sup>9</sup> See PG&E's Oct. 27, 2023, Amended filing and service of both the 8/30/23 and 9/20/23 PSPS Post Event Reports.

#### **Section 4**

**PG&E’s text and email notification script did not mention where to access CRC information. PG&E’s phone/voice notification script states; “For more information, including medical device charging resources, food replacement and other support, visit [pge.com/pspsupdates](https://www.pge.com/pspsupdates) or call 1-800-743-5002.” PG&E did not clearly specify in the notification to the location of the CRCs, the services available at each CRC, the hours of operation of each CRC, and where to access electricity during the hours the CRC is closed.**

We respectfully disagree with this alleged violation. We notified customers of CRC information including locations, services available and hours of operation by posting on our public facing website, to which customers are directed in each notification. During PSPS outages, given the detailed volume of CRC information and the dynamic nature of information associated with CRCs being subject to change, our notifications effectively direct agencies, customers, and the general public to [pge.com/pspsupdates](https://www.pge.com/pspsupdates) through automated notifications, news releases, social media, community-based organizations, and other avenues. PG&E also directs visitors from the [pge.com](https://www.pge.com) homepage to [pge.com/pspsupdates](https://www.pge.com/pspsupdates).

On [pge.com/pspsupdates](https://www.pge.com/pspsupdates), PG&E prominently highlights the dedicated Community Resource Center (CRC) page. The CRC page includes:

- Open CRC locations
- Hours of operation
- Services available at each site
- A note that the PSPS outage map can be used to find local CRC locations and identify where to access electricity during the hours CRCs are closed.

We proactively coordinate with customers for input regarding PSPS notifications. Based on feedback received, customers generally had low awareness of the terms “Community Resource Centers” and “CRC.” This is why PG&E highlights resources provided at CRCs, such as charging stations, as information that is available at [pge.com/pspsupdates](https://www.pge.com/pspsupdates). We have also incorporated feedback from customers, particularly the Access and Functional Needs population, that PG&E limit the amount of information in automated notifications to maximize effectiveness.

Currently, PG&E’s plan to address SED’s concern in this alleged violation is to add the term “Community Resource Center” to customer notifications and not include the other items identified in the NOV in future automated notifications; we will continue to list those other items in other forums, as described above. PG&E is currently working to make script changes in 2025 to include the term ‘Community Resource Center’ in order to meet the requirement.

## **Section 5**

**For the Aug. 30 – 31 event, PG&E did not provide a notification of the cancellation of a de-energization event, or removal from scope, by notifying five customers within two hours of the decision to cancel. PG&E responded that the customers were descoped and that they no longer had valid contact information.**

We respectfully disagree with this violation since this is not a notification failure. During earlier phases of the PSPS, the five customers were successfully notified that they were initially in scope and may have their power de-energized. However, these customers were later descoped in the PSPS due to the fact that these customers terminated service<sup>10</sup>; therefore, these customers no longer had valid contact information.

## **Section 6**

**For the following two events, PG&E’s geodatabase file did not include all the items that are required in Section 3.3. The missing items are: 1) County, 2) General Order (GO) 95, Rule 21.2-D Zone 1, Tier 2, or Tier 3 classification or non-High Fire Threat District, 3) Residential customers de-energized, 4) Commercial/Industrial customers de-energized, 5) AFN other than MBL customers de-energized, and 6) Distribution or transmission classification. After SED’s request, PG&E refiled amended geodatabase file on October 27, 2023.**

- **August 30-31**
- **September 20-21**

We respectfully disagree with this violation. PG&E acknowledges that the August 30 – 31, 2023, and September 20 – 21, 2023, PSPS Post-Event Report GDB files did not include some required fields in the public versions provided on PG&E’s website. PG&E considered these items confidential due to circuit level information and therefore provided SED with the confidential versions of the files for their records. However, upon SED’s request on October 27, 2023, we re-submitted both report’s GDB files<sup>11</sup> and uploaded them to the PG&E website.

## **Section 7**

**For the December 15 event, PG&E reported 44 MBL customers and seven Self-Identified Vulnerable (SIV) customers. PG&E achieved successful positive notifications to 39 MBL customers and six SIV customers. PG&E did not follow the Template to explain why PG&E did not send positive notifications to the remaining 5 MBL customers and one SIV customer.**

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<sup>10</sup> During the normal course of business, any given customer may cancel their service due to terminating and/or transferring services. If this were to occur during a PSPS event PG&E would no longer have current contact information for that customer.

<sup>11</sup> See PG&E’s Oct. 27, 2023, Amended filing and service of both the 8/30/23 and 9/20/23 PSPS Post Event Reports.

We respectfully disagree with this alleged violation. All 44 MBL and 7 SIV customers received successful positive notifications at various stages of notifications.<sup>12</sup> Moving forward, we will look into making modifications to the table associated with this section of the report to improve clarity on “successful positive” confirmation.

## **Section 8**

**For the December 15 event, PG&E did not report any advance notification failures. Instead, PG&E reported “PG&E did not de-energize customers, therefore, cancellation notifications are the only applicable notice type to be reported”. While PG&E did not de-energize any customers in this event, advance notices were sent starting from December 13 at 08:00, and the cancellation notices were sent starting from December 14 at 20:04. PG&E must identify and report any advance notification failures for the non-de-energization PSPS event, as well as the explanation of what caused the failure.**

Previously, PG&E did not report notification failures for canceled PPS events in our PPS Post-Event Reports, as it was believed these notifications were not applicable because the customers were not de-energized. Additionally, our previous calculation of notification failures was based on de-energized customers, and therefore, only cancellation notifications were applicable to our analysis. However, per subsequent CPUC feedback, we have updated our notification analysis to include all notifications, even for canceled PPS events.<sup>13</sup>

## **Conclusion**

PG&E appreciates the opportunity to respond to the 2023 PPS Post Event Reports NOV and is committed to improving PPS reporting and execution.

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<sup>12</sup> Per Section 5.3 of the Post Event report template, PG&E tracks positive confirmation from MBL/SIV customers via text, phone call, email, doorbell rings, live agent phone calls or door hanger at all stages of notifications. If we receive confirmation at any stage, that is considered a successful positive notification. Also see PG&E’s quarterly AFN reporting and PG&E Pre-Season reports.

<sup>13</sup> PG&E’s response to the September 27, 2024, Data Request, WSEB-PG&E-PER-07052024-01.

# **Appendix D**

## **(Enforcement Policy)**

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EXECUTIVE DIVISION

RESOLUTION M-4846  
November 5, 2020

**R E S O L U T I O N**

Resolution Adopting Commission Enforcement Policy

PROPOSED OUTCOME:

- Approves the Commission Enforcement Policy and its Appendix on Penalty Assessment Methodology
- Establishes enforcement guidelines
- Authorizes staff to draft proposed Administrative Consent Orders and Administrative Enforcement Orders, subject to Commission review and disposition
- Directs staff to form enforcement teams

SAFETY CONSIDERATIONS:

- An effective enforcement program improves compliance with rules and regulations by utilities and other entities subject to Commission jurisdiction, which improves safety for employees, customers and the public

ESTIMATED COST:

- None

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**SUMMARY**

This Resolution adopts the attached Commission Enforcement and Penalty Assessment Policy (Enforcement Policy or Policy). This Policy is part of the Commission's ongoing efforts to ensure compliance with statutes, rules, orders and other requirements and to provide meaningful deterrence to violations through robust enforcement actions. The Policy will:

- establish guiding principles on enforcement approaches, actions, settlements and setting penalties;
- encapsulate and standardize existing enforcement tools;

- authorize staff to propose Administrative Consent Orders and Administrative Enforcement Orders, subject to Commission review and disposition;
- apply the existing citation appellate process of Resolution ALJ-377 to proposed Administrative Enforcement Orders;
- create internal enforcement teams to oversee the efficiency, consistency and effectiveness of Commission enforcement actions; and,
- address other actions to advance the goals of consistent, firm, meaningful, and timely enforcement that is transparent to regulated entities and the residents of California, and tailored to address the needs of disadvantaged communities, while adhering to due process and other legal obligations.

This Enforcement Policy is the latest effort in the Commission's long-standing history of enforcing statutes, rules, orders, and other regulations applicable to regulated entities for the betterment of the residents of California.

Nothing in this Enforcement Policy restricts or reduces the Commission's, and its staff's, ability to use its existing enforcement tools and procedures.

