

**S273340**

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

ANTHONY GANTNER,  
*Appellant,*

v.

PG&E CORPORATION;  
PACIFIC GAS & ELECTRIC  
COMPANY,

*Appellees.*

No. 21-15571

D.C. No.  
4:20-cv-02584-HSG

ORDER CERTIFYING  
QUESTIONS TO THE  
SUPREME COURT OF  
CALIFORNIA

Filed February 28, 2022

Before: Danny J. Boggs,\* John B. Owens, and  
Michelle T. Friedland, Circuit Judges.

Order

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\* The Honorable Danny J. Boggs, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

**SUMMARY\*\***

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**Certification of Questions to Supreme Court of California / Bankruptcy**

The panel withdrew the case from submission and certified to the Supreme Court of California the following two questions of state law:

(1) Does California Public Utilities Code § 1759 preempt a plaintiff's claim of negligence brought against a utility if the alleged negligent acts were not approved by the California Public Utilities Commission, but those acts foreseeably resulted in the utility having to take subsequent action (here, a Public Safety Power Shutoff), pursuant to CPUC guidelines, and that subsequent action caused the plaintiff's alleged injury?

(2) Does PG&E's Electric Rule Number 14 shield PG&E from liability for an interruption in its services that PG&E determines is necessary for the safety of the public at large, even if the need for that interruption arises from PG&E's own negligence?

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\*\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

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**ORDER**

We respectfully ask the Supreme Court of California to exercise its discretion to decide the certified questions set forth in section II of this order.

**I. Administrative Information**

We provide the following information in accordance with California Rule of Court 8.548(b)(1). The caption of this case is:

No. 21-15571

ANTHONY GANTNER, Appellant,

v.

PG&E CORPORATION; PACIFIC GAS &  
ELECTRIC COMPANY, Appellees.

The names and addresses of counsel for the parties are:

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We designate Anthony Gantner as the petitioner if our request for certification is granted. He is the appellant before our court.

## **II. Certified Questions**

We certify to the Supreme Court of California the following two questions of state law:

(1) Does California Public Utilities Code section 1759 preempt a plaintiff's claim of negligence brought against a utility if the alleged negligent acts were not approved by the California Public Utilities Commission ("CPUC"), but those acts foreseeably resulted in the utility having to take subsequent action (here, a Public Safety Power Shutoff), pursuant to CPUC guidelines, and that subsequent action caused the plaintiff's alleged injury?

(2) Does PG&E's Electric Rule Number 14 shield PG&E from liability for an interruption in its services that PG&E determines is necessary for the safety of the public at large, even if the need for that interruption arises from PG&E's own negligence?



We certify these questions pursuant to California Rule of Court 8.548. The answers to these questions will determine the outcome of the appeal currently pending in our court. We will accept and follow the decision of the California Supreme Court on these questions. Our phrasing of the questions should not restrict the California Supreme Court's consideration of the issues involved.

### **III. Statement of Facts**

Anthony Gantner ("Plaintiff") is a resident of St. Helena, California, and a PG&E customer. Plaintiff filed a Class Action Complaint in December 2019 in the United States Bankruptcy Court for the Northern District of California, asserting a claim under California Public Utilities Code section 2106 in an adversary proceeding in PG&E's Chapter 11 proceedings. Plaintiff alleges negligence on the part of PG&E, claiming that PG&E had a duty to maintain its grid in a safe condition but failed to do so and that "PG&E's safety record is an abomination." Specifically, Plaintiff alleges, among other things, that "PG&E has 113,000 miles of conductors, and over 60% of those conductors are and were highly susceptible to failure"; that "PG&E repeatedly delayed upgrading its oldest transmission lines"; and that, "[i]n an investigation covering 1994 to 1998, CPUC staff accused PG&E of more than 500,000 counts of violating state laws requiring utilities to keep trees pruned a safe distance from overhead electric lines."

Plaintiff further alleges that, because of PG&E's negligence in maintaining its electrical equipment, PG&E was forced to implement Public Safety Power Shutoffs ("PSPSs") on five occasions in the autumn of 2019 to decrease the chance that its equipment would cause wildfires. Since 2019, public electric utilities have been required to have a PSPS protocol in place. *See* Cal. Pub.

Util. Code § 8386(c)(6). CPUC has adopted the policies that a utility “has the burden of demonstrating that its decision to shut off power is necessary to protect public safety,” Cal. Pub. Utils. Comm’n, Resolution ESRB-8, at 1, 4 (2018), and that a utility “must deploy de-energization as a measure of last resort and must justify why de-energization was deployed over other possible measures or actions,” Cal. Pub. Utils. Comm’n, Decision 19-05-042 app. A at A1 (2019).

As a result of the 2019 PSPSs, Plaintiff alleges that he and others were without power for “many days, in some cases up to 17 days total and upwards of 10 days in a row.” Those affected by the PSPSs allegedly suffered “loss of habitability of their dwellings, loss of food items in their refrigerators, expenses for alternative means of lighting and power,” and other damages. Plaintiff seeks to certify a class that includes “[a]ll California residents and business owners” who had their power shut off by PG&E during the 2019 PSPSs or any subsequent PSPS during this litigation. Plaintiff requests \$2.5 billion in damages for the class.

PG&E moved in bankruptcy court to dismiss the Complaint. PG&E argued that the court lacked subject matter jurisdiction to hear the claim because it was preempted by California Public Utilities Code section 1759. PG&E argued, in the alternative, that the Complaint should be dismissed because PG&E’s Electric Rule Number 14 shields PG&E from liability for an interruption in service that PG&E believes is necessary for public safety.<sup>1</sup> CPUC filed an amicus brief in the bankruptcy court, contending that “litigation and adjudication of Plaintiff’s claim . . . would

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<sup>1</sup> PG&E also argued that the Complaint should be dismissed because it failed to adequately plead that PG&E’s alleged negligence caused Plaintiff’s damages.

hinder and interfere with enforcement of the Commission’s guidelines concerning public safety power shutoffs.” The bankruptcy court issued a ruling in March 2020 dismissing the Complaint without leave to amend, holding that Plaintiff’s claim was preempted by section 1759, and not addressing PG&E’s Rule 14 argument.<sup>2</sup>

In April 2020, Plaintiff appealed the bankruptcy court’s dismissal of his Complaint to the United States District Court for the Northern District of California. In March 2021, the district court affirmed dismissal, ruling only on preemption grounds, and denying Plaintiff leave to amend.

Plaintiff filed a timely notice of appeal of the district court’s decision. Alice Stebbins, the former Executive Director of CPUC, filed an amicus brief in support of Plaintiff, arguing that imposing liability on PG&E under Plaintiff’s theory would not be inconsistent with CPUC’s policies or its “regulatory reach.” CPUC filed an amicus brief, which nominally did not support either party but, like the brief it had filed in the Bankruptcy Court, took the position that section 1759 preempted Plaintiff’s claim. We heard oral argument on January 12, 2022.

#### **IV. Explanation of Certification Request**

No controlling California precedent has answered the certified question whether California Public Utilities Code section 1759 preempts a negligence claim alleging that a utility violated state-law duties and consequently needed to take an action, with the permission of CPUC, that caused the

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<sup>2</sup> The bankruptcy court also concluded that Plaintiff’s claim failed because PG&E’s alleged negligence would not have proximately caused Plaintiff’s damages.

plaintiff to suffer damages. Similarly, no controlling California precedent has interpreted Rule 14 or has explained how a court should apply a utility's tariff rule when the text is susceptible to two reasonable interpretations. These questions are dispositive in this case and have significant public policy implications for California residents and utilities.

A.

This case presents a novel question about the scope of preemption under California Public Utilities Code section 1759. California law provides a private right of action against any public utility that acts unlawfully or that "omits to do any . . . thing required to be done." Cal. Pub. Util. Code § 2106. But section 1759 limits the jurisdiction of courts to hear any suit that could interfere with CPUC "in the performance of its official duties." *Id.* § 1759. To the extent there is conflict between sections 1759 and 2106, the California Supreme Court has held that section 1759 preempts a claim brought under section 2106 if an award of damages would "hinder or frustrate [CPUC's] declared supervisory and regulatory policies." *San Diego Gas & Elec. Co. v. Superior Ct.* ("Covalt"), 920 P.2d 669, 673 (Cal. 1996) (quoting *Waters v. Pac. Tel. Co.*, 523 P.2d 1161, 1162 (Cal. 1974)). Plaintiff alleges that, because of PG&E's negligent maintenance of its grid, PG&E needed to implement PSPSs, which caused his injury. In his filings before the bankruptcy court, and throughout this litigation, Plaintiff has made clear that "this case is not about whether the shutoffs were appropriate or how PG&E handled them." Rather, Plaintiff contends, "it is about *why* they had to be done in the first place." PG&E responds that, regardless of how Plaintiff frames his theory, any damages PSPSs cause cannot be recovered in litigation because of section 1759

preemption. This case thus presents the question whether adjudicating Plaintiff's claim that PG&E negligently maintained its grid would hinder or frustrate CPUC's regulatory authority with respect to PSPSs, when Plaintiff does not challenge the manner in which the PSPSs were executed but rather argues that they are a link in the causal chain that connects PG&E's alleged negligence to his damages.

When the California Supreme Court has considered whether a claim was preempted by section 1759, the Court has examined whether the allegedly tortious conduct was permitted by CPUC's policies. For example, in *Covalt*, the California Supreme Court held that section 1759 preempted a private nuisance claim that alleged that a utility's power lines emitted "high and unreasonably dangerous levels of electromagnetic radiation onto plaintiffs' property." *Id.* at 678. CPUC had previously decided that "regulated utilities need take no action to reduce [electromagnetic] field levels from existing powerlines." *Id.* at 697. The Court held that plaintiffs' claim was preempted because a determination of liability "would be inconsistent with [CPUC's] conclusions" that the challenged conduct was lawful. *Id.* In *Hartwell Corp. v. Superior Ct.*, 38 P.3d 1098 (Cal. 2002), the California Supreme Court considered an allegation that public utilities provided unhealthy drinking water. *Id.* at 1102. The Court held that that claim was preempted insofar as the water was in compliance with federal and state standards because "[a]n award of damages on the theory that the public utilities provided unhealthy water, even if the water met [applicable] standards, 'would plainly undermine [CPUC's] policy.'" *Id.* at 1113 (quoting *Covalt*, 920 P.2d at 704). But the Court also held that "damage claims based on the theory that the water *failed* to meet federal and state drinking water standards are not preempted by section

1759.” *Id.* (emphasis added). The Court reasoned that a finding that “a public water utility violated [those] standards would not interfere with the [C]PUC regulatory policy.” *Id.*

Existing California precedent does not address whether Plaintiff’s claim is preempted. In *Covalt* and *Hartwell*, and every other California Supreme Court case addressing section 1759 preemption, the utility’s allegedly unlawful conduct giving rise to the claim was the same conduct that directly caused the plaintiffs’ alleged injuries. Determining whether each claim was preempted required the Court to decide only whether that challenged conduct was consistent with CPUC’s policies. In this case, by contrast, there are two separate sets of conduct at issue. Plaintiff alleges that, first, PG&E negligently maintained its grid and, second, PG&E consequently had to engage in PSPSs, which caused Plaintiff’s damages. The challenged conduct—PG&E’s allegedly negligent maintenance of its grid—would undoubtedly contravene California law and CPUC’s policies if Plaintiff’s allegations about that conduct were proven true.<sup>3</sup> But the conduct that directly caused Plaintiff’s injury—the 2019 PSPSs—were implemented with CPUC’s permission. The caselaw does not answer whether section 1759 prevents Plaintiff from suing PG&E for its initial negligence given that the PSPSs, which Plaintiff alleges

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<sup>3</sup> See, e.g., Pub. Util. § 8386(a) (“Each electrical corporation shall construct, maintain, and operate its electrical lines and equipment in a manner that will minimize the risk of catastrophic wildfire posed by those electrical lines and equipment.”); *id.* § 451 (“Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities . . . as are necessary [*sic*] to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.”).

were the foreseeable result of that negligence and caused his injuries, were allowed under CPUC's policies.

Cognizant of the burden that certifying a question adds to a state court's caseload, we have stated that "[t]he certification procedure is reserved for state law questions that present significant issues, including those with important public policy ramifications, and that have not yet been resolved by the state courts." *Kremen v. Cohen*, 325 F.3d 1035, 1037 (9th Cir. 2003). This question meets that high standard for certification. Wildfires are increasingly an annual occurrence throughout California, and at least some PSPSs may be necessary to minimize the number of those fires. How California allocates the costs of wildfires and PSPSs involves important policy considerations. Given the significance of the policy issues implicated by Plaintiff's negligence claim, and the fact that no caselaw from the California Supreme Court directly addresses whether section 1759 preempts it, we certify that question to the California Supreme Court.

## B.

We also certify a question about the interpretation of Rule 14, which would independently foreclose Plaintiff's theory of liability if it were resolved in PG&E's favor. Rule 14 is a tariff rule that PG&E has filed with CPUC. California law requires utilities to file with the CPUC "tariff schedules containing rates, charges and classifications, 'together with all rules, contracts, privileges, and fa[c]ilities which in any manner affect or relate to rates, tolls, rentals, classifications, or service.'" *Waters*, 523 P.2d at 1163 (quoting Pub. Util. § 489(a)). A properly published and filed tariff rule "ha[s] the force and effect of a statute." *Dyke Water Co. v. Pub. Utils. Comm'n*, 363 P.2d 326, 337 (Cal. 1961).

Rule 14 provides generally that “PG&E will exercise reasonable diligence and care to furnish and deliver a continuous and sufficient supply of electric energy to the customer, but does not guarantee continuity or sufficiency of supply.” PG&E argues that the fourth paragraph of Rule 14 absolves it from any liability for service interruptions, including PSPSs. That paragraph provides:

PG&E specifically maintains the right to interrupt its service deliveries, *without liability to the Customers or electric service providers (ESPs) affected*, when, in PG&E’s sole opinion, such interruption is necessary for reasons including, but not limited to, the following:

1. Safety of a customer, a PG&E employee, or the public at large.

(emphasis added). Plaintiff argues, however, that a sentence in the first paragraph of Rule 14 contemplates that PG&E remains liable for interruptions in service that result from its own negligence. That sentence reads:

PG&E will not be liable for interruption or shortage or insufficiency of supply, or any loss or damage of any kind of character occasioned thereby, if same is caused by inevitable accident, act of God, fire, strikes, riots, war, or any other cause *except that arising from its failure to exercise reasonable diligence*.

(emphasis added).



Both parties have put forward reasonable interpretations of Rule 14. Under PG&E's reading, the fourth paragraph precludes liability for *any* interruption in service if, in PG&E's opinion, that interruption is necessary to protect the public at large. Under Plaintiff's reading, the first paragraph of Rule 14 limits PG&E's disclaimer of liability in the fourth paragraph by stating that PG&E is still liable for an interruption in service—even one that, in PG&E's opinion, is necessary to protect the public—if PG&E's negligence caused the interruption.

The California Supreme Court has never interpreted Rule 14 or issued an opinion that squarely answers which party's reading is correct. The California Court of Appeal, adopting a canon of construction from contract law, has held that "if there is an ambiguity in a tariff any doubt in its interpretation is to be resolved in favor of the [nondrafter and against the utility]." *Pink Dot, Inc. v. Teleport Commc'ns Grp.*, 107 Cal. Rptr. 2d 392, 397 (Ct. App. 2001) (brackets in original) (quoting *Transmix Corp. v. S. Pac. Co.*, 9 Cal. Rptr. 714, 721 (Ct. App. 1960)). Because tariff rules have "the force and effect of a statute," *Dyke Water Co.*, 363 P.2d at 337, it is unclear whether this contract-law approach to resolving an ambiguity in Rule 14 is appropriate or whether California law instead would require a court to apply standard principles of statutory construction. The California Supreme Court has never adopted the canon that ambiguities in a tariff rule must be resolved against the utility, and we are not certain whether the Supreme Court would choose to do so. *See, e.g., Waters*, 523 P.2d at 1166 ("[G]eneral principles which might govern disputes between private parties are not necessarily applicable to disputes with regulated utilities."). Given that this question of Rule 14's interpretation implicates the same public policy interests identified in section IV.A and likewise determines whether

a claim such as Plaintiff's may proceed, we respectfully certify this question as well.

### **V. Accompanying Materials**

The clerk of this court is hereby directed to file in the Supreme Court of California, under official seal of the United States Court of Appeals for the Ninth Circuit, copies of all relevant briefs and excerpts of the record, and an original and ten copies of this order and request for certification, along with a certification of service on the parties, pursuant to California Rule of Court 8.548(c), (d).

This case is withdrawn from submission. Further proceedings before us are stayed pending final action by the Supreme Court of California. The clerk is directed to administratively close this docket, pending further order from this court. The parties shall notify the clerk of this court within seven days after the Supreme Court of California accepts or rejects certification, and again within seven days if that Court accepts certification and subsequently renders an opinion. The panel retains jurisdiction over further proceedings.

**IT IS SO ORDERED.**

## General Docket

## United States Court of Appeals for the Ninth Circuit

**Court of Appeals Docket #:** 21-15571**Docketed:** 03/30/2021

Anthony Gantner v. PG&amp;E Corporation, et al

**Termed:** 02/28/2022**Appeal From:** U.S. District Court for Northern California, Oakland**Fee Status:** Paid**Case Type Information:**

- 1) bkd
- 2) other
- 3) null

**Originating Court Information:****District:** 0971-4 : 4:20-cv-02584-HSG**Trial Judge:** Haywood S. Gilliam, Junior, District Judge**Date Filed:** 04/14/2020**Date Order/Judgment:**

03/26/2021

**Date NOA Filed:**

03/26/2021

**Date Rec'd COA:**

03/26/2021

**Prior Cases:**

None

**Current Cases:**

|                     | <b>Lead</b>     | <b>Member</b>   | <b>Start</b> | <b>End</b> |
|---------------------|-----------------|-----------------|--------------|------------|
| -                   |                 |                 |              |            |
|                     | <u>20-17366</u> | <u>21-16507</u> | 09/13/2021   | 09/13/2021 |
| Docketing Link Only |                 |                 |              |            |
|                     | <u>21-15025</u> | <u>21-16043</u> | 07/30/2021   | 12/16/2021 |
| Related             |                 |                 |              |            |
|                     | <u>20-17366</u> | <u>21-15025</u> | 03/05/2021   | 12/16/2021 |
|                     | <u>20-17366</u> | <u>21-15447</u> | 04/09/2021   |            |
|                     | <u>20-17366</u> | <u>21-16043</u> | 06/17/2021   |            |
|                     | <u>20-17366</u> | <u>21-16507</u> | 09/13/2021   |            |
|                     | <u>21-15025</u> | <u>21-15447</u> | 04/09/2021   | 12/16/2021 |
|                     | <u>21-15025</u> | 21-15571        | 09/21/2021   | 12/16/2021 |
|                     | <u>21-15447</u> | <u>20-17366</u> | 12/16/2021   |            |
|                     | <u>21-15447</u> | 21-15571        | 12/16/2021   | 02/28/2022 |
|                     | <u>21-15447</u> | <u>21-16043</u> | 12/16/2021   |            |

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ANTHONY GANTNER,

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PG&E CORPORATION; PACIFIC GAS & ELECTRIC COMPANY,

Appellees.

- 03/30/2021 1 DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Appellant Anthony Gantner Mediation Questionnaire due on 04/06/2021. Appellant Anthony Gantner opening brief due 05/25/2021. Appellees PG&E Corporation and Pacific Gas & Electric Company answering brief due 06/24/2021. Appellant's optional reply brief is due 21 days after service of the answering brief. [12058354] (JBS) [Entered: 03/30/2021 01:38 PM]
- 04/06/2021 2 Filed (ECF) Appellant Anthony Gantner Mediation Questionnaire. Date of service: 04/06/2021. [12064891] [21-15571] (Carlin, Nicholas) [Entered: 04/06/2021 10:27 AM]
- 04/06/2021 3 The Mediation Questionnaire for this case was filed on 04/06/2021. To submit pertinent **confidential** information directly to the Circuit Mediators, please use the following **link**. Confidential submissions may include any information relevant to mediation of the case and settlement potential, including, but not limited to, settlement history, ongoing or potential settlement discussions, non-litigated party related issues, other pending actions, and timing considerations that may impact mediation efforts.[12065162]. [21-15571] (AD) [Entered: 04/06/2021 12:44 PM]
- 04/22/2021 4 Filed (ECF) Streamlined request for extension of time to file Opening Brief by Appellant Anthony Gantner. New requested due date is 06/25/2021. [12083726] [21-15571] (Carlin, Nicholas) [Entered: 04/22/2021 01:23 PM]
- 04/22/2021 5 **Streamlined request [4] by Appellant Anthony Gantner to extend time to file the brief is approved. Amended briefing schedule: Appellant Anthony Gantner opening brief due 06/24/2021. Appellees PG&E Corporation and Pacific Gas & Electric Company answering brief due 07/26/2021. The optional reply brief is due 21 days from the date of service of the answering brief.** [12084138] (BG) [Entered: 04/22/2021 04:08 PM]
- 05/03/2021 6 MEDIATION ORDER FILED: By 05/17/2021, counsel to email Circuit Mediator regarding settlement potential. Include Ninth Circuit case name and number in subject line. This communication will be kept confidential, if requested, and should not be filed with the court. The existing briefing schedule remains in effect. SEE ORDER FOR DETAILS. [12100692] (CL) [Entered: 05/03/2021 05:38 PM]
- 05/25/2021 7 MEDIATION ORDER FILED: This case is RELEASED from the Mediation Program. Counsel are requested to contact the Circuit Mediator should circumstances develop that warrant settlement discussions while the appeal is pending. [12124578] (CL) [Entered: 05/25/2021 04:52 PM]
- 06/24/2021 8 Filed (ECF) notice of appearance of Thomas B. Rupp (Keller Benvenuti Kim LLP, 650 California Street, Suite #1900, San Francisco, CA, 94108) for Appellees PG&E and PG&E Corporation. Date of service: 06/24/2021. (Party was previously proceeding with counsel.) [12152835] [21-15571] (Rupp, Thomas) [Entered: 06/24/2021 06:09 AM]
- 06/24/2021 9 Added Attorney(s) Thomas B. Rupp for party(s) Appellee PG&E Corporation and Appellee PG&E, in case 21-15571. [12152879] (QDL) [Entered: 06/24/2021 08:28 AM]
- 06/25/2021 10 Submitted (ECF) Opening Brief for review. Submitted by Appellant Anthony Gantner. Date of service: 06/25/2021. [12155290] [21-15571] (Carlin, Nicholas) [Entered: 06/25/2021 04:52 PM]
- 06/25/2021 11 Submitted (ECF) excerpts of record. Submitted by Appellant Anthony Gantner. Date of service: 06/25/2021. [12155302] [21-15571] (Carlin, Nicholas) [Entered: 06/25/2021 04:56 PM]
- 06/25/2021 12 Filed (ECF) Appellant Anthony Gantner Motion to take judicial notice of. Date of service: 06/25/2021. [12155316] [21-15571] (Carlin, Nicholas) [Entered: 06/25/2021 05:03 PM]



- 06/29/2021 13 Filed clerk order: The opening brief [10] submitted by Anthony Gantner is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: blue. The excerpts of record [11] submitted by Anthony Gantner are filed. Within 7 days of this order, filer is ordered to file 3 copies of the excerpts in paper format securely bound on the left side, with white covers. The paper copies shall be submitted to the principal office of the Clerk. [12157765] (SML) [Entered: 06/29/2021 01:44 PM]
- 07/02/2021 14 Filed (ECF) Streamlined request for extension of time to file Answering Brief by Appellees PG&E and PG&E Corporation. New requested due date is 08/25/2021. [12161962] [21-15571] (Orsini, Kevin) [Entered: 07/02/2021 02:27 PM]
- 07/02/2021 15 **Streamlined request [14] by Appellees PG&E Corporation and PG&E to extend time to file the brief is approved. Amended briefing schedule: Appellees PG&E Corporation and Pacific Gas & Electric Company answering brief due 08/25/2021. The optional reply brief is due 21 days from the date of service of the answering brief.** [12162031] (JN) [Entered: 07/02/2021 02:50 PM]
- 07/02/2021 16 Filed (ECF) notice of appearance of Omid H. Nasab (Cravath, Swaine & Moore LLP, Worldwide Plaza, 825 Eighth Avenue, New York, NY 10019) for Appellees PG&E and PG&E Corporation. Date of service: 07/02/2021. (Party was previously proceeding with counsel.) [12162063] [21-15571] (Nasab, Omid) [Entered: 07/02/2021 03:05 PM]
- 07/02/2021 17 Added Attorney(s) Omid Nasab for party(s) Appellee PG&E Corporation and Appellee PG&E, in case 21-15571. [12162068] (QDL) [Entered: 07/02/2021 03:07 PM]
- 07/02/2021 18 Filed (ECF) Appellees PG&E and PG&E Corporation Motion to extend time to file a response until 08/25/2021. Date of service: 07/02/2021. [12162357] [21-15571] (Nasab, Omid) [Entered: 07/02/2021 06:06 PM]
- 07/02/2021 19 COURT DELETED INCORRECT ENTRY. Notice about deletion sent to case participants registered for electronic filing. Correct Entry: [23]. Original Text: Filed (ECF) Alice Stebbins, Executive Director Emeritus of the California Public Utilities Commission Motion to become amicus curiae. Date of service: 07/02/2021. [12162384] [21-15571] (Creitz, Joseph) [Entered: 07/02/2021 08:12 PM]
- 07/02/2021 20 COURT DELETED INCORRECT ENTRY. Notice about deletion sent to case participants registered for electronic filing. Correct Entry: [23]. Original Text: Filed (ECF) Alice Stebbins, Executive Director Emeritus of the California Public Utilities Commission Motion to become amicus curiae. Date of service: 07/02/2021. [12162387] [21-15571] (Creitz, Joseph) [Entered: 07/02/2021 08:26 PM]
- 07/02/2021 23 Submitted (ECF) Amicus brief for review (by government or with consent per FRAP 29(a)). Submitted by Amicus Brief of California Public Utilities Commission Executive Director Emeritus Alice Stebbins. Date of service: 07/08/2021. [12166325] [21-15571]--[COURT UPDATE: Backdated entry to reflect original date of submission of the brief. 07/09/2021 by SML] (Creitz, Joseph) [Entered: 07/08/2021 10:34 AM]
- 07/07/2021 21 Received 3 paper copies of excerpts of record [11] in 4 volume(s) and index volume filed by Appellant Anthony Gantner. [12165540] (LA) [Entered: 07/07/2021 03:44 PM]
- 07/07/2021 22 Received 6 paper copies of Opening Brief [10] filed by Anthony Gantner. [12165558] (SD) [Entered: 07/07/2021 03:48 PM]
- 07/09/2021 24 Entered appearance of Amicus Curiae Alice Stebbins. [12168310] (SML) [Entered: 07/09/2021 01:52 PM]

- 07/09/2021 25 Filed clerk order: The amicus brief [23] submitted by Alice Stebbins is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: green. The paper copies shall be submitted to the principal office of the Clerk. [12168311] (SML) [Entered: 07/09/2021 01:53 PM]
- 07/13/2021 26 Received 6 paper copies of Amicus Brief [23] filed by Alice Stebbins. [12171494] (SD) [Entered: 07/13/2021 03:25 PM]
- 07/15/2021 27 Filed clerk order (Deputy Clerk: SSR): Appellant's motion (Docket Entry No. [12]) to take judicial notice and the proposed exhibits included in Docket Entry No. [12] are referred to the panel that will consider the merits of the case. Appellees' unopposed motion (Docket Entry No. [18]) for an extension of time to file a response to appellant's motion to take judicial notice is granted. Appellees may file a response by August 25, 2021. Appellant may file a reply by September 15, 2021. Any responses will be referred to the panel that will consider the merits of the case. Any discussion of the proposed exhibits in the parties' briefs may be stricken or disregarded if the panel denies appellant's motion for judicial notice. The answering brief remains due August 25, 2021. The optional reply brief is due within 21 days after service of the answering brief. [12173962] (JBS) [Entered: 07/15/2021 04:26 PM]
- 08/25/2021 28 Submitted (ECF) Answering Brief for review. Submitted by Appellees PG&E and PG&E Corporation. Date of service: 08/25/2021. [12211886] [21-15571] (Nasab, Omid) [Entered: 08/25/2021 08:49 PM]
- 08/25/2021 29 Submitted (ECF) supplemental excerpts of record. Submitted by Appellees PG&E and PG&E Corporation. Date of service: 08/25/2021. [12211887] [21-15571] (Nasab, Omid) [Entered: 08/25/2021 09:14 PM]
- 08/25/2021 30 Filed (ECF) Appellees PG&E and PG&E Corporation response to motion ([12] Motion (ECF Filing), [12] Motion (ECF Filing) motion to take judicial notice). Date of service: 08/25/2021. [12211888] [21-15571] (Nasab, Omid) [Entered: 08/25/2021 09:31 PM]
- 08/26/2021 31 Filed clerk order: The answering brief [28] submitted by PG&E Corporation and PG&E is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: red. The supplemental excerpts of record [29] submitted by PG&E Corporation and PG&E are filed. Within 7 days of this order, filer is ordered to file 3 copies of the excerpts in paper format securely bound on the left side, with white covers. The paper copies shall be submitted to the principal office of the Clerk. [12212537] (SML) [Entered: 08/26/2021 01:58 PM]
- 08/27/2021 32 Filed (ECF) Streamlined request for extension of time to file Reply Brief by Appellant Anthony Gantner. New requested due date is 10/15/2021. [12213238] [21-15571] (Carlin, Nicholas) [Entered: 08/27/2021 09:29 AM]
- 08/27/2021 33 **Streamlined request [32] by Appellant Anthony Gantner to extend time to file the brief is approved. Amended briefing schedule: the optional reply brief is due 10/15/2021.** [12213691] (JN) [Entered: 08/27/2021 01:04 PM]
- 08/30/2021 34 Received 3 paper copies of supplemental excerpts of record [29] in 2 volume(s) and index volume filed by Appellees PG&E Corporation and PG&E. [12215237] (KT) [Entered: 08/30/2021 01:34 PM]
- 08/30/2021 35 Received 6 paper copies of Answering Brief [28] filed by PG&E Corporation and PG&E. [12215468] (CPA) [Entered: 08/30/2021 02:43 PM]
- 09/01/2021 36 Submitted (ECF) Amicus brief for review (by government or with consent per FRAP 29(a)). Submitted by California Public Utilities Commission. Date of service: 09/01/2021. [12218409]

- [21-15571]--[COURT UPDATE: Updated entry to correctly reflect the filer. 09/02/2021 by SML] (Fermino, David) [Entered: 09/01/2021 10:05 PM]
- 09/02/2021 37 Entered appearance of Amicus Curiae CPUC. [12218928] (SML) [Entered: 09/02/2021 12:41 PM]
- 09/02/2021 38 Filed clerk order: The amicus brief [36] submitted by CPUC is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: green. The paper copies shall be submitted to the principal office of the Clerk. [12218941] (SML) [Entered: 09/02/2021 12:46 PM]
- 09/02/2021 39 Filed (ECF) notice of appearance of Leah, Romm (Phillips, Erlewine, Given & Carlin LLP; 39 Mesa Street, Suite 201 – The Presidio, San Francisco, CA 94129) for Appellant Anthony Gantner. Date of service: 09/02/2021. (Party was previously proceeding with counsel.) [12219506] [21-15571] (Romm, Leah) [Entered: 09/02/2021 05:10 PM]
- 09/02/2021 40 Added Attorney(s) Leah Romm for party(s) Appellant Anthony Gantner, in case 21-15571. [12219510] (QDL) [Entered: 09/02/2021 05:13 PM]
- 09/07/2021 41 Received 6 paper copies of Amicus Brief [36] filed by CPUC. [12221714] (SD) [Entered: 09/07/2021 01:38 PM]
- 09/15/2021 42 Filed (ECF) Appellant Anthony Gantner reply to response (). Date of service: 09/15/2021. [12229038] [21-15571] (Sweeney, Bonny) [Entered: 09/15/2021 11:20 AM]
- 09/21/2021 43 This case is being considered for an upcoming oral argument calendar in San Francisco
- Please review the San Francisco sitting dates for January 2022 and the 2 subsequent sitting months in that location at [http://www.ca9.uscourts.gov/court\\_sessions](http://www.ca9.uscourts.gov/court_sessions). If you have an unavoidable conflict on any of the dates, please file Form 32 **within 3 business days of this notice** using the CM/ECF filing type **Response to Case Being Considered for Oral Argument**. Please follow the form's instructions carefully.
- When setting your argument date, the court will try to work around unavoidable conflicts; the court is not able to accommodate mere scheduling preferences. You will receive notice that your case has been assigned to a calendar approximately 10 weeks before the scheduled oral argument date.
- If the parties wish to discuss settlement before an argument date is set, they should jointly request referral to the mediation unit by filing a letter **within 3 business days of this notice**, using CM/ECF (**Type of Document:** Correspondence to Court; **Subject:** request for mediation).[12235144]. [21-15571] (KS) [Entered: 09/21/2021 04:11 PM]
- 09/22/2021 44 Filed (ECF) Attorney Nicholas A. Carlin for Appellant Anthony Gantner response to notice for case being considered for oral argument. Date of service: 09/22/2021. [12235824] [21-15571] (Carlin, Nicholas) [Entered: 09/22/2021 12:21 PM]
- 09/23/2021 45 Filed (ECF) Attorney Omid Nasab for Appellees PG&E and PG&E Corporation response to notice for case being considered for oral argument. Date of service: 09/23/2021. [12237761] [21-15571] (Nasab, Omid) [Entered: 09/23/2021 05:35 PM]
- 10/15/2021 46 Submitted (ECF) Reply Brief for review. Submitted by Appellant Anthony Gantner. Date of service: 10/15/2021. [12258776] [21-15571] (Sweeney, Bonny) [Entered: 10/15/2021 02:41 PM]

- 10/15/2021 47 Filed clerk order: The reply brief [46] submitted by Anthony Gantner is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be submitted to the principal office of the Clerk. [12258809] (LA) [Entered: 10/15/2021 02:48 PM]
- 10/25/2021 48 Received 6 paper copies of Reply Brief [46] filed by Anthony Gantner. (sent to panel) [12267563] (SD) [Entered: 10/25/2021 01:42 PM]
- 10/31/2021 49 Notice of Oral Argument on Wednesday, January 12, 2022 – 1:30 P.M. – Courtroom 3 – Scheduled Location: Pasadena CA.  
The hearing time is the local time zone at the scheduled hearing location.

View the Oral Argument Calendar for your case [here](#).

NOTE: Although your case is currently scheduled for oral argument, the panel may decide to submit the case on the briefs instead. *See* Fed. R. App. P. 34. Absent further order of the court, if the court does determine that oral argument is required in this case, you may have the option to appear in person at the Courthouse or remotely by video. Check [here](#) for updates on the status of reopening as the hearing date approaches. At this time, even when in person hearings resume, an election to appear remotely by video will not require a motion, **and any attorney wishing to appear in person must provide proof of vaccination**. The court expects and supports the fact that some attorneys and some judges will continue to appear remotely. If the panel determines that it will hold oral argument in your case, the Clerk's Office will contact you directly at least two weeks before the set argument date to review any requirements for in person appearance or to make any necessary arrangements for remote appearance.

Please note however that if you do elect to appear remotely, the court **strongly prefers** video over telephone appearance. Therefore, if you wish to appear remotely by telephone you will need to file a motion requesting permission to do so.

Be sure to review the [GUIDELINES](#) for important information about your hearing, including when to be available (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible).

If you are the specific attorney or self-represented party who will be arguing, use the **[ACKNOWLEDGMENT OF HEARING NOTICE](#)** filing type in CM/ECF no later than 28 days before Wednesday, January 12, 2022. No form or other attachment is required. If you will not be arguing, do not file an acknowledgment of hearing notice.[12273620]. [21-15571] (KS) [Entered: 10/31/2021 06:38 AM]

- 11/11/2021 50 Filed (ECF) Acknowledgment of hearing notice by Attorney Nicholas A. Carlin for Appellant Anthony Gantner. Hearing in Pasadena on 01/12/2022 at 1:30 P.M. (Courtroom: Courtroom 3). Filer sharing argument time: No. Appearance in person or by video: I wish to appear in person. Special accommodations: NO. Filer admission status: I certify that I am admitted to practice before this Court. Date of service: 11/11/2021. [12284993] [21-15571] (Carlin, Nicholas) [Entered: 11/11/2021 10:03 AM]
- 12/15/2021 51 Filed (ECF) Acknowledgment of hearing notice by Attorney Omid Nasab for Appellees PG&E and PG&E Corporation. Hearing in Pasadena on 01/12/2022 at 1:30 P.M. (Courtroom: 3). Filer sharing argument time: No. (Argument minutes: 15) Appearance in person or by video: I wish to appear in person. Special accommodations: NO. Filer admission status: I certify that I am admitted to practice before this Court. Date of service: 12/15/2021. [12317438] [21-15571] (Nasab, Omid) [Entered: 12/15/2021 08:27 PM]

- 01/03/2022 52 Filed (ECF) notice of appearance of Candace J. Morey (California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102) for Amicus Curiae CPUC. Date of service: 01/03/2022. (Party was previously proceeding with counsel.) [12329875] [21-15571] (Morey, Candace) [Entered: 01/03/2022 05:03 PM]
- 01/03/2022 53 Added Attorney(s) Candace J. Morey for party(s) Amicus Curiae CPUC, in case 21-15571. [12329885] (QDL) [Entered: 01/03/2022 05:09 PM]
- 01/12/2022 54 ARGUED AND SUBMITTED TO DANNY J. BOGGS, JOHN B. OWENS and MICHELLE T. FRIEDLAND. [12339244] (BG) [Entered: 01/12/2022 03:44 PM]
- 01/14/2022 55 Filed Audio recording of oral argument.  
**Note:** Video recordings of public argument calendars are available on the Court's website, at <http://www.ca9.uscourts.gov/media/> [12340857] (BG) [Entered: 01/14/2022 08:12 AM]
- 02/28/2022 56 Order filed for PUBLICATION (DANNY J. BOGGS, JOHN B. OWENS and MICHELLE T. FRIEDLAND) We respectfully ask the Supreme Court of California to exercise its discretion to decide the certified questions set forth in section II of this order. [SEE ORDER FOR FULL TEXT] The clerk of this court is hereby directed to file in the Supreme Court of California, under official seal of the United States Court of Appeals for the Ninth Circuit, copies of all relevant briefs and excerpts of the record, and an original and ten copies of this order and request for certification, along with a certification of service on the parties, pursuant to California Rule of Court 8.548(c), (d). This case is withdrawn from submission. Further proceedings before us are stayed pending final action by the Supreme Court of California. The clerk is directed to administratively close this docket, pending further order from this court. The parties shall notify the clerk of this court within seven days after the Supreme Court of California accepts or rejects certification, and again within seven days if that Court accepts certification and subsequently renders an opinion. The panel retains jurisdiction over further proceedings. IT IS SO ORDERED. [12381259] (MM) [Entered: 02/28/2022 08:32 AM]

No. 21-15571

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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ANTHONY GANTNER, individually and on behalf of all those  
similarly situated,

*Plaintiff-Appellant,*

v.

PG&E CORPORATION, a California Corporation, and PACIFIC  
GAS & ELECTRIC COMPANY, a California Corporation

*Defendants-Appellees.*

On Appeal from the United States District Court  
for the Northern District of California  
No. 4:20-CV-02584-HSG  
Hon. Haywood S. Gilliam, Jr.,  
[an appeal from an Order in the Bankruptcy Case In re: PG&E  
CORPORATION and PACIFIC GAS AND ELECTRIC COMPANY,  
Debtors, Bankruptcy Case No. 19-30088 (DM), Adv. Pro. No. 19-  
03061 (DM), Hon. Donald Montali, U.S. Bankruptcy Judge]

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**APPELLANT'S OPENING BRIEF**

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## INTRODUCTION

In Fall 2019, Pacific Gas & Electric (“PG&E”) was forced to shut down huge swaths of its power grid because of its criminally negligent maintenance—the same negligence responsible for devastating wildfires that resulted in scores of deaths and billions of dollars in damage and led PG&E to plead guilty to 84 felony counts of manslaughter. PG&E “cannot safely deliver power to California,” according to the judge overseeing PG&E’s criminal probation, because “for years, to enlarge dividends, bonuses, and political contributions, PG&E cheated on its maintenance of its grid—to the point that the grid became unsafe to operate during our annual high winds, so unsafe that the grid itself failed and ignited catastrophic wildfires.” 2-ER-117.

These shutdowns, called Public Safety Power Shutoffs, or “PSPSs,” impacted over 800,000 PG&E customers. Plaintiff Anthony Gantner and the class of customers he seeks to represent were without power for many days, in some cases up to 17 days total and 10 days in a row. As a result, and as might be expected, they suffered damage. California Public Utilities Code section 2106 provides for a private right of action against a public utility like PG&E to recover for these

damages.<sup>1</sup> Plaintiff timely brought this action to do so.

But an erroneous analysis of section 1759(a), which carves out an exception to a Plaintiff's private right of action where a lawsuit would "interfere with the [California Public Utilities Commission, or "CPUC"] in the performance of its official duties," led both the bankruptcy court and the district court to dismiss Plaintiff's Complaint. These rulings cannot stand. Put simply, section 1759 does not immunize PG&E from liability for the negligent maintenance of its power grid.

The CPUC's regulation of PG&E encompasses only the manner in which the utility implements PSPSs and the factors it should take into account in deciding whether to implement them. But this case does not challenge either the way PG&E implemented the PSPSs or the decision to implement them. Nor does it take any issue with the factors that PG&E was supposed to consider in deciding to implement them. Rather, this lawsuit seeks to hold PG&E responsible for the negligence that led to the need to implement the PSPSs in the first place.

Fundamentally, the CPUC does not have the power or jurisdiction to order a utility to pay damages to customers for harm caused by PSPSs. In administrative proceedings before this lawsuit was filed, the CPUC acknowledged that it was "not the venue," to consider the subject of "financial liability" arising from PG&E's use

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<sup>1</sup> All further statutory references are to the California Public Utilities Code unless otherwise stated.

of PSPSs. 2-ER-213. While the CPUC filed a brief supporting PG&E's position in the bankruptcy court, aside from making the general point that the agency regulates PSPSs, that brief offered no specifics or evidence, or offered any reason why this case actually interferes with its duties.

Subsequent activity in the CPUC and the Legislature indicates that it does not and will not. The CPUC's recent decision concerning the 2019 PSPSs at issue here does not consider whether PG&E's negligence caused them harm and reaffirms that it has no authority to award damages or order that utilities pay them. Appellant's Motion for Judicial Notice ("AMJN"), Ex. 3. Further, as of July 1, 2021, the CPUC will not even have regulatory authority over PSPSs; under newly enacted section 326, that will fall to the Office of Energy Infrastructure Safety which is not subject to section 1759 preemption.

Nonetheless, the bankruptcy court erroneously dismissed Plaintiff's Complaint. Plaintiff then appealed to the district court, which compounded the error by affirming and adding another erroneous justification for dismissal. To wit, that court speculated that if a court ordered PG&E to pay damages in this case, it would be deterred from implementing PSPSs. But this is entirely illogical and inconsistent with the statutory private right of action embodied in section 2106.

By definition, a PSPS inflicts foreseeable damage. It is simply "the lesser evil" precipitated by PG&E's negligence and necessary "until PG&E finally comes



into full compliance with respect to removing hazardous trees and limbs and honoring the required clearances. AMJN, Ex. 1 at 16. If that negligence causes a wildfire to occur, PG&E should pay its victims, as it has done in many cases. Similarly, if it chooses to implement a PSPS to avoid that risk, there is no logical or legal reason why it should not have to pay the victims of the PSPS. Both species of damage are a direct result of the same negligence. And under the applicable CPUC regulations, the potential cost of having to pay customers for damages caused by a PSPS is not a factor that a utility is to consider in making the decision to implement a PSPS.

In addition to section 1759, PG&E added an untimely causation argument on reply in the bankruptcy court, and that court gave the argument some consideration. But the Complaint adequately alleged that PG&E's negligence caused the need for the PSPSs. Even if it was somehow not clear enough, both courts below committed clear error in dismissing the Complaint without leave to amend. The CPUC has admitted that the Complaint could be amended to sufficiently allege causation. 2-ER-148-149. And subsequent findings in the related criminal proceeding that the PSPSs were necessitated by PG&E's negligence should have put this argument to rest.

For these and the reasons that follow, Plaintiff respectfully requests that the

Court reverse the dismissal of his Complaint and remand to the trial court for further proceedings. Alternatively, Plaintiff suggests that this Court refer the matter to the California Supreme Court as this case entirely involves questions of state law.

### **JURISDICTIONAL STATEMENT**

Plaintiff appeals from a March 26, 2021 final order of the district court affirming the bankruptcy court dismissing his complaint against PG&E without leave to amend. 1-ER-2-11. The bankruptcy court's decision was dated March 30, 2020, its subsequent order was dated April 3, 2020, and plaintiff timely appealed that order on April 6th. 1-ER-12-24; 4-ER-515-517. The bankruptcy court had jurisdiction over this adversary proceeding under 28 U.S.C. §§ 1334 and 157; its decision and order are final and appealable under 28 U.S.C. § 158(a)(1). The district court had jurisdiction over the direct appeal of that decision pursuant to 28 U.S.C. § 158(c) and Fed. R. Bankr. P. 8005(a). 4-ER-515-517. Plaintiff filed the notice of appeal from the district court decision the same day as the order. 4-ER-510-514. This Court therefore has jurisdiction over this appeal under 28 U.S.C. §§ 158(d)(1) and 1291.

### **STATEMENT OF ADDENDUM**

All relevant statutory and regulatory authorities are listed in the Addendum.

## ISSUES PRESENTED

1. Whether the bankruptcy court erred when it granted PG&E's Motion to Dismiss.
2. Whether the bankruptcy and district courts erred when it found that § 1759 preempted Plaintiff's negligence claim.
3. Whether the bankruptcy court erred when it considered PG&E's argument, raised for the first time on reply, that Plaintiff had not sufficiently alleged causation.
4. Whether the bankruptcy court abused its discretion when it failed to grant Plaintiff leave to amend the Complaint.
5. Whether Issue (2) should be certified to the California Supreme Court.

## STATEMENT OF THE CASE

### I. FACTUAL BACKGROUND

#### A. PG&E's Negligent Maintenance of Its Power Grid Necessitated the Public Safety Power Shutoffs

On January 29, 2019, following a particularly gruesome 2018 fire season, PG&E sought bankruptcy protection. In October and November 2019, while still in bankruptcy, PG&E shut off power to customers in at least five distinct PSPSs. 4-ER-499-501.

Prior to 2019, PG&E had no PSPS program and had not employed widespread power outages as a means to prevent wildfires. AMJN, Ex. 3 at 28-29.

Hundreds of thousands of households and businesses suffered significant losses. 4-ER-487, 506-507. Plaintiff alleges that PG&E's years-long negligence in maintaining a reasonably safe power grid led to the need for the fall-2019 PSPSs that injured Plaintiff and thousands of other similarly-situated PG&E customers. 4-ER-488-501, 505-506.

PG&E's failures in this regard are well-documented. Countless fires have been caused by PG&E's negligent maintenance, including the Butte Fire, the Tubbs Fire, the Camp Fire, the Kincaid Fire, the list goes on and on. 4-ER-490-491. These fires have resulted in billions of dollars in fines, civil liability, and criminal convictions against PG&E for its criminally negligent maintenance of its power lines. 4-ER-491.

Judge Alsup, who is overseeing PG&E's criminal probation, has detailed the power company's failures. *See* 2-ER-25-129; AMJN, Ex. 1. As Judge Alsup noted, PG&E "cannot safely deliver power to California," because "[f]or years, in order to enlarge dividends, bonuses, and political contributions, PG&E cheated on its maintenance of its grid—to the point that the grid became unsafe to operate during our annual high winds, so unsafe that the grid itself failed and ignited many catastrophic wildfires." 2-ER-117. In fact, PG&E uses PSPSs precisely because of the risk its unsafe grid poses. 2-ER-120-122.

In addition to reciting PG&E’s woeful safety record, the court also found that PG&E’s distribution lines and its transmission lines remain in disrepair; that it has systematically failed to comply with California law as well as its own plan to maintain the four-foot clearance required between limbs and power lines, with hundreds of miles of unsafe lines and thousands of “risk” trees noted by inspectors (but not identified by PG&E); and that PG&E’s transmission towers suffer from “defective and worn-out hardware” which its own inspections failed to capture and thus were not being addressed as they should be. 2-ER-122-127.

In a more recent order to show cause, Judge Alsup recognized that “the number-one cause of wildfires ignited by PG&E” is “hazardous trees and limbs that should have, by law, been removed but which loom as threats in windstorms.” AMJN, Ex. 1 at 13. “PSPS events,” the order found, are “necessary because PG&E has failed to clear hazardous trees and limbs, cause huge disruptions for the public. Businesses suffer and residents who use medical devices go without electricity.” AMJN, Ex. 1 at 16. The court concluded that “[t]he PSPS is the lesser evil and will remain essential until PG&E finally comes into full compliance with respect to removing hazardous trees and limbs and honoring the required clearances.” AMJN, Ex. 1 at 16.

## **B. The CPUC's Role**

The CPUC is charged with regulating PG&E. PG&E and the CPUC emphasized below that the CPUC has exercised authority over *how* and *when* energy utilities like PG&E may shut off power to its customers to avoid potential wildfires. That's true, but nothing a court could decide in this case could possibly conflict with that.

While PG&E did not institute a PSPS or have a PSPS program until 2019, the CPUC has been engaged in setting the parameters for PSPSs since at least 2008 when San Diego Gas & Electric ("SDG&E") asked that the CPUC consider its proposal to shut off electricity to prevent wildfires and sought to be insulated from liability for doing so. The CPUC did not approve or give SDG&E immunity, noting that any future proposal must be "based on a cost-benefit analysis that demonstrates (1) the program will result in a net reduction in wildfire ignitions, and (2) the benefits of the program outweigh any costs, burdens, or risks the program imposes *on customers and communities*." AMJN, Ex. 3 at 9-15 (quoting CPUC Decision D.09-09-030 at 2 and 63) (emphasis added).

In 2012, the CPUC again addressed PSPSs in the context of all electric utility fire prevention plans, emphasizing that PSPSs should only be used as a last resort, citing Cal. Pub. Util. Code § 330(g), which states that "Reliable electric service is of utmost importance to the safety, health, and welfare of the state's

citizenry and economy.” AMJN, Ex. 3 at 15-19 (quoting CPUC Decision D.12-04-024).

Following the destructive 2017 wildfire season, in 2018, the CPUC adopted Resolution ESRB-8 to, among other things, strengthen customer notification requirements before de-energization events and order utilities to develop “de-energization” programs. 2-ER-209-217.<sup>2</sup> The CPUC approved such a program as part of PG&E’s Wildfire Safety Plan in 2019. 3-ER-395-485. That program set forth certain guidelines and minimum standards for PG&E’s implementation of PSPSs. Id.

Since 2012, the CPUC has required that utilities, like PG&E, first “identify and consider the safety risks to the public from shutting off electric power; and, after the utility identifies and considers these safety risks, then the utility must weigh the risks of a PSPS event against the benefits of initiating a PSPS event.” AMJN, Ex. 3 at 48. The CPUC reviews whether a utility complies with its directive to “identify, consider, and weigh the safety risks to the public from shutting off electric power against the benefits of initiating a PSPS event.” AMJN, Ex. 3 at 49. The utility’s potential liability for damages caused by either a wildfire or a PSPS is not a factor in the calculus. 3-ER-290 (“Under no circumstances may

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<sup>2</sup> Alice Stebbins, who was the Executive Director of the CPUC at the time, signed ESRB-8. 2-ER-217.

the utilities employ de-energization solely as a means of reducing their own liability risk from utility-infrastructure wildfire ignitions and the utilities must be able to justify why de-energization was deployed over other possible measures or actions.”).

Importantly, the CPUC had and has no power to award damages to customers because of a PSPS. Indeed, the CPUC disclaimed any such role when it adopted Resolution ESRB-8. “This resolution . . . is *not* the venue,” it announced, to consider any “financial liability” to PG&E’s customers because of its use of PSPSs. 2-ER-213 (emphasis added).

After the district court’s decision here, the CPUC, in considering what, if anything, to do about PG&E’s failure to consider the safety risks of the 2019 PSPSs to its customers, the CPUC reaffirmed that it “does *not* have jurisdiction to award damages to utility customers for losses of, for example, personal property, damage to real estate, lost wages, business losses, emotional distress, or personal injury.” AMJN, Ex. 3 at 60 (emphasis added).

Effective January 1, 2020, the California legislature mandated the establishment within the CPUC of the “Wildfire Safety Division” to, “[o]versee and enforce electrical corporations’ compliance with wildfire safety” and “[c]onsult with the Office of Emergency Services in the office’s management and response to utility public safety power shutoff events and utility actions for



compliance with public safety power shutoff program rules and regulations.”

§ 326.

Effective July 1, 2021, “all functions of the Wildfire Safety Division shall be transferred to the Office of Energy Infrastructure Safety established pursuant to Section 15473 of the Government Code.” § 326(b). California Government Code section 15475 confirms that the Office of Energy Infrastructure Safety is “the successor to” the Wildfire Safety Division and has “all of the duties, powers, and responsibilities” of that Division going forward. *See also* Cal. Gov’t Code § 15473.

## **II. PROCEDURAL HISTORY**

### **A. The Complaint**

Plaintiff filed his class action complaint as an adversary proceeding in PG&E’s bankruptcy, asserting a single claim of negligence against PG&E for its failure to maintain a reasonably safe power grid. 4-ER-486-509. The Complaint does not challenge PG&E’s right to institute PSPSs, whether they were necessary, or the manner in which it instituted them. Rather, Plaintiff seeks compensation for the losses he and hundreds of thousands of other Californians suffered as a result of the PSPSs, which he contends were made necessary because of PG&E’s gross negligence in maintaining its power grid. 4-ER-487, 494-496, 501-503.

The Complaint seeks special and general tort damages, punitive and exemplary damages as allowed under Cal. Civil Code § 3294 and Cal. Pub. Util. Code § 2106 (discussed below). 4-ER-508.

**B. PG&E’s Motion to Dismiss and Strike Class Claims**

PG&E moved to dismiss the Complaint or, in the alternative, strike its class claims. BR Dkt. No. 7.<sup>3</sup> PG&E primarily argued that § 1759 preempted Plaintiff’s claim. BR Dkt. No. 7 at 15-18.<sup>4</sup> Specifically, PG&E argued that Plaintiff’s action would hinder or interfere with the CPUC’s policies concerning PSPSs, and that, absent this litigation, Plaintiff and the class had recourse through the CPUC. *Id.* PG&E did *not* argue that Plaintiff failed to sufficiently allege causation. BR Dkt. No. 7.

**C. Plaintiff’s Opposition**

In opposition, Plaintiff argued that the case was not barred by § 1759 because it did not interfere with the CPUC’s regulatory authority over PSPSs, to the contrary, if anything, it reinforced it, and his action sought damages the CPUC

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<sup>3</sup> “BR Dkt. No.” references are to the Bankruptcy Court’s docket, Case No. 19-30088 (DM), Adversary Proceeding Case No. 19-03061 (Bankr. N.D. Cal.). “Dkt. No.” references are to the District Court’s docket, Case No. 4:20-cv-02584-HSG.

<sup>4</sup> PG&E also argued that PG&E’s Tariff Rule 14 authorized it to interrupt service without liability when, in its sole opinion, it was necessary for public safety; and that Plaintiff’s class claims failed on predominance and ascertainability grounds. BR Dkt. No. 7 at 19-23. The courts below did not address those arguments.

cannot award. BR Dkt. No. 16 at 5-14. Plaintiff also requested leave to amend in the event the bankruptcy court found the allegations of his complaint lacking. BR Dkt. No. 16 at 25.

**D. PG&E’s Reply, the CPUC’s Amicus Brief, and the Hearing**

On reply, PG&E added a new argument: That Plaintiff failed to sufficiently plead that PG&E’s negligence caused his injuries. BR Dkt. No. 18 at 1, 6-8. Plaintiff moved to strike the new argument in PG&E’s reply. BR Dkt. No. 20. But the court denied the motion and considered the argument. 1-ER-23.

At oral argument, Plaintiff argued that the Complaint sufficiently alleges causation. 2-ER-153-157. In addition, he pointed out to the Court a document referenced by PG&E in its moving papers (Amended PG&E Public Safety Power Shutoff (PSPS) Report to the CPUC October 9-12 De-Energization Event which PG&E’s itself cited in its opening brief (BR Dkt. No. 7 at p. 9 & fn. 8)—that reads (at. p. 9 of that report): “Assessment results confirm asset health and low wildfire risk *for the majority of transmission lines* within the potential PSPS scope, resulting in the ability to safely maintain power on these lines and to reduce customer impacts.”<sup>5</sup> 2-ER-156 (emphasis added). Plaintiff proffered the

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<sup>5</sup> That document is available at: [https://www.pge.com/pge\\_global/common/pdfs/safety/emergency-preparedness/natural-disaster/wildfires/PSPS-Report-Letter-10.09.19-amend.pdf](https://www.pge.com/pge_global/common/pdfs/safety/emergency-preparedness/natural-disaster/wildfires/PSPS-Report-Letter-10.09.19-amend.pdf)

reasonable inference from PG&E's statement that, if the "majority" of lines were healthy and low risk, then there was a minority which were not, and that was the reason PG&E instituted the PSPSs for those areas. *Id.*

Judge Alsup's subsequent findings (after the bankruptcy court's decision here) were even more direct on the subject: "PSPS events," are "necessary because PG&E has failed to clear hazardous trees and limbs, caus[ing] huge disruptions for the public." AMJN, Ex. 1 at 16.

The same day PG&E filed its reply, the CPUC filed an amicus brief on the § 1759 preemption issue. BR Dkt. No. 19. While the CPUC argued, without any factual basis, that the action would interfere with its regulatory authority over PG&E (at 6-8), it also conceded when pressed at oral argument that Plaintiff could likely amend to state a claim that the CPUC agreed would *not* be preempted: "I would think there could be a set of circumstances with specific shutdowns and specific power lines, in which you might have a negligence claim that could work." 2-ER-148-149.

#### **E. The Bankruptcy Court's Decision and Order**

In a Memorandum of Decision dated March 30, 2020, the bankruptcy court granted PG&E's motion to dismiss on a single ground: "The court is dismissing this adversary proceeding because it is preempted by Public Utilities Code section 1759." 1-ER-24. The decision stated that Plaintiff's negligence claim "interferes

with the CPUC’s exclusive regulatory authority over . . . shutoffs” because Plaintiff failed to allege “that [PG&E] exceeded the authority vested in it by the CPUC when it executed the PSPS events, and thus any damages incurred by parties as a result of these events must be addressed by the CPUC and not this court.” 1-ER-22.

The bankruptcy court rejected Plaintiff’s argument that § 1759 does not apply. The court reasoned—without any further explanation—that because the CPUC had already exercised its authority to regulate PSPSs before the PSPSs at issue, “any claim for damages caused by PSPS events approved by the CPUC<sup>6</sup>, even if based on [ ] pre-existing events that may or may not have contributed to the necessity of the PSPS events, would interfere with the CPUC’s policy-making decisions.” 1-ER-23.

Finally, despite stating that the only ground for granting the motion was § 1759 preemption, and without addressing that PG&E did not raise any causation argument until reply, the court added gratuitously that “the proximate causal connection between the harms suffered by Plaintiff during the blackouts . . . and the conditions pre-dating those blackouts is too remote to defeat the MTD, given

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<sup>6</sup> The decision to implement a PSPS is up the utility. The CPUC does not pre-approve them. AMJN, Ex. 2, at 4.

that such PSPS events can be necessitated by high winds even when equipment is adequately maintained.” 1-ER-23.

On April 3rd, the bankruptcy court issued its Order dismissing the complaint without leave to amend. 1-ER-12-13.

#### **F. The District Court’s Affirmance**

Plaintiff appealed the bankruptcy court’s dismissal to the district court (4-ER-515-517), arguing that (1) § 1759 did not preempt the case because PG&E failed to satisfy its burden that preemption applied, the bankruptcy court failed to conduct the proper analysis, and the action does not hinder or interfere with the CPUC’s regulatory authority; (2) PG&E’s causation argument was untimely and meritless and the bankruptcy court exceeded its authority by considering it at the Rule 12 stage; and (3) the bankruptcy court erred when it failed to grant Plaintiff leave to amend under the circumstances. Dkt. No. 7. PG&E argued that the bankruptcy court’s decision was proper and restated other arguments it made below. Dkt. No. 8.

Without oral argument, the district court addressed only the preemption and leave to amend issues and affirmed. 1-ER-2-11.

It incorrectly asserted that, by seeking to impose liability on PG&E for damages caused by its negligence, the Complaint would necessarily interfere with the CPUC’s regulatory authority. It wrote:

Imposing liability on [PG&E] for implementing CPUC-approved PSPS events would force [PG&E] to choose between incurring potentially limitless negligence liability and protecting public safety in the manner dictated by the appropriate regulatory authority: CPUC. Rather than acting in aid of CPUC's authority to regulate PSPS events, Appellant's theory of liability would create a powerful incentive for [PG&E] to avoid PSPS events, even if the PSPS events are warranted under CPUC regulations.

1-ER-9-10.

The court went on to note that it believed subjecting PG&E to negligence liability would impact PG&E's PSPS decision-making and that "it is not the job of the courts to regulate PSPS events through *ad hoc* imposition of negligence liability." 1-ER-10. The court also affirmed the denial of leave to amend on the basis that Plaintiff could not amend without contradicting his original complaint.

1-ER-11.

### **SUMMARY OF THE ARGUMENT**

The bankruptcy court's decision to dismiss this action without leave to amend and the district court's decision to affirm were erroneous and should be reversed.

*First*, § 1759 does not preempt Plaintiff's negligence claim. PG&E failed to satisfy its burden to prove that § 1759 preemption applied and the bankruptcy and district courts both failed to properly conduct the requisite analysis under *San Diego Gas & Electric Co. v. Superior Court (Covalt)*, 13 Cal. 4th 893 (1996).

This action does not hinder or interfere with the CPUC's exercise of regulatory authority. Instead, it seeks to compensate customers who suffered harm because of PG&E's negligent maintenance of its power grid. The CPUC is not capable of providing this type of relief. Finding PG&E negligent, and that its customers are entitled to compensation for the harm they suffered because of that negligence, does nothing to interfere with the CPUC's regulation of PSPS implementation. *Covalt*, 13 Cal. 4th at 939.

The lack of interference or potential interference is born out in what the CPUC has done in response to the 2019 PSPSs and its future role, or lack thereof, in regulating PSPS events. The CPUC's June 7, 2021 Decision "addressing the late 2019 PSPSs" says nothing about whether PG&E's negligent maintenance of its grid caused it to institute PSPSs or whether PG&E should be liable to its customers for that negligence. AMJN, Ex. 3. And, as of July 1, 2021, the CPUC will no longer have regulatory authority over PSPSs (past or present)—the Office of Energy Infrastructure Safety will have that duty and it is not covered by § 1759. § 326; Cal. Gov't Code § 15475.

Put plainly, the CPUC's policy concerning how PG&E conducts PSPSs has nothing to do with whether PG&E was negligent in causing the need for PSPSs in the first place. And awarding damages for such negligence does not interfere with the CPUC's regulatory authority, nor is it contrary to any policy of that regulatory



body. *Hartwell Corp. v. Superior Court (Santamaria)*, 27 Cal. 4th 256, 275 (2002). The CPUC’s conclusory assertion to the contrary is unavailing under California law. *See, e.g., Wilson v. S. California Edison Co.*, 234 Cal. App. 4th 123 (2015).

Nor does the speculative concern that Plaintiff’s “theory of liability would create a powerful incentive for PG&E to avoid PSPS events, even if the PSPS events are warranted under CPUC regulations” justify denying Plaintiff access to an appropriate legal remedy. PSPSs are only “warranted under CPUC regulations” (1-ER-9-10) “as a last resort for wildfire mitigation.” AMJN, Ex. 3 at 27 (the document adjudicating the 2019 PSPSs, uses the phrase “last resort” 67 times). Further, the CPUC does not provide for PG&E to consider the financial cost to itself of its decision, instead it must conduct a “cost-benefit analysis that demonstrates (1) the program will result in a net reduction in wildfire ignitions, and (2) the benefits of the program outweigh any costs, burdens, or risks the program imposes *on customers and communities.*” AMJN, Ex. 3 at 15 (quoting CPUC Decision D.09-09-030 at 2 and 63) (emphasis added). It would violate CPUC regulations for PG&E to allow potential liability here to sway it from instituting a PSPS as a measure of last resort. Indeed, dismissing this action would incentivize PG&E to continue to pass the costs of its negligence onto California

residents indefinitely, meaning that it will have even less incentive to address the underlying grid problems that caused both the fires and the PSPS events.

And in any event, the cost of causing a catastrophic wildfire is orders of magnitude greater than the cost of compensating homeowners for a temporary blackout, so the purported financial incentive to avoid a PSPS is simply non-existent.

Should the Court have any doubt about the scope of § 1759 preemption as it relates to this particular case, it should certify the question to the California Supreme Court.

*Second*, PG&E's causation argument was both untimely and without merit. In *dicta*, the bankruptcy court indicated that Plaintiff failed to sufficiently allege a "proximate causal connection" between PG&E's negligence and the harm he suffered. 1-ER-23. Not so. The Complaint sufficiently alleges that PG&E's negligent maintenance of its grid caused the need for the PSPS events that injured Plaintiff and the class. This causal link thus meets the substantial factor test applied in California. *City of Modesto v. Dow Chem. Co.*, 19 Cal. App. 5th 130, 156 (Cal. Ct. App. 2018), *as modified on denial of reh'g* (Feb. 6, 2018), *review denied* (Apr. 25, 2018), *as modified on denial of reh'g*, (Feb. 6, 2018) *and review filed*, (Feb. 20, 2018) *and review denied*, (Apr. 25, 2018).

The bankruptcy court *speculated* that even with adequate maintenance the PSPSs could have been “necessitated by high winds,” but the Complaint alleges just the opposite. 1-ER-23. The bankruptcy court is not entitled to make factual findings against Plaintiff at the Rule 12 stage—it must take his allegations as true and construe them in the light most favorable to him. *Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001). In any case, because PG&E raised its causation argument for the first time on reply, it was legal error for the bankruptcy court to consider it. *U.S. ex rel. Giles v. Sardie*, 191 F. Supp. 2d 1117, 1127 (C.D. Cal. 2000).

*Third*, the bankruptcy court erred when it failed to grant Plaintiff leave to amend. *Eminence Capital v. Aspeon*, 316 F.3d 1048, 1053 (9th Cir. 2003). Judge Alsup’s probation orders makes plain that Plaintiff could amend to tie the state of PG&E’s grids even more specifically to the PSPSs. Even the CPUC conceded that Plaintiff could amend to assert more specific causation allegations that would support the negligence claim. 2-ER-148-149.<sup>7</sup>

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<sup>7</sup> The bankruptcy court was correct to reject PG&E’s Tariff Rule 14 argument. *Tesoro Ref. & Mktg. Co. LLC v. Pac. Gas & Elec. Co.*, 146 F. Supp. 3d 1170 (N.D. Cal. 2015). Because neither court addressed the issue below, Appellant does not argue the issue here.

## STANDARD OF REVIEW

**Issues 1-3** are reviewed *de novo*. *In re Cardelucci*, 285 F.3d 1231, 1233 (9th Cir. 2002) (district court’s decision on appeal from bankruptcy court reviewed *de novo*); *In re Park at Dash Point*, 985 F.2d 1008, 1010 (9th Cir. 1993) (bankruptcy court interpretation of state law reviewed *de novo*); *In re Jakubaitis*, 604 B.R. 562, 569 (B.A.P. 9th Cir. 2019) (mixed question of law and fact reviewed *de novo*); *In re EPD Inv. Co., LLC*, 523 B.R. 680, 684 (B.A.P. 9th Cir. 2015) (order granting motion to dismiss reviewed *de novo*). *De novo* review means the Court “considers the matter anew, as if no bankruptcy court ruling was rendered.” *In re Jakubaitis*, 604 B.R. at 569.

**Issue 4** is reviewed for abuse of discretion. *Ditto v. McCurdy*, 510 F.3d 1070, 1079 (9th Cir. 2007). Nonetheless, “dismissal without leave to amend is improper unless it is clear, upon *de novo* review, that the complaint could not be saved by *any* amendment.” *Gompper v. VISX, Inc.* 298 F.3d 893, 898 (9th Cir. 2002) (emphasis added).

## ARGUMENT

### I. LEGAL STANDARDS

Federal Rule of Civil Procedure 8(a) requires that a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief.”

“Dismissal under 12(b)(6) is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.” *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). To survive a Rule 12(b)(6) motion, a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible when a plaintiff pleads “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Courts “accept all factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party.” *Winter ex rel. United States v. Gardens Reg'l Hosp. & Med. Ctr., Inc.*, 953 F.3d 1108, 1114 & n.4 (9th Cir. 2020).

While the Section 1759 preemption inquiry—the sole basis for the lower court decisions—is properly considered under Rule 12(b)(6) standards, *see N. Star Gas Co. v. Pac. Gas & Elec. Co.*, No. 15-CV-02575-HSG, 2016 WL 5358590, at \*6–16 (N.D. Cal. Sept. 26, 2016), the proponent of preemption bears the burden of demonstrating that it applies, *see Chamber of Commerce v. City of Seattle*, 890 F.3d 769, 795 (9th Cir. 2018) (burden to show preemption is on party asserting it); *Hadley v. Kellogg Sales Co.*, 273 F. Supp. 3d 1052, 1076 (N.D. Cal. 2017) (same).

## II. THE LOWER COURTS' DECISIONS THAT SECTION 1759 PREEMPTS THIS ACTION WERE IN ERROR

Section 2106 provides for a private right of action against public utilities:

Any public utility which does, causes to be done, or permits any act, matter, or thing prohibited or declared unlawful, or which omits to do any act, matter, or thing required to be done, either by the Constitution, any law of his State, or any order or decision of the commission, shall be liable to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or resulting therefrom. If the court finds that the act or omission was willful, it may, in addition to the actual damages, award exemplary damages. An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person.

PG&E nevertheless argued below that § 1759(a) preempts Plaintiff's claim.

§ 1759(a) provides:

No court of this state, except the Supreme Court and the court of appeal, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, as provided by law and the rules of court.

But Plaintiff's action does not ask to "review, reverse, correct, or annul any order or decision of the [CPUC]" or to "suspend or delay the execution or operation thereof, or to enjoin, restrain" the CPUC from anything. PG&E was thus forced to argue that Plaintiff's claim somehow would "interfere with the [CPUC] in the performance of its official duties" without ever explaining how or why. PG&E's position conflicts with longstanding law.

“It has never been the rule in California that the [CPUC] has *exclusive* jurisdiction over any and all matters having any reference to the regulation and supervision of public utilities.” *Vila v. Tahoe Southside Water Util.*, 233 Cal. App. 2d 469, 477 (1965) (emphasis in original). The mere fact that this action relates to PSPSs and that the CPUC regulated how PSPSs were implemented does not mean that this action “interferes” with the CPUC’s “performance of its official duties.”

The California Supreme Court set out the pertinent test for § 1759 preemption in *Covalt*, 13 Cal. 4th 893. The *Covalt* test has three components: “(1) whether the [C]PUC had the authority to adopt a regulatory policy on the subject matter of the litigation; (2) whether [C]PUC has exercised that authority; and (3) whether action in the case before the court would hinder or interfere with [C]PUC’s exercise of regulatory authority.” *Kairy v. SuperShuttle Int’l*, 660 F.3d 1146, 1150 (9th Cir. 2011).

All three prongs must be answered in the affirmative for preemption to apply. The third prong most assuredly is not.

This action seeks to compensate customers who suffered harm because of PG&E’s negligent maintenance of its power grid. That negligence led to PG&E’s need to implement the PSPSs, which in turn harmed customers who lost power. In this, these customers sit in the same position, legally speaking, as victims of wildfires caused by that same negligence. As part of the Chapter 11 reorganization

plan, PG&E will be paying some \$25 billion in damages to wildfire victims, insurance companies, municipalities, and others for damages caused by wildfires that resulted from the same negligent maintenance at issue here. If requiring PG&E to pay \$25 billion in wildfire damages will not interfere with the CPUC's ability to regulate PG&E, then neither will paying an amount orders of magnitude less for PSPS-related damages.

Neither PG&E nor the CPUC has demonstrated that awarding damages for that negligence hinders or interferes with the standards and guidelines the CPUC has adopted and approved for PSPSs. By their terms, those standards and guidelines ensure only that when PG&E chooses to implement a PSPS it should be as a last resort to mitigate wildfire risk, and that it does so in as narrowly tailored and least disruptive a way as possible.

But those standards and guidelines were not meant to insulate PG&E from any customer loss arising from a PSPS. And indeed, the CPUC said as much both before and after Plaintiff filed this lawsuit. 2-ER-213 (“This resolution . . . is *not* the venue,” to consider any “financial liability” to PG&E’s customers because of its use of PSPSs) (emphasis added); AMJN, Ex. 3 at 60 (CPUC “does not have jurisdiction to award damages to utility customers for losses of, for example, personal property, damage to real estate, lost wages, business losses, emotional distress, or personal injury.”) Denying this claim on faulty preemption grounds



would insulate PG&E and other utilities from compensating customers harmed by their negligence, leaving customers with no means for compensation at all.

**A. This Action Does Not Hinder or Interfere with the CPUC’s Exercise of Regulatory Authority**

**1. The CPUC’s Recent Decision and Impending Legislative Divestment of Authority Dictate that this Action Does Not and Cannot Interfere with the CPUC’s Regulatory Authority**

On June 7, 2021, the CPUC issued a “Decision Addressing the Late 2019 Public Safety Power Shutoffs by Pacific Gas and Electric Company [and other utilities] to Mitigate the Risk of Wildfire Caused by Utility Infrastructure.” *See* AMJN, Ex. 3. That Decision addressed the implementation of the PSPSs and whether PG&E considered appropriate factors in deciding to institute them, but it did not address whether PG&E’s negligence caused it to shut off the power, or whether it should be liable if that were the case. In fact, it explicitly noted that it lacked jurisdiction to do so. AMJN, Ex. 3, at 60.

To the extent a California agency might revisit the 2019 PSPSs after the CPUC’s comprehensive (within the bounds of its authority) decision, that agency would be the Office of Energy Infrastructure Safety, not the CPUC. § 326 (transferring regulatory authority over wildfire safety matters including PSPSs from the Wildfire Safety Division within the CPUC to the newly created Office of Energy Infrastructure Safety, a division of the California Natural Resources Agency, an entirely different department of government from the CPUC, as of July

1, 2021); Cal. Gov't Code § 15475 (confirming that the Office of Energy Infrastructure Safety is the successor to the Wildfire Safety Division and has all duties previously assigned to it). Section 1759 does not apply to that Office so no preemption exists no matter what it might decide to do. And because § 1759 preemption rests on whether the action would interfere with the CPUC's prospective regulation, not past events, no interference is possible. *United Energy Trading, LLC v. Pac. Gas & Elec. Co.*, 146 F. Supp. 3d 1122, 1137-38 (N.D. Cal. 2015) (no § 1759 preemption because “a lawsuit for *past* damages would not interfere with the CPUC's ongoing, *prospective* regulation of the relevant industry”) (emphasis in original).

## **2. The Lower Courts Did Not Properly Apply the *Covalt* Test**

The bankruptcy court failed to properly apply the *Covalt* test. It analyzed the *timing* of PG&E's negligent conduct rather than whether a finding of negligence here would interfere with any CPUC policy or conclusion. 1-ER-22-23. The district court's analysis was similarly flawed, wrongly concluding that this action seeks to impose liability for PG&E “complying with PSPS obligations created by CPUC regulations.” 1-ER-9-10. Not only are there no “PSPS obligations created by CPUC regulations”—permission to engage in PSPSs if certain conditions are followed is not an “obligation” to institute PSPSs—the district court confuses where PG&E's liability arises in this action.

In *Covalt*, the court considered whether § 1759 preempted a nuisance claim based on property damage caused by SDG&E’s powerlines producing electric and magnetic fields that *the CPUC had found* not to be dangerous. *Covalt*, 13 Cal. 4th at 917. The *Covalt* court determined that a damages award in the nuisance case would be inconsistent with the CPUC’s policies and conclusions because such finding “would be inconsistent with the commission’s conclusion, reached after consulting with DHS, studying the reports of advisory groups and experts, and holding evidentiary hearings, that the available evidence does not support a reasonable belief that 60 Hz electric and magnetic fields present a substantial risk of physical harm, . . .” *Covalt*, 13 Cal. 4th at 939.

Here, by contrast, the bankruptcy court conducted no such analysis. Unlike in *Covalt*, there is no direct conflict between a conclusion already reached by the CPUC and any findings needed to sustain liability in this case. To award damages here, the factfinder would have to find: (1) PG&E negligently maintained its power grid; (2) PG&E’s negligent maintenance of its power grid caused it to shut off power to Plaintiff and the Class; and (3) PG&E’s negligence was a substantial factor in causing Plaintiff’s (and the Class’s) injuries. *See* Judicial Counsel of California Civil Jury Instruction (CACI) 400. None of these findings, which are all consistent with Judge Alsup’s findings in the criminal case, conflict in any way with any CPUC policy or conclusion related to PSPSs. *See* AMJN, Ex. 3.

