

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of:

PacifiCorp's 2020 Wildfire Mitigation Plan
Compliance

[PROPOSED] ADMINISTRATIVE
ENFORCEMENT ORDER
(Number CPUC-21-AEO)

[PROPOSED] ADMINISTRATIVE ENFORCEMENT ORDER

YOU ARE GIVEN NOTICE THAT:

1. The California Public Utilities Commission's Safety and Enforcement Division (SED or Division) has found that PacifiCorp violated Public Utilities Code sections 451, 8386.1, 8386.3, subdivision (c)(1), 8389, subdivision (e)(7), Rule 1.1 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, and special conditions included in Commission Resolution WSD-008.
2. SED issues this proposed Administrative Enforcement Order (Proposed Order) to PacifiCorp pursuant to the Commission Enforcement Policy adopted by Resolution M-4846 (Enforcement Policy or Policy) and Public Utilities Code section 701. Pursuant to the 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.
3. Based on SED's investigation and findings, PacifiCorp is assessed a \$27,284,000 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 **July 3, 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. Neither an agreement to pay the penalty assessed in this Proposed Order nor the filing of a timely Request for Hearing shall excuse Respondent from curing the violations identified in this Proposed Order.
7. 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.
8. This Proposed Order includes a requirement that Respondent pay a penalty. The factors set forth Public Utilities Code section 8386.1 and 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.
9. Unless otherwise specified, "days" means calendar days.

FINDINGS

10. *Findings of Fact:*

10.1 Pursuant to Public Utilities Code section 8386, subdivision (b), PacifiCorp is required to prepare and submit a Wildfire Mitigation Plan (WMP) to the California Natural Resources Agency, Office of Energy Infrastructure Safety (Energy Safety) for review and approval. Following Energy Safety's approval, denial, or approval with conditions, the WMP is subject to Commission ratification.¹ Commission Resolution WSD-008, dated June 11, 2020, ratified approval of PacifiCorp's 2020 WMP, subject to specific conditions.

10.2 Energy Safety issued its Annual Report on Compliance (ARC) on February 24, 2023, addressing PacifiCorp's 2020 WMP compliance. In its final ARC, Energy Safety stated that PacifiCorp "failed to substantially comply with its 2020 WMP during the compliance period, January 1 to December 31, 2020."² Energy Safety acknowledged that PacifiCorp met some WMP objectives but concluded that "PacifiCorp failed to meet the key purpose behind the WMP, which is to reduce ignitions and wildfire risk. PacifiCorp failed to meet the targets for initiatives highly

¹ Public Utilities Code section 8386.3, subdivision (a).

² Office of Energy Infrastructure Safety (Energy Safety) Annual Report on Compliance, PacifiCorp 2020 Wildfire Mitigation Plan, February 2023 (Energy Safety, ARC PacifiCorp 2020 WMP), at 1. Accessible at: [Wildfire Mitigation Plan Compliance | Office of Energy Infrastructure Safety](#).

correlated with risk, failed to meet stated key objectives, and failed to sufficiently address risk on the system.”³

10.3 PacifiCorp’s poor and inaccurate record-keeping and reporting demonstrate poor data management and governance issues and a failure to undertake and maintain good utility operations and management practices in wildfire mitigation. PacifiCorp’s data governance issues resulted in a failure to reduce risk and potentially increased the likelihood of negative outcomes.⁴

10.4 SED’s investigation confirms Energy Safety’s conclusion that PacifiCorp’s interpretation of WMP targets as “estimates” demonstrates that PacifiCorp did not hold itself accountable to the commitments it made in PacifiCorp’s 2020 WMP. PacifiCorp failed to treat its 2020 WMP targets as compliance requirements.

10.5 PacifiCorp failed to substantially comply with its 2020 WMP targets regarding equipment installation, inspection, and repair as follows:

- a) Initiative 5.3.3.3 Covered Conductor Targets: PacifiCorp installed only 1.4 line-miles of covered conductor instead of the target of 38 line-miles.
- b) Initiative 5.3.3.6 Targeted Pole Replacements: PacifiCorp replaced 29 poles instead of the target of 189 poles.
- c) Initiative 5.3.2.1 Installation of Weather Stations: PacifiCorp installed only two weather stations instead of the target of 10.

10.6 PacifiCorp failed to substantially comply with its 2020 WMP targets for initiatives addressing vegetation management:

- a) Initiative 5.3.5.2 Distribution Vegetation Detailed Inspection and Initiative 5.3.4.11 Distribution Patrol Inspections: PacifiCorp failed to complete all inspection requirements for the required number of distribution line-miles and failed to timely complete all corrective work for the line-miles that were inspected.
- b) Initiative 5.3.5.3 Transmission Vegetation Detailed Inspection and Initiative 5.3.4.12 Transmission Patrol Inspections: PacifiCorp failed to inspect the required number of transmission line-miles; failed to complete all inspection requirements for the line-miles that were inspected; and failed to complete vegetation management work.
- c) Initiative 5.3.5.20 Vegetation Management to Achieve Clearances Around Electric Lines and Equipment: PacifiCorp failed to timely

³ Energy Safety, ARC PacifiCorp 2020 WMP, at 2.

⁴ Energy Safety, ARC PacifiCorp 2020 WMP, at 2.

complete required vegetation management work and failed to target specific areas described in the WMP.

- d) Initiative 5.3.5.2 Radial Pole Clearing: PacifiCorp failed to complete work clearing poles of vegetation and any other flammable materials.

10.7 PacifiCorp failed to substantially comply with its 2020 WMP reporting requirements:

- a) PacifiCorp failed to file a complete Annual Report on Compliance with its 2020 WMP.
- b) PacifiCorp failed to file a complete quarterly report on the details of implementation of PacifiCorp's approved WMP.

10.8 PacifiCorp made numerous false statements of fact to the Commission and/or Commission staff.

PENALTIES

- 11. 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."⁵ In addition, the Commission has authority to assess penalties "on an electrical corporation that fails to substantially comply with its plan."⁶ In assessing penalties, SED follows the Penalty Assessment Methodology as set forth by the Commission and outlined in Resolution M-4846, and the considerations enumerated in Section 8386.1.
- 12. Public Utilities Code section 8386.1 lists various factors the Commission must consider when assessing a penalty upon a finding that an electrical corporation has failed to substantially comply with its WMP. Many of these factors are similar to those considered in the Penalty Assessment Methodology:
 - (a) The nature and severity of any noncompliance with the plan, including whether the noncompliance resulted in harm. – Discussed in the "Severity or Gravity of the Offense" in paragraph 16.I. below.
 - (b) The extent to which the commission or office has found that the electrical corporation complied with its plans in prior years. – The 2020 ARC is the first ARC performed by Energy Safety and reviewed by the Commission. While this may be a mitigating factor in determining the penalty amount, it does not impact whether there is a

⁵ Public Utilities Code section 2107.

⁶ Public Utilities Code section 8386.1.

finding that PacifiCorp failed to substantially comply with its 2020 WMP.

- (c) Whether the electrical corporation self-reported the circumstances constituting noncompliance. – Discussed in “Conduct of the Regulated Entity” and “Totality of the Circumstances” in paragraphs 16.II. and 16.IV. below.
- (d) Whether the electrical corporation implemented corrective actions with respect to the noncompliance. – Discussed in “Conduct of the Regulated Entity” in paragraph 16.II. below.
- (e) Whether the electrical corporation knew or in the exercise of reasonable care should have known of the circumstances constituting noncompliance. – Discussed in “Conduct of the Regulated Entity” in paragraph 16.II. below.
- (f) Whether the electrical corporation had previously engaged in conduct of a similar nature that caused significant property damage or injury. - – Discussed in “The Role of Precedent” in paragraph 16.V. below.
- (g) Any other factors established by the Commission in a rulemaking proceeding, - The Commission has not opened a rulemaking proceeding to establish other factors to be considered when assessing a penalty for an electrical corporation’s failure to substantially comply with its WMP.

13. “Substantial compliance” means “actual compliance in respect to the substance essential to every reasonable objective of the statute.” *Western States Petroleum Association v. Bd of Equalization* (2013) 57 Cal.4th 401, 426 cited in Decision (D.) 16-01-014 at page 55.⁷ The objective of the wildfire mitigation statutory scheme is for an electrical corporation to reduce the risk of catastrophic wildfires caused by the construction, maintenance, and operation of its electric utility lines and equipment.⁸ The highly prescriptive and detailed nature of the WMP statutory scheme provides a long compliance checklist of essential components that each electrical corporation’s WMP shall include.⁹ PacifiCorp failed to achieve substantial compliance with its WMP when it did not meet its stated initiatives and targets as outlined in its WMP. PacifiCorp’s failure to substantially comply with its

⁷ Decision (D.) 16-01-014, *Modified Presiding Officer’s Decision Finding Rasier-CA, LLC, In Contempt, In Violation of Rule 1.1 of the Commission’s Rules of Practice and Procedure, and that Rasier-CA, LLC’s, License to Operate Should Be Suspended for Failure to Comply with Commission Decision 13-09-045*, January 14, 2016; issued in Rulemaking 12-12-011. See also, *Andrews v. Metropolitan Transit System* (2022), 74 Cal. App. 5th 597.

⁸ Public Utilities Code sections 8386-8389.

⁹ Public Utilities Code section 8386, subdivision (c).

WMP frustrates the very purpose and intent of the wildfire mitigation statutory scheme.

14. SED’s finding that PacifiCorp failed to substantially comply with its 2020 WMP is supported by Energy Safety’s findings in the ARC. Among other things, Energy Safety found that “PacifiCorp failed to meet the key purpose behind the WMP, which is to reduce ignitions and wildfire risk. PacifiCorp failed to meet the targets for initiatives highly correlated with risk, failed to meet stated key objectives, and failed to sufficiently address risk on the system.”¹⁰ Energy Safety also found that “PacifiCorp’s implementation of its 2020 WMP failed to sufficiently reduce the wildfire risk on its infrastructure in 2020” and this missed opportunity “increases the risk of an ignition and, depending on ignition location and time, the risk of a catastrophic wildfire.”¹¹
15. PacifiCorp failed to substantially comply with its 2020 WMP as shown below in Table 1 and as explained in detail in the SED Investigation Report (Appendix B).

¹⁰ Energy Safety, ARC PacifiCorp 2020 WMP, at 2.

¹¹ Energy Safety, ARC PacifiCorp 2020 WMP, at 53.

Table 1: PacifiCorp 2020 WMP Noncompliance

	Citation	WMP Initiative
1.	Pub. Util. Code § 8386.1	5.3.3.3 Install Covered Conductor: PacifiCorp installed only 1.4 line-miles of covered conductor instead of the target of 38 line-miles.
2.	Pub. Util. Code § 8386.1	5.3.3.6 Targeted Pole Replacements: PacifiCorp replaced 29 poles instead of the target of 189 poles.
3.	Pub. Util. Code § 8386.1	5.3.2.1 Installation of Weather Stations: PacifiCorp installed only two weather stations instead of the target of 10.
4.	Pub. Util. Code § 8386.1	5.3.5.21 Radial Pole Clearing: PacifiCorp failed to complete work clearing poles of flammable materials.
5.	Pub. Util. Code § 8386.1	5.3.5.2 Distribution Vegetation Detailed Inspection and 5.3.4.11 Distribution Patrol Inspections: PacifiCorp failed to complete all inspection requirements and failed to complete vegetation corrective work.
6.	Pub. Util. Code § 8386.1	5.3.5.3 Transmission Vegetation Detailed Inspection and 5.3.4.12 Transmission Patrol Inspections: PacifiCorp failed to inspect the required number of transmission line-miles; failed to complete all inspection requirements for the line-miles that were inspected; and failed to complete vegetation management work.
7.	Pub. Util. Code § 8386.1	5.3.5.20 Vegetation Management to Achieve Clearances Around Electric Lines and Equipment: PacifiCorp failed to complete required vegetation management work and failed to target specific areas described in the WMP.
8.	Pub. Util. Code § 8386.3(c)(1) ¹²	Section 8386.3(c)(1) requires that PacifiCorp file a complete Annual Report on Compliance but PacifiCorp failed to file a complete report.
9.	Pub. Util. Code § 8389(e)(7)	Section 8389(e)(7) requires that PacifiCorp report to the Commission on a quarterly basis the details of implementation of PacifiCorp's approved WMP but PacifiCorp failed to file a complete report.
10.	Pub. Util. Code § 451	Section 451 requires that every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities...to promote the safety, health, comfort, and convenience of its patrons, employees, and the public. PacifiCorp failed to 1) meet WMP targets; 2) accurately report the company's compliance status; and 3) take effective and timely corrective action where needed. PacifiCorp failed to meet the requirements of PUC §451 due to this pattern of behavior.
11.	Commission Rule 1.1	Rule 1.1 requires that any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law. PacifiCorp made numerous false statements of fact to the Commission and/or Commission staff. These false statements misled Commission staff in its investigation and finding that PacifiCorp failed to substantially comply with its WMP.

¹² See also, Wildfire Safety Division February 16, 2021, Compliance Operating Protocols regarding Annual Reports on Compliance such as pp. 10-11.

16. The Penalty Assessment Methodology contained in Resolution M-4846 sets forth the factors that staff and the Commission must consider in determining the amount of a penalty for each violation:

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.¹³ PacifiCorp's failure to substantially comply with WMP Initiatives and reporting requirements harms the regulatory structure and reduces the overall effectiveness of the WMP system for reducing wildfire risk. The potential for harm from PacifiCorp's noncompliance with its 2020 WMP is especially severe due to an increase in underlying wildfire risk. Additionally, many of PacifiCorp's statements regarding its 2020 WMP compliance and reporting are contradictory and/or contrary to the available evidence. These statements hinder transparency and harm the integrity of the regulatory process. The severity of this offense favors imposing the maximum penalty.

II. Conduct of the Regulated Entity

The second factor to be considered is PacifiCorp's conduct. PacifiCorp failed to substantially comply with a range of initiatives intended to significantly reduce wildfire risk as noted by Energy Safety. PacifiCorp failed to comply with many of its WMP initiatives and did not take reasonable steps to ensure compliance with its 2020 WMP. PacifiCorp's actions to detect its noncompliance, disclose, and rectify noncompliance with its 2020 WMP were deficient. PacifiCorp's inaccurate statements regarding its compliance hinder transparency and harm the integrity of the regulatory process. In addition, PacifiCorp's failure to substantially comply with its 2020 WMP may have caused or contributed to one or more ignitions as noted by Energy Safety's evaluation of wildfire risk from 2015 to 2020, which showed that wildfire risk peaked for PacifiCorp in 2020. PacifiCorp's conduct was particularly unreasonable given the vital and increasing importance of reducing catastrophic wildfire risk. The potential for harm from PacifiCorp's failure to substantially comply with its 2020 WMP was severe due to this increase in underlying wildfire risk and the scope of PacifiCorp's conduct. PacifiCorp should be held responsible for its actions. PacifiCorp's conduct favors imposing the maximum penalty.

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

The third factor under the methodology is the financial resources of the utility. Here, the Commission must not impose excessive fines or penalties while ensuring that the fine/penalty is an effective deterrent against future behavior. An effective fine or penalty is one that reflects the severity of the harm (the first factor examined above) and is also proportionate to the offending entity and those similarly situated to deter future similar

¹³ D.20-05-019, p. 20.

offense of violations, without putting them out of business or otherwise impacting the entity in a catastrophic way.

PacifiCorp is a multi-jurisdictional utility providing retail electric service to approximately 2.0 million retail electric customers in California, Idaho, Oregon, Utah, Washington, and Wyoming. In northern California, PacifiCorp serves approximately 47,800 customers in portions of Del Norte, Modoc, Shasta, and Siskiyou counties.¹⁴ PacifiCorp is an indirect wholly owned subsidiary of Berkshire Hathaway Energy Company.¹⁵ Per Berkshire Hathaway Energy's Annual Report, PacifiCorp's 2024 net operating income was \$539 million with \$6.6 billion in revenues.¹⁶ Given the size and scope of PacifiCorp's financial resources and territory and the importance of complying with its WMP to reduce wildfire risk, this penalty is appropriate

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

The fourth factor under Resolution M-4846 is an evaluation of the penalty in the totality of the circumstances, with an emphasis on protecting the public interest. PacifiCorp chose to treat compliance with its 2020 WMP as voluntary rather than an obligation. Further, SED's determination that PacifiCorp violated Rule 1.1 and Public Utilities Code section 451 during the course of SED's investigation is particularly concerning. Additionally, PacifiCorp has not yet met all of its 2020 WMP initiatives as of the date of this Proposed Order.

As described above, the fine included in this Proposed Order is reasonable under the circumstances.

V. The Role of Precedent

The final factor is an examination of fines in other Commission Decisions with similar factual situations. This is the first enforcement action brought for violation of Public Utilities Code section 8386.1. We believe a \$27,284,000 fine in this instance can serve as an adequate benchmark for future violations of Public Utilities Code section 8386.1.

17. Based on the above factors, Respondent shall be subject to a penalty of \$27,284,000. This penalty shall consist of a \$27,284,000 fine payable to the State of California General Fund. A total assessed penalty of \$27,284,000 is reasonable and within the range allowed by statute and calculated in accordance with the Commission's Penalty Assessment Methodology, under Resolution M-4846.

¹⁴ See Application (A.) 22-05-006, *Application of PacifiCorp (U-901-E) For An Order Authorizing a General Rate Increase*, Filed May 5, 2022 (PacifiCorp 2022 GRC Application), at 1; Appendix A at 3.

¹⁵ PacifiCorp 2022 GRC Application, Appendix A, at 3.

¹⁶ Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended December 31, 2024, at 227. Accessible at, [BHE 12.31.24 Form 10-K](#).

- (a) 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

- (b) In the event the payment specified in paragraph 17 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.

IT IS ORDERED.

DATED: _____

BY: _____

Leslie L. Palmer

Director, Safety and Enforcement Division

Appendix A: Request for Hearing Instructions

Appendix B: Investigation Report

Appendix C: Enforcement Policy

Appendix A
(Request for Hearing Instructions)

INSTRUCTIONS TO AGREE TO COMPLY WITH/ REQUEST A HEARING ON PROPOSED ADMINISTRATIVE ENFORCEMENT ORDER

Respondent is required to respond to this Proposed Order by: **5:00 PM on July 3, 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.¹

OR

- 2) Request a hearing on the Proposed Order.²

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.

¹ Please see “Agreement to Comply with Administrative Enforcement Order” form.