## **BACKGROUND**

This Enforcement Policy builds on the Commission's existing tools and processes, as well as incorporates best practices and legal responsibilities, with the goal of better serving the residents of California through nimble, meaningful and transparent, enforcement of statutes, rules, orders, and regulations over the entities the Commission regulates. This Policy will also assist in the implementation of the Commission's Strategic Directive on Compliance and Enforcement.<sup>1</sup>

The Commission currently uses numerous enforcement tools such as Orders Instituting Investigation (OII), Orders to Show Cause (OSC), citations, subpoenas, stop-work orders, revocations of authority, referrals to other agencies, or court actions. These tools remain unaltered by this resolution.

In addition to the robust and resource intensive actions such as OIIs and OSCs the Commission uses a number of staff-level actions to correct behavior before more serious action is needed. Staff has, and will continue to have, the ability to communicate with regulated entities, issue warning letters, request information, make inspections and apply

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<sup>1</sup> See SD-05

([https://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Public\\_Website/Content/About\\_Us/Mission\\_and\\_Values/Strategic\\_Directives\\_and\\_Governance\\_Policies\\_Revised\\_February%2020%202019.pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/About_Us/Mission_and_Values/Strategic_Directives_and_Governance_Policies_Revised_February%2020%202019.pdf)).

numerous other tools to identify and fix violations and potential violations in a quick and effective manner.

The Enforcement Policy seeks to provide more structure around those tools by consolidating and identifying a uniform set of staff level enforcement actions such as: communications with regulated entities, warning letters, requests for information and inspections, and notices of violations.

The Commission also has a long-standing practice of using citation processes, which delegate certain powers and actions to staff to be used in a less formal manner than an OII.

The Commission has numerous citation programs. While these citation programs exist in several industry areas the Commission regulates and continues to be expanded upon and improved,<sup>2</sup> they do not cover all regulated actors and/or actions. Experience has shown that there are circumstances not covered by these citation programs, thus limiting the Commission's ability to respond to instances of non-compliance. Moreover, penalty amounts are pre-determined under the citation programs and cannot be deviated from, no matter what extenuating or inculpative circumstances may exist.

This Policy does not modify any of the Commission's citation programs, nor would it create a disincentive to issuing citations or adding new citation programs.<sup>3</sup> Staff can continue to issue citations if appropriate for the circumstances. The Policy does give staff the option of issuing a proposed Administrative Consent Order or Administrative Enforcement Order instead of issuing a citation or seeking an OII in situations not currently covered by an existing citation program or warranting an OII.

In developing this Policy, staff presented it to the Commission's Policy and Governance Committee for public and Commissioner input on two occasions.

On June 17, 2020, staff distributed a draft version of the Enforcement Policy to solicit comments and to notify the public that the Policy would be presented and discussed at the July 1, 2020 Commission's Policy and Governance Committee meeting. Notice of the draft Enforcement Policy was emailed to those subscribed to the service list for Notice of

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<sup>2</sup> For example, the Commission recently adopted Resolution ALJ-377, which modified Resolution ALJ-299 and made permanent the Citation Appellate Rules. Other examples include Resolution E-5080 (August 6, 2020) *Approves a citation program enforcing compliance with the filing requirements of Integrated Resource Plans by Load-Serving Entities*. Resolution T-17601 (June 21, 2018) *Approval of a Citation Program To Enforce Compliance by Telecommunications Carriers With The Commission's Resolutions, Decisions, Orders, and The Public Utilities Code and Authorizes Staff To Issue Citations; Procedures For Appeal Of Citations*.

<sup>3</sup> For example, citations are final if not appealed but an Administrative Enforcement order is only proposed until the Commission adopts it.

Amendments to the Commission's Rules of Practice and Procedure. The July 1, 2020 meeting was noticed on the Daily Calendar.

Prior to the July 1, 2020 meeting, comments were submitted by CA Cable and Telecommunications Association (CCTA), CTIA, William Sherman, and Goodin, MacBride, Squeri and Day LLP. Those comments addressed due process matters pertaining to the Commission's adoption and implementation of this Policy, the consistency of enforcement practices, statutory bases of the Commission's delegation of certain actions to staff, the Policy's connection to audits of water utilities, and included a reiteration of similar comments raised in the processing of Resolution ALJ-377. The substance of those arguments is addressed below.<sup>4</sup>

At the July 1, 2020 meeting, the Commissioners discussed the Enforcement Policy and set a July 22, 2020 deadline for submitting additional public comments to the Policy and Governance Committee. No stakeholders or members of the public made comments during the meeting.

On July 14, 2020, Commission staff notified the service lists for Notice of Amendments to the Commission's Rules of Practice and Procedure and for General Order 96-B of the July 22, 2020 comment due date. On July 21 and 22, 2020, comments were received from Lyft, CCTA, Shell Energy North America, Pacific Gas and Electric Company, and jointly from San Diego Gas & Electric Company and Southern California Gas Company respectively. Those comments addressed delegation authority, due process concerns, the extent to which guidance to staff would promote consistency, the need for internal "firewalls" between enforcement and advisory staff and decision makers and the adoption of this Policy through the Resolution process. The substance of those arguments is addressed below

The Policy and Governance Committee discussed this Policy a second time on September 2, 2020. The meeting was noticed on the Daily Calendar and on August 24, 2020, Commission staff notified the service lists for Notice of Amendments to the Commission's Rules of Practice and Procedure and for General Order 96-B of the September 2, 2020 meeting date. Issues raised by Commissioners and the public included: penalty accrual and interest, enforcement prioritization and vulnerable communities, and the legal authority for the Policy and its implementation. The primary concerns raised in comments on the draft Policy are addressed below.

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<sup>4</sup> The Enforcement Policy does not address the matter of audits of water utilities as that is a separate matter unaffected by this Policy. The Policy has a stated objective of promoting a consistent approach among Commission staff to enforcement actions, but the Policy also recognizes that in practice different factual circumstances may require different approaches.

## **DISCUSSION**

To date, the issues raised through the process of drafting this Enforcement Policy can be summarized as:

1. The Commission’s jurisdiction and delegation authority
2. Adherence to due process principles in the adoption and implementation of this Policy
3. Internal Enforcement Teams
4. How this Policy will advance enforcement goals and principles
5. How this Policy will interact with existing enforcement tools
6. How this Policy addresses the accrual of penalties and the interest on penalties

### 1. Jurisdiction and Delegation Authority:

The Commission has affirmed its jurisdiction over regulated entities and its authority to establish enforcement mechanisms in numerous past decisions.<sup>5</sup>

The Commission has broad regulatory authority, as set forth in Article XII of the California Constitution and § 701 of the California Public Utilities (Pub. Util.) Code.<sup>6</sup> Section 701 authorizes the Commission to “supervise and regulate every public utility in the State . . . and do all things, whether specifically designated in [the Public Utilities Act] or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.”<sup>7</sup>

As mandated in § 702:

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

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<sup>5</sup> See, e.g., Resolution ALJ-274; D.14-12-001 (as modified by D.15-05-054); D.16-09-055; Resolution E-4017 (as modified by Resolution E-4195); Resolution E-4550; Resolution W-4799; Resolution TL-19108; Resolution ROSB-002; Resolution SED-3; Resolution T-17601; Resolution ALJ-377 (see Appendix B for a list of citation programs).

<sup>6</sup> All code citations are to the California Public Utilities Code unless otherwise stated.

<sup>7</sup> See also, e.g., Pub. Util. Code § 5381.

Pursuant to § 451 each public utility in California must:

Furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment and facilities, ... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

The Commission has stated that “[t]he duty to furnish and maintain safe equipment and facilities is paramount for all California public utilities.”<sup>8</sup>

Pursuant to § 2101, the Commission is directed “to see that the provisions of the Constitution and statutes of this State affecting public utilities, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected . . .”

Existing law, such as § 7, allows the Commission to delegate certain tasks to Commission staff. The Commission may lawfully delegate to its staff the performance of certain functions, including the investigation of facts preliminary to agency action and the assessment of specific penalties for certain types of violations.<sup>2</sup> The acts of delegation within the Enforcement Policy are delegations to Commission staff, who are acting in an enforcement capacity, and are not transferable to other governmental entities. Additionally, the Enforcement Policy does not give the Public Advocate’s Office any citation or enforcement powers.

The primary purpose of an effective enforcement program is to deter misbehavior or illegal conduct by utilities and other entities subject to Commission jurisdiction, thereby ensuring that both the employees of the utility and the public it serves are properly protected from the inherent hazards of providing utility services.