The Ninth Circuit's decision in *Kairy*, 660 F.3d 1146, is instructive. In that case, a former driver sued Supershuttle, a CPUC regulated company, for wages and benefits on the theory that he was misclassified as an independent contractor. Supershuttle moved to dismiss based on § 1759 preemption and the trial court granted the dismissal. The Ninth Circuit reversed, holding that the *Covalt* test's third prong was not satisfied because the employee/independent contractor determination the court would have to make to decide the case would not hinder or interfere with the CPUC's jurisdiction. *Id.* at 1156.

In contrast, the district court here did not analyze whether this action would require it to decide anything that conflicts with any CPUC policy or conclusion. Instead, it mistakenly focused on the mere fact that the CPUC permits PSPS events in certain circumstances and assumed that holding PG&E liable for its negligence would interfere with the CPUC's PSPS regulatory authority. But this completely ignores that liability in this case does not arise from the PSPSs themselves but from PG&E's negligent failure to maintain its power grid in compliance with state law and CPUC regulations.

As alleged in the Complaint (pp. 4-5), Section 451 requires PG&E to “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.”

4-ER-489. Various CPUC General Orders (for example, Nos. 95 & 165) require PG&E to comply with design standards for its electrical equipment, to ensure that its power lines can withstand high winds, and to inspect its distribution facilities.

4-ER-489-490. Cal. Pub. Res. Code § 4292 provides that PG&E must “maintain around and adjacent to any pole or tower which supports a switch, fuse, transformer, lightning arrester, line junction, or dead end or corner pole, a firebreak,” and Cal. Pub. Res. Code § 4293 requires that PG&E maintain “clearances of four to ten feet for all of its power lines.” 4-ER-489-490. Plaintiff alleges that PG&E failed in its duty to comply in whole or in part with all of the above. 4-ER-490-501, 505-507. And Judge Alsup agrees. *See, e.g.*, AMJN, Ex 1 at 13, 16.

These are the statutes and regulations upon which PG&E’s liability rests in this case, not those having to do with PSPS events. And there can be no question that holding PG&E liable for violations of these statutes and regulations aids the CPUC’s enforcement of these laws and does not hinder it, just as holding PG&E liable for wildfires caused by the *same negligence* does not hinder it.

### **3. The Bankruptcy Court Failed to Properly Analyze § 1759 Preemption under *Hartwell***

In *Hartwell*, 27 Cal. 4th 256, the California Supreme Court further clarified the line between cases that interfere with the CPUC’s regulatory authority and those that do not. Plaintiffs there challenged both the adequacy of federal and state

drinking water standards and compliance with those standards, seeking damages and injunctive relief. *Id.* at 276, 279. The utilities demurred based on § 1759, a trial court granted that motion, and the court of appeal affirmed.

But the California Supreme Court reversed in part, articulating an additional basis to affirm a court’s jurisdiction over a utility’s actions:

An award of damages is barred by section 1759 if it would be contrary to a policy adopted by the [CPUC] and would interfere with its regulation of public utilities. On the other hand, superior courts are not precluded from acting in aid of, rather than in derogation of, the [CPUC’s] jurisdiction.

*Id.* at 275 (internal citation omitted). The court explained that “a court has jurisdiction to enforce a [utility’s] legal obligation to comply with [CPUC] standards and policies and to award damages for violations” and allowed plaintiffs to pursue damages claims based on a theory that the utility failed to meet those standards. *Id.* at 275–76.

The bankruptcy court failed to analyze both whether an award of damages would be contrary to a CPUC policy and whether it would interfere with its regulation of PG&E. Neither necessary condition is satisfied here.

The district court considered these issues but came to the wrong conclusion based on (1) a faulty understanding of what this action seeks; and (2) assumptions and inferences drawn in PG&E’s favor.

*First*, as noted above, a damages award is not contrary to any CPUC policy concerning PSPSs or powerline safety. PG&E’s negligence here is failing to safely maintain its power grid. It is consistent with and complements the CPUC’s safety policies and regulations to hold PG&E liable for damages it causes as a result, and doing so has no impact on the CPUC’s PSPS policies.

*Second*, the district court inferred that the CPUC had a policy favoring PSPSs. But there is nothing in the record to support such a broad reading of the CPUC’s PSPS policy. In fact, the CPUC’s PSPS policy is that it permits utilities to enact PSPSs “as a last resort for wildfire mitigation.” AJNM, Ex. 3 at 27.

Liability in this case cannot possibly interfere with that actual policy. The district court’s further inference—that imposing liability in this case would interfere with a broad policy in support of PSPSs (were it to exist)—is also wrong and inappropriate at the pleading stage.

The CPUC’s policy for utilities to balance the need to curb wildfires against the costs, burdens, and risks to “customers and communities” also is not impacted by any decision in this case. AJNM, Ex. 3 at 15. In fact, the CPUC’s latest word on the topic is that awarding damages would support this balancing:

Utilities have statutory authority to preventatively shut off power using PSPS as a measure of last resort to assure public safety. Yet, PSPS occurs far more often today than what may be expected for a measure of last resort, as the condition of utility assets and surrounding vegetation is not sufficiently prepared to face high

wildfire risk conditions. *Misalignment of incentives, whereby utilities do not pay for the community impact and economic damage of PSPS events but do assume all liability for wildfire ignitions, exacerbates the tendency for utilities to utilize PSPS.* However, utilities are not held accountable for the safety and economic impacts a community may face without power.

Utility Wildfire Mitigation Strategy and Roadmap for the Wildfire Safety Division, Appendix: Global Strategies for Utility Wildfire Mitigation (December 2020), available at [https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About\\_Us/Organization/Divisions/WSD/Final\\_Appendix\\_1\\_GlobalStrategies\\_WS\\_D.pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About_Us/Organization/Divisions/WSD/Final_Appendix_1_GlobalStrategies_WS_D.pdf) (last visited June 24, 2021), at 8-9 (emphasis added).

The district court's concern that PG&E may factor in its desire to avoid paying for its own negligence into this calculus is unfounded because (1) the CPUC does not permit PG&E to do so; and (2) if the PSPS is not caused by PG&E's negligence, it has no liability. It is also illogical because, as noted above, the cost of paying for damages caused by a wildfire is far greater than the cost of paying for PSPS-related damages.

#### **4. The CPUC's Conclusory Assertion that an Action Interferes with its Regulatory Authority Carries No Weight**

The CPUC's bald assertion here that this action would interfere with it regulating PG&E does not mean that it does. BK Dkt. No. 19.

In PG&E's criminal proceedings, the CPUC outlined its role:

The CPUC has approved guidelines for electric utilities to use in their PSPS decision-making process, that are designed to maximize the



wildfire mitigation benefits of the PSPS option while minimizing the public safety consequences that can follow directly from exercising PSPS as a tool of last resort. Accordingly, the CPUC has not, to date, “approved” specific models, methodologies, criteria or assumptions to be used in PSPS decision-making. These matters are the responsibility of utility operators who must, by law, operate their electric systems safely and reliably, subject to the CPUC’s regulatory oversight and enforcement.

AMJN, Ex. 2 at 4. Put simply, liability in this case does not interfere with those guidelines, regardless of the CPUC’s *ipse dixit* that it does.

California courts reject the CPUC’s view of § 1759 preemption when those views conflict with reality. In *Wilson*, 234 Cal. App. 4th 123, for example, the utility appealed from a jury verdict awarding tort damages for negligently allowing uncontrolled currents into a customer’s home from an electrical substation located next door. The CPUC filed an amicus brief asserting, much like it did here, that it had an ongoing policy and program and that a superior court adjudication prior to a CPUC finding of wrongdoing “would interfere with the Commission’s authority to interpret and apply its own orders, decisions, rules and regulations . . .” *Wilson*, 234 Cal. App. 4th at 148 (quoting the CPUC’s brief).

The court disagreed, holding that it was not sufficient for the CPUC to have issued general regulations on the subject and set forth design requirements to find § 1759 preemption. Because there was no evidence that the CPUC had investigated or regulated the specific stray voltage issue on which liability hinged, the Court found that “the lawsuit would not interfere with or hinder any

supervisory or regulatory policy of the [C]PUC.” *Id.* at 151. So too here. It is for the courts, not the CPUC, to decide preemption.

**5. Whether PG&E Met the CPUC’s Minimum PSPS Standards is Irrelevant**

The bankruptcy court’s focus on whether PG&E met the minimum requirements the CPUC set for PSPSs is misplaced. 1-ER-22. The CPUC did not authorize or approve any particular PSPS or approve of PG&E’s conduct during these events retroactively (in fact, it found PG&E failed to meet many of its PSPS obligations). AMJN, Ex. 3 at 255-282 (CPUC findings of fact and conclusions of law). And, whether the execution of the PSPSs met the CPUC’s standards is irrelevant. The claim at issue here is that PG&E’s negligence is what necessitated the PSPSs in the first instance.

Even if PG&E had met the minimum requirements the CPUC set for electrical lines and equipment safety and PSPSs—and it did not—it would still not be insulated from a negligence lawsuit. *PegaStaff v. Pac. Gas & Elec. Co.*, 239 Cal. App. 4th 1303, 1320.

In *Mata v. Pac. Gas & Elec. Co.*, 224 Cal. App. 4th 309 (2014), *as modified on denial of reh’g* (Mar. 26, 2014), heirs of a decedent electrocuted by overhead powerlines while trimming trees brought a negligence action against PG&E alleging it failed to exercise due care in maintaining vegetation clearance near the power line. The superior court granted summary adjudication in PG&E’s favor on

a negligence per se cause of action because PG&E indisputably met its clearance obligations under CPUC General Order No. 95 for that power line. The superior court then granted PG&E's subsequent motion to dismiss based on § 1759.

The court of appeal reversed. It found that CPUC rules establishing minimum clearance requirements did not relieve PG&E “of its obligation to exercise reasonable care to avoid causing harm to others, or . . . its responsibility for failing to do so.” *Mata*, 224 Cal. App. 4th at 318; *see also Nevis v. Pac. Gas & Elec. Co.*, 43 Cal. 2d 626, 630 (1954) (“Compliance with the general orders of the [CPUC] does not establish as a matter of law due care by the power company, but merely relieves it ‘of the charge of negligence per se.’”).

Likewise, in *Wilson*, 234 Cal. App. 4th 123, the court of appeal found that compliance with a minimum standard did not insulate a utility from negligence liability. *See also PegaStaff*, 239 Cal. App. 4th at 1320 (“merely meeting [minimum] requirements does not necessarily insulate a utility from a superior court suit”).

Here, the CPUC has never indicated that PG&E may perform PSPSs without liability to its customers, regardless of whether it follows CPUC guidelines and rules. Courts in this circuit agree that § 1759 dismissal is inappropriate in such circumstances. *See, e.g., N. Star Gas*, 2016 WL 5358590, at \*13-15 (denying motion to dismiss based on § 1759 when case does not involve complex

interpretive challenges and damages finding would not hinder or impede any CPUC policy); *see also Mangiaracina v. BNSF Ry. Co.*, No. 16-CV-05270-JST, 2019 WL 1975461, at \*14 (N.D. Cal. Mar. 7, 2019) (denying motion for summary judgment based on § 1759 when finding of negligence would not invalidate CPUC standards and plaintiffs seek damages based on past negligence).

**B. This Action Is in Aid of and Complements the CPUC’s Jurisdiction**

“[C]ourts are not precluded from acting in aid of, rather than in derogation of, the [CPUC’s] jurisdiction.” *Hartwell*, 27 Cal. 4th at 275. In *Vila*, 233 Cal. App. 2d 469, the case on which *Hartwell* relies, the court found no preemption because the action, premised on a violation of a CPUC regulation, would aid rather than degrade the CPUC’s regulatory authority. *Id.* at 479.

*Cundiff v. GTE California*, 101 Cal. App. 4th 1395 (2002) follows this line of authority. There, plaintiffs sued phone utilities for charging rental fees for nonexistent or obsolete phones. *Id.* at 1400-02. The court of appeal reversed the granting of a demurrer on § 1759 grounds based on interference with the CPUC’s billing regulations because plaintiffs were not challenging the CPUC’s decision to allow defendants to rent phones, but the manner in which defendants billed them under the regulations. *Id.* at 1406.

That court relied on *Cellular Plus v. Superior Ct.*, 14 Cal. App. 4th 1224, 1245 (1993). There, the court allowed an antitrust action for price-fixing against

cell phone companies despite the CPUC's regulation of pricing because plaintiffs did not challenge the CPUC's right to set rates for cellular service or have the commission change its rates. *Cundiff*, 101 Cal. App. 4th at 1407.

The same is true here. Plaintiff is not challenging the CPUC's right to regulate PG&E's PSPSs, or PG&E's maintenance of its lines. Nor is Plaintiff seeking to change those regulations. Rather, this action "actually furthers policies of [the CPUC]" because it incentivizes PG&E to provide safe and reliable electricity to its customers. *Cundiff*, 101 Cal. App. 4th at 1408; *see also Nwabueze v. AT&T Inc.*, No. C 09-1529 SI, 2011 WL 332473, at \*16 (N.D. Cal. Jan. 29, 2011) ("A lawsuit for damages . . . would not interfere with any prospective regulatory program" since "a finding of liability would not be contrary to any policy adopted by the CPUC or otherwise interfere with the CPUC's regulation.").

*PegaStaff*, 239 Cal. App. 4th 1303 further illustrates the distinction between actions hindering the exercise of the CPUC's authority (which are barred) and those complementing it (which may go forward in court). In *PegaStaff*, a non-minority run staffing agency sued PG&E and others, alleging that PG&E's new tier structure that rewarded minority enterprises over others in response to new California Public Utilities Code sections and a CPUC general order designed to encourage the use of minority enterprises, negatively affected its business and discriminated against it. The trial court granted PG&E's motion for judgment on

the pleadings on the basis that § 1759 precluded jurisdiction. The court of appeal reversed.

In that case, despite plaintiff alleging that PG&E set up its preference system to comply with CPUC rules, the court found that PG&E's alleged conduct was not necessary to comply with the Code sections, rules, and decisions at issue and in fact the CPUC had not authorized or permitted the alleged conduct. Therefore, the court concluded that an award of damages or injunctive relief would enforce, not obstruct, the CPUC regulation. *PegaStaff*, 239 Cal. App. 4th at 1327-28 (citing *Hartwell*, 27 Cal. 4th at 275).

The facts here are even stronger than in *PegaStaff*. Plaintiff's negligence claim is based on PG&E repeatedly violating its duty of care to its customers and, in the process, violating §§ 451, 8386(a), the Cal. Pub. Res. Code § 4292, 4293, and CPUC General Orders Nos. 95 & 165 culminating in it shutting off power to hundreds of thousands of customers. 4-ER-489-490, 492-498, 505-506. The CPUC did not specifically authorize PG&E to violate these statutes or orders.

Further, the nature of the relief sought is relevant to whether an action would hinder or interfere with the CPUC's exercise of regulatory authority. *PegaStaff*, 239 Cal. App. 4th at 1318. "If the nature of the relief sought . . . fall[s] outside the [C]PUC's constitutional and statutory powers, the claim will not be barred by section 1759." *PegaStaff*, 239 Cal. App. 4th at 1318; *Mangiaracina*, 2019 WL

1975461, at \*14 (“the Court finds further support [for its denial of defendant’s motion to dismiss based on § 1759] in the fact that Plaintiffs seek damages based on past negligence, which the CPUC lacks the power to adjudicate”).

The CPUC acknowledges that it does not have the authority to award, or to order a utility to pay, tort damages, which is what Plaintiff seeks. 2-ER-201 (“[T]his Commission does not have authority to award damages, as requested by Complainant, but only reparations. . . . Accordingly, Complainant’s request in this regard for an award of damages is outside of Commission jurisdiction.”); AMJN, Ex. 3 at 60; 2-ER-192-193; *Mangiaracina*, 2019 WL 1975461, at \*14 (CPUC lacks power to adjudicate damages based on past negligence). This alone means that the bankruptcy court erred in finding § 1759 preemption. *PegaStaff*, 239 Cal. App. 4th at 1318.

**C. Any New Judicial Determination on the Boundaries of § 1759 Preemption Should Come from the California Supreme Court**

When interpreting state law, this Court follows the decisions of the California Supreme Court. *Johnson v. Fankell*, 520 U.S. 911, 916 (1997); *Muniz v. UPS*, 738 F.3d 214, 219 (9th Cir. 2013). Absent a binding California Supreme Court decision, this Court must endeavor to predict how California’s highest court would decide the question. *Ingenco Holdings, LLC v. Ace Am. Ins. Co.*, 921 F.3d 803, 815 (9th Cir. 2019). Where an issue of California law is both important and unsettled, however, there is a better option. Rather than predict what the California

Supreme Court would say, this Court can ask it.

California Rule of Court 8.548(a) allows this Court to certify questions of law to the California Supreme Court for decision. *See Kremen v. Cohen*, 325 F.3d 1035, 1037 (9th Cir. 2003); *see also Arizonans for Official English v. Arizona*, 520 U.S. 43, 79 (1997) (“Speculation by a federal court about the meaning of a state statute in the absence of prior state court adjudication is particularly gratuitous when the state courts stand willing to address questions of state law on certification from a federal court”).

Certification is appropriate when (1) the decision could determine the outcome of the matter pending in the requesting court, (2) there is no controlling precedent, and (3) the case presents significant issues with important public policy ramifications. *Kremen*, 325 F.3d at 1037. Whether § 1759 preempts Plaintiff’s negligence claim when that claim is based on PG&E’s negligent maintenance of its power grid necessitating it to institute PSPSs clearly meets that standard. To the extent this Court is not convinced that existing California precedent forecloses § 1759 preemption in this case, it should certify the question to the California Supreme Court.

First, the California Supreme Court’s interpretation of the scope of § 1759, the CPUC’s prospective authority over the 2019 PSPSs, and whether this negligence action would hinder that would determine the outcome of this matter.



Second, as discussed above, the scope of § 1759, and the CPUC's prospective authority over the 2019 PSPSs, and whether this negligence action would hinder that authority is potentially a question of California law for which there is no judicial precedent precisely on point. This is not to say the scope and application of § 1759 has not been considered by the California Supreme Court, or that whether the negligence action would actually hinder the CPUC is not a question of fact. It has and it is, and Plaintiff's contend that authority is clear that preemption should not apply. However, if there is any doubt, the California Supreme Court should decide the issue.

Third, this case presents significant issues with important public policy ramifications. Namely, the Court's decision concerning preemption here determines whether the millions of Californians impacted by PSPSs (and those who will be impacted in the future) may recover from a utility for damages caused to them if the utility's negligence is the root cause of the PSPS.

To the extent this Court harbors any question about whether § 1759 preempts Plaintiff's negligence claims under these circumstances, it should refer that question to the California Supreme Court rather than predict what that Court's response would be.

### III. THE BANKRUPTCY COURT’S CONCLUSION THAT PLAINTIFF FAILED TO SUFFICIENTLY ALLEGE CAUSATION IS WRONG

In *dicta*, the bankruptcy court suggests that the motion to dismiss could also have been granted because Plaintiff had not sufficiently alleged causation. 1-ER-23. The bankruptcy court’s *dicta* fails on its merits. And that issue never should have been considered in the first instance.<sup>8</sup>

To state a negligence claim Plaintiff must allege: (1) PG&E was negligent; (2) Plaintiff was harmed; and (3) PG&E’s negligence was a substantial factor in causing Plaintiff’s harm. CACI 400. There is no dispute that the Complaint satisfies the first two elements.

The third element is also satisfied. “A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.” CACI 430. Further, “A person’s negligence may combine with another factor to cause harm . . . . [Defendant] cannot avoid responsibility just because some other person, condition, or event was also a substantial factor in causing [plaintiff]’s harm.” CACI 431; *Uriell v. Regents of Univ. of California*, 234 Cal. App. 4th 735, 746–47 (2015). “Direct proof of every link in the chain of causation . . . is not required.” *City of Modesto*, 19 Cal. App. 5th at 156.

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<sup>8</sup> The district court did not reach the issue.

The bankruptcy court appeared to mistakenly believe that PG&E's negligent maintenance of its power grid had to be the only cause of Plaintiff's injury or that the court was free to imply other possible causes of Plaintiff's injury into Plaintiff's allegations. 1-ER-23. Not so. The bankruptcy court was required to accept Plaintiff's allegations as true on the motion to dismiss and construe them in the light most favorable to him. *Lee*, 250 F.3d at 679.

The causal connection between PG&E's negligent maintenance of its grid is set forth in detail in the Complaint. 4-ER-489 (Compl. ¶ 15 ("In extreme fire areas, PG&E also must ensure that its power lines can withstand winds of up to 92 miles per hour")); 4-ER-499 (¶ 66 (For the October 9 and 10 PSPSs, "there is no indication that it ever came close to the 92 miles per hour threshold established by CPUC General Order 95")); 4-ER-501 (¶78 (for the November 20 PSPS "winds did not approach the 92-mph threshold")). Judge Alsup's Probation Orders attempting to further reign in PG&E's abuses further supports the causal connection. (*See supra*, at Statement of the Case § I.A.1.)

Nor do proximate cause policy considerations favor insulating PG&E from liability for its negligence. *Cabral v. Ralphs Grocery Co.*, 51 Cal. 4th 764, 779 (2011) ("[T]he question of 'the closeness of the connection between the defendant's conduct and the injury suffered' [citation] is strongly related to the question of foreseeability itself.").

The court’s task “is not to decide whether a *particular* plaintiff’s injury was reasonably foreseeable in light of a *particular* defendant’s conduct, but rather to evaluate more generally whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed.” *Id.* at 772 (emphasis in original, internal quotation omitted). “[F]oreseeability is not to be measured by what is more probable than not, but includes whatever is likely enough in the setting of modern life that a reasonably thoughtful [person] would take account of it in guiding practical conduct.” *Bigbee v. Pac. Tel. & Tel. Co.*, 34 Cal. 3d 49, 57 (1983) (internal quotation marks omitted).

Plaintiff’s damages were a foreseeable consequence of PG&E’s failure to maintain its power grid safely. PG&E should have anticipated that if it failed to maintain its grid to stand up to conditions that regularly affect that grid, it would either: (1) cause fires; or (2) cause damages to customers by shutting off power.

In any event, the bankruptcy court should never have considered PG&E’s improperly-raised causation argument. *See U.S. ex rel. Giles*, 191 F. Supp. 2d at 1127 (“It is improper for a moving party to introduce new facts or different legal arguments in the reply brief than those presented in the moving papers.”); *see also State of Nev. v. Watkins*, 914 F.2d 1545, 1560 (9th Cir. 1990) (“[Parties] cannot raise a new issue for the first time in their reply briefs.” (citations omitted)); *Dytch*

*v. Yoon*, No. C-10-02915-MEJ, 2011 WL 839421, at \*3 (N.D. Cal. Mar. 7, 2011) (“Defendant’s argument . . . was raised for the first time her reply brief. As a result, it would be improper for the Court to consider it.”).

PG&E’s argument that it only realized Plaintiff alleged negligence based on its negligent maintenance of its power grid via Plaintiff’s opposition, not his Complaint, is absurd. The second paragraph of the Complaint put PG&E on notice of Plaintiff’s position: “The necessity for the outages was caused by PG&E’s own negligence in failing over many years, to properly maintain or replace old transmission lines, leaving them vulnerable to failing and sparking deadly wildfires.” 4-ER-487. PG&E thus waived any argument regarding causation and the bankruptcy court should not have addressed it.

#### **IV. IT WAS AN ABUSE OF DISCRETION TO DENY PLAINTIFF LEAVE TO AMEND THE COMPLAINT**

The bankruptcy court abused its discretion when it decided not to permit Plaintiff leave to amend and the district court abused its discretion by affirming that decision. *Eminence Capital*, 316 F.3d at 1053 (district court abused its discretion by denying plaintiffs leave to amend where allegations were not frivolous, plaintiffs’ allegations were in good faith, and it appeared plaintiffs had reasonable chance of successfully stating claim if given another opportunity). The bankruptcy court did not address the issue in its decision and did not even evaluate whether Plaintiff could amend to fix what it perceived to be fatal deficiencies.

While Plaintiff strongly disputes that the operative complaint is deficient, there is no doubt Plaintiff could amend the Complaint to address the bankruptcy court's concerns if need be.

Indeed, even the CPUC conceded as much, noting at oral argument that “there could be a set of circumstances with specific shutdowns and specific power lines, in which you might have a negligence claim that could work.” 2-ER-148-149. If more specific allegations concerning the PSPSs and the specific power lines is what is needed, Plaintiff should have been given the opportunity to allege those facts. PG&E's representation to the CPUC that “the majority of transmission lines within the potential PSPS scope” are healthy and present a “low wildfire risk” certainly implies that some were not and caused the need for the PSPSs. (*See supra*, at Statement of the Case § I.A.) Plaintiff should have been given the chance to discover those details if he was required to plead them.

Judge Alsup's orders likewise demonstrate that Plaintiff is capable of clearly drawing that connection for the court. 2-ER-117-129; AMJN, Ex. 1. For instance, the thousands of hazardous limbs and trees across PG&E's power grid in 2019 and the “defective and worn-out hardware” of its transmission towers caused a heightened risk of fire necessitating PSPSs which would not exist if PG&E had properly inspected and trimmed vegetation and trees and updated its grid as it was supposed to. 2-ER-122-127.

Further, even if the preemption argument were correct, the district court was wrong to conclude that amendment would be futile. When the party opposing amendment relies on futility, as PG&E does here, “such denial is improper unless it is *clear* that no amendment could save the pleading.” *Josef K. v. California Physicians’ Serv.*, No. 18-CV-06385-YGR, 2019 WL 688075, at \*4 (N.D. Cal. Feb. 19, 2019) (citations omitted). In that case, the court found the complaint preempted under ERISA, but nevertheless granted leave to amend because Rule 15(a) “imposes a presumption in favor of granting leave to amend.” *Id*

*Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001), cited by the district court, is inapposite. There, the plaintiff had already been allowed to amend his complaint. Unlike in that case, the district court here did not identify any “unnecessary details” in the complaint that precluded Plaintiff from asserting a negligence claim against PG&E or how a successful amendment would contradict the original complaint. There are no unnecessary details or mandatory contradictions in the Complaint.

The standard for amendment means that Plaintiff can amend even if it would require a different legal theory for an amended complaint to survive. The Court should permit Plaintiff “to amend his claims in the Complaint to challenge the proper defendants and to present any viable claim.” *Harris v. Amgen, Inc.*, 573 F.3d 728, 737 (9th Cir. 2009); *see also Chappel v. Lab’y Corp. of Am.*, 232 F.3d

719, 725–27 (9th Cir. 2000) (holding that district court abused its discretion in denying ERISA beneficiary leave to amend complaint to add previously unpleaded but cognizable theory of relief).

### CONCLUSION

For the foregoing reasons, the Court should reverse the bankruptcy court’s Decision and Order and remand for further proceedings.

Dated: June 25, 2021    PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

By: /s/ Nicholas A. Carlin  
Nicholas A. Carlin  
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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**STATEMENT OF RELATED CASES**

**Form 17. Statement of Related Cases Pursuant to Circuit Rule 28-2.6**

The undersigned attorney or self-represented party states the following:

[ X ]I am unaware of any related cases currently pending in this court.

**Signature** s/ Nicholas A. Carlin

**Date** June 25, 2021

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 8. Certificate of Compliance for Briefs**

I am the attorney or self-represented party.

**This brief contains 11,718 words**, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief complies with the word limit of Cir. R. 32-1.

**Signature** s/ Nicholas A. Carlin

**Date** June 25, 2021

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**CERTIFICATE OF SERVICE**

**9th Cir. Case Number(s) No. No. 21-15571**

I hereby certify that I electronically filed the foregoing/attached document(s) on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing System.

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| APPELLANT'S OPENING BRIEF<br>ADDENDUM<br>APPELLANT'S MOTION TO TAKE JUDICIAL NOTICE<br>EXCERPTS OF RECORD (Index Vol.)<br>EXCERPTS OF RECORD (Vol. 1 of 4)<br>EXCERPTS OF RECORD (Vol. 2 of 4)<br>EXCERPTS OF RECORD (Vol. 3 of 4)<br>EXCERPTS OF RECORD (Vol. 4 of 4) |
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**Signature** s/ Nicholas A. Carlin

**Date** June 25, 2021

**ADDENDUM**

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**Cal. Civ. Code § 3294**

(a) In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

(b) An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation.

(c) As used in this section, the following definitions shall apply:

(1) “Malice” means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.

(2) “Oppression” means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights.

(3) “Fraud” means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.

(d) Damages may be recovered pursuant to this section in an action pursuant to Chapter 4 (commencing with Section 377.10) of Title 3 of Part 2 of the Code of Civil Procedure based upon a death which resulted from a homicide for which the defendant has been convicted of a felony, whether or not the decedent died instantly or survived the fatal injury

for some period of time. The procedures for joinder and consolidation contained in Section 377.62 of the Code of Civil Procedure shall apply to prevent multiple recoveries of punitive or exemplary damages based upon the same wrongful act.

(e) The amendments to this section made by Chapter 1498 of the Statutes of 1987 apply to all actions in which the initial trial has not commenced prior to January 1, 1988.

**Cal. Gov't Code § 15473**

(a) There is in state government, within the Natural Resources Agency, the Office of Energy Infrastructure Safety. The office shall be under the supervision of the Director of the Office of Energy Infrastructure Safety, who shall have all rights and powers of a head of an office as provided by this code.

(b) The director shall be appointed by, and hold office at the pleasure of, the Governor. The appointment of the director is subject to confirmation by the Senate.

(1) The director shall receive an annual salary as set forth in Section 11552.

(2) The Governor may appoint a deputy director of the office. The deputy director shall hold office at the pleasure of the Governor.

(c) In carrying out the provisions of this part, the director may:

(1) Cooperate and contract with public and private agencies for the performance of acts, the rendition of services, and the affording of facilities as may be necessary and proper.

(2) Do other acts and things as may be necessary and incidental to the exercise of powers and the discharge of duties conferred or imposed by the provisions of this part.

**Cal. Gov't Code § 15475**

The office is the successor to, and, effective July 1, 2021, is vested with, all of the duties, powers, and responsibilities of the Wildfire Safety Division established pursuant to Section 326 of the Public Utilities Code, including, but not limited to, the power to compel information and conduct investigations. All laws prescribing the duties, powers, and responsibilities of the Wildfire Safety Division to which the office succeeds, together with all lawful rules and regulations established under those laws, are expressly continued in force.



**Cal. Pub. Res. Code § 4292**

Except as otherwise provided in Section 4296, any person that owns, controls, operates, or maintains any electrical transmission or distribution line upon any mountainous land, or forest-covered land, brush-covered land, or grass-covered land shall, during such times and in such areas as are determined to be necessary by the director or the agency which has primary responsibility for fire protection of such areas, maintain around and adjacent to any pole or tower which supports a switch, fuse, transformer, lightning arrester, line junction, or dead end or corner pole, a firebreak which consists of a clearing of not less than 10 feet in each direction from the outer circumference of such pole or tower. This section does not, however, apply to any line which is used exclusively as telephone, telegraph, telephone or telegraph messenger call, fire or alarm line, or other line which is classed as a communication circuit by the Public Utilities Commission. The director or the agency which has primary fire protection responsibility for the protection of such areas may permit exceptions from the requirements of this section which are based upon the specific circumstances involved.

**Cal. Pub. Res. Code § 4293**

Except as otherwise provided in Sections 4294 to 4296, inclusive, any person that owns, controls, operates, or maintains any electrical transmission or distribution line upon any mountainous land, or in forest-covered land, brush-covered land, or grass-covered land shall, during such times and in such areas as are determined to be necessary by the director or the agency which has primary responsibility for the fire protection of such areas, maintain a clearance of the respective distances which are specified in this section in all directions between all vegetation and all conductors which are carrying electric current:

(a) For any line which is operating at 2,400 or more volts, but less than 72,000 volts, four feet.

(b) For any line which is operating at 72,000 or more volts, but less than 110,000 volts, six feet.

(c) For any line which is operating at 110,000 or more volts, 10 feet.

In every case, such distance shall be sufficiently great to furnish the required clearance at any position of the wire, or conductor when the adjacent air temperature is 120 degrees Fahrenheit, or less. Dead trees, old decadent or rotten trees, trees weakened by decay or disease and trees or portions thereof that are leaning toward the line which may contact the line from the side or may fall on the line shall be felled, cut, or trimmed so as to remove such hazard. The director or the agency which has primary responsibility for the fire protection of such areas may permit exceptions from the requirements of this section which are based upon the specific circumstances involved.

**Cal. Pub. Util. Code § 326**

(a) By January 1, 2020, the commission shall establish the Wildfire Safety Division within the commission, located in Sacramento, California. The Wildfire Safety Division shall do all of the following:

(1) Oversee and enforce electrical corporations' compliance with wildfire safety pursuant to Chapter 6 (commencing with Section 8385) of Division 4.1.

(2) In consultation with the California Wildfire Safety Advisory Board, develop and recommend to the commission performance metrics to achieve maximum feasible risk reduction to be used to develop the wildfire mitigation plan and evaluate an electrical corporation's compliance with that plan. For this purpose, "maximum feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

(3) Develop a field audit program for wildfire mitigation plan compliance by each electrical corporation.

(4) Consult with the Office of Emergency Services in the office's management and response to utility public safety power shutoff events and utility actions for compliance with public safety power shutoff program rules and regulations.

(5) Support efforts to assess and analyze fire weather data and other atmospheric conditions that could lead to catastrophic wildfires and to reduce the likelihood and severity of wildfire incidents that could endanger the safety of persons, properties, and the environment within the state.

(6) Retain appropriate staff that includes experts in wildfire, weather, climate change, emergency response, and other relevant subject matters.

(7) Review, as necessary, in coordination with the California Wildfire Safety Advisory Board and necessary commission staff, safety requirements for electrical transmission and distribution infrastructure

and infrastructure and equipment attached to that electrical infrastructure, and provide recommendations to the commission to address the dynamic risk of climate change and to mitigate wildfire risk.

(b) Effective July 1, 2021, all functions of the Wildfire Safety Division shall be transferred to the Office of Energy Infrastructure Safety established pursuant to Section 15473 of the Government Code.

**Cal. Pub. Util. Code § 330**

(a) It is the intent of the Legislature that a cumulative rate reduction of at least 20 percent be achieved not later than April 1, 2002, for residential and small commercial customers, from the rates in effect on June 10, 1996. In determining that the April 1, 2002, rate reduction has been met, the commission shall exclude the costs of the competitively procured electricity and the costs associated with the rate reduction bonds, as defined in Section 840.

(b) The people, businesses, and institutions of California spend nearly twenty-three billion dollars (\$23,000,000,000) annually on electricity, so that reductions in the price of electricity would significantly benefit the economy of the state and its residents.

(c) The Public Utilities Commission has opened rulemaking and investigation proceedings with regard to restructuring California's electric power industry and reforming utility regulation.

(d) The commission has found, after an extensive public review process, that the interests of ratepayers and the state as a whole will be best served by moving from the regulatory framework existing on January 1, 1997, in which retail electricity service is provided principally by electrical corporations subject to an obligation to provide ultimate consumers in exclusive service territories with reliable electric service at regulated rates, to a framework under which competition would be allowed in the supply of electric power and customers would be allowed to have the right to choose their supplier of electric power.

(e) Competition in the electric generation market will encourage innovation, efficiency, and better service from all market participants, and will permit the reduction of costly regulatory oversight.

(f) The delivery of electricity over transmission and distribution systems is currently regulated, and will continue to be regulated to ensure system safety, reliability, environmental protection, and fair access for all market participants.

(g) Reliable electric service is of utmost importance to the safety, health, and welfare of the state's citizenry and economy. It is the intent of the Legislature that electric industry restructuring should enhance the reliability of the interconnected regional transmission systems, and provide strong coordination and enforceable protocols for all users of the power grid.

(h) It is important that sufficient supplies of electric generation will be available to maintain the reliable service to the citizens and businesses of the state.

(i) Reliable electric service depends on conscientious inspection and maintenance of transmission and distribution systems. To continue and enhance the reliability of the delivery of electricity, the Independent System Operator and the commission, respectively, should set inspection, maintenance, repair, and replacement standards.

(j) It is the intent of the Legislature that California enter into a compact with western region states. That compact should require the publicly and investor-owned utilities located in those states, that sell energy to California retail customers, to adhere to enforceable standards and protocols to protect the reliability of the interconnected regional transmission and distribution systems.

(k) In order to achieve meaningful wholesale and retail competition in the electric generation market, it is essential to do all of the following:

(1) Separate monopoly utility transmission functions from competitive generation functions, through development of independent, third-party control of transmission access and pricing.

(2) Permit all customers to choose from among competing suppliers of electric power.

(3) Provide customers and suppliers with open, nondiscriminatory, and comparable access to transmission and distribution services.

(l) The commission has properly concluded that:

(1) This competition will best be introduced by the creation of an Independent System Operator and an independent Power Exchange.

(2) Generation of electricity should be open to competition.

(3) There is a need to ensure that no participant in these new market institutions has the ability to exercise significant market power so that operation of the new market institutions would be distorted.

(4) These new market institutions should commence simultaneously with the phase in of customer choice, and the public will be best served if these institutions and the nonbypassable transition cost recovery mechanism referred to in subdivisions (s) to (w), inclusive, are in place simultaneously and no later than January 1, 1998.

(m) It is the intention of the Legislature that California's publicly owned electric utilities and investor-owned electric utilities should commit control of their transmission facilities to the Independent System Operator. These utilities should jointly advocate to the Federal Energy Regulatory Commission a pricing methodology for the Independent System Operator that results in an equitable return on capital investment in transmission facilities for all Independent System Operator participants.

(n) Opportunities to acquire electric power in the competitive market must be available to California consumers as soon as practicable, but no later than January 1, 1998, so that all customers can share in the benefits of competition.

(o) Under the existing regulatory framework, California's electrical corporations were granted franchise rights to provide electricity to consumers in their service territories.

(p) Consistent with federal and state policies, California electrical corporations invested in power plants and entered into contractual obligations in order to provide reliable electrical service on a nondiscriminatory basis to all consumers within their service territories who requested service.

(q) The cost of these investments and contractual obligations are currently being recovered in electricity rates charged by electrical corporations to their consumers.

(r) Transmission and distribution of electric power remain essential services imbued with the public interest that are provided over facilities owned and maintained by the state's electrical corporations.

(s) It is proper to allow electrical corporations an opportunity to continue to recover, over a reasonable transition period, those costs and categories of costs for generation-related assets and obligations, including costs associated with any subsequent renegotiation or buyout of existing generation-related contracts, that the commission, prior to December 20, 1995, had authorized for collection in rates and that may not be recoverable in market prices in a competitive generation market, and appropriate additions incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the

commission determines are reasonable and should be recovered, provided that the costs are necessary to maintain those facilities through December 31, 2001. In determining the costs to be recovered, it is appropriate to net the negative value of above market assets against the positive value of below market assets.

(t) The transition to a competitive generation market should be orderly, protect electric system reliability, provide the investors in these electrical corporations with a fair opportunity to fully recover the costs associated with commission approved generation-related assets and obligations, and be completed as expeditiously as possible.

(u) The transition to expanded customer choice, competitive markets, and performance based ratemaking as described in Decision 95-12-063, as modified by Decision 96-01-009, of the Public Utilities Commission, can produce hardships for employees who have dedicated their working lives to utility employment. It is preferable that any necessary reductions in the utility workforce directly caused by electrical restructuring, be accomplished through offers of voluntary severance, retraining, early retirement, outplacement, and related benefits. Whether workforce reductions are voluntary or involuntary, reasonable costs associated with these sorts of benefits should be included in the competition transition charge.

(v) Charges associated with the transition should be collected over a specific period of time on a nonbypassable basis and in a manner that does not result in an increase in rates to customers of electrical corporations. In order to insulate the policy of nonbypassability against incursions, if exemptions from the competition transition charge are granted, a firewall shall be created that segregates recovery of the cost of exemptions as follows:

(1) The cost of the competition transition charge exemptions granted to members of the combined class of residential and small commercial customers shall be recovered only from those customers.

(2) The cost of the competition transition charge exemptions granted to members of the combined class of customers other than residential and small commercial customers shall be recovered only from those customers. The commission shall retain existing cost allocation authority provided that the firewall and rate freeze principles are not violated.

(w) It is the intent of the Legislature to require and enable electrical corporations to monetize a portion of the competition transition charge for residential and small



commercial consumers so that these customers will receive rate reductions of no less than 10 percent for 1998 continuing through 2002. Electrical corporations shall, by June 1, 1997, or earlier, secure the means to finance the competition transition charge by applying concurrently for financing orders from the Public Utilities Commission and for rate reduction bonds from the California Infrastructure and Economic Development Bank.

(x) California's public utility electrical corporations provide substantial benefits to all Californians, including employment and support of the state's economy. Restructuring the electric services industry pursuant to the act that added this chapter will continue these benefits, and will also offer meaningful and immediate rate reductions for residential and small commercial customers, and facilitate competition in the supply of electric power.

**Cal. Pub. Util. Code § 451**

All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.

Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

All rules made by public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.

**Cal. Pub. Util. Code § 1759**

(a) No court of this state, except the Supreme Court and the court of appeal, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, as provided by law and the rules of court.

(b) The writ of mandamus shall lie from the Supreme Court and from the court of appeal to the commission in all proper cases as prescribed in Section 1085 of the Code of Civil Procedure.

**Cal. Pub. Util. Code § 2106**

Any public utility which does, causes to be done, or permits any act, matter, or thing prohibited or declared unlawful, or which omits to do any act, matter, or thing required to be done, either by the Constitution, any law of this State, or any order or decision of the commission, shall be liable to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or resulting therefrom. If the court finds that the act or omission was willful, it may, in addition to the actual damages, award exemplary damages. An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person.

No recovery as provided in this section shall in any manner affect a recovery by the State of the penalties provided in this part or the exercise by the commission of its power to punish for contempt.

**Cal. Pub. Util. Code § 8386**

(a) Each electrical corporation shall construct, maintain, and operate its electrical lines and equipment in a manner that will minimize the risk of catastrophic wildfire posed by those electrical lines and equipment.

(b) Each electrical corporation shall annually prepare and submit a wildfire mitigation plan to the Wildfire Safety Division for review and approval. In calendar year 2020, and thereafter, the plan shall cover at least a three-year period. The division shall establish a schedule for the submission of subsequent comprehensive wildfire mitigation plans, which may allow for the staggering of compliance periods for each electrical corporation. In its discretion, the division may allow the annual submissions to be updates to the last approved comprehensive wildfire mitigation plan; provided, that each electrical corporation shall submit a comprehensive wildfire mitigation plan at least once every three years.

(c) The wildfire mitigation plan shall include all of the following:

(1) An accounting of the responsibilities of persons responsible for executing the plan.

(2) The objectives of the plan.

(3) A description of the preventive strategies and programs to be adopted by the electrical corporation to minimize the risk of its electrical lines and equipment causing catastrophic wildfires, including consideration of dynamic climate change risks.

(4) A description of the metrics the electrical corporation plans to use to evaluate the plan's performance and the assumptions that underlie the use of those metrics.

(5) A discussion of how the application of previously identified metrics to previous plan performances has informed the plan.

(6) Protocols for disabling reclosers and deenergizing portions of the electrical distribution system that consider the associated impacts on public safety. As part of these protocols, each electrical corporation shall include protocols related to mitigating the public safety impacts of

disabling reclosers and deenergizing portions of the electrical distribution system that consider the impacts on all of the following:

(A) Critical first responders.

(B) Health and communication infrastructure.

(C) Customers who receive medical baseline allowances pursuant to subdivision (c) of Section 739. The electrical corporation may deploy backup electrical resources or provide financial assistance for backup electrical resources to a customer receiving a medical baseline allowance for a customer who meets all of the following requirements:

(i) The customer relies on life-support equipment that operates on electricity to sustain life.

(ii) The customer demonstrates financial need, including through enrollment in the California Alternate Rates for Energy program created pursuant to Section 739.1.

(iii) The customer is not eligible for backup electrical resources provided through medical services, medical insurance, or community resources.

(D) Subparagraph (C) shall not be construed as preventing an electrical corporation from deploying backup electrical resources or providing financial assistance for backup electrical resources under any other authority.

(7) Appropriate and feasible procedures for notifying a customer who may be impacted by the deenergizing of electrical lines, including procedures for those customers receiving medical baseline allowances as described in paragraph (6). The procedures shall direct notification to all public safety offices, critical first responders, health care facilities, and operators of telecommunications infrastructure with premises within the footprint of potential deenergization for a given event.

(8) Plans for vegetation management.

(9) Plans for inspections of the electrical corporation's electrical infrastructure.

(10) Protocols for the deenergization of the electrical corporation's transmission infrastructure, for instances when the deenergization may impact customers who, or entities that, are dependent upon the infrastructure.

(11) A list that identifies, describes, and prioritizes all wildfire risks, and drivers for those risks, throughout the electrical corporation's service territory, including all relevant wildfire risk and risk mitigation information that is part of the commission's Safety Model Assessment Proceeding (A.15-05-002, et al.) and the Risk Assessment Mitigation Phase filings. The list shall include, but not be limited to, both of the following:

(A) Risks and risk drivers associated with design, construction, operations, and maintenance of the electrical corporation's equipment and facilities.

(B) Particular risks and risk drivers associated with topographic and climatological risk factors throughout the different parts of the electrical corporation's service territory.

(12) A description of how the plan accounts for the wildfire risk identified in the electrical corporation's Risk Assessment Mitigation Phase filing.

(13) A description of the actions the electrical corporation will take to ensure its system will achieve the highest level of safety, reliability, and resiliency, and to ensure that its system is prepared for a major event, including hardening and modernizing its infrastructure with improved engineering, system design, standards, equipment, and facilities, such as undergrounding, insulating of distribution wires, and replacing poles.

(14) A description of where and how the electrical corporation considered undergrounding electrical distribution lines within those areas of its service territory identified to have the highest wildfire risk in a commission fire threat map.

(15) A showing that the electrical corporation has an adequately sized and trained workforce to promptly restore service after a major event,

taking into account employees of other utilities pursuant to mutual aid agreements and employees of entities that have entered into contracts with the electrical corporation.

(16) Identification of any geographic area in the electrical corporation's service territory that is a higher wildfire threat than is currently identified in a commission fire threat map, and where the commission should consider expanding the high fire threat district based on new information or changes in the environment.

(17) A methodology for identifying and presenting enterprisewide safety risk and wildfire-related risk that is consistent with the methodology used by other electrical corporations unless the commission determines otherwise.

(18) A description of how the plan is consistent with the electrical corporation's disaster and emergency preparedness plan prepared pursuant to Section 768.6, including both of the following:

(A) Plans to prepare for, and to restore service after, a wildfire, including workforce mobilization and repositioning equipment and employees.

(B) Plans for community outreach and public awareness before, during, and after a wildfire, including language notification in English, Spanish, and the top three primary languages used in the state other than English or Spanish, as determined by the commission based on the United States Census data.

(19) A statement of how the electrical corporation will restore service after a wildfire.

(20) Protocols for compliance with requirements adopted by the commission regarding activities to support customers during and after a wildfire, outage reporting, support for low-income customers, billing adjustments, deposit waivers, extended payment plans, suspension of disconnection and nonpayment fees, repair processing and timing, access to electrical corporation representatives, and emergency communications.



(21) A description of the processes and procedures the electrical corporation will use to do all of the following:

(A) Monitor and audit the implementation of the plan.

(B) Identify any deficiencies in the plan or the plan's implementation and correct those deficiencies.

(C) Monitor and audit the effectiveness of electrical line and equipment inspections, including inspections performed by contractors, carried out under the plan and other applicable statutes and commission rules.

(22) Any other information that the Wildfire Safety Division may require.

(d) The Wildfire Safety Division shall post all wildfire mitigation plans and annual updates on the commission's internet website for no less than two months before the division's decision regarding approval of the plan. The division shall accept comments on each plan from the public, other local and state agencies, and interested parties, and verify that the plan complies with all applicable rules, regulations, and standards, as appropriate.

### **PG&E Electric Rule No. 14**

When PG&E deems it necessary to make repairs or improvements to its system, PG&E will have the right to suspend temporarily the delivery of electric energy. In all such cases, reasonable notice will be given to the affected Customers, or their agents, and the making of such repairs or improvements will proceed as rapidly as may be practicable. If practicable, and without additional cost to PG&E, such work will be done at a time that will cause the least inconvenience to the majority of those involved. In some instances, PG&E will be required to initiate an interruption upon order of the ISO so work may be done on the ISO transmission grid. In those instances, PG&E will make best efforts attempt to provide affected customers, or their agents, with notice, but shall not be liable for interruption if notice cannot be provided in a timely manner. PG&E will be responsible for answering all outage related inquiries by the customer and its ESP.

In case of shortage of supply and during the period of such shortage, PG&E will make such apportionment of its available supply of energy among its customers, consistent with transmission allocation provided by the ISO by zone, and orders or directions provided by the California Public Utilities Commission, acting either directly or by a power administrator or other official appointed by it for that purpose. In the absence of such order or direction by the California Public Utilities Commission, PG&E will, in times of shortage, apportion its available supply of energy among all customers in the manner which it deems most fair, reasonable, and appropriate for the efficient operation of its distribution system and that of the ISO grid.

A Scheduling Coordinator or an ESP may be authorized, under a commercial contract with its customers, to apportion its available supply of energy among its customers. PG&E will accept requests for and make deliveries of these apportioned supplies as long as such deliveries do not affect PG&E's ability to deliver service to other end-use Customers, regardless of supplier, that would otherwise not be affected by the shortage or apportionment thereof.

## ELECTRIC EMERGENCY PLAN ROTATING BLOCK OUTAGES FOR TRANSMISSION LEVEL CUSTOMERS

For the purposes of this Section only, transmission level customers are those customers that are served from a "single customer substation" as defined in PG&E's Electric Rule 1 or without transformation at one of the standard transmission voltages specified in PG&E's Electric Rule 2, Section B.1.

Transmission level customers, except for those customers meeting the CPUC's criteria for essential use or those otherwise exempt from rotating outages in accordance with CPUC Decisions, will be incorporated into PG&E's rotating outage block plan and subjected to load interruptions when rotating block outages are ordered by the ISO. PG&E will, to the extent practical, follow the applicable principles and procedures specified in PG&E's Electric Rule 14, by the CPUC, and by the ISO. To the extent feasible, PG&E will coordinate rotating outages applicable to customers who are fossil fuel producers, pipeline operators and users to minimize disruption to public health and safety. PG&E shall not include a transmission level customer in an applicable rotating outage block if the customer's inclusion would jeopardize system integrity. Transmission level customers who are not exempt from rotating outages may submit an Optional Binding Mandatory Curtailment (OBMC) Plan to PG&E in accordance with PG&E's Electric Schedule OBMC. If PG&E approves a customer's OBMC Plan, the customer will become exempt from rotating outages and will be subject to the terms and conditions of PG&E's Electric Schedule OBMC and its associated agreement.

Non-exempt transmission level customers shall be required to undergo rotating outages applicable to the customer's assigned rotating outage block by either (1) implementing the load reduction on their own initiative, in accordance with subsection a, below; or (2) having PG&E implement the load reduction through PG&E-owned remote-controlled equipment in accordance with subsection b, below. A transmission level customer shall normally be subject to the provisions of subsection a. If PG&E approves a transmission level customer's request to have PG&E

implement the customer's load reduction, then the customer will be subject to the provisions of subsection b, below. If a transmission level customer subject to subsection a, below, exceeds the threshold specified in subsection c below, then the customer will be subject to the provisions of subsection c.(i) (ii), below.

#### 2.A. Customer-Implemented Load Reduction (Cont'd.)

**Authorized Residual Ancillary Load.** Authorized Residual Ancillary Load is load that is deemed to be equivalent to five (5) percent of the customer's recorded Maximum Demand from the customer's prior billing month. This minimum load level is used as a proxy to allow for no-load transformer losses and ancillary substation equipment loads.

For customers that are net-generators, Excess Energy Charges shall not apply during periods of pre-scheduled verifiable generator maintenance or if the customer's generator suffers a verified forced outage. The scheduled maintenance must be approved in advance by both the ISO and PG&E, but approval may not be unreasonably withheld.

#### B. PG&E-Implemented Load Reduction

Non-exempt transmission level customers may seek, in writing, to have PG&E drop the customer's entire load during all applicable rotating outages. If PG&E agrees to such an arrangement, PG&E will implement the load drop by using one of the following methods:

1. For transmission level customers whose load can be dropped by existing PG&E remote-controlled equipment, PG&E will implement the load drop during a rotating outage applicable to the customer. The customer will be responsible for dropping load in accordance with the provisions of subsection a, above, including receiving Notification and being subject to Excess Energy charge provisions, until PG&E has provided written notice to the customer of the effective date that PG&E will assume the responsibility for curtailing the customer's load. After receiving written notice from PG&E, the customer will not receive Notification or be subject to the Excess Energy Charge provisions set forth in subsection a, above. PG&E shall be the sole judge of the suitability of utilizing existing PG&E remote-controlled equipment to

shed the customer's load. PG&E or the customer may terminate the arrangements under this subsection upon thirty (30) days advance written notice.

#### B. PG&E-Implemented Load Reduction (Cont'd.)

2. For transmission level customers whose load cannot be dropped by existing PG&E remote-controlled equipment, the customer must request the installation of such remote-controlled equipment at the customer's expense in accordance with PG&E's Electric Rule 2, Section I, Special Facilities. The customer will be responsible for dropping load in accordance with the provisions of subsection a, above, including receiving Notification and being subject to Excess Energy Charge provisions, until all of the following have been completed: 1) payment by the customer for the installation of such equipment, 2) installation and testing of such equipment is complete, and 3) PG&E has provided written notice to the customer of the effective date that PG&E will assume the responsibility for curtailing the customer's load. After the three (3) requirements listed above have been met, the customer will not receive Notification or be subject to the Excess Energy Charge provisions set forth in subsection a, above. PG&E or the customer may terminate their arrangements under this subsection upon thirty (30) days advance written notice.

#### C. Non-compliance

A non-exempt transmission level customer subject to subsection a, above, shall be considered non-compliant with a single rotating outage event if the customer fails to reduce its load, averaged over the applicable rotating outage penalty period, to a level equal to or less than twenty (20) percent of the customer's recorded Maximum Demand from the customer's prior billing month. If a customer is non-compliant during any three (3) rotating outages in a three (3) year period, then the customer will be reassigned to the manual rotating outage block that is expected be curtailed next, and the customer will be expected to comply as required pursuant to subsection a, above, with subsequent applicable rotating outages. Further, such a customer must select, via written notice to PG&E, one of the two options below within fifteen (15) days

after receiving written notice from PG&E. A customer failing to make a selection within the specified time frame will default to subsection c.(ii) below. The three (3) year period shall commence with the first failure to drop load as specified in this subsection.

Non-compliance (Cont'd.)

1. Subject to PG&E's Electric Schedule E-OBMC Optional Binding Mandatory Curtailment Plan. The customer shall become subject to PG&E's Electric Schedule OBMC. The customer shall submit an OBMC Plan, in accordance with PG&E's Electric Schedule E-OBMC, within thirty (30) days of receiving written notice from PG&E. Pending the submittal of the OBMC Plan by the customer and pending the review and acceptance of the OBMC Plan by PG&E, the customer will remain responsible for dropping load in accordance with the provisions of subsection a, above, including the receiving of Notification and being subject to Excess Energy Charge provisions. Customers subject to this subsection that in turn fail to meet one or more requirements specified in PG&E's Electric Schedule E-OBMC shall be transferred to subsection c.(ii), below.

2. PG&E Implemented Load Reductions. PG&E shall proceed with one of the following: (1) For those customers where PG&E already has load drop equipment with remote-control capability installed, PG&E will drop the customer's entire load for all applicable subsequent rotating outages in accordance with the provisions of subsection b, above, except the customer shall not have the option to terminate their obligations under subsection b. PG&E shall be the sole judge of the suitability of utilizing existing PG&E remote-controlled equipment to shed the customer's load. (2) For customers where PG&E does not have load drop equipment with remote-control capability installed, PG&E shall install such equipment at the customer's expense in accordance with PG&E's Electric Rule 2, Section I, Special Facilities. After such equipment has been installed, PG&E will drop the customer's entire load for all applicable subsequent rotating outages in accordance with the provisions of subsection b, above, except the customer shall not have the

option to terminate their obligations under subsection b. Pending the installation of such equipment, the customer will remain responsible for dropping load in accordance with the provisions of subsection a, above, including receiving the Notification and being subject to Excess Energy Charge provisions.



**Cal. Rule of Court 8.548**

(a) Request for decision

On request of the United States Supreme Court, a United States Court of Appeals, or the court of last resort of any state, territory, or commonwealth, the Supreme Court may decide a question of California law if:

- (1) The decision could determine the outcome of a matter pending in the requesting court; and
- (2) There is no controlling precedent.

(b) Form and contents of request

The request must take the form of an order of the requesting court containing:

- (1) The title and number of the case, the names and addresses of counsel and any unrepresented party, and a designation of the party to be deemed the petitioner if the request is granted;
- (2) The question to be decided, with a statement that the requesting court will accept the decision;
- (3) A statement of the relevant facts prepared by the requesting court or by the parties and approved by the court; and
- (4) An explanation of how the request satisfies the requirements of (a).

(c) Supporting materials

Copies of all relevant briefs must accompany the request. At any time, the Supreme Court may ask the requesting court to furnish additional record materials, including transcripts and exhibits.

(d) Serving and filing the request



The requesting court clerk must file an original, and if the request is filed in paper form, 10 copies, of the request in the Supreme Court with a certificate of service on the parties.

(e) Letters in support or opposition

(1) Within 20 days after the request is filed, any party or other person or entity wanting to support or oppose the request must send a letter to the Supreme Court, with service on the parties and on the requesting court.

(2) Within 10 days after service of a letter under (1), any party may send a reply letter to the Supreme Court, with service on the other parties and the requesting court.

(3) A letter or reply asking the court to restate the question under (f)(5) must propose new wording.

(f) Proceedings in the Supreme Court

(1) In exercising its discretion to grant or deny the request, the Supreme Court may consider whether resolution of the question is necessary to secure uniformity of decision or to settle an important question of law, and any other factor the court deems appropriate.

(2) An order granting the request must be signed by at least four justices; an order denying the request may be signed by the Chief Justice alone.

(3) If the court grants the request, the rules on review and decision in the Supreme Court govern further proceedings in that court.

(4) If, after granting the request, the court determines that a decision on the question may require an interpretation of the California Constitution or a decision on the validity or meaning of a California law affecting the public interest, the court must direct the clerk to send to

the Attorney General-unless the Attorney General represents a party to the litigation-a copy of the request and the order granting it.

(5) At any time, the Supreme Court may restate the question or ask the requesting court to clarify the question.

(6) After filing the opinion, the clerk must promptly send filed-endorsed copies to the requesting court and the parties and must notify that court and the parties when the decision is final.

(7) Supreme Court decisions pursuant to this rule are published in the Official Reports and have the same precedential effect as the court's other decisions.

No. 21-15571

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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ANTHONY GANTNER, individually and on behalf of all those  
similarly situated,

*Plaintiff-Appellant,*

v.

PG&E CORPORATION, a California Corporation, and PACIFIC  
GAS & ELECTRIC COMPANY, a California Corporation

*Defendants-Appellees.*

On Appeal from the United States District Court  
for the Northern District of California  
No. 4:20-CV-02584-HSG

Hon. Haywood S. Gilliam, Jr.,

[an appeal from an Order in the Bankruptcy Case In re: PG&E  
CORPORATION and PACIFIC GAS AND ELECTRIC COMPANY,  
Debtors, Bankruptcy Case No. 19-30088 (DM), Adv. Pro. No. 19-  
03061 (DM), Hon. Donald Montali, U.S. Bankruptcy Judge]

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**APPELLANT'S EXCERPTS OF RECORD  
INDEX VOLUME**

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\*\*\*Case No. 3:14-cr-00175-WHA, U.S. District Court, Northern District of California (Related Criminal Action) Docket Numbers (these documents were in the record below as part of the Appendix [Case No. 4:20-cv-02584-HSG ECF #7-1])

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| Exhibit 1 – California Public Utilities Commission (CPUC) Decision Granting Motion to Dismiss Complaint (D. 14-03-032) in <i>Fenholt v. S. Cal. Edison Co.</i> , Case No. 13-07-14, issued March 27, 2014<br><i>(Declaration of Nicholas A. Carlin in Support of Plaintiff’s Opposition to Debtors’ Motion to Dismiss and Motion to Strike)</i>           | 02/25/20 | 17-1** | 188-197 |
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| <p>Exhibit E – California Public Utilities Commission (CPUC) Resolution Extending De-Energization Reasonableness, Notification, Mitigation and Reporting Requirements in Decision 12-04-024 to All Electric Investor Owned Utilities (Resolution ESRB-8), issued July 16, 2018<br/><i>(Declaration of Kevin J. Orsini in Support of Debtors’ Motion to Dismiss and Motion to Strike)</i></p> | 01/21/20 | 8-5** | 208-217 |
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| <p>Exhibit G – California Public Utilities Commission (CPUC) Decision Adopting De-Energization (Public Safety Power Shut-off) Guidelines (Phase 1 Guidelines) (Decision 19-05-042), issued June 4, 2019<br/><i>(Declaration of Kevin J. Orsini in Support of Debtors’ Motion to Dismiss and Motion to Strike)</i></p>  | 01/21/20 | 8-7** | 218-394 |
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\*Case No. 4:20-cv-02584-HSG, U.S. District Court, Northern District of California Docket Numbers

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No. 21-15571

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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ANTHONY GANTNER, individually and on behalf of all those  
similarly situated,

*Plaintiff-Appellant,*

v.

PG&E CORPORATION, a California Corporation, and PACIFIC  
GAS & ELECTRIC COMPANY, a California Corporation

*Defendants-Appellees.*

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for the Northern District of California  
No. 4:20-CV-02584-HSG

Hon. Haywood S. Gilliam, Jr.,

[an appeal from an Order in the Bankruptcy Case In re: PG&E  
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Debtors, Bankruptcy Case No. 19-30088 (DM), Adv. Pro. No. 19-  
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VOLUME 1 OF 4**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GANTNER,  
Plaintiffs,  
v.  
PG&E CORPORATION, et al.,  
Defendants.

Case No. 20-cv-02584-HSG  
**ORDER AFFIRMING BANKRUPTCY  
COURT’S DISMISSAL ORDER**  
Re: Dkt. No. 7

United States District Court  
Northern District of California

Pending before the Court is Appellant Anthony Gantner’s (“Appellant”) appeal of the Bankruptcy Court’s March 10, 2020 order that dismissed his class action complaint. Dkt. No. 7 (“Appellant Brief”) and Dkt. No. 9 (“Reply”). Appellees PG&E Corporation and Pacific Gas and Electric Company (collectively, “Debtors”) moved to dismiss Appellant’s complaint in the Bankruptcy Court and oppose the current appeal. Dkt. No. 8 (“Opposition”). For the following reasons, the Court **AFFIRMS** the Bankruptcy Court’s dismissal of Appellant’s complaint.

**I. BACKGROUND**

**A. PG&E’s Bankruptcy and Chapter 11 Plan**

On January 29, 2019, the Debtors commenced voluntary cases for relief under chapter 11 of title 11 of the United States Code (“Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of California (“Bankruptcy Court”). Significantly, the Debtors needed to propose a plan of reorganization that satisfied the requirements of A.B. 1054, including its June 30, 2020 deadline for plan confirmation. In light of the “increased risk of catastrophic wildfires,” A.B. 1054 created the “Go-Forward Wildfire Fund” as a multi-billion dollar safety net to compensate future victims of public utility fires and thereby “reduce the costs to ratepayers in addressing utility-caused catastrophic wildfires,” support “the credit worthiness of electrical

1 corporations,” like the Debtors, and provide “a mechanism to attract capital for investment in safe,  
 2 clean, and reliable power for California at a reasonable cost to ratepayers.” A.B. 1054 § 1(a). For  
 3 the Debtors to qualify for the Go-Forward Wildfire Fund, however, A.B. 1054 required, among  
 4 other things, the Debtors to obtain an order from the Bankruptcy Court confirming a plan of  
 5 reorganization by June 30, 2020. *See* A.B. 1054 § 16, ch. 3, 3292(b). After more than sixteen  
 6 months of negotiations among a variety of stakeholders, and following confirmation hearings that  
 7 spanned several weeks, the Debtors’ Plan of Reorganization dated June 19, 2020 (“Plan”)<sup>1</sup> was  
 8 confirmed by the Bankruptcy Court on June 20, 2020 and became effective on July 1, 2020  
 9 (“Effective Date”).

10 **B. Appellant’s Claim**

11 On December 19, 2019, Appellant filed a class action complaint and initiated an adversary  
 12 proceeding before the Bankruptcy Court. BR Dkt. No. 1 (“Compl.”).<sup>2</sup> Appellant’s single  
 13 negligence claim arises from certain planned power outages, known as public safety power shutoff  
 14 (“PSPS”) events. *Id.* He seeks damages for losses, such as loss of habitability, loss of food items,  
 15 and loss of productivity, that he and putative class members incurred as a result of five post-  
 16 petition PSPS events that took place in October and November 2019. *Id.* ¶¶ 3, 85; Dkt. No. 1-5  
 17 (Bankruptcy Court’s March 30, 2020 Memorandum Decision (“Mem. Decision”)) at 2. The  
 18 proposed class is defined as “All California residents and business owners who had their power  
 19 shutoff [sic] by PG&E during the October 9, October 23, October 26, October 28, or November  
 20 20, 2019 Outages and any subsequent voluntary Outages PG&E imposes on its customers during  
 21 the course of litigation.” Compl. ¶ 85.

22 Debtors moved to dismiss Appellant’s complaint, BR Dkt. No. 7, and the Bankruptcy  
 23 Court granted the motion without leave to amend, finding that Appellant’s claim is preempted by  
 24 California Public Utilities Code § 1759 (“§ 1759”). Mem. Decision at 7-11. This appeal  
 25

26 <sup>1</sup> Capitalized terms not otherwise defined in this order have the meanings ascribed to them in the  
 27 Plan.

28 <sup>2</sup> “BR Dkt. No.” references are to the Bankruptcy Court’s docket, Case No. 19-30088 (DM),  
 Adversary Proceeding Case No. 19-03061 (Bankr. N.D. Cal.). “Dkt. No.” references are to this  
 Court’s docket.

1 followed.

2 **II. LEGAL STANDARD**

3 District courts have jurisdiction to hear appeals from final judgments, orders, and decrees  
4 of bankruptcy judges. 28 U.S.C. § 158. A district court reviews a bankruptcy court’s decision by  
5 applying the same standard of review used by circuit courts when reviewing district court  
6 decisions. *In re Greene*, 583 F.3d 614, 618 (9th Cir. 2009). The district court reviews  
7 the bankruptcy court’s findings of fact for clear error and its conclusions of law de novo. *In re*  
8 *Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001). “Dismissal under Rule 12(b)(6) is appropriate only  
9 where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable  
10 legal theory.” *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). To  
11 survive a Rule 12(b)(6) motion, a plaintiff must plead “enough facts to state a claim to relief that is  
12 plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 540, 570 (2007). A claim is facially  
13 plausible when a plaintiff pleads “factual content that allows the court to draw the reasonable  
14 inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662,  
15 678 (2009). “In a case requiring a federal court to apply California law, the court ‘must apply the  
16 law as it believes the California Supreme Court would apply it.’” *Kairy v. SuperShuttle Int’l*, 660  
17 F.3d 1146, 1150 (9th Cir. 2011). The bankruptcy court’s decision to dismiss a complaint without  
18 leave to amend is reviewed for abuse of discretion. *In re Tracht Gut, LLC*, 836 F.3d 1146, 1150  
19 (9th Cir. 2016).

20 **III. DISCUSSION**

21 The question presented by this appeal is whether Appellant’s negligence claim, if allowed  
22 to proceed, would impermissibly hinder or interfere with the supervisory and regulatory policies  
23 of the California Public Utilities Commission (“CPUC”) in violation of California Public Utilities  
24 Code § 1759. Appellant argues that California Public Utilities Code § 2106 makes Debtors liable  
25 for damage caused by their negligence, and that § 1759 does not preempt his negligence claim.  
26 App. Br. at 3-4. Debtors respond that the Bankruptcy Court properly dismissed Appellant’s  
27 complaint on the ground that Appellant’s action would interfere with the CPUC’s regulatory  
28 authority to authorize PSPS events, contrary to § 1759. Opp. at 9. The Court reviews this

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1 question de novo. *See Kairy*, 660 F.3d at 1150.

2 **A. Section 1759 And The *Covalt* Test**

3 Section 1759 provides that:

4 No court of this state, except the Supreme Court and the court of  
5 appeal, to the extent specified in this article, shall have jurisdiction to  
6 review, reverse, correct, or annul any order or decision of the  
7 commission or to suspend or delay the execution or operation thereof,  
or to enjoin, restrain, or interfere with the commission in the  
performance of its official duties, as provided by law and the rules of  
court.

8 Cal. Pub. Util. Code § 1759.

9 In effect, § 1759 “declares that no court except [the California] Supreme Court has  
10 jurisdiction to review any order or decision of the Public Utilities Commission (hereafter the  
11 commission) or to interfere with the commission in the performance of its duties.” *San Diego Gas  
12 & Electric Co. v. Superior Court*, 13 Cal.4th 893, 902 (1996) (“*Covalt*”). At the same time,  
13 § 2106 “authorizes an action in superior court for damages caused by any unlawful act of a public  
14 utility.” *Id.*<sup>3</sup>

15 “The California Supreme Court has on a number of occasions addressed the tension  
16 between Public Utilities Code § 1759 and the public and private remedies provided for in Chapter  
17 11 of that Code, and has consistently applied a three-part test to resolve any conflict.” *Kairy*, 660

18  
19 <sup>3</sup> Section 2106 provides that:

20 Any public utility which does, causes to be done, or permits any act,  
21 matter, or thing prohibited or declared unlawful, or which omits to do  
22 any act, matter, or thing required to be done, either by the  
23 Constitution, any law of this State, or any order or decision of the  
24 commission, shall be liable to the persons or corporations affected  
25 thereby for all loss, damages, or injury caused thereby or resulting  
26 therefrom. If the court finds that the act or omission was willful, it  
may, in addition to the actual damages, award exemplary damages.  
An action to recover for such loss, damage, or injury may be brought  
in any court of competent jurisdiction by any corporation or person.  
No recovery as provided in this section shall in any manner affect a  
recovery by the State of the penalties provided in this part or the  
exercise by the commission of its power to punish for contempt.

27 Cal. Pub. Util. Code § 2106.

28

1 F.3d at 1150. In *Covalt*, the California Supreme Court articulated this three-part test in an effort  
 2 “to resolve conflicts between actions brought against a public utility under Public Utilities Code  
 3 § 2106 and the jurisdiction-stripping provision in § 1759.” *Kairy*, 660 F.3d at 1149. In doing so,  
 4 the California Supreme Court reaffirmed the “the primacy of section 1759 and the correspondingly  
 5 limited role of section 2106.” *Covalt*, 13 Cal.4th at 917. “[A]n action for damages against a  
 6 public utility pursuant to section 2106 is barred by section 1759 not only when an award of  
 7 damages would directly contravene a specific order or decision of the commission, i.e., when it  
 8 would ‘reverse, correct, or annul’ that order or decision, but also when an award of damages  
 9 would simply have the effect of undermining a general supervisory or regulatory policy of the  
 10 commission, i.e., when it would ‘hinder’ or ‘frustrate’ or ‘interfere with’ or ‘obstruct’ that policy.”  
 11 *Id.* at 918. Accordingly, in deciding whether an action is barred by § 1759, a court must ask: “(1)  
 12 whether the PUC had the authority to adopt a regulatory policy on the subject matter of the  
 13 litigation; (2) whether the PUC had exercised that authority; and (3) whether action in the case  
 14 before the court would hinder or interfere with the PUC’s exercise of regulatory authority.” *Kairy*,  
 15 660 F.3d at 1150.<sup>4</sup>

16 **B. The CPUC Had The Authority To Regulate PSPS Events And The CPUC**  
 17 **Exercised that Authority**

18 The California Public Utilities Code gives electric utilities regulated by the CPUC  
 19 authority to shut off electric power in order to protect public safety. *See* Cal. Pub. Util. Code  
 20 §§ 399.2(a), 451. In 2018, the CPUC promulgated de-energization guidelines that apply to all  
 21 investor-owned utilities, including Debtors. *See* Resolution Extending De-Energization  
 22 Reasonableness, Notification, Mitigation & Reporting Requirements in Decision 12-04-024 to All  
 23 Elec. Inv. Owned Utilities., No. ESRB-8, 2018 WL 3584003, at \*1 (July 12, 2018). “The decision  
 24 to shut off power may be reviewed by the [CPUC] pursuant to its broad jurisdiction over public  
 25 safety and utility operations.” *Id.* at \*8. Through its rulemaking authority, the CPUC also

26  
 27  
 28 <sup>4</sup> Appellant argues that the “bankruptcy court failed to apply the *Covalt* test *at all*.” App. Br. At 23 (emphasis in original). This is incorrect. The Bankruptcy Court cited *Covalt* and applied the three-part test. Mem. Decision at 5-10.

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1 established guidelines and protocols that govern the decision by a utility to conduct a PSPS event.  
2 See Order Instituting Rulemaking to Examine Electric Utility De-Energization of Power Lines in  
3 Dangerous Conditions, 2018 WL 6830158 (Cal. P.U.C. Dec. 13, 2018). This rulemaking  
4 reaffirmed the authority of the CPUC to review for reasonableness any decision by a utility to  
5 conduct a PSPS event. *Id.*

6 In September 2018, the California Legislature codified the obligation of California utilities  
7 to prepare and submit “Wildfire Mitigation Plans” to the CPUC. See Cal. Pub. Util. Code  
8 § 8386(b). One of the statutory requirements for the Wildfire Mitigation Plans is the  
9 establishment of “[p]rotocols for . . . deenergizing portions of the electrical distribution system  
10 that consider the associated impacts on public safety.” Cal. Pub. Util. Code § 8386(c)(6).

11 As discussed by the Bankruptcy Court, in February 2019, Debtors submitted their 2019  
12 Wildfire Safety Plan, which included factors to consider when considering a PSPS event. Mem.  
13 Decision at 3. This plan was ultimately approved by the CPUC. *Id.* In October and November of  
14 2019, Debtors conducted the PSPS events that form the basis for Appellant’s complaint. *Id.* On  
15 November 12, 2019, the CPUC ordered Debtors to show cause why they should not be sanctioned  
16 for failure to properly communicate with their customers during these PSPS events. *Id.* The  
17 CPUC also instituted a broader investigation to determine whether California’s utilities, including  
18 Debtors, prioritized safety and complied with CPUC regulations and requirements with respect to  
19 the PSPC events in late 2019. *Id.*; Order Instituting Investigation on the Commission’s Own  
20 Motion on the Late 2019 Public Safety Power Shutoff Events, 2019 WL 6179011 (Cal. P.U.C.  
21 Nov. 13, 2019). Accordingly, the Court finds that the CPUC had the authority to regulate the  
22 PSPS events challenged by Appellants and that the CPUC exercised, and continues to exercise,  
23 that authority.<sup>5</sup>

24 //

25 //

27 \_\_\_\_\_  
28 <sup>5</sup> The parties agree that the first two parts of the *Covalt* test are satisfied with regard to the PSPS events at issue. App. Br. at 22 (stating that “Plaintiff does not dispute that the first and second parts of the *Covalt* test are satisfied”); Opp. at 10.

**C. Allowing Appellant’s Claim To Proceed Would Interfere With The CPUC’s Regulatory Authority Over PSPS Events**

The third and most important part of the *Covalt* test is whether Plaintiff’s state law negligence claim would “hinder or interfere with” CPUC’s exercise of regulatory authority. Appellant contends that rather than interfere with CPUC’s regulatory authority, his negligence suit is in aid of, and complements, CPUC’s jurisdiction, relying on a standard articulated in *Hartwell Corp. v. Superior Court (Santamaria)*, 27 Cal. 4th 256 (2002). App. Br. At 29-32.

In *Hartwell*, the California Supreme Court applied the *Covalt* test and explained the general principle that:

[A]n award of damages is barred by section 1759 if it would be contrary to a policy adopted by the [CPUC] and would interfere with its regulation of public utilities. On the other hand, superior courts are not precluded from acting in aid of, rather than in derogation of, the [CPUC’s] jurisdiction.

27 Cal. 4th at 275 (citations omitted). The court reemphasized the holding in *Covalt* that § 1759 bars suits “when the relief sought would have interfered with a broad and continuing supervisory or regulatory program of the commission.” *Id.*

In evaluating the potential for Appellant’s claim to interfere with the CPUC’s regulatory authority over PSPS events, it is significant that Appellant is not suing Debtors for improperly deciding to implement the PSPS events, or even for negligence in how Debtors implemented the PSPS events. *See* Reply at 4 (“Plaintiff has said—in the Complaint, in the briefing and argument below, and now in this appeal—that he does not challenge the CPUC’s decision to approve the PSPSs, nor does he challenge the way PG&E implemented those shutoffs, in accordance with the regulatory protocol for doing so.”); Br. Dkt. No. 16 Appellant’s Opposition to Debtor’s Motion to Dismiss at 2 (“The Complaint does not allege that the PSPSs were not necessary and appropriate, or that CPUC’s approval of its Wildfire Safety Plan was improper, only that the PSPSs would not have been necessary in the first place had PG&E not been negligent.”).