² 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).
- 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 4th 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

(SED Investigation Report)

CALIFORNIA PUBLIC UTILITIES COMMISSION
Safety and Enforcement Division
Wildfire Safety and Enforcement Branch

PacifiCorp 2020 Wildfire Mitigation Plan Investigation Report

Report Date: May 27, 2025

Regulated Utility Involved: Pacific Power Corporation (PacifiCorp)

Date of Wildfire Mitigation Plan: February 7, 2020

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I. SUMMARY

Electrical corporations (electric utilities) must prepare and submit a Wildfire Mitigation Plan (WMP) to the Office of Energy Infrastructure Safety (Energy Safety) for review and approval under California Public Utilities Code (Pub. Util. Code) section 8386(b). They must also submit their plan to the California Public Utilities Commission (Commission) for ratification. Commission Resolution WSD-008, dated June 11, 2020, ratified approval of PacifiCorp's 2020 WMP subject to specific conditions.¹

On February 24, 2023, after an extensive audit and review process, Energy Safety issued an Annual Report on Compliance (ARC) for PacifiCorp's 2020 WMP. Energy Safety stated that PacifiCorp "failed to substantially comply with its 2020 WMP."² Energy Safety acknowledged that PacifiCorp met some of its 2020 WMP objectives but concluded that "PacifiCorp failed to meet the key purpose behind the WMP, which is to reduce ignitions and wildfire risk. PacifiCorp failed to meet the targets for initiatives highly correlated with risk, failed to meet stated key objectives, and failed to sufficiently address risk on the system."³

Energy Safety also found that "PacifiCorp's poor and inaccurate record-keeping and reporting reveals data governance issues throughout its operation, pointing to a pervasive data management issue. PacifiCorp's insufficient data governance resulted in a missed opportunity to reduce risk and potentially increased the likelihood of negative outcomes."⁴

The Commission's Safety and Enforcement Division (SED), Wildfire Safety and Enforcement Branch reviewed extensive material relative to PacifiCorp's 2020 WMP, implementation of and compliance with its WMP, and PacifiCorp's response to Data Requests. SED investigated both quantitative and qualitative targets, i.e. whether PacifiCorp worked the number of line-miles or units of work stated in each 2020 WMP initiative; and also whether PacifiCorp completed all tasks for each mile or unit.

SED's investigation confirms Energy Safety's conclusion that PacifiCorp failed to substantially comply with its 2020 WMP initiatives. PacifiCorp's failure to complete work under numerous 2020 WMP initiatives increased wildfire risk across large sections of PacifiCorp's service territory and caused or potentially caused several fires in 2020.

¹ PacifiCorp submitted their 2020 California Wildfire Mitigation Plan dated February 7, 2020 (PacifiCorp 2020 WMP). See Resolution WSD-008, dated June 11, 2020, page 1.

² See page 1 of Energy Safety's ARC for PacifiCorp's 2020 WMP.

³ See page 1 of Energy Safety's ARC for PacifiCorp's 2020 WMP.

⁴ See page 1 of Energy Safety's ARC for PacifiCorp's 2020 WMP.

SED's investigation also confirms Energy Safety's conclusion that because PacifiCorp considers its WMP targets as "estimates," PacifiCorp does not believe it is accountable to the commitments it makes in the 2020 WMP.⁵ In some responses to Energy Safety, PacifiCorp claimed explicitly that WMP commitments were merely "estimates." In other cases, PacifiCorp's actions (failure to meet targets, failure to report noncompliance, and reports that arbitrarily include different targets than its 2020 WMP) show that PacifiCorp failed to treat its 2020 WMP targets as compliance requirements.

A. SED Noncompliance Findings

SED finds that PacifiCorp failed to substantially comply with its 2020 WMP. SED also finds that PacifiCorp's WMP reports and responses to SED during this investigation do not comply with Rule 1.1 of the Commission's Rules of Practice and Procedure (Rule 1.1) and Public Utilities Code sections 8386.3(c)(1) and 8389(e)(7). Additionally, SED finds that PacifiCorp's conduct and failure to substantially comply with its 2020 WMP during the compliance period violates Public Utilities Code section 451.

⁵ Energy Safety's ARC for PacifiCorp's 2020 WMP at p. 56 ("PacifiCorp's interpretation of WMP targets as 'estimates' demonstrated a fundamental misunderstanding of the WMP process and its requirements... Clearly the statutory scheme that created the WMP process and Energy Safety's role did not envision the WMPs and their required elements as aspirational. The commitments made in PacifiCorp's approved WMP are ... requirements and not estimates...Energy Safety concludes that PacifiCorp does not hold themselves accountable to the commitments it made in the 2020 WMP.")

Table 1 below lists each instance where PacifiCorp did not meet its stated initiatives and targets, violated Commission Rule 1.1 by providing false statements during SED's investigation, and violated Section 451 by demonstrating an overall failure to substantially comply with its 2020 WMP targets.

Table 1: PacifiCorp 2020 WMP Noncompliance

	Citation	WMP Initiative
1.	Pub. Util. Code § 8386.1	5.3.3.3 Install Covered Conductor: PacifiCorp installed only 1.4 line-miles of covered conductor instead of the target of 38 line-miles.
2.	Pub. Util. Code § 8386.1	5.3.3.6 Targeted Pole Replacements: PacifiCorp replaced 29 poles instead of the target of 189 poles.
3.	Pub. Util. Code § 8386.1	5.3.2.1 Installation of Weather Stations: PacifiCorp installed only two weather stations instead of the target of 10.
4.	Pub. Util. Code § 8386.1	5.3.5.21 Radial Pole Clearing: PacifiCorp failed to complete work clearing poles of flammable materials.
5.	Pub. Util. Code § 8386.1	5.3.5.2 Distribution Vegetation Detailed Inspection and 5.3.4.11 Distribution Patrol Inspections: PacifiCorp failed to perform complete inspections for the required number of distribution line-miles and failed to complete all corrective work for the line-miles that were inspected.
6.	Pub. Util. Code § 8386.1	5.3.5.3 Transmission Vegetation Detailed Inspection and 5.3.4.12 Transmission Patrol Inspections: PacifiCorp failed to inspect the required number of transmission line-miles; failed to complete all inspection requirements for the line-miles that were inspected; and failed to complete vegetation management work.
7.	Pub. Util. Code § 8386.1	5.3.5.20 Vegetation Management to Achieve Clearances Around Electric Lines and Equipment: PacifiCorp failed to complete required vegetation management work and failed to target specific areas described in the WMP.
8.	Pub. Util. Code § 8386.3(c)(1)	Pub. Util. Code § 8386.3(c)(1) requires that PacifiCorp file a complete Annual Report on Compliance. PacifiCorp failed to file a complete report. ⁶
9.	Pub. Util. Code § 8389(e)(7)	Pub. Util. Code § 8389(e)(7) requires that PacifiCorp report to the Commission on a quarterly basis the details of implementation of PacifiCorp's approved WMP but PacifiCorp failed to file a complete report.
10.	Pub. Util. Code § 451	Pub. Util. Code § 451 requires that every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities...to promote the safety, health, comfort, and convenience of its patrons, employees, and the public. PacifiCorp violated Pub. Util. Code section 451 because it failed to 1) meet WMP targets; 2) accurately report the company's compliance status; and 3) take effective and timely corrective action where needed.

⁶ See also Wildfire Safety Division February 16, 2021, Compliance Operating Protocols for instance pages 2, 10, and 11.

	Citation	WMP Initiative
11.	Rule 1.1	Rule 1.1 requires that any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law. PacifiCorp made numerous false statements of fact to the Commission and/or Commission staff. These false statements misled Commission staff in its investigation and finding that PacifiCorp failed to substantially comply with its WMP.

B. SED Investigators and Reference Documents

Table 2 below lists report contributors and Table 3 lists the most relevant documents that SED reviewed.

Table 2: SED Investigators

	Name	Title
1.	Ed Pike	SED Lead Investigator
2.	Mihail Cucu	SED Investigator
3.	Desmond Lew	SED Investigator

Table 3: Reference Documents

	Source	Date	Description
1.	PacifiCorp	February 6, 2019	2019 PacifiCorp WMP
2.	PacifiCorp	May 6, 2020	PacifiCorp 2019 WMP Compliance Report
3.	PacifiCorp	February 7, 2020	2020 PacifiCorp WMP
4.	Commission	July 13, 2020	Incident Investigation Report E20190628-01
5.	Commission	July 13, 2020	Incident Investigation Report E20190528-02
6.	Commission	December 30, 2020	Notice of Non-Compliance
7.	Commission	January 8, 2021 ⁷	Notice of Non-Compliance
8.	PacifiCorp	March 31, 2021	PacifiCorp (U 901 E) 2020 WMP Annual Report on Compliance

⁷ The Notice of Non-Compliance is dated January 21, 2020. See Energy Safety ARC page 47 for correct date.

	Source	Date	Description
9.	Commission	February 16, 2021	Wildfire Safety Division Compliance Operational Protocols
10.	NV5	June 30, 2021	Independent Evaluator Annual Report on Compliance
11.	PacifiCorp	April 25, 2022 ⁸	PacifiCorp updated Q4 2021 Quarterly Initiative Update
12.	Energy Safety	August 24, 2022	2020 Substantial Vegetation Management Audit - PacifiCorp
13.	PacifiCorp	September 23, 2022	PacifiCorp 2020 Significant Vegetation Management Audit Corrective Action Plan
14.	Energy Safety	October 19, 2022	Report on PacifiCorp's 2020 Substantial Vegetation Management Audit
15.	Energy Safety	February 24, 2023	Annual Report on Compliance for PacifiCorp's 2020 WMP
16.	Commission	January 16, 2024	Data Request SED-01
17.	PacifiCorp	February 5, 2024	Response to SED-01, Tranche 01
18.	PacifiCorp	February 16, 2024	Response to SED-01, Tranche 02
19.	Commission	April 16, 2024	Data Request SED-02
20.	PacifiCorp	May 1, 2024	Response to SED-2, Tranche 01
21.	PacifiCorp	May 15, 2024	Response to SED-2, Tranche 02
22.	Commission	June 17, 2024	Data Request SED-03
23.	PacifiCorp	July 1, 2024	Response to SED-03
24.	Commission	August 27, 2024	Data Request SED-04
25.	PacifiCorp	September 11, 2024	Response to SED-04
26.	PacifiCorp	April 1, 2021	PacifiCorp 2020 WMP 4 th Quarterly Initiative Update
27.	PacifiCorp	June 16, 2021	SED_Set_3_CA R.18-10-007 WSD Compliance Set 2 (1-4) 6-16-21.pdf
28.	PacifiCorp	June 16, 2021 ⁹	WSD 2.3 CaliforniaTierIITierIIITracker_CY_2020.xlsx

⁸ This file was docketed April 25, 2022 (see [OEIS : Case Log](#) last accessed May 30, 2024).

⁹ See “SED_Set_3_CA R.18-10-007 WSD Compliance Set 2 (1-4) 6-16-21.pdf” for date of this attachment.

	Source	Date	Description
29.	CALFIRE	April 24 2020 ¹⁰	20CASKU0002945
30.	PacifiCorp	November 1, 2021	PacifiCorp (U 901 E) 2021 Wildfire Mitigation Plan Update – Change Order Report

II. BACKGROUND

In response to devastating wildfires in 2016 and 2017, the California Legislature passed several bills increasing oversight of electrical corporations’ efforts to reduce utility-related wildfires.¹¹ Among other statutory requirements, the Legislature required electrical corporations to prepare WMPs and submit them to Energy Safety for review and approval.¹²

WMP development and Energy Safety ARC

Public Utilities Code section 8386(c) requires, among other things, that each electrical corporation include in its WMPs initiatives to reduce the risk that its electrical lines and equipment could cause catastrophic wildfires. Energy Safety issues guidance for development of WMPs and reviews WMPs to ensure that utility wildfire mitigation efforts sufficiently address utility wildfire risk. Energy Safety reviewed PacifiCorp’s 2020 WMP and issued a conditional approval on June 10, 2020.¹³ The Commission ratified PacifiCorp’s 2020 WMP, subject to a number of conditions, on June 11, 2020.¹⁴

¹⁰ Incident date; document does not appear to contain a separate report date.

¹¹ See, e.g., Senate Bill 901 (Stats. 2018, Ch. 626) and Assembly Bill 1054 (Stats. 2019, Ch. 79).

¹² See Pub. Util. Code §§ 8386 and 8386.3; see also Energy Safety website: <https://energysafety.ca.gov/what-we-do/electrical-infrastructure-safety/wildfire-mitigation-and-safety/wildfire-mitigation-plans/#:~:text=Electrical%20corporations%20are%20required%20to%20prepare%20and%20submit,that%20will%20minimize%20the%20risk%20of%20>

¹³ See page 3 of Energy Safety’s ARC for PacifiCorp’s 2020 WMP.

¹⁴ See Resolution WSD-008. Page 32 notes that “Nothing in this Resolution should be construed as approval of the costs associated with PacifiCorp’s Wildfire Mitigation Plan mitigation efforts” and “PacifiCorp may track the costs associated with its Wildfire Mitigation Plan in a memorandum account, by category of costs, and shall be prepared for Commission review and audit of the accounts at any time.”

On November 20, 2020, the Commission’s Wildfire Safety Division (WSD)¹⁵ developed a compliance process, which was approved in Resolution WSD-12.¹⁶ Energy Safety’s review of PacifiCorp’s compliance with their approved 2020 WMP consisted of the following activities:

- PacifiCorp hired an Independent Evaluator (IE) from a list of firms “qualified” by Energy Safety.¹⁷
- WSD issued a “Notice of Non-Compliance” to PacifiCorp in January 2021 for failing to correct nine issues with PacifiCorp’s 2020 WMP. Some examples include:¹⁸
 - Data issues – general
 - PacifiCorp does not have a specific data governance wildfire mitigation program
 - Lack of detail on plans to address personnel shortages
 - PacifiCorp’s WMP lacks a QA/QC program for inspections
- PacifiCorp submitted its 2020 WMP Annual Report on Compliance to the Commission on March 31, 2021. This report generally did not address whether PacifiCorp implemented its 2020 WMP initiatives.
- The IE (NV5 and Guidehouse) issued the IE “ARC” report on WMP implementation on June 30, 2021. The IE ARC for PacifiCorp’s 2020 WMP covered some initiatives, but did not cover activities such as grid hardening and weather stations.
- Energy Safety conducted a Significant Vegetation Management (SVM) audit and issued its SVM audit on August 24, 2022.

¹⁵ On July 1, 2021, WSD transitioned into the Office of Energy Infrastructure Safety under the California Department of Natural Resources. However, the Commission retained jurisdiction over enforcement of WMP compliance.

¹⁶ See Energy Safety’s Wildfire Mitigation Plan Compliance at <https://energysafety.ca.gov/what-we-do/electrical-infrastructure-safety/compliance/wildfire-mitigation-plan-compliance/>.

¹⁷ Based on responses from potential contractors to a Request for Proposals or a Request for Qualifications.

¹⁸ Energy Safety determined that PacifiCorp was out of compliance with Public Utilities Code section 8386, Resolution WSD-002, and Resolution WSD-008 for failure to adequately meet nine of 15 requirements to address 2020 WMP Class B deficiencies. Energy Safety issued a “Notice of Non-Compliance” on January 8, 2021. Energy Safety ARC pages 47-48.

Energy Safety also issued PacifiCorp a “Notice of Non-Compliance” on December 30, 2020, for failing to address risk modeling to inform decision-making, a Class A deficiency. See Energy Safety ARC page 47-48.

- PacifiCorp responded to SVM audit noncompliance findings with a Corrective Action Plan dated September 23, 2022.
- Energy Safety issued a SVM report on October 19, 2022, that summarized the Energy Safety SVM audit; utility proposed corrective actions in response to the audit; and Energy Safety’s evaluation of whether any such corrective action(s) is sufficient.
- Energy Safety published its draft ARC analyzing PacifiCorp’s compliance with 2020 WMP initiatives on December 5, 2022. The draft ARC noted it was difficult to evaluate compliance due to the following extensive PacifiCorp reporting failures:
 - “PacifiCorp inaccurately and inconsistently reported data related to initiative completion across various documents.”¹⁹
 - “PacifiCorp failed to provide status, targets, and actual progress for all 2020 initiatives ... in its Q4 2020 [QIU] as required by the Compliance Operational Protocols.”²⁰
 - “PacifiCorp conflated and indiscriminately changed targets and units of numerous initiatives ... in its Q4 2020 QIU”²¹ compared to the approved PacifiCorp 2020 WMP. PacifiCorp routinely stated that targets equaled the quantity of work completed instead of stating the actual 2020 WMP target, which masked noncompliance.²² PacifiCorp failed to provide any explanation in the QIU document for falsely reporting the targets.²³
- Energy Safety issued the final ARC on February 24, 2023.²⁴

SED compliance investigation

SED’s compliance investigation included review of Energy Safety’s SVM audit, Energy Safety’s SVM report, Energy Safety’s ARC and two “Notice of Non-Compliance” documents issued by WSD to PacifiCorp for failing to correct a number of deficiencies identified during the WMP approval process. SED also reviewed records regarding

¹⁹ See page 23 of Energy Safety’s ARC for PacifiCorp’s 2020 WMP.

²⁰ See page 29 of Energy Safety’s ARC for PacifiCorp’s 2020 WMP.

²¹ See page 54 of Energy Safety’s ARC for PacifiCorp’s 2020 WMP.

²² See Table 8 on pages 25-26 of Energy Safety’s ARC for PacifiCorp’s 2020 WMP.

²³ SED reviewed the 26 2020 WMP initiatives reported in PacifiCorp’s Q4 2020 QIU.

²⁴ Energy Safety’s February 23, 2023, cover letter to the ARC states that PacifiCorp did not comment during a comment period on the ARC that began December 5, 2022.

PacifiCorp's policies, procedures, and compliance with the 2020 WMP, as well as data request responses as summarized above in Table 3.

In addition to compliance with its 2020 WMP, SED evaluated whether PacifiCorp complied with the following compliance reporting requirements:

- Public Utilities Code section 8386.3: PacifiCorp must file an Annual Report on Compliance.
- Public Utilities Code section 8389(e)(7): PacifiCorp must report to the Commission on a quarterly basis the details of implementation of PacifiCorp's approved WMP.

Based on SED's determination that PacifiCorp failed to substantially comply with its WMP, SED applied the penalty considerations set forth in Public Utilities Code section 8386.1. Section 8386.1 contains the following criteria that the Commission must use to determine appropriate penalty amount:

- (a) The nature and severity of any noncompliance with the plan, including whether the noncompliance resulted in harm.
- (b) The extent to which the commission or office has found that the electrical corporation complied with its plans in prior years.
- (c) Whether the electrical corporation self-reported the circumstances constituting noncompliance.
- (d) Whether the electrical corporation implemented corrective actions with respect to the noncompliance.
- (e) Whether the electrical corporation knew or in the exercise of reasonable care should have known of the circumstances constituting noncompliance.
- (f) Whether the electrical corporation had previously engaged in conduct of a similar nature that caused significant property damage or injury.
- (g) Any other factors established by the commission in a rulemaking proceeding, consistent with this chapter.