The Commission’s authority to adopt this Enforcement Policy falls within the same well-established authorities relied upon to adopt the citation programs. The Commission has adopted citation programs in many areas. (See e.g., E-4195 (resource adequacy); ROSB-002 (transportation/railroad); UEB-002 (telecommunications); USRB-001 (propane); and W-4799 (water and sewer). More recently, it established additional citation programs Rulemaking (R.) 14-05-013 (electric and gas citation programs); TL-19102 (household goods carriers); E-4550 (failure to comply with Permits to Construct or Certifications of Public Convenience and Necessity issued pursuant to the

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<sup>8</sup> D.11-06-017 at 16.

<sup>2</sup> D.09-05-020 at 8.

California Environmental Quality Act); TL-19108 (charter party carriers); SED ST-163 (rail transit); E-4720 (Renewables Portfolio Standard); SED-3 (communications facilities); T-17601 (telecommunications carriers); and UEB-003 (core transport agent).)

Additionally, the Commission has established an appellate process that works in conjunction with these citation programs. (See Citation Appellate Rules found in Resolution ALJ-187, Resolution ALJ-299 and Resolution ALJ-377.)

This Enforcement Policy builds upon this historical legal and procedural foundation. However, this Policy is different from prior citation programs in that staff have two new tools available to address violations: they can *draft and propose* an Administrative Consent Order or an Administrative Enforcement Order to the full Commission for approval, denial or modification. The legal analysis in past Commission decisions, D.02-02-049, D.06-01-047, and D.09-05-020, explains that allowing staff to issue proposed Administrative Enforcement Orders or Administrative Consent Orders for Commission approval and adoption, is not an improper delegation of authority.

In response to allegations that permitting staff to assess scheduled fines for violations of General Order (GO) 167 (maintenance and operations of electrical generation facilities) is an impermissible delegation of authority, D.06-01-047 cites to portions of D.02-02-049 and analyzes relevant case law:

As a general rule, powers conferred upon public agencies and officers which involve the exercise of judgment or discretion are in the nature of a public trust and cannot be surrendered or delegated to subordinates in the absence of statutory authorization. (*Bagley v. City of Manhattan Beach* (1976) 18 Cal.3d 22, 24; *California School Employees Association v. Personnel Commission* (1970) 3 Cal.3d 139, 144; *Schechter v. County of Los Angeles* (1968) 258 Cal.App.2d 391, 396.) On the other hand, public agencies may delegate the performance of ministerial tasks, including the investigation and determination of facts preliminary to agency action (*California School Employees, supra*, at p. 144), functions relating to the application of standards (*Bagley, supra*, at p. 25), and the making of preliminary recommendations and draft orders (*Schechter, supra*, at p. 397). Moreover, an agency's subsequent approval or ratification of an act delegated to a subordinate validates the act, which becomes the act of the agency itself. (*California School Employees, supra*, at p. 145.)

As the Commission pointed out in *California Association of Competitive Telecommunication Companies* [D.02-02-049] (2002) 2002 Cal.P.U.C. LEXIS 162, cases such as *California School Employees* and *Schechter* follow the general rule that agencies cannot delegate discretionary duties in the absence of statutory authority. However,

they really stand for the narrower principle that while agencies cannot delegate the power to make fundamental policy decisions or “final” discretionary decisions, they may act in a practical manner and delegate authority to investigate, determine facts, make recommendations, and draft proposed decisions to be adopted or ratified by the agency’s highest decision makers, even though such activities in fact require staff to exercise judgment and discretion.

(*California Association of Competitive Telecommunication Companies* [D.02-02-049], supra, 2002 Cal.P.U.C. LEXIS 162 at pp. \*9-\*10, petn. for writ den. Dec. 4, 2002, *Southern California Edison Company v. Public Utilities Commission*, B157507.)

Thus, in determining whether a delegation of authority is unlawful, the question is whether the Commission has delegated its power to make fundamental policy decisions or final discretionary decisions.

We have said that the purpose of the doctrine that legislative power cannot be delegated is to assure that “truly fundamental issues [will] be resolved by the Legislature” and that a “grant of authority [is] . . . accompanied by safeguards adequate to prevent its abuse.” [Citations.]

(*Kuglar v. Yocum* (1968) 69 Cal.2d 371, 376, original alterations.)

D.09-05-020 includes the same analysis when it rejects claims that staffs’ ability to issue fines over engineering and operating safety of rail carriers via Resolution ROSB-002, is improper. The analysis of principles found in the *Schechter* and *California School Employees* line of cases and articulated in D.02-02-049, D.06-01-047 and D.09-05-020 all confirm that the Commission can delegate authority to staff to draft proposed orders to be adopted or ratified by the Commission, even though drafting such orders require staff to exercise some level of judgment and discretion. The Commission’s subsequent approval or ratification of an Administrative Enforcement Order or Administrative Consent Order proposed by staff, validates the order, which becomes an act of the Commission itself.

## 2. Due Process Matters:

This Enforcement Policy was adopted following several notice and comment opportunities and, as such, its adoption complies with necessary due process requirements. In addition to two rounds of public notice and comment in the Commission’s Policy and Governance Committee process, this Resolution was issued for notice and comment pursuant to Article 14 of the Commission’s Rules of Practice and Procedure.

This Resolution was served on the mailing list for the Notice of Amendments to the Commission's Rules of Practice and Procedure as well as the GO 96-B service lists for Pacific Gas and Electric (PG&E), Southern California Edison (SCE), Southern California Gas Company (SoCalGas), and San Diego Gas and Electric (SDG&E). Comments on the draft resolution were requested pursuant to Rule 14.5 of the Commission's Rules of Practice and Procedure. Comments were posted on the Commission's website for the public to view.

The Commission has consistently adopted citation programs through the resolution process and doing so in this instance does not violate any due process requirements. While some citation programs have been adopted through the Order Instituting Rulemaking process, the majority of citation programs, including programs addressing complex matters, have been adopted through the resolution process.

Not only is the Policy adopted in a manner that meets due process principles, the implementation of this Policy will also supply due process through the processes established within the Policy.

Due Process requirements for the implementation of the Policy are included in the Policy itself. These requirements include: (1) the right to request an evidentiary hearing before an Administrative Enforcement Order becomes final; (2) the submitting for public notice and comment of a draft Resolution regarding the disposition of any proposed Administrative Enforcement Order or proposed Administrative Consent Order; (3) a Commission vote before any Administrative Enforcement Order or Administrative Consent Order becomes final; (4) the traditional rehearing and court review processes of any Commission vote on the matter.

A requested evidentiary hearing would be before an Administrative Law Judge (ALJ) and held in accordance with the Citation Appellate Rules found in Resolution ALJ-377 or any successor order. Pursuant to those rules, an ALJ drafted Resolution is presented to the Commission for approval and adoption. The adopted Commission Resolution is subject to rehearing pursuant to Pub. Util. Code section 1731 and to judicial review pursuant to Pub. Util. Code section 1756. The due process provided following issuance of an Administrative Enforcement Order is identical to the due process provided following the issuance of a traditional citation except for the extra due process step of requiring a Commission vote before an Administrative Enforcement Order becomes final, which is not a requirement for an un-appealed citation.

As the Commission discussed in Resolution ROSB-002, this ability to seek an evidentiary hearing removes the concern that a private interest could be erroneously deprived of property (e.g., fine), nor are the fiscal or administrative burdens on the private interest significant. (See Resolution ROSB-002, pp.7-8.)

Lastly, nothing in this Policy shifts any burden of proof, evidentiary standards, or otherwise applicable procedural requirements.

### 3. Internal Enforcement Teams

The Enforcement Policy directs staff to form two internal enforcement teams: Division Specific Enforcement Teams and a Commission Enforcement Team. The purpose for such teams is to address issues concerning prioritization of resources, consistency, transparency and other managerial concerns.

Commentors have correctly noted that internal “firewalls” must be established to adhere to conflict-of-roles or separation-of-duties prohibitions, ex parte restrictions and Bagley-Keene Open Meeting Act obligations.

The Commission is well-aware that procedural fairness requires internal separation between advocates and decision-makers to preserve the neutrality of decision-makers and equality among advocating entities. The Policy is also subject to the ex parte restrictions found in the Citation Appellate Rules. Lastly, nothing in the Policy would change the Commission’s existing obligations under the Bagley-Keene Open Meeting Act.

In the creation and staffing of these teams, staff, in consultation with the Commission Legal Department and others, will ensure that these existing and on-going legal obligations are met. And while staff may meet to discuss global issues and trends, ultimately every enforcement action will stand on its own evidentiary record.

### 4. How this Policy will advance enforcement goals and principles

The Enforcement Policy includes nine guiding enforcement principles: ensuring compliance; consistent enforcement; meaningful deterrence; timely enforcement; progressive enforcement; transparency; environmental justice and disadvantaged communities; adaptive management; and, enforcement prioritization.