Under Appellant’s theory, Debtors could implement a PSPS event that is required by statute and CPUC regulations—and do so in full accordance with the requirements of CPUC regulations and the CPUC-approved Wildfire Safety Plan—yet still be liable because of the underlying conditions necessitating the PSPS event. In Appellant’s view, such liability would not



1 interfere with the decision to implement a legally-mandated PSPS event because “[i]f a PSPS is  
 2 necessary, surely PG&E will not risk causing more deadly wildfires and incurring tens of billions  
 3 more in damages to wildfire victims, just to avoid liability here.” Reply at 7-8. The Court  
 4 disagrees.

5 As discussed above, the CPUC has promulgated specific guidelines concerning when and  
 6 how to implement PSPS events, and the CPUC has approved Debtor’s 2019 Wildfire Safety Plan.  
 7 Appellant does not allege any violations by Debtors of those guidelines or the safety plan. This  
 8 case is thus distinguishable from the cases cited by Appellant in which plaintiffs sought damages  
 9 arising from alleged failures to comply with CPUC standards. *See, e.g., PegaStaff v. Pacific Gas*  
 10 *& Electric Co.*, 239 Cal. App. 4th 1303, 1326 (2015). As this Court has previously summarized,  
 11 “[t]ogether, *Hartwell, Vila, Cundiff, Cellular Plus*, and *Nwabueze* make clear that California law  
 12 permits courts to entertain actions for both damages and injunctive relief against regulated utilities  
 13 where those actions seek to enforce, rather than challenge, obligations created by CPUC  
 14 regulations.” *North Star Gas Co. v. Pacific Gas & Electric Co.*, 2016 WL 5358590 at \*13 (N.D.  
 15 Cal. Sept. 26, 2016). Here, Appellant’s action seeks to impose liability for complying with PSPS  
 16 obligations created by CPUC regulations.

17 CPUC’s regulatory policies, as reflected in those guidelines and the approval of the  
 18 Wildfire Safety Plan, authorize Debtors to decide that a PSPS is warranted under certain  
 19 circumstances. CPUC has also exercised continuing investigatory authority over Debtors’ PSPS  
 20 events. *See Order Instituting Investigation on the Commission’s Own Motion on the Late 2019*  
 21 *Public Safety Power Shutoff Events*, 2019 WL 6179011 (Cal. P.U.C. Nov. 13, 2019). Imposing  
 22 liability on Debtors for implementing CPUC-approved PSPS events would force Debtors to  
 23 choose between incurring potentially limitless negligence liability and protecting public safety in  
 24 the manner dictated by the appropriate regulatory authority: CPUC.<sup>6</sup> Rather than acting in aid of  
 25 CPUC’s authority to regulate PSPS events, Appellant’s theory of liability would create a powerful  
 26 incentive for Debtors to avoid PSPS events, even if the PSPS events are warranted under CPUC

27 \_\_\_\_\_  
 28 <sup>6</sup> Appellant’s argument that negligence liability would not affect Debtors’ PSPS decision-making  
 is belied by his damages claim of \$2.5 billion for five PSPS events. *See Compl.* ¶ 106.



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1 regulations.

2 As correctly noted by the Bankruptcy Court, “before the wildfires in October and  
3 November 2019, [CPUC] had already exercised its authority to regulate the PSPSs by adopting its  
4 guidelines governing the circumstances in which an investor-owned utility can conduct them.”  
5 Mem. Decision at 9-10. “The CPUC continues to exercise that authority through ongoing  
6 rulemaking and investigations.” *Id.* Under California law, it is the job of CPUC to balance the  
7 costs and benefits of PSPS events and regulate them accordingly. And it is not the job of the  
8 courts to regulate PSPS events through ad hoc imposition of negligence liability. As articulated  
9 by CPUC in its *amicus curiae* brief in the Bankruptcy Court:

10 The Complaint appears to rest on the theory that in light of the  
11 Utility’s alleged generalized failure to maintain its infrastructure, any  
12 decision by the Utility to conduct a public safety power shutoff—in  
13 the recent past or future—necessarily gives rise to a claim against the  
14 Utility for negligence. Judicial adoption of such a theory would  
15 hinder and interfere with the Commission’s considered policy to  
16 allow utilities to conduct public safety power shutoffs in the interests  
17 of public safety pursuant to guidelines established by the  
18 Commission.

15 Br. Dkt. No. 19 at 7-8.<sup>7</sup>

16 Accordingly, the Court finds that Appellant’s claim for damages caused by PSPS events  
17 would interfere with CPUC’s PSPS policies and its “broad and continuing supervisory [and]  
18 regulatory program.” *See Covalt*, 13 Cal. 4th at 919.

19  
20  
21 <sup>7</sup> The Ninth Circuit has explained that the CPUC’s position regarding the applicability of § 1759  
22 should be considered persuasive authority:

23 California courts have made reference to the PUC’s amicus briefs  
24 filed in § 1759 cases for aid in assessing the third question in  
25 the *Covalt* analysis. Moreover . . . the California Supreme Court  
26 suggested that, in future cases, a court considering whether a civil  
27 action was barred by § 1759 “may deem it appropriate to solicit the  
28 views of the PUC regarding whether the action is likely to interfere  
with the PUC’s performance of its duties.” The California courts’  
reliance on the PUC’s view of the third *Covalt* inquiry means that, in  
this case, the PUC’s assertion . . . should be given persuasive effect in  
deciding what § 5.03 requires.

*Kairy*, 660 F.3d at 1154 (internal citations omitted).

**IV. THE BANKRUPTCY COURT DID NOT ERR IN DISMISSING WITHOUT LEAVE TO AMEND.**

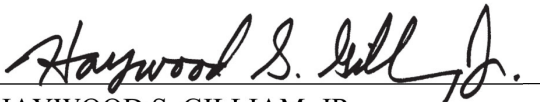
“Although there is a general rule that parties are allowed to amend their pleadings, it does not extend to cases in which any amendment would be an exercise in futility.” *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1298 (9th Cir. 1998). Here, Appellant’s entire negligence theory runs afoul of § 1759’s jurisdictional limitations, and Appellant would be unable to amend without contradicting his initial complaint. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (explaining that “a plaintiff can...plead himself out of a claim by including unnecessary details contrary to his claims.”). Accordingly, the Bankruptcy Court did not abuse its discretion in dismissing Appellant’s complaint without leave to amend.

**V. CONCLUSION**

The Bankruptcy Court’s order dismissing Appellant’s complaint is **AFFIRMED**. The Clerk is directed to terminate this appeal and close the case.

**IT IS SO ORDERED.**

Dated: 3/26/2021

  
HAYWOOD S. GILLIAM, JR.  
United States District Judge

United States District Court  
Northern District of California

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Entered on Docket  
April 03, 2020  
EDWARD J. EMMONS, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA



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Signed and Filed: April 3, 2020

DENNIS MONTALI  
U.S. Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

In re:  
PG&E CORPORATION,  
- and -  
PACIFIC GAS AND ELECTRIC  
COMPANY,  
  
Debtors.  
  
\_\_\_\_\_  
ANTHONY GANTNER, individually and  
on behalf of all those similarly situated,  
  
Plaintiff,  
  
v.  
PG&E CORPORATION, a California  
Corporation, and PACIFIC GAS &  
ELECTRIC COMPANY, a California  
Corporation,  
  
Defendants.

Case No. 19-30088 (DM)  
  
Chapter 11  
(Lead Case)  
(Jointly Administered)  
  
Adv. Pro. No. 19-03061  
  
**ORDER ON DEBTORS' MOTION TO  
DISMISS AND MOTION TO STRIKE**  
  
Date: March 10, 2020  
Time: 10:00 a.m. (Pacific Time)  
Place: United States Bankruptcy Court  
Courtroom 17, 16th Floor  
San Francisco, CA 94102

1                   The Debtors' Motion to Dismiss and Motion to Strike (the "**Motion**"), brought by  
2 Defendants PG&E Corporation ("**PG&E Corp.**") and Pacific Gas and Electric Company (the  
3 "**Utility**"), as debtors and debtors in possession (collectively, "**PG&E**" or the "**Debtors**" in the above-  
4 captioned chapter 11 cases (the "**Chapter 11 Cases**") and as Defendants in the above-captioned  
5 adversary proceeding (the "**Adversary Proceeding**"), came on for hearing March 10, 2020.  
6 Appearances of counsel were as stated in the record.

7                   For the reasons set forth in the *Memorandum Decision on Debtors' Motion to Dismiss*  
8 *and Strike* (Dkt. No. 34) entered on March 30, 2020, it is hereby ORDERED:

- 9                   1. The Motion to dismiss the Complaint is granted.
- 10                   2. The Complaint is dismissed without leave to amend.
- 11                   3. This Order shall be immediately effective and enforceable upon its entry.

12                   \*\* END OF ORDER \*\*

Entered on Docket  
March 30, 2020  
EDWARD J. EMMONS, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA



Signed and Filed: March 30, 2020

DENNIS MONTALI  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re ) Bankruptcy Case No. 19-30088-DM  
 )  
PG&E CORPORATION, ) Chapter 11  
 )  
- and - ) (Lead Case)  
 )  
PACIFIC GAS AND ELECTRIC ) (Jointly Administered)  
COMPANY, )  
 )  
Debtors. )

) Adversary Case No. 19-03061-DM  
ANTHONY GANTNER, individually )  
and on behalf of all those )  
similarly situated, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
PG&E CORPORATION, a California )  
Corporation, and PACIFIC GAS & )  
ELECTRIC COMPANY, a California )  
Corporation, )  
 )  
Defendants. )

**MEMORANDUM DECISION ON DEBTORS' MOTION TO DISMISS AND STRIKE**

On February 25, 2020, this court held a hearing on the motion (the "MTD") of defendants and debtors PG&E Corporation

1 and Pacific Gas and Electric Company ("Utility") (collectively,  
2 "Debtors") to dismiss and to strike the class action complaint  
3 filed against them by plaintiff Anthony Gantner ("Plaintiff"),  
4 individually and on behalf of all those similarly situated.  
5 Upon due consideration of the MTD (A.P. dkt. 7), Plaintiff's  
6 opposition (A.P. dkt. 16), Debtors' reply (A.P. dkt. 18), and  
7 the statement (A.P. dkt. 19) filed by the California Public  
8 Utilities Commission ("CPUC") in support of the MTD, the court  
9 will grant the MTD and dismiss this adversary proceeding without  
10 leave to amend, as it is preempted by California Public  
11 Utilities Code § 1759.

12 I. INTRODUCTION

13 Plaintiff seeks damages for losses he incurred as a result  
14 of certain planned blackouts, otherwise known as public safety  
15 power shutoff ("PSPS") events, implemented by PG&E in October  
16 and November 2019 to mitigate wildfire danger caused or  
17 exacerbated by projected high winds. He seeks class  
18 certification for other similarly situated customers or users  
19 who lost power during the scheduled PSPSs.

20 In their MTD, Debtors contend that (1) this court lacks  
21 subject matter jurisdiction over the claims asserted by  
22 Plaintiff (Fed. R. Civ. P. 12(b)(1)) and (2) Plaintiff has  
23 failed to state a claim upon which relief can be granted (Fed.  
24 R. Civ. P. 12(b)(6))(both made applicable by Fed. R. Bankr. P.  
25 7012); and (3) Plaintiff's class claims fail on predominance or  
26 ascertainability grounds (Fed. R. Civ. P. 23(a), made applicable  
27 by Fed. R. Bankr. P. 7023). Because Plaintiff's claims are  
28 preempted by California law and fall exclusively within the

1 regulatory authority of the CPUC, the court will grant the MTD  
2 without the necessity of addressing whether the class claims are  
3 certifiable under Fed. R. Civ. P. 23(a).

4 II. THE COMPLAINT

5 Plaintiff asserts a single count of negligence against  
6 Debtors and seeks damages arising from losses caused by the PSPS  
7 events in October and November 2019:

8 Plaintiff and the Class were without power for many  
9 days, in some cases up to 17 days total and upwards of  
10 10 days in a row. Plaintiff was without power himself  
11 for 8-9 days total and up to 5 days in a row. As a  
12 result, Plaintiff and the Class suffered various  
13 losses including loss of habitability of their  
14 dwellings, loss of food items in their refrigerators,  
15 expenses for alternate means of lighting and power,  
such as candles, flashlights, batteries, and gas  
generators, loss of cell phone connectivity, dangerous  
dark conditions, lack of running water, and loss of  
productivity and business.

16 A.P. dkt. 1, ¶ 3. Because of this loss of power, Plaintiff  
17 seeks "compensation for [his and other potential class  
18 claimants'] losses and also injunctive relief to require  
19 [Utility] to properly maintain and inspect its power grid." *Id.*  
20 at ¶ 4.

21 The complaint (as well as the opposition to the MTD)  
22 emphasize that Plaintiff and the potential class members are not  
23 suing the Utility for imposing the blackouts or PSPS events. In  
24 fact, Plaintiff alleges no negligence in the implementation of  
25 the five blackouts that were a result of the PSPSs. Instead, he  
26 faults the Utility for failing to maintain its transmission  
27 system in such a manner that no such blackouts would be  
28 necessary. For example, paragraphs 10-62 of the complaint

1 allege and describe the Utility's "abominable" safety record,  
2 its "criminally negligent maintenance of its power lines," its  
3 failure to safely design, operate and maintain the power system,  
4 and its "corporate culture" that purportedly resulted in  
5 "numerous and increasingly deadly fires." Plaintiff was not a  
6 victim of these fires. Rather, he alleges that he was a victim  
7 of the subsequent, post-petition PSPSs, which he contends were  
8 necessary because of the Utility's prior failures to safely  
9 maintain its power system. *Id.* at ¶¶ 63-79. As Plaintiff  
10 acknowledges in his opposition to the MTD:

11 Plaintiff here does not allege that PG&E, in deciding  
12 to conduct the public safety power shutoffs at issue,  
13 failed to comply its 2019 Wildfire Safety Plan or with  
14 the CPUC's guidelines. Rather, Plaintiff generally  
15 alleges that the Utility's negligent design and  
16 maintenance of its facilities for many years resulted  
17 in the need for the public safety power shutoffs "in  
18 the first place."

16 See Opposition, A.P. dkt. 16 at 16, lines 14-16.<sup>1</sup>

17 Plaintiff repeats this contention several times in his  
18 Opposition: "The Complaint does not allege that the PSPSs were  
19 not necessary and appropriate, or that CPUC's approval of its  
20 Wildfire Safety Plan was improper, only that the PSPSs would not  
21 have been necessary in the first place had PG&E not been  
22 negligent" (Opposition, A.P. dkt. 16 at 8, lines 5-7) and "this  
23 case is not about whether the shutoffs were appropriate or how  
24

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25 <sup>1</sup> As explained below, this concession is fatal, because without  
26 asserting negligence by PG&E in implementing the PSPSs,  
27 Plaintiff cannot invoke Pub. Util. Code 2106, which imposes  
28 liability on utilities for their actions or inactions causing  
loss, damages or injury.



1 PG&E handled them, it is about *why* they had to be done in the  
2 first place." *Id.* at 16, lines 15-16 (emphasis in original).

3 III. DISCUSSION

4 A. *The Utility's Authority to Implement The PSPS Events*

5 Under governing California law, electric utilities that are  
6 regulated by the CPUC may shut off power in circumstances  
7 defined by the Public Utilities Code and the CPUC's decisions.  
8 See Cal. Pub. Util. Code §§ 399.2(a), 451. In April 2012, the  
9 CPUC promulgated de-energization guidelines that permitted San  
10 Diego Gas & Electric Company to shut off power when strong  
11 winds, heat events, and other conditions made a power shutoff  
12 "necessary to protect public safety." See Decision Granting  
13 Petition to Modify Decision 09-09-030 and Adopting Fire Safety  
14 Requirements for San Diego Gas & Electric Company, Decision 12-  
15 04-024, at 25 (Cal. P.U.C. Apr. 19, 2012) (the "Fire Safety  
16 Ruling") (A.P. dkt. 8-3 at ECF pg. 27).

17 In July 2018, the CPUC adopted Resolution ESRB-8 extending  
18 the guidelines set forth in the Fire Safety Ruling to all  
19 investor-owned utilities, including PG&E. See Resolution  
20 Extending De-Energization Reasonableness, Notification,  
21 Mitigation, and Reporting Requirements in Decision 12-04-024 to  
22 All Electric Investor Owned Utilities ("Resolution ESRB-8"),  
23 2018 WL 3584003, at \*1 (Cal. P.U.C. July 12, 2018) (A.P. dkt. 8-  
24 5). The CPUC may review for reasonableness any decision by a  
25 utility to shut off power pursuant to the Fire Safety Ruling and  
26 Resolution ESRB-8. *Id.* at A.P. dkt. 8-5 at 5.

27 Pursuant to its rulemaking authority, the CPUC established  
28 guidelines and protocols governing a decision by a utility to

1 conduct a PSPS. See Order Instituting Rulemaking to Examine  
2 Electric Utility De-Energization of Power Lines in Dangerous  
3 Conditions, 2018 WL 6830158 (Cal. P.U.C. Dec. 13, 2018) (A.P.  
4 dkt. 8-6). The CPUC may review any decision by a utility to shut  
5 off power for reasonableness. *Id.*

6 In September 2018, the California Legislature added several  
7 new provisions to the Public Utilities Code requiring California  
8 utilities to prepare and submit "Wildfire Mitigation Plans" to  
9 the CPUC. Cal. Pub. Util. Code § 8386(b). The Wildfire  
10 Mitigation Plans must contain, among other things, "[p]rotocols  
11 for . . . deenergizing portions of the electrical distribution  
12 system that consider the associated impacts on public safety."  
13 Cal. Pub. Util. Code § 8386(c)(6).

14 On February 6, 2019, PG&E filed its 2019 Wildfire Safety  
15 Plan, specifying factors that it considers in deciding whether  
16 to conduct a PSPS. The CPUC considered and ultimately approved  
17 PG&E's 2019 Wildfire Safety Plan. See CPUC's Decision on  
18 Pacific Gas and Electric Company's 2019 Wildfire Mitigation Plan  
19 Pursuant to Senate Bill 901 issued on June 4, 2019 (A.P. dkt. 8-  
20 9).

21 During the 2019 wildfire season, PG&E executed four PSPS  
22 events in October and one in November. On November 12, 2019,  
23 the CPUC ordered PG&E to show cause why it should not be  
24 sanctioned for its failure to communicate with its customers  
25 properly during these PSPS events. See Assigned Commissioner and  
26 Assigned Administrative Law Judge's Ruling Directing [PG&E] to

27  
28

1 Show Cause, Rulemaking 18-12-005 (Cal. P.U.C. Nov. 12, 2019) at  
2 A.P. dkt. 8-17. That investigation is ongoing.

3 The following day, the CPUC instituted a new investigation  
4 to determine whether California's utilities prioritized safety  
5 and complied with the CPUC's regulations and requirements with  
6 respect to their PSPS events in late 2019. See Order Instituting  
7 Investigation on the Commission's Own Motion on the Late 2019  
8 Public Safety Power Shutoff Events, 2019 WL 6179011 (Cal. P.U.C.  
9 Nov. 13, 2019) at A.P. dkt. 8-16. That investigation is ongoing.  
10 The CPUC may take further action if it finds that violations of  
11 statutes, its decisions, or its general orders have been  
12 committed and if it finds that an action is necessary to enforce  
13 compliance. *Id.*

14 *B. CPUC's Exclusive Jurisdiction Over PSPS Events*

15 Both the Debtors and the CPUC assert that litigation and  
16 adjudication relating to PSPS events fall within the CPUC's  
17 exclusive regulatory powers. Section 1759 of the Public  
18 Utilities Code provides that no court of this state except the  
19 Supreme Court or court of appeal

20 shall have jurisdiction to review, reverse, correct,  
21 or annul any order or decision of the commission or to  
22 suspend or delay the execution or operation thereof,  
23 or to enjoin, restrain, or interfere with the  
commission in the performance of its official duties,  
as provided by law and the rules of court.

24 Cal. Pub. Util. Code § 1759(a).

25 In *San Diego Gas & Electric Co. v. Superior Court*  
26 ("*Covalt*"), 13 Cal. 4th 893, 923, 926, 935 (1986), the  
27 California Supreme Court held that section 1759 bars the  
28

1 assertion of a claim if (1) the CPUC has the authority to adopt  
2 a regulatory policy concerning the subject matter of the claim;  
3 (2) the CPUC has exercised that authority; and (3) litigation  
4 and adjudication of the claim would hinder or interfere with the  
5 relevant policy or policies adopted by the CPUC. In his  
6 opposition, Plaintiff concedes that the first two elements have  
7 been satisfied here, acknowledging that the CPUC "has authority  
8 to regulate and supervise the safety of public utility  
9 operations, including PSPSs" and "has exercised that authority  
10 in the realm of PSPSs[.]" See Opposition, A.P. dkt. 16 at 13,  
11 lines 17-20.

12 Plaintiff, however, disputes that the third *Covalt* factor  
13 is applicable, contending that this adversary proceeding would  
14 not hinder or interfere with CPUC's exercise of its regulatory  
15 authority. The CPUC disagrees, asserting that litigation of  
16 Plaintiff's claims would indeed "hinder and interfere with  
17 enforcement of [its] guidelines concerning public safety power  
18 shutoffs[.]" See CPUC Brief at A.P. dkt. 19, at 7. Even though  
19 Plaintiff does not specifically allege negligence by the Utility  
20 in executing the blackouts, but instead bases his liability  
21 claim on the theory that such PSPS events were caused by  
22 Utility's generalized failure to maintain its infrastructure,  
23 the CPUC contends that imposing liability on PG&E for damages  
24 arising out of 2019 PSPS events would effectively usurp the  
25 CPUC's regulatory to determine when shutoffs are appropriate for  
26 public safety and would further interfere with the CPUC's  
27 supervision of such PSPS events.

28

1 The Complaint appears to rest on the theory that in  
2 light of the Utility's alleged generalized failure to  
3 maintain its infrastructure, any decision by the  
4 Utility to conduct a public safety power shutoff- in  
5 the recent past or future-necessarily gives rise to a  
6 claim against the Utility for negligence. Judicial  
7 adoption of such a theory would hinder and interfere  
8 with the [CPUC's] considered policy to allow utilities  
9 to conduct public safety power shutoffs in the  
10 interests of public safety pursuant to guidelines  
11 established by the [CPUC].

12 CPUC Brief at A.P. dkt. 19 at 7-8 (emphasis added).

13 The court agrees that Plaintiff's assertion of damages  
14 arising out of a PSPS event is precluded by Public Utilities  
15 Code section 1759, even if his negligence claim is based on  
16 conduct pre-dating the PSPS events and possibly contributing to  
17 the necessity of the PSPS events. Any such claim interferes  
18 with the CPUC's exclusive regulatory authority over such  
19 shutoffs. As the court observed at the hearing on the MTD,  
20 Plaintiff has not alleged that Debtor exceeded the authority  
21 vested in it by the CPUC when it executed the PSPS events, and  
22 thus any damages incurred by parties as a result of these events  
23 must be addressed by the CPUC and not this court.

24 Finally, Plaintiff attempts to avoid application of Public  
25 Utilities Code section 1759 and *Covalt* by alleging that the PSPS  
26 events were necessitated by pre-existing conditions caused by  
27 the Utility's purported inadequate maintenance of equipment and  
28 inadequate attention to conditions that could cause wildfires.  
As the CPUC noted in its response, however, before the wildfires  
in October and November 2019, it had already exercised its  
authority to regulate the PSPSs by adopting its guidelines

1 governing the circumstances in which an investor-owned utility  
2 can conduct them. The CPUC continues to exercise that authority  
3 through ongoing rulemaking and investigations. Therefore, any  
4 claim for damages caused by PSPS events approved by the CPUC,  
5 even if based on in pre-existing events that may or may not have  
6 contributed to the necessity of the PSPS events, would interfere  
7 with the CPUC's policy-making decisions.

8 In any event, the proximate causal connection between the  
9 harms suffered by Plaintiff during the blackouts (loss of  
10 habitability of his dwelling, loss of cell phone connectivity)  
11 and the conditions pre-dating those blackouts is too remote to  
12 defeat the MTD, given that such PSPS events can be necessitated  
13 by high winds even when equipment is adequately maintained.

14 In conclusion, by asserting that inadequate maintenance led  
15 to the PSPSs, Plaintiff is usurping and interfering with the  
16 CPUC's authority in approving such PSPS events.<sup>2</sup> For that  
17 reason, the court is granting the MTD.

18 \_\_\_\_\_  
19 <sup>2</sup> In his opposition to the MTD, Plaintiff argues

20 To say that just because the Commission provides  
21 regulatory guidance on PSPSs, PG&E cannot be liable  
22 for its negligence resulting in the need for a PSPS,  
23 is akin to saying that PG&E should not be liable for  
24 negligently causing the San Bruno explosion or the  
25 wildfires just because the Commission regulates  
26 aspects of PG&E's conduct related to those disasters.  
27 And it does not take that position.

28 First, the damages asserted by the victims of the San Bruno  
explosion and the various wildfires did not arise out of conduct  
approved by the CPUC in its regulatory capacity. Second, the  
CPUC did authorize the process by which PG&E conducted the  
PSPSs. Finally, the losses and damages asserted by the San Bruno

1 IV. CONCLUSION

2 The court is dismissing this adversary proceeding because  
3 it is preempted by Public Utilities Code section 1759. Counsel  
4 for Debtors should upload an order granting the MTD for the  
5 reasons set forth in this memorandum decision and file a  
6 separate proof of service indicating that compliance with B.L.R.  
7 9021-1(c).

8 \*\*END OF MEMORANDUM\*\*

9  
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27 \_\_\_\_\_  
28 explosion victims and the wildfire victims were directly related  
and causally connected to the Utility's alleged misconduct.

-11-

No. 21-15571

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

ANTHONY GANTNER, individually and on behalf of all those  
similarly situated,

*Plaintiff-Appellant,*

v.

PG&E CORPORATION, a California Corporation, and PACIFIC  
GAS & ELECTRIC COMPANY, a California Corporation

*Defendants-Appellees.*

On Appeal from the United States District Court  
for the Northern District of California  
No. 4:20-CV-02584-HSG

Hon. Haywood S. Gilliam, Jr.,

[an appeal from an Order in the Bankruptcy Case In re: PG&E  
CORPORATION and PACIFIC GAS AND ELECTRIC COMPANY,  
Debtors, Bankruptcy Case No. 19-30088 (DM), Adv. Pro. No. 19-  
03061 (DM), Hon. Donald Montali, U.S. Bankruptcy Judge]

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**APPELLANT'S EXCERPTS OF RECORD  
VOLUME 2 OF 4**

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP, JUDGE

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 VS. ) No. CR 14-00175 WHA  
 )  
 PACIFIC GAS AND ELECTRIC )  
 COMPANY, )  
 )  
 Defendant. ) San Francisco, California  
 ) Thursday, May 28, 2020  
 \_\_\_\_\_)

**TRANSCRIPT OF TELECONFERENCE PROCEEDINGS**

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(Appearances continued, next page)

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Also Present:

**MARK FILIP, FEDERAL MONITOR  
CHARLES KALIL, FEDERAL MONITOR  
CHRIS KEEGAN, FEDERAL MONITOR  
JULIE M. KANE, SR. VICE PRESIDENT, PG&E  
JENNIFER HUTCHINGS, U.S. PROBATION  
LILLAN GROSSBARD  
CHRISTINE HAMMOND, CALIFORNIA PUC  
CHRISTOFER NOLAN, CALIFORNIA PUC**

1 Thursday, May 28, 2020

9:02 a.m.

2 P R O C E E D I N G S

3 **THE CLERK:** Calling Criminal Action 14-175, United  
4 States versus Pacific Gas and Electric Company.

5 Counsel, please state your appearances for the record,  
6 beginning with the government.

7 **MR. STERN:** Good morning, Your Honor. Noah Stern for  
8 the United States. I have with me on the line, appearing by  
9 telephone, Hallie Hoffman and Jeff Schenk.

10 **THE COURT:** PG&E, please.

11 **MR. ORSINI:** Good morning, Your Honor. This is Kevin  
12 Orsini from Cravath Swaine & Moore on behalf of PG&E.

13 **MR. SCHAR:** Reid Schar of Jenner & Block on behalf of  
14 PG&E.

15 **MS. DYER:** Kate Dyer, Clarence Dyer & Cohen, for PG&E.

16 **THE COURT:** All right. Any other counsel wish to  
17 appear?

18 **MR. AGUIRRE:** Good morning, Your Honor. This is  
19 Michael Aguirre, on behalf of the amici in the case.

20 **MS. SEVERSON:** Good morning, Your Honor. Maria  
21 Severson, also on behalf of amici in this case.

22 **THE COURT:** All right. Is there anyone else?

23 **MS. HUTCHINGS:** Good morning, Your Honor. Jennifer  
24 Hutchings on behalf of Probation.

25 **MR. ZAFFERANO:** Good morning, Your Honor. Marc

1 Zafferano for the City of San Bruno.

2 **MR. FILIP:** Good morning, Your Honor, Mark Filip,  
3 Chris Keegan and Charles Kalil on behalf of the monitor team.

4 **MS. HAMMOND:** Good morning, Your Honor. This is  
5 Christine Hammond from the California Public Utilities  
6 Commission. And we had not intended to make an appearance, as  
7 such, but wanted to make ourselves available to answer any  
8 questions.

9 **THE COURT:** All right. Your name again, please?

10 **MS. HAMMOND:** Christine Hammond.

11 **THE COURT:** Excellent. I appreciate your attendance.  
12 Anyone else?

13 (No response)

14 **THE COURT:** All right. Ms. Hammond, I have got a  
15 question for you right off the bat.

16 And that is AB1054, I believe, established something  
17 called the Wild -- I'm sorry, I've lost it now. Some division  
18 called the Wildfire Safety Division. Is that it?

19 **MS. HAMMOND:** That's correct, Your Honor

20 **THE COURT:** Yes. Is that part of the CPUC? Or is  
21 that a separate agency?

22 **MS. HAMMOND:** It was created as being within the CPUC,  
23 and in 2021 it will move over to the California Resources  
24 Agency, which also is an agency in which CalFire is housed.

25 **THE COURT:** Okay. And are you connected with the --

1 that division?

2 **MS. HAMMOND:** Yes. I'm representing the California  
3 Public Utilities Commission. And that is presently where the  
4 Wildfire Safety Division is housed.

5 **THE COURT:** All right. Okay. That helps a lot. All  
6 right. So this is -- I need to say to -- there's a lot of  
7 people on the line. But every time you join in or join out,  
8 there is a beeping noise that disrupts our ability to hear each  
9 other. So please try not to do that.

10 And I guess all of you should put yourselves on mute so  
11 that we won't hear your background noise. I might do that,  
12 myself.

13 (Beeping noise)

14 **THE COURT:** See, like, there goes another beep right  
15 there.

16 (Beeping noise)

17 **THE COURT:** I have to ask everyone to please, please  
18 not beep on the line.

19 Anyway -- I've forgotten what I was about to say. We're  
20 here because of a motion to reconsider by PG&E, with respect to  
21 conditions of probation.

22 So this is the motion by PG&E, and I would like to give  
23 you the opportunity to go first. So, please go ahead.

24 **MR. ORSINI:** Thanks, Your Honor. This is Kevin Orsini  
25 from Cravath, Swaine & Moore.

1 Just to make sure we're on the same page at the outset on  
2 the procedural issues, Your Honor, so we had filed a motion for  
3 leave to file our motion for reconsideration. But my  
4 understanding at this point is that the Court has granted that  
5 leave but, of course, has not ruled on the actual  
6 reconsideration request.

7 And based on that, we've obviously submitted a series of  
8 declarations from both fact witnesses and experts, and it's my  
9 understanding those are in the record. So unless the Court has  
10 a different view or proposed approach, I would just proceed  
11 right to the argument at this point.

12 **THE COURT:** Well, I -- I do want to say -- yes. Your  
13 assumption that I am allowing this motion to be reconsidered is  
14 correct. And I don't want you to feel as if you did not get a  
15 fair hearing. But I do feel -- I'll give you just one example.

16 We did have a hearing, I believe it was in February, at  
17 which I had proposed certain things in advance. And you were  
18 commenting on those. For example, one of your responses was  
19 that PG&E did not have to -- should not be required to go out  
20 and hire additional people to cut the trees because you were --  
21 yourself, PG&E, was going to hire what you called  
22 pre-inspectors. And these would be on your own payroll, and  
23 in-house.

24 And I then said okay, that's what PG&E wants, and that's  
25 not a bad idea. I'll shift over to that. And then now, now

1 you flimflam me, and say: No, we never got enough chance for a  
2 hearing.

3 Well, it was your own idea. So I'm sorry that you feel  
4 that you didn't get a hearing, but I want to err on the side of  
5 giving you a hearing, and I want to seriously consider all of  
6 your objections. And then I may modify the order, or I may  
7 withdraw it, completely.

8 So, so -- but you need to remember that if ever there was  
9 a corporation that deserved to go to prison, it's PG&E. And  
10 the number of people it killed in California. And the judge  
11 who's overseeing this probation has got to take the public  
12 interest and the safety, the safety of the people of California  
13 into account. I only have five years to do it, and there's  
14 three years have been used up.

15 But, PG&E is a recalcitrant criminal. And I am going to  
16 do everything within my power, being fair to you at the same  
17 time, everything within the power of the Federal District Court  
18 to protect the people of California from further crimes and  
19 further destruction by PG&E.

20 All right. That being said, I'm very interested to hear  
21 what you have to say. And I will sincerely listen to it, and I  
22 will consider it. And give you yet another opportunity to be  
23 heard.

24 Please go ahead.

25 **MR. ORSINI:** Thank you, Your Honor. Thank you for

1 that, those remarks. And I'll get to the vegetation-management  
2 issues specifically towards the end of my presentation.

3 And let me just start by saying, Your Honor, we, we  
4 completely understand the Court's perspective and share the  
5 Court's desire to ensure that there are no more wildfires, that  
6 there are no more homes destroyed, and God forbid, there are no  
7 more lives lost. And we appreciate the opportunity to engage  
8 with all interested parties including the Court on these issues  
9 and will continue to do so.

10 So I thought, Your Honor, as I organize my thoughts for  
11 the hearing today which we very much appreciate the Court  
12 making available to us, particularly under these circumstances,  
13 that I would start by addressing the conditions the Court has  
14 proposed with respect to PG&E's transmission system, and then I  
15 would turn to issues concerning the distribution system which  
16 focuses, as Your Honor noted, on vegetation management.

17 And so starting with the transmission inspection program,  
18 we have spoken before, Your Honor, about the fact that the  
19 inspection program that's in place today is fundamentally  
20 different from what was in place before the tragic Camp Fire.  
21 And it was completed redesigned from the ground up,  
22 specifically as a result of the Camp Fire and the conditions  
23 that led to the ignition of that tragic wildfire.

24 And as we've discussed and set forth in the record,  
25 Your Honor, the effort that PG&E undertook last year was



1 unprecedented. It was unlike anything that, to our knowledge,  
2 has ever been done in the utility industry. I don't say that  
3 so that we get a pat on the back. I don't say that so that we  
4 get credit for doing this, because I understand the perspective  
5 as to what had happened in previous years. But I think that is  
6 a critical piece of the context. Because what we are dealing  
7 with right now and discussing is fundamentally changed from  
8 what PG&E had in the past. And as we set forth in the  
9 declarations, and in particular, the declaration of  
10 Ms. Hvistendahl who oversees this program, the Wildfire Safety  
11 Inspection program that was implemented in 2009 was a  
12 risk-based inspection program that focused on those areas in  
13 the state that had the highest risks.

14 Your Honor, you and I have talked about these  
15 high-fire-threat districts in the past, and the idea that not  
16 all portions of PG&E service territory are created equally as  
17 it relates to wildfire risk.

18 So what PG&E did in close consultation with its regulators  
19 is it focused on those highest risk areas. And that included  
20 the physical inspections, both climbing and aerial, of just  
21 about 50,000 transmission structures. And, and we have  
22 tangible evidence that that program has worked to identify  
23 problems on PG&E's transmission system.

24 There were in the calendar year 2019, more than 60,000,  
25 60,000 conditions of varying levels that were identified for

1 either repair or replacement. That includes more than 2,000  
2 work orders related to what we call cold-end insulation  
3 hardware assemblies. That's -- that's a broader category,  
4 Your Honor, that includes the C-hook and hanger plate type  
5 assemblies that are in the record that we've talked about.  
6 It's also a little bit broader than that. But over 2,000 work  
7 orders were identified with respect to those types of  
8 components that needed repair and needed replacement.

9 And, and we submit, Your Honor, that these overwhelming  
10 reports, which far exceed anything that any other utility in  
11 the state found last year, is tangible evidence that the  
12 enhanced inspections are working, and that they're a  
13 fundamental sea change from what PG&E had been doing in the  
14 past.

15 The program that is in place right now, Your Honor, builds  
16 on that 2019 experience. It includes specific lessons learned  
17 from the 2019 inspections, including a few I'll talk about in a  
18 moment. And it was developed based upon additional input from  
19 its outside regulators at the CPUC and a host of outside  
20 experts, as well as the interested public.

21 And so, Your Honor, we believe, based on the totality of  
22 the record, that there certainly is in evidence that this  
23 approach needs to be scrapped, and there is no evidence to  
24 support the specific conditions proposed by the Court. And  
25 I'll get to each of those in detail in a little bit.

1 But first, Your Honor, I think it's important to focus on  
2 the threshold issue that's presented by these conditions. And  
3 that is one of federalism. And the concern that we have, that  
4 the Court's attempt to impose conditions that would require us  
5 to restart our entire design of the inspection program,  
6 interferes with the state regulatory process, which very much  
7 is within the police power of the state.

8 Now, let me be very clear, Your Honor. You have already  
9 implemented probation conditions that require PG&E to comply  
10 with the law, that require PG&E to comply with the CPUC  
11 guidance and regulations, and that require us to continue to  
12 work with our monitor. We accept every single one of those,  
13 and we welcome those. And we are not here arguing that the  
14 Court is acting outside its bounds by imposing those types of  
15 conditions.

16 But what we do think raises significant federalism  
17 concerns of the type that the Ninth Circuit addressed in  
18 *Lacatos* is the Court's stepping into the role of the regulator  
19 to apply specific conditions to how PG&E maintains its system.

20 And in particular, picking up on your colloquy with the  
21 CPUC at the beginning, there is absolutely no question,  
22 Your Honor, that the State of California is incredibly focused  
23 on wildfire risk. There have been entire new regulatory  
24 regimes created to address this fundamental problem in the last  
25 two years. And a big part of that is what was discussed at the

1 outset of this hearing, which is the creation of the Wildfire  
2 Safety Division. As noted by the CPUC, that division is  
3 currently part of the CPUC, but in a year or so will move out  
4 to be housed in the very same agency that houses CalFire, so we  
5 will now have under one division in the state of California  
6 those responsible for trying to prevent the fire from ever  
7 starting, as well as the heroic people from CalFire who stop  
8 the fires once they do start.

9 Governor Newsom has made a series of announcements over  
10 the past few months about the resources that are being  
11 dedicated to the Wildfire Safety Division. And he's explained  
12 that it will be staffed by at least a hundred people who have  
13 specific expertise, and will be devoted full-time to focusing  
14 on the question of wildfire prevention and wildfire safety.  
15 The division is advised by an independent board of directors.  
16 And critically, it engages in data requests directed at all of  
17 the investor-owned utilities across the state of California.

18 Just by way of example, as we have gone through the  
19 many-month process of preparing our 2020 wildfire mitigation  
20 plan, the Wildfire Safety Division provided PG&E, alone, with  
21 over 200 data requests seeking specific information about every  
22 aspect of the design of our mitigation program. And while I  
23 don't know the specific numbers that went to the two large  
24 utilities in the south, they're submitting similar data  
25 requests to them.

1           And the key is this allows the Wildfire Safety Division,  
2 as empowered by state law, to compare best practices among the  
3 utilities, and bring innovation from one to another. Something  
4 we absolutely welcome. And we had talked at previous hearings  
5 about PSPS. Much of our PSPS program was specifically designed  
6 based upon the experiences that were achieved in southern  
7 California, who had programs in place before us.

8           And the Wildfire Safety Division is the regulatory body  
9 that has the expertise, that has the manpower, and that has the  
10 legal mandate to help us all work together to constantly  
11 improve our programs. And that's key. Continuous improvement.  
12 Because I do not stand here and say that this process is done.  
13 It is an ongoing regulatory process that will last for as long  
14 as the wildfire conditions exist in the state of California.

15           And critically, it is a process that includes the striking  
16 of significant balances between how best to focus efforts and  
17 most effectively mitigate the risks presented by many different  
18 aspects of any utility's electrical system, including PG&E's.  
19 It is not one that can be redesigned overnight. And it's not  
20 one that is susceptible to conditions just being bolted onto  
21 it, without causing interference with those conditions that  
22 already exist.

23           And respectfully, Your Honor, there is no court that could  
24 ever hope to replicate that expertise, and critically, resource  
25 that's available for this ongoing iterative process. And so --

1           **THE COURT:** Let me interrupt you on that, then.

2           If all of that is true, and if the CPUC and the  
3 legislature and all the regulators -- they were all in place,  
4 all of that was in place when you -- PG&E burned up the wine  
5 country with 17 fires, explain to me why that expertise didn't  
6 stop the -- and those regulators didn't stop PG&E from burning  
7 up the wine country with 17 fires that you started, and killed  
8 a lot of people, and burned up a lot of homes.

9           Where was federalism then? Explain that to me.

10           **MR. ORSINI:** Yes, Your Honor. And I appreciate the  
11 question.

12           And the answer to that is, Your Honor, much of this did  
13 not exist back at that time. Obviously, the CPUC was in place.  
14 But there was no wildfire mitigation plan requirement like  
15 there is today. There was no Wildfire Safety Division like  
16 there is today. There was no ongoing iterative workshopping  
17 process with experts and with the public like there is today.  
18 All of which was created specifically because of those horrible  
19 tragedies that the Court has referenced. And, and we all know  
20 that everyone wishes that those -- those tragic events could  
21 have been averted.

22           But what -- what we can represent, Your Honor, and what I  
23 think is the critical point as we sit here today, is when we  
24 talk about the inspection program that exists now, it is  
25 nothing like the inspection program that existed then. When we

1 talk about the regulatory framework that exists now, it is  
2 nothing like the regulatory framework that existed then. The  
3 state has responded, PG&E has responded, to the failures of the  
4 past. And in particular, to the extreme increased risk that  
5 we're facing as each year goes on, including this year, when  
6 the conditions are susceptible to significant wildfire issues.

7 So Your Honor, in response to that question, I would  
8 respectfully submit this regulatory regime wasn't in place at the  
9 time. There was a CPUC, there was a PG&E. But both of those  
10 organizations, the focus of those organizations, and the  
11 statutory framework today is completely and fundamentally  
12 different.

13 And, and as part of that, the wildfire safety plans that  
14 we have to now submit, including our 2020 plan, are dozens of  
15 pages long, with extensive backup materials that we go through  
16 an elongated process with the Wildfire Safety Division to get  
17 approved.

18 And just this past month -- it was earlier this month, and  
19 it's in one of the materials that we've submitted to the Court,  
20 the WSD conditionally approved PG&E's 2020 plan. But in doing  
21 so, it imposed a long list of conditions.

22 There's no question, no question whatsoever, that the  
23 Wildfire Safety Division in approving our plan, conditionally,  
24 and as it relates to both transmission and vegetation, found  
25 issues that they demand we do better on. And raised questions

1 that they demand we answer.

2 And that shows precisely that the process is working.  
3 That they are not just accepting what we say is the right way  
4 for PG&E to do this process. They're taking the input of their  
5 experts, they're taking the input of the public, and they're  
6 pushing not only PG&E, but all of the utilities across the  
7 state, to make these programs better, Your Honor.

8 And, and we submit that as a result of that, at the most  
9 fundamental level, that is why, while we do accept conditions  
10 that say we have to comply with the monitor, while we welcome  
11 conditions that say we have to comply with state law and keep  
12 working through this process, we respectfully do not believe  
13 that it is either appropriate or beneficial to try to replicate  
14 any of that regulatory process in the context of probation  
15 hearings.

16 **THE COURT:** Wait, wait, wait, let me -- I want to  
17 challenge you on that.

18 **MR. ORSINI:** Yes, Your Honor.

19 **THE COURT:** The conditions that you have already  
20 accepted are not only to comply with state law concerning  
21 vegetation, but also -- and the monitor, but also to comply  
22 with your own wildfire safety plan which you submitted to me a  
23 year ago, and which was then accepted by the CPUC. And that  
24 version was what you were required to comply with, and you  
25 utterly failed.



1           In the first year, you failed so far behind on your own  
2 milestones in your plan, and you are in total violation of that  
3 condition of probation. It is -- you cannot go, run off to the  
4 CPUC and say: Oh, please, excuse us from violating our own  
5 plan, because you promised the U.S. District Court you would  
6 comply with that version of the plan.

7           Now, having violated your own conditions of probation, now  
8 you say to the District Court: Oh, Judge, oh, Judge, you don't  
9 have the authority to do anything about the fact that we  
10 violated the conditions of probation; only the CPUC can  
11 regulate us.

12           Well, what remedy do I then have, if you continue to  
13 violate the conditions of probation? Don't I have some  
14 authority to require PG&E to clean up its act, when you -- when  
15 you won't keep your promises as the probationer, as the  
16 convicted criminal, and the judge overseeing you -- doesn't  
17 that judge have some authority to enforce, by imposing more  
18 conditions that are designed to bring you into compliance with  
19 the conditions that you have, in fact, accepted?

20           All right. I'll stop there. Please answer that question.

21           **MR. ORSINI:** Yes, thank you, Your Honor.

22           So, a couple of responses on that. Number one, I  
23 completely agree with the Court's statement, which is factually  
24 true, that we were ordered as a probation condition to comply  
25 with our wildfire safety plan. And we would be very open and

1 accept a condition that requires us to continue to comply with  
2 our wildfire safety plans. I believe the existing condition  
3 may already do that.

4 I disagree with the Court in the statement that we fell  
5 completely behind with respect to that safety plan. There were  
6 failures. There's no question. There were a number of  
7 metrics, a minority of metrics, on which PG&E did not meet its  
8 standards. There were far more where PG&E did meet its  
9 standards. I'm not saying and PG&E certainly does not believe  
10 that, you know, batting .750, hitting two thirds of your  
11 milestones is sufficient, right? It's not acceptable to us.  
12 It shouldn't be acceptable to anyone.

13 And that is why PG&E is working to address every failure  
14 that was exhibited, to meet specific targets of the wildfire  
15 safety plan. Which Your Honor also needs to understand was, in  
16 its first place, an incredibly aggressive plan. Doesn't excuse  
17 not meeting the targets, those are targets we took on, but it  
18 was an incredibly aggressive plan. And that's what it need to  
19 be. And PG&E overwhelmingly and the record demonstrates that  
20 PG&E overwhelmingly met its targets.

21 With respect to the Court's question about the powers of  
22 this Court, respectfully, I do not believe the Court has the  
23 authority to impose conditions as a result of those failures or  
24 any other that intrude upon and displace the regulatory regime  
25 in the state of California, as these proposed regulations do.

1           Again, that's not to say that the Court doesn't have the  
2 power to impose conditions that we comply with the law. The  
3 Court certainly has the power to insist the monitor continue to  
4 work with us, something we welcome and appreciate, and are  
5 working closely with them.

6           But respectfully, Your Honor, no, I do not believe the  
7 law, I do not believe principles of federalism, and I do not  
8 believe *Lacatos* permits the Court to impose conditions of the  
9 type that are presented here in any circumstance, because they  
10 interfere with the regulatory regime.

11           **THE COURT:** Let me interrupt you a second now.

12           Part of the recent order that you object to said at the --  
13 near the end, that the Court was flexible, meaning I was  
14 flexible, and that you can come back -- you can confer with the  
15 CPUC, with the monitor, with your experts; you can come back  
16 with a counter-proposal that was designed to get at the same  
17 issues that the Court was raising. And I did that specifically  
18 to avoid any contention that I was stepping on the toes of the  
19 CPUC, or at least, disregarding what they had to say.

20           Now, why doesn't that give you what you need in terms of  
21 flexibility with the CPUC and your experts, to come back with a  
22 counter-proposal that explains to the Court an alternative way  
23 to achieve the same result? Why -- what's wrong with that?  
24 You completely ignore that part of the order.

25           **MR. ORSINI:** Thank you, Your Honor.

1           So, so I think in part, Your Honor, that part of the  
2 proposal puts a finger on precisely the problem here. We have,  
3 throughout the last year and a half, repeatedly been in  
4 situations where the Court is soliciting the input of the CPUC,  
5 of CalFire, of having us work together with respect to these  
6 plans. But Your Honor, that is precisely what the state  
7 regulatory regime is doing. The proposal as to how best to  
8 mitigate wildfire risk already exists. It is the proposal that  
9 is reflected in PG&E's 2020 wildfire mitigation plan as  
10 required by state law. And, and as now conditionally -- and  
11 that's a key word -- conditionally approved, subject to ongoing  
12 efforts by the regulators to have the very discussions the  
13 Court is focused on.

14           Your Honor, I feel like it is unfortunate that you and I  
15 fight on these issues in the context of these hearings, because  
16 we have fundamental agreement on one point. And that  
17 fundamental agreement is we cannot afford another wildfire.  
18 The state of California cannot afford another wildfire. We  
19 have to do everything we can to stop this from happening. And  
20 that's what we're doing, Your Honor, with the regulators.  
21 That's what the wildfire mitigation plan says.

22           And bringing that process in an abbreviated form into the  
23 context of a federal probation proceeding just interferes with  
24 the ability to focus on it that.

25           **THE COURT:** Wait a minute. Wait, wait. I just have

1 to interrupt you.

2 You know, after the wine country fires of 2017, I heard  
3 the same argument. I heard the same argument from PG&E. And  
4 -- that this problem was in hand, you were working with the  
5 regulators, and: Please, Judge, let us work with the people  
6 who know best and we'll solve this problem.

7 And then a few months later, we had the worst wildfire in  
8 California history that burned down half of Butte County and  
9 killed 88 people. That was what happened under that regime.

10 And then you said the same thing, you told me the same  
11 thing: Oh, we're working with the regulators, we have this --  
12 we have a wildfire safety plan. Then what happened? The  
13 Kincade Fire.

14 Now, you haven't owned up to the Kincade Fire yet, but  
15 it's quite clear that that jumper cable broke loose and started  
16 that fire on the burned mountain tower. And now you're making  
17 the same argument. This argument is never going to end.

18 You're always going to have a fire; you're always going to  
19 be saying: Oh, the regulators, we're working with the  
20 regulators. And, I don't know. It rings hollow after a while,  
21 this argument about defer to the regulators. I'm sorry, but I  
22 have to say that.

23 **MR. ORSINI:** Well, Your Honor, with respect to -- with  
24 respect to those comments, obviously the 2017 fires involved  
25 overwhelmingly, in I think all but one of the significant

1 wildfires of 2017, involved specifically vegetation management  
2 issues. And there was a lot of work done immediately after  
3 those fires to enhance the vegetation management work. And we  
4 see the results. The Court has noted that. We did not have a  
5 single vegetation-caused wildfire last year that resulted in a  
6 loss of a life or the loss of a structure. And we have to keep  
7 that streak going.

8 With respect to the 2018 Camp Fire, the cause that we've  
9 acknowledged and the primary point was the failure of the  
10 C-hook that we've talked about. And we all wish that that  
11 could have been avoided. And that had been identified through  
12 a variety of different mechanisms prior to the fire starting.

13 But it was as a result of the combined effect of those two  
14 years of fires that any incremental changes to the system that  
15 occurred between 2017 and '18 were discarded as insufficient,  
16 and we started with a complete blank piece of paper, both with  
17 respect to the regulatory framework, with respect to the  
18 legislation, and with respect to PG&E's approach. And, and  
19 what we've done prior to those just does not compare to what  
20 was done today.

21 With respect to Kincade, Your Honor, we don't yet know  
22 specifically what caused the fire. We do know, as we have  
23 said, that a jumper separated. What we've seen is, and as the  
24 expert declarations set forth, the inspections of that specific  
25 tower showed no evidence of an imminent failure of a jumper.

1 And the reality is that no inspection program will ever be  
2 perfect, but that doesn't mean we don't strive for perfection.  
3 And that is what PG&E is doing, and that's what the regulators  
4 are doing.

5 Your Honor, I understand the skepticism. I understand  
6 your skepticism; I understand the skepticism of the public.  
7 And we should not and do not ask that the Court simply accept  
8 PG&E's word for it. But federal law and Ninth Circuit  
9 precedent does require that these ongoing concerns be addressed  
10 under the police power of the state. And that's where they are  
11 being addressed, Your Honor. And we believe that it's critical  
12 that the Court defer to that process.

13 Now, I would like at this point, Your Honor, if I may, to  
14 turn to some of the specifics and -- and some of the specifics  
15 with respect to the conditions.

16 As I noted earlier, Your Honor, we fundamentally believe  
17 that the evidence of all of the issues that have been found,  
18 whatever that might say about the past, establishes that what's  
19 being done today is working. And we talked about Kincade.

20 The other thing that Your Honor and I have spent a lot of  
21 time talking about and a lot of paper's been dedicated to are  
22 the assemblies, the C-hook and hanger plates on the Cresta-Rio  
23 Oso line. Um, on that tower that was adjacent to the  
24 Caribou-Palermo line where the tragic Camp Fire started.

25 And let me say right at the outset and acknowledge right

1 at the outset that ultimately when PG&E went back and  
2 reinspected that tower with the benefit of the photographs  
3 provided by the TCC, PG&E made the determination that the  
4 condition of those hanger plates warranted what we call an  
5 E tag. And therefore, replacement within a year. We  
6 ultimately did it much faster than that; we did it within two  
7 months. And we absolutely wish that that condition had been  
8 noted the first time the inspection was done. It was not.

9 And so the question then is, since we acknowledge that key  
10 factual predicate, the question then is: Does that one  
11 incident, does that one example suggest that the entire  
12 inspection program needs to start over, and that it's not  
13 working?

14 And respectfully, Your Honor, it does not. There was no  
15 imminent safety risk presented by that hook. Period, full  
16 stop.

17 Dr. James's analysis is unrefuted. And it shows that we  
18 exceeded the CPUC's safety factor by 40-some-odd times. Right,  
19 the CPUC safety factor that the Court has cited to me in the  
20 past requires a load factor of 1.33. Even the worst one of  
21 these assemblies had a load factor of 50 to 60 times. There  
22 was absolutely no imminent risk of failure. So there was no  
23 public safety risk here.

24 And the reality, Your Honor, is that those same assemblies  
25 had, at a minimum, 15 more years before they approached the



1 critical safety factor, and potentially as long as a hundred  
2 years. But that tower would have been inspected multiple times  
3 before we ever got close to that safety factor.

4 And that's why the program is designed to have repeated  
5 inspections and more frequently repeated inspections in those  
6 areas that are most susceptible to wildfires.

7 Now, the next question that I would ask me is: Well,  
8 that's fine, but what are you doing to make sure you don't miss  
9 it the first time again?

10 And the answer there is, as set forth in the declarations,  
11 we have done a lot of work, PG&E has done a lot of work to  
12 improve the quality of the photos that are being taken during  
13 these inspections, and to improve the guidance that is being  
14 provided to those who are doing the inspections. We're  
15 learning from these lessons. And, and that's what we need to  
16 do. But again, this was not an imminent safety risk.

17 And respectfully Your Honor, one example across the entire  
18 system when we found 60,000 issues that needed correction just  
19 doesn't provide a record to throw the whole inspection program  
20 out.

21 And then, focusing on the particular conditions that the  
22 Court has proposed, which I break in to, I think, four basic  
23 categories, the first is videotaping.

24 Your Honor, as we set forth in the declarations, that is  
25 not something that's done by any utility, to our knowledge.

1 It's not something that any of the experts believe would be of  
2 any use. It's something that would give lower-quality  
3 inspection materials than the high-resolution photos that are  
4 currently being taken.

5 And ultimately, I think part of what might have been  
6 motivating the Court's concern with this condition, although  
7 you will obviously correct me if I'm wrong, was the concern  
8 about potential records falsification. Or a lack of clarity as  
9 to whether or not inspections were actually completed.

10 And as we set forth in our declarations and in the expert  
11 analysis, Your Honor, we do have very significant controls in  
12 place already on that front. The company is moving as quickly  
13 as it can to all digital-based inspection programs and forms.

14 The photographs that are required, some of which we have  
15 provided as an example in the submissions, include metadata.  
16 They require -- they require specific shots to be taken of the  
17 tower leg with the tower numbers. There's GPS location data on  
18 the photographs. So we already have a robust system in place  
19 through the photography to help address any concern that may  
20 exist about whether or not the inspection actually occurred.  
21 But there's no evidence, Your Honor, simply none, that would  
22 suggest that videotaping would add any value.

23 Related to that, there's the Court's suggestion that there  
24 might be pulling or tugging on the components. And I think  
25 that might be -- in part have been motivated by the Court's

1 comments and concerns related to the Kincade jumper that  
2 separated.

3 But the reality is, Your Honor, again, as set forth in the  
4 uncontested declarations of both the experts and the fact  
5 witnesses, is -- you can't do that. You certainly can't do it  
6 while energized, without using Faraday suits, which presents an  
7 incredible safety risk to those line workers up there actually  
8 doing this work.

9 **THE COURT:** Wait a second. Wait, wait. You're being  
10 very unfair here.

11 I said if there was going to be any pulling or tugging on  
12 it, of course it would have to be de-energized. There's no way  
13 you could do that with the power. It would have to be a  
14 completely de-energized line.

15 But here's the problem. When you submitted all of those  
16 -- that -- it's always a needle-in-a-haystack problem with you.  
17 You send me box after box after box, and there will be one  
18 document somewhere in there that's relevant. We try to find  
19 it, anyway.

20 But, the problem is this. You -- when we actually read  
21 your reports, and read what the inspectors put down on the  
22 paper, as recently as the Kincade Fire, after all these  
23 regulators did their job, as recently as all that, you cannot  
24 reconstruct from those reports whether they actually got up  
25 there on a de-energized line and tried to tug on the line, or

1    tried to see if it was loose in some respect.  You have no way  
2    of knowing, no way of knowing what those inspectors actually  
3    did.  You even try to hide the names of the inspectors from me  
4    so that we can't call them into court to ask them that  
5    question.

6            It's impossible to go behind your inspection regime  
7    because it is designed to conceal what really happened and what  
8    really was tested, so that you can then say -- it's a courtroom  
9    prop.  You say:  Judge, look, the inspections all said  
10   everything was fine.  We did our job.  No inspection system is  
11   perfect.

12           I've heard you say that like a broken record, 42 times.  
13   Well, I'm sorry, but you need some way to know what these  
14   inspectors did.  And how complete a job they did.  And the idea  
15   of the video was to have that record, a moment-by-moment  
16   reconstruction in addition to all those other things that you  
17   are doing, that would -- so that you could look at that and  
18   say:  Okay, yeah, they de-energized the line.  Yeah, in this  
19   particular case, they did get up there and tug on it to see if  
20   it was tight.

21           But I'm not saying that you -- I'm not saying -- I have  
22   never said and it's unfair for you to suggest that I said that  
23   you should send a worker up there to be electrocuted by  
24   touching a live wire.  That's ridiculous.  I never would make  
25   such a suggestion.  I know better than that.  I know enough

1 about power lines that that would be instant death.

2 Please, don't -- don't try to impugn the integrity of the  
3 Court in that way.

4 Next point.

5 **MR. ORSINI:** Your Honor, I in no way was trying to  
6 impugn the Court's integrity. And my very next point was going  
7 to be on de-energizing.

8 So Your Honor, I was laying out the two different  
9 approaches that are available to do something like this. One  
10 would be energized which, as we both agree, would be very  
11 dangerous. The other would be, as the Court noted,  
12 de-energizing. But that's neither feasible nor productive.

13 To de-energize consistently enough to do a  
14 tugging-and-pulling inspection on all of the transmission lines  
15 would cause massive reliability problems in the state of  
16 California, would require close coordination with the  
17 California ISO, and impose an enormous burden on them, all of  
18 which would not yield any benefit.

19 Your Honor, the forms do not indicate whether anyone  
20 tugged or pulled on the equipment, because we know they didn't.  
21 Because they are not instructed or permitted to. Because,  
22 again, you can't do it when it's live. You would have to  
23 de-energize, which we don't. And, and as the evidence  
24 establishes, doing so would not actually provide any useful  
25 information in nearly all instances.

1           As the experts explained, these components are incredibly  
2 large, incredibly heavy, under incredible tension. And having  
3 someone climb the tower and give them a tug or a pull does not  
4 go anywhere towards simulating the types of conditions that  
5 they would face in a failure event.

6           So --

7           **THE COURT:** Wait, wait, wait. Wait. I didn't say you  
8 had to climb and de-energize every line. I never suggested  
9 that. It is a -- you, yourself, told me that you de-energized  
10 that line in Butte County. That it was completely dead. You  
11 de-energized that in order to -- in part, I guess, to do  
12 inspections.

13           Now, I know you can de-energize a line if you feel it's  
14 necessary. But what I don't want you doing is coming back and  
15 saying later: Oh, Judge, look at the inspection reports;  
16 everything, everything was fine.

17           So, how -- tell me, counsel, assume for the sake of  
18 argument that I'm correct -- and I'm -- I believe to a moral  
19 certainty that I am correct -- that your jumper cable on the  
20 Kincade tower is what caused that fire, and it broke loose in  
21 the windstorm.

22           Explain to me how you would fix the inspection system so  
23 that that would not happen again. And if you can't explain  
24 that, how do we know it's not going happen on other jumper  
25 cables on PG&E lines?

1 Please, how would you fix the -- how is PG&E going to fix,  
2 fix it so that that inspection system catches it the next time?

3 **MR. ORSINI:** Your Honor, unfortunately I can't answer  
4 that question, because we don't yet know precisely what the  
5 failure mechanism was of that jumper. So without having a full  
6 reconstruction as to why it failed, we're not able to actually  
7 determine whether or not there's a specific issue that we could  
8 be looking for.

9 The --

10 **THE COURT:** Wait, wait. Think about how ridiculous  
11 that is.

12 Here it is, almost a year after that failure, a year after  
13 -- and it's your equipment, it's PG&E's equipment. And you,  
14 working with the regulators that you say have it all under  
15 control, you don't even know what went wrong.

16 **MR. ORSINI:** Your Honor --

17 **THE COURT:** That is an insult to the people of the  
18 state of California who rely on PG&E to be safe -- and that's  
19 what you keep telling us -- but in fact, you can't even tell us  
20 what went wrong on your own line that caused the fire.

21 **MR. ORSINI:** And Your Honor, if I could continue,  
22 part of the reason why we don't know precisely what happened is  
23 because there is an ongoing investigation with respect to that  
24 incident. And as is completely typical in any type of  
25 investigation of this nature, that evidence is preserved by the

1 State. It's not a criticism of them. Not in the least. But  
2 it's just a fact. That's point number one.

3 Point number two, what I can tell you is that PG&E,  
4 without having full knowledge right now of what may have caused  
5 that separation, does have additional inspection tools that it  
6 is using in order to try to identify hidden defects, such as  
7 they are.

8 And one of those is infrared imaging, which, based upon  
9 certain load factors, can help identify whether or not there  
10 may be a hidden defect. That is being deployed, and it's being  
11 deployed broadly.

12 We are also looking for circumstances that may involve  
13 jumpers, to have them more closely examined to see if there's  
14 anything else we can identify that could cause a separation, in  
15 the event of a high-wind occurrence.

16 So, so Your Honor, I understand the frustration with  
17 respect to not knowing precisely what happened. We are -- we  
18 are moving forward with inspection programs that were enhanced,  
19 to try to identify as many of these types of issues as we  
20 possibly can.

21 **THE COURT:** All right. I interrupted you. You were  
22 -- you are still on transmission. The point-by-point critique  
23 of the things that I had suggested that you put into your  
24 revised inspection program, all subject to a -- I was all  
25 willing to listen to a flexible revision of that, after you



1 consulted with the CPUC. But this is fine; I want to continue  
2 to hear your objections.

3 Go ahead.

4 **MR. ORSINI:** Yes, thank you, Your Honor.

5 So with respect to the asset age condition, again, the  
6 record overwhelmingly demonstrates that it's neither useful nor  
7 feasible. Asset age is not the primary motivator or even one  
8 of the key motivators of the maintenance of these systems.

9 This is a condition-based inspection program. It's  
10 looking at the specific condition that exists. That is the  
11 industry standard. It's exactly what's done by all other  
12 utilities in the state of California.

13 And as we've submitted, there is no record of any utility  
14 in the United States that would capture this level of granular  
15 information, because at the end of the day, it is only loosely  
16 correlated to the asset-management decisions.

17 Age can be a very poor indicator of condition. It could  
18 lead to decisions that are made that are not the most efficient  
19 and risk-adjusted decisions, in terms of what to inspect and  
20 what to replace.

21 You know, PG&E does track age at the line level, as a  
22 general matter, and that does provide some information for  
23 asset-management purposes. And also would permit, for example,  
24 an assessment of, you know, this line is X years old, but it's  
25 in a very dry inland area, and therefore, unlikely subject to

1 corrosion versus Y line which traverses the Bay area, and  
2 therefore is younger, but far more subject to corrosion. So at  
3 the very macro level of line vintage, that type of information  
4 is generally known and is tracked.

5 But to get into the specific age of the hundreds of  
6 thousands and millions of components across the entire  
7 transmission system would not meaningfully impact any  
8 asset-management decisions. And, candidly, would not even be  
9 feasible.

10 **THE COURT:** Let's stop you for a second.

11 **MR. ORSINI:** Sure.

12 **THE COURT:** On that line up there that wound up  
13 burning down half of Butte County, you've seen the photographs  
14 of the hanger plate and you've seen the photographs of the  
15 C-hook that was more than halfway worn through from swaying in  
16 the wind, and you're telling me that it would have done zero  
17 good to know the age of those components.

18 **MR. ORSINI:** Well, I'm telling you, first of all, that  
19 we don't know the age of those components. I know that for a  
20 fact.

21 Second of all, it would not have, in the context of a  
22 well-designed condition-based inspection program. Right? And  
23 that's what we have today.

24 I'm not defending, Your Honor, the program that was in  
25 place that failed to catch those conditions in Butte. I can't,

1 and I won't. What I can say is with the program we have now,  
2 just stepping back, it was based upon, in particular, what's  
3 called an FMEA, a failure mode effect analysis.

4 So what PG&E did with various outside experts is there are  
5 obviously a lot of different configurations, there are a lot of  
6 different assets and components to these lines. And not all  
7 are equal in terms of both their wildfire risk and their  
8 likelihood of wear or corrosion. And so an analysis was done  
9 of those components that are most likely to exhibit significant  
10 deterioration over time. And that is what's targeted as part  
11 of the inspections. That was updated for the year 2020.

12 And the way it was updated was by looking at those 60,000  
13 conditions that came down in 2019, and analyzing, based upon  
14 that data: Okay, what are we seeing in trends? What does it  
15 look like is occurring on the system, now that we have really  
16 enhanced these inspections?

17 And that is further refining the focus of the inspectors  
18 on the condition. And so ultimately, Your Honor, it comes down  
19 the condition; it comes down to that inspection. And knowing  
20 the precise age of every single assembly on the transmission  
21 system will not meaningfully change the assessment on a  
22 condition-by-condition basis.

23 And as I said, it's just simply not possible. The records  
24 going back that far do not exist. No utility tracks records  
25 like that. And the amount of effort and energy and distraction

1 that would be spent trying to come up with approximations of  
2 that data which does not exist would not, at the end of the  
3 day, yield reliable enough information to inform  
4 asset-management decisions, even if that level of granularity  
5 did. As I said, there are higher-level pieces of asset age  
6 that are part of the overall analysis, as related to the  
7 line-level age. And those are taken into account.

8 But we do not believe that there's any records to support  
9 the idea that getting into that level, given the infeasibility  
10 for each of the components, would do anything to enhance the  
11 safety of the system.

12 And then the final point, Your Honor, I'll make with  
13 respect to the transmission line conditions is the insurance  
14 condition. My remarks here are short because it's simply  
15 impossible. The insurance market does not exist that would  
16 provide that level of wildfire coverage.

17 That is a big part of the reason that the State of  
18 California created the wildfire fund. To make sure that there  
19 is a backstop in the event of another catastrophic wildfire  
20 that exceeds not only the insurance available to a utility and  
21 its contractors, but also that utility's ability to pay.  
22 Stated differently, to avoid another bankruptcy like we're  
23 currently in.

24 So the insurance condition, if it were possible, that  
25 would be ideal. But it's simply not possible.

1           **THE COURT:** Well, I think you're overstating what the  
2 insureds' condition was. Do the -- do these contractors carry  
3 insurance now? And if so, what is the typical amount that they  
4 carry for -- if they were to do their job poorly?

5           **MR. ORSINI:** The contractors do carry insurance,  
6 Your Honor. It varies by contractor. My understanding is some  
7 of them may have an ability to obtain no more than a few tens  
8 of millions of dollars worth of insurance. Other of the  
9 larger, more national contractors may often have insurance  
10 towers that exceed 100-, \$200 million. But those would be  
11 towers that I anecdotally understand would cover all of the  
12 lines of work that they're in.

13           The problem is the insurance market for wildfire liability  
14 coverage in the state of California just doesn't really exist  
15 anymore. That's a little bit of an overstatement. It is  
16 incredibly tight.

17           We set forth in the declarations the difficulty PG&E has  
18 had in getting insurance, itself. I know firsthand from  
19 working to resolve the wildfire claims in the bankruptcy and in  
20 the state-court proceedings before that, that when you look  
21 back at -- when you look back at what the company had in terms  
22 of a wildfire liability tower prior to the North Bay fires, it  
23 was close to a billion dollars. It was still a little over  
24 \$1 billion when the Camp Fire occurred for that policy year.  
25 Now we're down in the 4- to \$5 million range.

1           And to get that level of insurance, even for PG&E, is  
2 premiums that get close to 60 to 80 percent at times of the  
3 actual insurance coverage, even if the insurers will write it.

4           And what we've heard from the contractors, as reflected in  
5 the materials we filed, is the general description of the  
6 levels of coverage that I gave a few moments ago were for prior  
7 years, and it's not even clear whether or not they'll be able  
8 to obtain that type of insurance going forward.

9           **THE COURT:** Let me ask you a history question here.

10          **MR. ORSINI:** Yes, Your Honor.

11          **THE COURT:** Have any of the contractors through their  
12 insurance, or with or without insurance, paid into compensate  
13 victims of the various fires?

14          **MR. ORSINI:** So with respect to the Butte Fire -- not  
15 the Camp Fire, Your Honor, but the Butte County Fire of 2015,  
16 PG&E did pursue claims against a couple of its  
17 vegetation-management contractors, and there were amounts paid  
18 by those contractors into the recoveries that went to the  
19 wildfire victims.

20          For the more recent fires, part of the settlement that we  
21 reached with the tort claimants committee and the victims that  
22 they voted in favor of and is subject to confirmation right  
23 now, and it's actually a big part of the negotiation from the  
24 perspective of the TCC, was assigning to those -- to the trust  
25 that's being created for the benefit of the wildfire victims,

1 the claims that PG&E would otherwise have to seek such  
2 recoveries against any of PG&E's contractors that may bear some  
3 responsibility for the '17 and '18 fires.

4 So I have every expectation, given how hard the TCC has  
5 fought for those claims, that they will be pursued. They're  
6 already seeking discovery in furtherance of those claims in the  
7 bankruptcy. And that's where that stands, Your Honor.

8 **THE COURT:** All right. So you've now gotten through  
9 all of your points on the transmission lines. I think you  
10 wanted to also now turn to the distribution lines and the  
11 vegetation problem.

12 **MR. ORSINI:** Yes, Your Honor, thank you.

13 And, and here, again, I think there is common ground  
14 between PG&E and the Court. We have acknowledged repeatedly  
15 that vegetation contact on distribution lines is one of the  
16 biggest wildfire risks in the PG&E service territory.

17 (Music played over audio system)

18 **THE COURT:** Somebody, someone -- Theresa, are we still  
19 connected?

20 **MR. ORSINI:** I can hear you, Your Honor.

21 **THE CLERK:** Yes, we are, Judge.

22 **THE COURT:** What was that music?

23 **THE CLERK:** I'm not quite sure where that was coming  
24 from.

25 **MR. STERN:** Your Honor, this is Noah Stern from the

1 government. I've had that happen before on a call. I think  
2 somebody put us on hold. And sometimes the hold -- there's  
3 hold music that gets played.

4 So, if you could instruct everybody not to put us on hold.

5 **THE COURT:** Yes. I so instruct everyone. Try to keep  
6 the noise down, so we can hear everyone.

7 Okay. We're going to turn now to the vegetation. Please  
8 go ahead.

9 **MR. ORSINI:** Yes, thank you, Your Honor.

10 The point I was making when we had a soundtrack was that  
11 the company obviously agrees that vegetation strike on  
12 distribution lines is one of the biggest areas of risk. And  
13 that's why the company has done a lot, which we've talked to  
14 you about, in terms of expanding the work it does on that  
15 front.

16 And, and in particular, in these high-fire threat  
17 districts, each mile of distribution lines gets at least two  
18 different work flows, and in some instances three, that can  
19 result up to 12 different vegetation management work cycles in  
20 a given calendar year. And that's a combination of the routine  
21 work, the FEMA work, and the enhanced vegetation management.

22 You know, again, I'm focused on what we're doing today,  
23 not what happened before the 2017 fires. But what happened --  
24 what's happening today, and as confirmed by the testimony we  
25 submitted of Mr. Goodfellow, a vegetation management expert



1 with more than 40 years of experience, PG&E's process is at the  
2 forefront of the industry. Which is where it need to be.  
3 Right? Industry standard is one thing. California industry  
4 standard is another. And PG&E continues to push forward as  
5 much as it can. And, and there's no question that the  
6 vegetation management efforts are improving significantly.

7 As the Court noted, there were no vegetation-caused fires  
8 that destroyed a single home in PG&E's territory in 2019.

9 **THE COURT:** Well, wait, wait, wait, wait. That is  
10 true. But tell everyone why that is true.

11 **MR. ORSINI:** Well, Your Honor, part of that is true  
12 because of the enhanced vegetation management work we are  
13 doing. Another part of that, which I was going to get to, is  
14 the PSPS. The de-energization. Which, again, we have very  
15 common ground on that one, Your Honor. We believe  
16 de-energization is a critical part of what PG&E has to do to  
17 avoid wildfire risk.

18 Where we depart on that issue, Your Honor, is --

19 **THE COURT:** Wait, wait. One second. I'm sorry,  
20 counsel. Someone is talking on the line and it's -- they're  
21 not muting, and we're hearing your conversation, and it's  
22 interrupting us. So please mute your line if you are not  
23 speaking to the Court.

24 Well, while I have the floor, I'll just say this. I think  
25 the number was in -- was about 300. I've forgotten the exact

1 number now. During the PSPSs, I asked you to go back and to  
2 determine how many trees and limbs fell on the line, the  
3 distribution lines, and that were de-energized.

4 And of course, you know that, because the whole point of  
5 de-energizing is to be able to check the lines before you  
6 reenergize them to see if they're safe to -- and it turned out  
7 there were a fantastic number of trees and limbs had fallen  
8 that would have resulted in wildfires, had you not done the  
9 PSPS.

10 So on the one hand, I salute you, I give you credit for  
11 the PSPS. That is a step forward, despite the fact that it is  
12 a huge inconvenience, that nevertheless is better -- a lesser  
13 evil than -- lesser evil.

14 However, please don't leave the impression, as I think you  
15 were about to, that the vegetation program is under control.  
16 It is not. That is why you -- you are so far behind on it. So  
17 far behind, many, many years behind on it, that you have to  
18 resort to the PSPS to avoid those trees from starting  
19 wildfires.

20 So I think, I think your spin on this is not quite  
21 correct. I think your spin on this is that everything is fine.  
22 It's not everything is fine. There are a lot of trees and  
23 limbs out there that present real and present and clear dangers  
24 to the safety of the people of California.

25 Okay. I'm sorry for the interruption, but I had to say

1 that. Go ahead.

2 **MR. ORSINI:** And I'll address that directly,  
3 Your Honor. First of all, I do not assert that everything is  
4 perfect. You know, far from it.

5 But I don't, respectfully, agree with the Court's  
6 statement that the incidence of trees striking lines during  
7 PSPS is somehow indicative of a fundamental flaw in the  
8 company's system, or that we are so many years behind where we  
9 need to be. We are not. The record does not support the  
10 conclusion that PG&E is years away from compliance.

11 PG&E --

12 **THE COURT:** Wait, wait, wait. Wait, wait. I know you  
13 have terminated Bill Johnson. But about nine months ago, he  
14 was on television when he was still the CEO, and he said it  
15 would be a decade -- a decade -- before the company would be  
16 caught up on its vegetation management. And, and looking at  
17 the numbers that you have supplied to me, I believe that's  
18 pretty close to accurate, as to how far behind you are on your  
19 backlog.

20 Now, God bless you, I would be thrilled if you could come  
21 into compliance in one or two years. But I don't -- I believe  
22 it's more likely to be eight or ten years than it is to be one  
23 or two.