SED also utilized the Penalty Assessment Methodology established by the Commission's Enforcement Policy to determine the appropriate penalty amount.²⁵

III. SED REVIEW AND ANALYSIS

SED reviewed PacifiCorp's 2020 WMP, mandatory compliance reports, reference documents, records, and PacifiCorp operation and maintenance procedures. SED also submitted four (4) Data Requests to PacifiCorp and reviewed responses to a number of questions related to WMP compliance. SED finds numerous examples of noncompliance as described below.

A. PacifiCorp Failed to Substantially Comply With its 2020 WMP Initiatives

Energy Safety's ARC found that "PacifiCorp failed to substantially comply with its 2020 WMP during the compliance period, January 1 to December 31, 2020. PacifiCorp suffered from systematic failures that caused it to miss program targets and ultimately hindered its ability to reduce the risk of catastrophic wildfire on its system."²⁶ SED's investigation confirms that PacifiCorp failed to substantially comply with its 2020 WMP due to PacifiCorp's failure to comply with many of its 2020 WMP initiatives.

1. Initiative 5.3.2.1 Installation of Weather Stations

Weather stations help provide granular vision into local fire conditions. SED's investigation confirms Energy Safety's finding that PacifiCorp installed only two weather stations instead of installing 10 weather stations, the target PacifiCorp set under initiative 5.3.2.1 Installation of Weather Stations.²⁷ Thus, SED finds that PacifiCorp failed to substantially comply with this 2020 WMP initiative.

2. Initiative 5.3.3.3 Covered Conductor

Utilities install covered conductors to reduce the risk of vegetation or an object striking a bare conductor, and also to reduce the risk that a fallen conductor could cause an ignition. SED's investigation confirms Energy Safety's finding that PacifiCorp installed only 1.4 line-miles of covered conductor against a target of 38 line-miles.²⁸ As a result, PacifiCorp failed to substantially comply with this 2020 WMP initiative.

²⁵ See Resolution M-4846 adopting Enforcement Policy.

²⁶ See page 1 of Energy Safety's ARC for PacifiCorp's 2020 WMP.

²⁷ See page 25 of Energy Safety's ARC for PacifiCorp's 2020 WMP, dated October 2022.

²⁸ See page 19 of Energy Safety's ARC for PacifiCorp's 2020 WMP (which references PacifiCorp 2020 IE ARC, page 33).

3. Initiative 5.3.3.6 Targeted Pole Replacements

SED's investigation confirms Energy Safety's finding that PacifiCorp replaced 29 poles against a target of 189 poles²⁹ under initiative 5.3.3.6 Targeted Pole Replacements. Thus, SED finds that PacifiCorp failed to substantially comply with this 2020 WMP initiative.

4. Initiative 5.3.5.2 Distribution Vegetation Detailed Inspection and Initiative 5.3.4.11 Distribution Patrol Inspections

Initiative 5.3.5.2 Distribution Vegetation Detailed Inspection

Energy Safety found that PacifiCorp did not comply with initiative 5.3.5.2 because: 1) PacifiCorp failed to show that it completed all vegetation management corrective work based on detailed distribution vegetation inspections; and 2) PacifiCorp failed to show that it completed all inspection types included in this 2020 WMP initiative.³⁰ SED's investigation confirms both of these Energy Safety findings as discussed below:

1. Energy Safety found that PacifiCorp did not complete within the 2020 calendar year all line-miles of corrective work (784.56 line-miles of corrective work completed compared to a target of 825-line miles). PacifiCorp's Corrective Action Plan acknowledged that PacifiCorp missed this target.³¹ On February 16, 2024, PacifiCorp claimed to SED that PacifiCorp completed all corrective work for this initiative in 2020. However, PacifiCorp did not provide any relevant data that refutes the Energy Safety noncompliance finding and PacifiCorp's acknowledgement of failing to complete work. PacifiCorp provided a

²⁹ See page 19 of Energy Safety's ARC for PacifiCorp's 2020 WMP (which contains footnote 64 citing PacifiCorp 2020 IE ARC, page 20).

³⁰ See page 22 of Energy Safety's ARC for PacifiCorp's 2020 WMP and page 41 of the Energy Safety Report on 2020 Substantial Vegetation Management Audit. Page 251 of PacifiCorp's 2020 WMP states the 2020 target of completing 825-line miles.

PacifiCorp claimed that PacifiCorp's "Transmission & Distribution Vegetation Management Program Standard Operating Procedures" (SOP) dated August 19, 2019, shows that PacifiCorp "specifically require[d] that PacifiCorp staff and/or contractors conduct ANSI A300 Part 9 Level 1 and/or Level 2 assessments" for distribution and transmission circuits. (September 11, 2024, response to SED-04 Q2 and Q3) However, the SOP (page 1-2) contains a list of standards such as ANSI A300 Part 9 that "should" be followed but does not specifically require that PacifiCorp staff or contractors implement such standards.

³¹ Energy Safety's 2020 SVM Audit of PacifiCorp, August 24, 2022, page 16 shows that PacifiCorp did not complete this corrective work in 2020 based on "DetailedInspCorrect_CA_2020.xlsx" column "G" showing whether work was completed and column "H" showing the corresponding number of line-miles for each row. Page 13 of PacifiCorp 2020 SVM Audit Corrective Action Plan, September 23, 2022, acknowledges that PacifiCorp did not complete corrective work for this initiative. PacifiCorp stated "PacifiCorp was not able to complete all correction work within the 2020 calendar year and "rolled" over remaining correction work into Q1 of 2021."

file that does not address 2020 and does not show the number of line-miles completed. PacifiCorp also provided another file that appears to count patrol inspections rather than detailed inspections.³²

2. PacifiCorp did not show compliance with initiative 5.3.5.2 qualitative requirements. PacifiCorp's 2020 WMP³³ states "vegetation management annually completes correction work based on the inspection results, including the prompt removal of all high risk trees identified during the annual vegetation inspection." The WMP also states "a Level 1 assessment is conducted to identify any trees which may have become high risk trees over the course of the prior year; suspect trees are subjected to a Level 2 assessment, as outlined in ANSI A300 (Part 9)."³⁴ However, Energy Safety found that "PacifiCorp failed to provide documentation demonstrating that inspectors were directed to conduct

³² SED-01 Q6(e) requested that PacifiCorp "State the number of distribution line line-miles inspected for the 2020 WMP initiative 5.2.5.2 in 2020 including the completion of all vegetation clearance work. Provide all Documents Related to Your answer and state the page number(s) of the relevant section(s) of such Documents." In response to SED-01 Q6(e), PacifiCorp claimed that it surpassed the target for initiative 5.3.5.2 by completing 1,015 line miles of detailed inspection in 2020, but did not provide information justifying this claim.

First, PacifiCorp stated that excel file "Statistic_History_Report_-_for_Excel - CA_2020" shows the line-miles of work completed but the file does not appear to contain any such data.

- The "Year" for each entry in each tab is 2021; and
- The file does not appear to show line-miles completed because two columns with the heading "Total Miles" are blank (column "K" in tab "Summary by Work Cd & Work ID" and column "M" in tab "Summary w Invoice Nbr.).

Second, PacifiCorp also submitted "CaliforniaTierIITierIIITracker_CY_2020_Distribution" (on February 15, 2024, in response to SED-01 Q6(b)) to justify, based on data contained in column M, its claim to have completed all corrective work.

- However, a PacifiCorp June 16, 2021, response to a WSD data request indicated that a spreadsheet with an identical title (except for reference to an WSD data request) and apparently identical data contains data for corrective work based on patrol inspections. See "WSD 2.3 CaliforniaTierIITierIIITracker_CY_2020" and PacifiCorp's June 16, 2021, response to WSD 2nd Set Data Requests 2.1-2.4 question 2.3(e) dated June 2, 2021 which states "Total mileage for patrols and corrective work is calculated by filtering the columns in Attachment WSD 2.3 and then summing miles completed in column M..." This data response also indicates that the data in the spreadsheet was filtered to include circuits with patrol inspections to generate a total of 1,1015.63 miles of work rather than generating a total based on detailed distribution inspections.

Third, PacifiCorp's Compliance Action Plan later acknowledged that PacifiCorp failed to meet the target for completing corrective work.

³³ See page 221, PacifiCorp 2020 WMP.

³⁴ See page 220, PacifiCorp 2020 WMP.

Level 1 and Level 2 assessments to identify high risk trees along transmission lines in 2020.”³⁵ Energy Safety also found that PacifiCorp failed to show that it complied with the requirement to conduct a vegetation inspection in HFTD “prior to the height of fire season” because it provided a file that listed inspections spanning the calendar year and did not designate which inspections occurred in HFTD (nor the type of inspection).³⁶

Initiative 5.3.4.11 Distribution Patrol Inspections

Energy Safety found that PacifiCorp failed to comply with the initiative 5.3.4.11 Distribution Patrol Inspections, which PacifiCorp described as a sub-set of initiative 5.3.5.2.³⁷ SED’s investigation confirms Energy Safety’s finding because PacifiCorp failed to complete all required activities under initiative 5.3.5.2 and thus also failed to complete such activities under initiative 5.3.4.11.

Initiatives 5.3.5.17 Substation Inspections and 5.3.5.18 Substation Vegetation Management

PacifiCorp’s 2020 WMP states that PacifiCorp does not have a specific vegetation management and inspections program focused on substations. PacifiCorp instead relied on initiatives 5.3.5.2 and 5.3.5.3 for vegetation detailed inspection and correction.³⁸ SED finds that PacifiCorp failed to substantially comply with initiatives 5.3.5.17 and 5.3.5.18 because it did not show compliance with Initiatives 5.3.5.2 and, as discussed below, initiative 5.3.5.3.³⁹

³⁵ See page 41 of the Energy Safety Report on 2020 Substantial Vegetation Management Audit, dated October 2022. PacifiCorp confirmed to SED that PacifiCorp did not track high-risk trees (hazard trees) separately from other removals in 2020. See PacifiCorp response to SED-01 Q6(a).

³⁶ See page 217, PacifiCorp 2020 WMP.

Page 15 of the Energy Safety 2020 SVM Audit of PacifiCorp, August 24, 2024, regarding 5.3.5.2 Detailed Inspections of Vegetation Around Distribution Electric Lines and Equipment states that Energy Safety DR-096-SVM-20220516, question 3 requested an Excel file showing distribution circuits and the respective HFTD tier, the “detailed inspection” dates, and the secondary 2020 “patrol inspection” dates.

Energy Safety stated that PacifiCorp provided an Excel file “Attach OEIS 8.3.xlsx” that does not designate HFTD tier nor program descriptions such as “detailed inspection” and “patrol inspection.” The inspection dates provided spanned the calendar year rather than “prior to the height of fire season.”

³⁷ See page 20, footnotes, of Energy Safety’s ARC for PacifiCorp’s 2020 WMP.

³⁸ See pages 240-241 of PacifiCorp’s 2020 WMP. The plan also mentions initiative 5.3.5.20 for clearances in and around sub-stations.

³⁹ See Table 5 and footnote 75 and 76 on page 21 of Energy Safety’s ARC for PacifiCorp’s 2020 WMP.

5. Initiative 5.3.5.3 Transmission Vegetation Detailed Inspection and Initiative 5.3.4.12 Transmission Patrol Inspections

Initiative 5.3.5.3 Detailed Inspections of Vegetation Around Transmission Electric Lines and Equipment

Energy Safety found that PacifiCorp failed to show compliance with requirements for vegetation inspections and corrective vegetation work based on these inspections.⁴⁰ SED agrees with Energy Safety’s findings and finds that PacifiCorp failed to substantially comply with this initiative for several reasons.

First, PacifiCorp failed to show compliance with qualitative inspection requirements.

- PacifiCorp failed to show that it implemented ANSI 300 Level 1 and Level 2 inspections for potential hazard trees, such as trees with the potential to strike PacifiCorp facilities, as required by initiative 5.3.5.3.⁴¹

Second, PacifiCorp failed to show that it completed corrective work in 2020 for the transmission line-miles that it did inspect.

- PacifiCorp provided Energy Safety with an Excel file⁴² showing inspection dates but not corrective work dates as requested by Energy Safety.⁴³ PacifiCorp acknowledged, in its 2020 SVM Audit Corrective Action Plan that it missed its target, but gave several reasons for its failure to meet the deadline to complete corrective work.⁴⁴

⁴⁰ See page 220, PacifiCorp 2020 California Wildfire Mitigation Plan, February 7, 2020 for these targets.

⁴¹ See page 2 of Energy Safety’s “Report on 2020 Substantial Vegetation Audit” for PacifiCorp, dated October 19, 2022.

As noted above under “Initiative 5.3.5.2 Distribution Vegetation Detailed Inspection and Initiative 5.3.4.11 Distribution Patrol Inspections” PacifiCorp did not show evidence that it “specifically require[d] that PacifiCorp staff and/or contractors conduct ANSI A300 Part 9 Level 1 and/or Level 2 assessments” for distribution and transmission circuits in response to SED-04 Q2 and Q3.

⁴² Energy Safety’s 2020 SVM Audit of PacifiCorp, August 24, 2022, footnote 90 (on page 20) states that PacifiCorp provided this document in response to DR-096-SVM-20220516, question 8b, as Attach ENERGY SAFETY 8.8-2.xlsx. (See for instance column R).

⁴³ Energy Safety 2020 SVM Audit of PacifiCorp, August 24, 2022, page 20.

⁴⁴ See PacifiCorp 2020 SVM Audit Corrective Action Plan, dated September 23, 2022, pages 6, 7 and 13. For instance, PacifiCorp stated that resource limitations and “contracting” led to missed targets (see page 13).

- PacifiCorp claimed to SED⁴⁵ that it completed work under initiative 5.3.5.3 in 2020. However, the excel file that PacifiCorp provided did not justify this claim. This excel file did not show the date of any corrective work and did not address PacifiCorp's failure to show implementation of ANSI Level 1, and where justified, Level 2 inspections.⁴⁶

Third, PacifiCorp failed to adequately document compliance with the number of line-miles inspected:

- Energy Safety found that PacifiCorp documented inspection of 322.65 line-miles of transmission lines rather than the initiative target of 345 line-miles.⁴⁷
- PacifiCorp's 2020 SVM Audit Corrective Action Plan stated that PacifiCorp missed this target due to resource limitations.⁴⁸
- PacifiCorp later claimed to SED on February 16, 2024, that it met the inspection target⁴⁹ but did not provide any document(s), as requested by SED, related to this claim aside from a spreadsheet showing a blank column for inspection miles complete.⁵⁰
- PacifiCorp previously stated that it completed 184 line-miles of Transmission inspections.⁵¹

Initiative 5.3.4.12 Transmission Patrol Inspections

Energy Safety found that PacifiCorp failed to comply with initiative 5.3.4.12 Transmission Patrol Inspections, which PacifiCorp described as a sub-set of initiative

⁴⁵ See PacifiCorp's February 16, 2024, response to SED-01 Q7(d)(iii).

⁴⁶ PacifiCorp's February 16, 2024, response to SED-01 Q7(a) stated that all work was complete based on the excel file "CaliforniaTierIITierIIITracker_CY_2020.xlsx." This file does not provide dates for corrective action for the work areas listed in the spreadsheet and does not address PacifiCorp's failure to show implementation of ANSI Level 1, and where justified, Level 2 inspections.

⁴⁷ See page 20 of Energy Safety's 2020 SVM Audit of PacifiCorp.

⁴⁸ See page 7 of PacifiCorp 2020 SVM Audit Corrective Action Plan, dated September 23, 2022. PacifiCorp stated that resource limitations led to missed targets.

⁴⁹ See PacifiCorp's February 16, 2024, response to SED-01 Q7(a). PacifiCorp referred to cell M225 in the file provided as "CaliforniaTierIITierIIITracker_CY_2020.xlsx" in response to SED-01 Q7(a) and stated that it had previously undercounted the number of line-miles completed by 24 line-miles.

⁵⁰ SED-01 Q7(a) requested that PacifiCorp all related documents such as vegetation inspection records, work orders, work completion reports, invoices and/or others. PacifiCorp provided "CaliforniaTierIITierIIITracker_CY_2020_Transmission" as "Attachment CPUC SED 1.7."

⁵¹ See page 30 of the IE ARC by NV5 and Guidehouse, dated June 30, 2021.

5.3.5.3.⁵² PacifiCorp did not comply with initiative 5.3.4.12 because as discussed above for instance 1) it failed to show that it conducted Level 1 and Level 2 assessments for high-risk trees near transmission facilities; and 2) it failed to show completed corrective work in 2020 for vegetation clearance issues related to transmission facilities.

Initiatives 5.3.5.17 Substation Inspections and 5.3.5.18 Substation Vegetation Management

PacifiCorp relies on initiatives 5.3.5.2 and 5.3.5.3 for vegetation detailed inspection and correction at substations (as noted above under initiative 5.3.5.2).⁵³ Therefore, SED finds that PacifiCorp failed to substantially comply with initiatives 5.3.5.17 and 5.3.5.18 because it did not show compliance with initiatives 5.3.5.2 (as noted above) and initiative 5.3.5.3.⁵⁴

6. Initiative 5.3.5.20 Vegetation Management to Achieve Clearances Around Electric Lines and Equipment

The initiative states that "Maintaining safe clearances is the starting point of any utility vegetation management plan, including PacifiCorp's. PacifiCorp's vegetation management program to achieve clearances around electric lines and equipment includes four key components: (1) cycle trimming, (2) hazard tree removal, (3) remediation of at-risk species, and (4) removal of tall trees with path to strike electric lines and equipment."⁵⁵ PacifiCorp's 2020 WMP states that "Hazard trees [to be removed under this initiative] are identified through the inspections discussed in Sections 5.3.5.2 and 5.3.5.3 and by field crews performing work."⁵⁶

Energy Safety found that PacifiCorp completed only 2,201 line-miles of vegetation clearing against a target of 3,195 line-miles (or 69% completion), missing its target by 994 line-miles.⁵⁷ SED agrees with Energy Safety's findings. PacifiCorp's failure to inspect for hazard trees under 2020 WMP initiatives 5.3.5.2 and 5.3.5.3 means that any hazard trees could be overlooked rather than corrected as required under initiative 5.3.5.20. In addition, even if such hazardous trees had been found they would remain a wildfire risk in the field if vegetation management work was not completed.

⁵² See page 20 of Energy Safety's ARC for PacifiCorp's 2020 WMP.

⁵³ See pages 240-241 of PacifiCorp's 2020 California Wildfire Mitigation Plan dated February 7, 2020. The plan also mentions initiative 5.3.5.20 for clearances in and around sub-stations.

⁵⁴ See Table 5 and footnote 75 and 76 on page 21 of Energy Safety's ARC for PacifiCorp's 2020 WMP.

⁵⁵ See page 243 of PacifiCorp 2020 WMP.

⁵⁶ See page 244 of PacifiCorp 2020 WMP.