To advance these goals the Policy includes the creation of internal enforcement teams and also gives staff direction on how to use the various tools in this Policy.

The enforcement teams will help ensure the guiding principles are taken into consideration by staff and will also be responsible for tracking and publishing information in an enforcement database.

The direction given to staff regarding the various tools in the Policy will help ensure the enforcement principles are met. While many of these tools already exist, the Policy brings these tools into one coordinated policy document and directs the manner of their use.

In total, the Policy will promote maximum compliance with Commission rules and requirements through the adoption and application of consistent enforcement practices and the development of a sufficient record that ensures that regulated entities subject to an enforcement action receive due process. The purpose of these goals is to ensure that regulated entities provide services and facilities to the public in a manner that is safe, reliable, non-discriminatory and just and reasonable. The Commission intends for this Policy to promote a consistent approach among Commission staff to enforcement actions, to make enforcement a high priority and to promote the Commission's enforcement culture.

5. How this Policy will interact with existing enforcement tools

No existing citations programs are altered by this Resolution and Enforcement Policy. This Policy merely provides additional enforcement tools for staff to use in lieu of, or in conjunction with, existing citation programs. Nor does this Resolution and Enforcement Policy alter the Citation Appellate Rules.

The Policy does not change or undermine the citation programs, nor does it create a disincentive to issuing citations or adding new citation programs. Staff may continue to issue citations if appropriate for a case. All actions in this Enforcement Policy, whether new or existing, will be performed consistent with the Pub. Util. Code and all other relevant legal authorities.

The Policy does give staff the option of settling a case through an Administrative Consent Order or issuing a proposed Administrative Enforcement Order instead of issuing a citation, both of which would be subject to a vote by the full Commission. The Administrative Enforcement Order is an alternative to a citation and could be issued if a case does not necessitate an OII.

The addition of these tools to the Commission's existing enforcement options brings the Commission's enforcement practices more in-line with the enforcement practices of many other state agencies. The addition of the new tools is also consistent with the recommendations made by an independent third party that reviewed Commission enforcement practices after the San Bruno explosion<sup>10</sup> and advances the Commission's Strategic Directive on Compliance and Enforcement.

The goal of having consistent enforcement practices would be supported by the adoption of the Policy, which delineates a consistent Commission-wide approach to enforcement.

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<sup>10</sup> Report of the Independent Review Panel San Bruno Explosion  
[https://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Public\\_Website/Content/Safety/Natural\\_Gas\\_Pipeline/News/Final%20Report.pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Safety/Natural_Gas_Pipeline/News/Final%20Report.pdf)

Case facts may suggest the use of different enforcement tools at different times, but that does not mean that the Policy will not promote consistency. Rather, the Policy will promote a consistent approach to each case by establishing the same set of tools to be used Commission-wide. In addition, the Policy requires the formation of Division and Commission Enforcement Teams to support consistency.

Commentors also raised questions about the consistency of this Policy with Pub. Util. Code sections 2107 and 2108. Under the Policy staff can negotiate a proposed Administrative Consent Order or issue a proposed Administrative Enforcement Order, both of which may include fine amounts. All penalty amounts set forth in proposed orders for Commission adoption must be consistent with Pub. Util. Code sections 2107 and 2108.

6. How this Policy addresses the accrual of penalties and the interest on penalties

Regarding accrual the Policy states:

Corrective action requirements in a proposed Administrative Enforcement Order remain in effect, notwithstanding the filing of a Request for Hearing. Neither payment of the penalty nor filing a timely Request for Hearing shall excuse the regulated entity from curing a violation. ... The amount of the penalty shall continue to accrue on a daily basis until the violation is corrected or until the appeal, rehearing, and judicial review process is fully concluded, a penalty is found to be appropriate, and the penalty is paid in full. The requirement that a penalty be paid shall be stayed during the hearing and rehearing process.

This guidance is consistent with past Commission actions, Pub. Util. Code sections 451 and 2108, and the Enforcement Policy principles, especially those related to protecting public health and safety.

Regarding interest, the Commission has charged interest on penalty amounts after the penalty becomes final and the respondent is in default. Generally, the respondent has thirty (30) days from the date of finality to submit payment and unpaid balances accrue interest at the legal rate of interest for judgements. The Commission and its staff may take whatever actions are provided by law to recover unpaid penalties. It is envisioned that interest will be handled in the same manner for enforcement actions made pursuant to this Policy, although staff may tailor to the specifics of each case, as allowable by law.

**NOTICE OF COMMENTS**

Pub. Util. Code section 311(g)(1) provides that resolutions must be served on all parties and subject to at least 30 days public review. However, given that this resolution is

issued outside of a formal proceeding, interested stakeholders did not need to have party status in order to submit comments on the resolution.

This draft resolution was served on the service list of Notice of Amendments to the Commission's Rules of Practice and Procedure, as well as the GO 96-B service lists for PG&E, SCE, SoCalGas, and SDG&E and posted on the Commission Committee on Policy and Governance website, [www.cpuc.ca.gov/policyandgovernance](http://www.cpuc.ca.gov/policyandgovernance), and was placed on the Commission's Business Meeting agenda no earlier than 30 days from the date of service.

On October 6, 2020, timely comments were received from the following: SouthWest Gas Corporation (SouthWest); California Attorney General's Office (AG's Office); CCTA; CTIA; Hanson Bridgett LLP; joint comments from San Diego Gas & Electric Company and Southern California Gas Company (Joint Utilities); and, Shell Energy North America (Shell).

SouthWest recommends that the Enforcement Policy include an option for staff to provide notices to regulated entities that their response satisfies staff's concerns set forth in a Notice of Violation. The Enforcement Policy has been revised to include this request.

The AG's Office recommends refinements to the environmental justice goals and processes in the Policy. We have revised the Policy to refine the term "vulnerable and disadvantaged communities" by referring to the Commission's Environmental and Social Justice Action Plan, and also to include an explicit goal of coordinating enforcement actions with other agencies. We note that the Commission's Strategic Directive, SD-11, requires the Commission to collaborate and coordinate with local, state, federal and tribal entities – as appropriate – to achieve goals that include "effective and efficient regulation"<sup>11</sup> We also reiterate here the Commission's commitment to adequate staff training. Finally, the AG's Office recommends that the CPUC consider its ability to include supplemental environmental projects in its settlements with regulated entities, and how such process would fit within the Enforcement Policy, including providing benefits to disadvantaged communities. We will consider this recommendation in the future as we implement this Policy.

CCTA reiterates its prior comments which we have substantively addressed above.

CTIA states that the accrual of penalties is treated differently here than in Resolution SED-3. As previously stated, this Resolution and Enforcement Policy does not modify any existing citation program. We find the approach taken in the Policy is correct for the

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<sup>11</sup> The Commission's Strategic Directives can be found at: <https://www.cpuc.ca.gov/strategicplanninginitiative/>

implementation of the Policy itself; differences in different programs is not improper. Moreover, similarities between this Policy and Resolution SED-3 do exist; for example, both stay the collection of penalty payment during the appeal process.

Hansen Bridgett discusses jurisdictional demarcations between the Commission and other state agencies. This Policy does not expand or contract the jurisdiction of any governmental agency, nor is it the vehicle to resolve specific or ongoing jurisdictional disputes. Contrary to Hansen Bridgett's arguments, we find the Policy to be a proper and judicious use of Commission resources and not unduly burdensome on regulated entities. As detailed above, we find that the Commission has legal authority to create this Enforcement Policy, it is not an improper delegation to staff, regulated entities' due process rights are respected, and the Commission can enact this Policy through a resolution process.

The Joint Utilities argue that granting staff the ability to use additional enforcement tools is a modification of existing citation programs. We disagree. Most of the enforcement tools in the Policy already exist for staff, with or without a citation program. Just as staff can currently choose to forego a citation program and seek an OII, staff can also forego a citation program and use a tool in the Enforcement Policy – this does not modify the citation program, nor does it support the proposal of the Joint Utilities to limit the Policy to areas not covered by an existing citation program. The Joint Utilities' argument that the Commission needs express legislative authority for each specific citation program, or Enforcement Policy tool, is addressed above and is not in alignment with long-standing Commission practice. Regarding other arguments raised: the ability of staff to seek a penalty amount in an Administrative Enforcement Order is bound by the relevant Pub. Util. Code sections and is only a proposal subject to full Commission review, similar to any staff proposed penalty in an enforcement OII; staff enforcement roles (e.g., investigating, litigation, and seeking penalties) are no more expansive than their current roles in citations and OIIs; and, the processes detailed in Resolution ALJ-377 address concerns about the record and discovery.