24 Do you disagree with that?

25 **MR. ORSINI:** I do, Your Honor. I do disagree with

1 that. Because what Mr. Johnson was saying -- and we've  
2 addressed this previously -- is that it would be ten years  
3 before we might be able to stop PSPS. But that's not because  
4 of a backlog in vegetation management. That's because of other  
5 things that we need to do to bring the system up to the place  
6 where we can target de-energization, where we can harden the  
7 system, where we can do enhanced vegetation management that  
8 goes far beyond any regulatory clearance requirements. The  
9 enhanced vegetation management work that's clearing ground to  
10 sky, that's clearing a much wider corridor than the regulations  
11 actually require, Your Honor.

12 I do fundamentally disagree with the idea that the record  
13 supports that PSPS is the result of some multi-year backlog  
14 that's in place at PG&E. That's just simply not true,  
15 Your Honor.

16 PSPS, on top of that -- and the point I was going to make  
17 next is healthy green trees fail. Trees that no vegetation  
18 management program in the world would take down fail. And, and  
19 that's what our experts have explained. And that was a big  
20 part of the reason identified by the CPUC as to why PG&E and  
21 the other utilities need de-energization programs. Because  
22 even the best utility vegetation management program in the  
23 world -- and I'm not suggesting that's PG&E's, but even the  
24 best in the world, whoever it is, will not be able to stop all  
25 tree strikes. It's fundamentally and physically impossible.

1 PG&E worked last year over 1.3 million trees. For an  
2 expanded vegetation management, which will take eight to ten  
3 years to get done, they exceeded -- by just a tiny bit, but  
4 they met and exceeded the line mile target they had set in the  
5 2019 wildfire plan.

6 So yes, it will take years to do all of that enhanced  
7 vegetation management. But that's not years to clear a  
8 backlog. That's years to do enhanced work that's being  
9 designed to address the increased challenge of wildfires and  
10 the increased risk because of the confluence of the dry seasons  
11 and the high winds.

12 And Your Honor, on that point as well, there were -- what  
13 the record does support in terms of missed trees, there were a  
14 number that the monitor reported which we welcome and  
15 appreciated. Overwhelmingly, those were trees that were part  
16 of the enhanced vegetation management program. With a few  
17 exceptions, they were not compliance issues. Right? So that  
18 doesn't support the idea that we are fundamentally out of  
19 compliance with the state regulations.

20 There were hiccups with the EVM program because no one had  
21 ever done it before. And there were needs to go back and  
22 retrain a lot of the workers because they had to think about  
23 the approach very differently than you typically would from a  
24 compliance perspective, and that was part of the process. We  
25 didn't pilot it, we just did it. Because we needed to get

1 started right away. But, again, that's not a compliance issue.

2 So I understand the Court's perspective, and I've heard  
3 the Court's perspective. But respectfully, we fundamentally  
4 disagree on the idea that there -- that what we are seeing with  
5 PSPS or otherwise is in any way related to some backlog of  
6 years and years worth of work that will take a decade to  
7 complete. Because respectfully, Your Honor, it's just not  
8 true.

9 Now, turning directly to the specific condition -- and --  
10 and I heard Your Honor's description at the outset that we've  
11 sort of flimflammed you here. And that was certainly not our  
12 intention, and I don't believe we have done so.

13 What we explained in our prior filings was that we were  
14 running a pilot program to potentially bring a small number of  
15 pre-inspectors in house. That pilot program is still ongoing.  
16 We also are running a number of programs to bring some work  
17 verification, which is another way of saying post-inspection,  
18 in-house.

19 **UNIDENTIFIED MAN:** What? What's that?

20 **MR. ORSINI:** Sorry. Was that the Court? Or was that  
21 someone else?

22 **THE COURT:** It must be someone else. I can hear you.

23 **MR. ORSINI:** Okay. Thank you, Your Honor. I just  
24 wanted to make sure I wasn't talking over you.

25 That work is ongoing; those pilot programs are ongoing.

1 But, but we have not and never have intended to bring the  
2 entire pre-inspector work force internal to PG&E. And for all  
3 of the reasons we've set forth in the papers, all of the  
4 reasons that we've set forth in the declarations, we do not  
5 believe that that is advisable.

6 You know, I understand from our various interactions over  
7 the past year or so, Your Honor, that the Court has concerns  
8 about the use of outsourced contractors. The fact is that is  
9 what is done by every utility in this state, and that is  
10 industry standard throughout the country. There are good  
11 reasons for that. They are the experts on doing this work. We  
12 are not. They have the manpower to spin up and spin down and  
13 have flexibility to deploy resources that we don't.

14 And bringing 600 to 1,000 pre-inspectors in house to PG&E,  
15 I don't believe, Your Honor, there's any evidence that would  
16 actually improve safety or compliance. Right, in part, because  
17 it would just be the same people. There's a limited work force  
18 of trained inspectors. And so if we had to hire them to wear  
19 PG&E uniforms, we would just be taking the same people who  
20 currently exist, and moving them into PG&E, but now we would  
21 have to build on top of that an entire infrastructure to manage  
22 a new 1,000-person work force. And that would -- it would cost  
23 a lot of money. But far more important than the money, it  
24 would be a distraction for the vegetation management leaders  
25 from what they need to be focused on, which is their expertise

1 in trying to improve the accountability of the contractors that  
2 are doing the work. And that, I think, is one of the most  
3 important points here on this condition, Your Honor.

4 Again, a common ground here is we believe one of the most  
5 important things PG&E has to do is improve the accountability  
6 of the contractors who are doing the vegetation management  
7 work. And that is a big motivation behind the new defined  
8 scope program that PG&E has developed over the last few months,  
9 and is in the process of rolling out.

10 And just to give a little bit more detail on that,  
11 historically, for PG&E's basic regulatory-compliance tree work,  
12 there would be one contract company that would do the  
13 inspection, and a separate contract company that actually went  
14 in and did the tree cutting. And we've seen instances where a  
15 post-inspection will find something that was missed, as part of  
16 the quality control and quality assessment work that PG&E has  
17 done.

18 And there were at least some instances in which you would  
19 see some finger pointing. The pre-inspector saying: Oh, we  
20 marked it but they didn't work it. The tree contractor saying:  
21 Oh, we didn't see a marking there so they missed it, and we do  
22 what we are told to do.

23 A big part of defined scope is solving that problem. And  
24 the way it does that is by placing in the hands of a single  
25 contractor the work flow for a defined set of circuit miles.



1 That way, there is no ambiguity whatsoever with respect to who  
2 is responsible, in the event that some tree is missed.

3 And PG&E, as they roll this out, is adding another level  
4 of quality control because what they're going to do is they're  
5 going to add on top of their existing quality control and  
6 quality assessment audits, another level of work verification  
7 where they will go through with a mix of in-house and contract  
8 personnel -- obviously not contractors from the contractor who  
9 works that segment -- and do some post-work verification, and  
10 see how good a job that contractor did on the line miles that  
11 they are responsible for.

12 And that will allow for immediate accountability; it will  
13 allow for retraining. It will allow for, in the worst-case  
14 scenario, you know, a very clear record that this contractor's  
15 just not up to snuff, and they have to go.

16 And so that's a process that is under way that as  
17 Mr. DeCampi, an individual with decades of experience in this  
18 industry know, has been used to great effect elsewhere. And  
19 it's something that we're designing specifically to get to, I  
20 think, some of the very same concerns the Court has articulated  
21 about accountability and effectiveness of the work that's being  
22 done. And it's something that we can't do and also comply with  
23 the Court's condition.

24 And so respectfully, Your Honor, I think the evidence  
25 establishes that there is really no support for the idea that

1 bringing the whole pre-inspector cadre into PG&E will have any  
2 material benefit to public safety or compliance. And, and the  
3 evidence establishes that that's not something that's remotely  
4 done within the industry. But more significantly, that we're  
5 working to address the same types of concerns through another  
6 program that's already under way, and that would be disrupted  
7 if we had to comply with the condition.

8 **THE COURT:** All right. I never said that you had to  
9 bring every single pre-inspector into -- I said you had to  
10 bring in a sufficient number to manage the problem.

11 And you already have your own pre-inspection program on  
12 your own payroll. And that could be expanded some so that you  
13 could do at least some of the work, and have a firsthand  
14 knowledge of what is going on out there in the field. Because  
15 apparently, from what you're saying, you have no one competent  
16 within the four corners of PG&E to go out in the field and to  
17 spot the trees that need to be cut. Yet, it's your  
18 responsibility under the state law to do that. And, and yet  
19 you have nobody on your payroll who is competent to do that.

20 In the old days, I know you did. Back in the nineties, I  
21 believe you had people on the payroll who did exactly that.  
22 But you decided to outsource. That's what you did, outsource.  
23 You outsourced it.

24 And to your point that there's -- that you would just be  
25 hiring the same people, well, in part, that may be true. But

1 on the other hand, you can train people. Do what the Army  
2 does. You train people to do the job, that don't have any  
3 prior experience, yet they're trainable, and so you can train  
4 your own work force.

5 So, I don't know; you're not convincing me. You,  
6 yourself, told me this at the hearing in February that you --  
7 or whenever we were considering another different idea: Oh,  
8 Judge, look, we're bringing the pre-inspectors into PG&E. We  
9 have our own program. We're going to be trying this out.

10 Well, I thought: Okay, that's a pretty good idea. Let's  
11 go with that, instead.

12 Well, now you're backing off of that and saying it's a  
13 disaster. I was flimflammed by you, counsel. So, you -- you  
14 did it. You did it. You weren't -- you're trying to wiggle  
15 off your own statements to me now.

16 **MR. ORSINI:** Your Honor, if I may --

17 **THE COURT:** And I never said bring in 1,000 people.  
18 That's ridiculous. Where in the order does it say: Bring in a  
19 thousand people? It didn't say that.

20 **MR. ORSINI:** Well, Your Honor, a couple things, if I  
21 may respond to that.

22 So we interpreted your order as requiring us to in-house  
23 the pre-inspectors. When it says we shall employ our own cadre  
24 of pre-inspectors that will be a sufficient number to support  
25 the work being done by the tree trimmers, that is how we

1 interpreted the language. If that's not how the Court intended  
2 the language, I appreciate that clarification.

3 **THE COURT:** Well, didn't I also say that you can come  
4 -- I said specifically: Please get together with your experts,  
5 please get together with the monitor and with the CPUC, and you  
6 come back with a counter-proposal that -- and I used the word  
7 "flexible." But, something that will address this problem that  
8 I'm trying to get at.

9 And listen. You're not fooling me. Those pictures that  
10 PG&E sent to me by court order after each PSPS, they were in  
11 the hundreds. Hundreds of trees that fell on the distribution  
12 lines in those windstorms. And, and, those trees should have  
13 been cut. Those trees should have been cut or trimmed. And  
14 yes, some of them maybe you couldn't have told that they were a  
15 danger, but others you definitely could have. And you didn't  
16 do that.

17 So the problem is still very real. The problem of trying  
18 to find those trees and -- is a very real problem. And you are  
19 falling behind on that. You're not -- so there is a backlog.

20 Please don't tell me there is no backlog. There is a  
21 backlog. And it's going to take eight to ten years for you to  
22 dig your way out from under the backlog that PG&E created by  
23 paying dividends and executive bonuses instead of cutting the  
24 trees when they -- that's what happened here.

25 All right. But I -- all right. I'll let you say --

1 because I made a little speech there, I'll let you go ahead and  
2 respond.

3 **MR. ORSINI:** Thank you, Your Honor.

4 So, so again, what we said back in February was we were  
5 running a pilot program. We didn't say we were bringing  
6 everybody in-house. I have not stated, Your Honor, that  
7 there's no one within PG&E that has this ability. There are.

8 As I just said a few moments ago, we are doing some of the  
9 work verification and some of the quality assurance work  
10 internal to PG&E with PG&E personnel. We interpreted the  
11 Court's condition to suggest that we had to bring all the  
12 inspectors in-house. If that's not what the Court meant and  
13 the Court has now clarified that, we appreciate that.

14 I still do not believe the condition is appropriate. We  
15 are working with the regulators to continually develop the  
16 program and I think a statement that we have to employ a  
17 sufficient number is vague, and will not permit us to continue  
18 to develop the program, and be flexible in the way that we need  
19 to be.

20 **THE COURT:** Tell me, how many people do you have in  
21 the program now, and what do they actually do?

22 **MR. ORSINI:** I do not have those numbers available to  
23 me as I stand here right now, Your Honor.

24 **THE COURT:** Do you have even a rough idea?

25 **MR. ORSINI:** I understand that there are -- well, I

1 don't, Your Honor. I don't want to give a number that is  
2 inaccurate.

3 **THE COURT:** All right.

4 **MR. ORSINI:** As I said, the pilot program is under  
5 way. But Your Honor, I have to -- and maybe we'll just have to  
6 disagree on this, but I have to again strenuously object to the  
7 characterization that any of this is the result of an eight- to  
8 ten-year backlog. The record just does not support that,  
9 Your Honor. There is no evidence that there is an eight to  
10 ten-year backlog that we are still working through.

11 What we identified in terms of compliance issues that were  
12 a carryover from last year were 22,000 trees, out of  
13 1.3 million that had been worked. Of those 22,000 trees, there  
14 are only 3,000 left. The overwhelming majority of which are  
15 neither imminent hazards, nor trees that we can just go out and  
16 just cut down, because there are permitting and third-party  
17 issues associated with them that we are working through.

18 So the backlog from last year in terms of trees that are  
19 even arguably out of compliance is 22,000. And those are being  
20 addressed and worked down. There's not an eight to ten-year  
21 problem here.

22 **THE COURT:** All right. Even if it's one year, that's  
23 too much.

24 **MR. ORSINI:** Your Honor, respectfully --

25 **THE COURT:** No, wait a minute. Whenever PG&E burns

1 down another town, or burns down another neighborhood, people  
2 ought to drag out your comments, and say: Oh, a one-year  
3 backlog is 22,000 trees. Oh, that's nothing, we are addressing  
4 them.

5 That's, that's the present participle tense, that's like  
6 saying "The check is in the mail." You shouldn't have even one  
7 tree in the backlog. How did you even get up to 22,000, to  
8 begin with? Well, it's because you weren't doing your job.  
9 You weren't doing your job. You weren't complying with state  
10 law. So you are very good at making excuses, but you are not  
11 good at complying with state law.

12 **MR. ORSINI:** And if I may, just in closing Your Honor,  
13 I understand the perspective. We are in substantial  
14 compliance, overwhelmingly.

15 The 22,000 trees -- you know, a calendar year is not  
16 really relevant to the biology of a tree or when it's going to  
17 present a safety risk. And as we explained, many of these  
18 trees were trees that were identified late in the year. And  
19 that are being worked in the ordinary course.

20 So, so, I understand the Court's perspective. I  
21 respectfully disagree with it.

22 But I just want to close by noting again, Your Honor, that  
23 we do agree fully with the general propositions articulated by  
24 the Court that we cannot rest on the current program, and PG&E  
25 is not resting on the current program. Our regulators are not

1 letting us rest on the current program. They have presented a  
2 host of conditions and criticisms of what we put forward. And  
3 we look forward to continuing to work with them to address  
4 those issues.

5 **THE COURT:** All right. I -- I would like to give the  
6 government an opportunity to speak, and then if time permits I  
7 will let the amici speak. And I definitely want to hear from  
8 the CPUC as well. So let's hear from the U.S. Attorney.

9 **MR. STERN:** Thank Your Honor. This is Noah Stern for  
10 the United States. Just a quick housekeeping matter before I  
11 start.

12 I don't believe Your Honor made findings about the  
13 appropriateness of a telephonic hearing and whether PG&E waived  
14 its right to an in-person hearing. I think that might be  
15 appropriate.

16 **THE COURT:** All right. Well, does PG&E waive your  
17 right to an in-person hearing?

18 **MR. ORSINI:** This is Kevin Orsini. We do, Your Honor.  
19 We are satisfied with this telephonic hearing, and appreciate  
20 the Court's indulgence.

21 **THE COURT:** Thank you for that.

22 And the finding is that because of the pandemic, COVID-19,  
23 we have to proceed by telephone because there's too many people  
24 interested in this and -- and the courtroom would be too full.  
25 I hope that within a few weeks we will be able to have some



1 proceedings on the criminal side, and in the court. But we are  
2 at a distinct handicap because of the COVID-19.

3 So thank you for that waiver. And I now make that  
4 finding.

5 Okay. Go ahead, Mr. Stern.

6 **MR. STERN:** Thank you, Your Honor.

7 So just to summarize the government's position here, we  
8 agree that you can impose enlarged conditions on PG&E.  
9 However, we do think that those conditions should take into  
10 consideration the state regulation. And we also think that  
11 those conditions should take into consideration the new  
12 inspection programs that PG&E asserts that it is running this  
13 year. And we think that it makes sense to supplement the  
14 record to further develop it with respect to those issues, and  
15 to support whatever specific conditions the Court ends up  
16 ordering.

17 I would also note that the government thinks that  
18 Your Honor's suggestion that PG&E could submit a plan that  
19 would accomplish, I guess, the essence of the new conditions  
20 seems to be a very reasonable suggestion. And listening to  
21 Mr. Orsini's discussion with the Court, the government thinks  
22 that it may be that if PG&E had submitted a plan or submitted  
23 what it had already been intending on doing, that it's possible  
24 that that may have satisfied many of the Court's concerns.

25 So, just, now I'll talk a little bit more about those

1 things. I want to be very clear that the government shares the  
2 Court's interest in imposing probation conditions on PG&E to  
3 protect the public. And the Court has very broad discretion in  
4 developing and imposing conditions of probation, and it can  
5 modify or enlarge those conditions without any change in  
6 circumstances.

7 Here, there's certainly been a change in circumstances,  
8 and the Court's order cites to numerous facts that support  
9 enlarged conditions with respect to PG&E's inspection programs.  
10 The Court pointed out in its order that with respect to  
11 distribution lines, the federal monitor identified numerous  
12 dangerous conditions that were missed by PG&E's contractors.

13 And with respect to transmission lines, the Court cited to  
14 substantial evidence that inspections missed dangerous  
15 conditions. That includes inspections on the transmission  
16 tower that was one of the causes of the Camp Fire which led to  
17 PG&E recently pleading guilty to 84 counts of manslaughter.

18 The government disagrees with PG&E's federalism arguments.  
19 PG&E appears to be arguing that the conditions are unlawful  
20 because they inherently interfere with the state regulatory  
21 scheme. That argument, taken to its logical conclusion, I  
22 think would bar a court from ever imposing a substantive  
23 probation condition on a regulated company.

24 And it's not clear why PG&E's arguments wouldn't apply  
25 equally to probation conditions that are already in place, from

1 the imposition of the federal monitor itself, to the condition  
2 the Court ordered this last fall that required PG&E to provide  
3 a \$3 million fund for San Bruno to use for wildfire -- a  
4 wildfire mitigation project. Each of those conditions relate  
5 to PG&E's use of finite resources. But PG&E did not argue that  
6 they were clearly unlawful because they infringed on the CPUC's  
7 prioritization of those resources.

8 The cases that PG&E cites also do not support its broad  
9 arguments. Rather, they just support the proposition that  
10 conditions that implicate federalism concerns are more closely  
11 scrutinized by appellate courts.

12 For that reason, and because PG&E has argued here that the  
13 conditions would essentially -- I think Mr. Orsini said would  
14 displace the CPUC's regulations, the government believes that  
15 it's appropriate for the Court to solicit the input of the  
16 CPUC. This would be consistent with the recommendation in the  
17 sentencing guidelines that the Court do that. And it may also  
18 inform whether the conditions interfere with or undermine the  
19 regulatory scheme, and if so, to what degree. This input would  
20 also be relevant to the next issue, which is whether the  
21 conditions are reasonably necessary to protect the public.

22 And on this issue, the government's view is that the Court  
23 should supplement the record about the feasibility and the  
24 likely effectiveness of the specific conditions ordered.

25 There's a lot in the record supporting the imposition of

1 new conditions, generally. But a lot of this also may not  
2 account for the new programs that PG&E is implementing. And  
3 the vast majority of the record relating to how the specific  
4 conditions would work was submitted by PG&E in opposition to  
5 those conditions. I think PG&E submitted around eleven  
6 declarations from its employees and experts with its motion,  
7 who state, as Mr. Orsini has detailed in the hearing today,  
8 that some of the conditions might not be feasible or may confer  
9 no safety benefits.

10 And then, they also highlight the changes that PG&E's  
11 already making. These are very complex issues. And the United  
12 States isn't in a position to dispute the expert evidence that  
13 PG&E has offered with respect to the specific conditions. And  
14 so for those reasons, the government is suggesting that the  
15 Court supplement the record with additional evidence.

16 One of the ways the Court could do that is it could ask  
17 the federal monitor to obtain opinions from its experts about  
18 the feasibility and effectiveness of the conditions. I think,  
19 as everyone's aware, the monitor has been working closely with  
20 PG&E on its inspection processes. These experts may be  
21 well-positioned to opine on whether the new conditions are  
22 reasonably necessary, in light of the changes that PG&E is  
23 already making. The Court could also invite other PG&E  
24 stakeholders to submit their views.

25 This additional information might support the specific

1 conditions that the Court has already ordered. It could  
2 support different conditions, or none at all. But I think the  
3 Court will be in a better position to support its ruling on a  
4 more full record.

5 So for all of those reasons, the government's position is  
6 that the Court should for now, extend the stay of the  
7 conditions that it ordered, and seek to supplement the record.

8 **THE COURT:** Okay. Thank you, Mr. Stern.

9 Let me hear from Ms. Hammond for a moment.

10 Ms. Hammond, how up to speed are you on the proceedings  
11 that have gone on in our court over here? I know you are  
12 attending as a courtesy to the Court, so I don't want to  
13 presume that you are up to speed on everything, but maybe you  
14 are. So I would like to give you a chance to say your piece.

15 Go ahead.

16 **MS. HAMMOND:** Sure. Thank you, Your Honor.

17 The CPUC is not a party to this proceeding. We don't  
18 receive courtesy copies of any filings. It's up to us to try  
19 to keep up and monitor whatever is docketed. So we are trying  
20 to keep up with what's being filed.

21 There has been a flurry of activity in California at the  
22 state level and the legislature, here at the CPUC, and I would  
23 like to update the Court on some of the recent activities and  
24 actions and orders, since the CPUC last spoke to the Court.

25 But I do want to start off with saying that we do find

1 ourselves in this unusual position of weighing in on a criminal  
2 probation overseen by this United States District Court. It is  
3 very important to the CPUC that the Court and the Commission  
4 don't find themselves in a jurisdictional dispute as a result  
5 of PG&E's filings.

6 We are primarily concerned with the revised conditions of  
7 probation, if any, that could be at odds with the utility  
8 regulators' comprehensive jurisdiction over PG&E. And with any  
9 revised conditions of probation that could have unintended  
10 consequences that we may not even be aware of or can  
11 anticipate, that would be detrimental to the public health and  
12 safety. But the CPUC is willing to help supplement its 2019  
13 filings, and give you this update on what the State has been  
14 doing for the Court's record.

15 There's about seven or eight items. I will quickly go  
16 through that list. Your Honor may be aware of many of the  
17 things that have happened. Of course, last year's passage of  
18 AB1054, and the creation of the Wildfire Safety Division, about  
19 which Your Honor has already asked.

20 There are now 2020 wildfire mitigation plans that are teed  
21 up for approval with conditions. And those conditions are  
22 recommended by the Wildfire Safety Division, because that  
23 division identified tremendous deficiencies in PG&E's filings.

24 The Wildfire Safety Division is like a division, a  
25 looking-over-the-shoulder set of eyes and regulator like we've

1 never had before. What has proven to be effective 20 years ago  
2 that showed weaknesses and then showed failures more recently  
3 is now being addressed through AB1054, and increased  
4 regulation. And that is driven primarily through the Wildfire  
5 Safety Division.

6 They're pretty much just getting up and running. They  
7 started inspections two and a half weeks ago. In two and a  
8 half weeks, they have conducted, I think, something like 50  
9 inspections already. Looking over the shoulder of PG&E's work.

10 Their focus is on system hardening, it's what we refer to  
11 as improving the assets; the PSPS events; and enhanced  
12 vegetation management. And this is going to be a tremendous  
13 and robust organization.

14 The third thing that I wanted to update you on are just  
15 ongoing audits, citations and investigations. Those are tools  
16 that have long been at the CPUC's disposal, and we have been  
17 using them. Most recently last month, in the issuing of a  
18 final order in the investigation into the 2017 and 2018  
19 wildfires that PG&E was responsible for. Although PG&E did not  
20 admit fault or violations in that proceeding, it was a  
21 settlement that was adopted, with modifications. And it  
22 resulted in a fine -- a penalty, total penalty of about -- over  
23 \$2.1 billion.

24 Now, there has been some discussion by amici about a fine  
25 being suspended. That does not diminish the fact that PG&E

1 will be paying for \$2.1 billion of penalties. And there is a  
2 larger reason behind the suspension of the fine. And that has  
3 to do with not drawing down funds for the victims compensation  
4 fund that is being addressed in Bankruptcy Court. So, I don't  
5 know if Your Honor was aware of that, but there is a final  
6 decision that was voted out last month.

7 Your Honor, this morning, the CPUC is holding a business  
8 meeting to consider a proposed decision approving -- a decision  
9 on resolving PG&E's bankruptcy plan that the CPUC has to  
10 approve. And it is imposing a number of conditions on PG&E to  
11 improve the safety performance. And there is a plan of  
12 enhanced enforcement. And it is a six-step process. It  
13 progressively demands greater performance and compliance by  
14 PG&E.

15 Ultimately, there is a path, if PG&E continues to fail on  
16 the safety front, for the CPUC to impose the ultimate option,  
17 as identified in the decision. And that is to revoke their  
18 license. But that's not one of the first things that the  
19 Commission would consider. It's very important from the  
20 Commission's perspective that power continues to be delivered.  
21 That is a core safety consideration. It has to be delivered  
22 safely. It has to be delivered affordably. But it has to be  
23 delivered. And not delivering power is not an option. And  
24 that's something that the CPUC did stress last year to the  
25 Court.



1           There is an additional proposed legislative action.  
2           There's a Senate Bill 350, that's proposed in the legislature.  
3           And that is supposed to dovetail with an option of the CPUC  
4           asking for a receiver to step in, should we ever reach that  
5           point. But the goal in the immediate future and in the near  
6           future is to do more, do it better, do it faster. And to  
7           continue to have power delivered safely.

8           **THE COURT:** Can I ask you a question on that?

9           Are you -- of course I think everyone would agree, we need  
10          to keep the power going. But are you saying that you're going  
11          to stop the PSPS process?

12          **MS. HAMMOND:** Not at all. Not at all. In fact,  
13          there's a decision that's also pending a vote today that is  
14          supposed to improve the PSPS process. There is also an  
15          investigation into how PG&E handled their PSPS events last  
16          year. And it's all designed to improve, to narrow, to broaden  
17          where necessary, um, just to continue to improve the PSPS. But  
18          in no way is PSPS off the table. In fact, it's only going to  
19          be improved. We hope.

20          **THE COURT:** Okay. Good. Please continue.

21          **MS. HAMMOND:** Sure.

22          I just want to talk a little bit about the discussion that  
23          amici raised about PG&E -- the emphasis on PG&E's financial  
24          stability. And none of the considerations that we talk  
25          about -- financial stability, safety, enhanced vegetation

1 management -- can be considered in isolation.

2 Financial stability is necessary to continue to have  
3 operating, (inaudible) expense, working capital. The system  
4 has to continue to keep operating.

5 Part of AB1054, part of the wildfire investigation  
6 settlement, part of the wildfire mitigation plans, part of the  
7 CPUC's ongoing regulation of PG&E, involves continued  
8 expenditures to harden the system, to make improvements. And  
9 that all requires money.

10 Now, Your Honor, we all know we're in this COVID-19  
11 pandemic. And many, many Californians are finding that they  
12 can't pay their bills, including the utility bills. And one of  
13 the (inaudible) the CPUC has done is instructed utilities not  
14 to disconnect customers because they can't pay as a result of  
15 the pandemic.

16 Now, that's cutting into the revenues of each of the  
17 utilities, and the ability to continue to make safety  
18 improvements and to comply with the wildfire mitigation plans.  
19 I say this only to emphasize that no one mitigation measure,  
20 conditions of probation, or any isolated CPUC action or order  
21 can be viewed in isolation.

22 If I may, Your Honor, I just wanted to say a couple more  
23 things. The wildfire mitigation plans that are teed up to be  
24 approved with conditions represent an attempt to improve the  
25 wildfire mitigation plans. We're learning, we're improving,

1 we're demanding better. And we -- we want to be better. And  
2 we -- we and the State expect us to be better.

3 But the conditions can't be immutable. We will continue  
4 to learn more information. We may identify new high-risk  
5 situations that we are not aware of now, and attention may need  
6 to shift in that direction, just as we're triaging.

7 And so the concern that the CPUC has is that the revised  
8 conditions of probation may hamper the ability to pivot as  
9 necessary. And then address any given issue in the appropriate  
10 order.

11 And I finally want to say that the CPUC has open  
12 proceedings, they're open to the public. There's noticing  
13 requirements. On PG&E's 2020 wildfire mitigation plan there  
14 were, I think, something like 13 formally submitted comments  
15 and wildfire mitigation plans, maybe mod- -- not modified, but  
16 conditioned in response to some of the comments.

17 It's not just any one party's particular interests that  
18 the CPUC would take into consideration. There is constantly a  
19 balancing of interests between differently situated customers,  
20 differently situated members of the public. And in all  
21 circumstances, safety is the priority.

22 But the nature of public utility regulation does demand  
23 hearing from the different voices at the table. And, and, and  
24 there is a particular emphasis on hearing from communities that  
25 usually don't have a voice. They don't have the financial

1 resources. Disadvantaged community (inaudible). And that's a  
2 part of the process that unfortunately is not near in this  
3 criminal probation. And it's not to be expected to. CPUC is  
4 the home for that public process. It's for public input.

5 I think I'll stop there. I'm happy to answer any more  
6 questions.

7 **THE COURT:** Thank you. I appreciate that. That was  
8 good information for the Court to learn.

9 Ms. Hammond, I'm going ask you a question whether or not  
10 you would be willing to submit a brief or statement to the  
11 Court.

12 Let me just tell you what -- somebody is making noise on  
13 the -- on the line. It sounds like ripping paper off or  
14 something.

15 Please, here is what these two new conditions are trying  
16 to get at. And what I'm going ultimately to ask you is: Okay,  
17 do you agree that these are problems? And even if they are  
18 problems, maybe you already have a solution to them that I  
19 don't know about yet, and that I should just defer to the CPUC.

20 So I -- that would be grand if you did, in fact, have a  
21 solution. But there are two sets of problems. One is --  
22 concerns the distribution lines. The other concerns the  
23 transmission lines.

24 On the distribution lines, which is the lower ones, of  
25 course, the ones where -- that are down -- where the trees can

1 fall on them, the problem is the trees do fall on them. And  
2 then they -- because they're uninsulated. And there's nothing  
3 wrong with being uninsulated, but when they fall on the lines  
4 they spark, they -- in the dry summers, the spark falls to the  
5 grass, catches the grass on fire, and immediately we have a  
6 grass fire. I don't have to explain that to you. I know you  
7 understand that. And the whole purpose of the public utilities  
8 code, the Public Resources Code, was to have enough clearance  
9 from the trees that that wouldn't happen.

10 Well, there's a backlog. We disagreed a moment ago about  
11 how big the backlog is and how many years it accumulated, but  
12 you can just look at the record. The 2017 fire was started by  
13 trees falling on the lines. The Butte County Fire, the  
14 Camp Fire, one of the (inaudible) causes were the same thing.  
15 The other one was a transmission line.

16 I, myself, drive around through the chaparral region of  
17 the state of California, and I can -- on any given day I could  
18 bring back a dozen photographs of the PG&E lines that are  
19 running through, right through trees. They're not -- they're  
20 not in compliance with the state law. Anyone could send you  
21 those.

22 Now, I want to say, I have seen many PG&E contractors out  
23 there cutting the limbs. And, good for them. Because PG&E has  
24 been trying to address the backlog. So, I am not saying  
25 they're not doing that. But, but, then we come to -- I sent

1 out the monitor to spot-check the work. And to use a simple  
2 phrase, the work that was being done was crappy. C-R-A-P-P-Y.  
3 The monitor found numerous examples where the work was not done  
4 properly. So we reported that to PG&E, and then PG&E goes back  
5 and tries to address that problem.

6 Well, the -- so the issue is potential miscommunications  
7 and misdirection because PG&E is outsourcing all of this work  
8 and does not have in-house any of the people who are doing the  
9 pre-inspections, nor, for that matter, the post-inspections, to  
10 designate what work needs to be done to be in compliance with  
11 state law, and for that matter, the wildfire mitigation plan.

12 And so then the contractors are supposed to do the work,  
13 and then somebody double-checks to make sure that that work was  
14 done. I am firmly of the -- I am firmly of the view that the  
15 quality of the work that is being done now, even though it is  
16 in -- it is vastly ramped up over what it was a year ago, the  
17 quality of the work is not good. And there are too many  
18 mistakes, and we need a way to check it in advance.

19 By that, I mean that someone skilled goes in there from  
20 PG&E and says "Cut this tree, cut that tree, trim that tree."  
21 And you have a consistent flagging system with color-coded  
22 flagging and a GPS system. But the system that PG&E has in  
23 place now are not working. And it's not just that there's an  
24 occasional error; there are a lot of errors. And the monitor  
25 found those errors. So that's one set of problems. One set of

1 problems concerns the quality of the vegetation management, and  
2 the tree-cutting and tree-trimming, that's what it comes down  
3 to. And I guess also the hardening, that's a separate problem.

4 Okay. So that's one set of problems related to distribution.

5 The second set of problems relates to transmission lines  
6 which are way above the treetops. There's no tree problem  
7 there. But there is a problem with the towers. And there seem  
8 to be at least two instances now, the Kincadee as well as the  
9 Butte County, where massive fires have started. And when you  
10 try to get -- go behind it, we have the same scenario. PG&E  
11 trots out the inspection reports; the inspection reports say  
12 everything was checked. But they're in such vagueness that it  
13 is impossible to go behind it and find out what really  
14 happened.

15 And PG&E keeps saying: Nothing is perfect, we did our  
16 job, PG&E -- Look. The report said everything was fine. But  
17 we know something is wrong. We know that they're not spotting  
18 all the things that need to be fixed.

19 So the second major point is: How do we fix that  
20 inspection system so that it has a better chance -- not a  
21 perfect chance, but a better chance -- of finding the things  
22 that are about to go wrong, so that we avoid another  
23 catastrophic fire from the transmission lines?

24 So that one is: How do we fix the inspection process and  
25 the inspection reporting process and hold people accountable

1 for -- if they didn't do the inspection right, then they're  
2 accountable. So we can pinpoint what went wrong, so we'll know  
3 next time that's -- to avoid that problem.

4 It's a run-around now. At least, at least I get the  
5 run-around in court. I don't know what the PUC gets. But when  
6 these things happen, the lawyers are highly paid, and they're  
7 beautifully trained, and they do a great job, but it's a  
8 run-around. The same thing: Nothing is perfect, Judge; we had  
9 inspections reports; the inspections reports said everything  
10 was fine; it's impossible to do what you want to do, Judge. So  
11 we never have a suggestion to improve the thing.

12 Anyway, I'm getting off, myself, on a broken record.  
13 Here's what I want you to do. How would you fix -- how does  
14 the PUC propose to fix these things? Or maybe you think they  
15 don't need to be fixed. Or they're already fixed. But there's  
16 -- these are the two problems. One is -- I'll just summarize  
17 them in one sentence each.

18 On the distribution lines, it's the quality of the work  
19 that is being done now is not good enough. There are too many  
20 errors. And how do we fix that? I thought we could fix it by  
21 expanding the program that PG&E told me it already had in  
22 place, which was pre-inspection. Okay. If you don't like  
23 that, what would you do? Or maybe you think it's -- it's okay  
24 now.

25 The second one is transmission lines, and the inspection



1 process, and how do we -- how do we strengthen that to find the  
2 mistakes before they happen, and to impose accountability when  
3 they do happen?

4 So it's not -- to me, if the PUC came back to me and said  
5 "Judge, these are -- these problems are under control and  
6 here's how we are going control it and here's how -- the  
7 conditions, you know, the Wildfire Safety Division has imposed,  
8 they specifically addressed these problems and give those a  
9 chance," I probably would go along with that. I would go along  
10 with that. But all I ever hear from PG&E is a broken record  
11 saying -- they never have a single positive comment. All they  
12 do is -- is the same broken record.

13 But if the PUC were to say "You think you've got this  
14 under control, Judge, and you don't need to do this," I'd very  
15 likely defer to your judgment on this. But it's got to be  
16 something concrete that I can understand. And yeah, that looks  
17 pretty good. I'm glad that the PUC is -- so, would you be  
18 willing to send me a brief on that subject?

19 Please. Go ahead.

20 **MS. HAMMOND:** Um, yes. We are willing to help the  
21 Court understand what the State is doing. I'm not sure that we  
22 would say, ourselves, everything is under control. There is a  
23 tremendous and concerted effort to get safety, get the state  
24 safe. And we are trying to get ahead of the problem. The  
25 tools that traditionally have been at our disposal like

1 penalties and fines, it is not -- we're not getting ahead of  
2 the problem. We are trying to get ahead of the problem now.

3 And there aren't necessarily specific actions that the  
4 CPUC may want to put forward, but we are willing to help the  
5 Court understand exactly what we're doing. And understand --  
6 help the Court understand the tools that the State has at its  
7 disposal and is considering in the event that we don't see  
8 improved safety.

9 **THE COURT:** Well, I appreciate that. In addition, I  
10 invite to you explain to me why -- and it may be true, but to  
11 explain to me why any additional conditions even in the  
12 ballpark of what I'm suggesting would somehow hamper the CPUC  
13 in doing its job. I don't want to hamper the CPUC. So if that  
14 -- I want you to help me on that point, too.

15 Well, okay. How long do you need to do that brief?

16 **MS. HAMMOND:** Is two weeks acceptable to the Court?

17 **THE COURT:** Two weeks will be fine. And I appreciate  
18 it because I -- we're very close to the -- the next wildfire  
19 season is less than a month away. So, yes, two weeks will be  
20 fine. I appreciate that.

21 **MS. HAMMOND:** Thank Your Honor. And we, too, are  
22 feeling that urgency.

23 I misspoke about the number of inspections that have  
24 already been conducted by the Wildfire Safety Division in its  
25 two and a half weeks in. It's -- they've actually conducted

1 200 field inspections.

2 **THE COURT:** That's good. I wrote down 50, but the  
3 200, that's even better. Yeah. Good for the inspectors.

4 **MS. HAMMOND:** And they're slated to have a total of  
5 about 1,500 this year.

6 **THE COURT:** And the inspections are of work that's  
7 already been done? Or of work that is about to be -- what are  
8 they inspecting?

9 **MS. HAMMOND:** I believe it's work that's being  
10 conducted as it -- as the improvements are being done. But I'm  
11 happy to make that clarification.

12 **THE COURT:** Okay. Here, it would be good to know, is  
13 that inspecting the -- the hardening of the system? Is it  
14 inspecting vegetation management? And that would be very  
15 useful for me as well as the public. I hope you can make this  
16 a public document so that the public will get the benefit of  
17 it.

18 All right. So thank you for that. Okay. Can I -- do you  
19 have anything more, Ms. Hammond, to say? Or I'll move on to  
20 the amici.

21 **MS. HAMMOND:** Not at the moment. Your Honor probably  
22 remembers that amici did try to have the Cannara case referred  
23 to Your Honor, and Your Honor considered that request and  
24 declined it. These are active litigants in a case that is  
25 before Judge Donato. And I just wanted to make that statement.

1 Thank Your Honor.

2 **THE COURT:** Yeah, I think I remember that, but I --  
3 all right.

4 So, now, the amici doesn't get as much time --

5 **UNIDENTIFIED WOMAN:** Do you guys have rubbing alcohol?

6 **THE COURT:** What was that about rubbing alcohol?

7 **MR. WILKINS:** That was my mother. I apologize for  
8 that, Judge Alsup. This is Antwan Wilkins. That was my mom.

9 **THE COURT:** I can't give you much time because you  
10 submitted a big brief. But I'll give you two minutes to weigh  
11 in. Go ahead.

12 **MR. WILKINS:** Okay, um -- I'm here on behalf of --

13 **UNIDENTIFIED MAN:** Excuse me, that is not the amici,  
14 Your Honor, speaking there.

15 **THE COURT:** Who is it that was speaking?

16 **MR. WILKINS:** This is Antwan Wilkins. I'm calling on  
17 behalf of David Rizk, my lawyer.

18 **MR. RIZK:** Your Honor, this is David Rizk. Sorry.  
19 We're on the next case.

20 Antwan, can you please mute your phone? This is another  
21 case. Thank you.

22 **MR. WILKINS:** Okay, I'll mute it. I apologize.

23 **THE COURT:** All right. I have another case I've got  
24 to go to. I'm sorry, counsel.

25 But amici, give us your name, and then you have --

1           **MR. AGUIRRE:** Your Honor, my name is Michael Aguirre.  
2 And I have been litigating these wildfire issues since 2009  
3 with PG&E.

4           Your Honor, you're not being told a big part of the  
5 puzzle. And PG&E is not putting their cards on the table.  
6 Behind the scenes, PG&E is heavily influencing the Public  
7 Utilities Commission.

8           This is something PG&E said back in August of 2016  
9 (As read):

10                   "While we are very much focused on the future, we  
11                   will never forget the lessons of the past. We have  
12                   made unprecedented progress in the nearly six years  
13                   since the tragic San Bruno accident, and we are  
14                   committed to maintaining our focus on safety."

15           PG&E is not focused on safety. They are focused on how to  
16 pay for the fires. Your Honor's rulings has been focused on  
17 how to stop the fires. And I think it's imperative -- I'd ask  
18 Your Honor -- I know you said I could only have two minutes.  
19 But I think it's very imperative that Your Honor understand  
20 that the reason that the insurance companies are not writing  
21 insurance for PG&E is because they have absolutely no faith in  
22 PG&E's program for preventing future fires.

23           1054 did away with the most important prudence rule, the  
24 most important safety rule we had, which is that the utilities  
25 could only recover if they proved that they were prudent in

1 connection with the fire. That's gone now, and that's been  
2 replaced, at the behest of PG&E, with a presumption that they  
3 acted prudently.

4 So for example, with the Camp Fire, if the Camp Fire were  
5 to have happened after July of 2015, then PG&E would have been  
6 given a presumption that they acted reasonably, and they could  
7 recover for their uninsured costs.

8 The other part of 1054 is they imposed on the utility  
9 customers a \$13 1/2 billion charge, without any kind of  
10 fairness in terms of any hearing, to make the utility customers  
11 pay in the future. PG&E doesn't even believe that it's going  
12 to cause -- or not cause fires in the future.

13 PG&E has something that they have developed called the  
14 Fire Prediction Index, where they have taken all the various  
15 factors, and they have shared that secretly with the Governor's  
16 staff in connection with 1054.

17 Your Honor, I would urge Your Honor to allow us to file  
18 some additional papers to tell Your Honor what else you might  
19 want to ask for. Number one, the disclosure of all PG&E's  
20 communications to the PUC via the Governor's office, so you  
21 could understand how PG&E is, in fact, influencing the CPUC.

22 The CPUC, in its August 23rd approval where they issued  
23 the fire safety certificate to PG&E, they said -- the PUC said  
24 explicitly that they recognize what Your Honor was doing, and  
25 that they were going to follow the direction of Your Honor.

1 And that's what the executive director said in the August 23rd  
2 letter. PG&E -- PG&E is not committed to stopping the fires.  
3 And when you listen to them carefully, they make excuse after  
4 excuse.

5 The reason that your idea of having an in-house inspector  
6 makes sense is because that creates a corporate memory. That  
7 creates internal records that they can't hide or dispose of  
8 through their independent contractors.

9 They need to have a core of people trained to do this on  
10 an everyday basis. If anything, they need to expand the number  
11 of inspectors so that they can main- -- their inspectors should  
12 have a catalog of all of their high-fire-danger area  
13 vegetation-management issues as well as the transmission  
14 issues. They should have a catalog of that. There should be  
15 people assigned to specific areas of the state in order to  
16 avoid that.

17 But what PG&E is doing now is if they -- if they cause  
18 another fire in 2020 or 2021, that -- the full cost of that  
19 fire will automatically be paid by utility customers. They are  
20 already being forced to pay \$13 1/2 billion into this wildfire  
21 fund.

22 And if you just step back for a second, and you look at  
23 what Your Honor started in January of 2019, every step along  
24 the way, PG&E has brought the CPUC in to act as their defender.

25 There was -- the investigation that the staff -- and the

1 staff of the CPUC, in my experience, does have integrity and  
2 can be relied upon, but the -- the Department of Safety  
3 Enforcement, they did conduct an investigation of PG&E's  
4 activities in 2017 and 2018. They found that they caused 14  
5 fires. They committed 44 violations of General Order 95. And  
6 in doing so, they did not penalize them.

7 The idea that -- they said: Oh, we're going to disallow.  
8 Well, they disallowed what was never allowed, to begin with.  
9 There was no penalty imposed.

10 And with regard to -- with regard to the investigation,  
11 itself, I would recommend that Your Honor ask the safety  
12 enforcement division personnel that actually conducted that  
13 investigation, have them come before Your Honor, put them on  
14 the witness stand, and give Your Honor a chance and maybe amici  
15 a chance to examine them so you can find out what's really  
16 happening.

17 The staff wants to do the right thing. And the staff is  
18 developing the capability. But what I hear from the staff is  
19 they're very, very upset about the fact that the CPUC, which is  
20 supposed to be an independent investigative commission, that  
21 function is now going to be transferred over so it'll be  
22 directly under the Governor. So the PG&E, with its lobbyists,  
23 goes to see the Governor.

24 They had -- PG&E had 15 secret meetings with the  
25 Governor's office between January and July of 2019, where they



1 put together the plan to do away with the prudence standard and  
2 to impose the \$13 1/2 billion penalty.

3 So I'm a former Assistant U.S. Attorney. And I'm going to  
4 close here, Your Honor, but I'm a former Assistant U.S.  
5 Attorney in the Organized Crime/Fraud Section in the U.S.  
6 Attorney's office in San Diego. And as I was listening to the  
7 counsel for this convicted felon that has killed over a hundred  
8 people make excuses, I was just thinking: What would Judge  
9 Enright, Bill Enright, have done, if he were to listen to  
10 somebody on probation like this make those kinds of excuses?  
11 Let me tell you, he would have done exactly what Your Honor is  
12 doing.

13 There is no room for laxity. Your Honor is being given --  
14 I would say false information, certainly misleading  
15 information, by PG&E. I'm disappointed that the U.S.  
16 Attorney's office has not been more vigilant -- and I don't  
17 mean to put them down, but they should be more vigilant and  
18 more aggressive in getting a focus on -- there's going to be  
19 people that are going to be dead in a year. Dead in two years.  
20 And I'm just wondering what they would think if they come back  
21 and they listen to this discussion today and wonder why  
22 Your Honor is not sticking with what you've done, which was  
23 designed to protect them.

24 So I have much more to say, Your Honor, but I know about  
25 each one of your -- every single one of your conditions should

1 absolutely be put into effect, and the CPUC should adopt them.

2 Because they will get at the heart of the problem.

3 Final comment. Your Honor wants to stop the fires. PG&E  
4 wants to figure out a way to pay for the fires. That is the  
5 dichotomy. And that cannot allow to stand. PG&E cannot use  
6 its political muscle to go to the Governor's office, the  
7 Legislature, get its way with them while they're delaying you,  
8 because all they want to do is get past the probationary  
9 period. It's just a stall action. Stall it out, stall it out.

10 Even, Your Honor, when you asked Ms. Hammond if she would  
11 come forward with your very reasonable request and have the  
12 staff of the Safety and Enforcement Division explain how you  
13 might get to those two specific conditions, the distribution  
14 and the quality issues, how you might get there, there's no  
15 reason why they can't come in and have their staff come in and  
16 work with Your Honor, work with amici, work with the various  
17 parties to come up with a plan. But that's not the goal.  
18 That's not what PG&E has told them to do.

19 And Your Honor, I would just -- I want to just say how  
20 much we admire Your Honor, and hope that Your Honor will keep  
21 the pressure on, and not allow this misinformation to mislead  
22 you.

23 **THE COURT:** Thank you. I have a -- something you  
24 said, I need to go back to Ms. Hammond.

25 Ms. Hammond, are you still there?

1           **MS. HAMMOND:** I am, Your Honor.

2           **THE COURT:** All right. Just clarify for me and the  
3 public on this point.

4           Earlier you had said that the Commission had imposed a  
5 \$2.1 billion -- you called it a penalty.

6           **MS. HAMMOND:** Yes.

7           **THE COURT:** And then you also referred to a fine. But  
8 now Mr. Aguirre was saying that the Commission suspended  
9 everything.

10           So is that 2.1 billion actually going to be paid by PG&E,  
11 that penalty? Or has that been suspended?

12           **MS. HAMMOND:** It's \$2.1 billion in disallowances. So  
13 they are required to (inaudible) shareholders pay for any sort  
14 of repairs, replacements as a consequence of the fires, and any  
15 sort of upgrades that are necessary to improve safety. It will  
16 not be paid for by ratepayers. It will be paid for by  
17 shareholders. And that is --

18           **UNIDENTIFIED MAN:** That -- I'm sorry. Excuse me.

19           **MS. HAMMOND:** Yeah. And that is the penalty.

20           There was also talk about the use of the different  
21 penalizing tools available to the Commission. It could be in  
22 the form of disallowances. And fines are another option.  
23 Fines are paid for by shareholders. And they go to the general  
24 fund.

25           And so a decision was made to focus the punitive effect

1 towards making improvements to the system, rather than money  
2 going to the general fund.

3 **MR. AGUIRRE:** But Your Honor, they're disallowing what  
4 was never allowed. That's total sophistry. There's no  
5 specific order that says that -- or agreement on the part of  
6 PG&E that they're going to make \$2 billion worth of  
7 improvements, safety improvements. And therefore, they're  
8 going to have to pay that, themselves. That's all just left up  
9 in space. It's -- it's pure sophistry. They're disallowing  
10 what was never allowed to begin with. So PG&E never had the  
11 obligation to pay anything, to begin with.

12 And the one thing that the Administrative Law Judge  
13 ordered was a \$200 million fine. \$200 million fine. The only  
14 -- the ALJ for the CPUC said they should at least be ordered to  
15 pay \$200 million. And that was permanently suspended, ten days  
16 ago.

17 There is no interest on the part of the CPUC to do  
18 anything other than to carry out the will of PG&E. It's what  
19 Justice Ginsburg calls a "captured agency." And Your Honor,  
20 that's what you are dealing with.

21 And if you would allow us -- you know, we've literally  
22 been litigating on these issues since 2009. We've gone up to  
23 the Supreme Court, we've gone to the California Supreme Court,  
24 prevailed in both courts, when PG&E tried to undo the  
25 prudent-person standard in the courts.

1           And when they failed to do that, they went to the  
2 Governor's office. They had 14 secret meetings with the  
3 Governor. They introduced 1054. They introduced 1054 on  
4 July 12th, and it was passed in a week. No meaningful  
5 hearings. Then it went over to the CPUC. No evidentiary  
6 hearing. No impartial tribunal, no cross-examination. They  
7 simply enforced it. And they had the gall to claim that that  
8 was going to save utility customers money. A \$13 1/2 billion  
9 charge, \$900 million for the next 15 years, with no hearing.  
10 And that's what the focus has been.

11           And I think -- so, Your Honor, I mean, this -- if you are  
12 being lied to, if the CPUC is not playing straight with you,  
13 and you're thinking that you can trust them to regulate PG&E,  
14 you can't. And all they're going to do -- you're going to lose  
15 your authority over this case in a couple of years. Once they  
16 get past that, it's back to business as usual.

17           And I -- I respect the very able counsel for PG&E, who has  
18 a very difficult case, did an excellent job of confusing the  
19 issues, as an able advocate. But I will tell Your Honor right  
20 now, if anything, I would come back and say this. Have the  
21 Safety and Enforcement Division personnel who oversaw the  
22 investigation into the 2017 and 2018 fires, have them come in  
23 and make their presentation, and ask DA Ramsey to share his  
24 investigative materials, who's done a fantastic job, have him  
25 share his grand jury information about what he found about what

1 P&E did and didn't do in connection with the Camp Fire, and  
2 then make your decision about whether PG&E should be held in  
3 contempt of the court.

4 And I think until PG&E officers, until PG&E major  
5 officials are personally held accountable, we're not going to  
6 stop these fires. And if we don't stop the fires, we're going  
7 to have many more deaths in the future, Your Honor. Many more  
8 deaths.

9 Mr. Ramsey told me the story of a mother and a grandmother  
10 and a child, and they were on the phone as the fire was closing  
11 in on them in Paradise. And they were -- they were, you know,  
12 beseeching someone to come and help them as their lives just  
13 faded away and they were burned to death. And that's not --  
14 that will happen again.

15 Even the Governor said, even the Governor said, in  
16 connection with the -- in connection with, you know, whether  
17 PG&E was at fault or what their attitudes were, this is what  
18 the Governor said (As read):

19 "For decades, PG&E failed to prioritize public  
20 safety. Their lack of safety investments left PG&E  
21 and nearly half of California with an anticipated  
22 electrical system that is vulnerable to weather  
23 events and not able -- not at all prepared for the  
24 more extreme weather associated with climate change  
25 that has been predicted for the past several

1           decades."

2           That's coming from the Governor, who is one of their  
3 closest allies.

4           So again, Your Honor, I think that they have managed to  
5 confuse the record. I've gone back and I've read every single  
6 one of your orders to show cause --

7           **THE COURT:** Mr. Aguirre.

8           **MR. AGUIRRE:** Yes, Your Honor.

9           **THE COURT:** I'm giving you an Academy Award, because  
10 you have the great gift, when you come to the end of a sentence  
11 you immediately start a new sentence --

12           **MR. AGUIRRE:** Okay, I'll stop.

13           **THE COURT:** I can't get a word in edgewise.

14           **MR. AGUIRRE:** All right. I'll stop, Your Honor.

15 Sorry.

16           **THE COURT:** I've given you 20 minutes, instead of two  
17 minutes. I'm not diminishing the seriousness of what you're  
18 saying. But I am -- I have to bring it to a close.

19           **MR. AGUIRRE:** Very well.

20           **THE COURT:** All right. The CPUC in two weeks will  
21 give me their brief.

22           I am asking -- not just asking, ordering PG&E to give me a  
23 brief in two weeks that addresses the same subject. And that  
24 is: How can we solve the two problems that I've put on the  
25 table, and instead of making a long list of excuses, explain to

1 me what specifically is different that you're doing now or will  
2 do that will solve those problems.

3 And I'm asking the U.S. Attorney to give me a brief in two  
4 weeks. And the monitor to give me a brief in two weeks. And  
5 Mr. Aguirre, you can submit a brief in two weeks.

6 I want to put a page limit of 25 pages on each brief, with  
7 the exception of the CPUC. If you want to add to it, you can.  
8 But for everybody else, I think, you have submitted so much  
9 already that the 25 pages will be enough. And I will -- I look  
10 forward to reading all of that in two weeks.

11 We will very likely have another hearing. Maybe not; I  
12 don't know. I'll have to see, read the briefs. In the  
13 meantime, the stay of the conditions will -- will remain in  
14 effect, because I want to be fair to PG&E. I want to consider  
15 all of the -- these points and I -- I respect PG&E's right to  
16 due process.

17 So --

18 **MR. FILIP:** Your Honor, Your Honor, this is Mark  
19 Filip. Could I make one suggestion for your consideration,  
20 sir?

21 **THE COURT:** Yes. Please, go ahead.

22 **MR. FILIP:** My fear is you're going to get 125 pages  
23 of briefs passing in the night. And to me, the greatest  
24 positive of this effort that you have initiated is that it's  
25 been focused on practical things that hopefully will save



1 people's lives.

2 We can all talk about federalism and jurisdiction and all  
3 this and that. But at the margins of a very broad spectrum, it  
4 might be relevant, but on the practical issues, probably  
5 doesn't matter at all.

6 And if there were a way to say we'll make the briefs due  
7 in three weeks, but you directed the parties to confer with  
8 each other during that extra week to try to come up with  
9 pragmatic, actual concrete things to address these situations,  
10 I think -- you know, if people want to fight, they can fight,  
11 and they can appeal and all this and that. But if they do want  
12 to get to practical compromises and solutions, there's a lot of  
13 room here to try to make progress.

14 And obviously it's up to you. Whatever schedule you set,  
15 we'll abide by. But I think if you asked the parties to confer  
16 with each other to try to come up with -- you know, even if it  
17 were PG&E and the government and the monitor team, if -- if the  
18 three of us conferred, I -- I think it would give a better  
19 chance of having maybe some consensus proposals, as opposed to  
20 just people making lawyers' points.

21 **THE COURT:** Well, I -- will the CPUC meet and confer  
22 and will PG&E meet and confer and will the U.S. Attorney meet  
23 and confer?

24 If you're willing -- now, Mr. Aguirre, I'm leaving you out  
25 of this piece because you're an amicus. So I'm not going to

1 let you get in there and insist on being part of these  
2 meetings.

3 But will you other four meet and confer?

4 **MS. HAMMOND:** Your Honor, this is the CPUC.

5 I just have to emphasize this unusual position that we  
6 find ourselves in. We're not a party to this proceeding. This  
7 is a criminal probation.

8 At the same time, I do want to emphasize, as Your Honor  
9 did note before that, the bankruptcy investigation proposed  
10 decision does have -- appoints an independent monitor that  
11 performs a function akin to the federal monitor.

12 And I think at the very least, that the Wildfire Safety  
13 Division and the federal monitor and our Safety and Enforcement  
14 Division can be talking. I think they might already be talking  
15 and conferring with each other.

16 **UNIDENTIFIED MAN:** We have.

17 **MS. HAMMOND:** Yes. And --

18 (Audio connection dropped momentarily)

19 **THE COURT:** ...CPUC brief, I'd like to get that in two  
20 weeks because you're not part of the meet-and-confer. But the  
21 other three of you, PG&E and the U.S. Attorney and the monitor,  
22 you all meet and confer, see if you can reach some practical  
23 agreements. And then, your brief is individually due in three  
24 weeks.

25 And Mr. Aguirre, I'll let you file a brief as well, but

1 you don't get to be in on the meet-and-confer. And your brief  
2 is due in three weeks as well, too.

3 **MR. AGUIRRE:** Thank you very much, Your Honor. We  
4 appreciate the opportunity to participate.

5 **THE COURT:** All right. I'm sorry; we've been going  
6 two and a half hours. I'm sure my court reporter needs a  
7 break. So I'm going to call the hearing to an end for now and  
8 we will -- Theresa, I know we are overdue on the 11:00  
9 calendar, so I'm going to hang up and call in in five minutes.

10 All right. So long, everyone. Bye-bye.

11 (Proceedings concluded)

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**CERTIFICATE OF REPORTER**

I, BELLE BALL, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

*Belle Ball*

\_\_\_\_\_  
/s/ Belle Ball

Belle Ball, CSR 8785, CRR, RDR

Saturday, May 30, 2020

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United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 14-0175 WHA

Plaintiff,

v.

PACIFIC GAS AND ELECTRIC  
COMPANY,

**ORDER MODIFYING  
CONDITIONS OF PROBATION**

Defendant.

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A fundamental concern in this criminal probation remains the fact that Pacific Gas & Electric Company, though the single largest privately-owned utility in America, cannot safely deliver power to California. This failure is upon us because for years, in order to enlarge dividends, bonuses, and political contributions, PG&E cheated on maintenance of its grid — to the point that the grid became unsafe to operate during our annual high winds, so unsafe that the grid itself failed and ignited many catastrophic wildfires. In the past three years alone, PG&E wildfires killed at least 108 and burned 22,049 structures. It will take years, now, for PG&E to catch up on maintenance so that the grid can safely supply power at all times. The conditions of probation herein have been aimed at requiring PG&E to do so. It’s evident, however, that more is necessary.

\* \* \*

Let’s go back to the beginning. In 2010, an underground gas pipeline owned and operated by PG&E exploded in San Bruno. Eight people burned to death or died from wounds. Fifty-eight survived with injuries, and over 100 homes burned. In August 2016, a federal jury convicted PG&E on five federal felony counts of knowingly and

United States District Court  
Northern District of California

1 willfully violating pipeline maintenance safety standards. The jury also convicted  
2 PG&E on one felony count of obstructing the government’s investigation into the cause  
3 of the explosion. PG&E had knowingly kept inaccurate and deficient records of  
4 pipeline maintenance, knowingly violated federal safety standards, and was ultimately  
5 responsible for the explosion.

6 A corporation cannot be imprisoned, so District Judge Thelton Henderson  
7 imposed the most severe fine possible and imposed the longest possible period of  
8 probation, five years. He also imposed an independent monitor to oversee and report  
9 on PG&E’s rehabilitation. After Judge Henderson’s retirement, this case was re-  
10 assigned to the undersigned.

11 One year into its probation, PG&E struck again. In October 2017, the Wine  
12 Country Fires — including the Atlas and Nuns fires — ravaged tens of thousands of  
13 acres in Northern California. According to CAL FIRE, PG&E ignited seventeen of the  
14 twenty-one major Wine Country wildfires. This time the culprit was PG&E’s  
15 electricity grid. These seventeen fires alone killed 22 people and destroyed 3,256  
16 structures. Following the Wine Country fires, the monitor, the federal prosecutors,  
17 PG&E, and the Court agreed that the monitor would evaluate PG&E’s electric-  
18 distribution operations, including PG&E’s vegetation-management plan, and equipment  
19 maintenance and inspection programs.

20 CAL FIRE found that at least three of the Wine Country fires were specifically  
21 caused by PG&E’s violation of Section 4293 of the California Public Resources Code,  
22 which requires utilities to maintain a specified clearance between any part of the tree  
23 and energized power lines and to remove all hazardous trees or limbs that might fall on  
24 the lines.

25 When limbs or trees fall on energized distribution lines, the un-insulated  
26 conductors can be pushed together and “short out,” causing sparks and molten metal to  
27 fall, usually onto dry grass below. There’s nothing unusual about the lines being un-  
28 insulated, for that’s true of virtually all power lines. But given this danger, PG&E has

1 long been responsible under Section 4293 for identifying and removing hazardous trees  
2 and limbs which threaten distribution lines. Yet because PG&E skimmed on vegetation  
3 maintenance, an ever-greater backlog of hazard trees and hazard limbs grew year after  
4 year.

5 In November 2018, the Camp Fire in Butte County, the deadliest wildfire in  
6 California history, destroyed the town of Paradise, killed 85 people, and burned 18,793  
7 structures. Again, the fire was caused by PG&E. One cause was the collapse of a  
8 worn-out, ancient C-hook hanging from a PG&E electricity transmission tower, and  
9 another was a tree falling on a PG&E distribution line, all as strong winds swept the  
10 region.

11 A few days ago, PG&E announced it would plead guilty to 84 counts of  
12 manslaughter arising out of the disaster, admitting that it started the Butte County fire.  
13 In addition to the anticipated \$13.5 billion that PG&E will pay in the victim's  
14 compensation fund, the plea agreement will fine PG&E \$3.5 million, and require it to  
15 pay the District Attorney's office half a million dollars to cover the cost of its  
16 investigation. *See* THE NEW YORK TIMES, "PG&E Will Plead Involuntary  
17 Manslaughter in Camp Fire" (Mar. 23, 2020).

18 In the immediate aftermath of the Butte County conflagration, this Court initiated  
19 a series of probation hearings in early 2019 (including a view of the Butte County ruins  
20 by the undersigned and the PG&E board and officers) to determine what further safety  
21 conditions should be imposed to protect California from further mayhem by PG&E.

22 This led to these further probation conditions (Dkt. No. 1040):

- 23
- 24 1. PG&E must fully comply with all applicable laws  
25 concerning vegetation management and clearance  
26 requirements, including Sections 4292 and 4293 of  
27 the California Public Resources Code, CPUC  
28 General Order 95, and FERC FAC-003-4.
  2. PG&E must fully comply with the specific targets  
and metrics set forth in its wildfire mitigation plan,  
including with respect to enhanced vegetation  
management. Compliance with these targets and

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metrics, however, will not excuse any failure to fully comply with the vegetation laws as required in paragraph 1.

3. The monitor shall assess PG&E’s wildfire mitigation and wildfire safety work, including through regular, unannounced inspections of PG&E’s vegetation management efforts and equipment inspection, enhancement, and repair efforts. The inspections will include both inspections of segments of power lines where PG&E has conducted its enhanced vegetation management efforts pursuant to its wildfire mitigation plan, as well as areas where enhanced vegetation management has yet to occur. The inspections will further include field interviews and questioning of PG&E employees and contractors.
4. PG&E shall maintain traceable, verifiable, accurate, and complete records of its vegetation management efforts. PG&E shall report to the monitor on the first business day of every month on its vegetation management status and progress, and make available for inspection all related records at the monitor’s request.
5. PG&E shall ensure that sufficient resources, financial and personnel, including contractors and employees, are allocated to achieve the foregoing. If PG&E cannot find enough contractors, then PG&E must hire and train its own crews to trim and remove trees. To ensure that sufficient financial resources are available for this purpose, PG&E may not issue any dividends until it is in compliance with all applicable vegetation management requirements as set forth above.

In addition, this Court strongly urged, although did not require, PG&E to temporarily de-energize any power line unsafe to operate during dry-season windstorms. At the time, PG&E protested the idea and resisted any order to engage in such temporary de-energizations, but in fact, PG&E eventually implemented eight power shutoffs voluntarily in 2019, which came to be known as Public Safety Power Shutoffs (PSPSs). This became an important safety development. *Most significantly, during the entire wildfire season in 2019, no lives or homes were lost from wildfires started by PG&E’s distribution lines.* This safety improvement stands in stark contrast to the preceding years. Troublesome as those power shutoffs certainly were, that trouble paled by comparison to the death and destruction caused in the preceding years



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1 by wildfires ignited by PG&E's distribution lines during dry-season windstorms. We  
2 learned how necessary those power shutoffs actually were because, after each PSPS,  
3 crews discovered, in total, 365 fallen limbs and trees strewn across PG&E distribution  
4 lines. Even according to PG&E, 291 of those fallen limbs and trees would've likely  
5 caused arcing, meaning that sparks and molten metal flashed upon the dry grass or  
6 whatever lay below (Dkt. No. 1135 at 3).

7 Here is a photograph of one such wind-blown tree that, but for the PSPS, would  
8 likely have caused a wildfire:



25 A fallen tree blown onto a de-energized PG&E distribution line (Public Safety  
26 Power Shutoff Oct. 26–Nov. 1, 2019 Report, Appx. C, Fig. 6).

27  
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1           Those fallen limbs and trees remain proof positive that the PSPS program saved  
2 lives and homes. Shutting off the power in those lines in advance of the windstorms  
3 was essential to public safety, and PG&E did so. For this PG&E deserves credit.

4           But at the same time, those hundreds of fallen limbs and trees also remain proof  
5 positive of how unsafe PG&E had allowed its maintenance backlog to become.

6           **DISTRIBUTION LINES**

7           This order now addresses the two recurring causes of PG&E wildfires —  
8 distribution lines and transmission lines. Distribution lines stand lower, usually strung  
9 between wooden poles, about 40 feet off the ground, easily within range of tall trees.  
10 Transmission lines stand much higher, well above treetops, usually strung between  
11 metal towers.

12           The long-term solution for the distribution lines remains the same — PG&E must  
13 come back into full compliance with California’s tree clearance requirements. The  
14 conditions for probation in this criminal case specifically require PG&E’s full  
15 compliance with Section 4293 and all other laws concerning vegetation management  
16 and clearance requirements. In 2019, our Legislature insisted that PG&E develop and  
17 honor a wildfire mitigation plan, which the company submitted to the California Public  
18 Utilities Commission. Another condition of probation requires PG&E’s full  
19 compliance with its own plan.

20           To be sure, PG&E has recently stepped up its hazard tree and limb operations, but  
21 still admits it has fallen short. In truth, PG&E remains years away from compliance  
22 with California law and with its own wildfire mitigation plan (Dkt. No. 1132 at 4).  
23 When asked about its compliance, PG&E told the Court that given the “dynamic  
24 environment” of its purview, it remained “unable to certify perfect compliance” with  
25 the probation conditions (Dkt. No. 1129). That is an understatement.

26           Twenty-two thousand trees identified by PG&E as “hazardous” remain un-  
27 worked. Last year, PG&E received over 40 notices from regulatory agencies  
28 identifying clearance violations. In that year alone, CAL FIRE identified 75 hazardous

1 limbs and trees that violated Section 4923, the four-foot clearance requirement between  
2 limbs and power lines. Those are just the ones stumbled onto by CAL FIRE —  
3 thousands more lurk in the grid. Furthermore, PG&E reported that it failed to complete  
4 its crucial CEMA inspections. PG&E developed CEMA — the “Catastrophic Event  
5 Memorandum Account” program — in response to severe drought conditions in  
6 California, and the program runs additional inspections on all distribution lines in high  
7 fire-threat districts. PG&E completed only 80% of CEMA inspections in 2019, citing  
8 scheduling problems.

9 To patrol and trim its lines, PG&E has long since outsourced all responsibility,  
10 both as to inspections to identify hazard trees and limbs, and as to cutting the trees and  
11 limbs. After the disasters of 2017 and 2018, PG&E ramped up its outsourcing. It now  
12 has under contract over 1,000 “pre-inspectors” to flag trees that violate clearance  
13 requirements, and roughly 5,000 tree-trimmers to follow behind to remove hazard trees  
14 and limbs. This large uptick in effort has only made a small dent in the backlog of  
15 hazard trees and non-compliant vegetation management. Even if this effort had been  
16 perfectly executed, it will still take close to a decade to come into compliance with  
17 California law.

18 But this effort is *not* being perfectly executed — far from it. PG&E’s work,  
19 though accelerated, misses dangerous conditions entirely. In 2019, the monitor spot  
20 checked the work, putting boots to the ground and independently inspecting over 550  
21 miles of lines in high fire-threat districts. On miles which had just been subject to  
22 PG&E’s “enhanced” inspections, the monitor found 3,280 “risk” trees that PG&E  
23 contractors had failed to identify. Among these missed hazards were *fifteen* urgent  
24 conditions that could have resulted in fatalities, injuries, or serious damage if not fixed.  
25 Inasmuch as PG&E works on a one-year inspection cycle, these conditions might not  
26 have been fixed in time.

27 In one instance, PG&E contractors had recently marked an urgent condition —  
28 where a tree was one foot away from a primary conductor — as “tree work complete.”

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1 Similarly, a tree touched a primary conductor right outside the driveway of a home.  
2 Upon notification by the monitor, PG&E sent tree-trimmers to the scene immediately,  
3 who fixed the problem that same day. In another case, the monitor identified a tree  
4 within inches of a primary conductor. The leaves of the tree bore burn marks from the  
5 ongoing intermittent contact. That tree had been identified for routine compliance  
6 work in November 2018, and tree-trimming contractors reported they had completed  
7 the work in February 2019, although clearly they had not. (This prompted PG&E to  
8 conduct an internal investigation into potential records falsification.) In total, the  
9 monitor identified ten instances where PG&E's records indicated that specific trees had  
10 been worked when, in fact, they had not been.

11 Thanks to the monitor's spot checks, PG&E went out and fixed all these urgent  
12 problems. The point, however, is that PG&E's outsourcing scheme remains sloppy and  
13 unreliable. PG&E is fond of handing up records indicating completed work, but the  
14 monitor's spot-checks show how untrustworthy these records can be.

15 What is needed is an in-house team to do what the monitor has been doing —  
16 spot-checking the work. More than that, the in-house PG&E team should include pre-  
17 inspectors to study the lines to mark trees and limbs in need of removal. Then, as the  
18 monitor has been doing, the in-house team should at least spot-check the contractors'  
19 work to see if it was done right.

20 In addition to the conditions of probation already in effect, the Court now imposes  
21 the following new condition of probation in order to protect the public from further  
22 death and destruction resulting from PG&E-caused wildfires, and to promote the  
23 rehabilitation of PG&E, among other goals of 18 U.S.C. §§ 3553(a)(1) and (a)(2):

- 24
- 25 6. PG&E shall employ its own cadre of pre- and post-  
26 inspectors on its own payroll. PG&E shall employ  
27 a sufficient number of inspectors to manage the  
28 outsourced tree-trimming work. The pre-inspectors  
must identify trees and limbs in violation of  
California clearance laws that require trimming.  
Post-inspectors must spot-check the work of the  
contracted tree-trimmers to ensure that no hazard

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trees or limbs were missed. PG&E shall set clear guidelines on the colors and tags used to indicate hazard trees and limbs. PG&E shall submit a detailed by plan by May 28, 2020, to carry out this requirement.

**TRANSMISSION LINES**

While hazard trees threaten the distribution lines, a different set of dangers plague PG&E’s transmission towers, those tall steel towers that rise far above the tree tops (so there’s no risk of trees falling on the lines). For transmission towers, the problem is defective and worn-out hardware on the towers themselves. The Butte County fire, for example, started because an old C-hook had become so deeply gouged from decades of swaying against the plate on which it hung that the C-hook simply broke and fell, causing the attached power line to fall onto the metal tower, spewing sparks onto the wind-blown dry grass below. (And, as mentioned, just two miles away, minutes after C-hook failure, a tree blew onto a nearby PG&E distribution line, igniting a second source for the conflagration.)



The deep gouging of a C-hook, caused by many decades of swaying in high wind (Dkt. No. 1123, Exh. A).

The transmission tower had supposedly been assessed *just days before* the fire. Just days before the broken C-hook fell, PG&E sent contractors to conduct a “non-



1 routine” enhanced inspection — an unusual occurrence — on the line (Dkt. No. 1146).  
2 PG&E refused to say why it sent contractors to inspect the line but conceded that the  
3 line’s age was a factor. Inspectors climbed the hundred-foot tall towers, presumably  
4 searching for equipment deficiencies, yet reported *zero* instances of cold-end hardware  
5 issues such as worn-out C-hooks.

6 After the fire, inspectors went back to the line and identified 32 C-hooks similarly  
7 so gouged that they’d require immediate replacement. These had all been missed by  
8 the “enhanced” climbing inspection. (PG&E permanently de-energized the entire line.)

9 Similarly, although CAL FIRE has not yet announced its findings, evidence  
10 strongly indicates that the Kincade Fire in Sonoma County just last November was  
11 caused by PG&E. Photographs of a charred jumper cable on the Burned Mountain  
12 Tower indicate that the jumper simply broke loose during a windstorm, made contact  
13 with the metal tower, and shorted out, tossing electrical sparks onto the dry wind-blown  
14 grass. Earlier in 2019, *three separate inspections* — via tower climbers in February,  
15 high-resolution drone imaging in May, and ground inspectors with binoculars in July  
16 — had all failed to identify the problematic jumper cable.

17 Like a broken record, PG&E routinely excuses itself by insisting that all towers  
18 had been inspected and any noted faults were addressed, at least according to its  
19 paperwork. But these transmission tower inspections failed to spot dangerous  
20 conditions. Was this because the inspections were poorly designed or was it because  
21 they were poorly executed? Had someone falsified inspection reports? It is hard to get  
22 a straight answer from PG&E. The offender is masterful at falling back on the  
23 inspection reports and saying “See, Judge, we had that very line inspected and all was  
24 well,” or, “We fixed whatever they found wrong. We did our part.” The reports,  
25 however, are a mere courtroom prop. In the Kincade Fire, for example, three recent  
26 inspections of the tower in question — once by drone, once by climbing, and once by  
27 ground — all found nothing wrong, yet the jumper cable broke free, starting a  
28 catastrophic wildfire. Despite the deluge of inspection records served up by PG&E,

1 responsibility for what went wrong cannot be fathomed from those reports. This  
2 inspection system fails to hold the inspectors accountable.

3 Under current protocol, PG&E contractors do not accurately assess the degree of  
4 corrosion on the type of hardware that broke and caused the Butte County fire. For  
5 example, contracted inspectors could not agree on the amount of wear of a deeply  
6 gouged C-hook on a line parallel to Butte County's Caribou-Palermo line. Three  
7 contracted inspectors gave ballpark estimates between five percent and 30% wear. Yet  
8 an expert witness rated the wear at 30-50%, which would necessitate immediate  
9 replacement. And, because PG&E's inspection forms only ask inspectors to check *yes*  
10 or *no* to the prompt "cold-end hardware in poor condition," any degree of wear simply  
11 went unmarked.

12 Because there is no protocol for determining the percentage of wear on a piece of  
13 equipment, let alone the degree of wear necessitating replacement, more C-hooks could  
14 break at any moment. We are vulnerable to the possibility of another Butte County fire  
15 because ancient PG&E equipment goes unchecked. But PG&E *is* capable of  
16 conducting better assessments on transmission tower hardware. And, if records  
17 accurately tracked equipment age and degree of wear, PG&E could estimate better  
18 when to replace potentially dangerous tower parts before they fail.

19 As a further condition of probation, PG&E must keep records sufficient to  
20 identify when a piece of equipment is in danger of failing, and must require inspections  
21 that truly assess the state of equipment. In addition to the conditions of probation  
22 already in effect, the Court imposes the following new conditions:

- 23 7. PG&E must keep records identifying the age of  
24 every item of equipment on every transmission  
25 tower and line. Every part must have a recorded  
26 date of installation. If the age of a part is unknown,  
27 PG&E must conduct research and estimate the year  
28 of installation.
8. In consultation with the monitor, PG&E shall  
design a new inspection system for assessing every  
item of equipment on all transmission towers.  
Forms shall be precise enough to track what

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inspectors actually do, such as whether they touch or tug on equipment. Videos must be taken of every inspection. PG&E shall submit plans for its new inspection system to the undersigned for approval by May 28.