⁵⁷ See page 27 of Energy Safety's ARC for PacifiCorp's 2020 WMP.

PacifiCorp claims that the 2020 plan targets were estimates based on the line-miles completed in 2019.⁵⁸ However, WMP initiative targets are commitments, not estimates. PacifiCorp's claim that the 2020 WMP targets "were estimates" misinterprets the requirement in Public Utilities Code section 8386(c)(9) that the WMPs "shall include ... plans for vegetation management."⁵⁹ Section 8386.1 also provides that, "[t]he commission shall assess penalties on an electrical corporation that fails to substantially comply with its plan."

In addition to missing the numeric target, PacifiCorp failed to prepare or implement a plan to target areas of high-density vegetation for increased removal. PacifiCorp could not show that it targeted areas of high-density vegetation for increased removal of incompatible tree species.⁶⁰

PacifiCorp's failure to meet its vegetation clearing target for initiative 5.3.5.20 also means that it failed to substantially comply with 1) initiative 5.3.5.15 Remediation of At-risk Species; and 2) initiative 5.3.5.16 Removal and Remediation of Trees With Strike Potential to Electric Lines and Equipment. PacifiCorp's 2020 WMP states that these two initiatives are subsets of initiative 5.3.5.20 vegetation management to achieve clearances around electric lines and equipment program.⁶¹ Thus, PacifiCorp's failure to complete inspection and vegetation management work for initiative 5.3.5.20 means that PacifiCorp also failed to complete the elements described in initiative 5.3.5.15 and initiative 5.3.5.16 for those line-miles. SED finds PacifiCorp failed to substantially comply with this initiative.

7. Initiative 5.3.5.21 Radial Pole Clearing⁶²

Utilities clear the area around poles containing certain types of equipment to remove fuel and reduce the risk of fire ignition if electrical equipment causes sparks.⁶³ "Pole clearing [removes] all vegetation within a ten-foot radius cylinder of clear space around a subject pole and the application of herbicides and soil sterilants to prevent any vegetation

⁵⁸ PacifiCorp 2020 SVM Audit Corrective Action Plan, page 9.

⁵⁹ See page 9 of Energy Safety's Report on PacifiCorp's 2020 SVM Audit.

⁶⁰ See page 38 of Energy Safety's 2020 SVM Audit of PacifiCorp.

⁶¹ See page 243 of PacifiCorp's 2020 WMP. PacifiCorp did not propose any separate budgets for initiative 5.3.5.15 Remediation of at-risk species and initiative 5.3.5.16 Removal and Remediation of Trees with Strike Potential to Electric Lines and Equipment. See pages 254 and 255 of PacifiCorp's 2020 WMP.

⁶² PacifiCorp apparently reported this initiative as 5.3.5.5 Expanded Pole Clearing in PacifiCorp's Q4 2020 QIU row 21.

⁶³ See page 249 of PacifiCorp's 2020 WMP.

regrowth (unless prohibited by law or the property owner)...After a pole has been cleared, a spark falling within the 10-foot radius would be much less likely to ignite a fire."⁶⁴

SED's investigation confirms Energy Safety's finding that PacifiCorp was deficient in meeting WMP initiative 5.3.5.21 because it cleared 2164 local responsibility area (LRA) poles in 2020 instead of its 2020 WMP target of 2768 poles.⁶⁵ In addition, the IE ARC for PacifiCorp's 2020 WMP reported that the IE sampled 56 "treated" sites on June 7, 2021. The IE found that 41% of such sites failed to meet all required standards, indicating that PacifiCorp was not close to compliance with this initiative.⁶⁶ SED's review confirms this finding.

PacifiCorp made claims to Energy Safety and SED (in response to DR SED-01 Q5) that it met the 2020 WMP target. However, PacifiCorp incorrectly based this claim on totals that include poles cleared in prior years. For instance, PacifiCorp informed Energy Safety that the 2020 WMP initiative was an estimate based on a November-to-November program year and that it can add poles cleared in late 2019 to the number of poles cleared during 2020 when determining compliance.⁶⁷ However, this claim is not correct⁶⁸ and PacifiCorp had already included LRA poles cleared in 2019 as an accomplishment in PacifiCorp's 2019 WMP Compliance report to the Commission.⁶⁹ In support of its claim that it met the 2020 WMP target, PacifiCorp also provided SED with a spreadsheet showing poles cleared in both 2020 and 2021. The spreadsheet shows that PacifiCorp

⁶⁴ See page 248 of PacifiCorp's 2020 WMP.

⁶⁵ See page 9 of Energy Safety's Report on 2020 SVM Audit of PacifiCorp. PacifiCorp must also clear 12,292 poles in State Responsibility Areas per page 248 of PacifiCorp's 2020 WMP.

⁶⁶ IE ARC for PacifiCorp's 2020 WMP page 24.

⁶⁷ See pages 9-10 of Energy Safety's Report on 2020 SVM Audit of PacifiCorp, October 2022.

PacifiCorp claimed that it cleared 628 poles from November 2019 to December 2019 (compared to a shortfall in 2020 of 604 poles). See page 10 of Energy Safety Report on 2020 SVM Audit of PacifiCorp.

⁶⁸ Targets set for 2020 are enforceable based on progress in that year as noted by Energy Safety:

"PacifiCorp's responses [regarding three vegetation management initiatives] demonstrate a fundamental misunderstanding of the Wildfire Mitigation Plan (WMP) process and its purpose ... An initiative is a commitment pertaining to a wildfire risk mitigation activity in an electrical corporation's WMP used to initiative performance and compliance... An initiative target, therefore, is not a best guess at what a utility hopes to achieve during the year based on an estimate." From page 10 of Energy Safety's Report on 2020 SVM Audit of PacifiCorp, October 2022.

Energy Safety also noted that pursuant to Pub. Util. Code §8386.3(c)(5), after approval of a WMP, Energy Safety must oversee compliance with whether an electrical corporation failed to comply with the vegetation management requirements ... in its WMP. Clearly, as outlined in the statute, the vegetation management commitments made in PacifiCorp's approved WMP are to be treated as requirements and not 'estimates,' as PacifiCorp asserts.

⁶⁹ See p.4 of PacifiCorp 2019 Wildfire Mitigation Plan Compliance Report, May 6, 2020. PacifiCorp reported completing in 2019 988 LRA poles against a target of 2,764 LRA poles.

cleared only 626 poles in 2020, and that the total of 2,790 poles claimed by PacifiCorp is based on a combined total for 2020 and 2021.⁷⁰ Thus, the spreadsheet shows that PacifiCorp fell far short of meeting its 2020 target for clearing poles. PacifiCorp's attempts to count work completed in other years toward this 2020 WMP initiative demonstrate a failure to substantially comply during the relevant compliance period of 2020. In addition, PacifiCorp's inclusion of work outside the compliance period within its reported 2020 results demonstrates a lack of transparency.

B. Criteria for Penalties Due to WMP Initiative Noncompliance

Public Utilities Code section 8386.1 specifies the criteria the Commission will consider when determining penalties for substantial noncompliance. SED also considers the Penalty Assessment Methodology contained in the Commission's Enforcement Policy for determining penalties. The Penalty Assessment Methodology generally aligns with the statutory criteria and in a number of instances provides more specificity.

Cumulative Impact of Noncompliance on Risk Reduction

Energy Safety found that "PacifiCorp failed to meet the key purpose behind the WMP, which is to reduce ignitions and wildfire risk. PacifiCorp failed to meet the targets for initiatives highly correlated with risk, failed to meet stated key objectives, and failed to sufficiently address risk on the system."⁷¹ Energy Safety also found that "PacifiCorp's implementation of its 2020 WMP failed to sufficiently reduce the wildfire risk on its infrastructure in 2020" and this missed opportunity "increases the risk of an ignition and, depending on ignition location and time, the risk of a catastrophic wildfire."⁷²

Energy Safety also noted that increasing wildfire risk "underscores the importance of effective wildfire mitigation planning and execution of mitigation efforts."⁷³ Energy Safety evaluated wildfire risk from 2015 and 2020 and found that this risk peaked for PacifiCorp in 2020.⁷⁴ The potential for harm from PacifiCorp's noncompliance with its 2020 WMP was especially severe due to this increase in underlying wildfire risk.

⁷⁰ See PacifiCorp's February 16, 2024, response to SED-01 Q5(a). In particular column "S" of "Statistics_History_Report_-_for_Excel - 2020_LRA_Poles" shows circuits 5G76, 5G79, 7G82, 5G151, and 5G21 were worked in 2020 and the remaining circuits in the spreadsheet were worked in 2021.

⁷¹ See page 2 of Energy Safety ARC for PacifiCorp's 2020 WMP.

⁷² See page 53 of Energy Safety ARC for PacifiCorp's 2020 WMP.

⁷³ Energy Safety referred to red flag warnings circuit mile days from 2015-2020. This metric reflects wildfire risk normalized for the size of an electrical corporation's service territory. See page 30 of Energy Safety ARC for PacifiCorp's 2020 WMP.

⁷⁴ See page 31 of Energy Safety ARC for PacifiCorp's 2020 WMP.

In addition, Energy Safety noted that “PacifiCorp suffered from systematic failures that caused it to miss program targets and ultimately hindered its ability to reduce the risk of catastrophic wildfire on its system. PacifiCorp’s poor and inaccurate record-keeping and reporting reveals data governance issues throughout its operation, pointing to a pervasive data management issue [that resulted in a] missed opportunity to reduce risk and potentially increased the likelihood of negative outcomes.”⁷⁵

SED’s investigation confirms and agrees with each of Energy Safety’s findings given the scope of PacifiCorp’s noncompliance with a range of initiatives intended to significantly reduce wildfire risk, and PacifiCorp’s extensive reporting failures as discussed further below.

SED’s investigation also finds that PacifiCorp’s failure to substantially comply with its WMP Initiatives and reporting requirements harms the regulatory structure and reduces the overall effectiveness of the WMP system for reducing wildfire risk. Many of PacifiCorp’s statements regarding 2020 WMP compliance and reporting are contradictory and/or contrary to the available evidence. These statements hinder transparency and hinder and obstruct the regulatory process.

1. Initiative 5.3.2.1 Installation of Weather Stations

Pub. Util. Code §8386.1(a) The nature and severity of any noncompliance with the plan, including whether the noncompliance resulted in harm.

PacifiCorp failed to substantially comply with this initiative, installing only two weather stations against a target of 10. These stations support better understanding of local climatology that could result in elevated fire risk, as well as analysis of fire weather history so “the utility is better able to take actions when needed and not expend resources when there is no significant wildfire risk.”⁷⁶

PacifiCorp’s failures to comply with WMP Initiatives harms the regulatory structure for reducing wildfire risk through WMP implementation.

Pub. Util. Code §8386.1(b) The extent to which the commission or office has found that the electrical corporation complied with its plans in prior years.

PacifiCorp’s 2019 WMP did not contain specific goals for weather station installation in 2019.

Pub. Util. Code §8386.1(c) Whether the electrical corporation self-reported the circumstances constituting noncompliance.

⁷⁵ Page 1 of Energy Safety ARC for PacifiCorp’s 2020 WMP.

⁷⁶ Page 121 of the PacifiCorp 2020 WMP.

PacifiCorp did not voluntarily self-report this noncompliance.⁷⁷

Pub. Util. Code §8386.1(d) Whether the electrical corporation implemented corrective actions with respect to the noncompliance.

PacifiCorp claimed on February 5, 2024, that “PacifiCorp self-reported the non-compliance in Section C, page 6 of the Company’s 2020 Annual Report on Compliance.”⁷⁸ The Commission requires, in part, that PacifiCorp include “An assessment of whether the [electrical corporation] met the risk reduction intent by implementing all of their approved WMP initiatives”⁷⁹ to comply with Public Utilities Code section 8386(c)(1). However, PacifiCorp’s report does not mention any noncompliance with initiative 5.3.2.1,⁸⁰ failing to meet a mandatory reporting obligation and missing an opportunity to propose any corrective action(s). Prompt reporting of noncompliance and identification of corrective action(s) often helps a utility correct noncompliance and prevent re-occurrence.⁸¹

PacifiCorp also noted that it filed a QIU report for the 4th quarter of 2020 that includes initiative 5.3.2.1.⁸² The row cited by PacifiCorp states in the column for reporting corrective action “Delays in siting and installation.”⁸³ This brief explanation is not useful because PacifiCorp previously reported siting and installing ten existing weather stations

⁷⁷ SED-01 Q4(b) requested, in part, that PacifiCorp identify whether any self-reporting was voluntary. PacifiCorp claimed that it reported noncompliance but did not state that it voluntarily self-reported or identify any voluntary self-reporting. See PacifiCorp’s February 5, 2024, response to SED-01 Q4(b).

⁷⁸ See PacifiCorp’s February 5, 2024, response to SED-01 Q4(b).

⁷⁹ See page 3 of PacifiCorp’s 2020 WMP Annual Report on Compliance, March 2021.

⁸⁰ This document does not identify PacifiCorp’s failure to meet its target for weather station installation. Page 6 of 2020 WMP Annual Report on Compliance states “Ramping up weather station installation and calibration program; Iterative process at first to site and ensure data is captured properly.” This description also does not contain any specific steps to implement corrective action.

⁸¹ See Attachment to Resolution M-4846, pages 17-18.

⁸² See PacifiCorp’s February 5, 2024, response to SED-01 Q4(b) which refers to PacifiCorp’s 2020 Q4 QIU, row 3.

⁸³ PacifiCorp referenced “PacifiCorp_2020 Q4 QIU_20210401”, row 3, cell AB3 (“Initiatives” tab). The document also states “[i]terative and longer process to ensure quality data is received”, apparently referring to operational procedures after the weather stations were installed, and that the additional weather stations had been purchased and were in the process of being installed.

in 2019 and failed to explain why it could not do so in 2020.^{84, 85} PacifiCorp also failed to propose in the QIU any corrective action for these two issues, though PacifiCorp did note that the weather stations had been purchased.

Pub. Util. Code §8386.1(e) Whether the electrical corporation knew or in the exercise of reasonable care should have known of the circumstances constituting noncompliance.

PacifiCorp knew or in the exercise of reasonable care should have known that installing two weather stations failed to substantially comply with the target of installing 10 weather stations.

Pub. Util. Code §8386.1(f) Whether the electrical corporation had previously engaged in conduct of a similar nature that caused significant property damage or injury.

PacifiCorp reported to Energy Safety that wildfires ignited from PacifiCorp infrastructure did not cause any fatalities or injuries from 2015 through 2019.⁸⁶ SED is not aware of any such prior conduct that caused significant property damage.⁸⁷

2. Initiative 5.3.3.3 Covered Conductor

Pub. Util. Code §8386.1(a) The nature and severity of any noncompliance with the plan, including whether the noncompliance resulted in harm.

PacifiCorp failed to substantially comply with this initiative. In addition to planning to install covered conductors, PacifiCorp targeted replacement of line equipment

⁸⁴ PacifiCorp's 2019 WMP dated February 6, 2019, identified a 2018 weather station installation program included in the company's General Rate Case - see page 29. Page two of PacifiCorp's 2019 Wildfire Mitigation Plan Compliance Report, May 6, 2020, states that PacifiCorp installed ten weather stations. The report did not identify any challenges to installing these stations.

PacifiCorp's 2020 WMP also stated that 10 existing weather stations were installed and commissioned in 2019 and did not identify any delays for the installation of these 10 weather stations installed prior to PacifiCorp's 2020 WMP. See Page 89 of the PacifiCorp 2020 WMP.

⁸⁵ PacifiCorp stated that it finished installing the eight outstanding weather stations on May 5, 2021. See PacifiCorp's February 5, 2024, response to SED-01 Q4(c). PacifiCorp stated that it reported completing these weather stations in a 2021 Q2 Quarterly Data Report; and the eight weather stations were also counted in the total weather station goal of 20 total stations in PacifiCorp's 2021 WMP (page 115). PacifiCorp reported completing all weather stations included in PacifiCorp's 2021 WMP target of 21 weather stations (cell "M3" and cell "U3") shown in "Pacific Corp updated Q4 2021 QIU" docketed April 25, 2022.

⁸⁶ See page 41 of Energy Safety's ARC for PacifiCorp's 2020 WMP.

⁸⁷ Energy Safety ARC for PacifiCorp's 2020 WMP states on page 43 that PacifiCorp reported \$184k in assets destroyed by utility-ignited wildfire in 2015; \$241k in assets destroyed by utility-ignited wildfire in 2019; and no such damage in 2016, 2017, 2018. The report does not state the cause of such fires such as whether the cause was related to the types of activities contained in this 2020 WMP initiative.

(connectors, crossarms, lightning arrestors, etc.) as part of the covered conductor project to reduce risk.⁸⁸ Energy Safety found that failure to complete this initiative is one example that “significantly hindered PacifiCorp’s ability to effectively mitigate its wildfire risk.”⁸⁹

PacifiCorp’s failure to implement this covered conductor installation potentially resulted in an ignition at latitude 41.262867 and longitude -122.274 on November 7, 2020, due to a PacifiCorp lightning arrestor.⁹⁰ PacifiCorp acknowledged that installation of a non-expulsion lightning arrestor, planned as part of the “Dunsmuir Tie Taps” covered conductor project, might have prevented an ignition if it had completed work at this site.⁹¹ PacifiCorp also made a contradictory claim that it was not aware of any ignition caused or potentially caused by failure to complete a 2020 WMP initiative.⁹² PacifiCorp did not provide any justification for this claim nor did PacifiCorp explain why it made this claim after acknowledging that completing this initiative could have potentially avoided a fire.

SED previously found that PacifiCorp lightning arrestors caused or potentially caused at least two fires in 2019⁹³ and they also caused at least three fires in 2020.⁹⁴ These prior fires highlight the importance of completing the covered conductor initiative in part to risk reduction from associated lightning arrestor replacements.

⁸⁸ See page 45 of Energy Safety ARC for PacifiCorp’s 2020 WMP.

⁸⁹ See page 50 of Energy Safety ARC for PacifiCorp’s 2020 WMP.

⁹⁰ See row 18 of spreadsheet “Attach CPUC SED 2.1” submitted by PacifiCorp on May 1, 2024, in response to SED-02.

⁹¹ SED-01 Q2(c) asked “Energy Safety found that “PacifiCorp failed to install covered conductor as planned for the ‘Dunsmuir Tie Taps’ project, which later experienced an ignition on or near that exact location in 2020.” State whether installation of covered conductor in 2020 at this location could have prevented this ignition. Provide all Documents Related to Your answer and state the page number(s) of the relevant section(s) of such Documents.

PacifiCorp’s response dated February 5, 2024, stated, in part “Because the suspected ignition likely involved a lightening arrestor, as indicated in the report, PacifiCorp believes that installation of a non-expulsion type arrestor, as part of the “Dunsmuir Tie Taps” project, may have prevented such an ignition. Non-expulsion type arrestors were included in the design at this location.”