Shell argues that the Policy cannot cover entities that are subject to citations. We disagree. The same authorities that allow the Commission to make entities subject to citation programs, allow the Commission to make those entities subject to the Enforcement Policy. The Enforcement Policy does not expand or restrict any jurisdictional authority the Commission has over an entity pursuant to the Pub. Util. Code or other applicable laws. Also, the existence of various enforcement options for staff's use is not arbitrary or a violation of due process, or a grant of unfettered discretion to staff. Staff already has the discretion to use various tools (e.g., letters, citation, OII, etc.) and the Policy gives staff guidance on how to use those tools, and any non-citation penalty actions (i.e., Administrative Enforcement Orders or Administrative Consent Orders) of staff are proposals subject to Commission disposition. The internal enforcement teams are a measure to promote enforcement consistency.

All other comments were considered and addressed above and/or found not to warrant further discussion or revision to the Enforcement Policy.

### **FINDINGS AND CONCLUSIONS**

1. Pub. Util. Code section 701 authorizes the Commission to supervise and regulate every public utility in the State.
2. Pub. Util. Code section 702 mandates every public utility to obey and promptly comply with every Commission order, decision, direction, or rule.
3. Pub. Util. Code section 451 mandates every public utility to furnish and maintain safe, sufficient and just service, instruments, equipment and facilities.
4. Pub. Util. Code section 2101 mandates the Commission shall ensure that the provisions of the California Constitution and statutes affecting public utilities are enforced and obeyed.
5. Public utilities, corporations and persons are subject to Commission enforcement actions and penalties pursuant to Pub. Util. Code, Division 1, Part 1, Chapter 11.
6. California law, including Pub. Util. Code section 7, authorizes the commission to delegate certain powers to its Staff, including the investigation of acts preliminary to agency action, and the issuance of citations for certain types of violations in specified amounts.
7. The Commission may authorize staff to investigate and draft proposed Administrative Enforcement Orders, subject to review and consideration by the Commission after any requested evidentiary hearing is granted.
8. The Commission may authorize staff to investigate, negotiate, and draft proposed Administrative Consent Orders, subject to review and consideration by the Commission.
9. The Enforcement Policy was subject to two rounds of public notice and comment in the Commission's Policy and Governance Committee.
10. The Commission has long adopted citation programs through the Resolution process.
11. The Enforcement Policy will provide staff with guidance to use existing tools more effectively.
12. The Enforcement Policy will provide staff with new tools to address non-compliance in a prompt and effective manner.
13. The Enforcement Policy will provide staff with guidance regarding the unique concerns of disadvantaged communities.

14. The Enforcement Policy will advance enforcement consistency and meaningful deterrence.
15. The Enforcement Policy will provide the timely remedies necessary to correct ongoing compliance issue while conserving staff resources.
16. The Enforcement Policy will incentivize utilities to prevent non-compliance issues from recurring or continuing.
17. The procedures set forth in the Enforcement Policy will ensure due process, fairness, and efficiency in the application of the Policy.
18. The Enforcement Policy will be implemented in a manner that ensures adherence to legal obligations, including ex parte restraints, the Bagley-Keene Open Meeting Act, and conflict-of-roles prohibitions.
19. Payment of the penalty assessed in an approved Enforcement Order or Consent Order does not excuse a regulated entity from promptly curing cited violations and does not preclude the Commission from taking other remedial measures.
20. Nothing in the Enforcement Policy interferes with the existing requirements that the public utilities must maintain and operate their systems safely, including invoking any necessary emergency response procedures to address immediate safety hazards, or any other procedures necessary to ensure that immediate safety hazards are promptly corrected.
21. Nothing in the Enforcement Policy limits or interferes with the Commission's ability to institute a formal enforcement action.
22. Nothing in the Enforcement Policy limits or interferes with existing authorities staff has to address enforcement concerns.
23. Nothing in the Enforcement Policy modifies or interferes with existing citation programs.
24. The Enforcement Policy does not create a dis-incentive to using existing citation programs.
25. Nothing in the Enforcement Policy modifies or interferes with the existing Citation Appellate Rules.
26. The Penalty Assessment Methodology is reasonable and consistent with previous Commission orders.
27. All penalty amounts must be consistent with Pub. Util. Code sections 2107 and 2108.

**THEREFORE, IT IS ORDERED THAT:**

1. The Enforcement Policy and its attached Penalty Assessment Policy, attached hereto, is adopted.

2. No other portion of Commission decisions, orders or resolutions are intended to be modified by this resolution.
3. This Resolution is effective today.

I hereby certify that the foregoing Resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California at its regular meeting held on November 5, 2020, the following Commissioners voting favorably thereon:

/s/ RACHEL PETERSON  
Rachel Peterson  
Acting Executive Director

MARYBEL BATJER  
President  
LIANE M. RANDOLPH  
MARTHA GUZMAN ACEVES  
CLIFFORD RECHTSCHAFFEN  
GENEVIEVE SHIROMA  
Commissioners

**ATTACHMENT**

## California Public Utilities Commission Enforcement Policy

### I. **INTRODUCTION**

#### A. **Background**

The California Public Utilities Commission (Commission) regulates a broad array of entities and industries, that include privately owned electric, natural gas, telecommunications, water, railroad, rail transit, and passenger transportation entities (regulated entities). The Public Utilities Act (Public Utilities Code § 201 et. seq.) requires the Commission to enforce the laws affecting regulated entities by promptly investigating and prosecuting alleged violations and imposing appropriate penalties.

The Commission considered its existing enforcement policies and practices when developing this Commission Enforcement Policy (Policy). Nothing in this policy document shall be used as the basis of a regulated entities' defense to any enforcement action or as justification for any ratemaking relief, nor in any way relieve regulated entities of any duties and obligations they may have under statutory law.

This Policy does not apply to any violation that, as of the effective date of the Policy, is the subject of a citation, an Order to Show Cause, an Order Instituting Investigation, or a referral to the Legal Division for the filing of a civil or criminal action.

#### B. **Policy Objectives**

The goals of the Policy are to promote maximum compliance with Commission rules and requirements through the adoption and application of consistent enforcement practices and to develop a sufficient record that ensures that regulated entities subject to an enforcement action receive due process (e.g., notice and an opportunity to be heard). The purpose of these goals is to ensure that regulated entities provide services and facilities to the public in a manner that is safe, reliable, non-discriminatory and just and reasonable. The Commission intends for this Policy to promote a consistent approach among Commission staff<sup>1</sup> to enforcement actions, to make enforcement a high priority and to promote the Commission's enforcement culture.

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<sup>1</sup> As used in this Policy the term "staff" refers to division staff or such other staff as may be designated by the Executive Director or a Deputy Executive Director to carry out the functions involved in taking enforcement action.

The Policy provides guidance on:

1. Achieving a consistent approach to enforcement;
2. Enforcement actions;
3. Settlements; and
4. Setting penalties

### **C. *Policy Components***

#### Guiding Principles

The Commission's enforcement actions will be guided by a standard set of principles, as described in this Policy, within its jurisdictional authority for energy, communications, water and transportation.

#### Division Specific Enforcement Teams

This Policy creates division-specific enforcement teams made up of staff handling enforcement work. Among other activities, staff will prioritize enforcement cases, recommend appropriate enforcement actions, and ensure that enforcement activities are monitored and documented and that enforcement actions are made public to the extent possible.

#### Commission Enforcement Team

The Policy also creates a Commission Enforcement Team made up of at least one enforcement liaison from each division. The enforcement liaisons shall meet at least quarterly to discuss enforcement matters and procedures with the goal of promoting consistency and efficiency throughout the Commission.

#### Consistent Enforcement Actions

To provide a consistent approach to enforcement, the Policy standardizes enforcement documents and procedures to the extent appropriate.

## **II. GUIDING PRINCIPLES**

### **A. *Ensuring Compliance***

The Commission will strive to ensure compliance with statutes, rules, orders and other requirements and provide a meaningful deterrent to violations through its enforcement actions.

**B. Consistent Enforcement**

Commission enforcement actions shall be consistent, while considering the differences in the Commission's statutory authority and programs for each particular industry. The Commission's enforcement actions shall be appropriate for each type of violation and shall provide consistent treatment for violations that are similar in nature and have similar safety and/or customer protection impacts. Enforcement actions shall also require a timely return to compliance.