- 9. PG&E shall require all contractors performing such inspections to carry insurance sufficient to cover losses suffered by the public should their inspections be deficient and thereby start a wildfire.

\* \* \*

The Court notes with approval the order of the CPUC Administrative Law Judge Peter Allen requiring that PG&E hire an independent monitor to continue what the federal monitor has been doing, keeping in mind the fact that the federal monitorship will end in 19 months when probation ends. The Court believes it would be productive for the CPUC and the federal monitor to meet with PG&E to devise ways to carry out the new conditions set forth above. In fact, the Court will be flexible in approving any protocols that achieve the essence of the foregoing new conditions if all such parties so recommend. Again, any such plan is due by May 28.

Given that probation will end in January 2022 (and cannot be extended), this order will describe a few points that deserve consideration by the CPUC, the Governor, and the Legislature, as PG&E moves beyond its probation.

*First*, utilities should be fined for violating vegetation management and infrastructure remediation requirements. PG&E does not currently face punishments for these violations of California law. The state could impose harsher penalties for PG&E’s failure to maintain proper vegetation clearances, including failure to mitigate hazard trees and limbs within a reasonable period of time, and impose harsher penalties for PG&E’s failure to address infrastructure remediation tags within regulatory time frames. The state could consider a regulatory-based penalty proceeding, relying on sheriffs, the Highway Patrol, CAL FIRE, and so on to flag violations for the CPUC to investigate.

*Second*, executive bonuses should be tied to safety management. Mid- and senior-level executives at PG&E should be paid out on their yearly bonuses *on the condition*



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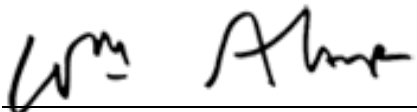
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that PG&E met all of its wildfire abatement targets in the annual Wildfire Safety Plan. Had this policy been in effect last year, bonuses would hypothetically not have been distributed, because PG&E reported meeting only 46 of their 53 internal safety targets.

*Third*, during the high-wind events, we must continue to tolerate PSPSs as the lesser evil until PG&E has come into compliance with state law and the grid is safe to operate in high winds. But as segments of lines do come into compliance and do become safe, PG&E should configure the grid to keep those segments energized, while denying power to the unsafe segments.

**IT IS SO ORDERED.**

Dated: April 29, 2020.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

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In Re: ) Case No. 19-30088  
 ) Chapter 11  
PG&E CORPORATION AND PACIFIC )  
GAS AND ELECTRIC COMPANY ) San Francisco, California  
 ) Tuesday, March 10, 2020  
Debtors. ) 10:00 AM  
 )

ADV#: 19-03061  
ANTHONY GANTNER v. PG&E  
CORPORATION, et al.

DEBTORS' MOTION TO DISMISS  
AND MOTION TO STRIKE [#7]

SCHEDULING CONFERENCE

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE DENNIS MONTALI  
UNITED STATES BANKRUPTCY JUDGE

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PG&E Corp.; Gantner v. PG&E Corp., et al.

1 SAN FRANCISCO, CALIFORNIA, TUESDAY, MARCH 10, 2020, 1:48 PM

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3 (Call to order of the Court.)

4 THE CLERK: All rise. Court is back in session.

5 THE COURT: Good afternoon again. Please be seated.  
6 Anybody got any big major settlements to report in the last  
7 hour?

8 UNIDENTIFIED SPEAKER: (Indiscernible).

9 THE COURT: Mr. Karotkin.

10 Huh? Any surprises?

11 MR. KAROTKIN: Not yet, sir.

12 THE COURT: All right, well, consistent with our --  
13 oh, well, because we are crowded but not full, we've gone ahead  
14 and closed the other courtroom because we couldn't keep people  
15 on duty there to take care of -- so if any of you want to  
16 escape and go in the other courtroom, it won't be available.

17 All right, I said that we'd take the Gantner v. PG&E  
18 motion to dismiss out of order. So I'm ready to go on that.  
19 Who's going to appear for the debtor?

20 MR. NASAB: Good afternoon, Your Honor. Omid Nasab  
21 from Cravath, Swaine & Moore, on behalf of the debtors.

22 THE COURT: Good afternoon, Mr. Nasab. And you --

23 MR. NASAB: Your Honor, I plan to divide my time by  
24 taking fifteen minutes for the opening argument. Going to  
25 share five minutes with counsel for the CPUC, which has asked

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1 for five minutes, and save the remainder for rebuttal.

2 THE COURT: Okay.

3 MR. CARLIN: Good afternoon, Your Honor. I'm not sure  
4 of your procedures here; just being a lowly class-action  
5 lawyer. But I'm Nick Carlin. I represent the plaintiffs. And  
6 I'm here with my bankruptcy co-counsel --

7 THE COURT: I know. I know him.

8 MR. CARLIN: Okay.

9 THE COURT: "Lonely (sic) class-action lawyer". Well,  
10 just be seated.

11 MR. CARLIN: So I'll wait --

12 THE COURT: Did anybody give you a chair?

13 MR. CARLIN: That's okay. We'll sit in the --

14 THE COURT: Good afternoon, Mr. Harris.

15 MR. CARLIN: -- sit back here.

16 All right, so -- but, Mr. Carlin, you have a half an  
17 hour as you wish, so --

18 Let's go. Mr. Nasab.

19 MR. NASAB: Your Honor, in our papers, we raised three  
20 grounds for dismissal: preemption, causation, and Tariff Rule  
21 12, and also moved to strike the class allegations.

22 THE COURT: Isn't it Tariff Rule 14?

23 MR. NASAB: Tariff Rule 14. Apologize if I misspoke.

24 THE COURT: I want to get the right tariff; that's  
25 all.

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1 MR. NASAB: I'm going to touch on each, but I will  
2 focus on preemption because that's the issue that's been  
3 discussed in some of the papers that were filed after our  
4 reply. And let me start there.

5 Plaintiff in this adversary proceeding seeks to impose  
6 liability on PG&E, based on five power shutoffs that occurred  
7 in October and November of 2019. The proposed class includes  
8 all California residents and businesses who had their power  
9 shut off during one of those five events, as well as future  
10 events that happened during the course of this case.

11 Prior to engaging in these shutoffs, PG&E submitted,  
12 as it was required to do by state law, a protocol, in its  
13 wildfire-mitigation plan for de-energization, that laid out to  
14 the CPUC how and when PG&E would conduct shutoffs. As called  
15 for by that legislation, the CPUC reviewed that protocol and  
16 approved it. And as the Commission stated in its brief, on  
17 page 7, the approval of that plan, as well as the other  
18 guidelines issued by the Commission, expressly authorize --  
19 those were the words the Commission used -- PG&E to shut off  
20 during times of extreme wildfire risk, to protect the public.

21 The plaintiff here advances a fairly remarkable attack  
22 on that protocol. Plaintiff says that, even if you dutifully  
23 prepared a protocol, you did it the right way, you submitted it  
24 to the CPUC, they reviewed it, they approved it, and then  
25 you -- even if you perfectly complied with that protocol and

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1 did the shutoffs as you were authorized to do by the CPUC,  
2 we're going to come in and seek to impose billions of dollars  
3 of liability on PG&E for engaging in that authorized conduct.  
4 That is interference with the CPUC's authority to strike the  
5 right balance when it comes to when do the benefits of de-  
6 energization outweigh the harms of de-energization.

7 THE COURT: So when does a wrongdoer have to pay for  
8 harming someone? Is it at the -- the CPUC approval isn't a  
9 shield, is it?

10 MR. NASAB: Well --

11 THE COURT: It's not a -- it's not a get-out-of-jail-  
12 free card. So what does it do if the utility is negligent?

13 MR. NASAB: Well, Your Honor --

14 THE COURT: Or does something wrong. I'll leave --  
15 strike the word "negligent". Does something that the plaintiff  
16 believes can lead to a remedy.

17 MR. NASAB: Well, Your Honor, there is a cause of  
18 action under PU Code Section 2106.

19 THE COURT: Right.

20 MR. NASAB: As the Court -- the Supreme Court of  
21 California made clear in Covalt, that has to be read to be  
22 limited to where the award of damages does not interfere or  
23 hinder CPUC policy. Now, where does that happen? Where does  
24 that limitation come in? Sometimes drawing the line can be  
25 difficult, but in a case like this it is not, because what the

PG&E Corp.; Gantner v. PG&E Corp., et al.

1 Supreme Court of California in Covalt and in Hartwell has been  
2 clear about is that you can't award liability for conduct that  
3 the CPUC authorizes.

4 So let me give an example, right, the Hartwell  
5 example. That said, in a situation where plaintiffs said that  
6 a water utility had committed wrongdoing, to use the court's  
7 words --

8 THE COURT: Right.

9 MR. NASAB: -- by allowing certain contaminants into  
10 water, it could then sue the utility for negligence. And what  
11 the court there said was, if the CPUC has investigated and  
12 regulated the contaminant at issue and set an allowable limit,  
13 then you can't come in and say, "I'm going to impose liability  
14 for that authorized conduct."

15 Covalt was similar. There, the plaintiff alleged the  
16 wrongdoing was that the utility had failed to mitigate electric  
17 and magnetic fields emanating from power lines that ran on the  
18 plaintiff's property. And the Supreme Court there said the  
19 CPUC has looked at this, and it has authorized the utility not  
20 to mitigate these risks. And so you can't come and award  
21 liability for conduct that has been authorized.

22 THE COURT: But can you -- can a court award liability  
23 for negligently conducting authorized conduct? In other words,  
24 suppose the CPUC authorized the utility to activate smart  
25 meters and then somebody gets electrocuted on a smart meter



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1 because it was negligently installed. Is that immune because  
2 of this preemption concept?

3 MR. NASAB: Your Honor, a couple points on that  
4 question. Number one, not the case we have here. Right? And  
5 I would very much acknowledge that, if you had a case like  
6 that, the analysis would be different. Right? Now, where you  
7 draw the particular line will depend on the facts of whatever  
8 is presented.

9 THE COURT: Well, but I drew it. So somebody screwed  
10 up the smart meter and the plaintiff got electrocuted.

11 MR. NASAB: And that negligence was -- there was a  
12 provision -- the CPUC has a standard, there's negligence, and  
13 that issue causes harm. So, for example -- we could use an  
14 example that's very specific to the Hartwell case. There, if a  
15 contaminant level is, say, 5 and the utility had allowed a  
16 contaminant level of 10 in the water, then yes. The Supreme  
17 Court said, in that situation, a suit for past damages is  
18 allowable. What you can't do is seek to impose liability for  
19 what's been regulated and authorized.

20 THE COURT: So if the Commission authorized the PSPSes  
21 during certain hours or during certain wind conditions, and the  
22 utility didn't comply and went outside of the limits of that,  
23 then maybe they could be held liable.

24 MR. NASAB: It would be a very different analysis than  
25 the allegations here.

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1 THE COURT: Well, I think you made -- in your papers,  
2 argued that there's no allegation of negligence that is  
3 temporal, namely, in the context of the PSPSes and the  
4 blackouts. But it all predates that by pre-petition, to be  
5 blunt.

6 MR. NASAB: Right. And the plaintiff was very  
7 explicit about that in its opposition. It said, we're not  
8 saying that you did anything wrong, we're not saying that it  
9 wasn't necessary, and we're not saying you violated any CPUC  
10 guidelines or protocols in enacting the five power shutoffs  
11 that are at issue here. So again, right, what they're seeking  
12 to do is impose liability for an authorized action, and they  
13 can't do that.

14 THE COURT: Okay.

15 MR. NASAB: Now, of course the plaintiff -- I'll just  
16 note that, in their brief, they said over and over again that  
17 the Court should draw an inference from the CPUC's silence on  
18 this issue. And then of course the CPUC spoke, and they put in  
19 a brief that concurred that the complaint, as cast here, is  
20 preempted. And the plaintiffs have responded by then attacking  
21 the CPUC for voicing its opinion and have asked the Court to  
22 totally disregard it, which I thought was quite the change in  
23 tune. And --

24 THE COURT: Well, what do you do if you don't like the  
25 argument on the other side? You throw it out, right?

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1 MR. NASAB: But we think this -- what really matters  
2 here is that the position staked out by the CPUC is very much  
3 consistent with the Supreme Court of California's framework for  
4 how to look at these issues.

5 THE COURT: Well, but doesn't it get back to the very  
6 point you just made: there's no allegation of negligence? So  
7 what has the utility been charged with doing? What did they do  
8 wrong? Well, the plaintiff says they did years and years of  
9 mismanagement of their transmission lines and vegetation  
10 policies, et cetera, et cetera.

11 MR. NASAB: And, Your Honor, that doesn't change the  
12 preemption analysis at all. What that does is raise a  
13 causation problem for the plaintiffs, but it doesn't change the  
14 preemption analysis. It doesn't -- and the reason for that,  
15 right, is because it doesn't change the fact that they're  
16 trying to impose liability for an act, the five power shutoffs  
17 that were, as the complaint is pled, authorized.

18 THE COURT: But don't you agree, though -- I know  
19 you're going to say of course you agree -- even if you don't  
20 get to preemption, if there's no causation, you're equally not  
21 liable? I mean, you can't be liable if you didn't cause the  
22 harm; right?

23 MR. NASAB: Absolutely, Your Honor. The whole -- this  
24 whole disassociation between the event that gives rise to  
25 liability and the negligence, it rests, apparently, on a theory

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1 that the negligence -- some of which is from 2010, 2012.  
2 Frankly, a lot of it doesn't have to do with the primary risk  
3 PSPS is trying to address, which is, hundred-mile-an-hour winds  
4 or ninety-mile-an-hour winds breaking branches off and carrying  
5 them a considerable distance into power lines. It's not even  
6 related to that. But the key point is that the complaint  
7 doesn't even, at least in a factual way, allege a link between  
8 those two things.

9 Now, the complaint says it a few times; right? It  
10 says, well, one necessitated the other. But that's not enough.  
11 You have to bring forth facts. And --

12 THE COURT: Well, doesn't Iqbal and the other Supreme  
13 Court cases say you have to have a plausible link? You have  
14 to -- you have to get to the result as a matter of  
15 plausibility. And I think what you're saying is, even if you  
16 were negligent in running your transmission lines and your  
17 vegetation, there's no link to the plaintiff's lights going  
18 out.

19 MR. NASAB: Your Honor, PSPS is a statewide  
20 phenomenon.

21 THE COURT: Right. Right.

22 MR. NASAB: PGE's not the only utility that is  
23 authorized and has been engaging in them. The utilities in  
24 Southern California are also -- have also engaged, in 2019, in  
25 power shutoffs, because what triggers it, and that's clear from

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1 the regulatory history that has been submitted, is weather.  
2 Right? When you get this cocktail of factors, the strong winds  
3 from inland that are dry, the tinder-dry vegetation, right, it  
4 tends to happen in very concentrated periods of time. That's  
5 why you see these in October and November and in certain  
6 discrete geographic regions.

7 And it's that that is causing the events to be  
8 triggered, not -- the CPUC's not saying, "Hey, if your system  
9 has been negligently run, then shut off the power." What it's  
10 saying is, when the weather is extreme and it presents such a  
11 risk that it outweighs the harms from cutting off power, then  
12 we authorize you to engage in it, subject to an approved  
13 protocol.

14 And so there is no plausible link. We don't think  
15 they could estab -- the complaint doesn't try. But if you look  
16 at the overall circumstances of PSPS, we don't think any  
17 attempt would be successful at that.

18 I'm going to briefly touch on Tariff Rule 14. Your  
19 Honor, there's no dispute that the tariff rule governs the  
20 relationship between the utility and its customers. And that's  
21 what the class is; it's composed of PG&E's customers.

22 THE COURT: Right.

23 MR. NASAB: It says -- no dispute about this -- that  
24 PG&E may interrupt service to a customer, without liability, if  
25 PG&E determines that it's necessary for a number of things,

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1 including public safety. And there is no dispute here; right?  
2 Key point. There's no dispute here that PG&E interrupted  
3 service during these five events, not because it felt like it  
4 or there was some other reason, but it did it for public  
5 safety. Plaintiff doesn't dispute that; it acknowledges that.

6 And so you don't have to have a PhD in logic to know  
7 that therefore this rule is triggered and PG&E does not have  
8 liability under the circumstances. Plaintiff argues, look,  
9 this rule has been around even before PSPS was around. That's  
10 true. When this rule was put in place --

11 THE COURT: Well, yeah, they indicate a history why it  
12 came in place.

13 MR. NASAB: Which, frankly -- set the -- put that  
14 issue aside for -- I'm not sure that I follow that argument,  
15 that the reason it was put in place was because of wholesale  
16 transmission issues. Right? This has to do with weighing two  
17 competing considerations. When you have an overriding  
18 consideration like you need to do maintenance, there's an  
19 emergency, a (sic) safety of an employee is at risk -- I don't  
20 know that they've given us any reason to believe that the only  
21 purpose that that could be is to allow the utility to exercise  
22 the ability to interrupt service, without liability, when one  
23 of those enumerated factors is present.

24 Now, that just happens to be, right, the same exact  
25 reason that it's being implemented in PSPS. Admittedly, when

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1 the rule was put in place, I don't think people were  
2 contemplating the scale of shutoffs that are being done to  
3 prevent wildfires. But I don't think that that takes us out of  
4 the umbrella of this rule.

5 Now, is it the case that the CPUC or the legislature  
6 may want to revisit the umbrella that's been provided in this  
7 rule and take it away or modify it? Of course. But today the  
8 rule that PG&E has that governed its relationship with its  
9 customers and is applicable is the rule that says, we may, in  
10 our judgment when we think public safety is at risk, interrupt  
11 service, without liability.

12 They also cite the Tesoro case.

13 THE COURT: Right.

14 MR. NASAB: Separate issue. Separate provision. Not  
15 this balancing --

16 THE COURT: You said it's a different provision of the  
17 tariff, right?

18 MR. NASAB: Yes. And the court there -- frankly, PG&E  
19 was taking a more aggressive position in that case, saying that  
20 any transmission-related outage of any kind was -- they were  
21 not liable for it. And the court said, look, I'm looking at  
22 the sentence; it says, event that's out of your control, event  
23 that's out of your control, event that's out of your control,  
24 or any other outage. I read that to mean any other outage  
25 that's outside your control. That's how the court read that

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1 provision. Has nothing to do with paragraph 4, which deals  
2 with these situations that entail, hey, I got -- I have two  
3 competing considerations: interrupt service or endanger a  
4 customer or an employee or the public.

5 THE COURT: Okay, we need to let you reserve your  
6 time --

7 MR. NASAB: Yeah --

8 THE COURT: -- and share your --

9 MR. NASAB: I was just going to -- I'm going to  
10 reserve -- I'm just going to -- one minute on class action.  
11 The only point I wanted to make on this, Your Honor, was -- I  
12 just don't want this point to get lost. Plaintiff acknowledges  
13 that there's not one PSPS, that there's five of them. But it's  
14 not just that there's five. Right? Each of those events is a  
15 large number of underlying de-energization events. This  
16 doesn't happen --

17 THE COURT: In Northern California, you probably can  
18 count them, right?

19 MR. NASAB: Right. It doesn't happen on a region  
20 basis. It happens at the distribution level, circuit by  
21 circuit, on the transmission line, line by line. And if you  
22 look at the late-October events, those large events, they were  
23 hundreds and hundreds of distribution circuits, and hundreds  
24 and hundreds of transmission lines.

25 So we're not just getting one case; we're getting, for



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1 each event, for even one event, hundreds and hundreds of  
2 different cases that each have different causation and  
3 negligence allegations that would need to be tied to them.

4 THE COURT: But if I accept your other arguments, we  
5 never get there.

6 MR. NASAB: Absolutely. And we don't get to the issue  
7 of damages, which I thought Your Honor was consistent with our  
8 view in the Herndon case, where it says, look, the damages are  
9 all individual: was the person home during the shutoff; was  
10 this a vacation home or a primary home; are they afraid of the  
11 dark; are they not afraid of the dark; was their phone charged;  
12 do they have a winery where they had a vineyard issue; do they  
13 not have a winery. Those are all highly individual issues and  
14 they're not the stuff of a class action.

15 I will reserve the rest of my time. Thank you, Your  
16 Honor.

17 THE COURT: Okay. Thank you very much.

18 For the Commission? You want to cite appellate rules?  
19 Great to have an appellate rule cited, just for old time's  
20 sake. You relied on Rule 8000-something for your amicus brief.  
21 But that's okay; I'll let you in.

22 MR. KOLATCH: Thanks, Your Honor. Your Honor --

23 THE COURT: I need a name.

24 MR. KOLATCH: Joseph Kolatch of Paul, Weiss, Rifkind,  
25 Wharton & Garrison, on behalf of the California Public

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1 Utilities Commission.

2 As Your Honor is aware, the Commission filed an amicus  
3 brief last week respecting the debtors' motion to dismiss.

4 Given that the briefing on the motion to dismiss focused in  
5 part on whether plaintiff's claims in this case interfere with  
6 the Commission's regulatory authority over the shutoffs, the  
7 Commission thought it'd be helpful to weigh in on that issue.

8 The Commission studied carefully the parties' briefing  
9 and gave thoughtful consideration to Section 1759 of the Code  
10 and specifically how that provision applies to the allegation  
11 in plaintiff's complaint. And as the Commission's brief  
12 explains, the Commission believes that litigation and  
13 adjudication of plaintiff's claims, as framed in the complaint,  
14 would interfere with enforcement of the Commission's guidelines  
15 concerning public-safety power shutoffs.

16 THE COURT: But do you agree with -- the same question  
17 I asked prior counsel. If there was some negligent conduct in  
18 carrying out a PSPS, there might be liability. There's just  
19 none alleged here. Is that a fair analysis?

20 MR. KOLATCH: I would agree with the second part of  
21 that, which is to say it's not alleged here. There may be some  
22 set of circumstances, and the Commission would have to study  
23 those set of circumstances in coming to a different conclusion.  
24 But the allegations as framed in the complaint don't rise to --

25 THE COURT: Well, but I'll phrase it differently. The

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1 Commission is in the business of regulating utilities,  
2 consistent with safety and et cetera, et cetera, but it isn't  
3 in the position or the -- it's not -- its mission isn't to hand  
4 out free negligence passes. So if somebody acts properly,  
5 that's not a license to be negligent.

6 MR. KOLATCH: That's correct, Your Honor. It's not --

7 THE COURT: And that's all I'm saying.

8 MR. KOLATCH: The position is not to say that there  
9 can never be a set of circumstances --

10 THE COURT: Right. Right.

11 MR. KOLATCH: -- under which a negligence claim could  
12 succeed. It's just that --

13 THE COURT: So my example of the smart meter that is  
14 negligently -- is authorized to be activated but negligently  
15 installed and electrocutes somebody, there's no immunity based  
16 upon the CPUC's oversight. Do you agree with that?

17 MR. KOLATCH: I would be hesitant to agree and put the  
18 Commission stamp of approval on a --

19 THE COURT: No, I wouldn't want you to, but --

20 MR. KOLATCH: -- specific set of circumstances.

21 THE COURT: -- I love hypotheticals, and it seemed to  
22 me that --

23 MR. KOLATCH: Understood.

24 THE COURT: -- that if you do something -- if you're  
25 authorized to do something but you do it negligently, then

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1 there might be a consequence.

2 MR. KOLATCH: I would agree with that; there could  
3 be --

4 THE COURT: Okay.

5 MR. KOLATCH: -- those set of circumstances. But --

6 THE COURT: Okay.

7 MR. KOLATCH: -- the main point, as Mr. Nasab  
8 mentioned, is that the allegations in the complaint, as framed,  
9 don't -- are not anywhere near that level, in the Commission's  
10 view.

11 THE COURT: Do you think the complaint is amendable?

12 MR. KOLATCH: Your Honor, that is -- to the extent the  
13 plaintiffs ultimately do amend the complaint, the Commission  
14 would of course look at those amended allegations.

15 THE COURT: No, I understand, but what I'm getting  
16 at -- I'm trying to make sure I understand as well as you do  
17 the interplay of one section that says what the Commission can  
18 do and the Court can't, and another section that says what  
19 negligent people must abide by. And those -- I don't think  
20 those sections are in conflict, but you could have a situation  
21 where somebody walks a fine line between complying with one and  
22 violating the other.

23 MR. KOLATCH: That's correct. And I would think there  
24 could be a set of circumstances with specific shutdowns and  
25 specific power lines, in which you might have a negligence

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1 claim that could work. But again -- and this gets to the point  
2 that Mr. Nasab was making -- the generalized allegations in the  
3 complaint that PG&E's failure to maintain its entire grid, in  
4 the Commission's view, runs (sic) afoul of Section 1759.

5 And just to kind of bring this all together; the  
6 plaintiff hasn't alleged any particular decision by the utility  
7 to conduct a certain shutoff violates the Commission's policies  
8 concerning shutoffs or resulted from some underlying failure to  
9 comply with a particular mandate. Instead, the plaintiff seeks  
10 to certify a class that would include every PG&E customer who  
11 was affected by the outages of late 2019 and impose blanket  
12 liability on the utility for having conducted a shutoff that  
13 was authorized by the Commission.

14 THE COURT: But that -- but if one plaintiff brought  
15 the suit not as a class action, you'd make the same argument  
16 about --

17 MR. NASAB: That's correct.

18 THE COURT: -- about the statute --

19 MR. KOLATCH: Yeah.

20 THE COURT: -- and the interplay, not the ability of  
21 one plaintiff to represent the interests of another one.

22 MR. KOLATCH: It's not tied to the class. It's tied  
23 to the fact that it's seeking to impose liability for actions  
24 that the Commission authorized and that are not alleged to have  
25 been in violation of a Commission rule or order.

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1 And so for those reasons, Your Honor, the Commission  
2 believes that Section 1759 bars plaintiff's claims.

3 THE COURT: And I understood from your papers, you  
4 take no position on the tariff question?

5 MR. KOLATCH: That's correct, Your Honor.

6 THE COURT: Okay. Thank you very much.

7 All right, so the debtor and/or CPUC have ten minutes  
8 to reserve.

9 Mr. Carlin, are you up? Just a lowly class-action  
10 lawyer? Welcome to --

11 MR. CARLIN: That's right, Your Honor.

12 THE COURT: Welcome to the bankruptcy court.

13 You have thirty minutes.

14 MR. CARLIN: So I don't know if it's intentional or  
15 not, but what we're hearing from the debtor and from the CPUC  
16 is a complete mischaracterization of what we're doing here. We  
17 are not saying that any of these PSPSes should not have been  
18 done. We're not saying that PG&E did something wrong in the  
19 implementation of those PSPSes. And that's the only thing that  
20 would implicate PUC regulatory authority.

21 What we are saying in this case, Your Honor -- and I  
22 think you got to it early on -- the issue is negligence in the  
23 maintenance of their properties, of their assets. And we  
24 allege pages and pages in the complaint, chapter and verse, of  
25 all the negligence that they have engaged in over the years but

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1 continuing up through the blackouts, in not properly  
2 maintaining their assets, their --

3 THE COURT: Did your co-counsel remind you of the  
4 bankruptcy concept of petition date and talk about the  
5 operative facts all predate the petition? Is that -- any  
6 relevance to that?

7 MR. CARLIN: Well, it seems to me, Your Honor -- we  
8 have talked about that, but I don't see that's an issue,  
9 because the damage --

10 THE COURT: But when did the operative facts occur?  
11 When did the misconduct -- when did the mischief take place?

12 MR. CARLIN: Well, a lot of the negligence took place  
13 prior to the petition date. But --

14 THE COURT: All of it.

15 MR. CARLIN: But the -- not all of it --

16 THE COURT: Well --

17 MR. CARLIN: -- because there're still --

18 THE COURT: All of it --

19 MR. CARLIN: -- months and months of misconduct.

20 THE COURT: All of it, as alleged.

21 MR. CARLIN: Well, no, what we allege is, throughout  
22 the -- up until the shutoffs, they -- that PG&E violated --

23 THE COURT: But, Mr. Carlin, there was no damage --

24 MR. CARLIN: That's right.

25 THE COURT: -- up until the shutoff. Your client

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1 might have been lucky in the sense that he didn't lose his home  
2 the way so many other victims did because of fires that some  
3 people blame PG&E for; but your client didn't, so there was --  
4 the operative facts gave rise to no claim, because on the  
5 petition date or at the last day of September of 2019, he had  
6 no claim. So --

7 MR. CARLIN: I understand, Your Honor, but the --

8 THE COURT: So why -- so therefore, even if there was  
9 the most egregious of negligent conduct, there was no damage.  
10 So why is there a claim now, because the company was operating  
11 consistent with the CPUC authorizations?

12 MR. CARLIN: Because the damage occurred after the  
13 bankruptcy petition was filed. So the cause of action didn't  
14 arise until October or November --

15 THE COURT: What --

16 MR. CARLIN: -- which is past --

17 THE COURT: What operative facts --

18 MR. CARLIN: -- past the bar date.

19 THE COURT: -- are in the complaint, about the damage  
20 that occurred when it occurred?

21 MR. CARLIN: About the damage that occurred?

22 THE COURT: Well, but Mr. Carlin --

23 MR. CARLIN: Well, we talk about the damage --

24 THE COURT: Let's --

25 MR. CARLIN: Yeah. Okay.



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1 THE COURT: Let's not change the facts. Suppose your  
2 client bought his vineyard on the day after the bankruptcy. So  
3 nothing was pre-petition as far as he was concerned. He didn't  
4 suffer any harm all the way through the end of September, to --  
5 had no claim, because he (sic) was no harm.

6 MR. CARLIN: Right.

7 THE COURT: But then in October, the lights went off  
8 for a few hours or few days, and he suffered damage to his  
9 grapes. I understand. I don't make light of that. But why is  
10 PG&E liable for that, when it didn't do anything wrong that  
11 made his -- damaged his grapes? His grapes got damaged because  
12 the power went off. The power went off because the utility  
13 turned the power off because it had the right, if not the duty,  
14 to.

15 MR. CARLIN: Well, it went --

16 THE COURT: So why is that a negligent act?

17 MR. CARLIN: Because at the time that they made the  
18 decision to turn off the power, their equipment was not  
19 properly maintained.

20 And, Your Honor, let me --

21 THE COURT: Okay.

22 MR. CARLIN: -- point something out to you. The PG&E  
23 cited, in their brief, to the amended PG&E public-safety power-  
24 shutoff report to the CPUC, for the October 9th through 12th  
25 de-energization event. That's the first one.

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1 THE COURT: Um-hum.

2 MR. CARLIN: And what PG&E said in here -- it's very  
3 telling, Your Honor. It's on page 9. They talked about the  
4 factors considered in the decision to shut off the power. And  
5 I don't know if you have this, Your Honor, because it's a link  
6 in a footnote in their brief. But they brought it before the  
7 Court. So --

8 THE COURT: The footnote 8, did you say?

9 MR. CARLIN: I can't recall the exact --

10 THE COURT: Well, I mean, there's a --

11 MR. CARLIN: -- footnote number, but --

12 THE COURT: -- two footnotes; one of them --

13 MR. CARLIN: Yeah.

14 THE COURT: -- has some pictures. And that's the page  
15 you gave me, I thought; page 9.

16 UNIDENTIFIED SPEAKER: Counsel, do you have a copy?

17 MR. CARLIN: Not --

18 I can show it to Your Honor.

19 THE COURT: Well, I think I've got it. It's the page  
20 9 up in the upper right-hand corner; right?

21 MR. CARLIN: I can find it in just a moment.

22 THE COURT: Well, all I'm referencing is that on page  
23 9 there is some text and there're two footnotes, and both those  
24 footnotes --

25 MR. CARLIN: Yes, that's it, Your Honor. Yeah.

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1 THE COURT: -- reference a URL. And so therefore,  
2 what do I glean from that?

3 MR. CARLIN: All right, so what it says is -- they're  
4 talking about the factors and the decision to de-energize. And  
5 it says, "transmission-line scope". And it talks about  
6 insights from enhanced inspections and other asset-health data  
7 informed assessment of each transmission line's wildfire risk,  
8 which includes historical outages, open maintenance tags, which  
9 clearly means maintenance that has not been done; date of last  
10 vegetation patrol and vegetation LIDAR data. And --

11 THE COURT: Okay, now you got to stop there because  
12 I'm not seeing where you're reading. Are you reading in the  
13 footnote or in the text?

14 MR. CARLIN: No. It's from the document that was  
15 referenced in their footnote, Your Honor. And I can pass it up  
16 to Your Honor --

17 THE COURT: No, I believe you.

18 MR. CARLIN: -- if you want to see it.

19 THE COURT: I can look it up later.

20 MR. CARLIN: All right.

21 THE COURT: So again, it's in the document referenced  
22 in the footnote --

23 MR. CARLIN: Yes.

24 THE COURT: -- not in the document itself?

25 MR. CARLIN: Right.

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1 THE COURT: Okay.

2 MR. CARLIN: And here's the significant portion, Your  
3 Honor; it says, "Assessment results confirm asset health and  
4 low wildfire risk for the majority of transmission lines within  
5 the potential PSPS scope, resulting in the ability to safely  
6 maintain power on these lines and to reduce customer impacts."  
7 Now, reading between -- translated, Your Honor, what that means  
8 is -- "asset health" is talking about the health of their  
9 assets, the poles, the transmission lines, the trees that are  
10 in the way; all of that. That's asset health.

11 THE COURT: Okay.

12 MR. CARLIN: And they're saying it's healthy for the  
13 majority of the transmission lines within the scope of the  
14 potential power shutoff, resulting in the ability to safely  
15 maintain power on those lines and reduce customer impacts. So  
16 what does that mean? That means they shut off the ones where  
17 the assets were not healthy, and they did not shut off the ones  
18 were the assets were healthy. All right?

19 THE COURT: I'm still --

20 MR. CARLIN: And that has to do with their maintenance  
21 of those lines in October of 2019, which is during the post-  
22 petition period.

23 THE COURT: But I'm still not able to determine where  
24 your client caused -- suffered damage caused by what PG&E did.  
25 You're saying that, because they had these asset-health issues,

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1 they turned the power off and therefore your client suffered.

2 I don't deny that he --

3 MR. CARLIN: Right.

4 THE COURT: -- suffered a loss because his power went  
5 off, but why does that become a liability based upon  
6 negligence --

7 MR. CARLIN: Well, we --

8 THE COURT: -- which is the theory of your complaint?

9 MR. CARLIN: Right. We've alleged that the reason  
10 their assets were not healthy is because they negligently  
11 maintained those assets.

12 THE COURT: Okay.

13 MR. CARLIN: And that's -- I mean, that's why so many  
14 of us are here: because of the wild -- the fires.

15 THE COURT: Well --

16 MR. CARLIN: It's all --

17 THE COURT: -- but not --

18 MR. CARLIN: -- the same --

19 THE COURT: -- not you today in your capacity, because  
20 your client did not suffer a fire loss. Your client suffered a  
21 loss because the utility was, to be blunt, trying to avoid  
22 another fire loss --

23 MR. CARLIN: Right.

24 THE COURT: -- including your client.

25 MR. CARLIN: Right.

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1 THE COURT: In fact, oddly enough, if they hadn't  
2 turned the power off, maybe your client would have suffered.  
3 We don't know. But that's not the point. The point is -- I'm  
4 missing how I'm supposed to take a reference to something that  
5 supports the philosophy, perhaps, of the PSPs (sic) and why you  
6 have them, and translate that to causation for your client's  
7 damage. I'll accept that, for these purposes, PG&E caused the  
8 conditions that led -- for years, that led to so many horrible  
9 things. But they didn't cause the condition that caused your  
10 client's lights to go off. That's why you have to show me how  
11 to get -- to cross that bridge, that causation gap, if you  
12 will.

13 MR. CARLIN: Right. Well, that's where reasonable  
14 inference comes in, Your Honor. We're not going to be able, at  
15 this point, without doing discovery, to know the specifics of  
16 each line shutoff they did, because we haven't been able to do  
17 discovery. But what we do know and what we have alleged and, I  
18 think, what is known in this entire room and the state of  
19 California -- in fact --

20 THE COURT: No, it's well known -- we know that we're  
21 here because tens of thousands of people suffered horrendous  
22 injuries, and --

23 MR. CARLIN: Right.

24 THE COURT: -- companies and so on. But your client  
25 isn't one of them. And so your client is not a fire victim --

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1 MR. CARLIN: Right.

2 THE COURT: -- or a fire survivor. Your client got  
3 hurt because the utility was trying to avoid another fire and,  
4 therefore, you're saying -- therefore your client is owed money  
5 and PG&E's liable to him. And that's what you're up against in  
6 terms of convincing me that that is even plausible legal theory  
7 on negligence.

8 MR. CARLIN: So what we're saying, Your Honor, is that  
9 the reason they had to shut down the lines they did --

10 THE COURT: Um-hum.

11 MR. CARLIN: -- is because of their negligent  
12 maintenance. And that negligent maintenance carried through  
13 from post- -- pre-petition to post-petition. It carried on all  
14 the way through up until the date that they finally made the  
15 decision, really unprecedented decision, to engage in these  
16 massive blackouts. And --

17 THE COURT: But they --

18 MR. CARLIN: -- Gov. Newsom said -

19 THE COURT: But they had authority to do it.

20 MR. CARLIN: They had authority to do the shutoff --  
21 the shutdowns. We're not contesting that. What we're saying  
22 is they wouldn't have had to do them -- they wouldn't have had  
23 to do the ones they did, had they not negligently maintained  
24 their assets.

25 THE COURT: No, I understand. But that's really what

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1 it comes down to. It comes right back down to the causation.

2 MR. CARLIN: Right, and so as we said in our --

3 THE COURT: I mean, we can go back to Posgraff  
4 (phonetic). Mrs. Posgraff probably wouldn't have been injured  
5 if they hadn't done whatever they set up in the station; right?  
6 Remember that?

7 MR. CARLIN: Sure.

8 THE COURT: Or is that before your time? She was a  
9 friend of mine, actually.

10 (Laughter.)

11 THE COURT: No, but isn't that what happened? I mean,  
12 it was this causation linkage. And at some point, the -- our  
13 tort law doesn't take you out to these extremes; it doesn't --

14 MR. CARLIN: Well, I think you --

15 THE COURT: -- it doesn't have the --

16 MR. CARLIN: -- draw a reasonable inference, Your  
17 Honor.

18 THE COURT: Okay.

19 MR. CARLIN: The reasonable inference from the massive  
20 mismanagement of their assets is that they were forced to  
21 engage in these shutdowns --

22 THE COURT: Okay.

23 MR. CARLIN: -- because of that massive mismanagement.  
24 And I think that's confirmed by their report to the PUC.

25 THE COURT: Okay. I got it.



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1 MR. CARLIN: Gov. Newsom, I was going to say, he  
2 called the shutdowns the unacceptable result of PG&E's greed  
3 and mismanagement. And that's fundamentally what we're saying.

4 THE COURT: But again, aren't we back to where the  
5 CPUC has a role to play and it has the ability to cause the  
6 utility to pay some price for bringing about these things to  
7 happen? So again, we're back to where we were in the opening  
8 argument: between the role of the CPUC and the role of the  
9 Court's tort issues.

10 MR. CARLIN: Right. So the issue of whether the  
11 PUC -- whether this would interfere with their regulatory  
12 authority, is that what you're saying, Your Honor?

13 THE COURT: Correct.

14 MR. CARLIN: Right. So you know, I hear -- they keep  
15 saying that and -- but there's no beef. Where's the beef? I  
16 have not once heard any explanation for how -- how awarding  
17 damages in this case would interfere with their ability to  
18 regulate PG&E.

19 THE COURT: Well, you know, Mr. Carlin, those who come  
20 in my court often know that I'm a horrendous hypotheticaler. So  
21 I'm going to hypothetical you. What if PG&E and done  
22 absolutely Grade A vegetation and transmission line management  
23 for ten years, but there were high winds last fall and they got  
24 permission to shut down because of the risk and your client's  
25 vineyards were damaged? Would we be here?

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1 MR. CARLIN: No, absolutely not.

2 THE COURT: I mean, we wouldn't be in bankruptcy, but  
3 would your client have a claim for conduct for that? If I'm --  
4 I'm switching the facts.

5 MR. CARLIN: Right.

6 THE COURT: I'm saying the utility has never been  
7 negligent in maintaining its transmission lines but shut down  
8 the power because of the high winds, because it was  
9 anticipating risk of -- to all of us.

10 MR. CARLIN: No problem.

11 THE COURT: No problem?

12 MR. CARLIN: That's the whole point.

13 THE COURT: So we're back -- we're back to the --

14 MR. CARLIN: It's all about the negligence, Your  
15 Honor.

16 THE COURT: So we're back to the probability and the  
17 causation.

18 MR. CARLIN: Right.

19 THE COURT: Or would -- you want me to say the  
20 reasonable inference is years of neglect translates to  
21 something that was done later that didn't cause any direct  
22 damage to your client, but it's all a product of what happened  
23 in the past?

24 MR. CARLIN: Years of negligence up, into and  
25 including October of 2019.

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1 THE COURT: Well, I can go back and look at your  
2 complaint. I don't know that you -- that I recall, at least  
3 factually, alleging specific conduct post-petition.

4 MR. CARLIN: Well --

5 THE COURT: And you may have. I don't --

6 MR. CARLIN: Your Honor, to the extent that's an  
7 issue --

8 THE COURT: Of the complaint --

9 MR. CARLIN: -- I think this document we certainly  
10 could, in good faith, amend to --

11 THE COURT: I understand that maybe you could amend  
12 and one of the things that I have to think about in any  
13 12(b)(6) motion of any kind, is, you know, is their right to  
14 amend. But I mean, you're asking to amend because of a  
15 reference and a footnote in the opposition. You didn't even  
16 develop the argument until now and I'm -- that's why I had such  
17 trouble understanding it.

18 MR. CARLIN: Right, well, I -- in our defense, Your  
19 Honor, they raised, as I pointed out, in our motion to strike  
20 portion of their reply brief, they raised -- that's a new  
21 matter in their reply brief, this whole notion of causation.  
22 And so we didn't have much time to respond. But that's -- this  
23 is what we've been able to find. I don't think -- frankly, I  
24 don't think Your Honor should even consider the causation  
25 argument because they did not make it in their motion. And we

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1 move to strike that.

2 THE COURT: Well, then I am confused about some  
3 things. You just pointed me to the motion to dismiss.

4 MR. CARLIN: Right.

5 THE COURT: Page 9, footnotes 8 and 9. And that was  
6 not in an opposition. That was in the motion. So did I  
7 misunderstand? You just now made the argument that they raised  
8 something in their reply. But --

9 MR. CARLIN: Well, no. That -- they raised -- they  
10 had a link to this document for a different reason, to stand  
11 for something else. But we found the evidence in here that  
12 it's like --

13 THE COURT: Okay, all right. Maybe I -- that went  
14 over my head. Okay. Go ahead.

15 MR. CARLIN: All right. So again, there's simply  
16 no -- as we point out in our response to the CPUC's brief,  
17 there's no explanation as to how, how would this interfere with  
18 your ability to regulate PG&E? We're not trying to stop you  
19 from doing blackout -- from doing shutdowns. We're not trying  
20 to do anything, other than to say, hey, you were negligent in  
21 maintaining your grid. You caused damage and you should pay --  
22 pay damages for that. It's the same as for the wildfire  
23 victims. So there's actually no evidence before the Court,  
24 Your Honor, from PUC or from PG&E to actually support this bare  
25 assertion that somehow it'll affect their ability to regulate

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1 PG&E.

2 THE COURT: Well, okay. But -- I understand.

3 MR. CARLIN: I'd like to address Tariff 14, if --

4 THE COURT: Sure.

5 MR. CARLIN: Tariff 14. So the Tesoro (phonetic)  
6 opinion is dispositive, Your Honor. And the rule itself says  
7 that they -- there is no immunity when there's negligence. And  
8 this notion that there's a difference between paragraph 3 and  
9 paragraph 4 is just made up of whole cloth. It's all -- first  
10 of all, these are not numbered paragraphs. It's just --

11 THE COURT: I guess that's -- that's the answer then,  
12 right?

13 MR. CARLIN: It's just a follow-on sentence and PG&E  
14 argues that paragraph 4 is different somehow because it talks  
15 about a decision making process, right, a decision to shut  
16 down. And that was their argument in their reply brief and I  
17 think that's what I heard today. But if you take a look at  
18 paragraph 3, that covers outages, planned and unplanned. So  
19 paragraph 3 covers planned outages. Planned outages are  
20 outages for which you made a plan, you made a decision. So  
21 that's a distinction without a difference.

22 And I should say, the -- the Pink Dot case, which we  
23 cited, Your Honor, says that ambiguities in these tariff rules  
24 are construed against the drafter. So to the extent that  
25 there's any ambiguity on this, it certainly should be construed

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1 against PG&E. And I think it's noteworthy PUC didn't even  
2 bother to try and make that argument. And in fact, as we cited  
3 in our brief, the PUC has spoken many times and said that  
4 Tariff 14 does not apply to PSPS events.

5 On the class certification issue, Your Honor, it's  
6 really -- this is not the proper stage to decide that. But I  
7 think that we have, you know, a class member, a lead plaintiff  
8 who's suffered the damages that 800 -- the same kind of damages  
9 that 800,000 to a million of these PG&E customers --

10 THE COURT: But I think -- I think the argument is  
11 that that's a -- that's for another day, isn't it?

12 MR. CARLIN: That's -- our primary argument of that is  
13 that's for another day. It's for a class certification motion.  
14 I don't think Your Honor should reach it today.

15 THE COURT: Well, if I grant the motion to dismiss,  
16 we're done. And if I --

17 MR. CARLIN: Right.

18 THE COURT: And if I deny it and you get past that  
19 stage, then perhaps we visit that later.

20 MR. CARLIN: Okay.

21 THE COURT: Do you agree that if I am not persuaded by  
22 your argument and I make the decision that the claim should  
23 be -- the motion to dismiss should be granted, then your Rule  
24 23 class-action claim has to fall by the same wayside. Don't  
25 you agree?

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1 MR. CARLIN: Yeah. Well, sure, yeah.

2 THE COURT: I mean, I didn't -- I didn't even --

3 MR. CARLIN: Obviously if our --

4 THE COURT: I didn't even realize that that was a  
5 motion and a class claim filed. I mean, I don't sit and, you  
6 know, patrol the docket. I have enough to do.

7 MR. CARLIN: Yeah.

8 THE COURT: But it seems to me that it's a little belt  
9 and suspenders from your point of view, if this adversary  
10 proceeding survives as a class action, I don't know why you  
11 need to have a class proof of claim and vice versa. But if you  
12 don't have the ability to prosecute the class action, then you  
13 don't have a right to prosecute the class claim, even if one  
14 can be brought for a post-petition conduct, agreed? The  
15 agreement --

16 MR. CARLIN: Sure. I mean --

17 THE COURT: Okay, okay.

18 MR. CARLIN: -- obviously if you say we don't have a  
19 cause of action, then we can't bring a class claim.

20 THE COURT: Well, but we've already had a class claim  
21 elsewhere in this case, you may be aware. But the point is  
22 those were pre-petition. Yours and your theory of the case is  
23 post-petition and I hadn't -- I hadn't taken time and didn't  
24 choose to take any time, because I've been a little busy, is to  
25 think about whether you could even maintain a post-petition

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1 Rule 23 class claim. I --

2 MR. CARLIN: Right.

3 THE COURT: -- don't worry about it. It's for another  
4 day, or not. Okay. I got it. Anything further, Mr. Carlin?

5 MR. CARLIN: I guess I would just say that this --  
6 these blackouts caused real, substantial harm to 800,000 to a  
7 million households and -- and maybe double that many people,  
8 Your Honor. If there's -- there's got to be some mechanism for  
9 these people to get some kind of compensation. And PG&E has  
10 stated unequivocally in their 10K or 10Q -- I'm not a  
11 securities lawyer, one of those --

12 THE COURT: Something.

13 MR. CARLIN: -- they're not going to pay any more  
14 money on that, period. And so this is the only chance, Your  
15 Honor. This is the only forum in which these people will be  
16 able to get a recovery. And the class --

17 THE COURT: Well, there's a political forum.

18 MR. CARLIN: Well, yeah, but there's no guarantees  
19 there at all.

20 THE COURT: No, I -- no, I understand that.

21 MR. CARLIN: And PG&E, they noted in their reply brief  
22 that there is some legislation pending. I'm familiar with  
23 that, the Scott Wiener legislation. But that only addresses  
24 prospective harm, not retrospective.

25 THE COURT: But a trial -- a trial court isn't



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1 supposed to decide, you know, this motion should be denied  
2 because you have no other way to recover. This motion should  
3 be granted or denied based upon its own strength or weaknesses.  
4 I --

5 MR. CARLIN: Right, I understand that, of course.

6 THE COURT: I'd be a great policymaker if I could just  
7 grant motions and then adopt new policies, but that's not --  
8 you know, it's out of my pay grade. Okay, I got it.

9 MR. CARLIN: I understand that. But I -- you know, I  
10 believe the law is solidly on our side. This is negligent  
11 conduct that caused the need for these shutoffs. And I think  
12 it's a very simple equation and one that the Court can easily  
13 draw an inference as to.

14 THE COURT: Okay. Thank you, Mr. Carlin.

15 MR. CARLIN: Thank you.

16 THE COURT: Okay, debtors, you have ten minutes. Go,  
17 Mr. Nasab? And you're going to take all your time, right?  
18 You're not going to share with your colleague?

19 MR. NASAB: Well, I don't think I'm going to need all  
20 ten minutes, but I'm not sure they need it either.

21 THE COURT: Whatever. It's up to you.

22 MR. NASAB: The first -- I just want to pick off where  
23 Mr. Carlin left off, which he said that these shutoffs caused  
24 substantial harm. I don't think, Your Honor, there's any  
25 denying that. But there's also no denying, it's a matter of

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1 fact, that is -- we showed you four of the pictures. There are  
2 many, many more, that these shutoffs averted dozens of  
3 ignitions during a time of extreme, extreme weather, right?

4 Some of these events, we had seventy, eighty mile an  
5 hour winds, when the vegetation was tinder dry. Your Honor is  
6 aware of the potentially catastrophic results that could happen  
7 when the weather is like that.

8 THE COURT: I've had trees go down in my neighborhood.

9 MR. NASAB: And Your Honor, it's -- that's exactly why  
10 this is a -- this is a -- that balance, how do you balance?  
11 It's very difficult, right? And it's one that evolves with  
12 experience. We learn from this year. Next year, we might --  
13 the CPUC may adjust the protocols. Okay, they overdid it here,  
14 they underdid it there. And that's exactly why the -- this is  
15 the exact type of matter that should be left to the regulatory  
16 sphere. And as Your Honor said, if the legislature is not  
17 satisfied with that balance, it can step in. But the  
18 legislature has the ability to deal with this in a much better  
19 way than a court can.

20 Number two, they said what's -- Mr. Carlin said what's  
21 the beef? We're not trying to stop the shutoffs. With  
22 respect, when you try to impose two-and-a-half billion dollars  
23 of liability for a shutoff, that alters the balance. At least  
24 if the companies -- the utilities want to stay solvent, that's  
25 going to alter the balance. And so that is the exact type of

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1 interference that is preempted.

2 Liability, that's always what it is, right? These  
3 lawsuits, Covalt, Hartwell, all they're trying to do is impose  
4 liability. But when you try to do that for authorized conduct,  
5 you are in the land of preemption.

6 And then finally, I would just note, there's a  
7 causation issue here. But there's also the issue that you  
8 don't have an absolute right to assert a negligence claim. And  
9 I would refer the Court, for example, to the Covalt case and to  
10 the Hartwell case. And those cases are clear, right? And the  
11 Covalt says, in order to resolve the potential conflict between  
12 section 1759 and 2106, which is what the plaintiff is suing  
13 under, the latter section must be construed as limited to those  
14 situations in which an award of damages -- damages, would not  
15 hinder or frustrate the Commission's declared supervisory and  
16 regulatory policies. That's exactly what those also cases  
17 teach, is that we're in that area, authorized conduct for which  
18 the plaintiff seeks to impose liability.

19 And finally, on Tariff Rule 14, Your Honor, I'll just  
20 make one point. Mr. Carlin said it today. They've said it in  
21 their briefs, that the PUC has said that this rule doesn't  
22 apply to PSPS. The PUC has not said that. We would refer the  
23 Court to the things that have been filed. You will not find  
24 that statement. You haven't heard it in the briefs today.  
25 They've expressed no opinion, either way. And they have not,

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1 in the regulatory history, expressed an opinion that, as  
2 written, that rule does not apply to PSPS events. I'm not  
3 saying they said it does. But they also have not said that it  
4 doesn't.

5 THE COURT: They haven't any other way.

6 MR. NASAB: Correct.

7 THE COURT: Okay.

8 MR. NASAB: Thank you, Your Honor.

9 THE COURT: Okay, thank you both, all three counsel  
10 for your --

11 MR. KOLATCH: Your Honor? Just very briefly, if I  
12 may?

13 THE COURT: Yeah, sure.

14 MR. KOLATCH: Just two quick points in response to  
15 some things Mr. Carlin said. First, Mr. Carlin referenced the  
16 fact that the Commission hadn't explained the nature of the  
17 interference and respectfully, I disagree. I think the brief  
18 sets forth the nature of the interference. But one thing, I  
19 would just mention that -- that may have not come out in the  
20 argument is that the Commission does have an ongoing  
21 investigation into the propriety of the shutoffs.

22 THE COURT: Right, I'm aware of that.

23 MR. KOLATCH: And that there is a risk of  
24 interference --

25 THE COURT: I think the papers say that. And that can

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1 give rise to some consequence, right?

2 MR. KOLATCH: That's correct.

3 THE COURT: Right.

4 MR. KOLATCH: And there could -- there is a risk that  
5 there could be different conclusions between the Court and the  
6 Commission.

7 THE COURT: Well, I didn't ask Mr. Carlin about that,  
8 but that does seem like the potential for being a cost purpose,  
9 but that -- that's all right. I'll take that --

10 MR. KOLATCH: Okay. And just the last point on --  
11 that's been mentioned by both parties on Tariff Rule 14. The  
12 Commission has not taken a position on it and -- but the --  
13 nothing should be read into that silence, contrary to what Mr.  
14 Carlin has said.

15 THE COURT: Okay. Thank you for the arguments on both  
16 sides. The matter stands submitted. I will --

17 MR. CARLIN: Your Honor, may I have one last --

18 THE COURT: Well, I'm really going to wrap it up. I'm  
19 sorry, I'm not going to do it. I'm going to -- I've got a --  
20 we've got a full house. Thank you for your time. The matter  
21 stands submitted.

22 Okay, we're going to go back to the disclosure  
23 statement. Mr. Karotkin, you'll give me one second, please.

24 MR. KAROTKIN: Can we have one minute?

25 THE COURT: You want a minute? Want me to take a

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1 short break? I mean, if you want a minute, I'll just sit here  
2 and twiddle my thumbs, if you'll --

3 MR. KAROTKIN: Yeah, do you mind?

4 THE COURT: No. No, I'm here for the evening.

5 MR. KAROTKIN: I hope not.

6 THE COURT: Tell Ms. Prada when you want me to come  
7 back.

8 MR. KAROTKIN: Okay.

9 (Whereupon these proceedings were concluded at 2:42 PM)

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C E R T I F I C A T I O N

I, Clara Rubin, certify that the foregoing transcript is a true and accurate record of the proceedings.



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/s/ CLARA RUBIN

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Phoenix, AZ 85020

Date: March 12, 2020

GANTNER v.  
PG&E CORPORATIONADV#: 19-03061  
March 10, 2020

| A   |  |  |   |  |
|---|--|--|---|--|
|   | <b>afternoon (5)</b><br>3:5,20,22;4:3,14                             | <b>anticipating (1)</b><br>33:9  | 23:11   | 41:18  |
|   | <b>again (8)</b><br>3:5;9:11,16;20:1;<br>26:21;32:4,7;35:15          | <b>Apologize (1)</b><br>4:23   | <b>authorize (2)</b><br>5:18;12:12  | <b>big (1)</b><br>3:6  |
| <b>abide (1)</b><br>19:19   |  | <b>apparently (1)</b><br>10:25   | <b>authorized (18)</b><br>6:1,3;7:14,19,21,23,<br>24;8:19,20;9:12;10:17;<br>11:23;18:14,25;20:13,<br>24;42:4,17 | <b>billion (1)</b><br>41:22  |
| <b>ability (10)</b><br>13:22;20:20;27:5,14;<br>32:5,17;35:18,25;<br>38:12;41:18 | <b>against (3)</b><br>30:5;36:24;37:1                                | <b>appear (1)</b><br>3:19  | <b>authorizes (1)</b><br>7:3  | <b>billions (1)</b><br>6:2   |
| <b>able (5)</b><br>27:23;29:14,16;<br>34:23;39:16                               | <b>aggressive (1)</b><br>14:19                                       | <b>appellate (2)</b><br>16:18,19   | <b>available (1)</b><br>3:16  | <b>blackout (1)</b><br>35:19   |
| <b>absolute (1)</b><br>42:8   | <b>agree (9)</b><br>10:18,19;17:16,20;<br>18:16,17;19:2;37:21,<br>25 | <b>applicable (1)</b><br>14:9  | <b>awarded (1)</b><br>41:2  | <b>blackouts (4)</b><br>9:4;22:1;30:16;39:6  |
| <b>Absolutely (4)</b><br>10:23;16:6;32:22;<br>33:1                              | <b>agreed (1)</b><br>38:14   | <b>applies (1)</b><br>17:10  | <b>avoid (2)</b><br>28:21;30:3  | <b>blame (1)</b><br>23:3   |
| <b>accept (2)</b><br>16:4;29:7  | <b>agreement (1)</b><br>38:15  | <b>apply (3)</b><br>37:4;42:22;43:2  | <b>award (5)</b><br>6:22;7:2,20,22;42:14  | <b>blanket (1)</b><br>20:11  |
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|  |   |  | <b>2</b>  | <b>2:42 (1)</b><br>45:9<br><b>2010 (1)</b><br>11:1<br><b>2012 (1)</b><br>11:1<br><b>2019 (6)</b><br>5:7;11:24;20:11;<br>23:5;27:21;33:25<br><b>2020 (1)</b><br>3:1<br><b>2106 (2)</b><br>6:18;42:12<br><b>23 (2)</b>   |



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9 bsc@phillaw.com

10 Attorneys for Plaintiff

11 **UNITED STATES BANKRUPTCY COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN FRANCISCO DIVISION**

14 In re:  
15 PG&E CORPORATION  
16 -and-  
17 PACIFIC GAS AND ELECTRIC COMPANY,  
18 Debtors

**Case No. 19-30088 (DM)**  
**Chapter 11**  
**(Lead Case)**  
**(Jointly Administered)**

19 ANTHONY GANTNER, individually and on  
20 behalf of all those similarly situated,  
21 Plaintiff,  
22 vs.  
23 PG&E CORPORATION, a California  
24 Corporation, and PACIFIC GAS & ELECTRIC  
25 COMPANY, a California Corporation,  
26 Defendants.

**Adv. Pro. No. 19-03061 (DM)**  
**DECLARATION OF NICHOLAS A.**  
**CARLIN IN SUPPORT OF**  
**PLAINTIFF'S OPPOSITION TO**  
**DEBTORS' MOTION TO DISMISS**  
**AND MOTION TO STRIKE**

**Date: March 10, 2020**  
**Time: 10:00 a.m. (Pacific Time)**  
**Place: USBC, Courtroom 17**  
**San Francisco, CA**

PHILLIPS, ERLEWINE, GIVEN & CARLIN, LLP  
39 Mesa Street, Suite 201 - The Presidio  
San Francisco, CA 94129  
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1 I, Nicholas A. Carlin, make the following declaration pursuant to 28 U.S.C. § 1746:

2 1. I am a member in good standing of the Bar of the State of California, licensed  
3 before this and all the courts of the State of California. I am a member of the law firm Phillips,  
4 Erlewine, Given & Carlin LLP, counsel of record for Plaintiff in the above-captioned adversary  
5 proceeding. I submit this Declaration in Support of Plaintiff's Opposition to Debtors' Motion to  
6 Dismiss and to Strike. I make this declaration upon personal knowledge and am competent to  
7 testify to the facts set forth herein.

8 2. Attached hereto as Exhibit 1 is a true and correct copy of the California Public  
9 Utilities Commission (CPUC) Decision Granting Motion to Dismiss Complaint (D. 14-03-032)  
10 in *Fenholt v. S. Cal. Edison Co.*, Case No. 13-07-14, issued March 27, 2014 and available on  
11 Westlaw at 2014 WL 1390909.

12 3. Attached hereto as Exhibit 2 is a true and correct copy of the CPUC Assigned  
13 Commissioner Ruling Regarding Pacific Gas and Electric Company's Post-Public Safety Power  
14 Shutoff Corrective Action Reporting (Rulemaking 18-12-005, Jan. 30, 2020) (available at  
15 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M326/K172/326172052.PDF>).

16 4. Attached hereto as Exhibit 3 is a true and correct copy of the CPUC Decision  
17 Granting Motion to Dismiss Complaint (D. 20-01-031) in *Tgs Molding, LLC v. S. Cal. Edison*  
18 *Co.*, No. 19-02-001, issued on January 24, 2020 and available on Westlaw at 2020 WL 496716.

19 5. Attached hereto as Exhibit 4 is CPUC Order Instituting Rulemaking in *Re*  
20 *Establish Consumer Rights and Consumer Protection Rules* (R. 00-02-004), issued on February  
21 3, 2000 and available on Westlaw at 2000 WL 346176.

22 6. Attached hereto as Exhibit 5 is a true and correct copy of *Tesoro Refining &*  
23 *Marketing Co. LLC v. Pac. Gas & Elec. Co.*, No. 14-cv-00930-JCS (N.D. Cal.) (ECF No. 89-9).  
24 That document contains the January 29, 1998 Advice Letter 1737-E from PG&E to the CPUC  
25 Re: Submits Direct Access Tariff Revisions in Compliance with Decision 97-10-087. It was  
26 produced by the CPUC pursuant to a records request in the *Tesoro Refining & Marketing Co.*  
27 *LLC v. Pac. Gas & Elec. Co.*, No. 14-cv-00930-JCS (N.D. Cal.) and was filed in that action as  
28 ECF No. 89-9.

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1           7.       Attached hereto as Exhibit 6 is a true and correct copy of Southern California  
2 Edison Tariff Rule 14, CPUC Sheet No.53899-E.

3           8.       Attached hereto as Exhibit 7 is a true and correct copy of San Diego Gas &  
4 Electric Tariff Rule 14, CPUC Sheet No. 4794-E.

5  
6           I declare under penalty of perjury under the laws of the State of California and the  
7 United States of America that the foregoing is true and correct.

8  
9 Dated: February 25, 2020

By: /s/ Nicholas A. Carlin  
Nicholas A. Carlin

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# EXHIBIT 1

2014 WL 1390909 (Cal.P.U.C.)

Thomas W. Fenholt and Isabella M. Fenholt, Complainants,  
v.  
Southern California Edison Company (U338E), Defendant.

Case 13-07-014  
Decision 14-03-032

California Public Utilities Commission

March 27, 2014

**DECISION GRANTING MOTION TO DISMISS COMPLAINT**

Before Peevey, President, and Florio, Sandoval, and Peterman, Commissioners.

BY THE COMMISSION:

**1. Summary**

\*1 The Commission grants Southern California Edison Company's Motion to

Dismiss the Complaint filed by Thomas W. Fenholt and Isabella M. Fenholt on the grounds that the Complaint requests the recovery of compensatory damages, however, the Commission lacks jurisdiction to award compensatory damages.

This proceeding is closed.

**2. Background**

**2.1. The Complaint**

On July 15, 2013, Thomas W. Fenholt and Isabella M. Fenholt (Fenholts or

Complainants) filed a Complaint against Southern California Edison Company (SCE) for damages to their household's wiring and appliances that was allegedly caused by a power surge from a wire connecting from SCE Pole No. 797764E to the Fenholts' home. The incident occurred on January 13, 2013, when smoke filled the living room of the Fenholts' home, surge protectors melted in the living room and bedroom, the wiring and appliances were damaged, and a number of light bulbs burned out. SCE was contacted and a Troublemaker replaced the service neutral connections at both the pole and the point of attachment at the Fenholts' home, but SCE has declined to pay for the damages to the Fenholts' home, estimated at \$49,000.00 to repair the wiring, and another \$2,000.00 to replace the damaged appliances and electronics. As support for their claim that SCE is liable for the damages, the Fenholts attach, as Exhibit B, a series of e-mails from Commission personnel who investigated their claim. In one of the e-mails, Derek Fong, Utilities Engineer in the Commission's Electric Safety & Reliability Branch, states "I'm leaning toward the SCE bad neutral connection being the only real culprit because it did not function as it was intended."

**2.2. SCE's Answer and Motion to Dismiss**

On September 9, 2013, SCE filed an Answer to the Complaint. While SCE

acknowledges that it dispatched one of its workers to the Fenholts' home and that the worker did find a bad service neutral connection at the pole to the Fenholts' home, SCE denied responsibility for the damages that occurred at the Fenholts' home. Per SCE, damage to the Fenholts' "home neutral could occur for a variety of reasons, [and] not necessarily as a direct result

of the bad neutral connection incident that occurred on January 13, 2013.”<sup>1</sup> SCE also asserted that the Fenholts' were seeking compensatory damages, and that the Commission lacked jurisdiction to award damages for the Fenholts' claimed losses.

Along with its Answer, SCE filed a Motion to Dismiss the Complaint on the grounds that the Commission lacks jurisdiction to award compensatory damages.

### 2.3. The Fenholts' Response to SCE's Motion to Dismiss

On September 21, 2013, the Fenholts filed their Response to SCE's Motion to Dismiss. The Response attempts to establish that SCE violated the Commission's rules regarding emergency notifications. The Commission's website states:

\*2 Electric Utilities must report, within two hours during working hours and four hours outside of working hours, any incident which results in...Damage to property of the utility or others estimated to exceed \$50,000 and are attributable or allegedly attributable to utility owned facilities.<sup>2</sup>

The Fenholts' assert in their Response that SCE “failed to report this damage, though it is clearly more than the required \$50,000. SCE, thumbing their nose at emergency reporting requirements is an example of their brazen disregard for CPUC rules.”<sup>3</sup>

### 3. Standards for Ruling on a Motion to Dismiss

Over the years, the Commission has developed two similar standards for ruling on a motion to dismiss, and we address and apply each standard in this decision.

#### 3.1. The First Standard: Do the Undisputed Facts Require the Commission to Rule in the Moving Party's Favor as a Matter of Law?

In *Raw Bandwidth Communications, Inc. v. SBC California, Inc. and SBC Advanced Solutions, Inc. (Raw Bandwidth)*, the Commission stated that a Motion to Dismiss “requires the Commission to determine whether the party bringing the motion prevails based solely on undisputed facts and matters of law. The Commission treats such motions as a court would treat motions for summary judgment in civil practice.”<sup>4</sup> A motion for summary judgment is appropriate where the evidence presented indicates there are no triable issues as to any material fact, and that based on the undisputed facts, the moving party is entitled to judgment as a matter of law. ([California Code of Civil Procedure, § 437\(c\)](#); Weil & Brown, *Civil Procedure Before Trial*, 10:26-27). While there is no express Commission rule for summary judgment motions, the Commission looks to [§ 437\(c\)](#) for the standards on which to decide a motion for summary judgment. (*Id.*)<sup>5</sup> [Section 437\(c\)](#) provides:

\*3 The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact.

A further beneficial purpose of such a motion is “that it promotes and protects the administration of justice and expedites litigation by the elimination of needless trials.” (*Westcom Long Distance, supra*, 54 CPUC2d, 249). As such, where appropriate,

the Commission regularly grants motions for summary judgment or summary adjudication. (See Decision (D.) 07-07-040 [granting Chevron judgment against Equilon “as a matter of law”]; Decision (D.) 07-01-004 [granting Cox Telecom judgment against Global NAPs of California]; and Decision (D.) 02-04-051 [granting summary adjudication of a claim by County Sanitation District against SCE]).

**3.2. The Second Standard: Is Defendant Entitled to Prevail Even if the Complaint’s Well-Pleaded Allegations are Accepted as True?**

In *Re Western Gas Resources-California, Inc.*, (1999) Decision (D.) 99-11-023, we articulated another standard for dismissing complaints and applications that is slightly different than what was adopted in *Raw Bandwidth*:

On a motion to dismiss a complaint, the legal standard against which the sufficiency of the complaint is measured is whether, taking the well-pleaded factual allegations of the complaint as true, the defendant is entitled to prevail as a matter of law. (e.g., *MCI Telecommunications Corp. v. Pacific Bell*, D.95-05-020, 59 Cal. PUC 2d 665, 1995 Cal. PUC LEXIS 458, at \*29-\*30, citing *Burke v. Yellow Cab Co.* (1973) 76 Cal. PUC 166), 3 CPUC 3d, 301.

This standard was employed more recently in *Everyday Energy Corporation v. San Diego Gas & Electric Company*, (2012) Decision (D.) 12-03-037, wherein the Commission added: “By assuming that the facts as alleged in the complaint are true for the purpose of deciding whether to grant a motion to dismiss, we assume that complainant will be able to prove everything alleged in its complaint.” (Slip Op., 7.)

In determining if the complainant’s allegations are “well pleaded,” we are guided by the standards set forth in [Pub. Util. Code § 1702](#), which provides that the complainant must allege that a regulated utility has engaged in an act or failed to perform an act in violation of any law or Commission order or rule:

\*4 Complaint may be made by the commission of its own motion or by any corporation or person, chamber of commerce, board of trade, labor organization, or any civic, commercial, mercantile, traffic, agricultural, or manufacturing association or organization, or anybody politic or municipal corporation, by written petition or complaint, setting forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission.

As demonstrated by past precedent, the Commission will dismiss a complaint that fails to meet this two-pronged standard. (See *Monkarsh v. Southern California Gas Company*, (2009) (D.) 09-11-017; *Pacific Continental Textiles, Inc. v. Southern California Edison Company*, (2006) Decision (D.) 06-06-011; *Watkins v. MCI\_Metro Access Transmission Services*, (2005) Decision (D.) 05-03-007; *Rodriguez v. Pacific Gas and Electric Company*, (2004) Decision (D.) 04-03-010; *AC Farms Sheerwood v. So. Cal Edison*, (2002) Decision (D.) 02-11-003; and *Crain v. Southern California Gas Company*, (2000) Decision (D.) 00-07-045.)

**4. The Undisputed Facts Establish that SCE is Entitled to Judgment as a Matter of Law as the Commission Lacks Authority to Award Compensatory Damages to the Fenholts**

The facts are undisputed that the Fenholt's wiring and personal property were damaged and that there was a bad service neutral connection at an SCE pole. It is also undisputed that as a result of this incident, the Fenholt's seek the following remedy:

The Powell Electric quote for \$49,000 is the amount we seek as this will give us the repairs needed. In addition we need a new stove, new color laser printer and battery for an Apple computer, CD player, clock radio, three extension cords, and 20 light bulbs \$2,000.00.<sup>6</sup>

While we certainly sympathize with the Fenholt's plight, it is not within the Commission's power to grant the requested compensatory damages.

In order to explain our rationale, it is necessary to discuss the extent of the Commission's jurisdiction over regulated utilities in general and the Commission's specific authority to remedy wrongs committed by regulated utilities against California ratepayers. Pursuant to [Article XII, §§ 1-6 of the Constitution](#), the Commission "has broad authority to regulate utilities." (*Ford v. Pacific Gas & Electric Company*, (1997) 60 Cal. App.4<sup>th</sup> 696, 700, citing to *San Diego Gas & Electric Company v. Superior Court*, (1996) 13 Cal. 4<sup>th</sup> 893, 914-915). The California Legislature enacted the Public Utilities Act which authorized the Commission to supervise and regulate every public utility in California and to do all things which are "necessary and convenient in the exercise of such power and jurisdiction." ([Pub. Util. Code § 701](#).) In the event the Commission determines that a utility has violated the law, there are a number of remedies at the Commission's disposal. In *Diener v. Pacific Gas and Electric Company*, (2011) Decision (D.) 11-09-027, the Commission explained that:

\*5 [Pub. Util. Code § 2100 et seq.](#) provides a wide variety of remedies designed to redress violations of Commission decisions committed by public utilities. These include orders to common carriers to collect under-charges or unlawful rebates, actions for mandamus or injunction, actions to recover penalties, imposition of fines, criminal prosecutions, and contempt proceedings.

But in granting and exercising this regulatory authority to provide remedies, the Legislature and the Commission drew a distinction between the Commission's authority to award reparations as opposed to compensatory or consequential damages. In *Walker v. P.T. & T. Co.*, 1971 Cal. PUC LEXIS 1288, the Commission restricted reparations to:

relief limited to a refund or adjustment of part of all of the utility charge for a service or group of related services. Consequential damage on the other hand is an amount of money sufficient to compensate an injured party for all the injury proximately caused by a tortious act.

This Commission has repeatedly ruled that only the Superior Court has the power to award consequential damages as opposed to reparations. (See, e.g., *Balassy v. Sprint Telephony PCS, LP*, (2012) Decision (D.) 12-04-031; *Gregory v. Pacific Bell Telephone Company*, (2011) Decision (D.) 11-11-003 ["It is clear that complainant seeks damages for defendants' alleged improper conduct. As we have no jurisdiction to award damages, we dismiss the complaint for failing to plead a cause of action within our jurisdiction"]). (*Day v. Verizon California*, (2006) Decision (D.) 06-06-061 ["Complainant's remedy for any alleged intentional damage to her DSL service is with the courts, not the Commission"]; and *Sweepston v. California-American Water Company*,



(2004) Decision (D.) 04-12-032 [“Since the Commission has no jurisdiction to award damages, the courts have held that complaints alleging breach of contract should be brought in civil courts”].)

The Commission's interpretation of the extent of its ability to redress economic harms to ratepayers is consistent with [Pub. Util. Code § 2106](#), which authorizes an action for monetary damages by a ratepayer in Superior Court:

Any public utility which does, causes to be done, or permits any act, matter, or thing prohibited or declared unlawful, or which omits to do any act, matter, or thing required to be done, either by the Constitution, any law of this State, or any order or decision of the commission, shall be liable to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or resulting therefrom. If the court finds that the act or omission was wilful, it may, in addition to the actual damages, award exemplary damages. An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person.

\*6 In *Ford*, the Court interpreted [§ 2106](#) as authorizing “a supplementary private remedy in the form of an action for damages” in superior or municipal court. (*Ford, supra*, 60 Cal. App.4<sup>th</sup>, at 701.); (see also *Diener, supra*.)

As the only compensation the Fenholt is seeking is compensatory damages, the law does not permit the Commission to grant such a recovery. Instead, the Fenholt must pursue their claims against SCE in the Superior Court of the State of California.

## **5. Assuming the Fenholt's Factual Allegations are accepted as True, Their Remedy for Financial Compensation Lies in Pursuing a Lawsuit in Superior Court, Rather than with This Commission**

### **5.1. A Violation of a Commission Statute, Rule, or Order Does Not Give Rise to A Claim for Compensatory Damages that the Commission can Award**

In our review of the Complaint, the attached exhibits, and the Response, the Fenholt is asking this Commission to find that SCE has violated a Commission statute, rule, or order. As noted above in their Response, the Fenholt's claim that SCE violated the Commission's reporting requirements by not reporting the damage to their property as the damage exceeded the \$50,000.00 threshold. In addition, it appears that the Fenholt is suggesting that SCE violated General Order (GO) 95. They attach to their Complaint a letter dated May 2, 2013 from Rosario Cervantes, Commission's Consumer Affairs Branch, which states, in part, that the Commission's engineer “did not find any conclusive evidence of nonconformance with GO 95.”

While it is not clear what aspect of GO 95 that the engineer was referencing, it is of no consequence. Even if we were to assume that the Fenholt can prove SCE had violated a Commission statute, rule, or order, that fact would not permit the Commission to award the Fenholt the compensatory damages they seek from SCE. In so ruling, however, we stress that we are sympathetic to the Fenholt's predicament. Therefore, we instruct our Safety and Enforcement Division to conduct an investigation of the January 13, 2013 incident at the Fenholt's home to determine if SCE has violated any of the Commission's statutes, rules, or orders, and, if so, to determine if a fine or penalty would be appropriate pursuant to, at a minimum, [Pub. Util. Code §§ 2100 through 2105](#).

### **5.2. The Commission is not Bound by the Statements Made by its Employees**

As the Fenholt has placed great stock in the comments of a Commission employee as to SCE's possible culpability, it is necessary to address the extent that an employee's comments may bind the Commission. In the *Order Modifying Resolution*

*ROSB-002 and Denying Rehearing of Resolution, as Modified*,<sup>7</sup> the Commission explained its role in approving ministerial acts delegated to staff:

\*7 Generally, the commission has stated that 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.) Public agencies, however, may delegate the performance of ministerial tasks, including the investigation and determination of facts preliminary to agency action (*California School Employees, supra*, at 144), functions relating to the application of standards (*Bagley, supra*, at 25), and the making of preliminary recommendations and draft orders (*Schechter, supra*, at 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. (At \*3-4.)