⁹² PacifiCorp stated on May 1, 2024: “PacifiCorp has not identified any fire incidents since 2020 potentially caused or partially caused by failure to complete an initiative in the Company’s 2020 Wildfire Mitigation Plan (WMP)” in response to SED-02 Q2.

⁹³ SED Incident Investigation Report E20190628-01, June 14, 2019, Montague, CA; and SED Incident Investigation Report E20190528-02, May 24, 2019, Montague, CA.

⁹⁴ PacifiCorp’s February 5, 2024, response to SED-01 Q1 lists two fires caused by lightning arrestors. (See “Attach CPUC SED 1.1.xlsx”) CalFire Investigation Report 20CASKU0002945 documents a third on April 24, 2020, in Weed, California.

PacifiCorp's delayed grid hardening work, including failure to install covered conductor, also contributed to its failure to significantly reduce the risk of PSPS events that create disruption and other harm to the public.⁹⁵ PSPS events can have cascading effects, de-energizing circuit segments in high-risk area(s) as well as customers "downstream" of such circuits segment(s) depending on the circuit design.⁹⁶

PacifiCorp identified this initiative as a key objective for 2020.⁹⁷ PacifiCorp's 2020 WMP budget included approximately \$7.5 million to install the 36.6 line-miles of covered conductors that were not completed.⁹⁸ However, PacifiCorp fell short on completing this initiative because it spent only a portion of its estimated budget and completed installation of only 1.4 line-miles of covered conductor.⁹⁹

PacifiCorp's failures to comply with its 2020 WMP initiatives harms the regulatory structure for reducing wildfire risk through WMP implementation.

Pub. Util. Code §8386.1(b) The extent to which the commission or office has found that the electrical corporation complied with its plans in prior years.

The Commission has not at this time made any finding regarding PacifiCorp's compliance with its 2019 WMP. PacifiCorp's compliance report for its 2019 WMP and PacifiCorp's 2020 WMP both indicate that PacifiCorp did not complete any line-miles of reconductoring work in 2019.¹⁰⁰

⁹⁵ Energy Safety noted "PacifiCorp's assertion that implementation of its system hardening and situational awareness initiatives was expected to "significantly decrease" the impacts of its PSPS events." See page 50 of Energy Safety ARC for PacifiCorp 2020 WMP.

⁹⁶ Energy Safety noted that a PacifiCorp planned 2020 covered conductor installation would have connected to the same substation as the PSPS event area, though the project did not intersect the boundaries of the PSPS event area. See page 46 of Energy Safety ARC for PacifiCorp 2020 WMP.

⁹⁷ See page 15 of PacifiCorp's 2020 WMP.

⁹⁸ See PacifiCorp response to SED-01 Q2(a). PacifiCorp's 2020 WMP budget included \$207,237 per line mile for distribution circuits. See page 168, Table 23, row 3b. Row 3 of this table on page 168 states "\$0" for transmission circuit per mile costs in 2020, indicating that PacifiCorp did not intend to install covered conductor for any transmission circuits in 2020, and thus all costs for this initiative should match the distribution cost estimate.

⁹⁹ See 2021 Wildfire Mitigation Plan Update Change Order Report, November 1, 2021, page 10.

¹⁰⁰ Page 4 of PacifiCorp's 2019 Wildfire Mitigation Plan Compliance Report, May 6, 2020, states that PacifiCorp created engineering standards for future installations and did not report completing any installations in 2019. Similarly, page 30 of PacifiCorp's 2020 WMP reported that 2019 progress included engineering standards and scoping and did not report that any reconductoring was completed.

Pub. Util. Code §8386.1(c) Whether the electrical corporation self-reported the circumstances constituting noncompliance.

PacifiCorp did not voluntarily self-report noncompliance with this initiative.¹⁰¹

Pub. Util. Code §8386.1(d) Whether the electrical corporation implemented corrective actions with respect to the noncompliance.

PacifiCorp did not implement effective corrective actions to remedy noncompliance and did not expect to finish the last covered conductor installation under this 2020 WMP initiative until 2025. In addition, PacifiCorp's mandatory compliance reports did not consistently report noncompliance and failed to propose effective corrective action:

- The compliance section of PacifiCorp's Annual Report on Compliance for the 2020 WMP did not identify noncompliance with the covered conductor initiative.¹⁰² PacifiCorp briefly mentioned in a spending-related section of the report that it was behind schedule without explicitly stating that it missed the 2020 WMP target.¹⁰³
- PacifiCorp's April 1, 2021, mandatory QIU report stated, "Significantly delays due to start up efforts and onboarding contractors to support the design and estimating phase of the projects."¹⁰⁴ The report did not explain why these routine activities were delayed and did not identify any corrective action(s). PacifiCorp previously claimed that it completed engineering and scoping in 2019 for 38 line-miles planned in 2020, indicating that most or all of the design stage was completed before 2020.¹⁰⁵

¹⁰¹ See PacifiCorp's February 5, 2024, response to SED-01 Q2(b) which states that PacifiCorp provided mandatory reporting for this initiative. PacifiCorp mandatory reporting is discussed later in this report.

¹⁰² See PacifiCorp's March 31, 2021, PacifiCorp WMP Annual Report on Compliance. Section A of the report is titled "An assessment of whether the EC met the risk reduction intent by implementing all of their approved WMP initiatives. i.e. the degrees to which initiative activities have reduced ignition probabilities." This section of the March 31, 2021, report does not acknowledge noncompliance with the covered conductor initiative.

¹⁰³ See Section C page 6 of PacifiCorp's Annual Report on Compliance for the 2020 WMP. The report did not identify any reasons or potential remedies for missing the 2020 WMP covered conductor targets.

¹⁰⁴ See row 7 of file PacifiCorp's 2020 Q4 QIU and column "AB" "CorrectiveActionsIfDelayed."

¹⁰⁵ See page 7 of PacifiCorp (U 901E) 2019 Wildfire Mitigation Plan Compliance Report, May 6, 2020.

- Most projects planned under this 2020 WMP initiative were completed between one and three years late as shown in Table 4 below.¹⁰⁶

**Table 4: 2020 WMP Covered Conductor Installation Remedial Work
2021 through May 2024¹⁰⁷**

Circuit	GhID	Line Miles	Completion Date
5G69	6810400	0.4	2021 Q1
5G76	8052055	0.5	2021 Q2
5G69	6771707	1.9	2021 Q3
5G79	8052057	0.8	
5G69	8143344	0.4/ 2.3 ¹⁰⁸	2021 Q4
	8094878	2.5	
6G101	6810404	3.1	
6G101	8094476	1.1	
5G45	8116061	1.9	2022 Q1
5G69	8179571	2.9	
5G69	8228947	2.9	
7G71 and 7G73	8184056	2.6	
	8234846	0.7	
7G75	8228974	1.8	2022 Q2
5G45	8003687	0.7	
5G69	8142422	0.1	
	6810389	0.3	
5G76	6771765	1.2	
5G79	6771705	1	2022 Q3
7G75	8283736	1.5	
7G75	6810408	0.2	2023 Q2
5R106	6993791	2	2023 Q3

¹⁰⁶ PacifiCorp completed 13 line-miles in 2021, 17.6 line-miles in 2022, and 2.2 line-miles in 2023. One additional project for 5R165 Hiouchi Hwy is scheduled for completion by October 2025. See PacifiCorp February 5, 2024, response to SED-01 Q2(e). 1.4 line-miles were installed on schedule in 2020.

¹⁰⁷ PacifiCorp response to SED-02 Q6(a) provided May 1, 2024.

¹⁰⁸ PacifiCorp's response to SED-02 Q6(a) lists GhID 8143344 twice, once with a value of 0.4 line-miles and once a value of 2.3 line-miles.

Thus, PacifiCorp failed to identify potential corrective actions and failed to implement timely corrective action for noncompliance with initiative 5.3.3.3.

Pub. Util. Code §8386.1(e) Whether the electrical corporation knew or in the exercise of reasonable care should have known of the circumstances constituting noncompliance.

PacifiCorp knew or in the exercise of reasonable care should have known that installation of 1.4 line-miles of covered conductor failed to substantially comply with the initiative target of 38 line-miles.

Pub. Util. Code §8386.1(f) Whether the electrical corporation had previously engaged in conduct of a similar nature that caused significant property damage or injury.

As noted earlier regarding initiative 5.3.2.1 Installation of Weather Stations, PacifiCorp reported to Energy Safety that wildfires ignited from PacifiCorp infrastructure did not cause any fatalities or injuries from 2015 through 2019. SED is not aware of any such prior conduct that caused significant property damage.

3. Initiative 5.3.3.6 Targeted Pole Replacements

Pub. Util. Code §8386.1(a) The nature and severity of any noncompliance with the plan, including whether the noncompliance resulted in harm.

PacifiCorp failed to substantially comply with initiative 5.3.3.6, installing only 29 poles instead of the target of 189 poles.

PacifiCorp stated that it is not aware of any reportable ignitions in 2020 or 2021 at the 160 locations where pole replacements were delayed past the 2020 WMP deadline.¹⁰⁹ However, failure to complete this initiative led to increased fire risk. In addition, delayed grid hardening work contributed to PacifiCorp's failure to significantly reduce the risk of PSPS events that create disruption and other harm to the public.¹¹⁰

PacifiCorp's failures to comply with WMP initiatives harms the regulatory structure for reducing wildfire risk through WMP implementation.

¹⁰⁹ PacifiCorp stated in response to SED-01 Q3(b) that "No reportable incidents [fires] are known to have occurred at the 160 locations in 2020 or 2021."

¹¹⁰ Energy Safety noted "PacifiCorp's assertion that implementation of its system hardening and situational awareness initiatives was expected to 'significantly decrease' the impacts of its PSPS events." See page 50 of Energy Safety ARC for PacifiCorp's 2020 WMP.

PacifiCorp identified this initiative as a key objective for 2020.¹¹¹ PacifiCorp budgeted \$3.7 million for 2020 pole replacements that were not completed in 2020 (approximately \$84,000 for distribution and \$3.6 million for transmission).¹¹²

Pub. Util. Code §8386.1(b) The extent to which the commission or office has found that the electrical corporation complied with its plans in prior years.

PacifiCorp's 2019 WMP does not contain an enforceable target for replacing poles. It states that before the next plan is filed, PacifiCorp will identify a "five year plan proactive for replacement wooden poles with steel structures."¹¹³

Pub. Util. Code §8386.1(c) Whether the electrical corporation self-reported the circumstances constituting noncompliance.

PacifiCorp did not voluntarily self-report noncompliance with this initiative. Moreover, as discussed below, PacifiCorp failed to report noncompliance in PacifiCorp's mandatory 2020 Annual Report on Compliance to the Commission.

Pub. Util. Code §8386.1(d) Whether the electrical corporation implemented corrective actions with respect to the noncompliance.

PacifiCorp reported misleading information by indicating that it had self-reported non-compliance with this initiative. Specifically, PacifiCorp claimed to SED that PacifiCorp self-reported the non-compliance in Section C, page 6 of its 2020 Annual Report on Compliance. Public Utilities Code section 8386(c)(1) requires in part that "each electrical corporation shall file ... a report addressing the electrical corporation's compliance with the plan during the prior calendar year." However, PacifiCorp's 2020 Annual Report on Compliance does not mention the pole replacement initiative.¹¹⁴ PacifiCorp provided false information to SED by stating that it had self-reported its non-compliance when in fact it had not. In addition, PacifiCorp missed an opportunity to identify causes and corrective actions.

PacifiCorp also failed to report noncompliance in the "status" column of an April 1, 2021, PacifiCorp QIU even though PacifiCorp acknowledged replacing only 29 poles instead of the target of 189. The spreadsheet states that 2020 pole replacements were

¹¹¹ See page 15 of PacifiCorp's 2020 California Wildfire Mitigation Plan dated February 7, 2020.

¹¹² See PacifiCorp's response to SED-01 Q3(a).

¹¹³ See page 12.

¹¹⁴ See PacifiCorp response to SED 01 Q3(c). PacifiCorp stated that the pole replacements were part of the Grid Design and System Hardening category, but this section of page 6 does not mention pole replacements.

“rephased” to align with covered conductor installations.¹¹⁵ However, the 2020 WMP pole replacement initiative is not contingent on completing other work; and aligning installations with covered conductor installations subject to lengthy delays is not an effective corrective action.

The April 1, 2021, PacifiCorp spreadsheet states “future delays not anticipated.” PacifiCorp also reported on November 1, 2021, that it intended to significantly increase the rate of pole replacement and reinforcement by the end of 2021.¹¹⁶ However, PacifiCorp reported on April 25, 2022, that it failed to meet its 2021 WMP target, installing only 87 poles in 2021.¹¹⁷ Even at the end of 2021, PacifiCorp had not yet installed enough poles over two years (116) to meet its one year target for 2020 of 189. PacifiCorp failed to take corrective action to remedy noncompliance with its 2020 WMP and prevent future noncompliance.

Thus, PacifiCorp failed to disclose that it was not in compliance with this initiative. Consequently, it failed to propose or implement timely corrective action.

Pub. Util. Code §8386.1(e) Whether the electrical corporation knew or in the exercise of reasonable care should have known of the circumstances constituting noncompliance.

PacifiCorp knew or in the exercise of reasonable care should have known that installation of 29 poles failed to substantially comply with the target of replacing 189 poles.

Pub. Util. Code §8386.1(f) Whether the electrical corporation had previously engaged in conduct of a similar nature that caused significant property damage or injury.

SED is not aware of any such prior conduct that caused significant property damage. As noted earlier regarding initiative 5.3.2.1 Installation of Weather Stations, PacifiCorp reported to Energy Safety that wildfires ignited from PacifiCorp infrastructure did not cause any fatalities or injuries from 2015 through 2019.

¹¹⁵ PacifiCorp reported replacing 29 poles instead of the target of 189 in a spreadsheet as part of its 2020 Q4 QIU. See row 9 of PacifiCorp_2020 Q4 QIU. Column “AB” contains the header “CorrectiveActionifDelayed” and row 9, column “AB” states “Scope of project fully defined and aligned with the targeted installation of covered conductor in 2020 resulting in a re-phasing of stand-alone pole replacements; Future delays not anticipated.”

¹¹⁶ PacifiCorp forecasted replacing 555 more distribution poles by the end of 2021, for an annual planned total of 668. Page 15 of PacifiCorp 2021 Wildfire Mitigation Plan Update Change Order Report dated November 1, 2021.

¹¹⁷ See “Pacific Corp updated Q4 2021 QIU”, docketed April 25, 2022. PacifiCorp reported an annual initiative target of 128 poles in cell M9 of the “Initiatives” tab; and PacifiCorp’s updated Q4 2021 QIU for its 2021 WMP reported actual annual installation of 87 poles in cell “U9.”

4. Initiative 5.3.5.2 Distribution Vegetation Detailed Inspection and Initiative 5.3.4.11 Distribution Patrol Inspections

Pub. Util. Code §8386.1(a) The nature and severity of any noncompliance with the plan, including whether the noncompliance resulted in harm.

PacifiCorp failed to substantially comply with these initiatives and reduce wildfire risk to the extent required by initiatives 5.3.5.2 and 5.3.4.11. PacifiCorp failed to show that it: 1) targeted high-risk trees; 2) completed inspections in HFTD prior to the height of the fire season; and 3) completed corrective work on time for vegetation issues that were found during inspections.¹¹⁸

PacifiCorp's noncompliance with initiatives 5.3.5.2 and 5.3.4.11 may have led to a fire on the 5G41 distribution circuit in a Tier 2 HFTD near Fort James.¹¹⁹ The fire ignited on September 18, 2020, due to vegetation contact and burned 0.43 acres.¹²⁰ This distribution circuit is included in initiative 5.3.5.2.¹²¹ However, PacifiCorp did not provide records showing whether it inspected this specific ignition location to determine whether vegetation required corrective work¹²² prior to the September 18, 2020, fire in Fort

¹¹⁸ PacifiCorp completed 784.56 line-miles of corrective work completed compared to a target of 825-line miles.

¹¹⁹ PacifiCorp identified the September 18, 2020, fire in Fort James in response to SED-01 Q8(a).

¹²⁰ See PacifiCorp's May 15, 2024, response to SED-02 Q13(a). PacifiCorp does not have any record of any structures damaged or destroyed nor of any injury or loss of life resulting from the fire.

¹²¹ PacifiCorp's 2020 WMP states on page 217 that PacifiCorp implemented an additional vegetation management inspection of all PacifiCorp overhead lines in HFTD areas in California for vegetation management issues beginning in 2019. It also states that PacifiCorp conducts a vegetation inspection each year, prior to the height of fire season, in the HFTD. "PacifiCorp vegetation management believes that this tool is the most effective strategy to identify high risk trees at the earliest stage possible. This strategy facilitates removal of high risk trees before such trees could ever fall into a line and cause a wildfire, consistent with GO95 requirements."

¹²² PacifiCorp did not identify any records specifically showing whether the site of the September 18, 2020, fire was inspected in 2020. PacifiCorp stated in response to SED-02 Q13(d) that "Inspection of portions of the circuit where no work is identified are not recorded in the inventory report." PacifiCorp records do not show any vegetation work at that location.

PacifiCorp stated that "the inspection date of vegetation in the vicinity of the [fire ignition site] can reasonably be inferred to be on or about July 2, 2020, based on the inspection date of the nearest location where work was identified and took place prior to the fire ignition." That location was approximately 370 meters from the ignition site (based on the latitude and longitude of that location and the latitude of 41.5623 and longitude of -122.9308 for the ignition site). Thus, PacifiCorp does not have any records showing whether the specific ignition site was inspected for vegetation issues. See PacifiCorp's May 15, 2024, response to SED-02 Q13(d). SED also notes that even if PacifiCorp had inspected this site for vegetation issues, other types of noncompliance such as completing the inspection and delayed corrective work could have left risks in the field unmitigated.

James. In addition, PacifiCorp's noncompliance with these 2020 WMP initiatives potentially left other fire ignition risks in the field over a large area instead of correcting them.

Moreover, noncompliance with initiative 5.3.5.2 and initiative 5.3.5.3 led to noncompliance with initiative 5.3.5.17 Substation Inspections and initiative 5.3.5.18 Substation Vegetation Management as noted in discussion of initiative 5.3.5.2 compliance.

PacifiCorp's failures to comply with WMP initiatives harms the regulatory structure for reducing wildfire risk through WMP implementation. In addition, PacifiCorp harmed the regulatory process by failing to provide transparent and accurate communication with regulators; and failing to identify and implement effective and timeline corrective actions (as discussed below in detail in the section addressing Pub. Util. Code § 8386.1(d).)

PacifiCorp budgeted \$1,725 per line mile for initiative 5.3.5.2.¹²³ PacifiCorp did not provide information requested by SED regarding the budget allocated to work that was not completed,¹²⁴ which would include line-miles that were not completely inspected and line-miles that PacifiCorp stated were inspected but where PacifiCorp did not show that work was completed and within the schedule.