**C. Firm Enforcement & Meaningful Deterrence**

Enforcement actions should provide a meaningful deterrent to non-compliance. This requires, at a minimum, that the Commission seek adequate remedies, including:

1. Refunding or depriving the economic benefit gained by the noncompliance;
2. Penalties that are higher than the amounts required to be refunded or deprived. In setting the penalty amount, Staff shall be guided by statute and the factors in Appendix I, Penalty Assessment Methodology, which include:
  - a. Severity or gravity of the offense (including physical harm, economic harm, harm to the regulatory process, and the number and scope of the violations);
  - b. Conduct of the utility (including the regulated entity's prior history of violations and actions to prevent, detect, disclose, and rectify a violation);
  - c. The financial resources of the regulated entity (including the size of the business, need for deterrence, and constitutional limitations on excessive fines);
  - d. The totality of the circumstances in furtherance of the public interest; and
  - e. The role of precedent.

**D. Timely Enforcement**

The Commission shall pursue timely enforcement, consistent with the needs of each case.

**E. Progressive Enforcement**

The Commission shall implement progressive enforcement. Progressive enforcement is an important component of consistent and firm enforcement. Progressive enforcement provides an escalating series of actions, beginning with actions such as a warning letter or notification of violation followed by actions that compel compliance and may result in the imposition of penalties or fines (e.g., the issuance of an enforcement order or filing a civil or criminal action). Progressive enforcement may not be an appropriate enforcement response when violations result from intentional or grossly negligent misconduct, where the impacts on ratepayers or other consumers are widespread, or where impacts to safety are significant.

**F. Transparency**

The Commission shall provide clear and consistent information about its enforcement actions and which entities it regulates. The Commission will monitor and report its enforcement actions in a publicly accessible way, including the extent to which regulated entities return to compliance.

**G. Environmental Justice and Disadvantaged Communities**

The Commission shall promote enforcement of all statutes within its jurisdictions in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority and low-income populations in the state. This includes tailoring enforcement responses to address the needs of vulnerable and disadvantaged communities, including those communities described as Environmental and Social Justice Communities in the Commission's Environmental and Social Justice Action Plan or subsequent documents.

**H. Adaptive Management**

The Commission shall continuously monitor and update its enforcement tools, programs and authorities to ensure that they remain protective of customers, ratepayers, and the environment. This includes keeping abreast of new markets, business practices, and consumer abuses that might necessitate changes to the enforcement program and authorities. The Commission will prioritize regular communication among divisions to identify both specific violations and trends.

The Commission should address new consumer issues as they arise. In instances where the Commission lacks jurisdiction, the Commission will work proactively to identify the appropriate local, state or federal agency that

does have jurisdiction and will work with that agency to remedy the harm to consumers.

***I. Enforcement Prioritization***

It is the policy of the Commission that every violation should result in an appropriate enforcement action consistent with the priority of the violation. In recognition of its finite resources, the Commission shall exercise its enforcement discretion to prioritize enforcement actions. Enforcement prioritization enhances the Commission's ability to leverage its finite enforcement resources and to achieve the general deterrence needed to encourage the regulated community to anticipate, identify and correct violations. In prioritizing enforcement actions, the Commission shall consider the impact of violations on vulnerable and disadvantaged communities.

**III. ENFORCEMENT**

In carrying out the Commission's mandate, staff may pursue different levels of enforcement action. In some cases, an enforcement response, such as an oral communication followed by a Warning Letter or Email or a Notice of Violation, will be enough to notify a regulated entity that staff identified an issue or violation that requires corrective action. Other cases may warrant a stronger enforcement action in lieu of or in addition to a warning or other initial enforcement response. All enforcement actions shall be designed and implemented to ensure that timely action is taken to avoid or correct a violation and return to compliance.

Division Enforcement Teams

Each division that participates in enforcement work shall establish a Division Enforcement Team. The Division Enforcement Team is made up of the managers or their delegates and an attorney[s] from the Commission's Legal Division. The Division Enforcement Teams shall prioritize division cases for enforcement action to ensure the most efficient and effective use of available resources. The Division Enforcement Teams shall meet at least quarterly to prioritize enforcement cases, continuously improve enforcement processes and procedures, and make recommendations about how to proceed with cases, including which enforcement action is appropriate for each case. The Division Enforcement Team is also responsible for tracking and publishing information about division cases in an enforcement database.

Commission Enforcement Team

The Commission Enforcement Team is made up of enforcement liaisons from each division that maintains an enforcement team and attorney(s) from the Commission's Legal Division. The enforcement liaisons and attorney(s) shall meet at least quarterly to discuss enforcement matters of statewide concern with the goal of promoting consistency and efficiency throughout the divisions.

**A. Enforcement Actions**

Staff may pursue the following enforcement actions:<sup>2</sup>

1. In Person or Telephone Communication

- a. Staff may, but is not required to, inform regulated entities in person or by telephone of violations of violations that must be corrected. Staff may also orally inform regulated entities of weaknesses, safety concerns, or opportunities for improvement that are not violations but should be corrected to avoid a violation or to reduce safety risk. Staff shall keep a detailed written record of such oral communications with the regulated entity in the case file. The minimum requirements for documenting an oral communication with a regulated entity are:
  - i. Date and time of the communication;
  - ii. The name of the staff member[s] and the representative[s] of the regulated entity involved in the communication;
  - iii. The violation, weakness, safety concern, or opportunity for improvement that was discussed;
  - iv. Actions for correcting the violation or addressing the weakness, safety concern, or opportunity for improvement that were discussed, including required timeframes for completing such actions;
  - v. The regulated entity's response to the communication of the violation, weakness, safety concern, or opportunity for improvement; and
  - vi. The evaluation of whether the response is sufficient and/or warrants a follow-up investigation.

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<sup>2</sup> Nothing in this Policy shall be construed to constrain staff or the Commission from pursuing actions that are otherwise authorized but are not specifically mentioned in the Policy.

- b. All oral communications shall be memorialized in a warning email or letter, Notice of Violation, or other written communication. Oral communications are not required in every case. Staff may issue a Warning Letter or email, citation, Notice of Violation or refer a case for other enforcement in lieu of an oral communication.

## 2. Warning Letter or Email

Staff may send a regulated entity a letter or an email that identifies program weaknesses, safety concerns, or opportunities for improvement. A Warning Letter or Email should only be sent to a regulated entity to address issues that are not being cited as violations but should be corrected to avoid a citation or Notice of Violation or to reduce a safety risk. Staff shall verify delivery of the Warning Letter or Email using a Proof of Service form. A Warning Letter or Email shall be placed in the regulated entity case file and recorded in the enforcement database and shall include the following:

- a. The date the letter or email was sent;
- b. The date staff identified the situation or condition at issue;
- c. The circumstances under which staff identified the situation or condition at issue (e.g., during an inspection or by consumer complaint); and
- d. Actions recommended to address the situation or condition at issue, including any recommended timeframes to complete such actions.

## 3. Request for Information

Staff are authorized to inspect the accounts, books, papers, and documents of a regulated entity. Staff may request the production of accounts, books, papers, and documents of a regulated entity. Failure to make such records available may lead to the issuance of a subpoena or other enforcement action.

## 4. Subpoena

Staff may subpoena records from a regulated entity as permitted by the Public Utilities Act. Staff may also subpoena the attendance of a person for deposition or other examination under oath as permitted by the Public

Utilities Act. The issuance of a subpoena is not a prerequisite for the exercise of Commission authority under Public Utilities Code section 313 or any appropriate powers under the California Constitution and the Public Utilities Code.

5. Cease and Desist/Stop Work Order

Commission or staff may issue an order to cease and desist an activity or an order to stop work to a regulated entity consistent with existing Commission decisions and orders and as permitted by the Public Utilities Act. Nothing in this Policy is intended to modify existing procedures concerning such actions, including any right to appeal such actions.