Thus, the opinion of a staffer would not become binding on the Commission unless and until the Commission approves or ratifies the opinion, as this Commission made clear in *Moore v. PG&E Co.* (1992) Decision (D.) 92-04-022 43 Cal. PUC 2d 629 [not published in full], 1992 Cal. PUC LEXIS 345, at \*18-19:

We are of the opinion that the prior determination of the Commission staff is not binding on this Commission simply because it was a staff determination and not a Commission determination. No formal proceedings were undertaken, no evidentiary hearings were held, no witnesses were examined and subjected to cross-examination, and no decision was issued by this Commission.

## 6. Categorization and Need for Hearings

The Instructions to Answer filed on August 9, 2013, categorized this complaint as adjudicatory and that a Prehearing Conference (PHC) will be scheduled unless the matter is resolved by the parties. However, because of the reasoning set forth in this proposed decision, this complaint must be dismissed, so there is no need for a PHC.

There was a preliminary determination that hearings were needed. But since we have determined that the Complaint must be dismissed as a matter of law, there is no need for Evidentiary Hearings.

## 7. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with [Pub. Util. Code § 311](#) and comments were allowed under Commission Rules of Practice and Procedure, Rule 14.3.

### 7.1. SCE

\*8 On March 17, 2014, SCE served and filed comments to the proposed decision. While SCE agrees with the proposed decision's dismissal of the complaint, SCE disagrees with Ordering Paragraph 3, which requires the Commission's Safety and Enforcement Division (SED) to investigate the Fenholt's loss to determine if SCE "violated a Commission statute, rule, or order, and, if so, determine if a fine or penalty should be imposed." SCE asserts that SED has already completed an investigation--referring to Exhibit B to the Complaint as proof--making a further investigation unnecessary.

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The Commission disagrees with SCE's claims that an investigation was completed and that further investigation is unnecessary. Exhibit B consists of a series of e mails from and to Commission staff regarding the damage to the Fenholt's residence, and we discuss some of these e mails below.

On March 8, 2013, Derek Fong, a utilities engineer in SED's Electric Safety & Reliability Branch (ESRB), stated to Mr. Fenholt that ESRB was conducting its investigation.

On April 4, 2013, Fadi Daye states that he believes the damage to the Fenholt's wiring and appliances "seem to be a result of bad SCE service neutral connections[.]"

On April 4, 2013, Rosario Cervantes states that SCE "may be responsible for this safety issue."

On April 4, 2013, Derek Fong states he is "leaning toward the SCE bad neutral connection being the only real culprit because it did not function as it was intended."

While there are indications in these e mails that SCE may be at fault, there are no conclusions from ESRB that SCE has, in fact, violated a Commission statute, rule, or order. As such, we will require SED to investigate and prepare a report in accordance with Ordering Paragraph 3 of the proposed decision.

## 7.2. Fenholt's

Complainants did not file any comments.

## 8. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Robert M. Mason III is the assigned ALJ in this proceeding.

## Findings of Fact

1. Thomas W. Fenholt and Isabella M. Fenholt are SCE customers who reside in Long Beach, California.
2. On January 13, 2013, the Fenholt's notified SCE that there had been a power surge in the line emanating from an SCE pole and to the Fenholt's residence.
3. The Fenholt's claim that as a result of the power surge, the wiring, appliances, and electronic equipment were damaged.
4. The Fenholt's request that SCE be ordered to pay compensatory damages to the Fenholt's in the amount of \$49,000.00 (to repair the damaged wiring), and \$2,000.00 (to replace the stove, color laser printer, battery for an Apple computer, CD player, clock radio, three extension cords, and 20 light bulbs).
5. An SCE Troublemaker replaced the service neutral connections at both the pole and the point of attachment to the Fenholt's home.
- \*9 6. SCE denies responsibility for the damages that the Fenholt's sustained.
7. On July 15, 2013, the Fenholt's filed the instant Complaint.
8. On September 9, 2013, SCE filed both an Answer to the Fenholt's Complaint and a Motion to Dismiss Complaint.

9. On September 21, 2013, the Fenholts filed and served a Response to SCE's Motion to Dismiss Complaint.

#### Conclusions of Law

1. The Complaint only seeks the recovery of compensatory damages.
2. The Commission cannot award the Fenholts compensatory damages as the Commission has no jurisdiction to award compensatory damages, as opposed to reparations.
3. Even assuming the validity of the facts alleged in the Complaint, the Complaint must be dismissed.
4. The Complaint must be dismissed for failure to state a cause of action upon which relief may be granted.
5. Hearings are not necessary.

#### ORDER

**IT IS ORDERED** that:

1. The Complaint filed by Thomas W. Fenholt and Isabella M. Fenholt against Southern California Edison Company is dismissed.
2. If Thomas W. Fenholt and Isabella M. Fenholt wish to pursue their damage claims against Southern California Edison Company, they must pursue them in the Superior Court of the State of California pursuant to [Public Utilities Code § 2106](#).
3. The Commission's Safety and Enforcement Division is ordered to investigate the Fenholts' loss to determine if Southern California Edison Company violated a Commission statute, rule, or order, and, if so, determine and recommend if a fine or penalty should be imposed.
4. No hearings are necessary.

Case 13-07-014 is closed.

This order is effective today.

Dated March 27, 2014, at San Francisco, California.

Commissioner Michael Picker, being necessarily absent, did not participate.

#### Footnotes

- 1 Answer, at 4.
- 2 Response, at 6.
- 3 *Id.*
- 4 (2003) Decision (D.) 03-05-023 (*Scoping Memo and Ruling of Assigned Commissioner on Motion to Dismiss and Preliminary Matters* at 3, citing to *Westcom Long Distance, Inc. v. Pacific Bell et al.*, Decision (D.) 94-04-082, 54 CPUC 2d 244, 249).
- 5 See *Westcom, supra*, 54 CPUC 2d, 249-250.

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6 Complaint, at 3.

7 *Application of Union Pacific Railroad Company and BNSF Railway Company for Rehearing of Resolution ROSB-002*, (2009) Decision (D.) 09-05-020; Application 08-12-004; 2009 Cal. PUC LEXIS 250.

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# EXHIBIT 3

WESTLAW

2020 WL 496716 (Cal.P.U.C.)

TGS Molding, LLC, Complainant,

**TGS Molding, LLC, Complainant, v. SOUTHERN CALIFORNIA EDISON COMPANY (U338E), Defendant.**

January 24, 2020 (400471) SOUTHERN CALIFORNIA EDISON COMPANY (U338E), Defendant.

Case 19-02-001  
Decision 20-01-031

California Public Utilities Commission

January 24, 2020

**PRESIDING OFFICER'S DECISION GRANTING MOTION TO DISMISS COMPLAINT**

BY THE COMMISSION:

**Summary**

\*1 This decision grants the motion of Southern California Edison Company (SCE) to dismiss the Amended Complaint of TGS Molding, LLC (TGS) for failure to identify a cause of action upon which the Commission may grant relief. Complainant requests that SCE be ordered to provide "corrected and accurate" billing statements for electricity used at Complainant's premises for the period June 2018 through April 2019.<sup>1</sup> Complainant also requests that if SCE fails to provide the requested statements, the Commission assess penalties on SCE and issue an order directing SCE to provide a notice to TGS acknowledging and taking responsibility for inaccurate billing statements for the specified time period.

As previously stated, this decision grants the SCE motion to dismiss the Complaint because Complainant has failed to identify any applicable law, Commission rule or order that SCE has purportedly violated. Moreover, the Commission does not have jurisdiction to award damages as requested. Complainant thus fails to identify any cause of action upon which the Commission may grant relief. Accordingly, C. 19-02-001 is dismissed, and this proceeding is closed.

**1. Factual and Procedural Background**

A Complaint was filed January 28, 2019, by TGS Molding, LLC (TGS or Complainant). TGS is a plastic manufacturer that has received retail electric service from Southern California Edison Company (SCE). The Complaint involves disputes arising from failure of TGS to pay for electric service provided to its business, located at 425 E. Parkcenter Circle South, San Bernardino, California, and the resulting service disconnection by SCE.<sup>2</sup>

In February 2018, SCE identified Complainant's account as being delinquent since Complainant had been consistently paying its energy bill more than 19 days after the due date. On March 27, 2018, SCE sent a "Deposit Warning Letter" to Complainant, stating that:

- (a) during the preceding 12 months, a total of 11 overdue notices had been mailed to Complainant and
- (b) if the delinquent payment pattern continued, SCE may request, pursuant to Tariff Rule 6.C.2, re-establishment of credit based on the preceding 12 months of usage, equal to \$26,900 deposit for continuation of service to the TGS account.

Complainant's delinquent payment pattern continued for its April 2018 bill. In accordance with its Deposit Warning Letter and Tariff Rules 6 and 7, on July 5, 2018, SCE billed Complainant \$26,900 to re-establish Complainant's credit. Although SCE did not receive payment of the deposit on the July 13, 2018 due date, it continued to provide electric service to Complainant through late August 2018.

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\*2 In early August 2018, SCE offered Complainant a three-month payment plan for the required deposit. Complainant agreed to the payment plan but did not make the first payment. SCE shut off the power to the TGS account at the end of August 2018 for non-payment of the deposit under Tariff Rule 11.F. SCE reconnected Complainant on August 29, 2018, after Complainant assured SCE that the deposit was paid. Complainant, however, paid the deposit with a bad check returned by the bank for insufficient funds. On September 4, 2018, Complainant assured SCE that it would pay the deposit, but did not provide payment until late September 2018.

Complainant alleges that for three months, SCE did not send out a utility bill to many households and businesses in the San Bernardino area including TGS. SCE admits it delayed sending bills between April and August 2018. SCE notes, however, that Complainant's delinquent payment patterns began much earlier.

On October 4, 2018, SCE and Complainant entered into a payment plan to pay in 11 installments for rebilled energy charges. Complainant did not make the first payment installment on time. Complainant agreed to enter into another payment arrangement but did not meet the terms of that agreement.

Under SCE Tariff Rule 11.B, which governs nonpayment of bills, default on the payment plan meant that the account became eligible for disconnection. SCE thus disconnected service to TGS on December 6, 2018. On the same date, Complainant called SCE seeking to restore service. SCE requested that Complainant pay a deposit of \$11,340 to re-establish credit in accordance with SCE Tariff Rule 6.C. SCE reconnected Complainant after receiving assurances that the deposit had been paid. Complainant, however, again paid with a bad check, returned by the bank for insufficient funds.

On February 11, 2019, SCE's Consumer Affairs managers contacted Complainant and offered to restore service on the same day and to work out a payment plan. Complainant declined the offer. On March 4, 2019, in conversation with SCE's Consumer Affairs, Complainant confirmed it wanted the power to be shut off permanently and declined to reach payment terms regarding outstanding charges.

Complainant filed Complaint No. 19-02-001 on January 28, 2019. The Complaint requested that "electricity be turned on so that business can continue at TGS Molding," and that "Southern California Edison be fair in allowing for a reasonable payment plan."<sup>3</sup> Complainant's outstanding balance for the energy service to date was calculated to be approximately \$86,545.<sup>4</sup>

\*3 The Commission issued an Instruction to Answer on February 7, 2019. SCE filed an Answer on March 11, 2019. A prehearing conference (PHC) was held June 26, 2019, in the Commission's Los Angeles Hearing Room (Junipero Serra State Office Building at 320 West 4th Street, Suite 500, Los Angeles, California 90013). At the PHC, Complainant requested and received permission to amend its Complaint. On August 6, 2019, the Commission's Docket Office accepted the late-filed Amended Complaint, pursuant to direction from assigned Administrative Law Judge (ALJ) Kelly.

The Amended Complaint no longer seeks the original relief, but instead alleges that: (1) SCE did not provide timely and accurate billing statements to TGS and (2) SCE's failure to provide accurate and timely billing statements "impacted TGS in its production of Plastic Injection Molding Products" resulting in damages to TGS.<sup>5</sup>

The Amended Complaint requests, as a remedy, that SCE provide corrected and accurate billing statements for electricity used at Complainant's premises for the period June 2018 through April 2019. If SCE fails to provide such statements, Complainant also requests that penalties be assessed on SCE and with an order directing SCE to provide a notice acknowledging and taking responsibility for the inaccurate billing statement provided to TGS for January 2019 through April 2019.

On August 16, 2019, SCE filed a Motion to Dismiss the Amended Complaint on the grounds that it does not allege any violations of law or tariff and does not comply with Commission requirements for a well-pled complaint. On August 21, 2019, ALJ Kelly notified parties by e-mail ruling that any response to the motion to dismiss was due by September 6, 2019. Up to the date of this decision, however, no response has been filed.

## 2. Motion to Dismiss



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In its motion to dismiss, SCE asserts that Complainant makes no allegations as to what aspects of the bills, or in fact, which bills, if any, are incorrect or inaccurate and has not reported to SCE any examples of billing inaccuracies or statement errors. Complainant identifies no example of an incorrect bill or practice that is "unjust, unreasonable, unsafe, improper, inadequate, or insufficient."

SCE claims that it billed Complainant consistent with Commission-approved tariffs and cannot "correct" an undefined, alleged "error" about which Complainant provides no information. SCE argues that it cannot rebut allegations of "unjust, unreasonable, unsafe, improper, inadequate, or insufficient" practices when none of those alleged practices have been identified or explained. SCE argues that Complainant's general accusation of improper practices or incorrect billing statements, without examples, descriptions, allegations of tariff violations, or evidence of any errors, is insufficient basis for a viable complaint.

\*4 SCE also argues that the Commission lacks jurisdiction to award damages as sought by Complainant. Accordingly, SCE requests that the Amended Complaint be dismissed with prejudice.

### 3. Discussion

As a basis to rule on a motion to dismiss, the Commission must determine whether the moving party prevails based solely on undisputed facts and matters of law. The Commission treats such motions as a court would treat motions for summary judgment in civil practice.<sup>6</sup> A motion for summary judgment is appropriate where (a) the evidence indicates there are no triable issues as to any material fact, and (b) based on the undisputed facts, the moving party is entitled to judgment as a matter of law. ([California Code of Civil Procedure, § 437\(c\)](#); Weil & Brown, [Civil Procedure Before Trial, 10:26-27.](#))

After accepting the facts as stated, the Commission will examine them in the light of applicable law and policy. Complainant TGS apparently no longer seeks any of the relief sought in its original Complaint. The Amended Complaint does not state sufficient facts to constitute a cause of action.

As prescribed in [Pub. Util. Code § 1702](#), the Commission may only hear a complaint if it alleges "any act or thing done or omitted to be done by any public utility... in violation or claimed to be in violation of any provision of law or of any order or rule of the commission." The Complaint must "[set] forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission." ([§ 1702](#))

Complainant apparently no longer seeks the relief requested in its original Complaint which is superseded by the Amended Complaint. The Amended Complaint does not present a cause of action upon which relief may be granted. The Amended Complaint makes allegations of what it characterizes as "unjust, unreasonable, unsafe, improper, inadequate, or insufficient" practices by SCE. Complainant, however, provides no specific examples, descriptions, or evidence of any errors in SCE billing statements. Even after the assigned ALJ provided an opportunity for Complainant to respond to the SCE motion to dismiss, Complainant did not file any response. Complainant thus fails to identify any applicable law, Commission rule or order that SCE has violated.

\*5 Also, as SCE notes, this Commission does not have authority to award damages, as requested by Complainant, but only reparations.<sup>7</sup> In this regard, reparations are limited to a refund or adjustment of all or part of the utility charge for a service or group of services. By contrast, damages compensate an injured party for injury alleged to be caused by a tortious act, or to replace the value of performance of a breached obligation.<sup>8</sup> Complainant does not seek any refund of some or all of SCE's billed electric charges. Complainant's requested relief thus does not constitute reparations. Accordingly, Complainant's request in this regard for an award of damages is outside of Commission jurisdiction.

Based on these considerations, the Complainant's allegations fail to constitute a cause of action upon which relief may be granted. Therefore, SCE's motion to dismiss is granted. The Amended Complaint is dismissed with prejudice.

### 4. Categorization and Need for Hearing

2/22/2020 TGS Molding, LLC, Complainant, v. SOUTHERN CALIFORNIA EDISON COMPANY (U338E), Defendant. | Administrative Materials | We...

This proceeding is categorized as adjudicatory. In the "Instructions to Answer," it was preliminarily determined that hearings would be necessary in this proceeding. However, because the complaint must be dismissed as a matter of law, there is no need for evidentiary hearings.

#### 5. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Gerald Kelly is the assigned Administrative Law Judge in this proceeding.

#### 6. Appeal of Decision

Any party aggrieved by this Presiding Officer's Decision may file an appeal pursuant to Rule 14.4 within 30 days of service of this decision.

#### Findings of Fact

1. The Complaint at issue involves a dispute between TGS Molding, LLC, a plastic manufacturer, and SCE, arising from failure of TGS to pay for its bills for electric service provided by SCE and the resulting service disconnection.
2. On March 27, 2018, SCE sent a "Deposit Warning Letter" to Complainant, stating that: (a) during the preceding 12 months, a total of 11 overdue notices had been mailed to Complainant and (b) if the delinquent payment pattern continued, SCE may request, pursuant to Tariff Rule 6.C.2, re-establishment of credit based on the preceding 12 months of usage.
3. Under SCE Tariff Rule 11.B, which governs nonpayment of bills, the TGS account became eligible for disconnection, and SCE disconnected service to TGS on December 6, 2018.
4. SCE Tariff Rule 6.C requires customers whose electric service has been discontinued during the last 12 months because of non-payment of bills to pay a deposit to re-establish credit.
- \*6 5. SCE reconnected Complainant after receiving assurances that the required deposit had been paid. Complainant paid with a bad check returned by the bank for insufficient funds.
6. On March 4, 2019, in conversation with SCE's Consumer Affairs, Complainant confirmed it wanted the power to be shut off permanently and declined to reach payment terms with SCE regarding outstanding charges.
7. In its original Complaint, TGS requested that electricity be turned on by SCE so that TGS business operations could continue and that SCE be fair in allowing for a reasonable payment plan.
8. TGS changed its requested relief pursuant to an Amended Complaint which requested that SCE provide corrected and accurate billing statements for electricity used at its premises for the period June 2018 through April 2019.
9. The Amended Complaint makes only generalized allegations regarding SCE bills, but identifies no examples of an incorrect bill or practice that is unjust, unreasonable, unsafe, improper, inadequate, or insufficient.
10. Complainant does not identify any applicable law, Commission rule or order purportedly violated by SCE.
11. There are no material issues of disputed fact that warrant hearings.

#### Conclusions of Law

1. The Amended Complaint does not state facts sufficient to constitute a cause of action upon which the Commission can grant relief, and should be dismissed.
2. The Amended Complaint does not satisfy Pub. Util. Code § 1702 requirements that complainants set forth an "act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation, of any provision of law or of any order of the Commission," and should be dismissed.

2/22/2020 TGS Molding, LLC, Complainant, v. SOUTHERN CALIFORNIA EDISON COMPANY (U338E), Defendant. | Administrative Materials | We...

- 3. The Commission has broad authority to supervise and regulate every public utility within the state, but does not have jurisdiction to award damages, as requested by Complainant.
- 4. Good cause is shown for granting SCE's motion and the complaint should be dismissed.
- 5. Case 19-02-001 should be closed.

**ORDER**

**IT IS ORDERED** that:

- 1. The motion of Southern California Edison Company to dismiss the Amended Complaint of TGS Molding, LLC, versus Southern California Edison Company is granted.
- 2. Complaint Case 19-02-001 is dismissed.
- 3. Case 19-02-001 is closed.

This order is effective today.

Dated January 24, 2020, at San Francisco, California.

**Footnotes**

- 1 Amended Complaint at 4
- 2 Prior to filing the formal Complaint, Complainant did not try to resolve this matter informally with SCE's Consumer Affairs Manager or the Commission's Consumer Affairs staff. SCE's Consumer Affairs managers contacted TGS after the Complaint was filed and offered to reconnect TGS.
- 3 TGS Complaint, Section H.
- 4 In its Answer to the original complaint, SCE listed the outstanding balance as \$120,000. After subsequently ascertaining that Complainant was not interested reestablishing service, SCE applied existing deposits and interest earned on the deposits to the TGS account balance. SCE removed energy and late payment charges accrued after January 9, 2019. After applying these credits, the TGS account balance was reduced to \$86,545.
- 5 Amended Complaint, at 3-4.
- 6 (2003) Decision (D.)03-05-023 (*Scoping Memo and Ruling of Assigned Commissioner on Motion to Dismiss and Preliminary Matters* at 3, citing to *Westcom Long Distance, Inc. v. Pacific Bell et al.*, D.94-04-082, 54 CPUC 2d 244, 249).
- 7 D.91-10-008, at 3. See also D.14-03-032, at 8 (citing D.12-04-031, D.11-11-003, D.06-06-061, and D.04-12-032).
- 8 See D.91-10-008, p.3 (internal citations omitted). See also D.06-06-061, p. 2; D.11-09-027, at 3; and D.14-03-032, at 8.

**End of Document**

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12 *Attorneys for Debtors and Debtors in Possession*

13 **UNITED STATES BANKRUPTCY COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

15 In re:  
16 PG&E CORPORATION,  
- and -  
17 PACIFIC GAS AND ELECTRIC  
18 COMPANY,  
Debtors.  
19  
20 ANTHONY GANTNER, individually and  
on behalf of all those similarly situated,  
21 Plaintiff,  
22 v.  
23 PG&E CORPORATION, a California  
Corporation, and PACIFIC GAS &  
24 ELECTRIC COMPANY, a California  
Corporation,  
25 Defendants.

Case No. 19-30088 (DM)  
Chapter 11  
(Lead Case)  
(Jointly Administered)  
Adv. Pro. No. 19-03061  
**DECLARATION OF KEVIN J. ORSINI  
IN SUPPORT OF DEBTORS' MOTION  
TO DISMISS AND MOTION TO STRIKE**  
Date: March 10, 2020  
Time: 10:00 a.m. (Pacific Time)  
Place: United States Bankruptcy Court  
Courtroom 17, 16th Floor  
San Francisco, CA 94102  
Objection Deadline: February 25, 2020

1 Pursuant to 28 U.S.C. § 1746, I, Kevin J. Orsini, hereby declare under penalty of perjury as follows:

2 1. I am a Member of Cravath, Swaine & Moore LLP, counsel to Pacific Gas and Electric  
3 and PG&E Corporation (collectively, “PG&E” or the “Debtors”) in the above-captioned Chapter 11  
4 Cases. I am admitted to practice in the State of New York and am admitted to practice before this  
5 Court *pro hac vice*. I submit this Declaration in Support of Debtors’ Motion to Dismiss and Motion  
6 to Strike. I have personal knowledge of the facts set forth in this declaration except as otherwise  
7 stated.

8 2. Attached hereto as Exhibit A is a true and correct copy of the Application of San Diego  
9 Gas & Electric Company (U 902-E), filed December 22, 2008.

10 3. Attached hereto as Exhibit B is a true and correct copy of the California Public Utilities  
11 Commission (“CPUC”) Decision Denying Without Prejudice San Diego Gas & Electric Company’s  
12 Application to Shut Off Power During Periods of High Fire Danger (Decision 09-09-030), issued  
13 September 18, 2009.

14 4. Attached hereto as Exhibit C is a true and correct copy of the CPUC Decision Granting  
15 Petition to Modify Decision 09-09-030 and Adopting Fire Safety Requirements for San Diego Gas &  
16 Electric Company (Decision 12-04-024), issued April 26, 2012.

17 5. Attached hereto as Exhibit D is a true and correct copy of the CPUC Decision Adopting  
18 Regulations to Reduce Fire Hazards Associated with Overhead Power Lines and Communication  
19 Failures (Decision 12-01-032), issued January 18, 2012.

20 6. Attached hereto as Exhibit E is a true and correct copy of the CPUC Resolution  
21 Extending De-Energization Reasonableness, Notification, Mitigation and Reporting Requirements in  
22 Decision 12-04-024 to All Electric Investor Owned Utilities (Resolution ESRB-8), issued July 16,  
23 2018.

24 7. Attached hereto as Exhibit F is a true and correct copy of the CPUC Order Instituting  
25 Rulemaking to Examine Electric Utility De-Energization of Power Lines in Dangerous Conditions  
26 (Rulemaking 18-12-005), issued December 19, 2018.

27  
28

1           8.       Attached hereto as Exhibit G is a true and correct copy of the CPUC Decision Adopting  
2 De-Energization (Public Safety Power Shut-off) Guidelines (Phase 1 Guidelines) (Decision 19-05-  
3 042), issued June 4, 2019.

4           9.       Attached hereto as Exhibit H is a true and correct copy of the Assigned Commissioner's  
5 Phase 2 Scoping Memo and Ruling (Rulemaking 18-12-005), filed August 14, 2019.

6           10.      Attached hereto as Exhibit I is a true and correct copy of the CPUC Decision on Pacific  
7 Gas and Electric Company's 2019 Wildfire Mitigation Plan Pursuant to Senate Bill 901 (Decision 19-  
8 05-037), issued June 4, 2019.

9           11.      Attached hereto as Exhibit J is a true and correct copy of the CPUC Order Instituting  
10 Rulemaking to Implement Electric Utility Wildfire Mitigation Plans Pursuant to Senate Bill 901  
11 (Rulemaking 18-10-007), issued October 25, 2018.

12          12.      Attached hereto as Exhibit K is a true and correct copy of Comments of the CPUC in  
13 Response to Order to Show Cause, *United States v. Pac. Gas & Elec. Co.*, No. CR 14-0175 WHA  
14 (N.D. Cal. Jan. 28, 2019), Dkt. 987.

15          13.      Attached hereto as Exhibit L is a true and correct copy of the CPUC Guidance Decision  
16 on 2019 Wildfire Mitigation Plans Submitted Pursuant to Senate Bill 901 (Decision 19-05-036), issued  
17 June 3, 2019.

18          14.      Attached hereto as Exhibit M is a true and correct copy of the Order Adopting New  
19 Conditions of Probation, *United States v. Pac. Gas & Elec. Co.*, No. CR 14-0175 WHA (N.D. Cal.  
20 Apr. 3, 2019), Dkt. 1040.

21          15.      Attached hereto as Exhibit N is a true and correct copy of the Response of PG&E to  
22 Request for Information on PSPS, *United States v. Pac. Gas & Elec. Co.*, No. CR 14-0175 WHA  
23 (N.D. Cal. Oct. 30, 2019), Dkt. 1110.

24          16.      Attached hereto as Exhibit O is a true and correct copy of the Letter from Marybel  
25 Batjer, CPUC President, to William Johnson, CEO of Pacific Gas and Electric Company, dated  
26 October 14, 2019.

27  
28

1 17. Attached hereto as Exhibit P is a true and correct copy of the CPUC Order Instituting  
2 Investigation on the Commission’s Own Motion on the Late 2019 Public Safety Power Shutoff Events,  
3 (Investigation 19-11-013), issued November 13, 2019.

4 18. Attached hereto as Exhibit Q is a true and correct copy of the Assigned Commissioner  
5 and Assigned Administrative Law Judge’s Ruling Directing PG&E To Show Cause Why It Should  
6 Not Be Sanctioned By The Commission For Violation of Public Utilities Code Sections 451  
7 Commission Decision 19-05-042 And Resolution ESRB-8 (Rulemaking 18-12-005), filed November  
8 12, 2019.

9 19. Attached hereto as Exhibit R is a true and correct copy of PG&E Electric Rule No. 14,  
10 CPUC Sheet No. 19762-E.

11 I declare under penalty of perjury that, to the best of my knowledge and after reasonable  
12 inquiry, the foregoing is true and correct.

13  
14 Dated: January 21, 2020

15 /s/ Kevin J. Orsini

16 Kevin J. Orsini  
17 Cravath, Swaine & Moore LLP

# EXHIBIT E

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Date of Issuance: July 16, 2018

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

**SAFETY AND ENFORCEMENT DIVISION  
Electric Safety and Reliability Branch**

**Resolution ESRB-8  
July 12, 2018**

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

**RESOLUTION EXTENDING DE-ENERGIZATION REASONABLENESS,  
NOTIFICATION, MITIGATION AND REPORTING REQUIREMENTS  
IN DECISION 12-04-024 TO ALL ELECTRIC INVESTOR OWNED  
UTILITIES.**

**PROPOSED OUTCOME:**

This Resolution extends the de-energization reasonableness, public notification, mitigation and reporting requirements in Decision (D.) 12-04-024 to all electric Investor Owned Utilities (IOUs) and adds new requirements. It also places a requirement on utilities to make all feasible and appropriate attempts to notify customers of a de-energization event prior to performing de-energization.

**SAFETY CONSIDERATIONS:**

De-energizing electric facilities during dangerous conditions can save lives and property and can prevent wildfires. This resolution provides guidelines that IOUs must follow and strengthens public safety requirements when an IOU decides to de-energize its facilities during dangerous conditions.

**ESTIMATED COST:** Costs of compliance with the new requirements are unknown.

**SUMMARY**

Commission Decision (D.) 12-04-024 established requirements for reasonableness, notification, mitigation and reporting by San Diego Gas & Electric Company (SDG&E) for its de-energization events.

This resolution extends the requirements established in D.12-04-024 to all electric IOUs, requires that the utilities meet with the local communities that may be impacted by a future de-energization event before putting the practice in effect in a particular area, requires feasible and appropriate customer notifications prior to a de-energization event, and requires notification to the Safety and Enforcement Division (SED) as soon as practicable after a decision to de-energize facilities and within 12 hours after the last service is restored.

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ER-209

## **BACKGROUND**

California Public Utilities Code (PU Code) Sections 451 and 399.2(a) give electric utilities authority to shut off electric power in order to protect public safety. This authority includes shutting off power for the prevention of fires caused by strong winds.

Application (A.) 08-12-021 filed by SDG&E on December 22, 2008, requested specific authority to shut off power as a fire-prevention measure against severe Santa Ana winds and a review of SDG&E's proactive de-energization measures. SDG&E also requested that such power shut-offs would qualify for an exemption from liability under SDG&E's Tariff Rule 14.

Decision (D.) 12-04-024 issued on April 19, 2012 provided guidance on SDG&E's authority to shut off power under the PU Code and also established factors the Commission may consider in determining whether or not a decision by SDG&E to shut off power was reasonable. The decision ruled that SDG&E has the authority under Public Utilities Code, Sections 451 and 399.2(a) to shut off power in emergency situations when necessary to protect public safety. It also ruled that a decision to shut off power by SDG&E under its statutory authority, including the adequacy of any notice given and any mitigation measures implemented, may be reviewed by the Commission to determine if SDG&E's actions were reasonable. The decision requires SDG&E to take appropriate and feasible steps to provide notice and mitigation to its customers whenever it shuts off power. The decision also requires SDG&E to notify the Commission's Consumer Protection and Safety Division, now the Safety and Enforcement Division (SED), of the shut-off within 12 hours and submit a report to SED with a detailed explanation of its decision to shut off the power.

Southern California Edison Company (SCE) and Pacific Gas and Electric Company (PG&E) both currently exercise their authority to shut off power during dangerous fire conditions. However, there are currently no established standards on reasonableness, notification, mitigation and reporting by IOUs other than SDG&E.

## **DISCUSSION**

The 2017 California wildfire season was the most destructive wildfire season on record, and saw multiple wildfires burning across California, including five of the 20 most destructive wildland-urban interface fires in the state's history. Devastating fires raged in Santa Rosa, Los Angeles, and Ventura, and the Thomas Fire proved to be the largest wildfire in California history. These fires further demonstrated the fire risk in California. As a result of the fires and critical fire weather conditions, both the President of the United States and the Governor of California issued State of Emergency declarations.

SDG&E exercised its statutory authority under Public Utilities Code Sections 451 and 399.2(a), to de-energize specific circuits in December of 2017. The first group of de-energization events occurred during the period of December 4 through 12, 2017. There were 55 individual circuit de-energization events involving 28 circuits (some circuits had multiple de-energization events) in various eastern San Diego County communities. A total of approximately 14,000 customers were affected.

A second group of de-energization events occurred on December 14 and 15, 2017. There were six individual circuit de-energization events involving three circuits in various eastern San Diego County communities. A total of approximately 650 customers were affected.

In 2017, SCE also used de-energization as a measure to protect its system against fire safety hazards. The de-energization event occurred on December 7, 2017 and affected customers in the community of Idyllwild. Approximately 8,061 total customers were affected in SCE's and nearby Anza Co-Op's service territories. The de-energization event occurred in response to a Red Flag Warning in effect, SCE meteorological forecasting, field-validated extreme high winds and associated fire risks in the area.

According to SCE, during such an event, the company typically attempts to notify customers who could be affected prior to de-energization if timing allows. For the December 7, 2017 event, SCE notified city, county and government officials prior to de-energizing but was not able to notify affected customers prior to the outage occurring. SCE also utilizes other wildfire mitigation practices, such as blocking of distribution reclosers in High Fire Areas, prior to de-energization. According to SCE, de-energization of circuits would be the last line of defense to protect public safety due to extreme fire weather conditions. SCE requires that such an event must be authorized by its activated Incident Management Team.

PG&E reports that prior to 2018, it did not have a policy to de-energize lines as a fire prevention measure. PG&E reported that it did not proactively de-energize lines due to extreme fire weather conditions in 2017. However, in March 2018 PG&E announced that it is developing a program to de-energize lines during periods of extreme fire conditions and has been meeting with local communities to gather feedback.

## **I. Current De-Energization Policies Applicable to SDG&E**

D.12-04-024 established de-energization policies applicable to SDG&E addressing reporting, reasonableness review and customer notification.

### **A. Reporting**

Under D.12-04-024, SDG&E is required to provide the following notifications:

- A notification to the Director of SED provided no later than 12 hours after the power shut-off.
- A report to the Director of SED provided no later than 10 business days after the shut-off event ends that includes (i) an explanation of the decision to shut off power; (ii) all factors considered in the decision to shut off power, including wind speed, temperature, humidity, and moisture in the vicinity of the de-energized circuits; (iii) the time, place, and duration of the shut-off event; (iv) the number of affected customers, broken down by residential, medical baseline, commercial/industrial, and other; (v) any wind-related damage to SDG&E's overhead power-line facilities in the areas where power is shut off; (vi) a description of the notice to customers and any other mitigation provided by

SDG&E; and (vii) any other matters that SDG&E believes are relevant to the Commission's assessment of the reasonableness of SDG&E's decision to shut off power.

As other electric IOUs shut off power in a similar manner and in similar situations, such notifications are important to allow safety oversight by SED, and it would be appropriate to have these reporting requirements apply to all electric IOUs' de-energization events.

### **B. Reasonableness Review**

D.12-04-024 identified several factors that the Commission may consider in assessing whether an SDG&E decision to de-energize "was reasonable and qualifies for an exemption from liability under SDG&E's Electric Tariff Rule 14."<sup>1</sup> These factors are summarized below:

- SDG&E has the burden of demonstrating that its decision to shut off power is necessary to protect public safety.
- SDG&E must rely on other measures, to the extent available, as alternatives to shutting off power.
- SDG&E must reasonably believe that there is an imminent and significant risk that strong winds will topple its power lines onto tinder dry vegetation during periods of extreme fire hazard.
- SDG&E must consider efforts to mitigate the adverse impacts on the customers and communities in areas where it shuts off power. This includes steps to warn and protect its customers whenever it shuts off power.
- Other additional factors, as appropriate, to assess whether the decision to shut off power is reasonable.

As other electric IOUs are developing and/or instituting de-energization plans, it is important that these factors be used to assess the reasonableness of all electric IOU de-energization events in order to ensure that the power shut off is executed only as a last resort and for a good reason. However, we modify the third factor listed above by adding the phrase underlined below:

- [The IOU] must reasonably believe that there is an imminent and significant risk that strong winds will topple its power lines onto tinder dry vegetation or will cause major vegetation-related impacts on its facilities during periods of extreme fire hazard.

### **C. Public Outreach, Notification, and Mitigation**

D.12-04-024 requires that SDG&E provide notice and mitigation to its customers, to the extent feasible and appropriate, whenever SDG&E shuts off power pursuant to its statutory authority.

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<sup>1</sup> D.12-04-024, page 30.

As other electric IOUs are developing and/or instituting de-energization plans, it is important that this requirement for public outreach, notification, and mitigation apply to all electric IOUs in order to ensure that customers are impacted to the least extent necessary. We recognize that it is not practicable to have an absolute requirement that electric IOUs provide advance notification to customers prior to a de-energization event.

## **II. Strengthened Requirements Applicable to all Electric IOUs**

Recent California experience with wildfires demands that we enhance existing de-energization policy and procedures. In order to ensure that the public and local officials are prepared for power shut off and aware of an IOU de-energization policy, and in order to ensure proper safety oversight by SED, we adopt the following:

1. The guidelines in D.12-04-024, currently applicable to SDG&E only, shall apply to all electric IOUs.
2. The guidelines shall be strengthened as described in the following sections and the strengthened guidelines shall apply to all electric IOUs.

### **A. Reporting**

IOUs shall submit a report to the Director of SED within 10 business days after each de-energization event, as well as after high-threat events where the IOU provided notifications to local government, agencies, and customers of possible de-energization though no de-energization occurred. Reports to the Director of SED must include at a minimum the following information:

- The local communities' representatives the IOU contacted prior to de-energization, the date on which they were contacted, and whether the areas affected by the de-energization are classified as Zone 1, Tier 2, or Tier 3 as per the definition in General Order 95, Rule 21.2-D.
- If an IOU is not able to provide customers with notice at least 2 hours prior to the de-energization event, the IOU shall provide an explanation in its report.
- The IOU shall summarize the number and nature of complaints received as the result of the de-energization event and include claims that are filed against the IOU because of de-energization.
- The IOU shall provide detailed description of the steps it took to restore power.
- The IOU shall identify the address of each community assistance location during a de-energization event, describe the location (in a building, a trailer, etc.), describe the assistance available at each location, and give the days and hours that it was open.

### **B. Reasonableness Review**

The reasonableness review discussion in D.12-04-024 and detailed above shall apply to all electric IOUs. At this time, we are not adding additional requirements and, while we recognize that this issue along with financial liability are important ongoing discussions, this resolution is not the venue for that discussion.

### **C. Public Outreach, Notification, and Mitigation**

Increased coordination, communication and public education can be effective measures to increase public safety and minimize adverse impact from de-energization.

- The IOU shall notify the Director of SED, as soon as practicable, once it decides to de-energize its facilities. If the notification was not prior to the de-energization event, the IOU shall explain why a pre-event notification was not possible. The notification shall include the area affected, an estimate of the number of customers affected, and an estimated restoration time. The IOU shall also notify the Director of SED of full restoration within 12 hours from the time the last service is restored.
- Within 90 days of the effective date of this resolution, each IOU shall convene De-Energization Informational Workshops with representatives of entities that may be affected by a de-energization event, including but not limited to: state agencies, tribal governments, local agencies and representatives from local communities. Workshops should be inclusive of, but not limited to, representatives of customers who are low-income, have limited English, have disabilities, or are elderly. The purpose of these workshops is to explain, and receive feedback on, the IOU's de-energization policies and procedures. The workshops should be supplemented by focused working sessions, upon request by specific groups such as communications providers or Community Choice Aggregators that might have notification needs different than those of the general public.
- Within 30 days of the effective date of this resolution, each IOU shall submit a report to the Director of SED outlining its public outreach, notification, and mitigation plan. The plan must include at a minimum, the following information:
  - Names of communities that will be invited to De-Energization Informational Workshops.
  - Names of state agencies and tribal governments that the IOU will coordinate with in developing its de-energization plan and will invite to De-Energization Informational Workshops.
  - Names of local agencies the IOU will coordinate with in developing its de-energization plan and will invite to De-Energization Informational Workshops.
  - Proposed communication methods for publicizing and convening the De-Energization Informational Workshops.
  - Details regarding its plans for notification in advance of, and during, a de-energization event, and its plans for mitigation when de-energization occurs.
- The IOU shall ensure that de-energization policies and procedures are well-communicated and made publicly available, including the following:
  - Make available and post a summary of de-energization policies and procedures on its website.
  - Meet with representatives from local communities that may be affected by

- de-energization events, before putting the practice in effect in a particular area.
- Provide its de-energization and restoration policy in full, and in summary form, to the affected community officials before de-energizing its circuits.
  - Discuss the details of any potential shut-off and mitigation measures that the communities should consider putting in place, including information about any assistance that the IOU may be able to provide during events.
  - In anticipation of a specific de-energization event, the IOU shall:
    - Notify customers of planned de-energization as soon as practicable before the event.
    - As practicable and operationally feasible, notify and communicate with representatives from the fire departments, first responders, local communities, government, communications providers, and Community Choice Aggregators that may be affected by the de-energization event.
    - Discuss with local government and community representatives the details of any potential shut-off and mitigation measures the IOU can provide to lessen the negative impacts of the power outage (e.g., cooling centers).
    - Ensure that critical facilities such as hospitals, emergency centers, fire departments, and water plants are aware of the planned de-energization event.
  - The IOU shall retain documentation of community meetings and information provided in electronic form, and make that information available to SED upon request. The information shall be retained for a minimum of one year after the de-energization event or five years after the community meetings, whichever comes first.
  - After the de-energization event, IOUs shall assist critical facility customers to evaluate their needs for backup power and determine whether additional equipment is needed. To address public safety impacts of a de-energization event, the IOU may provide generators to critical facilities that are not well prepared for a power shut off.
  - The IOU shall retain records of customer notifications and make that information available to SED upon request. The information shall be retained for a minimum of one year after the de-energization event.

### **COMMENTS ON DRAFT RESOLUTION**

PU Code Section 311(g)(1) provides that a resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding or in other specified situations.

The draft resolution was mailed to parties for comment on May 30, 2018, and was noticed on the Commission's Daily Calendar on June 8, 2018. The 30-day comment period for the draft resolution was neither waived nor reduced. Parties submitted comments by June 28, 2018, and reply comments by July 6, 2018.



Based on parties' comments, several modifications were made to the draft resolution, including the following:

- One of the factors specified in D.12-04-024 for consideration during reasonableness reviews was expanded for use when applied to all IOUs.
- The requirements for reporting events that do not eventually trigger de-energization were clarified.
- The full restoration reporting period to the SED was increased from 30 minutes to 12 hours.
- The period for convening De-Energization Informational Workshops was increased from 60 days to 90 days.
- The guidance for meeting with local communities was made a general requirement, rather than tied to specific de-energization events.
- Low-income, limited English, and disability communities were added to the list of parties to include in the De-Energization Informational Workshops.
- Communications providers were added to the list of representatives to be notified in anticipation of a de-energization event.
- The requirement to provide generators and/or batteries to critical facilities was removed since most critical facilities are required to have their own back-up power resources.

Also in response to comments by the parties, we clarify that the requirements adopted in this resolution are not in conflict with IOU authority to de-energize power lines to ensure public safety provided under the PU Code. We expect an IOU to use its best judgment on a case-by-case basis to determine whether de-energization is needed for public safety. We hold this expectation even if an IOU has not complied fully with each of the requirements in this resolution, for example, if a need for de-energization arises before an IOU has met with the impacted local communities. If an IOU did not fulfill one or more of the requirements in this resolution prior to a de-energization, the IOU shall identify the missed requirement(s) and provide an explanation in its report submitted to the Director of SED after the de-energization event.

### **FINDINGS**

1. Under PU Code Sections 451 and 399.2(a), electric IOUs have the authority to shut off power in order to protect public safety.
2. The decision to de-energize electric facilities for public safety is complex and dependent on many factors including and not limited to fuel moisture; aerial and ground firefighting capabilities; active fires that indicate fire conditions; situational awareness provided by fire agencies, the National Weather Service and the United States Forest Service; and local meteorological conditions of humidity and winds.
3. The decision to shut off power may be reviewed by the Commission pursuant to its broad jurisdiction over public safety and utility operations.



Resolution ESRB-8

July 12, 2018

4. The requirements for reporting, public outreach, notification, mitigation and reasonableness review in D.12-04-024 are effective, but are only applicable to SDG&E.
5. All electric IOUs may face similar safety situations requiring power shut-off in emergencies and de-energization events in their service territory.
6. De-energization of electric facilities could save lives, protect property, and prevent fires.
7. The measures in D.12-04-024 should be strengthened to further ensure that the public and local officials are prepared for de-energization events and to ensure the proper safety oversight by the Commission's Safety and Enforcement Division.

**THEREFORE, IT IS ORDERED THAT:**

1. All electric IOUs shall take appropriate and feasible steps to provide notice and mitigation to their customers in accordance with the guidelines in D.12-04-024 whenever they shut off power pursuant to their statutory authority.
2. All electric IOUs shall follow the notification requirements to SED established in D.12-04-024.
3. All electric IOUs shall comply with the additional guidelines stated in the section of this resolution titled "**Strengthened Requirements Applicable to all Electric IOUs.**"

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on July 12, 2018; the following Commissioners voting favorably thereon:

/s/ ALICE STEBBINS  
ALICE STEBBINS  
Executive Director

MICHAEL PICKER  
President  
CARLA J. PETERMAN  
LIANE M. RANDOLPH  
MARTHA GUZMAN ACEVES  
CLIFFORD RECHTSCHAFFEN  
Commissioners

No. 21-15571

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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ANTHONY GANTNER, individually and on behalf of all those  
similarly situated,

*Plaintiff-Appellant,*

v.

PG&E CORPORATION, a California Corporation, and PACIFIC  
GAS & ELECTRIC COMPANY, a California Corporation

*Defendants-Appellees.*

On Appeal from the United States District Court  
for the Northern District of California  
No. 4:20-CV-02584-HSG

Hon. Haywood S. Gilliam, Jr.,

[an appeal from an Order in the Bankruptcy Case In re: PG&E  
CORPORATION and PACIFIC GAS AND ELECTRIC COMPANY,  
Debtors, Bankruptcy Case No. 19-30088 (DM), Adv. Pro. No. 19-  
03061 (DM), Hon. Donald Montali, U.S. Bankruptcy Judge]

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**APPELLANT'S EXCERPTS OF RECORD  
VOLUME 3 OF 4**

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# EXHIBIT G

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ER-218

COM/MP6/jt2

**Date of Issuance 6/4/2019**

Decision 19-05-042 May 30, 2019

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

Order Instituting Rulemaking to Examine  
Electric Utility De-Energization of Power  
Lines in Dangerous Conditions.

Rulemaking 18-12-005

**DECISION ADOPTING DE-ENERGIZATION (PUBLIC SAFETY POWER  
SHUT-OFF) GUIDELINES (PHASE 1 GUIDELINES)**

R.18-12-005 COM/MP6/jt2

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## **DECISION ADOPTING DE-ENERGIZATION (PUBLIC SAFETY POWER SHUT-OFF) GUIDELINES (PHASE 1 GUIDELINES)**

### **Summary**

This decision adopts de-energization (Public Safety Power Shut-off) communication and notification guidelines for the electric investor-owned utilities along with updates to the requirements established in Resolution ESRB-8. The guidelines adopted in this decision are meant to expand upon those in Resolution ESRB-8. Resolution ESRB-8 and the guidelines adopted in this decision remain in effect unless and until superseded by a subsequent decision. This decision also presents the overarching de-energization strategy of the Commission.

The de-energization guidelines adopted in this decision are set forth in Appendix A. Appendix B presents a preliminary list of issues to be explored in Phase 2 of this rulemaking. Appendix C contains a glossary of terms and abbreviations used throughout this decision. Appendix D contains a copy of Resolution ESRB-8, and Appendix E includes a copy of San Diego Gas & Electric's November 11-16, 2018 de-energization report, issued on December 4, 2018.

This proceeding remains open.

### **1. Overview**

Over the last decade, California has experienced increased, intense, and record-breaking wildfires in Northern and Southern California. These fires have resulted in devastating loss of life and damage to property and infrastructure. The California Public Utilities Commission (CPUC or Commission) has been one of three critical state agencies – along with the California Department of Forestry and Fire Protection (CAL FIRE) and the California Governor's Office of

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Emergency Services (CalOES) – involved in assessing and addressing the impacts of wildfires.

After several years of drought, changing weather patterns, extreme high heat, ferocious winds, and low humidity, among other factors, the 2018 fire season in California was the most destructive on record. July 2018 was the hottest month on record in California.<sup>1</sup> In 2018, more than 8,000 fires burned close to 2 million acres.<sup>2</sup> These devastating fires resulted in billions of dollars in damage and numerous lives lost.

Electric utility infrastructure has historically been responsible for less than ten percent of reported wildfires;<sup>3</sup> however, fires attributed to power lines comprise roughly half of the most destructive fires in California history.<sup>4</sup> With the growing threat of wildfire, utilities will proactively cut power to lines that may fail in certain weather conditions in order to reduce the likelihood that their infrastructure could cause or contribute to a wildfire. This effort to reduce the risk of fires caused by electric infrastructure by temporarily turning off power to specific areas is called “de-energization” in this proceeding.<sup>5</sup>

The strategy to de-energize builds on new weather tracking and modeling technology that provides localized forecasts during increasingly powerful wind storms, along with statewide fire hazard maps identifying those areas of very

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<sup>1</sup> National Oceanic and Atmospheric Administration; <https://www.noaa.gov/news/july-2018-was-11th-warmest-july-on-record-for-us>.

<sup>2</sup> [https://www.predictiveservices.nifc.gov/intelligence/2018\\_statsumm/fires\\_acres18.pdf](https://www.predictiveservices.nifc.gov/intelligence/2018_statsumm/fires_acres18.pdf).

<sup>3</sup> Cal FIRE; [http://www.fire.ca.gov/fire\\_protection/fire\\_protection\\_fire\\_info\\_redbooks](http://www.fire.ca.gov/fire_protection/fire_protection_fire_info_redbooks).

<sup>4</sup> Cal FIRE; [http://fire.ca.gov/communications/downloads/fact\\_sheets/top20\\_destruction.pdf](http://fire.ca.gov/communications/downloads/fact_sheets/top20_destruction.pdf).

<sup>5</sup> De-energization is also known as a “proactive power shutoff” or “public safety power shutoff (PSPS)”.

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flammable dry woody and brush fuels due to years of drought. These new tools have been developed, tested, and improved over the course of several years in the San Diego area by the local electric utility, San Diego Gas & Electric Company (SDG&E). Over this period, weather monitoring and wind modeling have become more precise, and the areas that are proactively shut off from service have grown smaller and smaller due to more reliable information and changes to electric infrastructure that allow SDG&E to isolate smaller portions of their system for de-energization.

Added to tougher regulations for removing vegetation that can come into contact with electric power infrastructure, proactively de-energizing power lines can save lives. Increasing precision to allow de-energization of smaller areas of infrastructure is important because, aside from the inconvenience of lost power for individuals and businesses, public safety services such as street lights and signals, wells used for pumping water used for firefighting, police and fire facilities, telecommunications, and home medical devices may also be impacted or shut down when power is turned off.

The 2017 and 2018 wildfire season evidenced that the public needs better information - about fire conditions, about when those conditions occur, and how the public should prepare - regardless of whether de-energization is performed proactively or occurs as a result of another emergency. The focus needs to be more on the growing danger of fire and how to respond to conditions associated with wildfire risk, and not just on actions such as de-energization that utilities take to prevent their infrastructure from contributing to potential fires. When there is forewarning of high-fire threat conditions and the potential for ignition

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from utility infrastructure or other sources exists,<sup>6</sup> emergency responders need to expect and be prepared for a potential loss of power.

The Commission's goal must be to ensure the public receives timely notice of proactive de-energization or de-energization resulting from another event. Achieving this goal necessitates shared responsibility among the electric investor-owned utilities, local, and state entities. Lessons learned from prior disasters throughout the State show that these entities should utilize Standardized Emergency Management System (SEMS). This will allow the utilities, emergency responders, and local governments to be seamlessly integrated when communicating de-energization notifications.

It is the Commission's vision that notification and communication will come primarily from the utilities with supplemental or secondary notification by local first responders. To make this possible, the Commission will need to ensure that the utilities integrate as much as possible with local emergency systems and frameworks and treat de-energization in a similar manner as any other emergency that results in loss of power, such as earthquakes, floods or non-utility caused fire events. The need for shared responsibility between the utilities, public safety partners, and local governments is critical. Therefore, the utilities should immediately begin working with CalOES to integrate their

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<sup>6</sup> In contrast to proactive de-energization, unplanned electric grid outages may occur as a result of many unforeseeable events. Examples of such events include vehicle collisions with poles and equipment, animal contact with energized power lines, lightning strikes and other weather that causes damage to equipment, vandalism, arson, and wildfires not caused by utility equipment. Often, unplanned outages occur during catastrophes, such as floods, severe winds or heat storms and such outages can impact essential services, including 911 and other emergency communications. Therefore, while this decision adopts advanced notification and education guidelines for proactive de-energization, emergency responders, operators of critical facilities, local governments, and electric customers, especially those in high fire threat districts, should be prepared for power outages that occur without advanced warning.

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warning programs with the agencies and jurisdictions within California that are responsible for ensuring the public is notified effectively before, during, and after emergencies. To this end, the utilities should align messaging and outreach with the California Statewide Alert and Warning Guidelines recently issued by CalOES.<sup>7</sup>

Finally, critical to making a notification system work for de-energization events is significant investment by the state agencies, local governments, and utilities in a joint effort to educate the public on how to prepare for wildfire season and de-energization events. These statewide education campaigns should educate the public in advance of de-energization events regarding what is entailed during a de-energization event, what tools are available to the public during these events, what to do in an emergency, how to receive information alerts during a power shutoff, and who the public should expect to hear from and when. The utilities should also report back to the Commission through its required ESRB-8 filings, as updated by this decision, on what they learn after each de-energization event.

## **2. Background and Jurisdiction**

In the wake of one of the most devastating wildfire seasons in California in history and in response to Senate Bill (SB) 901,<sup>8</sup> the Commission instituted this Order Instituting Rulemaking (OIR) to build on earlier rules on the de-energization of powerlines.<sup>9</sup> California Public Utilities Code Sections<sup>10</sup>

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<sup>7</sup> Incorporated into the record of Rulemaking (R.) 18-12-005 by written ruling on March 28, 2019.

<sup>8</sup> Stats. 2018, Ch. 626. SB 901 *available at* [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB901](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB901).

<sup>9</sup> R.18-12-005 at 1; SB 901.

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(Pub. Util. Code §§) 451 and 399.2(a) give electric investor-owned utilities (IOUs, electric utilities, or utilities) authority to shut off electric service in order to protect public safety.<sup>11</sup> However, de-energization can leave communities and essential facilities without power, which brings its own risks and hardships, particularly for vulnerable communities and individuals.<sup>12</sup> This section outlines current de-energization policies adopted by the Commission and where this OIR fits among current legislative directives and other active wildfire mitigation proceedings pending before the Commission.

### **2.1. Decision 12-04-024**

The Commission adopted de-energization rules and guidelines in Decision (D.) 12-04-024, which established requirements for reasonableness, notification, mitigation and reporting by SDG&E for its de-energization events.<sup>13</sup> D.12-04-024 reaffirms the Commission's finding in D.09-09-030 that SDG&E has authority under §§ 451 and 399.2(a) to shut off power in order to protect public safety when strong winds exceed the design basis for SDG&E's system.<sup>14</sup> D.12-04-024 goes a step beyond the 2009 decision, by ordering SDG&E to (1) take all appropriate and feasible steps to provide notice and mitigation to its customers whenever the utility shuts off power pursuant to §§ 451 and 399.2(a), and (2) reporting any de-energization events to the Commission's Safety and Enforcement Division (SED) within 12 hours after SDG&E shuts off power.<sup>15</sup>

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<sup>10</sup> Unless otherwise stated, all code section references are to the Public Utilities Code.

<sup>11</sup> R.18-12-005; Resolution ESRB-8 at 2.

<sup>12</sup> R.18-12-005 at 2.

<sup>13</sup> D.12-04-024 at 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at Conclusions of Law 1 and 2.

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While the Commission recognizes the impossible feat of anticipating every emergency situation resulting in proactive de-energization, the Commission held that SDG&E should provide as much notice as feasible before shutting off power so the affected providers of essential services (e.g., hospitals, prisons, public safety agencies, telecommunications utilities, and water districts) and customers who are especially vulnerable to power interruptions (e.g., customers who rely on medical-life support equipment) may implement their own emergency plans.<sup>16</sup> Since the adoption of D.12-04-024, Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) have exercised their authority to de-energize power lines pursuant to §§ 451 and 399.2(a), but these electric utilities were not subject to the reasonableness, notification, mitigation and reporting requirements ordered in D.12-04-024 for SDG&E.<sup>17</sup>

## **2.2. Resolution ESRB-8**

In 2017, California suffered the most destructive wildfire season on record, including 5 of the 20 most destructive wildland-urban interface fires in the state's history.<sup>18</sup> As a result of these fires, the President of the United States approved a major disaster declaration and the Governor of California proclaimed a State of Emergency. In light of the increased intensity of California wildfires and varying de-energization guidelines amongst all of California's electric IOUs, the Commission issued Resolution ESRB-8 on July 16, 2018. Resolution ESRB-8 extends D.12-04-024's reasonableness, public notification, mitigation and reporting requirements to all electric IOUs to ensure that public and local

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<sup>16</sup> *Id.* at 10.

<sup>17</sup> Resolution ESRB-8 at 2.

<sup>18</sup> *Id.*

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officials are prepared for power shut off and aware of the electric IOUs' de-energization policies.<sup>19</sup> Resolution ESRB-8 goes a step beyond D.12-04-024 by strengthening the reporting and public outreach, notification and mitigation guidelines adopted in 2012.<sup>20</sup>

Resolution ESRB-8 strengthens reporting requirements by directing the electric IOUs to submit a report to the Director of SED within 10 business days after each de-energization event, as well as after high-threat events where the utility provided notifications to local government, agencies, and customers of possible de-energization actions but where de-energization did not occur.<sup>21</sup> At a minimum, the de-energization report must include: (1) who the electric utility contacted in the community prior to de-energization and whether the affected areas are classified as Zone 1, Tier 2, or Tier 3 per the definition in General Order 95, Rule 21.2-D<sup>22</sup>; (2) explanation of why notice could not be provided at least 2 hours prior to a de-energization event if such notice was not given; (3) the number of and a summary of the complaints received as a result of the de-energization events, including any claims filed against the utility because of de-energization; (4) a detailed description of the steps the utility used to restore power; and (5) the address and description of each community assistance location during a de-energization event.<sup>23</sup>

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<sup>19</sup> *Id.* at 5.

<sup>20</sup> *Id.* at 5 to 7.

<sup>21</sup> *Id.* at 5.

<sup>22</sup> Rule 21.1(D) defines High Fire-Threat Districts(s) (HFTD). Zone 1 is Tier 1 of the latest version of the United States Forest Service and CAL FIRE's joint map of Tree Mortality High Hazard Zones. Tiers 2 and 3 are designated as such in the Commission's Fire-Threat Map.

<sup>23</sup> Resolution ESRB-8 at 5.



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Resolution ESRB-8 strengthened the public outreach, notification, and mitigation guidelines of D.12-04-024 by directing the IOUs to hold De-Energization Information Workshops with the public within 90 days from the date Resolution ESRB-8 was formally adopted. Resolution ESRB-8 ordered the IOUs to submit a report to the Director of SED outlining its public outreach, notification and mitigation plan, within 30 days of the effective date the resolution. Resolution ESRB-8 also orders the IOUs to retain documentation of community meetings and customer notifications for a minimum of one-year after a de-energization event. Finally, Resolution ESRB-8 requires the IOUs to assist critical facility customers to evaluate their need for backup power and notes that the IOUs may need to provide generators to critical facilities that are not well prepared for a disruption in service.<sup>24</sup>

### **2.3. Senate Bill 901**

On September 21, 2018, the Governor approved SB 901. Among other things, SB 901 added new provisions to § 8386, requiring all California electric utilities to prepare and submit Wildfire Mitigation Plans (Plans) that describe the utilities' plans to prevent, combat, and respond to wildfires affecting their service territories.<sup>25</sup> Shortly after, the Commission opened R.18-10-007 as a vehicle for the review and implementation of the electric IOUs' Plans prior to commencement of the 2019 wildfire season.<sup>26</sup> R.18-10-007 notes that, although

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<sup>24</sup> *Id.* at 7.

<sup>25</sup> R.18-10-007 at 2.

<sup>26</sup> R.18-10-007 at 2 to 3.

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SB 901 included other Commission-related provisions in addition to the Plans, those provisions would be addressed in other Commission proceedings.<sup>27</sup>

Pertinent to R.18-12-005, § 8386(c)(6) requires the Plans to include protocols for disabling reclosers and de-energizing portions of the electrical distribution system that consider the associated impacts on public safety, including impacts on critical first responders and on health and communication infrastructure.<sup>28</sup> Furthermore, § 8386(c)(7) requires the Plans to include appropriate and feasible procedures for notifying customers who may be impacted by the de-energizing of electrical lines. The procedures must consider the need to notify, as a priority, critical first responders, health care facilities and operators of telecommunications infrastructure.

Prior to R.18-10-007, the Commission initiated R.18-03-011 to address emergency disaster relief to California residents affected by a series of devastating wildfires in Northern and Southern California in 2017 and 2018.<sup>29</sup> Cross coordination among all of these rulemakings is necessary to ensure California is prepared for the 2019 and beyond wildfire seasons.

#### **2.4. R.18-12-005 Purpose and Procedural Background**

On December 19, 2018, the Commission opened R.18-12-005 to further examine de-energization policies and guidelines adopted in D.12-04-024 and Resolution ESRB-8.<sup>30</sup> Due to the important role that de-energization can play in

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<sup>27</sup> R.18-10-005 at 2, footnote 4.

<sup>28</sup> R.18-12-005 at 3.

<sup>29</sup> R.18-03-011 at 1 to 2.

<sup>30</sup> PG&E, SCE, SDG&E, Liberty Utilities/CalPeco Electric (Liberty), Bear Valley Electric Service, a division of Golden State Water Company (Bear Valley), and Pacific Power, a division of PacifiCorp (PacifiCorp) are listed as respondents to the OIR.

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ensuring public safety during an extreme weather event, as well as the impacts of de-energization on affected populations, the Commission opted to address the implementation and logistics for de-energization of power lines in R.18-12-005,<sup>31</sup> rather than in R.18-10-007.<sup>32</sup>

This proceeding intends to: examine conditions in which proactive and planned de-energization is practiced; develop best practices that ensure an orderly and effective set of criteria for evaluating de-energization programs; ensure the electric utilities coordinate with state and local level first responders, and align their systems with SEMS;<sup>33</sup> mitigate the impact of de-energization on vulnerable populations; examine whether there are ways to reduce the need for de-energization; ensure effective notice to affected stakeholders of possible de-energization and follow-up notice of actual de-energization; and ensure consistency in notice and reporting of de-energization events.<sup>34</sup>

Pursuant to the schedule set in R.18-12-005, staff led the first of two workshops on December 14, 2018 in Santa Rosa, California. A second staff led workshop took place on January 9, 2019 in Calabasas, California. On January 25, 2019, the assigned Administrative Law Judge (ALJ) issued a ruling providing guidance to parties on the comments to the rulemaking and canceling the February 6, 2019 prehearing conference (PHC) date to allow adequate time for the Commission and parties to review comments on the rulemaking.

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<sup>31</sup> R.18-12-005 at 1: Resolution ESRB-8 will remain in effect during the pendency of this proceeding unless and until the Commission explicitly modifies or rescinds it.

<sup>32</sup> *Id.* at 3.

<sup>33</sup> R.18-12-005 at 2, footnote 2: SEMS is the system required by Government Code Section 8607(a) for managing emergencies involving multiple jurisdictions and agencies.

<sup>34</sup> *Id.* at 2.

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Subsequently the assigned ALJ scheduled a PHC,<sup>35</sup> which was held on February 19, 2019 in Sacramento, California.<sup>36</sup>

In response to the opening comments and discussion at the PHC, the assigned Commissioner issued a Scoping Memo and Ruling (Scoping Memo) on March 8, 2019. The Scoping Memo divides this OIR into two phases<sup>37</sup> with the goal of the first phase being completed in advance of the 2019 wildfire season.<sup>38</sup> The first phase of the OIR, which is the subject of the instant decision, focuses on notice and communication issues in order to provide a framework under which the electric utilities may de-energize.<sup>39</sup>

The Scoping Memo attached a Staff Proposal authored by the Commission's SED. The Staff Proposal provides high-level responses to each of the issues in scope for Phase 1 of this proceeding. The Scoping Memo directed

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<sup>35</sup> See Administrative Law Judge's Ruling Setting Prehearing Conference (January 31, 2019).

<sup>36</sup> Opening comments and responses to the OIR were filed by: Small Business Utility Advocates (SBUA); Coalition of California Utility Employees (CUE); California Farm Bureau Federation (Farm Bureau); Sunrun, Inc.; Utility Consumers' Action Network (UCAN); SDG&E; Counties of Napa, Sonoma, Mendocino, and the City of Santa Rosa (*collectively referred to as, the Joint Local Governments*); California Energy Storage Alliance (CESA); PG&E; Direct Access Customer Coalition, Energy Users Forum (DACC/EUF); Protect Our Communities Foundation (POC); SCE; Northern California Power Agency (NCPA); Bear Valley, Liberty, and PacifiCorp (*collectively referred to as, the California Association of Small and Multijurisdictional Utilities* (CASMU); California Water Association (CWA); East Bay Municipal Utility District (EBMUD); Municipal Water District of Orange County (MWDOC); the Commission's Office of the Safety Advocate (OSA); California Municipal Utilities Association (CMUA); the City and County of San Francisco (CCSF); the Public Advocates Office of the California Public Utilities Commission (Public Advocates); The Utility Reform Network (TURN); Local Government Sustainable Energy Coalition (LGSEA); County of San Diego Office of Emergency Services; and Mussey Grade Road Alliance (MGRA).

<sup>37</sup> Scoping Memo at 3: Phase 2 issues will be set forth in a forthcoming scoping memo.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

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parties to respond to the Staff Proposal in comments.<sup>40</sup> Parties filed comments on March 25, 2019 and reply comments on April 2, 2019.<sup>41</sup>

### 3. Issues Before the Commission

The Assigned Commissioner's Scoping Memo and Ruling, issued on March 8, 2019, states: "The goal of the first phase of this proceeding is to ensure that the Commission has adopted de-energization parameters and protocols in anticipation of the upcoming 2019 wildfires season." Due to an expedited timeline, Phase 1 focuses primarily on notice and communication issues. Phase 2 will take a more comprehensive look at de-energization practices, including mitigation, additional coordination across agencies, further refinements to findings in Phase 1, re-energization practices, and other matters. A preliminary list of Phase 2 issues is attached to this decision as Appendix B.

The Phase 1 issues considered in this decision are:

1. Updates to Resolution ESRB-8;
  - a. What, if any, updates or modifications should be made to Resolution ESRB-8 to ensure that, should de-energization become necessary during the 2019 wildfire season, de-energization is undertaken as efficiently and safely<sup>42</sup> as possible?

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<sup>40</sup> *Id.* at 5.

<sup>41</sup> The following parties filed Phase 1 comments: SDG&E, California State Association of Counties (CSAC); Rural County Representatives of California (RCRC); William B. Abrams (Abrams); SCE; Farm Bureau; AT&T, CTIA, California Cable & Telecommunications Association (CCTA), Frontier Communications, T-Mobile West LLC dba T-Mobile, Sprint Communications, California Company and the Small LECs, Comcast Phone of California LLC, and Verizon (*collectively*, the Joint Communications Parties); PG&E; NCPA; UCAN; Public Advocates; CMUA; CASMU; California Large Energy Consumers Association (CLECA); TURN; EBMUD; SBUA; DACC/EUF; Joint Local Governments; City of Malibu; Center for Accessible Technology (CforAT); OSA; CCSF; POC; and MGRA.

<sup>42</sup> Parties were requested to provide comment on what constitutes "efficient" and "safe" de-energization.

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2. Notification and communication to the public (including vulnerable populations), local governments, critical facilities, and emergency/first responders;
  - a. What are the best ways to notify the aforementioned parties of a planned de-energization event and when power will be restored in the event of de-energization?
    - i. How far in advance (and in what order of priority) should the aforementioned parties be notified of an upcoming de-energization event?
    - ii. What information should be conveyed about an upcoming de-energization event?
    - iii. Who should be responsible for notifying affected customers/populations? Should the utilities be solely responsible, or should other parties such as local governments have a responsibility in communicating these events?
    - iv. What systems [or frameworks]<sup>43</sup> should be used for notification of customers (for example, the Standardized Emergency Management System<sup>44</sup> framework, reverse 9-1-1, etc.)?
  - b. How should 'vulnerable populations' be defined and identified?
    - i. Is a list of Medical Baseline customers sufficient, and if not, how should the utilities identify vulnerable populations?

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<sup>43</sup> Added to the original scope to improve clarity.

<sup>44</sup> The Commission notes that SEMS is not a notification system. The purpose of SEMS is to "provide effective management of multi-agency and multijurisdictional emergencies in California. By standardizing key elements of the emergency management system, SEMS is intended to: (1) facilitate the flow of information within and between levels of the system, and (2) facilitate coordination among all responding agencies.

Use of SEMS will improve the mobilization, deployment, utilization, tracking, and demobilization of needed mutual aid resources. Use of SEMS will reduce the incidence of poor coordination and communications and reduce resource ordering duplication on multi-agency and multijurisdictional responses." See SEMS Guidelines, Page 1 Section I.A.2. "Purpose of SEMS", November 2009.

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- c. How should critical facilities be defined and identified?
- d. How should first responders/emergency responders be defined and identified?
  - i. Should water utilities and communication companies be defined as first responders?
3. What structures and practices should be in place to maximize coordination between utilities and first responders/local governments?
  - a. Should the utilities be required to embed liaison officers (who are empowered to make decisions on behalf of the utility) in emergency operations centers carried out under state and local plans consistent with SEMs?
4. What information should be provided to the Commission after a de-energization event to show that de-energization was used as a method of last resort and that it followed Commission rules?
5. What additional provisions or protocols are necessary if de-energization of transmission lines become necessary?

#### **4. Positions of Parties on Scoping Memo and Staff Proposal**

Attached to the March 8, 2019 Scoping Memo, the Commission's SED introduced its Phase 1 Staff Proposal containing preliminary recommendations on each of the questions contained in the Scoping Memo. Parties provided detailed comments on the Staff Proposal, which are summarized in the following sections.<sup>45</sup> Although this decision does not identify every comment made by each party, the Commission considered the input of all parties in adopting the guidelines herein. Furthermore, comment summaries are presented in a different order to the layout of the Staff Proposal.

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<sup>45</sup> Parties provided thorough comments on all issues in this proceeding. Due to the magnitude of information and the compressed timeline of Phase 1, summaries of party comments are not comprehensive. The assigned Commissioner and assigned ALJ did; however, review all comments. The decision contains a representative selection of comments for each section.



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#### **4.1. Definitions**

Adopting standardized definitions and customer designations allows the utilities, CalOES (and other state or local government entities), CAL FIRE, local first/emergency responders, local governments, critical facilities, the Commission, customers and all others to operate with a shared understanding and language throughout a de-energization event. In addition, designation as one of the groups set forth below carries special consideration for notice, both in timing and form (discussed later in this decision,) possible mitigation to lessen the impacts before, during and after a de-energization event and possible prioritization during re-energization. Mitigation and re-energization will be explored more fully in Phase 2 of this proceeding.

##### **4.1.1. First Responders/Emergency Responders/Public Safety Partners/Local Safety Partners (Issues 2(d) and 2(d)(i))**

The Scoping Memo, in Issue 2(d), asks parties to answer the following question: How should first responders/emergency responders be defined and identified? As a follow-up to this initial question, in Issue 2(d)(i), the Scoping Memo solicits feedback on whether water utilities and communication companies should be designated as first responders. The Staff Proposal mentions the term "public safety partners" throughout but does not include a specific definition for that term. Party positions on the staff proposal are summarized below.

##### **4.1.1.1. Staff Proposal**

Staff set forth the following proposals:

The term "first responder" refers to those individuals who in the early stages of an incident are responsible for the protection and preservation of life, property, evidence, and the environment,



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including emergency response providers. The term “emergency response providers” includes federal, state, and local governmental and nongovernmental public safety, fire, law enforcement, emergency response, emergency medical services providers (including hospital emergency facilities), and related personnel, agencies, and authorities. (*Issue 2(d)*)

Public Utilities Code Section 8386 (c)(6) states that Communications infrastructure providers should receive priority notification of planned de-energization events. For purposes of notification, water and communication companies should be prioritized; however, this should not include designation as first responders. (*Issue 2(d)(i)*).

#### **4.1.1.2. Parties’ Positions**

##### **4.1.1.2.1. Definition of First Responders/Emergency Responders**

Parties broadly supported Staff’s proposed definition of first responders/emergency responders, including CASMU, Public Advocates, CCSF, SDG&E, EBMUD, PG&E, the Joint Communications Parties, City of Malibu, CforAT and the Farm Bureau. CSAC agrees with Staff’s definition but suggests the inclusion of Emergency Medical Associations and public works in this category. OSA recommends the inclusion of CalOES and CAL FIRE. SCE suggests expanding the definition to include certain electric utility staff, such as wildfire management personnel and troublemen. Abrams recommends expansion to include individual decision makers within the private and non-profit sectors that manage at-risk infrastructure, e.g. flammable and combustible material storage facilities.

Other parties recommend that the Commission adopt a different definition for first/emergency responders. CWA suggests the following definition: “fire departments, first responders, local communities, government, water service

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providers, communications providers, and Community Choice Aggregators (CCAs).” The Joint Local Governments state that the Staff Proposal is too broad and does not identify the actual agencies that will be contacted first in a de-energization event. MWDOC recommends use of the definition of “first responder” set forth in the U.S. Department of Homeland Security Presidential Directive HSPD-8.<sup>46</sup> TURN offers that Merriam-Webster and Federal Emergency Management Agency (FEMA) definitions could be a starting place to define first/emergency responders. TURN further states that first/emergency responders should include responders that protect the public safety during a prolonged blackout, not just those that respond to accidents or emergencies.

#### **4.1.1.2.2. Water Utilities and Communication Providers**

Most parties agree with Staff’s recommendation that “for purposes of notification, water and communication companies should be prioritized; however, this should not include designation as first responders”<sup>47</sup> (Farm Bureau, CASMU, CforAT, OSA, Public Advocates, EBMUD, City of Malibu, PG&E, SCE, SDG&E, TURN). Selected additional comments follow. The Joint Water Districts<sup>48</sup> and MWDOC recommend that water utilities be designated as first responders, citing in part to HSPD-8. However, TURN raises the concern that designation of water utilities as first responders by a state agency “may have

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<sup>46</sup> As cited in MWDOC opening comments at 6: refers to those...who in the early stages of an incident are responsible for the protection and preservation of life, property, evidence, and the environment, including...emergency management...public works, and other skilled support personnel (such as equipment operators) that provide immediate support services during prevention, response and recovery operations.”

<sup>47</sup> Staff Proposal at 5.

<sup>48</sup> Valley Center Municipal Water District and Padre Dam Municipal Water District filed opening comments jointly. MWDOC joined these entities to file reply comments.

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implications beyond the current de-energization proceeding.”<sup>49</sup> CWA, in reply comments, acknowledges TURN’s concern and suggests that priority notification of water utilities is more important than a designation as a first responder. RCRC and other parties suggests that telecommunications companies and water utilities should be notified as if they were first responders, but not receive an official designation as such.

Finally, the parties representing water infrastructure emphasize that the lack of water supply can reduce firefighting capabilities, and a lack of adequate water pressure can increase the risk of drinking water contamination. Electric service is also a vital component to the transport and treatment of wastewater. These parties agree that water infrastructure warrants priority designation for notification.

#### **4.1.1.2.3. Public Safety Partners**

CCSF, CWA, and MWDOC, among others, note that the Staff Proposal uses the term “public safety partners” throughout, but does not provide a definition for the term. CWA (supported by CCSF) asserts that the term “public safety partners” should be defined as “fire departments, first responders, affected local communities, local governments, publicly-owned utilities, communication providers, community choice aggregators, water service providers, and waste utilities.” Several other parties recommend that public safety partners be defined as the collective group of emergency/first responders *and* critical facilities. PG&E suggests that the terms should be defined as city and county officials (or local officials), CalOES, CAL FIRE and the Commission.

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<sup>49</sup> TURN Opening Comments at 10.

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#### **4.1.2. Critical Facilities (Issue 2(c))**

In Resolution ESRB-8, the Commission requires that the utilities ensure that operators of critical facilities are aware of any planned de-energization event. Furthermore, in preparation for a de-energization event, the utilities must assist critical facility customers to evaluate their needs for backup generation and determine whether additional equipment is needed, including providing generators to facilities that are not well prepared for a power shut off.<sup>50</sup> Although Resolution ESRB-8 provides several examples of critical facilities, no comprehensive definition has yet been adopted by the Commission. Therefore, Issue 2(c) in the Scoping Memo solicits feedback on the following question: How should critical facilities be defined and identified?

##### **4.1.2.1. Staff Proposal**

Staff set forth the following proposal:

For the purposes of de-energization events, critical facilities should include the following:

- Police Stations
- Fire Stations
- Emergency Operations Centers
- Medical facilities, including hospitals, skilled nursing facilities, nursing homes, blood banks, and health care facilities
- Schools and day care centers
- Public and private utility facilities vital to maintaining or restoring normal services
- Drinking water and wastewater treatment plants
- Communication carrier infrastructure including selective routers, central offices, head ends, cellular switches, remote terminals, and cell sites.

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<sup>50</sup> Resolution ESRB-8 at 7.