Pub. Util. Code §8386.1(b) The extent to which the commission or office has found that the electrical corporation complied with its plans in prior years.

The Commission has not at this time made any finding regarding PacifiCorp's compliance with its 2019 WMP. PacifiCorp stated that it met its 2019 requirement for annual detailed inspections around distribution lines. (1170 line-miles total for distribution and transmission)¹²⁵

¹²³ See page 251 of PacifiCorp's 2020 WMP. SED estimates that PacifiCorp budgeted approximately \$250,600 for the 145.3-line miles (the target of 825 line-miles minus 679.7 line-miles) where a PacifiCorp tracking spreadsheet provided to SED in response to SED-01 shows that PacifiCorp did not complete work. This estimate would not address work that was partially completed for the other 679.7 line-miles.

¹²⁴ See PacifiCorp February 16, 2024, response to SED-01 Q6(c). PacifiCorp stated "In 2020, the budget was not allocated in a manner that would allow for the budgeted amount information to be provided." PacifiCorp also claimed that "All work was completed."

¹²⁵ See page 30 of PacifiCorp's 2020 WMP.

PacifiCorp's 2019 WMP discusses annual vegetation management inspection for every line in a HFTD (page 56) including Level 1 assessment for hazard trees, Higher Risk Tree Removals (page 57) and Reliability/At Risk Tree Species (page 58).

Pub. Util. Code §8386.1(c) Whether the electrical corporation self-reported the circumstances constituting noncompliance.

PacifiCorp did not voluntarily self-report noncompliance with this initiative.¹²⁶

Pub. Util. Code §8386.1(d) Whether the electrical corporation implemented corrective actions with respect to the noncompliance.

PacifiCorp’s failures regarding corrective action show a high degree of culpability for noncompliance with initiatives 5.3.5.2 and 5.3.4.11. For instance, PacifiCorp was required to correct deficiencies in PacifiCorp’s 2020 WMP identified during the review and approval process. However, PacifiCorp failed to correct several deficiencies, showing a lack of responsiveness and unwillingness to take steps necessary to successfully implement the WMP initiatives. PacifiCorp also failed on several occasions to provide mandatory reports of noncompliance with initiatives 5.3.5.2 and 5.3.4.11 and failed to implement timely and effective action to remedy such noncompliance.

First, Energy Safety required that PacifiCorp correct several deficiencies identified during the 2020 WMP approval process, but PacifiCorp did not correct these deficiencies. Energy Safety issued a “Notice of Non-Compliance” on January 8, 2021, because PacifiCorp failed to correct many deficiencies including but not limited to 1) poor data management; 2) lack of a data governance plan for wildfire mitigation, and 3) lack of planning to address personnel shortages.¹²⁷ SED believes that these failures likely caused or contributed to noncompliance with initiatives related to vegetation inspections and management.¹²⁸

¹²⁶ See PacifiCorp’s February 16, 2024, response to SED-01 Q6(d), which requested that PacifiCorp identify any voluntary self-reporting. PacifiCorp did not identify any voluntary self-reporting.

¹²⁷ Energy Safety’s ARC for PacifiCorp’s 2020 WMP states on page 48-49 that Energy Safety found that PacifiCorp’s response to these Class B deficiencies failed to address these deficiencies. Energy Safety issued a Notice of “Non-Compliance” on January 8, 2021, to PacifiCorp based on Pub. Util. Code §8386, Resolution WSD-002, and Resolution WSD-008.

¹²⁸ See pages 48-49 of Energy Safety’s ARC for PacifiCorp’s 2020 WMP. Energy Safety noted that PacifiCorp failed to correct deficiencies such as:

- General Data issues;
- PacifiCorp does not have a specific data governance wildfire mitigation program; and
- Lack of detail on plans to address personnel shortages.

SED believes that these flaws likely caused or contributed to noncompliance with initiatives related to vegetation inspections and management.

Secondly, PacifiCorp claimed on February 16, 2024, that "PacifiCorp mandatorily self-reported any noncompliance" in PacifiCorp's 2020 Annual Report on Compliance to the Commission. However, PacifiCorp did not specifically mention this initiative, the target, the actual line-miles completed nor PacifiCorp's noncompliance with this initiative in the Company's 2020 Annual Report on Compliance, which addresses only the cost of vegetation management.¹²⁹

PacifiCorp also made contradictory statements to SED about whether it complied with initiative 5.3.5.2:

- PacifiCorp claimed twice that it met the target for the WMP initiative in 2020.¹³⁰
- PacifiCorp acknowledged failing to complete work for the WMP initiative in 2020.¹³¹

Third, PacifiCorp failed to propose and implement effective corrective action. PacifiCorp stated, as part of a corrective action plan submitted to Energy Safety, that "Due to resource constraints and contracting, PacifiCorp was not able to complete all correction work within the 2020 calendar year and 'rolled' over remaining [distribution circuit] correction work into Q1 of 2021."¹³² PacifiCorp did not explain why it failed to provide adequate resources, especially when Energy Safety had previously directed PacifiCorp to provide adequate personnel. PacifiCorp also did not explain why contracting, a routine activity, should result in noncompliance. PacifiCorp did not propose any corrective action to prevent future noncompliance. Energy Safety found this response "insufficient."¹³³

PacifiCorp committed to implementing corrective action to track the level of inspection (patrol vs. detailed), whether each such inspection was conducted in a HFTD, and the

¹²⁹ PacifiCorp's February 16, 2024, response to SED-01 Q6(d) regarding initiative 5.3.5.2 states in part "PacifiCorp mandatorily self-reported any noncompliance in section C page 6 of the Company's 2020 Annual Report on Compliance."

¹³⁰ SED-01 Q6(e) requested that PacifiCorp provide information on any corrective action regarding initiative 5.3.5.2 and the date of such corrective action. PacifiCorp instead claimed that PacifiCorp exceeded the target for this 2020 WMP initiative (with 1,015 line-miles completed) as discussed earlier.

PacifiCorp also claimed, in response to SED-01 Q6(c), that "All work was completed" for this initiative.

¹³¹ PacifiCorp's February 16, 2024, response to SED-01 Q6(f) states that PacifiCorp's 2021 target for Distribution Vegetation Detailed Inspections was 1,380 miles including some uncompleted miles from 2020. (PacifiCorp's February 16, 2024, response to SED-01 Q6(f)(iii) states "The 2021 WMP target does not include miles associated with the 2020 WMP target of 825." PacifiCorp did not explain the apparent conflict between these two answers.)

¹³² See page 13 of PacifiCorp 2020 SVM Audit Corrective Action Plan. PacifiCorp also described data management improvements in this plan.

¹³³ See pages 5 of Energy Safety's Report on PacifiCorp's 2020 Substantial Vegetation Management Audit.

date of vegetation management corrective action. PacifiCorp provided the following inconsistent information about whether it implemented such corrective action:

- PacifiCorp's Corrective Action Plan claimed that it "will cross reference patrol inspection activities with Tier 2 or Tier 3 designations to confirm patrol inspections were conducted on all overhead lines in HFTD."¹³⁴ PacifiCorp's "SVM_Audit_Tracker" row 5, ID 1, states that PacifiCorp completed corrective action on January 1, 2022 (cell "K5") regarding the need to identify dates, type (patrol or details), and HFTD of distribution circuit inspections but the "comments/deliverables" field (cell "J5") is blank. PacifiCorp did not explain how it could complete this action item without a deliverable.¹³⁵
- SED requested that PacifiCorp provide information about any corrective action that was completed but PacifiCorp did not provide any such information.¹³⁶

In addition, PacifiCorp committed to revising a contractor form by January 1, 2023, to explicitly require Level 1 and (where necessary) Level 2 inspections for high-risk trees as corrective action for its failure to direct inspectors to conduct such inspection.¹³⁷ PacifiCorp did not release the revised form until May 5, 2023.¹³⁸

¹³⁴ See page 16 of PacifiCorp's 2020 SVM Audit Corrective Action Plan in response to Energy Safety's 2020 SVM Audit of PacifiCorp, finding 2i, page 41. Energy Safety found PacifiCorp's response sufficient. See page 6 of Energy Safety's Report on 2020 SVM Audit of PacifiCorp.

¹³⁵ PacifiCorp provided the tracker in response to SED-03 Q2. Similar to detailed distribution inspections, PacifiCorp's "SVM_Audit_Tracker" states that PacifiCorp completed corrective action on January 1, 2022, regarding the need to identify dates, type (patrol or details), and HFTD for transmission detailed inspections (ID 4 and row 7) but the "comments/deliverables" field is also blank for transmission detailed inspections.

¹³⁶ SED-01 Q6(e) requested that PacifiCorp "State whether PacifiCorp took corrective actions to complete all Distribution Vegetation Detailed Inspection miles that were included in the 2020 WMP initiative 5.3.5.2 but not completed in 2020" and state the date(s) of any such corrective actions. PacifiCorp did not provide any such information in its response. (PacifiCorp instead claimed that PacifiCorp exceeded the target for this 2020 WMP initiative).

¹³⁷ Item 1.ii on page 5 of PacifiCorp's 2020 SVM Audit Corrective Action Plan dated September 23, 2022, states that PacifiCorp is developing a program tracker to address the finding that PacifiCorp failed to provide documentation demonstrating that inspectors were directed to conduct Level 1 and Level 2 assessments to identify high risk trees along distribution lines in 2020. Page 13 of the Corrective Action Plan states "PacifiCorp plans to update work release documents to explicitly instruct inspectors to conduct Level 1 and if warranted, Level 2 assessments, to identify high risk trees along the distribution lines." Page 11 states that the deadline is January 1, 2023.

¹³⁸ PacifiCorp issued a work release form that contains the requirement to conduct Level 1, and where warranted Level 2, assessments on May 5, 2023. See PacifiCorp's September 11, 2024, response to SED-

PacifiCorp’s failure to show timely completion of corrective action represents an inability or unwillingness to: 1) remedy deficiencies identified prior to approval of the WMP; 2) report noncompliance regarding implementation of the WMP; and 3) propose and implement remedies for such noncompliance.

Pub. Util. Code §8386.1(e) Whether the electrical corporation knew or in the exercise of reasonable care should have known of the circumstances constituting noncompliance.

PacifiCorp knew or in the exercise of reasonable care should have known that it failed to substantially comply with the target for initiative 5.3.5.2 and initiative 5.3.4.11.

PacifiCorp explicitly stated the qualitative and quantitative targets in its 2020 WMP.

PacifiCorp also acknowledged that it failed to meet the initiative 5.3.5.2 targets in response to the Energy Safety’s SVM Audit.¹³⁹ PacifiCorp’s claims that it complied with this WMP initiative show a lack of reasonable care and/or a lack of candor rather than any reasonable misunderstanding about the circumstances constituting noncompliance.

Pub. Util. Code §8386.1(f) Whether the electrical corporation had previously engaged in conduct of a similar nature that caused significant property damage or injury.

SED is not aware of any such prior conduct that caused significant property damage. As noted earlier regarding initiative 5.3.2.1 Installation of Weather Stations, PacifiCorp reported to Energy Safety that wildfires ignited from PacifiCorp infrastructure did not cause any fatalities or injuries from 2015 through 2019.

5. Initiative 5.3.5.3 Transmission Vegetation Detailed Inspection and Initiative 5.3.4.12 Transmission Patrol Inspections

Pub. Util. Code §8386.1(a) The nature and severity of any noncompliance with the plan, including whether the noncompliance resulted in harm.

PacifiCorp failed to substantially comply with this initiative to reduce wildfire risk to the extent required by initiative 5.3.5.3 and initiative 5.3.4.12. For instance, PacifiCorp failed to show that it instructed inspectors to conduct Level 1 and Level 2 assessments of high-risk trees, indicating that PacifiCorp facilities were vulnerable to potential strikes from

04 Q3 regarding distribution circuits and attachment “FIN DIST WORK RELEASE_ALL STATES.pdf”, which states “Contractor shall conduct a Level 1 visual assessment and where necessary, a Level 2 assessment consistent with ANSI A300 (part 9) and PacifiCorp’s Standard Operating Procedures to identify all high-risk trees (hazard trees) for removal”; and attachment “CA_DNT WORK RELEASE.pdf.”

¹³⁹ Page 13 of PacifiCorp 2020 SVM Audit Corrective Action Plan, September 23, 2022, proposed corrective action for inspection deficiencies and also acknowledged that “PacifiCorp was not able to complete all correction work within the 2020 calendar year” for detailed distribution inspections.

such trees (unless trimmed or removed for other reasons). PacifiCorp also failed to show that it completed corrective work in 2020 and provided contradictory answers regarding whether it completed inspection targets.¹⁴⁰ PacifiCorp's noncompliance with these two 2020 WMP initiatives potentially left fire ignition risks in the field unmitigated over a large area.

In addition, noncompliance with initiative 5.3.5.3 (and initiative 5.3.5.2) led to noncompliance with initiative 5.3.5.17 Substation Inspections and initiative 5.3.5.18 Substation Vegetation Management as noted in discussion of initiative 5.3.5.3 compliance.

PacifiCorp's failures to comply with WMP Initiatives harms the regulatory structure for reducing wildfire risk through WMP implementation.

PacifiCorp budgeted \$2,098 per line mile to complete initiative 5.3.5.3.¹⁴¹

Pub. Util. Code §8386.1(b) The extent to which the commission or office has found that the electrical corporation complied with its plans in prior years.

The Commission has not at this time made any finding regarding PacifiCorp's compliance with its 2019 WMP. PacifiCorp stated that it completed 100% of detailed inspections around transmission lines in 2019.¹⁴²

Pub. Util. Code §8386.1(c) Whether the electrical corporation self-reported the circumstances constituting noncompliance.

PacifiCorp did not voluntarily self-report noncompliance with this initiative.¹⁴³

¹⁴⁰ Energy Safety also found that PacifiCorp's transition to a computerized tracking system prevented PacifiCorp from documenting compliance with commitments in its 2020 WMP. See page 2 of Energy Safety's "Report on 2020 Substantial Vegetation Audit" for PacifiCorp, October 19, 2022.

¹⁴¹ See page 251 of PacifiCorp's 2020 WMP.

¹⁴² PacifiCorp also stated that it completed 1170 line-miles total for distribution and transmission. See page 30 of PacifiCorp's 2020 WMP. PacifiCorp's 2019 WMP discusses inspecting every line in a HFTD annually (page 56) including Level 1 assessment for hazard trees; Higher Risk Tree Removals (page 57) and Reliability/At Risk Tree Species (page 58). It also contains discussion (page 58) of off-cycle inspections so that every line within a HFTD is inspected for vegetation issues annually.

¹⁴³ PacifiCorp did not identify any voluntary self-reporting in response to SED's request that PacifiCorp identify any such reporting. See PacifiCorp's February 16, 2024, response to SED-01 Q7(c).

Pub. Util. Code §8386.1(d) Whether the electrical corporation implemented corrective actions with respect to the noncompliance.

PacifiCorp did not take any actions to correct its noncompliance with initiative 5.3.5.3, and thus also initiative 5.3.4.12. PacifiCorp: 1) failed to correct deficiencies identified during the original WMP approval process; 2) failed to report noncompliance regarding implementation of this initiative; and 3) failed to implement corrective action for noncompliance with this initiative.

First, Energy Safety required that PacifiCorp correct several deficiencies identified during the 2020 WMP approval process. However, PacifiCorp failed to do so, leading to an Energy Safety “Notice of Non-compliance” on January 8, 2021, as noted above regarding distribution inspections and corrective work.

Second, PacifiCorp claimed on February 16, 2024, that “PacifiCorp mandatorily self-reported the non-compliance [with initiative 5.3.5.3] in ... the Company’s 2020 Annual Report on Compliance.”¹⁴⁴ However, this report does not specifically mention this initiative, nor whether PacifiCorp complied with this initiative. Prompt reporting of noncompliance and identification of corrective action(s) often helps a utility correct noncompliance and prevent re-occurrence.¹⁴⁵

In addition, PacifiCorp also failed to report noncompliance with initiative 5.3.5.3 in a mandatory quarterly report required by Public Utilities Code section 8389 (e)(7). PacifiCorp incorrectly stated that the annual target was 185 line-miles - matching the amount of work that PacifiCorp reported completing - instead of reporting that the actual WMP initiative target was 345 miles.¹⁴⁶

Third, PacifiCorp did not implement effective corrective action:

- PacifiCorp stated that contracting led to delays completing corrective work but did not explain why contracting, a routine activity, caused noncompliance. In addition, PacifiCorp failed to propose any corrective action to prevent future noncompliance. Energy Safety found this response “insufficient.”¹⁴⁷

¹⁴⁴ See PacifiCorp’s response to SED-01 Q7(c). PacifiCorp claimed that Section C page 6 of the Annual Report of Compliance contains this information.

¹⁴⁵ See Resolution M-4846, Enforcement Policy, pages 17 and 18.

¹⁴⁶ See “Initiative” tab of PacifiCorp’ 2020 Q4 QIU. PacifiCorp incorrectly stated that the annual target was 185 line-miles in cell “M20” and reported completing 185 line-miles in cell U20.

¹⁴⁷ See pages 5 and 6 of Energy Safety’s Report on PacifiCorp’s 2020 SVM Audit dated October 19, 2022.

- PacifiCorp's 2020 SVM Audit Corrective Action Plan dated September 23, 2022, states that "PacifiCorp resource limitations led to missed targets" for transmission lines inspected.¹⁴⁸ Energy Safety found this response "insufficient."¹⁴⁹ PacifiCorp did not explain why it failed to provide adequate resources, especially when Energy Safety had previously directed PacifiCorp to correct a deficiency regarding adequate personnel (as discussed earlier). PacifiCorp also failed to propose any corrective action to avoid further noncompliance due to "resource limitations."
- PacifiCorp missed the January 1, 2023, deadline to implement proposed corrective action regarding Level 1 and Level 2 inspections for transmission circuit inspections, similar to distribution inspections discussed for initiative 5.3.5.2 Distribution Vegetation Detailed Inspection and initiative 5.3.4.11 Distribution Patrol Inspections.¹⁵⁰
- SED requested, on January 16, 2024, that PacifiCorp state whether it took corrective action to complete initiative 5.3.5.3 line-miles that were not completed in 2020. PacifiCorp claimed that it completed all line-miles without addressing qualitative issues and without adequate documentation of compliance with quantitative targets.¹⁵¹

PacifiCorp's failures regarding corrective action show an inability or unwillingness to: 1) remedy deficiencies identified prior to approval of the WMP; 2) report noncompliance

¹⁴⁸ See page 7. This page also states that PacifiCorp plans to provide a program tracker, described in Section 6, with action items to ensure that going forward, the Company can verify and produce documentation showing its VM programs and processes are consistent with the statements made in the WMPs.