6. Notice of Violation

- a. When a violation is identified, staff may issue a Notice of Violation to a regulated entity. Staff shall use a Notice of Violation form. Staff shall verify delivery of the Notice of Violation using a Proof of Service form. A Notice of Violation shall be placed in the regulated entity case file and recorded in the enforcement database and shall include:
  - i. The law or Commission order, decision or rule violated by the regulated entity;
  - ii. The facts that form the basis for each violation;
  - iii. Information related to the potential for additional or ongoing violations;
  - iv. A directive to correct each violation to avoid additional enforcement action;
  - v. A date by which the regulated entity must submit a plan for correcting each violation if a plan is appropriate;
  - vi. A date by which the regulated entity must certify that each violation has been corrected;

- vii. A penalty amount if the Notice of Violation includes a penalty;<sup>3</sup>
  - viii. Staff contact information; and
  - ix. Information about how to respond to the Notice of Violation.
- b. A regulated entity that receives a Notice of Violation shall be given an opportunity to respond in writing to that Notice of Violation. The response shall be provided to the enforcing division within 30 days<sup>4</sup> from the date the Notice of Violation was served upon the regulated entity. The response time may be extended or shortened by staff, depending on the exigencies of a case. The response shall include:
- i. If the regulated entity disputes that a violation has occurred, a statement of the facts upon which the dispute is based;
  - ii. A plan to correct any undisputed violations;
  - iii. Confirmation that the regulated entity will correct any undisputed violations by the date(s) specified in the Notice of Violation or a proposal for a later date with an explanation of the need for additional time; and
  - iv. Confirmation that a penalty assessed will be paid within 30 days of the issuance of the Notice of Violation or a proposal for a lower penalty amount with an explanation of why the lower amount is appropriate.
- c. Staff shall review the regulated entity's response to a Notice of Violation and consider the regulated entity's explanation or defenses. Staff shall determine whether to accept the response or proceed with additional enforcement. The reasons for a determination that the regulated entity's explanation or defenses lack merit should be included in the regulated entity case file. After

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<sup>3</sup> Staff may decide that violations that are "administrative" in nature do not warrant the imposition of a penalty given the facts known at the time. Administrative violations do not involve immediate safety implications. Examples of "administrative" violations include: Inadvertent omissions or deficiencies in recordkeeping that do not prevent staff from determining compliance; records not physically available at the time of the inspection, provided the records exist and can be produced in a reasonable amount of time; and inadvertent violations of insignificant administrative provisions that do not involve a significant threat to human health, safety, welfare, or the environment. A recurring "administrative" violation may warrant a penalty.

<sup>4</sup> When referred to in this policy, "days" means calendar days.

reviewing the response, staff may take any appropriate action including any of the following actions:

- i. Send the regulated entity a draft Proposed Administrative Consent Order and negotiate a proposed settlement for Commission review;
- ii. Request that the regulated entity provide additional information;
- iii. Take the next appropriate enforcement action; or
- iv. Notify the regulated entity that the response resolved one or more violations identified in the Notice of Violation.

#### 7. Administrative Consent Order

- a. A negotiated proposed settlement shall be memorialized in a proposed Administrative Consent Order, prepared using an Administrative Consent Order form. The proposed Administrative Consent Order shall become final upon review and approval by the Commission. All proposed and final Administrative Consent Orders shall be placed in the regulated entity case file and recorded in the enforcement database and shall include:
  - i. The law or Commission order, resolution, decision, or rule violated by the regulated entity;
  - ii. The facts that form the basis for each violation;
  - iii. The number of violations, including the dates on which violations occurred;
  - iv. Information related to the potential for additional or ongoing violations;
  - v. An agreement by the regulated entity to correct each violation;
  - vi. A date by which the regulated entity must certify it corrected all violations;
  - vii. An agreement by the regulated entity to pay any penalty by a date specified.

- b. The Commission's Executive Director shall designate Commission management at the Deputy Director level or higher (or designee) to negotiate a proposed Administrative Consent Order.
- c. If a regulated entity does not respond to a Notice of Violation within the required time frame, or if a proposed Administrative Consent Order is not negotiated, staff shall take the next appropriate enforcement action.

8. Citation and Compliance Programs

- a. If staff discover a violation that can be addressed under an existing Citation and Compliance Program, staff shall determine whether to issue a citation as allowed under the Citation and Compliance Program or take a different enforcement action. Factors to consider in determining whether a different enforcement action is appropriate include, but are not limited to:
  - i. Whether more flexibility in determining the penalty is appropriate for the circumstances, including whether the appropriate penalty is lesser or greater than the administrative limit imposed by the Citation and Compliance program (the remaining factors below may be relevant to this determination);
  - ii. The culpability of the regulated entity – e.g., whether the violation was negligent, knowing, willful, or intentional;
  - iii. Whether the regulated entity benefitted economically from noncompliance, either by realizing avoided or reduced costs or by gaining an unfair competitive advantage;
  - iv. Whether violations are chronic, or the regulated entity is recalcitrant;
  - v. Whether violations can be corrected within 30 days;
  - vi. Whether the actual or potential harm from a violation is substantial;
  - vii. Whether the case warrants specific corrective action requirements that cannot be included in a citation; and
  - viii. Whether the case warrants a recommendation for an Order Instituting Investigation or civil or criminal action.

- b. If staff discover a violation that cannot be addressed through a pre-existing Citation and Compliance program, staff should take the next appropriate enforcement action.
- c. Prescriptive and Proscriptive Requirements – All requirements (including, but not limited to, complaint procedures, an action or failure to act identified as a violation in a Citation and Compliance Program, and requirements to report actual or potential violations to any entity, e.g. local authorities or the Commission), that are otherwise applicable to a regulated entity shall continue to apply and remain enforceable, regardless of whether staff choose to issue a citation for a violation under a Citation and Compliance Program or pursue a different enforcement action.

9. Administrative Enforcement Order

- a. Staff may issue a proposed Administrative Enforcement Order to a regulated entity, prepared using an Administrative Enforcement Order form. Staff shall verify delivery of the proposed Administrative Enforcement Order to the regulated entity using a Proof of Service form. Proposed Administrative Enforcement Orders shall be placed in the regulated entity case file and recorded in the enforcement database and shall include:
  - i. The law or Commission order, resolution, decision, or rule violated by the regulated entity;
  - ii. The facts that form the basis for each violation;
  - iii. The number of violations, including the dates on which violations occurred;
  - iv. Information related to the potential for additional or ongoing violations;
  - v. A directive to correct each violation;
  - vi. A date by which the regulated entity must certify that it corrected all violations;
  - vii. A directive to pay a penalty by a date specified;
  - viii. Staff contact information; and
  - ix. Information about how to request a hearing on the proposed Administrative Enforcement Order.

- b. The Commission's Executive Director shall designate Commission management at the Deputy Director level or higher (or designee) to transmit a proposed Administrative Enforcement Order to a regulated entity.
  
- c. The regulated entity may request a hearing on the proposed Administrative Enforcement Order by filing a Request for Hearing form within 30 days of the date the proposed order is served on the entity. 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, the proposed Administrative Enforcement Order shall become final upon adoption by the Commission. Corrective action requirements in a proposed Administrative Enforcement Order remain in effect, notwithstanding the filing of a Request for Hearing. Neither payment of the penalty nor filing a timely Request for Hearing shall excuse the regulated entity from curing a violation. The hearing shall be conducted by an ALJ in accordance with the hearing provisions in the Citation Appellate Rules. A draft ALJ 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. The amount of the penalty shall continue to accrue on a daily basis until the violation is corrected or until the appeal, rehearing, and judicial review process is fully concluded, a penalty is found to be appropriate, and the penalty is paid in full. The requirement that a penalty be paid shall be stayed during the hearing and rehearing process.

#### 10. Order Instituting Investigation

Staff may recommend that the Commission issue an Order Instituting Investigation. Factors that may be considered in determining whether to recommend an Order Instituting Investigation include, but are not limited to:

- a. The appropriate penalty for the case exceeds limits set by resolution or decision;
- b. The matter is complex;
- c. The violations caused fatalities, substantial injuries, and/or involved significant property damage in a widespread area;

- d. The matter includes allegations of fraud or knowing, intentional or willful behavior;
- e. The regulated entity's potential explanation or defenses; and
- f. The entity has repeatedly violated the law or Commission rules and orders.

#### 11. Order to Show Cause

Staff may recommend that the Commission issue an Order to Show Cause - an order that requires a regulated entity to show cause why a specified Commission action should not be taken. In deciding whether to recommend that the Commission issue an Order to Show Cause, Staff shall consider:

- a. Whether the regulated entity failed to comply with a Commission order, general order, ruling, rule, data request, or statute; and
- b. If the regulated entity failed to comply, whether the failure is a Rule 1.1 violation, a violation of Public Utilities Code section 2107, or its actions meet the criteria for a finding of contempt.

#### 12. Suspension, Alteration, Amendment, and Revocation/Receivership

Commission or staff may suspend, alter, amend, or revoke the license or certification of a regulated entity consistent with existing Commission decisions and orders and as permitted by the Public Utilities Act. Nothing in this Policy is intended to modify existing procedures concerning such actions, including any right to appeal such actions.

#### 13. Civil or Criminal Action

Staff may request that the Commission refer the matter to the Legal Division for the filing of a civil or criminal action, including requests for injunctive relief. Factors staff may consider in determining whether to refer the matter for civil or criminal action include, but are not limited to:

- a. The matter includes allegations of criminal behavior;
- b. Any of the factors for recommending an Order Instituting Investigation exist; or

c. Referral is appropriate given resource availability.