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#### 4.1.2.2. Parties' Positions

Many parties, including a majority of the utilities, support the list of critical facilities set forth in the Staff Proposal, most with proposed modifications. Selected comments follow. The Joint Local Governments and CforAT support the Staff Proposal as presented. CSAC recommends the addition of dialysis centers, surgical centers, hospitals, lock down facilities, pump stations, refineries and chemical production facilities. CASMU suggests the inclusion of jails and prisons. OSA recommends the Commission consider adding school districts, universities, colleges, private schools, hospice facilities, airports, prisons and nursing homes. RCRC recommends the addition of fairgrounds or other local government staging sites, including evacuation centers and shelters, as well as municipal airports.

CCSF concurs with the recommendations of others and offers that navigation communication systems, traffic control and landing and departure facilities for commercial air and sea operations, rail transit systems, petroleum refineries, other industrial facilities dependent on electricity for public safety, publicly-owned utilities (POUs), CCAs, and dialysis centers should be added to the list of critical facilities. CCSF recommends that the Commission combine the list presented in the Staff Proposal with the list of Essential Customers adopted in D.02-04-060, *Interim Opinion on Interruptible Programs and Curtailment Priorities*.<sup>51</sup> Abrams supports the inclusion of flammable and combustible material storage facilities. City of Malibu recommends an expanded list of water infrastructure, discussed more below, as well as the inclusion of city halls or similar city facilities.

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<sup>51</sup> D.02-04-060, Attachment B, lists Essential Customers.

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The Joint Communication Providers note that SB 901 requires priority notification of communications providers without the requirement they be designated as critical facilities.<sup>52</sup> TURN recommends that critical facilities should include communications and telecommunications facilities in addition to schools, airports and other transit providers. TURN notes that, as required by ESRB-8, the IOUs must assist critical facilities to evaluate their needs for backup power and determine whether additional equipment is needed. Public Advocates recommends that the list of critical facilities be updated by the local utility when new critical infrastructure is established in its operating territory.

CSAC, MWDOC and Public Advocates recommend that the Commission consider the FEMA definition of critical facilities, which is broader than the Staff Proposal. EPUC offers that the Commission should consider whether a special outreach protocol is necessary for Category N customers. POC suggests that the list of 110 sites proposed by SDG&E to be prewired to accept portable generators, as discussed in D.09-09-030, is a good starting place to designate critical facilities.

CLECA notes that terms used by the utilities in their Wildfire Mitigation Plans and those presented in the Staff Proposal overlap. For example, SCE designates “Essential Service Providers,”<sup>53</sup> and PG&E references “critical services” and “critical facilities.”<sup>54</sup> CLECA recommends that the Commission adopt a standard term for critical facilities/essential service providers along with a list of included categories to ensure proper notification of such facilities. CLECA also requests the inclusion of private industrial facilities necessary to the

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<sup>52</sup> Many other parties support inclusion of communication facilities as critical facilities.

<sup>53</sup> SCE Wildfire Mitigation Plan at 68.

<sup>54</sup> PG&E Wildfire Mitigation plan at 103-105.

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operation of police, fire and emergency operations centers (e.g. pipeline transportation facilities that supply fuel directly to fire departments or other first responders). In addition to suggestions offered by others, CLECA recommends inclusion of radio and television broadcasting stations used for broadcasting emergency messages, instructions, and other public information related to electric curtailment.

Many parties suggest that drinking water and wastewater treatment plants do not encompass the scope of critical water infrastructure that should be designated as critical facilities. CMUA offers the following definition: “drinking water and wastewater facilities critical to maintain public health and safety standards, such as, treatment plants, pumping stations and other storage facilities.”<sup>55</sup> CWA recommends that critical facilities be defined to include all infrastructure used to pump, divert, transport, store, treat and deliver water. The Joint Water Districts emphasize the inclusion of, at a minimum, water pumping stations, sewer lift stations, water and wastewater treatment plants, corporate headquarters and operation control facilities. MWDOC offers a complementary list of water facilities as those already presented, and EBMUD also recommends the inclusion of drinking water pumping distribution plants. The Farm Bureau notes that many rural users rely primarily on well water that requires electricity for access; therefore, advanced notification of such customers should be considered.

The utilities offer a varied response to the Staff Proposal. PG&E generally supports the Staff Proposal, noting that the proposal is generally aligned with the

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<sup>55</sup> CMUA Opening Comments at 6. In Reply Comments, CLECA disagrees with SCE, arguing that the list of critical facilities should be expansive this year when the risks of de-energization are likely greater than in subsequent years (CLECA Reply Comments at 4).

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list PG&E provides in its Wildfire Mitigation Plan; however, PG&E notes that its list is comprehensive and presents entities in order of priority for re-energization. PG&E disagrees with the suggestions of many parties, arguing that “the Commission [should] avoid broadening the definition in a manner that would be unmanageable or defeat the prioritization purpose.”<sup>56</sup> SCE also agrees with most of the entities listed in the Staff Proposal but notes that it considers entities which provide critical services to the public as essential providers. For example, SCE notes that shutting off power to schools and daycare facilities does not pose the “same immediate risk to public safety operations as compared to fire and police agencies and other critical infrastructure such as hospitals and nursing homes.”<sup>57</sup> CASMU generally supports the Staff Proposal, but encourages engagement with emergency service contacts to further evaluate needs and ensure all critical facilities are included. Finally, SDG&E argues that the Staff Proposal’s list of critical facilities is overly broad.

Regarding how to identify critical facilities, few parties offered specific comments beyond a discussion of broad critical facility categories. CCSF recommends that each IOU have ultimate responsibility for identifying critical facilities within its service territory. Prior to the start of the wildfire season, CCSF states that the IOUs should be required to vet their lists of critical facilities with relevant emergency officials (a position supported by CASMU) and the IOUs should be required to update the list on an on-going basis as new information is learned, but no less frequently than annually.

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<sup>56</sup> PG&E Reply Comments at 6.

<sup>57</sup> SCE Opening Comments at 17.



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#### **4.1.3. Vulnerable Populations (Populations with Access and Functional Needs) (Issues 2(b) and 2(b)(i))**

The Commission, in ESRB-8, first identifies the need to communicate with and educate vulnerable populations (although not designated as such in the resolution) including low-income customers, customers with limited English, disabled customers and the elderly.<sup>58</sup> In the OIR that opened this proceeding, the Commission set a preliminary scope that included the following questions: “Do notification standards differ for vulnerable populations,”<sup>59</sup> and “how [should the utilities] mitigate the impact of de-energization on vulnerable populations?”<sup>60</sup>

Many parties’ comments on the OIR stated that, absent a definition of “vulnerable populations,” it would be challenging to ascertain appropriate notification standards and mitigation measures. Therefore, Issue 2(b) of the Scoping Memo asked the following question: How should ‘vulnerable populations’ be defined and identified? Issue 2(b)(i) expanded upon this threshold by seeking feedback on the following question: Is a list of medical baseline customers sufficient, and if not, how should the utilities identify vulnerable populations?

##### **4.1.3.1. Staff Proposal**

Staff proposed the following definition for vulnerable populations  
(*Issue 2b*):

For the purposes of de-energization, "vulnerable populations" should address those individuals who are or have:

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<sup>58</sup> Resolution ESRB-8 at 6.

<sup>59</sup> OIR at 8.

<sup>60</sup> *Id* at 9.

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- Physical, developmental or intellectual disabilities
- Chronic conditions or injuries
- Limited English proficiency
- Elderly
- Children
- Low income, homeless and/or transportation disadvantaged (i.e., dependent on public transit)
- Pregnant women

Regarding the question of medical baseline customers, Staff proposed the following (*Issue 2(b)(i)*):

Although medical baseline customers do not represent the breadth and scope of the Access and Functional needs community, the use of this population is the best available proxy prior for the 2019 fire season. To augment the limitations on this methodology, IOUs should reach out to organizations with the ability to reach out to these communities, including (but not limited to): local Independent Living Centers, Regional Centers, paratransit providers, and other resource providers. Additionally, potential augmentation efforts to more fully address methods to identify and alert vulnerable populations should be addressed in Phase 2 of this rulemaking.

#### **4.1.3.2. Parties' Positions**

The majority of parties recommended that the definition of vulnerable populations be expansive in nature (*Issue 2(b)*) and not limited solely to those customers listed under the utilities' various medical baseline programs (*Issue 2(b)(i)*). Parties offered numerous additional populations and definitions the Commission could consider in its designation of vulnerable populations. The utilities and several other parties argue that the Staff Proposal's definition is infeasible in practice due to identification and privacy concerns and that the definition should be limited to data that is available to the utilities under its programs and tariffs.

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CSAC, the Joint Local Governments, and City of Malibu generally agree with the Staff Proposal as presented, although the Joint Local Governments are concerned about the feasibility of identifying and providing effective notice to such a large group. Abrams suggests that the term ‘vulnerable populations’ be replaced with the term ‘disproportionately vulnerable populations,’ because all residents are vulnerable to utility ignited wildfires. UCAN suggests a more expansive definition featuring additional qualifiers, e.g. instead of the term ‘elderly,’ UCAN suggests replacing it with the following: “seniors and people living with disabilities to include people living both independently and in dependent care facilities.”<sup>61</sup>

CCSF states that the Staff Proposal’s list of vulnerable populations addresses the appropriate groups, but recommends that the Commission adopt a more specific definition, such as that set forth in Government Code § 8593.3.<sup>62</sup> Public Advocates cites to CAL FIRE’s 2019 Community Wildfire Prevention and Mitigation Report as a possible source for defining vulnerable populations as well as § 745(c)(1), which, in addition to medical baseline customers, includes customers requesting third-party notifications and customers who the Commission has ordered cannot be disconnected from service without a prior in-person visit from a utility representative. SBUA agrees that vulnerable

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<sup>61</sup> UCAN Opening Comments at 7.

<sup>62</sup> Government Code § 8593.3 provides that cities and counties must update their emergency plans to include service for the ‘access and functional needs’ population. The code lists ‘access and functional needs’ populations as follows: ...the “access and functional needs population” consists of individuals who have developmental or intellectual disabilities, physical disabilities, chronic conditions, injuries, limited English proficiency or who are non-English speaking, older adults, children, people living in institutionalized settings, or those who are low income, homeless, or transportation disadvantaged, including, but not limited to, those who are dependent on public transit or those who are pregnant.

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populations should include Medical Baseline customers, but the Commission should also consider using the definition of ‘hard to reach’ customers as defined in D.18-05-041.<sup>63</sup>

RCRC requests inclusion of communities with only one method of ingress/egress, as these communities are particularly vulnerable during wildfires. RCRC also cautions against using only CalEnviroScreen to identify disadvantaged communities, as it would eliminate almost all of the most fire prone communities. TURN suggests that, at a minimum, vulnerable customers should include medical baseline customers and life support customers, customers who certify that they have a serious illness that could become life threatening absent electric service, and customers over 65 years old. TURN also recommends consideration of households with infants less than 12 months of age, noting that many states also provide protections against disconnections of households with infants.

CASMU asserts that the utilities do not have the data to ascertain whether customers fall under the Staff Proposal’s ‘vulnerable populations’ definition. PG&E suggests that Staff’s proposed definition is infeasible because it would require the utility to ascertain socio-economic data that is not legally or practically available to the utility. SCE suggests that the proposed definition is too broad and would be difficult, if not impossible, to reasonably implement. Adoption of this definition will shift responsibilities on to the IOUs that state law assigns to public sector emergency services. SDG&E submits that ‘vulnerable populations’ should be defined as those who are wholly dependent upon electricity for life-sustaining service, for example those designated as “Life

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<sup>63</sup> *Decision Addressing Energy Efficiency Plans.*

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Support” customers, which are a subset of SDG&E’s medical baseline population. In Reply Comments, PG&E agrees that there is a distinction between those customers who are dependent upon electricity for health care needs and those customers that are generally vulnerable, but notes if the Commission adopts a broad definition, then PG&E supports the suggestion that the utilities partner with the appropriate agencies who could then notify broader categories of “vulnerable populations.”

Staff propose that, for the 2019 wildfire season, use of medical baseline customers is the best available proxy for vulnerable populations, with the caveat that the IOUs should increase outreach to community organizations that can contact vulnerable populations as a means of overcoming limitations of the use of the medical baseline program. This proposal was met with varying responses among parties. CASMU, PG&E, SCE and SDG&E agree that medical baseline customers are the best available proxy for 2019, although SCE disagrees with the recommendation that the IOUs use additional notification streams to notify communities disproportionately affected by de-energization. CSAC, CforAT, POC, CCSF, SBUA and others disagree that medical baseline is an appropriate proxy for 2019. The Joint Governments argue that medical baseline programs are undersubscribed. SBUA recommends prioritizing residential and small commercial customers residing in disadvantaged communities for the 2019 fire season.

Parties offer many suggestions on how to identify vulnerable populations, both through the utilities’ own programs and tariffs and through partnership with local agencies. CSAC suggests that identification of “medically fragile” vulnerable populations should be handled by both the IOUs and the local Public

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Health Department.<sup>64</sup> OSA recommends that the utilities identify vulnerable populations in the same way they identify medical baseline customers; the utilities should ask such customers to register with the utility. TURN supports this approach but recommends that the utilities be required to partner with community-based organizations that work with identified vulnerable populations to facilitate self-certification.

Public Advocates suggests that the utilities immediately update their Medical Baseline lists prior to the start of the 2019 wildfire season. If possible, the utilities should work with appropriate counties and departments of health and human services to identify eligible customers. CforAT notes that the utilities can identify and reach low income customers that are enrolled in the utilities' CARE (California Alternate Rates for Energy) and FERA (Family Electric Rate Assistance) programs. The Joint Local Governments recommend that the utilities must cultivate and maintain ongoing relationships and lines of communication with the agencies that serve its vulnerable populations. Further, customers could be given a way to self-select to the list of identified vulnerable populations. Similarly, UCAN notes that incorporating community-based organizations into notification systems builds both alert capacity and post-event effectiveness. Advanced cooperation is imperative. NCPA stresses that the Commission must adopt a means of identifying and locating vulnerable populations prior to the development of notification processes.

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<sup>64</sup> CSAC Opening Comments at 7.

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#### **4.2. De-Energization Notification and Communication**

This decision will focus primarily on notice and communication in the days prior to and after a de-energization event, but the Commission will also adopt preliminary standards for advanced communication and notice (standardized templates, etc.), as well as communication during de-energization when power will be interrupted and also during re-energization. Communication and notice during de-energization and re-energization will be explored more fully in Phase 2.

This decision will answer the following questions: (1) who should receive notice; (2) who is responsible for providing notice; (3) when should agencies/entities/customers receive notice; (4) what information should be conveyed; (5) what systems and methods should be used to convey that information; and (6) what structures and practices should be in place to maximize coordination between utilities first responders and local governments.

In order to answer the above questions, information from the Staff Proposal (and party comments) are presented in a different order than originally presented in the Staff Proposal. This discussion section will correspond with this format.

##### **4.2.1. Who Should be Notified? (Portions of Issue 2(a))**

Communication with affected customers as well as first responders is critical to ensure that de-energization happens as orderly and safely as possible. Issue 2(a) in the Scoping Memo asked for feedback on the following question: What are the best ways to notify [the public, including vulnerable populations, local governments, critical facilities and emergency/first responders] of a

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planned de-energization event and when power will be restored in the event of de-energization?

#### **4.2.1.1. Staff Proposal**

Staff provided the following proposal:

... IOUs will be responsible for contacting local public safety officials in impacted jurisdictions prior to a de-energization event and must utilize all available means to communicate a de-energization event. At a minimum, these contacts should include local and county public safety notification points whose jurisdictions include de-energized areas. These contacts must include primary 24-hour contact points, secondary contacts, and tertiary contacts.

To ensure the accuracy of these lists, electric IOUs will be required to update these lists annually and conduct a communication exercise prior to fire season to confirm their ability to rapidly disseminate information. Additionally, all notifications related to de-energization events will be concurrently sent to CalOES, the CPUC and CAL FIRE. These notifications should include anticipated de-energization events, de-energization events, and estimated restoration timelines.

#### **4.2.1.2. Parties' Positions**

Parties provided a variety of comments, most generally supportive of the staff proposal, but with proposed modifications. Many of parties' comments pertain to timing, method and content of notice, which, although included minimally in Issue 2(a), will be discussed in later sections.

CASMU, the Joint Local Governments, CCSF, PG&E, CforAT, and Public Advocates generally support the Staff Proposal. CSAC recommends the addition of notice to the Emergency Management Agency, the Department of Public Health, and fire service and law enforcement agencies, at a minimum. EBMUD and the Joint Water Districts recommend that notice be given to water companies. SBUA recommends that the utilities should notify governmental



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bodies beyond first responders. CCSF also recommends that notice be sent to relevant adjacent jurisdictions that may be impacted by de-energization.

Farm Bureau recommends that the Commission require a dedicated customer service line for wildfire-related information that is staffed with specifically trained personnel. CLECA offers that the utilities should be able to receive communications from critical facilities and/or large users in addition to sending messages. DACC/EUF note the importance of obtaining the correct contact at critical facilities and/or large customers; the billing contact may not be the appropriate contact in the case of de-energization. Several parties recommend notification of POUs and electric cooperatives that may be impacted by de-energization because of interconnection with the utility's grid.

SCE concurs with the Staff Proposal, but requests that the Commission not require that a specific information technology be used. Furthermore, SCE suggests that tertiary contacts should not be required because the utilities cannot require that public safety agencies provide a certain number of contacts. SDG&E supports annually updating its contact list as well as conducting a communication exercise on an annual basis. SDG&E also states that all affected groups should be notified as soon as practicable or operationally feasible.

#### **4.2.2. When and in What Order Should Contact Occur? (Issue 2(a)(i))**

Advance notice is crucial in order to allow agencies and affected customers time to adequately prepare for and respond to a de-energization event. The Scoping Memo (Issue 2 (a)(i)) seeks feedback on the following question: How far in advance (and in what order of priority) should [the public, including vulnerable populations, local governments, critical facilities and emergency/first responders] be notified of an upcoming de-energization event?

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#### **4.2.2.1. Staff Proposal**

Staff set forth the following proposal:

Every effort must be made by the IOUs to provide notice of potential de-energization events as early as possible. At a minimum, notifications to Public Safety officials and critical infrastructure owners/operators should occur when a utility Emergency Operations Center activates (stands-up) in anticipation of a public safety power shutoff (PSPS) Response Protocol taking place, when the PSPS Response Protocol is initiated, when re-energization begins, and when re-energization is completed within a jurisdiction.

Instead of creating a multi-layer notification tiering system, it is recommended that notifications be provided to public safety partners and critical infrastructure partners prior to initial customer notifications; however, the completion of these notifications should not be an impediment to providing notification to impacted populations. To the extent practical, communities disproportionately impacted by de-energization events should include additional notification streams (up to and including in person notification) in lieu of staggered alerting timelines.

Staff also recommends consistency with the California Alert and Warning Guidelines by using alerts, warnings and notifications. This proposal will be discussed in Section 4.2.3, below. In addition, the method of notification, including possible in-person notification for vulnerable populations, is described in Section 4.2.5, below.

#### **4.2.2.2. Parties' Positions**

The parties universally agree that advanced notice is imperative and should be afforded whenever possible. Parties differ on which entities should receive priority notice and how far in advance notice should be given. Comments will focus first on the timing of notification and then on the priority of notification, although some comments overlap. Farm Bureau and the City of Malibu support the Staff Proposal as written. CSAC suggests a phased approach

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beginning at seven days before de-energization, then 72 hours, 48 hours, 24 hours, 12 hours, and finally two hours before a de-energization event. CforAT supports advance notice but cautions that advance notice of de-energization events that ultimately do not occur could cause customer frustration and fatigue as customers take potentially expensive precautions.

The Joint Governments support the Staff Proposal but note that communication with local governments, public safety and CalOES is most critical. Public Advocates supports a generally structured and prioritized notification system. CLECA supports the Staff Proposal, pending the definition of critical facilities, and suggests extending any communication exercises to critical facilities. EPUC recommends an upfront notification system to customers based on their relative risk of de-energization. EPUC offers a relative risk categorization system, such as red/yellow/green. CMUA offers that the Commission should either clarify that the utility must always activate an Emergency Operations Center before a de-energization event or else designate some other point in time prior to de-energization that the utilities should use, to the extent feasible, to provide notice.

OSA suggests there should be five tiers of notification: Priority 1 (first responders) one-to-seven days in advance; Priority 2 (local government) two-to-six days in advance; Priority 3 (Critical Facilities) three-to-five days in advance; Priority 4 (medical baseline) four days in advance; Priority 5 (general public) two days in advance. The Joint Communication Parties recommend, in addition to those in the Staff Proposal, an additional notice two-to-four hours in advance of de-energization. TURN suggests that first responders, water and telecommunications providers receive between 96 and 48-hours advance notice,

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local governments 24 to 48 hours, and the general public 24 to 48 hours- notice. Final notice should occur 24 hours before de-energization.

CCSF recommends that the Commission adopt specific notification timelines and recommends a 72-hour notice. Abrams emphasizes the importance of advance notification so that affected entities are prepared when a de-energization event is called. POC recommends that all customers in Tier 3 HTFD affirmatively sign an advisory notice at least one month in advance of fire season, inclusive of information regarding where to go during a de-energization event. DACC/EUF recommend that the Commission requires at least a 12-hour advance notice of re-energization.

CASMU supports the Staff Proposal as written. PG&E agrees with the Staff Proposal, noting that prioritization of alerts, warnings and notifications should not create any impediment to notification of the entire population. SCE agrees that the notification of public safety agencies and customers should generally occur two days in advance of de-energization. SDG&E states that it attempts to notify the public, local governments, critical facilities and emergency/first responders at least 48 hours in advance of a de-energization event. SDG&E prioritizes public safety partners, especially first/emergency responders, because these groups are best positioned to respond to emergencies. If concurrent notification does not occur, notification should next be made to local governments because the public is likely to turn to them for information and because local governments can initiate emergency response protocols. Next should be critical facilities such as hospitals, water and telecommunication providers, followed by the general public.

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**4.2.3. What Information Should Be Communicated? (Part of Issue 1, Part of Issue 2(a), Part of Issue 2(A)(i), Issue 2(a)(ii), and Part of Issue 2(a)(iii))**

Public Safety Partners and affected customers will require accurate and up-to-date information for each de-energization event. Furthermore, different entities will require different information. For example, first/emergency responders will require a different type of information than residential customers since they must prepare for the public safety impacts of de-energization. Staff discussed the type of information that should be included in de-energization notifications and communications to both Public Safety Partners and customers in various portions of the Staff Proposal. This section brings those proposals together under one heading and presents a summary of party comments on the topic.

**4.2.3.1. Staff Proposal**

Staff offered the following proposals:

1. In order to facilitate situational awareness across public safety partners throughout California, IOUs must clearly articulate their threshold for strong wind events, as well as the conditions (humidity, fuel dryness, temperature) that define "an extreme hazard" to allow public safety partners to conduct parallel planning for potential de-energization events. Additionally, IOUs will be responsible for publishing a Geographic Information System Representational State Transfer Service (GIS REST) service articulating the geographic boundaries of the areas subject to de-energization to public safety partners concurrent with their notifications of de-energization events (*Issue 1*).
2. [All] notifications related to de-energization events will be concurrently sent to the CalOES the CPUC, and CAL FIRE. These notifications should include anticipated de-energization

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events, de-energization events, and estimated restoration timelines. (*Issue 2a*).

3. Additionally, to be consistent with the California Alert and Warning Guidelines, the following definitions will be utilized to discuss de-energization communications (*Issue 2(a)(i)*):
  - a. Alert - A communication intended to draw the attention of recipients to some previously unexpected or unknown condition or event.
  - b. Warning - A communication that encourages recipients to take immediate protective actions appropriate to some emergent hazard or threat.
  - c. Notification - A communication intended to inform recipients of a condition or event for which contingency plans are in place.
  
4. In order to ensure shared situational awareness, IOUs will need to provide public safety partners with the following information: total customer outages within a jurisdiction's boundaries, total number of impacted medical baseline customers within a jurisdiction's boundaries, the event triggering the de-energization, and the estimated length of the de-energization event. IOUs will be responsible for publishing a GIS REST service articulating the geographic boundaries of the areas subject to de-energization to public safety partners concurrent with their notifications of de-energization events. (*Issue 2(a)(ii)*).
  
5. IOUs should pre-script messages templates in advance in a format that allows public safety agencies to use their official public alerting channels to amplify the message if they choose to do so. Consistent with existing best practices articulated in the California Alert and Warning Guidelines, warning messages should answer five (5) key recipient questions (*Issue 2(a)(iii)*):
  - a. Why are we at risk?
  - b. Do you really mean me? (Does this affect my location or situation?)
  - c. How long do I have to act?

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- d. What should I do?
- e. Who says so?

#### **4.2.3.2. Parties' Positions**

##### **4.2.3.2.1. Issue 1**

Many parties supported Staff's proposal in Issue 1, with proposed modifications. For example, the Joint Local Governments, CCSF, Public Advocates, DACC/EUF, PG&E, SCE, SDG&E and the Joint Communication Parties generally support the provision of de-energization event boundaries to Public Safety Partners. Several parties, such as CCSF, request that more detailed information be provided, including affected circuits, real-time weather data and fire threat mapping. DACC/EUF recommend that notifications be precise as to what facilities are to be de-energized so that back-up generation can be activated. The Joint Communication Providers recommend that communication providers receive the same information as Public Safety Partners.

PG&E suggests that utility GIS were designed for utility information needs and therefore presents information that is not formatted for use by public safety agencies. SCE recommends against the requirement to share GIS REST files, instead stating that the information can be published to their website for far less cost. SCE also agrees with other parties that information such as outage boundaries, circuits impacted by shut-off, the number of customers per circuit, and the number of critical care customers per circuit should be shared with Public Safety Partners. SDG&E generally supports sharing information with Public Safety Partners but believes that the Staff Proposal requires more exploration and expansion. Furthermore, SDG&E does not believe that Resolution ESRB-8 requires modification, noting that SDG&E has received



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positive feedback from local jurisdictions on their notification and communication efforts. CASMU supports the Staff Proposal as written.

Regarding the setting of thresholds for strong wind events and defining the conditions that constitute an “extreme hazard,” parties provided varying comments. MWDOC, Abrams, the Joint Local Governments, NCPA and CCSF agree that the utilities should have clearly articulated thresholds and conditions. Abrams supports standardization of thresholds across the utilities. Both CCSF and NCPA notes that setting thresholds and standards should not be construed as automatically triggering a de-energization event; rather, such information helps Public Safety Partners with their own planning efforts.

The Joint Communication Parties suggest that defined standards are not as important as receiving clear and advance information in real time from the utilities. TURN, on the other hand, supports the adoption of thresholds and standards, noting that the utilities “are required to provide an essential public service, and they should not have unbounded discretion over when the essential public service should be suspended.”<sup>65</sup> TURN states that the utilities should have narrow discretion, but defined thresholds must be met before the utility can exercise that discretion. To do otherwise would mean that the Commission cannot determine whether a particular instance of de-energization was necessary to protect the public safety, as required by ESRB-8.

SDG&E states that it does not utilize thresholds or define “extreme hazards,” but it agrees with the sentiment of the Staff Proposal. SDG&E notes that it already shares information with the public, but the decision to de-energize requires utility operating experience in order to analyze all inputs. PG&E asserts

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<sup>65</sup> TURN Reply Comments at 2.



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that it already has set and articulated the parameters it uses to determine if de-energization is necessary. SCE opposes the adoption of thresholds because the determination to de-energize is complex and subject to change based on real-time conditions.

**4.2.3.2.2. Issue 2(a) and 2(a)(ii)**

This section will summarize party comments pertaining to relevant portions of Issue 2(a) and Issue 2(a)(ii). The staff proposals on these two issues overlap significantly. Comments pertaining to GIS REST services are summarized above.

CLECA and CforAT support the Staff Proposal, particularly information regarding the anticipated length of the de-energization event. CSAC suggests inclusion of the following information: (1) the reason for the proposed outage or event triggering the de-energization; (2) trigger points for outage; (3) area of proposed outage; (4) anticipated length of outage; (5) number of residents affected; (6) estimated de-energization start time and date; (7) restoration date and time; and (8) estimated time to re-energize the grid. The Joint Local Governments believe that weather data, fire threat assessments, maps of the circuits and transmission lines potentially affected, information regarding segmentation of those circuits for targeted de-energization, and the status of notifications to vulnerable populations should be communicated to local governments and the public. MWDOC adds that information regarding protocols for engagement during the event, including appropriate contacts and a reliable communication briefing timeline should be required.

EBMUD notes that water agencies also need circuit level information and an understanding of whether water facilities can remain online by employing sectionalization or other technologies for separating loads within a circuit.

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EBMUD also requests re-energization estimates. The Joint Water Agencies generally agree with EBMUD's comments. RCRC and CCSF suggest that notice includes information regarding total number of impacted medical baseline or other medically vulnerable customers and critical facilities. POC recommends that, in order to develop messaging, the utilities should be required to hold a lessons-learned workshop focusing on the reports from previous de-energization events. TURN recommends that exact location information at a granular level be provided. Abrams focuses mostly on advanced education and notes that information should be provided about safe use of generators, traffic safety when traffic signals may be impacted, information regarding where to obtain information, and who to contact during a de-energization event.

PG&E and CASMU generally agree with the Staff Proposal regarding information to be conveyed. SCE suggests that, based on its experience, public safety agencies are most concerned about the impacts of de-energization, rather than information on what triggered the event. SCE disagrees with providing the number of medical baseline customers, noting that it should focus on Critical Care customers, those customers that require critical life support equipment at their home. SCE and SDG&E are concerned that providing an estimated duration for de-energization may be misleading and counterproductive since conditions can change rapidly.

#### **4.2.3.2.3. Issue 2(a)(i)**

Few parties provided comment on the use of the definitions included in the California Alert and Warning Guidelines Plan for notification (alert, warning, notification). As noted elsewhere, EPUC recommends the use of tiered notification using color coding, such as red/yellow/green to signify a customer's risk of de-energization. SBUA recommends the following definitions: (1) Alerts:

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communicating that conditions in the coming days may result in de-energization. Alerts may continue for several days without other action; (2) Watches: announcing that potentially dangerous conditions are emerging and encouraging customers to begin preparations; (3) Warnings: predicting that the utility expects to de-energize; and (4) Notifications: reporting actual de-energization. SDG&E supports using consistent definitions but suggests that determining the appropriate definitions may require collaboration through workshops in order to achieve state-wide uniformity. SDG&E suggests this topic be deferred to Phase 2.

#### **4.2.3.2.4. Issue 2(a)(iii)**

No party filed comments disagreeing with the proposal that messages should be consistent with the existing best practices articulated in the California Alert and Warning Guidelines, which include answering the five questions set forth in the Staff Proposal. Presumably parties that concurred with the Staff Proposal as written (SDG&E, CASMU, PG&E, SCE, CLECA, POC, RCRC, Public Advocates, EPUC, Joint Communication Parties, Joint Water Agencies, MWDOC TURN, and others) also agreed with the use of the California Alert and Warning Guidelines best practices for notice.

#### **4.2.4. Who is Responsible for Notification? (Issue 2(a)(iii))**

The Scoping Memo, in Issue 2(a)(iii) asks the following question: Who should be responsible for notifying affected customers/populations? Should the utilities be solely responsible, or should other parties, such as local governments, have a responsibility in communicating these events and notifying affected customers/populations? If not, who should be responsible for notification?

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#### **4.2.4.1. Staff Proposal**

Staff sets forth the following proposal:

The IOUs should retain the responsibility for notifying impacted jurisdictions of de-energization events...

The Staff Proposal offers additional language pertaining to the method and content of messaging. This proposal is discussed in Section 4.2.5.

#### **4.2.4.2. Parties' Positions**

The parties universally agreed that the utilities should be primarily responsible for notification of affected customers. As the entity that is responsible for calling the de-energization event and the entity that holds contact information for its own customers, parties feel that the utility should take the primary leadership role in providing notice to customers. However, many parties recognize that the utilities may have limitations in identifying certain customer groups, such as vulnerable populations, and therefore recommend partnering with various agencies and organizations to more effectively disseminate information.

For example, Farm Bureau and CforAT recommend coordination with safety agencies, City of Malibu recommends coordination with local governments, and CSAC recommends that notification language be provided to the local Office of Emergency Services to send out via the emergency notification system. CSAC also recommends that the utilities develop a Memorandum of Understanding with local governments in order to coordinate notification. UCAN recommends collaboration with local public safety partners because such agencies have an "accurate and timely understanding of potential adverse

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impacts of notification”<sup>66</sup> and can ensure that notifications will be distributed to vulnerable populations. The Joint Local Governments support the utility as the lead for notice but assert that the utility must partner with local health departments, medical service providers, nursing facilities and other social service organizations that serve vulnerable populations that are likely not enrolled in medical baseline.

PG&E concurs with the Staff Proposal and agrees to share notification templates with public safety agencies in advance so that the agencies can leverage their own public alert systems to supplement PG&E’s notifications, if they choose to do so. SDG&E agrees that the utility should retain responsibility for notification and remains concerned with the proposed expansion of vulnerable populations. SCE and CASMU agree with the Staff Proposal.

**4.2.5. What Notification Systems and Notification Methods Should Be Used? (How Should Contact Occur?) (Issue 2(a)(iv), Part of Issue 2(a), Part of Issue 2(a)(i), Part of Issue 2(a)(iii))**

In order to provide notification and to communicate effectively with affected customers and public safety partners, the utilities will have to use many communication systems. Furthermore, the utilities, in order to collaborate effectively with first/emergency responders and local governments, will need to employ messaging structures that coordinate with the systems used by such entities and agencies. The Scoping Memo asks the following main questions: What systems should be used for notification of customers (e.g. reverse 9-1-1),

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<sup>66</sup> UCAN Opening Comments at 5.

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and what are the best ways to notify [entities] of a planned de-energization event and when power will be restored in the event of de-energization?

The Staff Proposal, in various places, discusses the frameworks for providing notice, such as SEMS, the systems that can be used to send out notifications, and the various types of communications that should be used (e.g. social media, telephone, in person notification). This section brings the staff proposals together under one heading and presents a summary of party comments on the topic.

#### **4.2.5.1. Staff Proposal**

Staff set forth the following proposals:

1. Consistent with the principles of the Standardized Emergency Response System (SEMS), (emphasis added) IOUs will be responsible for contacting local public safety officials in impacted jurisdictions prior to a de-energization event and must utilize all available means to communicate a de-energization event (emphasis added) (*Issue 2(a)*).
2. To the extent practical, communities disproportionately impacted by de-energization should include additional notification streams (up to and including in person notification) in lieu of staggered alerting timelines...Additionally, to be consistent with the California Alert and Warning Guidelines, the following definitions will be utilized to discuss de-energization communications (*Issue 2(a)(i)*):
  - Alert - A communication intended to draw the attention of recipients to some previously unexpected or unknown condition or event.
  - Warning - A communication that encourages recipients to take immediate protective actions appropriate to some emergent hazard or threat.
  - Notification - A communication intended to inform recipients of a condition or event for which contingency plans are in place.

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3. [T]he California Alert and Warning Guidelines state that (*Issue 2(a)(iii)*):

"People rarely act on a single warning message alone. To be effective, warnings should be delivered in various formats via various media, both to increase reliability of warning delivery and to provide a sense of corroboration that will encourage recipients to take protective actions"

In order to ensure time sensitive notifications are sent to populations potentially impacted by de-energization events, IOUs should pre-script messages templates in advance in a format that allows public safety agencies to use their official public alerting channels to amplify the message if they choose to do so. Consistent with existing best practices articulated in the California Alert and Warning Guidelines, warning messages should answer five (5) key recipient questions: a. Why are we at risk; b. Do you really mean me? (Does this affect my location or situation?); c. How long do I have to act; d. What should I do; and e. Who says so?

4. In order to be effective, warnings should be delivered in multiple formats across several media channels, both to increase the potential a message successfully reaches an impacted population and to provide a sense of corroboration that will encourage individuals to take protective actions. These customer notifications should include, but are not limited to, telephonic notification, text message notification, social media advisories, emails, and messages to agencies that service disadvantaged communities within an impacted area to allow them to amplify any pertinent warnings. Although mandating public safety partners provide notifications to impacted jurisdictions in advance of a de-energization event is outside the scope of this proceeding, IOUs should develop messages that allow public safety partners to utilize their official notification tools at their discretion (*Issue 2(a)(iv)*).

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#### **4.2.5.2. Parties' Positions**

##### **4.2.5.2.1. Issue 2(a)**

Many of the comments relating to Issue 2(a) have been discussed elsewhere. This section will focus primarily on comments regarding methods of communication; however, some of the comments will be necessarily duplicative of earlier sections. As noted earlier, many parties agree with the Staff Proposal as written. OSA recommends that all available communication channels be used to give notice and that notice must be given in multiple languages. Public Advocates agrees with OSA but recommends that the Commission adopt a standard notification timeline across utilities so that customers understand de-energization processes even if they move across service territories. Public Advocates also notes that first responders should receive maps and detailed information about de-energization as soon as they become available. De-energization without notice should be kept to a minimum and should receive heightened scrutiny by the Commission.

City of Malibu agrees with the Staff Proposal but highlights that during a de-energization event, internet and phone services may not be available. The utilities must take all necessary steps to communicate effectively, which may include door-to-door knocking or other efforts. TURN clarifies that attempted notifications may not be sufficient, especially for vulnerable populations. Positive or affirmative notification must be employed for such customers. The Commission should also direct the utilities to establish or re-establish local offices in areas most likely to experience de-energization. Finally, TURN notes, messages should be actionable and should educate and motivate audiences to act on what they have learned, use common language and terminology and should be generic and flexible. Both Abrams and SBUA emphasize coordinated



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education campaigns in advance of wildfire season. Abrams suggests that surveys must be used to determine the effectiveness of education campaigns. Numerous parties support using all available communication channels including broadcast media, cellular text messaging, door-to-door notice (if warranted) electronic mail communications, radio, and phone calls.

PG&E supports establishing “clear and consistent notification processes that include advanced notification and more targeted customer outreach.”<sup>67</sup> PG&E commits to working closely with first responders, critical facilities and others to establish clear lines of communication and established protocols. SDG&E notes that communication and coordination is important, but it cannot supersede or delay actual de-energization, which may occur rapidly if the need arises.

#### **4.2.5.2.2. Issue 2(a)(i)**

Most of the provisions of Issue 2(a)(i) were discussed earlier, including the use of the California Alert and Warning Guidelines definitions of alert, warning and notification. Most parties support the Staff Proposal and were either affirmative or silent on the use of the California Alert and Warning Guidelines definitions. SBUA provided other suggested definitions, discussed earlier, and EPUC recommended a color-coded system of green/yellow/red to denote de-energization risk for specific areas/populations. As noted earlier, TURN supports in-person notification for customers disproportionately impacted by de-energization and notes the importance of remembering that customers will be without power during de-energization and re-energization, thus limiting communication streams. CforAT, like TURN, supports the notion of positive

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<sup>67</sup> PG&E Reply Comments at 2.

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contacts or affirmative contacts for vulnerable populations. CforAT recommends that the utilities report on the number of positive contacts and requests that the utilities provide an explanation of why positive contacts were not made, if that occurs. Utility comments are summarized in the previous section and elsewhere in this decision.

**4.2.5.2.3. Issue 2(a)(iii) and Issue 2(a)(iv)**

Starting with the almost universally agreed upon understanding stated in the California Alert and Warning Guidelines that people rarely act on a single warning message alone (Issue 2(a)(iii)), the bulk of party comments focus on the methods and systems that should be used to contact affected entities in the case of a power shut-off. Comments also focus on differences between communication with affected customers and Public Safety Partners.

City of Malibu and CLECA support the Staff Proposal as written. CSAC asserts that warnings must be disseminated through as many formats and channels as possible, including partnering with local OES and broadcast media. The Joint Communication Parties recommend that messaging be sent via phone, text or email. The Joint Water Agencies recommend the use of radio and television broadcasts. RCRC emphasizes that rural communities have insufficient broadband connectivity and as such, broadband cannot be relied upon as a primary source of information for such entities. TURN agrees that wireless emergency alerts (WEA) or other local government systems could assist with notification. UCAN recommends that the utilities should select communication methods and technologies that are most effective for each jurisdiction's demographic, cultural and geographical area. Public Advocates recommends that "off-network" communication methods be used, such as in-person visits to medical baseline customers or the opening of physical

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information centers.” CforAT notes that the ability to send messages via multiple channels will be impacted by loss of power.

The Joint Local Governments support using the SEMS framework as the first line of communication between the utility and first responders. Once the utility has provided notice and relevant information, the local governments can use their own notification systems (e.g. Nixle, Nextdoor, Reverse 9-1-1) to amplify the message. The Joint Local Governments, as well as other parties, note that there should be a 24-hour hotline that remains active throughout the event. MWDOC also supports the use of the SEMS framework, but reminds the Commission that SEMS is not a notification system. CCSF recommends that coordination with critical facilities occur through the California Utilities Emergency Association.<sup>68</sup>

PG&E agrees with the Staff Proposal that warnings should be delivered through various channels including Interactive Voice Response (IVR), text, e-mail, social media, and mass media. PG&E agrees to share notification templates in advance with public safety agencies so that public alerting channels can be used to supplement PG&E’s notifications. CASMU and SCE support the Staff Proposal as presented.

**4.2.6. Coordination Between Utilities and First Responders/Local Governments (Issue 3) and Utility Liaisons in Emergency Operation Centers (Issue 3(a))**

Safe and effective de-energization relies in large part on the ability of the utilities, first/emergency responders and local jurisdictions/governments to

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<sup>68</sup> The California Utilities Emergency Association “serves as a point of contact for critical infrastructure utilities and [CalOES] and other Government Agencies before, during and after an event.”

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coordinate responses, including messaging, as seamlessly as possible. The Scoping Memo sought feedback from parties on the following questions:

(1) What structures and practices should be in place to maximize coordination between utilities and first responders/local governments (*Issue 3*); and (2) Should the utilities be required to embed representatives (who are empowered to make decisions on behalf of the utility) in emergency response team operations centers carried out under state and local plans consistent with SEMS? (*Issue 3(a)*)

#### **4.2.6.1. Staff Proposal**

Staff offered the following proposals:

In order to ensure situational awareness in a format compatible with state-of-the-art public safety systems, IOUs should provide geospatial REST services in a format that can be readily accessed and that provides a near real time overview. Additionally, IOUs should provide Shapefiles/KMZ files to public safety partners and critical infrastructure providers that geospatially represent historic de-energization boundaries and any available probabilistic models of de-energization events. (*Issue 3*)

Yes; in order to ensure that public safety partners are able to address the full range of impacts that may stem from a de-energization event, IOUs who have initiated a de-energization plan should assign a liaison officer to the Emergency Operations Center (EOC) that has been activated to respond to a de-energization event. These liaison officers must be enabled to provide rapid and accurate information from the IOUs and should be in frequent communication with an IOU's operational center. (*Issue 3(a)*)

#### **4.2.6.2. Parties' Positions**

##### **4.2.6.2.1. Issue 3**

Staff's proposal regarding the provision of GIS REST services has been presented elsewhere in this decision. This section will focus on party comments pertaining to the provision of historic de-energization boundaries and probabilistic models to Public Safety Partners. In addition, parties provided

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comments on the general principles of utility/first responder/local government coordination.

Several parties support the Staff Proposal as articulated, including CLECA, CWA, EBMUD, City of Malibu, POC, RCRC and CCSF. OSA recommends using SEMS<sup>69</sup> for managing responses to multi-agency and multijurisdictional emergencies in California as the appropriate governing framework for de-energization. Public Advocates also recommends aligning the utilities' coordination practices with SEMS (or at least using SEMS to inform their coordination practices). CforAT agrees with the Staff Proposal but notes that the proposal requires additional coordination, including consideration of allocation of resources between utilities and local government agencies.

CSAC and CMUA recommend, as does CASMU below, that the utilities be required to provide pre-scripted message language to local OES for use in the Emergency Notification System as well as in all social media. This messaging should be used to augment the utilities' communications, and a Memorandum of Understanding should be developed between parties. Abrams asserts that structures and practices for coordination should be developed from a very specific set of protocols with associated communication tools and templates. MWDOC recommends that all provisions of data and messaging be delivered to water utilities in addition to first responders/local governments. The Joint Water Districts suggest that there should be increased electric utility/water utility coordination and documentation for critical water/wastewater facilities.

SDG&E supports information sharing and collaboration with Public Safety Partners, but suggests that more specificity, clarity and guidance is needed

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<sup>69</sup> Government Code § 8607(a).

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regarding the provision of shapefiles. CASMU supports the Staff Proposal but recommends that the utilities should pre-script message templates in advance in a format that allows public safety agencies to use their official alert channels to amplify the utility message, if they choose to do so. PG&E states that without additional detail on probabilistic models, PG&E cannot endorse Staff's recommendation.

**4.2.6.2.2. Issue 3(a)**

Most parties that responded to Issue 3(a) support the notion of embedding a utility liaison with decision-making authority in the local jurisdictional emergency operation centers (EOCs), including the Joint Local Governments, OSA, TURN and Abrams. CMUA suggests that this issue is out of scope because it is more appropriately addressed in R.15-06-009.<sup>70</sup> The Joint Local Governments, in response to the concerns articulated by the utilities below, recommend that the utility embed a liaison officer in the County EOC if and when it is activated. In the alternative, if the utility is able to hold twice-daily conference calls between its EOC Incident Commander and local governments, that may be sufficient to "address the previous shortcomings in PG&E's communications – assuming that the conference calls provide timely and accurate information and a direct line to PG&E's decision-makers."<sup>71</sup>

PG&E disagrees with the Staff Proposal noting that, depending on the scope of the event, or if there are multiple emergencies occurring, PG&E could

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<sup>70</sup> Order Instituting Rulemaking Regarding Policies, Procedures and Rules for Regulation of Physical Security for the Electric Supply Facilities of Electrical Corporations Consistent with Public Utilities Code Section 364 and to Establish Standards for Disaster and Emergency Preparedness Plans for Electrical Corporations and Regulated Water Companies Pursuant to Public Utilities Code Section 768.6.

<sup>71</sup> Joint Local Governments Reply Comments at 4.

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face challenges with embedding liaisons. Furthermore, PG&E asserts that embedding liaisons with decision-making authority in multiple locations would defeat the purpose of having an Incident Command Structure (ICS).<sup>72</sup> PG&E proposes that it assign a full-time liaison that CalOES can call when local EOCs are activated in order to get the most up-to-date information from the Chief of Staff in PG&E's EOC. SDG&E also disagrees with the proposal to embed liaisons in local EOCs noting that it would strain limited resources and violate both Incident Command Systems and emergency management principles, which discourage self-deployment. SDG&E notes that it has designated seats in its EOC for both County and CalOES representatives.

#### **4.3. Requests to Delay De-Energization (Issue 1(a))**

In Issue 1 of the Scoping Memo asks for feedback on the following question: what, if any, updates or modifications should be made to Resolution ESRB-8 to ensure that, should de-energization become necessary during the 2019 wildfire season, de-energization is undertaken as efficiently and safely as possible? Staff set forth three main recommendations, the first two of which are discussed in earlier sections (thresholds for strong wind events and conditions for "an extreme hazard" as well as the provision of GIS REST service articulating the boundaries of the areas subject to de-energization). Staff also sets forth a recommendation to allow requests to delay de-energization. This section discusses Staff's recommendation as well as party comments on this matter.

#### **4.4. Staff Proposal**

Staff offers the following proposal:

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<sup>72</sup> ICS is a management system designed to enable effective and efficient domestic incident management by integrating a combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure.



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IOUs should ensure their de-energization plans provide the means for pre-designated first responders with statutory responsibility for impacted jurisdictions to request a temporary delay in de-energization events in exigent circumstances.

#### **4.5. Parties' Positions**

CLECA generally supports the Staff Proposal as written. Public Advocates recommends that the Commission make clear who qualifies to be a pre-designated first responder and determine who has ultimate authority to implement de-energization. Furthermore, the Commission, should it allow requests to delay de-energization for emergency circumstances, must clarify which emergency takes precedence and how long a delay can last before a decision to de-energize must be reached. Finally, Public Advocates asserts that the Commission must clearly define "exigent circumstances." MWDOC agrees that further clarification is necessary to determine who is a "pre-designated first responder with statutory responsibility..." MWDOC also notes that, after a de-energization occurs, there must be a protocol for rapid re-energization if an emergency occurs, e.g. if a non-utility wildfire occurs and water is needed from a de-energized water provider to fight the fire.

The Joint Local Governments and PG&E express concern about the allowance of a delay noting that once a utility has decided to de-energize, a delay could put communities at risk. The Joint Local Governments note that it is not clear that a situation would arise where the utility would decide to de-energize and then delay that decision because other circumstances outweigh the risk of a wildfire caused by utility equipment. SDG&E suggests that first responders with a statutory responsibility for an affected jurisdiction should be able to request a temporary delay, but the Staff Proposal as written is concerning and the issue of



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liability if a delay is granted must be addressed. SCE recommends that this issue be explored more fully in Phase 2.

#### **4.6. De-Energization of Transmission Lines (Issue 6)**

To date, de-energization has focused primarily on the distribution system; however, there may be times when it becomes necessary for an electric utility to consider de-energization of a transmission line. De-energization of transmission lines will likely have more far-reaching and cascading impacts than distribution-level de-energization. As such, the Scoping Memo asked the following question: What additional provisions or protocols are necessary if de-energization of transmission lines becomes necessary?

##### **4.6.1. Staff Proposal**

Staff set forth the following proposal:

As opposed to providing provisions or protocols that differ based on impacted infrastructure (transmission versus distribution), it is recommend that the IOUs shape their protocols based on the impacts to populations across impacted jurisdictions. In the case of transmission line de-energization events, this may require additional coordination with CalOES's State Operations Center.

##### **4.6.2. Parties' Positions**

TURN, Public Advocates, EBMUD, the Joint Local Governments, SDG&E and DACC/EUF generally agreed with the Staff Proposal that notice and communication methods and de-energization protocols should be based on the type, number, and location of customers that may be affected.<sup>73</sup> Some parties note, however, that transmission level de-energization requires a different assessment of impact as well as different notification and coordination efforts

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<sup>73</sup> TURN-specific language, Opening Comments at 12.

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because of the types of customers that may be affected by a transmission-level outage.

For example, parties noted that the following entities could be significantly affected or brought entirely offline if the utility employs transmission-level de-energization: large generators (NCPA); POUs and electric cooperatives that interconnect to the IOU-grid (OSA, NCPA); facilities that interconnect at the transmission level (CCSF); and customers that live in distant jurisdictions that may not live in high fire-threat districts (CCSF, Joint Local Governments). However, as noted by Farm Bureau and SDG&E, the transmission system has some level of built-in redundancies such that resultant outages to customers could be less likely. CSAC notes that the scale and scope of response of a transmission-level de-energization should reflect the scope of the events.

Many parties, such as Public Advocates, CLECA, SCE, CCSF, CMUA, PG&E, SDG&E, NCPA, EPUC, DACC/EUF, and OSA noted that communication and coordination with additional entities is warranted because the impacts of a transmission-level de-energization could be more extensive. Parties note that communication with the CAISO, CalOES's State Operations Center, the reliability coordinator for the Western Electricity Coordination Council and other transmission owners will be likely. OSA, CLECA, EPUC and CCSF note that de-energization of transmission lines could violate North American Electric Corporation (NERC) Reliability Standards and there may be Federal Energy Regulatory Commission (FERC) jurisdictional tariff issues that must be considered. CAISO, in reply comments, notes that they do not own or operate transmission lines; de-energization decisions rely entirely on the transmission owners. However, notice to CAISO is necessary to allow for CAISO to ensure grid reliability.

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SCE and PG&E discuss a bit about their risk-based decision-making process to assess wildfire risk of individual transmission lines, and SCE discusses its risk-based decision-making process for transmission-line de-energization. CLECA states that PG&E's risk-based process to assess wildfire risk of individual transmission lines requires more clarity. CASMU notes that both Bear Valley Electric Service and Liberty CalPeco have limited or no transmission lines in their service territories. PacifiCorp is geographically diverse, and its customers are geographically dispersed; therefore, PacifiCorp supports the Staff Proposal's focus on impacts to populations.

CSAC argues if a wildfire exists, de-energization should not be permitted, and re-energization should be required. Similarly, MWDOC requests that the Commission explore what happens if a line is de-energized and a wildfire occurs which could require the need for power. Similarly, MWDOC requests that the Commission explore what happens if a line is de-energized and a wildfire occurs which could require the need for power. City of Malibu notes that water utilities may require generators, and that water utilities must be able to ensure that water needs can be met for firefighting activities. Presumably, CSAC, MWDOC and City of Malibu's comments apply to both distribution-level and transmission-level de-energization events.

Finally, NCAP argues that the Commission must provide "clear direction and clarification regarding the 'power lines' subject to the rules and protocols being addressed [in Phase 1]."<sup>74</sup> NCAP notes that the scope and impact of de-energization can vary significantly depending on whether a distribution or transmission line is being de-energized and how the lines are defined. As an

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<sup>74</sup> NCAP Opening Comments at 2.

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example, NCPA notes that if the distinction between transmission and distribution lines is based on a 100kV bulk electric system threshold, POUs and electric cooperatives that interconnect on a 60kV line could be seen as distribution level customers, which presumably could impact notice to and coordination with non-IOU customers.

#### **4.7. Reporting (Issue 4)**

Resolution ESRB-8 expands the reporting requirements adopted in D.12-04-024 following a de-energization event to all the utilities and adopts additional strengthened requirements. Currently, the electric utilities are required to submit a report to the Director of Commission's Safety and Enforcement Division within ten business days after a de-energization event, as well as after high-threat events where the utility provided notifications to local government, agencies, and customers of possible de-energization though no de-energization occurred.<sup>75</sup> The reports must include a variety of information, for example (but not limited to), a list of all factors considered in the decision to shut off power, the time, place and duration of the de-energization event, the number of affected customers, any wind-related damage to overhead power-line facilities, a description of the notice to customers and any other mitigation measures provided the utility, the local community representative contacted, an explanation if the utility is not able to provide at least two hours of notice prior to a de-energization event, complaints receive by the utility, etc.

The Scoping Memo solicits party feedback on the following question:  
What information should be provided to the Commission after a de-energization

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<sup>75</sup> Resolution ESRB-8 at 5.

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event to show that de-energization was used as a method of last resort and that [de-energization] was in compliance with Commission rules?

#### **4.7.1. Staff Proposal**

Staff provided the following proposal:

In the reporting required by ESRB-8 following power restoration, the IOUs should provide information including, but not limited to, an event timeline, decision criteria leading to a de-energization (including an evaluation of alternative actions), all notifications and timing, impacted area, and lessons learned. In addition, the IOUs should explain how the public benefit of the de-energization event outweighed any potential public safety risks.

#### **4.7.2. Parties' Positions**

There was consensus among parties that after-the-fact reporting was critical to ascertain the reasonableness of a de-energization event and to facilitate learning for future de-energization events. Many parties stated that de-energization reports should be made public,<sup>76</sup> and first/emergency responders, involved government organizations and others should be allowed to submit their own comments and/or feedback on the de-energization (or anticipated de-energization) event. Comments below are presented first with recommended additional reporting requirements followed by comments regarding party input on reports and report timing and review.

CLECA recommends that, in addition to the reporting requirements set forth in ESRB-8 and the Staff Proposal, the utilities should describe all mitigation measures used to prevent utility-caused wildfire employed in advance of de-energization (for the de-energized area). Public Advocates requests that the utilities demonstrate how the public benefit of de-energization outweighed any

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<sup>76</sup> The Joint Communications Parties suggest that confidential information in the report should be made available to interested parties upon execution of a nondisclosure agreement.

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potential public safety risks as well as presenting full evaluations of alternatives considered that justify de-energization as the best solution. City of Malibu recommends that the utilities present an analysis of whether the utilities could have reduced the size of the affected area and/or the duration of the de-energization event while still protecting public safety. Many parties suggest that the utilities provide a detailed accounting of how the utilities arrived at the decision to de-energize, including a discussion of alternatives (generally, CSAC, Public Advocates, the Joint Local Governments, CCSF, the Joint Communication Parties, SDG&E and CforAT). City of Malibu requests that the utilities include information on requested delays or modifications from local government and whether the utility agreed to the delay (and if not, an explanation of why). OSA recommends that the number of impacted customers include information on critical facilities and medical baseline customers (how many were impacted and for how long).

RCRC requests that the utilities be required to show what actions were taken to strategically sectionalize areas of risk in order to minimize impacts on utility customers. RCRC also recommends that the utilities present all information and communications with local government agencies to the Commission for review. TURN and CforAT suggest that the utilities provide a report of all known incidents of harm as a result of de-energization. TURN, MGRA and CforAT request that the utilities present information about all wire down or other equipment failures that occurred during de-energization that could have caused ignition both inside and outside of a de-energized area. MGRA suggests that vegetation contact should be included.

Regarding input from affected parties and timing/review of de-energization reports, EBMUD, the Joint Local Governments, CCSF, CASMU

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and others recommend that the Commission require the utilities to solicit input from all affected critical facilities, public safety partners, local governments and citizens regarding the effectiveness of notification, communications, lessons learned and recommendations for improvement, if any. The Joint Communication Parties, TURN and CASMU suggest that the water and telecommunication companies should also provide feedback. SDG&E recommends that, if the utilities are to be held to the ten-day deadline for submitting de-energization reports, comments from stakeholders should be submitted to SED after the utility files the report.

Parties recommended that, in addition to de-energization reports being public, they should be subject to a 30-day comment period, posted on the Commission's Daily Calendar and on the utilities' websites. CCSF recommends that the Commission's Safety and Enforcement Division should be required to analyze the utilities' reports and related comments and publish an independent evaluation of each de-energization event. The Joint Communication Parties assert that the Commissions should rule on the reasonableness of each de-energization event; SED should issue a draft resolution for review by the full Commission. In making a determination of reasonableness, Abrams offers that the Commission should review utility actions for results. For example, Abrams argues utility notifications alone should not be a measure of reasonableness; rather, the Commission must evaluate whether the communications were effective. Abrams also suggests that utility de-energization events be measured against other actions taken to reduce risk, showing that de-energization is a measure of last resort. Public Advocates recommends that the Commission adopt a standard reporting template in Phase 2. MGRA concurs noting that



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SDG&E's November 16, 2018 report introduced a format for reporting that should be replicated across utilities.

MGRA notes that, to date, the Commission's SED has only reviewed one power shut-off report. Furthermore, MGRA suggests that the Commission should review a utility's decision to de-energize based upon risk of utility infrastructure being a source of wildfire ignition; wildfire risk in and of itself should not be considered adequate justification for a de-energization event. MGRA emphasizes that a determination of reasonableness must rely upon a finding that de-energization increased public safety; liability is not a justifiable reason to de-energize. Finally, MGRA asserts that reports must provide clear and actionable information that can be used to formulate future de-energization protocols and requirements.

PG&E, SCE and SDG&E generally comment that the existing requirements in Resolution ESRB-8 adequately meet the intent of the Staff Proposal and provide sufficient information regarding the timing of key events leading to de-energization and restoration. CASMU, as noted above, generally supports the staff proposal and supports input from stakeholders affected by and involved with de-energization. PG&E recommends that the Commission consider the issue of weighing public benefit against public safety risks in Phase 2. SCE offers that, in addition to the ESRB-8 reporting requirements, it will provide information about protective measures taken before a de-energization event, including: (1) using modified field work procedures for field crews working in high fire risk areas during times of elevated fire danger; (2) blocking reclosers; (3) enabling fast curve relay settings; and (4) sending personnel to the field to monitor actual conditions near electrical lines. SCE will also describe how the "facts on the ground coincided with the risk of ignition in conditions that could



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lead to a catastrophic wildfire such that de-energization to prevent a catastrophic outcome was warranted.”<sup>77</sup>

## **5. Adopted De-Energization Guidelines**

The Commission adopts the guidelines set forth in this decision in order to promote safe, effective and consistent de-energization of powerlines across the service territories of the electric utilities under the Commission’s jurisdiction. The guidelines adopted herein are in addition to the guidelines adopted in Resolution ESRB-8,<sup>78</sup> and the utilities must adhere their de-energization plans to both Resolution ESRB-8 and this decision. The guidelines in Resolution ESRB-8 and this decision will remain in effect unless and until superseded by a subsequent decision. It is expected that the utilities will make every effort to implement these guidelines in advance of the 2019 wildfire season; however, the Commission recognizes that some of these guidelines will take additional time to fully deploy. As such, the utilities are required to submit two reports to the Director of the SED detailing progress towards implementation of the guidelines adopted herein. The electric utilities must also serve copies of progress reports on the service list of this proceeding and post the reports on their websites. The first progress report is due three months after issuance of this decision, and the second is due nine months after issuance of this decision. The Commission’s SED may request additional progress reports after these initial reports.

As noted in the Scoping Memo, due to regional variability in topography, weather, and other factors, there is no one-size-fits-all approach for utility

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<sup>77</sup> SCE Opening Comments at 21.

<sup>78</sup> In the event that a guideline adopted in this decision conflicts with a guideline in ESRB-8, the guidelines adopted herein govern.

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de-energization. Further, each of the utilities has varying experience with de-energization and must serve diverse territories ranging significantly in size. Therefore, the Commission understands that the utilities must be afforded some flexibility in developing and deploying their de-energization programs. However, it is the intention of the Commission that, by adopting these and future guidelines, utilities, first responders and local jurisdictions will all operate under a cohesive framework using consistent language. This endeavor will ensure that citizens within the utilities' service territories understand and know how to respond to de-energization events, no matter where they may live.

The 2017 and 2018 wildfire seasons evidenced that better warnings and communication are needed – about fire conditions, when those conditions occur, and how the public should prepare – whether de-energization is proactive or not. The focus needs to be more on the growing danger and how generally to respond, and not just when utilities act to prevent potential hazards from their infrastructure. The Commission will need to ensure that the utilities integrate as much as possible with local emergency systems and frameworks and treat de-energization in a similar manner as any other emergency that results in loss of power, such as earthquakes, floods or non-utility caused fire events. The need for shared responsibility between the utilities, public safety partners, and local governments is critical; however, for now, the electric utilities are ultimately responsible and accountable for de-energization communication and notification.

A critical part of making a notification system work for de-energization events is a coordinated and up-front effort to educate the public on how to prepare for wildfire season and de-energization events. These statewide education campaigns should educate the public in advance of de-energization events regarding what is entailed during a de-energization event, what tools are

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available to the public during these events, what to do in an emergency, how they may receive information alerts during a power shutoff, and who the public should expect to hear from and when.

A key component to developing an effective and cohesive de-energization program is to report on de-energization experiences and lessons learned. Therefore, the utilities must report back to the Commission through its required ESRB-8 filings, as updated by this decision, on what occurred in advance of and during each proactive de-energization event. In addition, beginning in 2020, the utilities are required to submit with their annual Wildfire Mitigation Plans reports on lessons learned through the de-energization process.

De-energization has far reaching and significant impacts on affected communities. As such, although de-energization is a valuable tool to promote the public safety, it must be deployed by the utilities as a measure of last resort, and the utilities should continue to strengthen their infrastructure to minimize the need for and size of de-energization events. Under no circumstances may the utilities employ de-energization solely as a means of reducing their own liability risk from utility-infrastructure wildfire ignitions, and the utilities must be able to justify why de-energization was deployed over other possible measures or actions.

The guidelines adopted below focus primarily on issues of notice and communication in advance of a de-energization event. The Commission adopts high-level guidelines for communication during the de-energization event itself and during re-energization; however, these issues, among others, will be more fully explored in Phase 2 of this rulemaking. A comprehensive list of the guidelines adopted in this decision is set forth in Appendix A. Appendix B contains a preliminary list of issues to be explored in Phase 2. Appendix C

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provides a glossary of definitions and acronyms used in this decision.

Appendix D contains a copy of Resolution ESRB-8, and Appendix E includes a copy of SDG&E's November 16, 2018 de-energization report.

In addition to the specific guidelines set forth below, the Commission adopts the following overarching de-energization guidelines:

- The purpose of proactive de-energization is to promote public safety by decreasing the risk of utility-infrastructure as a source of wildfire ignitions.
- The electric investor-owned utilities must deploy de-energization as a measure of last resort and must justify why de-energization was deployed over other possible measures or actions.
- Customers should understand the purpose of proactive de-energization, the electric investor-owned utilities' process for initiating it, how to manage safely through a de-energization event, and the impacts if deployed. To accomplish this, the electric investor-owned utilities must:
  - develop and use a common nomenclature that integrates with existing state and local emergency response communication messaging and outreach, including the California Statewide Alert and Warning Guidelines.
  - develop notification and communication protocols and systems that reach customers no matter where the customer is located and deliver messaging in an understandable manner.
  - communicate to customers in different languages and in a way that addresses different access and functional needs using multiple modes/channels of communication.
- Deploying de-energization requires a coordinated effort across multiple state and local jurisdictions and agencies. Coordination in preparation for de-energization is a shared responsibility between the electric investor-owned utilities, public safety partners, and local governments; however, the electric utilities are ultimately responsible and accountable for the safe deployment of de-energization. The electric investor-owned

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utilities must work with the CalOES to integrate their warning programs with the agencies and jurisdictions within California that have a role in ensuring that the public is notified before, during, and after emergencies.

- The electric investor-owned utilities, emergency responders, and local governments need to be seamlessly integrated when communicating de-energization notifications, with the goal that local governments provide supplemental or secondary notifications in the near future. For now, the utilities retain ultimate responsibility for notification and communication throughout a de-energization event.
- The consequences of de-energization should be treated in a similar manner as any other emergency that may result in loss of power, such as earthquakes, floods or non-utility caused fire events. The electric investor-owned utilities must avoid development of duplicative or contradictory messaging and notification systems to those already deployed by first responders.
- The electric investor-owned utilities must coordinate with CalOES and the CAL FIRE to engage in a statewide public education and outreach campaign. The campaign must effectively communicate in English, Spanish, Chinese (including Cantonese, Mandarin and other Chinese languages), Tagalog and Vietnamese as well as Korean and Russian where those languages are prevalent within the utilities' service territories.<sup>79</sup> The campaign must convey, in advance of wildfire season, the immediate and increasing risk of catastrophic wildfires and how to prepare for them, the impacts of de-energization, how the public can prepare for and respond to a de-energization event, what resources are available to the public during these events, what to do in an emergency, how to receive information alerts

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<sup>79</sup> This requirement is consistent with the guidance set forth in SB 901. The Commission takes Official Notice, Pursuant to Rule 13.9 of the Commission's Rules of Practice and Procedure, that United States Census data shows that the top three primary languages used in California other than English and Spanish are Chinese (including Cantonese, Mandarin and other Chinese languages), Tagalog, and Vietnamese.

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during a power shutoff, and who the public should expect to hear from and when.

- The electric investor-owned utilities must report on lessons learned from each de-energization event, including instances when de-energization protocols are initiated, but de-energization does not occur, in order to further refine de-energization practices. In addition, the utilities must work together to share information and develop best practices across California.
- The electric investor-owned utilities must work together to share information and advice in order to create effective and safe de-energization programs at each utility and to ensure that utilities are sharing consistent information with public safety partners.

### **5.1. Adopted Definitions**

Adopting standardized definitions and customer designations allows the utilities, CalOES (and other state or local government entities), CAL FIRE, local first/emergency responders, local governments, critical facilities, the Commission, customers and all others to operate with a shared understanding and language throughout a de-energization event, including re-energization. In addition, designation as one of the groups set forth below may carry special consideration for notice, both in timing and form (discussed later in this decision,) possible mitigation before, during and after a de-energization event and possible prioritization during re-energization (mitigation and re-energization will be explored more fully in Phase 2 of this proceeding).

The Commission adopts the definitions set forth below for first/emergency responders, critical facilities, public safety partners, and vulnerable populations. The Commission recognizes the adopted definitions as an interim step towards the standardization of language across agencies and anticipates that the adopted definitions will evolve over time. The Phase 1

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record also pointed to the need to adopt and standardize other terms in the context of de-energization, such as ‘extreme wildfire risk’ and ‘transmission versus distribution.’ The Commission will explore additional refinement of definitions in Phase 2 of this proceeding, and the Commission is actively partnering with CalOES and CAL FIRE to move towards a standard lexicon. The definitions adopted herein will remain in effect unless or until updated by the Commission in a subsequent decision.

#### **5.1.1. First Responders/Emergency Responders**

The Commission adopts the following definition for first/emergency responders:

The term ‘first responder/emergency responder’ refers to those individuals who, in the early stages of an incident, are responsible for the protection and preservation of life, property, evidence, and the environment, including emergency response providers. The term ‘emergency response providers’ includes federal, state, and local governmental and nongovernmental public safety, fire, law enforcement, emergency response, emergency medical services providers (including hospital emergency facilities), and related personnel, agencies and authorities.

This definition was widely supported by parties and is an appropriate definition that can be used and understood by all agencies and entities, such as CalOES, CAL FIRE, the Commission, local governments and other affected customers and stakeholders. The definition included in the Staff Proposal is rooted in existing definitions adopted by FEMA,<sup>80</sup> which comports with the Commission’s goal to standardize and harmonize nomenclature across federal, state and local agencies and to fit de-energization practices within existing

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<sup>80</sup> The proposed definition is cited to both (White House, HSPD 8, 2003) and (Homeland Security Act of 2002, Public Law No. 107-296, section 2, 116.)



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emergency response frameworks. The adopted definition does not designate water utilities and communication companies as first/emergency responders, instead designating them as critical facilities and public safety partners that must receive priority notification. Identification of specific first/emergency responders within each jurisdiction will be discussed in subsequent sections.

### **5.1.2. Public Safety Partners**

The Staff Proposal uses the term ‘public safety partners’ throughout but does not offer a definition for the term. The Commission finds value in the use of the term and views Public Safety Partners as those entities for whom advanced notice is critical to preserve the public safety during a de-energization event, including during re-energization. The Commission adopts the following definition:

The term ‘public safety partners’ refers to first/emergency responders at the local, state and federal level, water, wastewater and communication service providers, community choice aggregators (CCAs), affected publicly-owned utilities (POUs)/electrical cooperatives, the Commission, CalOES and CAL FIRE. Public safety partners will receive priority notification of a de-energization event, as discussed in subsequent sections.

### **5.1.3. Critical Facilities/Critical Infrastructure**

As noted earlier in this decision, Resolution ESRB-8 notes that operators of critical facilities and critical infrastructure must be aware of any planned de-energization event. Furthermore, the utilities must assist critical facility and infrastructure customers to evaluate their needs for backup generation and determine if additional equipment is needed, potentially including utility-provided generators for facilities that are not well prepared for a power



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shut-off.<sup>81</sup> The Staff Proposal set forth a list of potential critical facilities and critical infrastructure, but did not offer a standard definition for the term. Parties, in comments, mostly responded to the list presented in the Staff Proposal, but few offered an overarching definition. Many parties pointed out overlaps with utility terms such as SCE's 'essential providers,' which SCE lists as those entities that provide a critical service to the public.<sup>82</sup>

The purpose of adopting a standard definition for the term 'critical facilities' and 'critical infrastructure' is to promote coordination between the utilities, local government agencies, first/emergency responders and such facilities that are essential to the public safety.<sup>83</sup> The goal, as noted in ESRB-8, of identifying these facilities and infrastructure is to provide adequate notice before a de-energization event but, equally as important, to assist those facilities to maximize resiliency during de-energization and re-energization by implementing advanced planning.

At this point, the Commission lacks sufficient record and experience with de-energization across the utilities to adopt an overarching definition for critical facilities and critical infrastructure. Parties offered a number of possible expansions and changes to the list; however, the impact of these additions is not yet fully understood. However, it is the Commission's goal to move towards a standardized definition across all utilities. It is also unclear from the record whether it is prudent to adopt a specific list of facilities at this time and require the use of that list across all utilities, exclusive of all other facilities. Therefore,

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<sup>81</sup> Resolution ESRB-8 at 7.

<sup>82</sup> SCE does not include daycares and schools in its list of 'essential providers.'

<sup>83</sup> At this point, there is disagreement on what facilities are essential to the public safety.

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the Commission adopts the following interim definition and list of critical facilities and critical infrastructure but notes that this list is not meant to be exhaustive or restrictive. The Commission may examine this definition further in Phase 2 of this proceeding or subsequent proceedings. Identification of these facilities and infrastructure will be discussed in a subsequent section.

The term ‘critical facilities’ and ‘critical infrastructure’ refers to facilities and infrastructure that are essential to the public safety and that require additional assistance and advance planning to ensure resiliency during de-energization events. The Commission adopts an interim list of ‘critical facilities’ and ‘critical infrastructure’ but notes that the utilities, in their Wildfire Management Plans (WMP), often list additional or differing facilities than those adopted here. The Commission strives to move towards a standardized definition and designation of critical facilities and critical infrastructure on a going forward basis, and the definition adopted here should not be construed as restrictive. The utilities must use the standard terms ‘critical facilities’ and ‘critical infrastructure’ (together critical customers) on a going forward basis in their de-energization procedures and WMPs. Utilities should partner with local government and public safety partners in high fire risk areas to develop a list of critical facilities and critical infrastructure in those areas, and the utilities should be prepared to partner with the Commission to adopt a comprehensive list of types of critical facilities and critical infrastructure in the future.

The Commission adopts the following interim list of critical facilities/infrastructure based upon the Department of Homeland Security’s Critical Infrastructure Sectors:<sup>84</sup>

- Emergency Services Sector
  - Police Stations
  - Fire Station

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<sup>84</sup> See <https://www.dhs.gov/cisa/critical-infrastructure-sectors> at 21.

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- Emergency Operations Centers
- Government Facilities Sector
  - Schools
  - Jails and prisons
- Healthcare and Public Health Sector
  - Public Health Departments
  - Medical facilities, including hospitals, skilled nursing facilities, nursing homes, blood banks, health care facilities, dialysis centers and hospice facilities<sup>85</sup>
- Energy Sector
  - Public and private utility facilities vital to maintaining or restoring normal service, including, but not limited to, interconnected publicly-owned utilities and electric cooperatives
- Water and Wastewater Systems Sector
  - Facilities associated with the provision of drinking water or processing of wastewater including facilities used to pump, divert, transport, store, treat and deliver water or wastewater
- Communications Sector
  - Communication carrier infrastructure including selective routers, central offices, head ends, cellular switches, remote terminals and cellular sites
- Chemical Sector
  - Facilities associated with the provision of manufacturing, maintaining, or distributing hazardous materials and chemicals.<sup>86</sup>

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<sup>85</sup> Excluding doctor offices and other non-essential medical facilities.

<sup>86</sup> Including Category N-Customers as defined in D.01-06-085.

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#### **5.1.4. Vulnerable Populations (Access and Functional Needs Populations)**

De-energization can have disproportionate impacts on certain populations. As discussed below, the Commission adopts a definition that comports with that used by CalOES and will henceforth refer to vulnerable populations as populations with access and functional needs (AFN populations). The purpose of identifying AFN populations is to ensure that such populations, as with critical facilities, receive the education and notification they need to maximize resiliency during a de-energization event. Parties provided a variety of comments on the suggested definition in the Staff Proposal ranging from greatly expanding the list to reducing the list solely to those who are wholly dependent upon electricity for life-sustaining service, e.g. SDG&E's Life Support customers. Parties are generally concerned about two main issues: (1) the ability to identify and locate customers that are designated as AFN and (2) the burden and potentially diminishing returns of notifying an expansive list of customers, especially if door-to-door notification becomes necessary.

The Commission, at this juncture, takes a broad approach to defining AFN populations with the goal of identifying and notifying AFN populations and mitigating against the impacts of de-energization on these populations. This will include up-front education of AFN populations in advance of wildfire season such that these customers can be prepared to address the unique impacts of de-energization. The Commission recognizes that the utilities cannot adequately identify all AFN populations at this time; identification will be explored in the next section. However, the Commission expects the utilities to partner with local and state agencies to develop a plan with the goal of identifying and notifying AFN populations on a going forward basis. As with critical facilities and critical

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infrastructure, the Commission wishes to adopt a standardized definition across all utilities but recognizes that this definition will need to be further refined as the utilities, the Commission and other public safety partners gain experience with proactive de-energization.

In keeping with the Commission's desire to integrate as fully as possible with existing emergency management frameworks and structures, the Commission adopts the following definition:

The term 'access and functional needs populations' refers to those populations with access and functional needs as set forth in Government Code § 8593.3. Government Code § 8593.3 lists 'access and functional needs populations as follows: ...the 'access and functional needs population' consists of individuals who have developmental or intellectual disabilities, physical disabilities, chronic conditions, injuries, limited English proficiency or who are non-English speaking, older adults, children, people living in institutionalized settings, or those who are low income, homeless, or transportation disadvantaged, including, but not limited to, those who are dependent on public transit or those who are pregnant.

#### **5.1.5. How Should Entities Be Identified?**

Identification of public safety partners, critical facilities and AFN populations in advance of wildfire season is essential to ensure that de-energization occurs as safely and effectively as possible. As noted by the Joint Local Governments, the definition of first/emergency responders adopted herein does not identify the actual agencies that will be contacted first in a de-energization event. Furthermore, as discussed by many parties, including the utilities, identification of AFN populations goes beyond customer information held by the utility. The Commission recognizes that identification of first/emergency responders, critical facilities/critical infrastructure contacts and AFN populations will be an ongoing process that will not be fully complete in

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advance of the 2019 wildfire season. However, the utility, in partnership with state and local public safety partners, should continue to identify appropriate points of contacts for all listed populations.<sup>87</sup> The utility should prioritize identification in Tier 2 and 3 fire threat areas followed by adjacent jurisdictions that may be impacted in the event of de-energization. The Commission adopts the following guidelines:

**5.1.5.1. Identification of First/Emergency Responders/Public Safety Partners**

- The electric investor-owned utilities must work with local and county officials to identify appropriate emergency/first responder points of contact. This may include local government points of contact for jurisdictions that share first responder resources. The electric investor-owned utilities must identify 24-hour contact points and must identify secondary contacts at a minimum and tertiary contacts if possible. The electric investor-owned utilities must also identify primary and secondary means of communication for each contact.
- The electric investor-owned utilities must provide utility personnel 24-hour points of contact, including secondary and tertiary contacts to affected local jurisdictions/first responders.
- The electric investor-owned utilities must identify clear points of contact for all other public safety partners, including affected CCAs, POU's/electric cooperatives, water and communications providers. The electric investor-owned utilities must have 24-hour contacts with secondary contacts at a minimum and tertiary contacts if possible. The electric investor-owned utilities must also have clear points of contact at the Commission, CalOES and CAL FIRE.