¹⁴⁹ See pages 7 and 8 of Energy Safety Report on 2020 SVM Audit of PacifiCorp.

¹⁵⁰ Item 1.ii on page 5 of PacifiCorp's 2020 SVM Audit Corrective Action Plan dated September 23, 2022, states that PacifiCorp is developing a program tracker. Page 13 states "PacifiCorp plans to update work release documents to explicitly instruct inspectors to conduct Level 1 and if warranted, Level 2 assessments, to identify high risk trees along the distribution lines." Page 11, Table 2, states that the deadline for the update work release is January 1, 2023.

PacifiCorp released an updated work release form on May 5, 2023, according to PacifiCorp's September 11, 2024, response to SED-04 Q2 regarding transmission circuits. "CA_TNT_MGI_WORK RELEASE.pdf" attached to that response states (on page 1) that contractors shall conduct Level 1 visual assessments, and where warranted Level 2, assessments.

¹⁵¹ PacifiCorp's response to SED-01 Q7(d)(iii) states in part that "All work was completed" for initiative 5.3.5.3 Transmission Vegetation Detailed Inspections based on a change to PacifiCorp's spreadsheet with a column showing "inspection miles" and "miles complete" as discussed in response to SED-01 Q7(d)(a). This spreadsheet does not discuss noncompliance with qualitative aspects of this initiative and does not adequately show compliance with the initiative quantitative target as discussed earlier in Section II.A of the SED investigation report.

regarding implementation of the WMP; and 3) propose and implement remedies for such noncompliance.

Pub. Util. Code §8386.1(e) Whether the electrical corporation knew or in the exercise of reasonable care should have known of the circumstances constituting noncompliance.

PacifiCorp knew or in the exercise of reasonable care should have known that it failed to substantially comply with the qualitative and quantitative targets for initiative 5.3.5.3 and initiative 5.3.4.12, which PacifiCorp proposed and explicitly stated in its 2020 WMP.¹⁵² In addition, PacifiCorp acknowledged the need for corrective action regarding Level 1 and Level 2 assessments for high-risk trees and tracking whether corrective work was conducted during the same calendar year as a WMP commitment.¹⁵³ PacifiCorp's later claim that it complied with initiative 5.3.5.3 (which would also result in compliance for initiative 5.3.4.12) reflect a lack of reasonable care rather than any reasonable misunderstanding about the circumstances constituting noncompliance.

Pub. Util. Code §8386.1(f) Whether the electrical corporation had previously engaged in conduct of a similar nature that caused significant property damage or injury.

SED is not aware of any such prior conduct that caused significant property damage. As noted earlier regarding initiative 5.3.2.1 Installation of Weather Stations, PacifiCorp reported to Energy Safety that wildfires ignited from PacifiCorp infrastructure did not cause any fatalities or injuries from 2015 through 2019.

6. Initiative 5.3.5.20 Vegetation Management to Achieve Clearances around Electric Lines and Equipment

Pub. Util. Code §8386.1(a) The nature and severity of any noncompliance with the plan, including whether the noncompliance resulted in harm.

PacifiCorp failed to substantially comply with this initiative by not meeting its target of 996 line-miles as outlined in its 2020 WMP, which left increased risk in the field compared to meeting this target. In addition, as noted above under initiative 5.3.5.2, a fire ignited in Fort James on September 18, 2020, on circuit 5G41 due to contact from

¹⁵² Page 251 of PacifiCorp's 2020 WMP states the 2020 target of completing 345-line miles of detailed inspections of vegetation around transmission electric lines and equipment. Page 220 states "a Level 1 assessment is conducted to identify any trees which may have become high risk trees over the course of the prior year; suspect trees are subjected to a Level 2 assessment, as outlined in ANSI A300 (Part 9)." Page 221 of PacifiCorp's 2020 WMP discussion of this initiative 5.3.5.3 states "vegetation management annually completes correction work based on the inspection results, including the prompt removal of all high risk trees identified during the annual vegetation inspection."

¹⁵³ See page 2, documenting the issue and pages 4-5 summarizing PacifiCorp's corrective action, from Energy Safety's Report on 2020 SVM Audit of PacifiCorp.

vegetation. PacifiCorp did not complete work under initiative 5.3.5.20 until 2021 and PacifiCorp's failure to complete vegetation inspection and management work may have caused or contributed to this ignition. PacifiCorp's noncompliance with this 2020 WMP initiative potentially left fire ignition risks in the field over a large area instead of correcting them.

PacifiCorp's failures to comply with WMP initiatives harms the regulatory structure for reducing wildfire risk through WMP implementation.

Pub. Util. Code §8386.1(b) The extent to which the commission or office has found that the electrical corporation complied with its plans in prior years.

The Commission has not at this time made any finding regarding PacifiCorp's compliance with its 2019 WMP.

Pub. Util. Code §8386.1(c) Whether the electrical corporation self-reported the circumstances constituting noncompliance.

PacifiCorp did not voluntarily self-report noncompliance with this initiative.

Pub. Util. Code §8386.1(d) Whether the electrical corporation implemented corrective actions with respect to the noncompliance.

PacifiCorp's failures regarding corrective action show a high degree of culpability for noncompliance with this initiative. PacifiCorp also failed on several occasions to report noncompliance with this initiative and failed to implement timely effective action to remedy such noncompliance.

First, Energy Safety required that PacifiCorp correct several deficiencies identified during the 2020 WMP approval process, but PacifiCorp failed to correct them. This failure indicates a lack of responsiveness and unwillingness to take steps necessary to successfully implement the WMP initiatives.

Second, PacifiCorp claimed to SED on February 16, 2024, "PacifiCorp mandatorily self-reported the noncompliance in Section C page 6 of the Company's 2020 Annual Report on Compliance."¹⁵⁴ However, in response to an SED request that PacifiCorp substantiate its claim PacifiCorp acknowledged that it did not disclose noncompliance in this

¹⁵⁴ PacifiCorp's claimed on February 16, 2024, in response to DR1 Q8(c), that Section C page 6 of PacifiCorp's WMP 2020 Annual Report on Compliance contains this reporting.

report.¹⁵⁵ Energy Safety also found that PacifiCorp failed to acknowledge noncompliance with initiative 5.3.5.20 in a mandatory QIU report because PacifiCorp stated incorrectly that the annual target was based on spending instead of line-miles completed.¹⁵⁶ PacifiCorp’s failure to comply with reporting requirements represents a missed opportunity to disclose noncompliance and identify effective corrective actions.

Third, PacifiCorp did not propose any corrective action for its failure to complete 3195 line-miles for initiative 5.3.5.20. Energy Safety found PacifiCorp’s proposed corrective actions “insufficient.”¹⁵⁷ PacifiCorp later claimed to SED that all distribution line-miles not completed in 2020 were “rolled over” and completed in 2021.¹⁵⁸ SED requested documentation for this claim, and PacifiCorp showed only 28 additional line-miles completed in 2021 as shown in Table 5 below, a small fraction of the uncompleted work.

Table 5: PacifiCorp’s table stating 2020 WMP Initiative 5.3.5.20 line-miles completed in 2021¹⁵⁹

Circuit	Geographic Location	Total Circuit Miles	Miles Included in Initiative 5.3.5.20	Miles Completed in 2020 (Corrective Action)	Miles Rolled Over and Completed in 2021	Work Included in 2021 WMP (Y/N)
5G41	Etna/Fort Jones Area, CA	88.17	88.17	65	23.17	Yes, inspection was completed in 2020 and remaining correction work rolled over into 2021.
5G45	South of Weed, CA	8.27	8.27	5	3.27	Yes, inspection was completed in 2020 and remaining correction work rolled over into 2021.
5R147	Crescent City, CA	13.98	13.98	12.42	1.56	Yes, remaining inspection miles were included in 2021 WMP inspection target.

¹⁵⁵ See PacifiCorp’s May 15, 2024, response to SED-02 Q14(a). PacifiCorp stated that “PacifiCorp’s 2020 Annual Report on Compliance was incorrectly referenced in the Company’s response to CPUC SED Data Request 1.2. The correct reference should have been to the Company’s 2020 Substantial Vegetation Management (SVM) Audit Corrective Action Plan dated September 23, 2022, provided as Attachment CPUC SED 2.14” pages 20-21. However, this Corrective Action Plan did not identify noncompliance but rather responded to Energy Safety’s finding of noncompliance.

¹⁵⁶ “PacifiCorp did not report any targeted or completed miles under initiative 5.3.5.20 but instead reported a financial target for the initiative.” See page 38 of Energy Safety’s Substantial Vegetation Management Audit of PacifiCorp and cell M25 of the PacifiCorp 2020 Q4 QIU report (see “Initiatives” tab and “Read Me First” tab for instructions).

¹⁵⁷ Page 9 of Energy Safety’s Report on 2020 SVM Audit of PacifiCorp. See item 4ii.

¹⁵⁸ PacifiCorp’s response to SED-01 Q8 (d) states that “i. Miles that were not completed as part of distribution routine maintenance were “rolled over” and completed in 2021” and “ii. Corrective actions in future years only applied to distribution. All committed transmission miles were completed in 2021. “

¹⁵⁹ PacifiCorp response to SED-02 Q12. The miles completed in 2021 total 28 miles.

PacifiCorp also reported that it would not take any corrective action to address increased removal of high-risk trees in areas of high-density vegetation, an aspect of 2020 WMP initiative 5.3.5.20 that PacifiCorp did not implement.¹⁶⁰

Thus, PacifiCorp failed to propose or implement effective corrective action for noncompliance with this 2020 WMP initiative.

Pub. Util. Code §8386.1(e) Whether the electrical corporation knew or in the exercise of reasonable care should have known of the circumstances constituting noncompliance.

PacifiCorp knew or in the exercise of reasonable care should have known that it failed to substantially comply with the requirements of initiative 5.3.5.20, which PacifiCorp explicitly stated in PacifiCorp’s 2020 WMP. Energy Safety found that PacifiCorp documents show 2,201 miles completed, a shortfall of 996 line-miles.¹⁶¹ PacifiCorp stated in part that it missed the WMP initiative 5.3.5.20 quantitative target because its 2020 WMP targets were estimates,¹⁶² rather than requirements. As noted earlier, Energy Safety found that PacifiCorp’s claim is not consistent with the requirement outlined in Public Utilities Code section 8386(c)(9), that WMPs “shall include ... plans for vegetation management.”¹⁶³

Pub. Util. Code §8386.1(f) Whether the electrical corporation had previously engaged in conduct of a similar nature that caused significant property damage or injury.

SED is not aware of any such prior conduct that caused significant property damage. As noted earlier regarding initiative 5.3.2.1 Installation of Weather Stations, PacifiCorp reported to Energy Safety that wildfires ignited from PacifiCorp infrastructure did not cause any fatalities or injuries from 2015 through 2019.

7. Initiative 5.3.5.21 Radial Pole Clearing

Pub. Util. Code §8386.1(a) The nature and severity of any noncompliance with the plan, including whether the noncompliance resulted in harm.

PacifiCorp failed to substantially comply with initiative 5.3.5.21. PacifiCorp failed to meet the target for treating poles under this initiative and the IE sampling of “treated” sites found that PacifiCorp failed to complete work at 41% of such sites. PacifiCorp

¹⁶⁰ Page 21 of the PacifiCorp 2020 SVM Audit Corrective Action Plan dated September 23, 2022, states “PacifiCorp does not plan to create this plan“ for implementing a program for increased removal of high-risk trees in areas with high density vegetation in response to finding 4i.

¹⁶¹ See page 38 of Energy Safety’s 2020 SVM Audit of PacifiCorp.

¹⁶² See page PacifiCorp 2020 SVM Audit Corrective Action Plan, page 9.

¹⁶³ See pages 7 and 8 of Energy Safety’s Report on 2020 SVM Audit of PacifiCorp October 2022.

acknowledged that “[o]ne fire occurred within a LRA at a facility where PacifiCorp does not have record of pole clearing taking place in 2020.”¹⁶⁴ PacifiCorp’s failure to complete work under this initiative left combustible fuel at a large number of such poles, increasing wildfire risks.

PacifiCorp did not provide complete data requested by SED regarding the budget allocated for the poles that were not cleared in 2020.¹⁶⁵ SED estimates that a “pro-rata” budget for uncompleted work would equal \$387,733 based on the ratio of the poles not cleared in 2020 (604 poles) compared to the budget total initiative target (2,768 poles).¹⁶⁶ This estimate does not include work at additional poles that PacifiCorp claimed were completed but the IE found were not (SED does not have data on the amount spent to partially complete work at poles).

PacifiCorp’s failures to substantially comply with its 2020 WMP initiatives harms the regulatory structure for reducing wildfire risk through WMP implementation. In addition, PacifiCorp’s inclusion of work completed prior to and after the 2020 compliance period, without explaining that the totals shown for 2020 were not exclusively for work completed in 2020, is an example of inaccurate and misleading reporting.

Pub. Util. Code §8386.1(b) The extent to which the commission or office has found that the electrical corporation complied with its plans in prior years.

The Commission has not at this time made any finding regarding PacifiCorp’s compliance with its 2019 WMP. PacifiCorp reported expanding the scope of its radial pole clearing program in 2019 to include 2,768 LRA subject equipment poles located in the HFTD and completing 988 such poles.¹⁶⁷

¹⁶⁴ PacifiCorp Response to SED-01 Q5(b). The fire occurred June 27, 2021, in Yreka (latitude 41.7325 and longitude -122.621) on circuit 5G149.

¹⁶⁵ PacifiCorp instead claimed that it complied with this 2020 WMP initiative, but PacifiCorp based this claim on a spreadsheet showing the total number of poles cleared in 2020 and 2021 as noted earlier. See PacifiCorp’s response to SED-01 Q5(a).

¹⁶⁶ PacifiCorp’s 2020 WMP, stated a budget of \$1,777,080 (based on 15,060 line-miles times \$118 per line-mile) under the radial pole clearing initiative, see page 256. Alternatively, using the number of poles completed (626) in 2020 in the spreadsheet provided by PacifiCorp in response to SED-01 Q5, the amount budgeted for uncompleted work is \$1,375,180.

¹⁶⁷ Page 4 of the PacifiCorp 2019 Wildfire Mitigation Plan Compliance Report, May 6, 2020.

Pub. Util. Code §8386.1(c) Whether the electrical corporation self-reported the circumstances constituting noncompliance.

PacifiCorp did not voluntarily self-report noncompliance with initiative 5.3.5.21.¹⁶⁸

Pub. Util. Code §8386.1(d) Whether the electrical corporation implemented corrective actions with respect to the noncompliance.

PacifiCorp failed to identify noncompliance with initiative 5.3.5.21 in reporting to the Commission.

- PacifiCorp claimed on February 16, 2024, that “PacifiCorp mandatorily self-reported the noncompliance with the 2020 Wildfire Mitigation Plan (WMP) Initiative 5.3.5.21 in Section C, page 6 of the Company’s 2020 Annual Report on Compliance.”¹⁶⁹ This claim was false. PacifiCorp did not mention the initiative in its 2020 Annual Report on Compliance, missing a mandatory reporting obligation and an opportunity to propose corrective action(s).
- PacifiCorp also failed to acknowledge noncompliance with initiative 5.3.5.21 in its April 1, 2021, QIU. PacifiCorp stated that the target for “Expanded Pole Clearing” was 2164 poles, the number it claimed to complete in 2020, rather than the correct 2020 WMP target of 2,768 poles.

Prompt reporting of noncompliance and identification of corrective action(s) often helps a utility correct noncompliance and prevent re-occurrence.¹⁷⁰

PacifiCorp also failed to propose and implement timely corrective action:

- PacifiCorp did not include any information in the 2020 WMP Q4 QIU row 21 column “AB” field for corrective action, missing another opportunity to propose corrective actions.
- Energy Safety found that PacifiCorp did not "a) provide an explanation of why it failed to clear 604 LRA poles in 2020, and b) detail the steps it

¹⁶⁸ See PacifiCorp’s response to SED-01 Q5(c), which does not identify any voluntary self-reporting in response to SED’s request for any such information.

¹⁶⁹ See PacifiCorp’s response to SED-01 Q5(c).

¹⁷⁰ See Resolution M-4846, Enforcement Policy, pages 17 and 18.

is taking to ensure the vegetation management operations are consistent with statements made in the WMP."¹⁷¹

- PacifiCorp documentation states that PacifiCorp completed corrective action to review estimates for the rate of pole clearing by December 30, 2023.¹⁷² This date is not timely for the 2020 compliance period.

Pub. Util. Code §8386.1(e) Whether the electrical corporation knew or in the exercise of reasonable care should have known of the circumstances constituting noncompliance.

PacifiCorp knew or in the exercise of reasonable care should have known that it failed to substantially comply with the target for initiative 5.3.5.21 as adopted in PacifiCorp's 2020 WMP. This failure of accurate and responsive reporting resulted in a lack of transparency and missed opportunities for mitigating wildfire risk through timely corrective action compliance.

Pub. Util. Code §8386.1(f) Whether the electrical corporation had previously engaged in conduct of a similar nature that caused significant property damage or injury.

SED is not aware of any such prior conduct that caused significant property damage. As noted earlier regarding initiative 5.3.2.1 Installation of Weather Stations, PacifiCorp reported to Energy Safety that wildfires ignited from PacifiCorp infrastructure did not cause any fatalities or injuries from 2015 through 2019.

C. PacifiCorp Failed to File a Complete and Accurate “Quarterly Initiative Update” in Violation of Pub. Util. Code §8389(e)(7).

Public Utilities Code section 8389(e)(7) requires that electrical corporations file quarterly Tier 1 (i.e. “information-only”) Advice Letters with the Commission with details of the utilities’ implementation of their approved WMPs.¹⁷³

Additional guidelines state that the Advice Letter filing “shall include: 1) annual targets and projected quarterly progress for all initiatives (both quantitative and qualitative) laid out in the [electric utility’s] Wildfire Mitigation Plan, with each quarterly submission

¹⁷¹ See Energy Safety’s PacifiCorp’s 2020 SVM Audit pages 9-10. PacifiCorp’s Corrective Action Plan in response to the 2020 SVM Audit stated incorrectly that PacifiCorp could show compliance by counting activities during part of 2019 and part of 2020 rather than activities during the 2020 calendar year, the time period for completing activities contained in the 2020 WMP.

¹⁷² PacifiCorp SVM Audit Tracker. See “ID” (column “B”) number 10.