#### 14. Referral to or from and Coordinating With Other Agencies

In some circumstances it may be appropriate to refer a case to another local, state or federal agency for consideration of enforcement action. If another agency refers a case to the CPUC, enforcement actions considered and/or taken will be in accordance with this Policy. The Commission and staff will coordinate enforcement actions with other agencies as appropriate.

#### **B. Settlement of Enforcement Actions**

The Policy does not list the full range of considerations that may be relevant to negotiating a proposed settlement. However, the following general considerations should be evaluated as part of any proposed settlement to be submitted for Commission review:

1. Equitable factors;
2. Mitigating circumstances;
3. Evidentiary issues; and
4. Other weaknesses in the enforcement action that the division reasonably believes may adversely affect the ability to obtain the calculated penalty.

#### **C. Penalties**

The Commission and staff that choose not to take enforcement action under a Citation and Compliance Program, shall calculate an appropriate penalty using the methodology set forth in Appendix I (Penalty Assessment Methodology).

#### **D. Monitoring Compliance with Orders, Decisions, and Resolutions**

Staff is responsible for monitoring compliance with all final orders (including administrative consent orders), decisions, and resolutions. Staff shall document compliance in the enforcement database and the regulated entity's case file.

## **Appendix I Penalty Assessment Methodology**

When a regulated entity violates the Public Utilities Act or Commission rules, decisions, or orders, Commission staff may propose, and the Commission may assess a penalty against the regulated entity. The penalty amount for each violation may be proposed or assessed at an amount that is within the statutory range authorized by the Public Utilities Act. This Penalty Assessment Methodology sets forth the factors that staff and the Commission must consider in determining the amount of a penalty for each violation. The factors are consistent with those that the Commission previously adopted and has historically relied upon in assessing penalties and restates them in a manner that will form the analytical foundation for future decisions that assess penalties.

The purpose of a penalty is to go beyond restitution to the victim and to effectively deter further violations by the perpetrator or others. Effective deterrence creates an incentive for regulated entities to avoid violations. Deterrence is particularly important against violations that could result in public harm and other severe consequences. The following factors shall be used in setting penalties that are appropriate to a violation:

### **I. Severity or Gravity of the Offense**

The evaluation of the severity or gravity of the offense includes several considerations:

- Economic harm to victims
- Physical harm to people or property
- Threatened physical harm to people or property
- Harm to the integrity of the regulatory processes, including disregarding a statutory or Commission directive
- The number of violations
- The number of consumers affected

Economic harm reflects the amount of expense that was imposed upon victims. In comparison, violations that cause actual physical harm to people or property are generally considered the most severe, followed by violations that threaten such harm. The fact that the economic harm may be difficult to quantify does not itself diminish the severity or the need for sanctions. For example, the Commission has recognized that deprivation of choice of service providers,

while not necessarily imposing quantifiable economic harm, diminishes the competitive marketplace and warrants some form of sanction.

Many potential penalty cases do not involve any harm to consumers but are instead violations of reporting or compliance requirements. Such violations harm the integrity of the regulatory processes. For example, state law requires all California public utilities to comply with Commission directives:

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

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

The number of the violations is a factor in determining the severity. A series of temporally distinct violations can suggest an on-going compliance deficiency that the regulated entity should have addressed after the first instance. Similarly, a widespread violation which affects a large number of consumers is a more severe offense than one that is limited in scope. For a “continuing offense”, Public Utilities Code section 2108 counts each day as a separate offense.

## **II. Conduct of the Regulated Entity**

The evaluation of the conduct of the regulated entity includes several considerations:

- Degree of culpability
- Actions taken to prevent a violation
- Actions taken to detect a violation
- Actions taken to disclose and rectify a violation, including voluntary reporting of potential violations, voluntary removal or resolution efforts undertaken, and the good faith of the regulated entity in attempting to achieve compliance after notification
- Actions taken to conceal, hide or coverup a violation
- Prior 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. The regulated entity is responsible for the acts of all its officers, agents, and employees:

“In construing and enforcing the provisions of this part relating to penalties, the act, omission, or failure of any officer, agent, or employee of any public utility, acting within the scope of his [or her] official duties or employment, shall in every case be the act, omission, or failure of such public utility.” (Public Utilities Code § 2109).

Prior to a violation occurring, prudent practice requires that all regulated entities take reasonable steps to ensure compliance with Commission directives. This includes becoming familiar with applicable laws and regulations, and most critically, the regulated entity regularly reviewing its own operations to ensure full compliance. In evaluating the regulated entity's advance efforts to ensure compliance, the entity's past record of compliance with Commission directives should be considered.

The Commission expects regulated entities to diligently monitor their activities and operations. When staff determines that regulated entities, for whatever reason, failed to monitor and improve substandard operations, staff will continue to hold the regulated entity responsible for its actions. Deliberate as opposed to inadvertent wrong-doing will be considered an aggravating factor. Staff will also look at the management's conduct during the period in which the violation occurred to ascertain the level and extent of involvement in or tolerance of the offense by management personnel. Staff will closely scrutinize any attempts by management to attribute wrong-doing to rogue employees. Managers will be considered, absent clear evidence to the contrary, to have condoned day--to-day actions by employees and agents under their supervision.

When a regulated entity is aware that a violation has occurred, staff expects the regulated entity to promptly bring it to the attention of Commission staff. The precise timetable that constitutes “prompt” will vary based on the nature of the violation. Violations that physically endanger the public must be immediately corrected and thereafter reported to the Commission staff. Reporting violations should be remedied at the earliest administratively feasible time. Prompt reporting of violations and expeditious correction promotes transparency and public trust and furthers the public interest. For this reason, steps taken by a regulated entity to promptly and cooperatively report and correct violations may be considered in assessing any penalty.

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

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. Some California regulated entities are among the largest corporations in the United States and others are extremely modest, one-person operations. An accounting rounding error to one company is annual revenue to another. If appropriate, penalty levels will be adjusted to achieve the objective of deterrence, without becoming excessive, based on each regulated entity's financial resources.

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

An evaluation of the totality of the circumstances in furtherance of the public interest includes several considerations:

- Establishing a penalty that effectively deters further unlawful conduct
- Consideration of facts that tend to mitigate or exacerbate the degree of wrongdoing
- Harm from the perspective of the public interest
- Ensuring that a regulated entity does not have incentives to make economic choices that cause or unduly risk a violation

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. In cases where the violation occurred because the regulated entity postponed improvements, failed to implement adequate control measures, failed to obtain required Commission authority or did not take other measures needed to prevent the violations, the economic benefit may be substantial. Economic benefit should be calculated as follows:

- Determine those actions required to comply with a permit, decision, or order of the Commission, an enforcement order, or that were necessary in the exercise of reasonable care, to prevent a violation. Needed actions include obtaining regulatory authority or coverage, capital improvements, staff training, plan development, or the introduction of procedures to improve facility management.
- Determine when and/or how often the regulated entity should have taken these actions as specified in the permit, decision, or order, or as necessary to exercise reasonable care, in order to prevent the violation.
- Evaluate the types of actions that the regulated entity should have taken to avoid the violation and estimate the costs of these actions. There are two types of costs that should be considered; delayed costs and avoided costs. Delayed costs include expenditures that should have been made sooner (e.g., for capital improvements such as plant upgrades, training, development of procedures and practices), but that the regulated entity implemented too late to avoid the violation and/or is still obligated to perform. Avoided costs include expenditures for equipment or services that the regulated entity should have incurred to avoid the incident of noncompliance, but that are no longer required. Avoided costs also include ongoing costs such as needed additional staffing from the time the costs should have been incurred to the present.
- Calculate the present value of the economic benefit. The economic benefit is equal to the present value of the avoided costs plus the “interest” on delayed costs. This calculation reflects the fact that the regulated entity has had the use of the money that should have been used to avoid the instance of noncompliance.
- Determine whether the regulated entity gained any other economic benefits. These may include income from unauthorized or unpermitted operations.

The economic benefit should not be adjusted for expenditures by the regulated entity to abate the effects of the unauthorized conduct, or the costs to achieve or return to compliance.

The economic benefit amount should be compared to the penalty amount calculated using the other factors set forth in this appendix.

The penalty amount should be at least 10 percent higher than the economic benefit amount so that regulated entities do not construe penalties as the cost

of doing business and that the assessed penalty provides a meaningful deterrent to future violations. Absent express findings of exceptional circumstances or other factors as justice may require, if the penalty amount is lower than the economic benefit amount plus 10 percent, the economic benefit amount plus 10 percent shall be the penalty. It would be unfair to regulated entities that voluntarily incur the costs of regulatory compliance to impose a lower amount absent exceptional circumstances.

#### **V. The Role of Precedent**

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.