¹⁷³ Pub. Util. Code § 8389(e)(7) states in part “The electrical corporation shall file a notification of implementation of its wildfire mitigation plan with the office [Energy Safety] and an information-only submittal with the commission on a quarterly basis that details the implementation of both its approved wildfire mitigation plan...”.

including status updates for each initiative for the prior calendar quarter.”¹⁷⁴ The update must also include information such as “Status (Completed, In Progress, Planned, Delayed, Cancelled)” and “Corrective Actions for Behind Schedule / Off Track Initiatives.”¹⁷⁵

PacifiCorp’s 2020 4th QIU Advice Letter¹⁷⁶ failed to meet the requirements outlined in Section 8389(e)(7) for two reasons. First, PacifiCorp’s Q4 2020 QIU Advice Letter omitted extensive amounts of information:

- Energy Safety found that PacifiCorp’s Q4 2020 QIU included only 26 of the 86 initiatives in PacifiCorp’s 2020 WMP.¹⁷⁷
- Even where PacifiCorp included an initiative, PacifiCorp often failed to provide information regarding “Corrective Actions for Behind Schedule / Off Track Initiatives” if PacifiCorp did not meet the target(s). For example, PacifiCorp failed to report this information for the following initiatives (see column AB of PacifiCorp’s Q4 2020 QIU): 5.3.5.2 Detailed Distribution Line Vegetation Inspections; 5.3.5.3 Detailed Distribution Line Vegetation Inspections; 5.3.5.11 Patrol Inspections of Vegetation Around Distribution Electric Lines and Equipment; 5.3.5.12 Patrol Inspections of Vegetation Around Transmission Electric Lines and Equipment; 5.3.5.20 Vegetation Cycle Clearance.
- In three instances PacifiCorp proposed a corrective action that was not fully adequate.¹⁷⁸

Second, PacifiCorp’s Q4 2020 QIU Advice Letter provided false information regarding the “Annual Quantitative Target” for many 2020 WMP initiatives.¹⁷⁹ PacifiCorp listed its actual level of activity instead of the approved 2020 WMP initiative target in 13 instances compared to only 4 four instances where

¹⁷⁴ See page 5 of the Wildfire Safety Division - Compliance Operational Protocols.

¹⁷⁵ See page 6 of the Wildfire Safety Division Compliance Operational Protocols. These protocols were issued prior to PacifiCorp’s 2020 WMP 4th QIU.

¹⁷⁶ Dated April 1, 2021, see “READ ME FIRST” tab.

¹⁷⁷ See page 25 of Energy Safety ARC for PacifiCorp’s 2020 WMP.

¹⁷⁸ See Section III.B discussion of whether the electrical corporation implemented corrective actions regarding covered conductors, weather stations, and pole replacements.

¹⁷⁹ See page 54 of Energy Safety ARC for PacifiCorp’s 2020 WMP. For instance, “PacifiCorp reported targets in its Q4 2020 QIU that were substantively different than those reported in its 2020 WMP” and “PacifiCorp conflated and indiscriminately changed targets and units of numerous initiatives... in its Q4 2020 QIU.”

PacifiCorp correctly stated the approved 2020 WMP initiative target.¹⁸⁰ For instance:

- PacifiCorp stated that the target for initiative 5.3.5.3 Transmission Detailed Inspections of Vegetation was 185 line-miles,¹⁸¹ but the actual approved WMP initiative target was 345 line-miles.
- PacifiCorp stated that the target for initiative 5.3.5.5. Expanded Pole Clearing was 2,164 poles,¹⁸² but the actual approved WMP Initiative target was 2,768 poles.
- PacifiCorp substituted different metrics and targets for the approved WMP targets for the following initiatives: 5.3.4.1 Distribution Detailed Inspections; 5.3.4.2 Transmission Detailed Inspection; 5.3.4.11 Distribution Patrol Inspections; and 5.3.4.12 Transmission Patrol Inspections.¹⁸³
- PacifiCorp failed to state that the annual target was 3,195 line-miles for initiative 5.3.5.20 Vegetation management to achieve clearances around electric lines and equipment.¹⁸⁴
- Instead of listing the actual approved 2020 WMP quantitative initiative targets, PacifiCorp listed dollar values as the targets for initiative 5.3.2.5 Fire Risk Monitoring and initiative 5.3.7.1 Centralized repository regarding data.¹⁸⁵

¹⁸⁰ See PacifiCorp Q4 2020 QIU. PacifiCorp must report information on progress towards WMP initiative approved targets rather than PacifiCorp's alternative targets and/or units. The instructions for 4th Quarter 2020 QIU update file state in part "Update progress on WMP Initiatives" ("Read Me First" tab cell C5).

The relevant columns are column L, "QuantTargetUnits" and column M "AnnualQuantTarget" on the "Initiatives" tab of the 4th Quarter 2020 QIU update file.

The "Read Me First" tab of the 4th Quarter 2020 QIU update file states instructions for reporting for Column "L" on the "Initiatives" tab: "If initiative has a quantitative target, then report the units for the target. For example, if the initiative is installing covered conductors, then the unit would be "# of covered conductors installed."

The "Read Me First" tab of the 4th Quarter 2020 QIU update file states instructions for reporting for Column "L" on the "Initiatives" tab: "Quantitative target for year."

¹⁸¹ See cell M20 of the "Initiatives" tab.

¹⁸² See cell M21 of the "Initiatives" tab.

¹⁸³ See cells L11 and M11 of the "Initiatives" tab for initiative 5.3.4.1; cells L12 and M12 for initiative 5.3.4.2 Transmission Detailed Inspections; cells L15 and M15 for initiative 5.3.4.11; cells L16 and M16 for initiative 5.3.4.12.

¹⁸⁴ PacifiCorp instead stated the WMP initiative target was \$6,699,302, see cell L25 and M25 of the "Initiatives" tab.

¹⁸⁵ See cell M5 of the "Initiatives" tab for initiative 5.3.2.5 and cell M26 for initiative 5.3.7.1.

Public Utilities Code section 8389(e)(7) and the implementing guidance for this reporting required that PacifiCorp provide transparency regarding actual progress compared to its approved WMP and propose corrective actions where needed. Instead, PacifiCorp's Q4 2020 QIU Advice Letter obscured its compliance status by failing to report its progress on the majority of initiatives¹⁸⁶ and, when it did include an initiative, often failing to state the target included in the approved 2020 WMP.¹⁸⁷ PacifiCorp often failed to propose corrective actions needed to correct noncompliance. This lack of transparency and pattern of reporting failures obscured PacifiCorp's noncompliance and impeded the Commission's investigation pursuant to its statutory oversight responsibilities.

D. PacifiCorp Failed to Comply with Commission Rule 1.1

Rule 1.1 requires that *“Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.”*

PacifiCorp violated Rule 1.1 because, as discussed further below:

- PacifiCorp repeatedly made false statements of fact to SED regarding the contents of the March 31, 2021, PacifiCorp 2020 WMP Annual Compliance Report.
- PacifiCorp made other false statements of fact discussed previously in this report.

PacifiCorp's false statements of fact hindered the regulatory process. SED staff relied on PacifiCorp's statements to conduct its investigation and PacifiCorp's inaccurate and false statements of fact impacted SED's investigation and findings regarding PacifiCorp's failure to substantially comply with its WMP. These actions hindered the regulatory process.

PacifiCorp False Statements of Fact in Responses to SED Data Requests

The instructions for each SED data request to PacifiCorp contain an explicit reminder to follow Rule 1.1.¹⁸⁸ However, PacifiCorp repeatedly made false statements of fact in response to SED data requests. For example, Table 6 below shows six instances where

¹⁸⁶ See page 23 of Energy Safety ARC for PacifiCorp's 2020 WMP. PacifiCorp reported on only 30% of initiatives.

¹⁸⁷ See page 24 of Energy Safety ARC for PacifiCorp's 2020 WMP.

¹⁸⁸ See for example SED-01 Instructions section “a” and SED-02 Instructions section “a”.

PacifiCorp falsely claimed to SED that it disclosed noncompliance with a WMP initiative in PacifiCorp's 2020 Annual Compliance Report. PacifiCorp failed to provide accurate data request responses to SED staff.

Table 6: PacifiCorp's False Claims Regarding 2020 Annual Compliance Report

Initiative	PacifiCorp Claim Regarding Annual Report on Compliance ¹⁸⁹	SED evaluation of PacifiCorp's claim ¹⁹⁰
Initiative 5.3.3.6 Targeted Pole Replacements	"PacifiCorp self-reported the non-compliance in section C page 6 of the 2020 Annual Report on Compliance"	These claims are false. PacifiCorp's 2020 Annual Report on Compliance fails to mention noncompliance with these initiatives.
Initiative 5.3.2.1 Installation of Weather Stations	"PacifiCorp self-reported the non-compliance in section C page 6 of the Company's 2020 Annual Report on Compliance."	
Initiative 5.3.5.2 Distribution Vegetation Detailed Inspection	"PacifiCorp mandatorily self-reported any non-compliance in section C page 6 of the Company's 2020 Annual Report on Compliance."	
Initiative 5.3.5.3 Transmission Vegetation Detailed Inspection	"PacifiCorp mandatorily self-reported the non-compliance in section C page 6 of the Company's 2020 Annual Report on Compliance"	
Initiative 5.3.5.20 Vegetation Management to Achieve Clearances around Electric Lines and Equipment	"PacifiCorp mandatorily self-reported the non-compliance in section C page 6 of the Company's 2020 Annual Report on Compliance."	
Initiative 5.3.5.21 Radial Pole Clearing	"PacifiCorp mandatorily self-reported the non-compliance with the 2020 Wildfire Mitigation Plan (WMP) Initiative 5.3.5.21 in section C page 6 of the Company's 2020 Annual Report on Compliance."	

In addition, as noted in the prior section of this report, a PacifiCorp 4th quarter 2020 QIU includes numerous false statements of fact regarding 2020 WMP initiative targets. In addition, PacifiCorp made false statements that PacifiCorp's noncompliance with WMP initiatives did not potentially cause or contribute to any ignition(s). However, PacifiCorp

¹⁸⁹ For references for PacifiCorp's claims, see Section III (B discussion of whether PacifiCorp took corrective action for each initiative.

¹⁹⁰ For analysis of PacifiCorp's claims, see Section III (B discussion of whether PacifiCorp took corrective action for each initiative.

acknowledged at least one such possible ignition and SED found evidence of at least one additional example.¹⁹¹

SED finds that PacifiCorp failed to make a reasonable effort to timely and accurately inform SED of errors and incompleteness in its 2020 WMP reporting and in reporting noncompliance with its stated initiatives.

E. PacifiCorp Failed to File a Complete Annual Report on Compliance in Violation of Pub. Util. Code § 8386.3(c)(1)

Public Utilities Code section 8386.3(c)(1) states, “[t]hree months after the end of an electrical corporation's initial compliance period, as established by the Wildfire Safety Division pursuant to subdivision (b) of Section 8386, and annually thereafter, each electrical corporation shall file with the division a report addressing the electrical corporation's compliance with the plan during the prior calendar year.” WSD established Compliance Operational Protocols on February 16, 2021, with additional guidance for such Annual Reports on Compliance, including the report due March 31, 2021, for 2020 WMPs. For instance, the reports must include “An assessment of whether the EC [electric utility] met the risk reduction intent by implementing all of their approved WMP initiatives. i.e. the degrees to which initiative activities have reduced ignition probabilities.”¹⁹²

PacifiCorp largely omitted two types of information from its Annual Report on Compliance for its 2020 WMP. First, the report omitted discussion of almost all noncompliance with WMP initiatives. Table 6 above shows many examples. This failure violated Section 8386.3(c)(1) and the Compliance Operational Protocols.

¹⁹¹ See discussion of the November 7, 2020, ignition in the section III.B.2 discussion of initiative 5.3.3.3 Covered Conductor Installation. See also discussion of the September 18, 2020, ignition in the section III.B.4 discussion of initiative 5.3.5.2 Distribution Vegetation Detailed Inspection and initiative 5.3.4.11 Distribution Patrol Inspections; and section III.B.6 discussion of initiative 5.3.5.20 Vegetation Management to Achieve Clearances around Electric Lines and Equipment.

¹⁹² The Commission implementation guidelines require that the electric utility include “[a]n assessment of whether the [electric utility] met the risk reduction intent by implementing all of their approved WMP initiatives, i.e., the degree to which initiative activities have reduced ignition probabilities.” See page 10 of the Wildfire Safety Division Compliance Operational Protocols issued in 2021.

Secondly, PacifiCorp also failed to address whether the initiatives that it did implement reduced ignition risk; and the effect of noncompliance on risk reduction efforts. For instance, PacifiCorp failed to disclose that noncompliance: 1) led to higher system-wide risk than would have achieved through WMP compliance; and 2) may have caused or contributed to the ignition of several fires in 2020.¹⁹³

Therefore, PacifiCorp failed to meet the requirements outlined in Public Utilities Code section 8386.3(c)(1) and relevant Commission guidelines. This failure is part of a pattern of reporting failures that obscured noncompliance and hindered and delayed SED's investigation as part of the Commission's statutory oversight responsibilities.

F. PacifiCorp Violated Public Utilities Code Section 451

PacifiCorp violated Public Utilities Code section 451 due to a pattern of noncompliance with specific WMP initiative targets as detailed in this report. PacifiCorp failed to demonstrate a lack of commitment to safe operations of its "instrumentalities, equipment, and facilities" as required by Section 451 by failing to meet its commitments to address factors it had identified as posing wildfire risk to its system. PacifiCorp also routinely failed to meet mandatory requirements to disclose noncompliance in quarterly and annual reports and propose effective corrective action to remediate areas of concern. PacifiCorp also made conflicting and poorly documented statements to SED and Energy Safety and the IE, which demonstrate PacifiCorp's inability to reliably track and document inspections and take corrective actions for risk mitigation initiatives, including, but not limited to, vegetation management and grid hardening. This broad failure affected WMP initiatives related to pole clearing, inspection of PacifiCorp facilities for potential vegetation issues, completion of Level 1 and Level 2 inspections, completion of vegetation corrective work, and covered conductor installation. SED finds that PacifiCorp's noncompliance may have caused or contributed to several fires. This noncompliance also left many other ignition risks uncorrected such as:

- Leaving potentially hazardous vegetation that could strike lines.
- Leaving flammable vegetation at the base of poles.
- Failure to install covered conductors, which if installed can reduce risks from a variety of potential ignition risks ranging from vegetation to bird or animal or object contact and others.

¹⁹³ See pages 3-5 of PacifiCorp's 2020 Wildfire Mitigation Plan Annual Report on Compliance. PacifiCorp discussed general risk modeling capabilities and not the effect of PacifiCorp's actions on risk: "For the 2020 compliance period, PacifiCorp's risk modeling capability was still in development and therefore not fully mature and capable of quantifying proposed or planned risk reduction. The previous model focused on general ignition probability drivers to reduce risk, but did not include the capability to discretely model location-specific wildfire risk."

PacifiCorp's failures to address numerous deficiencies in its WMP further contributes to noncompliance with Section 451. WSD found that PacifiCorp failed to correct ten identified deficiencies when the Commission originally approved PacifiCorp's WMP.¹⁹⁴ WSD determined that PacifiCorp was thus out of compliance with Public Utilities Code section 8386, Commission WMP guidance (Commission Resolution WSD-002), and with the Commission's Resolution approving PacifiCorp's WMP (Resolution WSD-008). Some of these deficiencies (such as data issues and lack of resources) likely contributed to noncompliance with WMP initiative(s) while others degraded PacifiCorp's ability to effectively and efficiently achieve risk reduction (such as lack of risk modeling to inform decision-making; and lack of risk spend efficiency information). PacifiCorp's conduct demonstrates a violation of Public Utilities Code section 451.

IV. CONCLUSION

PacifiCorp failed to substantially comply with its approved 2020 WMP because it failed to complete the 2020 WMP initiatives as detailed in this report. PacifiCorp failed to complete work ranging from upgrading electrical facilities to clearing vegetation at poles and distribution and transmission system vegetation management. As a result, PacifiCorp failed to reduce wildfire risk to the extent required by PacifiCorp's 2020 WMP. SED identified ignitions that may have been avoided if PacifiCorp had met its 2020 WMP obligations.

In addition, PacifiCorp routinely failed to propose and implement corrective action regarding 2020 WMP noncompliance. While PacifiCorp reported taking some corrective actions, in most cases, PacifiCorp failed to identify the shortcomings that led to noncompliance and to show that it corrected them.

PacifiCorp's reporting regarding 2020 WMP vegetation management initiatives was often incomplete and/or inaccurate. For example, PacifiCorp failed to file a complete Annual Report on Compliance in violation of Public Utilities Code section 8386.3(c)(1). Next, PacifiCorp provided false statements to Commission staff in violation of Rule 1.1. Finally, PacifiCorp failed to fully comply with quarterly reporting requirements pursuant to Public Utilities Code section 8389(e)(7). These failures obscured PacifiCorp's

¹⁹⁴ WSD's December 30, 2020, Notice of Non-Compliance stated that PacifiCorp's response regarding Lack of risk modeling to inform decision-making, a "Class A Condition" was "insufficient."

WSD's January 8, 2021, Notice of Non-Compliance stated that PacifiCorp's responses regarding the following Class B Conditions were "Insufficient": 1. Lack of risk spend efficiency (RSE) information; 3. Lack of discussion on PSPS impacts; 8. Data issues – general; 9. Lack of detail on plans to address personnel shortages; 10. Lack of detail on long-term planning; 11. PacifiCorp's WMP does not report adequate planning for climate change; 13. PacifiCorp did not explain how it would track effectiveness of its covered conductor initiative; 14. PacifiCorp's WMP lacks a QA/QC program for inspections; 15. PacifiCorp does not have a specific data governance wildfire mitigation program. (The Notice was dated January 21, 2020, which was apparently a typographical error per Energy Safety ARC pages 47-48).

compliance status and delayed and hindered SED's investigation as part of the Commission's statutory responsibilities. PacifiCorp's failures also show an unwillingness or inability to provide accurate information to the Commission, Commission staff, and other stakeholders.

V. APPENDIX - LIST OF ACRONYMS

ARC - Annual Report on Compliance

ANSI – American National Standards Institute

HFTD – High Fire Threat District

LRA – Local Responsibility Area (regarding clearing poles)

QIU – Quarterly Initiative Update

SED –Safety and Enforcement Division

SOP - Standard Operating Procedure

SVM – Significant Vegetation Management

WMP – Wildfire Mitigation Plan

WSD – Wildfire Safety Division

Appendix C

(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

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.¹

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

¹ 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).

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,² 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 inculpatory 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.³ 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

² 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*.

³ 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.⁴

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.

⁴ 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.⁵

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.⁶ 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.”⁷

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.

⁵ 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).

⁶ All code citations are to the California Public Utilities Code unless otherwise stated.

⁷ 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.”⁸

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.² 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

⁸ D.11-06-017 at 16.

² 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 explosion¹⁰ 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.

¹⁰ 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

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, 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"¹¹ 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

¹¹ 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 forgo 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 staff¹ to enforcement actions, to make enforcement a high priority and to promote the Commission's enforcement culture.

¹ 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:²

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.

² 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;³
 - 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 days⁴ 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

³ 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.

⁴ 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.