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<sup>87</sup> The Commission recognizes that the utilities will not be able to identify specific AFN points of contact beyond those customers enrolled in existing utility programs such as medical baseline programs.

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- To ensure accuracy of contacts, the electric investor-owned utilities are required to update lists annually at least two months in advance of the start of the wildfire season and conduct communication exercises prior to wildfire season to confirm their ability to rapidly disseminate information. The electric investor-owned utilities should work with points of contact to encourage proactive updating of information in the event of a change, beyond the annual update required of the utilities.

#### **5.1.5.2. Critical Facilities and Infrastructure**

- The electric investor-owned utilities must, in addition to developing their own list of critical facilities and infrastructure based on the adopted definition, work in coordination with first/emergency responders and local governments to identify critical facilities within the electric investor-owned utilities' service territories. The electric investor-owned utilities must identify 24-hour points of contact and, at a minimum, secondary points of contact. The electric investor-owned utilities must work together with the operators of critical facilities and infrastructure to identify preferred points of contact (the billing contact may not be the appropriate de-energization contact) and preferred methods of communication.
- To ensure accuracy of contacts, the electric investor-owned utilities are required to update critical facility and infrastructure lists annually at least two months in advance of the start of wildfire season. The electric investor-owned utilities should work with points of contact to encourage proactive updating of information throughout the year in the event of a change, beyond the annual update required of the utilities. The electric investor-owned utilities should prioritize identification of appropriate contacts for critical facilities and infrastructure located within Tier 3 and 2 HFTDs, followed by adjacent jurisdictions that may be impacted in the event of de-energization.
- The electric investor-owned utilities must, pursuant to Resolution ESRB-8, and in advance of the wildfire season, proactively partner with critical facility and critical infrastructure representatives to assess the ability of the critical facility to



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maintain operations during de-energization events of varying lengths. The electric investor-owned utilities must help critical facility and critical infrastructure representatives assess the need for backup generation and determine whether additional equipment is needed, including providing generators to facilities that are not well prepared for a power shut off.<sup>88</sup> Advance education of representatives and preparation of critical facilities and infrastructure is imperative to ensure that public safety is preserved during a de-energization event.

### **5.1.5.3. Access and Functional Needs Populations**

Most parties support an expanded definition of AFN populations; however, the utilities express concerns about their ability to identify such populations, including privacy concerns. The Commission understands and appreciates this concern; however, it is important for AFN populations to be identified in order to ensure that these customers are able to prepare for de-energization in a way that fits their needs. For example, it is essential that those customers dependent upon life-sustaining medical equipment that requires electricity<sup>89</sup> are identified so that the utilities and public safety partners can assist those customers in developing a de-energization action plan. It is the goal of the Commission that a means of identifying other AFN populations is developed; however, the Commission recognizes that the utilities will be unable to identify and notice all AFN populations and must rely upon local and state jurisdictions to assist in this effort. This will be an ongoing endeavor, and the Commission will explore identification of and notification methods to AFN populations more fully in Phase 2. Accordingly, the Commission adopts the following guidelines:

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<sup>88</sup> Responsibility for the cost of back-up generation will be explored in Phase 2.

<sup>89</sup> These customers are noted differently in each utility's tariffs but are generally included under the utilities' medical baseline programs.



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- The electric investor-owned utilities must make a diligent effort to identify AFN populations within their customer base. The electric investor-owned utilities should review available information including, but not limited to, customers on medical baseline tariffs, CARE and FERA tariffs and customers that require in person notification in advance of service disconnection.<sup>90</sup> In advance of the 2019 wildfire season, the electric investor-owned utilities should seek to identify and expand registration under their medical baseline tariffs.
- In the spirit of shared responsibility, the electric investor-owned utilities should endeavor to partner with local governments and agencies to encourage identification of AFN populations through those agencies. Recognizing privacy concerns, the Commission does not require the electric investor-owned utilities to develop a comprehensive contact list of AFN customers nor to share individual customer information with local jurisdictions; rather, the Commission encourages that, through local agency partnerships, the electric investor-owned utilities and local jurisdictions can together provide up front education and outreach before and communication during a de-energization event in formats appropriate to individual AFN populations. The electric investor-owned utilities must also develop a plan for expanding identification of AFN customers beyond those customers enrolled in existing utility programs in the event that local agency partnerships are unavailable to assist. The Commission acknowledges that identification of all AFN customers is a goal that may not be fully achievable even with assistance of local jurisdictions; however, the utilities must take all reasonable steps within the boundaries of the law towards that goal in order to protect the safety of AFN populations.
- The electric investor-owned utilities must update contact information for medical baseline customers and provide an opportunity for such customers to select alternative means of

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<sup>90</sup> See D.12-03-054.

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contact beyond their preferred means of contact from the utility for billing and other information.

#### **5.1.5.4. All Other Customers**

The utility and public safety partners will need to communicate with all customers within the boundaries of a de-energized area (and potentially adjacent jurisdictions) in advance of a de-energization event. The Commission adopts the following guidelines:

The electric investor-owned utilities must ensure that customer contacts are up-to-date. The Commission recognizes that electric investor-owned utility customer points of contact are necessarily limited, for example a landlord-controlled account will not provide a method of contact for tenants. The electric investor-owned utilities must work with local jurisdictions to leverage all means of identifying and communicating with all people within a de-energized area, including people who may be visiting the area or not directly listed on utility accounts. The Commission expects that this will be an iterative process developed over time.

#### **5.2. Who Should Receive Notification and in What Order of Priority?**

Communication of a de-energization event, no matter the cause, is crucial to ensure that the event happens in as safe orderly a manner as possible. There are two main forms of communication: (1) education and public outreach in advance of wildfire season to ensure that procedures and processes are in place with public safety partners and that customers are aware of de-energization and know how to prepare; and (2) notice and communication of a potential, imminent or a suddenly occurring de-energization event. This section will focus primarily on the second form of communication; education and outreach are already occurring and will be discussed further below in this decision.

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### **5.2.1. Who Should Receive Notice?**

Depending on the size of the de-energized area and the utilities' ability to segment their grid, de-energization can have a significant impact on a large group of people spread across diverse topographies. It is imperative that all stakeholders potentially impacted by a de-energization event receive notification as far in advance as possible, without causing undue confusion. The Commission adopts the following guidelines:

Recognizing that there may be times when advance notice is not possible due to emergency conditions beyond the electric investor-owned utilities' control, the electric investor-owned utilities must, whenever possible, provide advance notification to all populations potentially affected by a de-energization event. This includes, but is not limited to, public safety partners, critical facilities and critical infrastructure, AFN populations, and jurisdictions that are not at threat of a utility-caused wildfire but may lose power as a result of de-energization elsewhere on the system.

### **5.2.2. In What Order of Priority?**

Understandably, all affected entities wish to receive notification of an impending de-energization event as far in advance as possible. As noted by SDG&E, the utilities should strive to provide notice with enough time for affected populations to respond effectively, which may include concurrent notification to all affected populations. The Commission finds, however, that whenever possible priority notice should be given to a select group of stakeholders, followed by all other affected populations. Priority notice provides that those who will respond to ensure public safety are sufficiently noticed and adequately prepared. Accordingly, the Commission adopts the following guidelines:

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Consistent with the principles of the SEMS, whenever possible, priority notification should occur to the following entities, at a minimum:<sup>91</sup> public safety partners, as defined herein, and adjacent local jurisdictions that may lose power as a result of de-energization. Notice to all other affected populations, including AFN populations, may occur after the utility has given priority notice; however, AFN populations may require additional notification streams. This guideline is not meant to be restrictive; utilities may provide priority notification to a broader subset of customers, e.g. certain critical facilities, to promote public safety.

The Commission acknowledges that many parties recommended that the Commission require advanced notification of critical facilities and AFN populations. As discussed elsewhere in this decision, public outreach and education events in advance of wildfire season are critical to ensure that such populations are prepared and know how to respond in the event of de-energization. The Commission and the utilities, based upon their statements in comments, wish to provide advance notification whenever possible to all populations; however, it is imperative that priority notification be given to those who will be called on to respond to preserve the public safety.

### **5.3. How Far in Advance Should Notice Occur?**

The Commission recognizes that all stakeholders desire as much time as possible to prepare for a de-energization event. However, there is a balance that must be struck. Notification too far in advance risks causing confusion and/or ambivalence, especially if the utility ultimately decides not to de-energize. The Commission also appreciates that there may be times when de-energization must

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<sup>91</sup> The Commission's adopted definition of public safety partners does not include critical facilities and infrastructure beyond water utilities and communication providers. The utility may, in partnership with first/emergency responders and/or local government entities, identify other critical facilities that should receive priority notice. This guideline is intended to set a floor, not a ceiling for priority notification.

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occur with little to no notification in order to respond to an emergency situation, to avoid the risk of a utility-caused wildfire, or because de-energization occurs due to an unforeseen circumstance outside of the control of the utility, such as a natural disaster or non-utility ignited wildfire. Finally, as discussed in the general guidelines and Section 5.4, below, the Commission expects the utilities to endeavor to work with local jurisdictions, CalOES and CAL FIRE to develop a coordinated notification effort that leverages existing emergency notification channels and protocols.

The utilities stated generally that they would provide advanced notice whenever possible, with SDG&E noting that it strives to provide 24-48 hours advanced notice. The Commission is persuaded by parties that it is valuable to adopt a specific notification timeline; however, the utilities must be afforded flexibility to adjust the timeline based upon situational awareness and real-time events that may be out of the utilities' control. The Commission adopts the following guidelines:

Every effort must be made by the electric investor-owned utilities to provide notice of potential de-energization as early as the electric investor-owned utilities reasonably believe de-energization is likely. At a minimum, notification to public safety partners must occur when a utility activates its Emergency Operations Center (EOC) in anticipation of a de-energization event or whenever a utility determines that de-energization is likely to occur, whichever happens first. In addition, the electric investor-owned utilities must provide notice when a decision to de-energize is made, at the beginning of a de-energization event, when re-energization begins and when re-energization is complete. Electric investor-owned utilities should, whenever possible, adhere to the following minimum notification timeline:

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- 48-72 hours in advance of anticipated de-energization: notification of public safety partners<sup>92</sup>/ priority notification entities
- 24-48 hours in advance of anticipated de-energization: notification of all other affected customers
- 1-4 hours in advance of anticipated de-energization, if possible: notification of all affected customers<sup>93</sup>
- When de-energization is initiated: notification of all affected customers<sup>94</sup>
- Immediately before re-energization begins: notification of all affected customers<sup>95</sup>
- When re-energization is complete: notification of all affected customers

#### **5.4. Who is Responsible for Notification?**

Parties to this proceeding universally agreed that the utility, as the entity calling the de-energization event, should be ultimately responsible for notification of all stakeholders. The Commission, however, also seeks to ensure that the utilities integrate as much as possible with local emergency systems and frameworks and treat de-energization in a similar manner as any other emergency that results in loss of power, such as earthquakes, floods or

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<sup>92</sup> Consistent with Resolution ESRB-8, the electric investor-owned utilities must provide notice to the Commission's SED Director.

<sup>93</sup> The Commission appreciates that it may not be possible at this juncture to know exactly when a de-energization will occur and to provide this level of advanced notification. However, the electric investor-owned utilities should strive to communicate that de-energization is imminent.

<sup>94</sup> In advance of wildfire season, the electric investor-owned utilities must develop a plan for communicating with public safety partners during a de-energization event, recognizing that many communication channels may be affected by the loss of power.

<sup>95</sup> Similarly, communication may be affected by the loss of power.

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non-utility caused fire events. It is the Commission's vision that notice and communication will primarily come from utilities but with close coordination with local first responders, whenever possible, based upon pre-designed templates and scripts developed by the utilities in coordination with relevant state and local agencies. The Commission supports this approach so that there is cohesive treatment and communication across all emergency events and in recognition that citizens should have consistent experience during de-energization events regardless of their utility provider.

The concept of shared responsibility between the utilities, public safety partners and affected customers is critical; however, for now, the utilities are ultimately accountable for each de-energization event. Affected customers should be afforded advanced notification whenever possible; however, with advanced education and outreach, customers should be prepared well in advance of a de-energization event or any other event that results in the loss of power, such as a non-utility caused wildfire resulting in power loss, to meet their own safety needs. For AFN populations, this includes, to the extent possible, partnering with community-based organizations and other entities to develop plans in advance to ensure that needs can be met in the event of a power loss. The utilities should work with public safety partners and community-based organizations to develop outreach and education materials and plans for AFN populations to prepare for de-energization well in advance of any particular event.

There are public safety implications that must be explored, especially as utilities harden and sectionalize their grid, resulting in more granular de-energization events. Furthermore, local jurisdictions incur costs when they engage in notification and public safety efforts during de-energization, and it is



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unclear who should bear the burden of those costs at this time. The Commission also does not have enough of a record to determine at this point if the electric utility or a CCA (or both) should provide notification in jurisdictions where a customer is served by both a CCA and the utility. Finally, the SEMS framework, aside from setting a bottom-up approach to emergency events, acts as a framework for allocating resources across jurisdictions. The utilities are not a governmental agency, and at this juncture, state agencies cannot allocate utility resources in the event of de-energization. The Commission will explore these issues in Phase 2.

Taking the above into account, the Commission adopts the following guidelines for the 2019 wildfire season, recognizing that these guidelines will necessarily evolve over time:

The electric investor-owned utilities, as the entity with the most knowledge of and jurisdiction to call a de-energization event and subsequent re-energization, retain ultimate responsibility for development of the communication strategy and notification in advance of, during and after a de-energization event. However, the electric investor-owned utilities should immediately begin working with CalOES and local governments to develop notification programs such that, wherever possible, the utilities' notification processes integrate into the SEMS framework, with the goal that local governments provide supplemental or secondary notification in the near future based upon pre-designed templates and scripts developed by the utilities in coordination with relevant state and local agencies. Supplemental notification does not supplant the utilities' responsibility to provide notification to all customers

The utilities must work with the goal of integrating into and leveraging existing outreach and notification systems wherever possible, rather than creating duplicative and potentially conflicting systems to those employed by local jurisdictions/emergency/first responders.



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## **5.5. What Information Should Be Included in Notifications (and Outreach)?**

There are two primary timeframes for notification that must occur prior to de-energization, and each has differing information that must be conveyed. The first form of notice comes in advance of wildfire season and includes information that must be shared with public safety partners, critical facilities and the public (advanced outreach and education). The second form of notice occurs in the days and hours preceding a specific de-energization event.

### **5.5.1. Advanced Outreach and Education**

The utilities must work to build relationships with public safety partners, critical facilities, community-based organizations (preferably in partnership with public safety partners) and the public, including AFN populations, in order to ensure that all are as prepared as possible to face a de-energization event if and when it occurs. Accordingly, the Commission adopts the below advanced education and outreach guidelines.

#### **5.5.1.1. Public Safety Partners and Critical Facilities**

The utilities must develop partnerships with public safety partners at the local and state level to enable these agencies and entities to sufficiently prepare for de-energization events. The Commission finds that the utilities should share information as broadly and comprehensively as possible to allow public safety partners to conduct parallel planning in advance of the 2019 and subsequent wildfire seasons. For this reason, the Commission is unconvinced by some of the utilities' arguments that thresholds cannot be developed or communicated for strong wind events and extreme hazard conditions (humidity thresholds, fuel dryness, extreme temperatures).

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The Commission recognizes that there are a number of factors, including on-the-ground utility employee assessments, that go into calling a de-energization event, and the Commission understands that, at this time, there is some degree of discretion that is necessary. The Commission further recognizes that different utilities are in different places in their development of de-energization programs. However, requiring each utility to share the particular characteristics and thresholds, which likely vary across terrain, that trigger the utility to *consider* de-energization, enables public safety partners, critical facilities and the general public to plan accordingly. Therefore, the Commission requires, as set forth below, that the utilities begin to develop and make available information characteristics and thresholds that the utility uses in considering whether to de-energize. The Commission does not require that the utilities develop standardized thresholds across the state. Finally, the Commission requires that the utilities work with critical facilities and public safety partners to ensure that these entities have the information and ability to communicate they need to respond effectively during a de-energization event. This may include, but is not limited to, sharing information about the number of medical baseline customers in a particular jurisdiction, circuits affected, and de-energization boundaries to the extent possible, as well as providing operational coordination with public safety partners.

The Commission adopts the following guidelines:

- With the goal of having a common understanding of situational awareness among public safety partners throughout California, each electric investor-owned utility must clearly articulate thresholds for strong wind events as well as the conditions that define “an extreme fire hazard” (humidity, fuel dryness, temperature) that the electric investor-owned utility evaluates in considering whether to de-energize. This information may vary

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for different jurisdictions and topographies; however, the information must be provided to and be readily available to public safety partners and the public.<sup>96</sup> The electric investor-owned utilities are afforded discretion to evaluate real-time and on-the-ground information in determining whether to de-energize; adoption of thresholds is not determinative of de-energization.

- To aid in preparation, the electric investor-owned utilities must provide, if requested, relevant GIS data, including identification of critical facilities, circuits, and number of medical baseline customers, to local jurisdictions in advance of wildfire season. In addition, the utilities must provide, if requested, operational coordination with public safety partners to ensure such partners have not only the information but also the coordination with the utilities necessary to prepare for de-energization.

#### **5.5.1.2. All Other Customers**

Although de-energization is a proactive shutting off of power, any emergency, including a non-utility-infrastructure caused wildfire, can cause a prolonged loss of power. The Commission, therefore, requires that the utilities work with public safety partners, including CAL FIRE and CalOES, to develop outreach and educational materials to make citizens aware of how to prepare for a prolonged loss of power in advance of the 2019 wildfire season.<sup>97</sup> The Commission will not adopt specific language or requirements at this juncture; however, the Commission requires that the outreach and education efforts be a comprehensive and cohesive multi-agency outreach effort that is coordinated with local entities.

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<sup>96</sup> For example, on the utility's website.

<sup>97</sup> The utilities have already begun to partner with Cal FIRE and CalOES to develop and disseminate such materials. See, for example, <https://prepareforpowerdown.com/>

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Finally, the utilities must partner with public safety partners to develop scripted de-energization templates that can be used by public safety partners during a de-energization event. This should include a standardized set of definitions that must be used across all utilities and public safety partners. The utilities should, whenever possible, use the best practices, procedures, and protocols outlined in the California Alert and Warning Guidelines to harmonize with existing emergency notifications.

Accordingly, the Commission adopts the following guidelines:

- In advance of the 2019 wildfire season, the electric investor-owned utilities, jointly, must immediately oversee development and execution of a statewide Public Safety Power Shut-off education campaign, developed in partnership with CalOES and CAL FIRE, that provides education tailored to the needs of stakeholders, including AFN populations, in order to make citizens aware of how to prepare for and obtain information during a prolonged loss of power, including as a result of de-energization. Education and outreach must use best practices outlined in the California Alert and Warning Guidelines to maximize understanding. The electric investor-owned utilities, in coordination with the above-named agencies, must measure effectiveness of education and outreach efforts and adjust efforts accordingly.
- The electric investor-owned utilities must partner with local and state public safety partners to develop scripted de-energization templates that can be used by public safety partners leading up to, during, and after a de-energization event. In order to allow jurisdictions with public alerting authority to send timely and appropriate messages to populations potentially impacted by a de-energization event, the utilities must develop Common Alerting Protocol compliant messages and protocols for use by the designated alert authorities. Whether local jurisdictions choose to utilize their Public Alert and Warning system to notify the public of a de-energization event is at their discretion. The electric investor-owned utilities must also work with state public

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safety partners (CalOES, CAL FIRE) to develop definitions to use for communications and a standardized nomenclature based on existing emergency frameworks.

#### **5.5.2. Notification Preceding a De-Energization Event**

Equally important as advanced outreach and education is notification to potentially affected entities preceding a de-energization according to the timelines discussed earlier in this decision. Public safety partners will require specific information including the boundaries of the de-energization event, circuits to be de-energized, information regarding customers within the de-energization boundaries (number of medical baseline customers, etc.) the estimated start date and time of de-energization, estimated length of the de-energization event and estimated restoration timelines.

The Commission is not persuaded by some of the utilities' arguments that it is inappropriate to provide an estimated length of de-energization. While it is impossible to know the exact length of a de-energization event in advance, it is likely that by evaluating advanced weather forecasting and "extreme hazard" thresholds, the utility can develop an estimated length of outage. The utilities must convey this information to public safety partners but may caveat the information as an estimate that is subject to change as conditions evolve in real-time. The utilities must also convey this information to all affected customers but may present it in estimated timeframes, e.g. 2-7 days.

Finally, the utilities must provide all situational awareness information possible to public safety partners, including GIS situational awareness information. The goal is for the utilities to provide GIS REST services; however, the Commission understands this may not be possible in advance of the 2019 wildfire season. Nevertheless, accurate and timely geospatial information that

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can be rapidly integrated into public safety partners' existing geospatial awareness tools is critical in facilitating decision-making at the state and local level. The Commission rejects SCE's suggestion that agencies can manually download information from a public website. To require this would necessitate that an additional series of steps be taken in a time-constrained environment, increasing the potential for errors. The Commission does support, however, the inclusion of de-energization boundary maps on the utilities de-energization websites that are accessible to the public.

#### **5.5.2.1. Public Safety Partners**

The Commission adopts the following guidelines for information to be communicated with public safety partners in the days and hours preceding a de-energization event:

- The electric investor-owned utilities must convey to public safety partners at the time of first notification preceding a de-energization event information regarding the upcoming de-energization, including estimated start time of the event, estimated duration of the event, and estimated time to full restoration. The electric investor-owned utilities must use the previously established contact channels developed in advance of the 2019 wildfire season and should strive to provide contact according to the timeframes adopted in these guidelines. The electric investor-owned utilities must provide the number of medical baseline customers in the impacted area to first/emergency responders and/or local jurisdictions.
- For the 2019 wildfire season, the electric investor-owned utilities must, at the time of first notification preceding a de-energization event, make available a GIS shapefile via a secure data transfer process depicting the most accurate and specific information possible regarding the boundaries of the area subject to de-energization to all public safety partners whose jurisdictions or service areas will be impacted by the de-energization event, including adjacent jurisdictions or service areas that could lose

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power as a result of de-energization in a high fire threat district (HFTD). Going forward, the electric investor-owned utilities must work to provide a secure data transfer of the de-energization boundary in GIS REST format (or other agreed upon format that is rapidly consumable by existing geospatial and situational awareness tools) and must also show affected circuits and any other information that is requested by public safety partners and can reasonably be provided by the utility. The utilities must work towards being able to provide real-time data to public safety partners.

#### **5.5.2.2. All Other Customers**

The Commission adopts the following guidelines for information to be communicated with all other customers in the days and hours preceding a de-energization event:

- The electric investor-owned utilities must work with local public safety partners to communicate with all other customers that a de-energization event is possible, the estimated start date and time of the de-energization event, the estimated length of the de-energization event, which may be communicated as a range, and the estimated time to power restoration, which again, may be communicated as a range. Communications should state when the customer can next expect communication about the de-energization event. Communication, consistent with best practices articulated in the California Alert and Warning Guidelines, must answer five key recipient questions: (1) Who is the source of the warning; (2) What is the threat; (3) Does this affect my location; (4) What should I do; and (5) What is the expected duration of the event? Communications must also point customers towards education and outreach materials disseminated in advance of the 2019 wildfire season.
- The electric investor-owned utilities must provide up-to-date information, including a depiction of the boundary of the de-energization event, on their websites' homepage and a dedicated PSPS webpage regarding the de-energization event. The electric investor-owned utilities, in partnership with local



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public safety partners, must establish and communicate a 24-hour means of contact that customers may use to ask questions and/or seek information.

**5.6. What Methods Should the Electric Investor-Owned Utilities Use to Communicate a De-Energization Event with the Public?**

The Statewide Alert and Warning Guidelines (Guidelines) provide guidance and expectations for jurisdictions throughout California to ensure that all available tools are used to alert and warn members of the public about emergencies. The Guidelines state that “it is an inherent responsibility of local government organizations to keep the public informed about natural, human-caused, and technological disasters,” and that “a highly effective alert and warning program will use as many delivery methods as possible.”<sup>98</sup> Although the Guidelines do not explicitly address de-energization and do not adopt notification and communication methods when there is a loss of power, the Guidelines create a strategy for notice to residents by local jurisdictions. The utilities must partner with local and state public safety partners to develop notification strategies that comport with the Guidelines for all customer groups, recognizing that the utilities retain responsibility to ensure notification of affected public safety partners, critical facilities and infrastructure and customers.

De-energization should be communicated by all available means including, but not limited to, media and broadcast television, social media, phone calls, texts, and in person visits, and multiple methods of communication should be employed. In addition, notifications must be communicated in

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<sup>98</sup> Section 11.3.4 Multi-Modal / Multi-Platform Systems, 2019 Statewide Alert & Warning Guidelines.



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English, Spanish, Chinese (including Cantonese, Mandarin and other Chinese languages), Tagalog and Vietnamese as well as Korean and Russian where those languages are prevalent within the utilities' service territories. Communication methods must consider the geographic and cultural demographics of affected areas, e.g. some rural areas lack access to broadband services. The utilities, in partnership with local and state public safety partners, must develop notification strategies for AFN populations up to and including in person notification. The Commission will not adopt a list at this juncture of populations requiring in-person notification; however, consideration should be given to medical baseline customers and customers requiring advanced notice in the event of power service disconnection.<sup>99</sup> The utilities should strive to develop a coordinated positive/affirmative notification strategy with public safety partners for pre-designated AFN populations. Pre-designated AFN populations should be determined in coordination with public safety partners, whenever possible. Finally, the utilities, in coordination with public safety partners, must develop a strategy for how communication can occur, if possible, with affected customers once de-energization has begun and during re-energization. Loss of power will likely impact many communication channels. This issue will be explored further in Phase 2.

The Commission adopts the following guidelines:

- The California Alert and Warning Guidelines states that "people rarely act on a single warning message alone. To be effective, warnings should be delivered in various formats via various media, both to increase reliability of warning delivery and to provide a sense of corroboration that will encourage recipients to take protective actions." The electric investor-owned utilities

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<sup>99</sup> See D.12-03-054

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must develop notification strategies for all customer groups affected by de-energization. The electric investor-owned utilities must partner with local and state public safety partners, whenever possible, to develop notification strategies. In order to be effective, notifications should be delivered in multiple formats across several media channels, both to increase the potential a message successfully reaches an impacted population and to provide a sense of corroboration that will encourage individuals to take protective actions. Customer notifications should include, but are not limited to, telephonic notification, text message notification, social media advisories, emails, and messages to agencies that service disadvantaged communities within an impacted area to allow them to amplify any pertinent warnings. Communication methods must consider the geographic and cultural demographics of affected areas, e.g. some rural areas lack access to broadband services. Communications must be delivered in English, Spanish, Chinese (including Cantonese, Mandarin and other Chinese languages), Tagalog and Vietnamese as well as Korean and Russian where those languages are prevalent within the utilities' service territories.

- The electric investor-owned utilities must develop a strategy for how communication will occur with affected customers once de-energization has begun and during re-energization, recognizing that communication channels may be restricted due to the loss of power. The electric investor-owned utilities should develop this strategy in coordination with public safety partners.

#### **5.7. How Should the Electric Investor-Owned Utilities Communicate and Coordinate with Public Safety Partners Before and During a De-Energization Event?**

There are two layers of notification and communication that must be addressed by the utilities and public safety partners, both of which require coordination. The first is how (under what principles and frameworks) should notification of and communication with public safety partners occur, and the second is how should public safety partners and utilities communicate with

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affected customers. As noted elsewhere, the Commission intends that public safety partners and the utilities work together to address de-energization as they would any other emergency event, despite the utilities having the jurisdictional authority to call a de-energization event.

The Commission supports a framework where the utility embeds in and utilizes existing emergency preparedness and response frameworks, rather than developing redundant or contrary platforms. SEMS is a structure for coordination between the government and local emergency response organizations. It provides and facilitates the flow of emergency information and resources within and between the organizational levels of on-the-ground responders, local government, operational areas, regions and state management. Although the utilities are not government agencies, and state management cannot allocate resources from the utilities, the utilities should, consistent with the principles of SEMS, follow the notification practices included therein, which means that the utilities will be responsible for contacting local public safety officials in impacted jurisdictions, through pre-designated channels prior to and during a de-energization event. The utility must ensure that an impending de-energization event is communicated to local and state officials. The utilities must work with public safety partners to disseminate all information in formats and through processes that are used by public safety partners during other emergencies, including developing messaging aligned with the best practices outlined in the California Alert and Warning Guidelines.

The Commission adopts the following guidelines:

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- Consistent with SEMS,<sup>100</sup> the electric investor-owned utilities will be responsible for contacting local public safety officials in impacted jurisdictions prior to and during a de-energization event. The electric investor-owned utilities must communicate an impending de-energization event to local and state officials. The electric investor-owned utilities must work with public safety partners to disseminate all information in formats and through processes that are used by public safety partners during other emergencies, including developing notification messaging consistent with the California Alert and Warning Guidelines. The electric investor-owned utilities must partner with local and state public safety partners to develop notification strategies for all customer groups that comport with the best practices articulated in the California Statewide Alert and Warning Guidelines.
- In advance of the 2019 wildfire season, the electric investor-owned utilities must continue to partner with local jurisdictions, CalOES and CAL FIRE to develop a comprehensive, coordinated and cohesive notification framework including, but not limited to, the electric investor-owned utilities providing notification to public safety partners and public safety partners, to the extent they are willing and able, providing secondary or supplemental notification to the general public. Electric investor-owned utilities retain responsibility to ensure notification of affected customers.
- The electric investor-owned utilities, in partnership with local and state public safety partners, must develop notification strategies for AFN populations up to and including in-person notification. The electric investor-owned utilities should strive to develop a coordinated positive/affirmative notification strategy with public safety partners for pre-designated AFN populations. Pre-designated AFN populations should be determined in coordination with public safety partners, whenever possible, but

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<sup>100</sup> PacifiCorp, as a utility that operates across state lines, requests that it operate consistent with NIMS. This is allowable; however, if a provision of NIMS conflicts with SEMS, PacifiCorp must follow the provisions mandated in SEMS.

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should include customers on medical baseline tariffs that are dependent upon electricity for the provision of life-sustaining services.

#### **5.8. Coordination with Emergency Response Centers and Incident Command Systems**

A safe and effective de-energization event relies in large part on the ability of the utilities and public safety partners to coordinate responses as seamlessly as possible. Although not yet declared emergencies by the State of California, de-energization should be treated as any other emergency that results in a prolonged loss of power. Accordingly, the utilities must avoid developing duplicative and separate response structures and instead seek to integrate into and coordinate with already existing structures and emergency response practices.

The Commission rejects the utilities' arguments that embedding liaisons in local EOCs would be overly burdensome; however, the Commission does appreciate the utilities' concerns about dilution of resources and the possibility of inconsistent decision-making with a dispersed structure. The Commission addresses this issue in the guidelines set forth below. The Commission does agree that, consistent with the principles of the Incident Command System, utilities should not *proactively* embed a liaison unless requested by the local jurisdiction. In fact, if de-energization is not considered an emergency by a local jurisdiction, it is likely that the jurisdiction will not form its own EOC; therefore, it would be futile to require the utility to embed in a non-existent EOC. At this juncture, the utility does form its own EOC; thus, the utility must hold seats in its EOC for local jurisdictional emergency representatives and invite those representatives to sit on its EOC.

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On a going forward basis, the Commission envisions that de-energization will be treated as any other incident/emergency. The utilities should coordinate with CalOES, CAL FIRE and local jurisdictions to determine the most appropriate formation and staffing of EOCs in the case of utility called de-energization. Finally, it is imperative that the utilities and public safety partners have a communication strategy for when power is turned-off; loss of power may impact many standard forms of communication such as cellular and internet services.

The Commission adopts the following guidelines:

- If requested by the local jurisdiction, the electric investor-owned utilities must embed a liaison officer at the local or county EOC. When requested, the utility must embed a liaison officer at the State Operations Center for the purpose of assessing and integrating wildfire threat data for decision-making. The liaison officers must be empowered to provide rapid and accurate information from the utilities. To ensure consistency of response across jurisdictions, the electric investor-owned utilities should have a designated lead with decision-making authority located at the utility's EOC with whom embedded liaisons can communicate in real-time to obtain the most up-to-date information. This requirement does not preclude the utilities from developing a centralized communication structure that is amenable to both the utility and local jurisdictions to provide real-time coordination and situation awareness.
- Currently, the electric investor-owned utilities form an EOC during each de-energization event. The electric investor-owned utilities must invite representatives from CalOES, water infrastructure providers, and communication service providers. In the alternative, the utilities may develop a mutually agreeable communications structure with water infrastructure providers and communication service providers in lieu of holding seats in its EOC.

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### **5.9. Requests to Delay De-Energization and to Re-Energize**

In the Staff Proposal, Staff suggests that utilities should ensure that their de-energization plans allow for pre-designated first responders with statutory responsibility for impacted jurisdictions to request a temporary delay in de-energization events in exigent circumstances. Party comments make clear that this issue requires further exploration, and the Commission lacks sufficient record to define the terms “pre-designated first responders with statutory responsibility for impacted jurisdictions,” “exigent circumstances” and “temporary delay” (i.e. length of delay that can be requested). Noting the concerns of MWDOC and others about the possibility of de-energization amplifying another emergency event,<sup>101</sup> the Commission adopts the following interim guidelines:

- The electric investor-owned utilities should continue to address requests for a de-energization delay on a case-by-case basis. The electric investor-owned utilities must only respond to de-energization delay requests from public safety partners. The electric investor-owned utilities retain ultimate authority to grant a delay and responsibility to determine how a delay in de-energization impacts public safety.
- The electric investor-owned utilities must work with public safety partners in advance of the wildfire season to develop preliminary plans for addressing emergency situations that may arise during de-energization, such as a non-utility caused wildfire that occurs in a de-energized area that necessitates the use of water for firefighting purposes. Although not a request to delay de-energization, such a situation could result in the public safety being better served by utility lines being re-energized.

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<sup>101</sup> MWDOC points to the loss of water pressure during a wildfire that can impact the ability of fire fighters to fight wildfires.



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### **5.10. De-Energization of Transmission Lines**

De-energization of transmission lines will have different and not yet fully understood impacts as compared to de-energization of distribution lines. For example, de-energization of transmission lines may have impacts on POUs, adjacent jurisdictions and entities such as airports that are often interconnected at the transmission level. Furthermore, some of the small and multi-jurisdictional utilities do not operate any transmission lines and/or are geographically disbursed.

Based upon the record before the Commission, de-energization of transmission lines requires further exploration in Phase 2 including, but not limited to, voltage designation for delineation of distribution versus transmission level de-energization, impacts on small and multi-jurisdictional utilities, notification required for transmission level de-energization (type and timing), and other matters. As noted by CAISO, the utility, as the transmission line operator, retains authority to de-energize transmission lines. The Commission adopts the following interim guidelines for de-energization of transmission lines:

- The electric investor-owned utilities must design interim protocols for the de-energization of transmission lines based upon the impacts to populations across affected jurisdictions including, but not limited to, POUs/electric cooperatives, adjacent jurisdictions and small/multi-jurisdictional utilities and critical facilities interconnected at the transmission level. The utility must solicit input from stakeholders in developing these protocols, and the utilities shall serve the interim protocols on the service list of R.18-12-005 within three months of issuance of this decision.
- In the event of transmission line de-energization, additional coordination may be required with CalOES, CAL FIRE, local jurisdictional public safety partners and the California Independent System Operator (CAISO). The electric



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investor-owned utilities must also provide notice to the CAISO of transmission-level de-energization as far in advance as possible. The electric investor-owned utilities must comply with Federal Energy Regulatory Commission (FERC) and North American Electric Reliability Corporation (NERC) reliability standards.

- While the Commission explores development of transmission level notification and communication guidelines, the utilities must employ all relevant notification and communication guidelines adopted herein, in addition to those in Resolution ESRB-8, to the de-energization of transmission lines.

#### **5.11. Post-Event Reporting and Lessons Learned**

Resolution ESRB-8 expands the reporting requirements adopted in D.12-04-024 following a de-energization event to all the utilities and adopts additional strengthened reporting requirements. Currently, the electric utilities are required to submit a report to the Director of the Commission's SED within ten business days after a de-energization event, as well as after high-threat events where the utility provided notifications to local government, agencies, and customers of possible de-energization though no de-energization occurred.<sup>102</sup>

The Commission views post-event reporting as a means of facilitating learning and improvement across utilities, state and local public safety agencies and local jurisdictions. Therefore, it is imperative that the utilities provide detailed and accurate information to the Commission and that the Commission review each de-energization event for reasonableness. As with other elements of de-energization, reporting will be an iterative process that will be further developed with time. For example, in Phase 2, the Commission will explore whether to adopt additional reporting requirements and whether to review and

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<sup>102</sup> Resolution ESRB-8 at 5.

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approve the reasonableness of de-energization events through a formal Commission proceeding. The guidelines adopted below are meant to compliment the requirements in Resolution ESRB-8. Where the guidelines adopted herein conflict with those in Resolution ESRB-8, the guidelines in this decision govern.

- In addition to submitting a report to the Director of the Commission's Safety and Enforcement Division (SED) within 10 business days of power restoration, electric investor-owned utilities must serve their de-energization report on the service lists of this proceeding and Rulemaking (R.) 18-10-007 or their successor proceedings. Service should include a link to the report on the utility's website and contact information to submit comments to the Director of SED. The electric investor-owned utilities must actively contact public safety partners involved in the de-energization event to encourage them to provide feedback. The electric investor-owned utilities must also send a copy of the report to the lead local/county public safety agency for the de-energization event.
- Within 15 days of the electric investor-owned utility serving its post-event report, affected stakeholders, including public safety partners, critical facilities and local residents may serve comments on the electric investor-owned utility's post-event report in order to inform SED's reasonableness review. Comments must be sent to the following address: Safety and Enforcement Division Director, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California, 94102. In addition, comments should be served on the service list of R.18-12-005 or its successor proceeding.
- In addition to the reporting requirements in Resolution ESRB-8, the electric investor-owned utilities must provide the following information:
  - 1) Decision criteria leading to de-energization, including an evaluation of alternatives to de-energization that were considered and mitigation measures used to decrease the risk of utility-caused wildfire in the de-energized area;

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- 2) A copy of all notifications, the timing of notifications, the methods of notifications and who made the notifications (the utility or local public safety partners);
  - 3) If the utility fails to provide advanced notification or notification according to the minimum timelines set forth in these Guidelines, an explanation of the circumstances that resulted in such failure.
  - 4) A description and evaluation of engagement with local and state public safety partners in providing advanced education and outreach and notification during the de-energization event;
  - 5) For those customers where positive or affirmative notification was attempted, an accounting of the customers (which tariff and/or AFN population designation), the number of notification attempts made, the timing of attempts, who made the notification attempt (utility or public safety partner) and the number of customers for whom positive notification was achieved.
  - 6) A description of how sectionalization, i.e. separating loads within a circuit, was considered and implemented and the extent to which it impacted the size and scope of the de-energization event;
  - 7) An explanation of how the utility determined that the benefit of de-energization outweighed potential public safety risks;
  - 8) The timeline for power restoration (re-energization,) in addition to the steps taken to restore power as required in Resolution ESRB-8.
  - 9) Lessons learned from the de-energization event; and
  - 10) Any recommended updates to the guidelines adopted in Resolution ESRB-8 and this decision.
- The electric investor-owned utilities should refer to SDG&E's November 11-16, 2018 de-energization report, issued on December 4, 2018 (Appendix E) as a starting place for a reporting

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format until the Commission provides further guidance on a standard report template.

- In addition to de-energization reports, the electric investor-owned utilities are required to submit reports on de-energization lessons learned concurrent with their 2020 Wildfire Mitigation Plans and thereafter, including an evaluation of utility/public safety partnerships. The reports must include a copy of all educational campaigns and outreach made in advance of the wildfire season and an evaluation of their effectiveness. The Commission may consider these reports in other proceedings; however, existing or successor Wildfire Mitigation Plan proceedings are the appropriate place to file these reports at this time.
- The Commission's SED should develop a post-de-energization event reporting template. The template, at a minimum, should include the information requested herein; however, SED has the discretion to request additional information. SED should solicit input from stakeholders on the development of the template. The template should be adopted by the Commission via Tier 3 advice letter.
- The Commission's SED should develop a template for the lessons learned report in advance of the 2020 Wildfire Mitigation Plan submission date. SED should hold workshops to solicit input and facilitate cross-utility and cross-stakeholder learning to inform the development of the reports. The template should be adopted by the Commission via Tier 3 advice letter.
- The Commission's SED will continue to review electric investor-owned utility's de-energization reports pursuant to Resolution ESRB-8. The Commission will consider development of reasonableness criteria in Phase 2.

## **6. R.18-12-005 Phase 2**

This Phase 1 decision primarily addresses notification and communication prior to a de-energization event as well as updates to Resolution ESRB-8. The Commission adopts the guidelines in this decision in order to move the needle

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towards a comprehensive, cohesive and well-executed de-energization policy that is easily understood by customers and public safety partners alike. Due to the proximity to the 2019 wildfire season, the Commission necessarily issued this decision under a tight timeline.

De-energization is a rapidly evolving tool that is being developed by many of the utilities in real-time as conditions in California change in unprecedented ways. Much work remains to be done among all partners. The Commission will further examine some of the findings in this decision as well as many other topics related to de-energization in Phase 2 of this rulemaking. A preliminary list of Phase 2 issues is set forth in Appendix B to this decision. This list is not meant to be comprehensive; the Commission may consider additional issues not listed in Appendix B. A final Phase 2 scope will be adopted in a subsequent scoping memo.

## **7. Comments on Proposed Decision**

The proposed decision of Commissioner Picker in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. The following parties filed and served opening comments on May 16, 2019: Abrams; CSAC; City of Malibu; NCPA; CMUA; TURN; the Joint Water Districts; DACC/EUF; EBMUD; EPUC; POC; Public Advocates; MGRA; NCPA; CWA; CforAT; Western States Petroleum Association; Agricultural Energy Consumers Association; the Joint Communication Parties; CLECA; CESA; the Joint Local Governments; Farm Bureau; PG&E; SDG&E; SCE; and, PacifiCorp. The following parties filed and served reply comments on May 21, 2019: CSAC; CMUA; DACC/EUF; City of Malibu; MGRA; TURN; EBMUD;

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EPUC; POC; CWA; CforAT; CCSF; the Joint Local Governments; PG&E; SCE; SDG&E; and, PacifiCorp.

In addition to modifications to the decision to improve clarity and correct typographical errors, the Commission makes the following modifications based upon party comments:

- A new ordering paragraph is added requiring that the electric investor-owned utilities submit two progress reports detailing progress towards implementation of the guidelines set forth in Appendix A to the Director of the SED. The progress reports must be served on the service list of Rulemaking 18-12-005 and posted to the utilities' websites. The first progress report is due three months after issuance of this decision; the second progress report is due nine months after issuance of this decision. The Commission's Safety and Enforcement Division may request additional progress reports after the initial two reports.
- The Commission adds a new Appendix D containing Resolution ESRB-8 and a new Appendix E containing SDG&E's November 11-16, 2018 de-energization report, submitted on December 4, 2019.
- The introduction is adjusted to better reflect that the purpose of de-energization is to protect the public safety from the risk of wildfire caused by utility infrastructure. In addition, citation sources have been updated.
- The overarching guidelines are updated as follows:
  - Addition of requirement for electric investor-owned utilities to justify why de-energization was deployed over other possible measures;
  - Addition of the goal that customers should know how to manage safely through a de-energization event;
  - Clarifying language that electric investor-owned utilities are ultimately responsible and accountable for the safe deployment of de-energization;

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- Clarification that, for now, the electric investor-owned utilities retain ultimate responsibility for notification and communication throughout a de-energization event;
- Clarification that the statewide education campaign must be conducted in English, Spanish, Chinese (including Cantonese, Mandarin and other Chinese languages), Tagalog and Vietnamese as well as Korean and Russian where those languages are prevalent within the utilities' service territories.
- The 'Adopted Definitions' guidelines are updated as follows:
  - Clarification that a de-energization event includes the power restoration (re-energization) process;
  - Inclusion of wastewater service providers in the definition of "public safety partners:"
  - Critical Facilities/Infrastructure definition is updated to remove licensed daycare centers, add public health departments and wastewater service providers and clarify that the chemical sector includes Category N customers.
- The "How Should Entities be Identified" guidelines are updated as follows:
  - Electric investor-owned utilities must ensure that emergency/first responder and critical facility contacts are updated at least two months in advance of the start of wildfire season;
  - Additional clarification is provided regarding the identification of AFN populations;
  - The requirement for the electric investor-owned utilities to develop a means for customers to self-identify as a member of an AFN population is removed. The Commission will explore this further in Phase 2;
  - The electric investor-owned utilities must consider how to provide notice to people impacted within a de-energized area but who may not be listed on a utility account.



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- The 'Who Should Receive Notice and in What Order of Priority' guidelines are updated as follows:
  - Additional clarification is provided to note that electric investor-owned utilities may provide priority notice to entities beyond those listed in the guidelines.
- The 'How Far in Advance Should Notice Occur' guidelines are updated to provide clarity around which customers should receive notice under each notice time period.
- The 'What Information Should be Included in Notifications and Outreach' guidelines are updated as follows:
  - The electric investor-owned utilities are required to provide operational coordination with public safety partners, if requested, in order to facilitate de-energization preparation;
  - The guidelines are clarified to state that certain information must be provided to public safety partners at the time of first notification preceding a de-energization event;
  - The electric investor-owned utilities must provide a depiction of the boundary of the area to be de-energized on their website homepage and a dedicated PSPS webpage.
- The 'What Methods Should the Electric Investor-Owned Utilities Use to Communicate a De-energization Event with the Public' guidelines are modified to clarify that communications must be delivered in English, Spanish, Chinese (including Cantonese, Mandarin and other Chinese languages), Tagalog and Vietnamese as well as Korean and Russian where those languages are prevalent within the utilities' service territories.
- The 'How Should the Electric Investor-Owned Utilities Communicate and Coordinate with Public Safety Partners Before and During a De-Energization Event' guidelines are modified to clarify that medical baseline customers that are dependent upon electricity for the provision of life-sustaining services should receive positive or affirmative notification, up to and including in person notification.



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- The ‘Coordination with Emergency Response Centers and Incident Command Systems’ guidelines are modified as follows:
  - The requirement for the electric-investor owned utility to embed a liaison in a local or county EOC, if requested, is modified to clarify that this requirement does not preclude the utilities from developing a centralized communication structure that is amenable to both the utility and local jurisdictions to provide real-time coordination and situation awareness;
  - The electric investor-owned utilities are permitted to develop a mutually agreeable communications structure with water infrastructure providers and communication service providers in lieu of holding seats for these providers in the utilities’ EOCs.
- The ‘De-Energization of Transmission Lines’ guidelines are modified as follows:
  - The electric investor-owned utilities are required to develop their interim transmission de-energization protocols with the input of stakeholders, and interim protocols must be served on the service list of R.18-12-005 within three months of issuance of this decision;
  - The electric investor-owned utilities must employ all notification and communication guidelines adopted in this decision and Resolution ESRB-8 to the de-energization of transmission lines while the Commission explores this issue more fully in Phase 2.
- The ‘Post-Event Reporting and Lessons Learned’ guidelines are modified as follows:
  - Post de-energization reports must be submitted within 10 business days of power restoration;
  - The electric investor-owned utilities must explain the circumstances that led to a failure to provide advanced notification of a de-energization event, if advanced notification does not occur.

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- The electric investor-owned utilities must provide a description of the customers that received affirmative or positive notification;
- The electric investor-owned utilities must report on the timeline for power restoration (re-energization) in addition to the steps taken to restore power as required in Resolution ESRB-8;
- The electric investor-owned utilities must submit individual reports on lessons learned concurrent with their 2020 Wildfire Mitigation Plans and annually thereafter;
- The Commission's SED should develop a post de-energization event reporting template;
- The Commission's SED should develop a template for the lessons-learned reports in advance of the 2020 Wildfire Mitigation Plan submission date.

The Commission also modified Appendix B to provide for greater clarity on Phase 2 issues; however, a final determination of Phase 2 issues will be conveyed in the Phase 2 Scoping Memo. The Commission rejects MGRA's assertion that the Commission committed legal error by not including in the Phase 1 or preliminary Phase 2 scope certain issues that were set forth in the Preliminary Scoping Memo to the OIR. The Preliminary Scoping Memo is meant to present the Commission's initial thinking on the scope of the proceeding. Pursuant to Pub. Util. Code § 1701.1(c), "the assigned commissioner shall prepare an issue by order or ruling a scoping memo that describes the issues to be considered..." Issuance of the Phase 1 Scoping Memo and the upcoming Phase 2 Scoping Memo meet the requirements of § 1701.1(c).

#### **8. Assignment of Proceeding**

Michael Picker is the assigned Commissioner and Melissa K. Semcer is the assigned Administrative Law Judge in this proceeding.

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### **Findings of Fact**

1. The 2018 wildfire season in California was the most destructive on record.
2. Electric utility infrastructure can be an ignition source for wildfires.
3. De-energization is the proactive shut-off of power to power lines that may fail in certain weather conditions in order to reduce the likelihood that utility infrastructure can cause or contribute to a wildfire. It is a measure that can be used after the electric investor-owned utility has exhausted all other means to protect against the risk of wildfire ignitions as a result of utility infrastructure.
4. Utilities are responsible and accountable for the safe de-energization of power lines and all de-energization notification and communication.
5. Regional variability in topography, weather, and on-the-ground utility employee assessments impact de-energization decisions.
6. The electric investor-owned utilities serve diverse territories ranging significantly in size and topography.
7. The electric investor-owned utilities have varying experience with de-energization.
8. De-energization can have disproportionate impacts on certain populations.
9. Adopting standardized definitions and customer designations allows the electric investor-owned utilities, CalOES, CAL FIRE, other state and local government agencies, critical facilities and infrastructure, public safety partners, the Commission, and the public to operate with a shared understanding and language throughout a de-energization event and during subsequent re-energization.
10. The purpose of identifying critical facilities and critical infrastructure is to provide adequate notice to these facilities and infrastructure prior to a

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de-energization event and to assist these facilities and infrastructure to maximize resiliency during de-energization and re-energization.

11. The purpose of identifying AFN populations is to ensure that such populations receive the education and notification they need to maximize resiliency during a de-energization event and subsequent re-energization.

12. Advanced identification of primary, secondary, and if possible tertiary 24-hour points of contact for public safety partners and primary and secondary 24-hour points of contact for critical facilities and critical infrastructure, updated annually at least two months prior to the start of wildfire season, is essential to ensure a safe and effective de-energization event, including re-energization.

13. The electric investor-owned utilities cannot identify all AFN populations within their service territories at this time. Identification of AFN populations may require the assistance of local and state jurisdictions and social service agencies.

14. It is essential to identify customers dependent upon life-sustaining medical equipment that requires electricity so that the electric investor-owned utilities and public safety partners can assist those customers in advance of and during a de-energization and re-energization event.

15. Customer account contacts may not adequately capture all users of electricity within the utilities' service territories or all people that may be impacted within a de-energized area.

16. Advance notice of a de-energization event allows public safety partners, critical facilities and critical infrastructure, AFN populations and utility customers time to prepare for and respond to a de-energization event.

17. Accurate and timely communication with and notification to first responders/emergency responders, state and local government entities, public

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safety partners, critical facilities and affected customers within the boundaries of a de-energization event is critical to ensure safe and orderly de-energization.

18. Coordinated responses, including messaging, among electric investor-owned utilities, first responders and emergency responders, public safety partners and state and local jurisdictions/ governments is necessary to protect the public safety during a de-energization event and subsequent re-energization.

19. There are two forms of advanced de-energization notification and communication: (1) education and public outreach in advance of wildfire season to ensure that procedures and processes are in place with public safety partners and that customers are aware of de-energization and know how to prepare; and (2) notice and communication of a potential, imminent, or a suddenly occurring de-energization event.

20. Notification of imminent re-energization helps protect the public safety.

21. Priority notification of public safety partners and adjacent jurisdictions that may be impacted by a de-energization event enables those with public safety responsibilities to be adequately prepared.

22. There may be times when advanced notification of a de-energization event is not possible.

23. Adopting an advanced notification timeline, while affording the electric investor-owned utilities flexibility to adjust the timeline based upon situational awareness and real-time events, allows public safety partners, critical facilities and critical infrastructure, and affected customers time to prepare for and respond to an imminent de-energization event.

24. It is difficult to predict in advance the duration or extent of a de-energization event.

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25. The electric investor-owned utilities, as the entities with the most knowledge of and jurisdiction to call a de-energization event and subsequent re-energization, are best situated to provide notification in advance of and during a de-energization event and subsequent re-energization.

26. Local jurisdictions are responsible for notification and communication related to other emergency events that result in a loss of power, such as wildfires.

27. Consequences of de-energization and subsequent re-energization should be treated in a similar manner as any other emergency that results in a loss of power.

28. Integrating into and leveraging existing state and local emergency outreach and notification guidelines and systems, such as the California Alert and Warning Guidelines, and developing pre-scripted templates and messages that are Common Alerting Protocol compliant enables a cohesive notification effort and allows local jurisdictions the ability to provide secondary or supplemental notification and outreach.

29. Public outreach and education in advance of wildfire season are critical components to ensure that AFN populations are prepared and know how to respond to a de-energization event or any emergency event that may result in a loss of power.

30. A statewide education campaign will allow citizens to prepare for and obtain information during a prolonged loss of power.

31. Educating public safety partners and the public about the characteristics and factors that the utility considers in determining whether to de-energize, such as high temperatures, high wind speeds, dry vegetation, and low humidity, enables public safety partners and the public to conduct parallel planning and preparation.

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32. Informing public safety partners of the geographic boundaries of a de-energization event, the circuits to be de-energized, information regarding customers within the de-energization boundaries (e.g. medical baseline customers and critical facilities/infrastructure), the estimated start date and time of the de-energization event, the estimated length of the de-energization event and the estimated restoration time, will facilitate a coordinated response to these events and enhance public safety.

33. Requiring the electric investor-owned utilities to provide operational coordination with public safety partners, if requested, enables public safety partners to prepare for de-energization.

34. Accurate and timely geospatial information that can be rapidly integrated into public safety partners' existing geospatial tools is critical in facilitating decision-making at the state and local levels.

35. Providing customers with information regarding the timing and estimated duration of a de-energization event in a format consistent with the best practices articulated in the California Alert and Warning Guidelines enables customers to better prepare for these events. In addition, providing customers access to the boundaries of the de-energized area allows them to understand the scope of the de-energization event.

36. The California Alert and Warning Guidelines provide guidance and expectations for jurisdictions throughout California on the tools to use to alert the public to dangerous conditions and warn of emergencies.

37. Whether local jurisdictions choose to utilize their Public Alert and Warning systems to notify the public of a de-energization event is at their discretion.

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38. Establishing a 24-hour point of customer contact with the electric investor-owned utilities enables customers to have their de-energization questions answered.

39. To be effective, notifications should be delivered in multiple formats via various media, and in English, Spanish, Chinese (including Cantonese, Mandarin and other Chinese languages), Tagalog and Vietnamese as well as Korean and Russian where those languages are prevalent within the utilities' service territories in order to increase reliability of warning delivery and to provide a sense of corroboration that will encourage recipients to take protective actions.

40. Some rural areas may lack access to broadband services.

41. During a de-energization event, customers may not have access to communication channels that rely upon electricity, such as broadband services, cellular services, etc.

42. SEMS is a structure for coordination between government and local emergency response organizations. It provides and facilitates the flow of emergency information and resources within and between the organizational levels of on-the-ground responders, local government, operational areas, regions and state management.

43. Advanced provision of GIS data to local jurisdictions, including the location of non-confidential critical facilities and infrastructure, circuit maps and number of medical baseline customers, will facilitate preparation for future de-energization events.

44. The Incident Command System governs formation and staffing of EOCs.

45. It is possible that a local jurisdiction will not form an EOC for a de-energization event; however, the electric investor-owned utilities will always form an EOC.



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46. Requests to delay de-energization currently occur on an ad-hoc basis. Further development of the record is required to adopt standardized de-energization delay parameters.

47. De-energization could exacerbate another subsequent emergency, e.g. if a wildfire ignites in a de-energized area and water infrastructure lacks electricity to provide adequate water services for fire suppression.

48. To date, de-energization has occurred primarily on the distribution system; transmission-level de-energization may become necessary in the future.

49. De-energization of transmission lines may have different and not yet fully understood impacts as compared to de-energization of distribution lines.

50. De-energization of transmission lines will require coordination with CAISO, CalOES and CAL FIRE as well as compliance with FERC and NERC reliability standards.

51. De-energization of transmission lines will require similar notification and outreach efforts as de-energization of distribution lines; however, additional notifications may be needed for downstream communities outside of the target de-energization area.

52. Post-de-energization reporting provides transparent information on the de-energization event and facilitates learning by the utilities, public safety partners and the Commission.

53. Wide service of post de-energization event reports will ensure that impacted public safety partners are provided an opportunity to offer feedback on the de-energization event.

54. SED currently reviews post de-energization reports.

55. Adoption of standardized post de-energization report templates and lessons-learned templates will enable comparison and learning across utilities.

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56. Adopting the Guidelines in Appendix A furthers the ability of the electric investor-owned utilities, first and emergency responders and public safety partners to operate under a cohesive framework using consistent language.

57. Submission of status reports will enable the Commission and other public safety partners and all customers to understand the efforts being undertaken by the electric investor-owned utilities to implement the Guidelines set forth in Appendix A.

### **Conclusions of Law**

1. Pursuant to Pub. Util. Code §§ 451 and 399.2(a), the electric investor-owned utilities have the authority to shut-off electric service in order to protect the public safety.

2. D.12-04-024 adopted reasonableness, public notification, mitigation and reporting requirements for SDG&E in the event that SDG&E initiated de-energization.

3. Resolution ESRB-8 extends the reasonableness, public notification, mitigation and reporting requirements of D.12-04-024 to all electric investor-owned utilities and strengthens reporting, public outreach, notification and mitigation guidelines.

4. It is reasonable to afford the electric investor-owned utilities flexibility in developing and deploying de-energization programs while requiring the use of standardized definitions and nomenclature and requiring operation under a cohesive framework.

5. It is reasonable to adopt a definition for first responders/emergency responders that is rooted in definitions adopted by FEMA.

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6. It is reasonable to adopt a definition for public safety partners in order to designate entities for whom advanced notice of a de-energization event, including re-energization, is critical to preserve the public safety.

7. It is reasonable to adopt a definition for critical facilities and critical infrastructure aligned with the Department of Homeland Security's Critical Infrastructure Sectors.

8. It is reasonable to adopt the definition for AFN populations set forth in Government Code § 8593.3.

9. It is reasonable to adopt definitions for first responders/emergency responders, public safety partners, critical facilities/infrastructure and AFN populations set forth in the Guidelines in Appendix A.

10. It is reasonable to require the electric investor-owned utilities to identify and maintain accurate 24-hour points of contact for public safety partners and critical facilities/infrastructure, updated annually two months in advance of wildfire season.

11. It is reasonable to require the electric investor-owned utilities to update and expand outreach for enrollment in their Medical Baseline programs and to partner with local governments and social service agencies to identify AFN populations as well as to require the electric investor-owned utilities to take all reasonable steps within the boundaries of the law to identify AFN populations even absent assistance from local governments and social service agencies.

12. It is reasonable to require priority notification of a de-energization event to public safety partners and adjacent jurisdictions that may lose power as a result of de-energization.

13. The guidelines in Appendix A satisfy the requirements of Pub. Util. Code § 8386(c)(7).

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14. It is reasonable to require the electric investor-owned utilities, whenever possible, to provide advanced notification of de-energization events according to the timeline set forth in the Guidelines in Appendix A.

15. It is reasonable for the electric investor-owned utilities to, for now, retain responsibility and accountability for notification and communication of a de-energization event and subsequent re-energization and to retain responsibility and accountability for the safe deployment of de-energization and subsequent re-energization.

16. It is reasonable to require the utilities to integrate into and leverage existing local and state emergency notification systems and for the electric investor-owned utilities to coordinate with public safety partners to provide notification.

17. It is reasonable to require the electric investor-owned utilities to provide to local governments, public safety partners, and the public information on the thresholds for strong wind events and conditions that define an “extreme fire hazard” that the utility evaluates in considering whether to de-energize.

18. Official Notice is taken, pursuant to Rule 13.9 of the Commission’s Rules of Practice and Procedure, that United States census data shows that the top three primary languages used in California other than English and Spanish are Chinese (including Cantonese, Mandarin, and other Chinese languages), Tagalog and Vietnamese.

19. It is reasonable to require the electric investor-owned utilities to partner with CalOES and CAL FIRE to develop a statewide education campaign that provides education tailored to the needs of customers, including AFN populations, in English, Spanish, Chinese (including Cantonese, Mandarin and other Chinese languages), Tagalog and Vietnamese as well as Korean and

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Russian where those languages are prevalent within the utilities' service territories.

20. It is reasonable to require the electric investor-owned utilities to provide public safety partners with the boundaries of a de-energization event, circuits to be de-energized, information regarding customers within the de-energization boundaries (e.g. medical baseline customers), the estimated start date and time of the de-energization event, estimated length of the de-energization event and estimated restoration times, which includes the re-energization start date and time and completion timeframe.

21. It is reasonable to require the electric investor-owned utilities to provide geographic information to public safety partners as set forth in Appendix A.

22. It is reasonable to require the electric investor-owned utilities to partner with local public safety partners to communicate to impacted customers that a de-energization event is possible, the estimated start date and time of the de-energization event, the estimated length of the de-energization event, the geographic boundaries of the de-energization event, and the estimated time to power restoration. Estimates should be updated as necessary.

23. The electric-owned utilities should partner with state and local public safety partners to develop notification strategies that comport with the California Alert and Warning Guidelines.

24. It is reasonable to require the electric investor-owned utilities, in collaboration with state and local public safety agencies, to deliver notifications to all customer groups in multiple formats and through multiple media channels including, but not limited to, telephonic notification, text message notification, social media advisories, emails and messages to agencies that serve disadvantaged communities within an impacted area. Notifications should be

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prepared in English, Spanish, Chinese (including Cantonese, Mandarin and other Chinese languages), Tagalog and Vietnamese as well as Korean and Russian where those languages are prevalent within the utilities' service territories.

25. It is reasonable to require the electric investor-owned utilities to develop notification strategies that consider the geographic and cultural demographics of affected areas.

26. The investor-owned utilities, in partnership with local and state public safety partners, should develop notification strategies for AFN populations up to and including in-person notification. The utilities should work with local and state government agencies and public safety partners to determine a strategy for in-person notification when needed.

27. It is reasonable to require the electric investor-owned utilities, in coordination with public safety partners, to develop a communication strategy once de-energization has begun when access to some communication channels may be restricted due to the loss of power.

28. Even though the electric investor-owned utilities are not government agencies, it is reasonable for the utilities to coordinate with local and state agencies consistent with SEMS.

29. It is reasonable to require the electric investor-owned utilities to provide, if requested by local jurisdictions, relevant GIS data for that jurisdiction including identification of critical facilities, circuits and number of medical baseline customers in advance of wildfire season.

30. The electric investor-owned utilities should embed a liaison that is empowered to provide rapid and accurate information regarding the de-energization event in local EOCs and at the state Operations Center, if requested.

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31. The electric investor-owned utilities should designate an EOC liaison lead with decision-making authority to coordinate communication with embedded liaisons.

32. When an electric investor-owned utility forms an EOC, it must hold a space for and invite representatives from CalOES, water infrastructure providers, and communication providers.

33. It is reasonable to permit the electric investor-owned utilities to develop a centralized communication structure that is amenable to both the utility and local jurisdictions to provide real-time coordination and situation awareness.

34. It is reasonable to allow the utilities to develop a mutually agreeable communications structure with water infrastructure providers and communication service providers in lieu of holding seats in the utilities' EOCs.

35. It is reasonable to require electric investor-owned utilities to only respond to requests to delay de-energization from public safety partners. The electric investor-owned utilities should retain ultimate authority to grant or deny a delay and responsibility to determine how a delay will impact the public safety.

36. It is reasonable to require the electric investor-owned utilities to work with public safety partners in advance of wildfire season to develop preliminary plans for addressing emergency situations that may arise concurrent with de-energization, such as ignition of a wildfire, where re-energization of energized lines may provide greater public safety benefits.

37. In the event of a transmission-level de-energization, it is reasonable to require the electric investor-owned utilities to provide notice to and coordinate with the CAISO, CalOES and CAL FIRE. The utilities should comply with FERC and NERC reliability standards.

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38. It is reasonable to require the electric investor-owned utilities to develop interim protocols for the de-energization of transmission lines and to serve the interim protocols on the service list of R.18-12-005 within three months of issuance of this decision.

39. It is reasonable to require the electric investor-owned utilities to the apply the notification and communication guidelines adopted in the Guidelines in Appendix A to the de-energization of transmission lines.

40. It is reasonable to require the electric investor-owned utilities to submit post-de-energization reports according to the parameters set forth in Appendix A.

41. SED should develop a post-de-energization event reporting template. The template, at a minimum, should include the information requested in the Guidelines in Appendix A; however, SED has the discretion to request additional information. SED should solicit input from stakeholders on the development of the template. The template should be adopted by the Commission via Tier 3 advice letter.

42. SED should develop a template for the lessons learned report in advance of the 2020 Wildfire Mitigation Plan due date. SED should hold workshops to solicit input and facilitate cross-utility and cross-stakeholder learning to inform the development of the reports. The template should be adopted by the Commission via Tier 3 advice letter.

43. SED should assist the Commission, in Phase 2 of this proceeding, to develop reasonableness guidelines for assessing de-energization events.



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44. R.18-12-005 should remain open to address additional issues in Phase 2.

## O R D E R

### IT IS ORDERED that:

1. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, Bear Valley Electric Service, a division of Golden State Water Company, Liberty Utilities (CalPeco Electric) LLC and PacifiCorp d.b.a. Pacific Power must follow the guidelines set forth in Appendix A to this decision. These guidelines, along with the guidelines adopted in Resolution ESRB-8 will remain in effect unless and until they are superseded by another Commission decision or resolution.

2. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, Bear Valley Electric Service, a division of Golden State Water Company, Liberty Utilities (CalPeco Electric) LLC and PacifiCorp d.b.a. Pacific Power must continue to follow the guidelines adopted in Resolution ESRB-8 unless superseded by the guidelines adopted in this decision.

3. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, Bear Valley Electric Service, a division of Golden State Water Company, Liberty Utilities (CalPeco Electric) LLC and PacifiCorp d.b.a. Pacific Power must make every effort to implement the guidelines set forth in Appendix A in advance of the 2019 wildfire season; however, some of the guidelines will necessarily take additional time to fully deploy. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, Bear Valley Electric Service, a division of Golden State Water Company, Liberty Utilities (CalPeco Electric) LLC and

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PacifiCorp d.b.a. Pacific Power must submit two progress reports detailing progress towards implementation of the guidelines set forth in Appendix A to the Director of the California Public Utilities Commission's Safety and Enforcement Division. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, Bear Valley Electric Service, a division of Golden State Water Company, Liberty Utilities (CalPeco Electric) LLC and PacifiCorp d.b.a. Pacific Power must serve the progress reports on the service list of Rulemaking 18-12-005 and post the reports to their websites. The first progress report is due three months after issuance of this decision; the second progress report is due nine months after issuance of this decision. The Commission's Safety and Enforcement Division may request additional progress reports after the initial two ordered herein.

4. Rulemaking 18-12-005 remains open.

This order is effective today.

Dated May 30, 2019, at San Francisco, California.

MICHAEL PICKER  
President  
LIANE M. RANDOLPH  
MARTHA GUZMAN ACEVES  
CLIFFORD RECHTSCHAFFEN  
GENEVIEVE SHIROMA  
Commissioners

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# Appendix A

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**APPENDIX A  
DE-ENERGIZATION (PUBLIC SAFETY POWER SHUT-OFF)  
GUIDELINES**

**Overarching Guidelines**

- The purpose of proactive de-energization is to promote public safety by decreasing the risk of utility-infrastructure as a source of wildfire ignitions.
- The electric investor-owned utilities must deploy de-energization as a measure of last resort and must justify why de-energization was deployed over other possible measures or actions.
- Customers should understand the purpose of proactive de-energization, the electric investor-owned utilities' process for initiating it, how to manage safely through a de-energization event, and the impacts if deployed. To accomplish this, the electric investor-owned utilities must:
  - develop and use a common nomenclature that integrates with existing state and local emergency response communication messaging and outreach and is aligned the California Alert and Warning Guidelines.
  - develop notification and communication protocols and systems that reach customers no matter where the customer is located and deliver messaging in an understandable manner.
  - communicate to customers in different languages and in a way that addresses different access and functional needs using multiple modes/channels of communication.

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- Deploying de-energization requires a coordinated effort across multiple state and local jurisdictions and agencies. Coordination in preparation for de-energization is a shared responsibility between the electric investor-owned utilities, public safety partners, and local governments; however, the electric utilities are ultimately responsible and accountable for the safe deployment of de-energization. The electric investor-owned utilities must work with the California Governor's Office of Emergency Services to integrate their warning programs with the agencies and jurisdictions within California that have a role in ensuring that the public is notified before, during, and after emergencies.
- The electric investor-owned utilities, emergency responders, and local governments need to be seamlessly integrated when communicating de-energization notifications, with the goal that local governments provide supplemental or secondary notifications in the near future given the primary or initial notification to the public provided by utilities. For now, the utilities retain ultimate responsibility for notification and communication throughout a de-energization event.
- Consequences of de-energization should be treated in a similar manner as any other emergency that may result in loss of power, such as earthquakes, floods or non-utility caused fire events. The electric investor-owned utilities must avoid development of duplicative or contradictory messaging and notification systems to those already deployed by first responders.
- The electric investor-owned utilities must coordinate with California Governor's Office of Emergency Services and the California Department of Forestry and

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Fire Protection to engage in a statewide public education and outreach campaign. The campaign must effectively communicate in English, Spanish, Chinese (including Cantonese, Mandarin and other Chinese languages), Tagalog and Vietnamese as well as Korean and Russian where those languages are prevalent within the utilities' service territories. The campaign must convey, in advance of wildfire season, the immediate and increasing risk of catastrophic wildfires and how to prepare for them, the impacts of de-energization, how the public can prepare for and respond to a de-energization event, what resources are available to the public during these events, what to do in an emergency, how to receive information alerts during a power shutoff, and who the public should expect to hear from and when.

- The electric investor-owned utilities must report on lessons learned from each de-energization event, including instances when de-energization protocols are initiated, but de-energization does not occur, in order to further refine de-energization practices. In addition, the utilities must work together to share information and develop best practices across California.
- The electric investor-owned utilities must work together to share information and advice in order to create effective and safe de-energization programs at each utility and to ensure that utilities are sharing consistent information with public safety partners.

### **Adopted Definitions**

- The term 'first responder/emergency responder' refers to those individuals who, in the early stages of an incident, are responsible for the protection and preservation of life, property, evidence, and the environment, including emergency response providers.

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The term ‘emergency response providers’ includes federal, state, and local governmental and nongovernmental public safety, fire, law enforcement, emergency response, emergency medical services providers (including hospital emergency facilities), and related personnel, agencies and authorities.

- The term ‘public safety partners’ refers to first/emergency responders at the local, state and federal level, water, wastewater and communication service providers, affected community choice aggregators and publicly-owned utilities/electrical cooperatives, the Commission, the California Governor’s Office of Emergency Services and the California Department of Forestry and Fire Protection. Public safety partners will receive priority notification of a de-energization event, as discussed in subsequent sections.
- The term ‘critical facilities’ and ‘critical infrastructure’ refers to facilities and infrastructure that are essential to the public safety and that require additional assistance and advance planning to ensure resiliency during de-energization events. The Commission adopts an interim list of ‘critical facilities’ and ‘critical infrastructure’ but notes that the electric investor-owned utilities, in their Wildfire Management Plans, often list additional or differing facilities than those adopted here. The Commission strives to move towards a standardized definition and designation of ‘critical facilities’ and ‘critical infrastructure’ on a going forward basis, and the definition adopted here should not be construed as restrictive. The utilities must use the standard term ‘critical facilities’ or ‘critical infrastructure’ on a going forward basis in their de-energization procedures and Wildfire Management Plans. The electric investor-owned utilities should

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partner with local government and public safety partners in high fire risk areas to develop a list of critical facilities and critical infrastructure in those areas, and the utilities should be prepared to partner with the Commission to adopt a comprehensive list of types of critical facilities and critical infrastructure in the future.

The Commission adopts the following interim list of critical facilities and critical infrastructure, as aligned with Department of Homeland Security's Critical Infrastructure Sectors:<sup>1</sup>

- Emergency Services Sector
  - Police Stations
  - Fire Stations
  - Emergency Operations Centers
- Government Facilities Sector
  - Schools
  - Jails and prisons
- Healthcare and Public Health Sector
  - Public Health Departments
  - Medical facilities, including hospitals, skilled nursing facilities, nursing homes, blood banks, health care facilities, dialysis centers and hospice facilities<sup>2</sup>
- Energy Sector

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<sup>1</sup> See <https://www.dhs.gov/cisa/critical-infrastructure-sectors> at 21.

<sup>2</sup> Excluding doctor offices and other non-essential medical facilities.



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- Public and private utility facilities vital to maintaining or restoring normal service, including, but not limited to, interconnected publicly-owned utilities and electric cooperatives
- Water and Wastewater Systems Sector
  - Facilities associated with the provision of drinking water or processing of wastewater including facilities used to pump, divert, transport, store, treat and deliver water or wastewater
- Communications Sector
  - Communication carrier infrastructure including selective routers, central offices, head ends, cellular switches, remote terminals and cellular sites
- Chemical Sector
  - Facilities associated with the provision of manufacturing, maintaining, or distributing hazardous materials and chemicals.
- The term ‘access and functional needs populations’ refers to those populations with access and functional needs as set forth in Government Code § 8593.3. Government Code § 8593.3 list ‘access and functional needs populations as follows: ...the ‘access and functional needs population’ consists of individuals who have developmental or intellectual disabilities, physical disabilities, chronic conditions, injuries, limited English proficiency or who are non-English speaking, older adults, children, people living in institutionalized settings, or those who are low income, homeless, or transportation disadvantaged, including, but not

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limited to, those who are dependent on public transit or those who are pregnant.

## **Who Should Receive Notice and When Should Notice Occur?**

### ***Notification and Priority***

- Recognizing that there may be times when advance notice is not possible due to emergency conditions beyond the electric investor-owned utilities' control, the electric investor-owned utilities must, whenever possible, provide advance notification to all populations potentially affected by a de-energization event. This includes, but is not limited to, public safety partners, critical facilities and infrastructure, access and functional populations, and jurisdictions that are not at threat of a utility-caused wildfire but may lose power as a result of de-energization elsewhere on the system.
- Consistent with the principles of the State Emergency Management System, whenever possible, priority notification should occur to the following entities, at a minimum:<sup>3</sup> public safety partners, as defined herein, and adjacent local jurisdictions that may lose power as a result of de-energization. Notice to all other affected populations, including access and functional needs populations, may occur after the utility has given priority notice; however, access and functional needs populations may require additional notification streams. This guideline is not meant to be restrictive; utilities may provide priority notification to a broader subset of customers, e.g. certain critical facilities, to promote public safety.

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<sup>3</sup> The Commission's adopted definition of public safety partners does not include critical facilities and infrastructure beyond water utilities and communication providers. The utility may, in partnership with first/emergency responders and/or local government entities, identify other critical facilities that should receive priority notice. This guideline is intended to set a floor, not a ceiling for priority notification.

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### ***Timing of Notification***

- Every effort must be made by the electric investor-owned utilities to provide notice of potential de-energization as early as the electric investor-owned utilities reasonably believe de-energization is likely. At a minimum, notification to public safety partners must occur when a utility activates its Emergency Operations Center in anticipation of a de-energization event or whenever a utility determines that de-energization is likely to occur, whichever happens first. In addition, the electric investor-owned utilities must provide notice when a decision to de-energize is made, at the beginning of a de-energization event, when re-energization begins and when re-energization is complete. The electric investor-owned utilities should, whenever possible, adhere to the following minimum notification timeline:
  - 48-72 hours in advance of anticipated de-energization: notification of public safety partners<sup>4</sup>/priority notification entities
  - 24-48 hours in advance of anticipated de-energization: notification of all other affected customers/populations
  - 1-4 hours in advance of anticipated de-energization, if possible: notification of all affected customers/populations<sup>5</sup>

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<sup>4</sup> Consistent with Resolution ESRB-8, the electric investor-owned utilities must provide notice to the Commission's Director of the Safety and Enforcement Division.

<sup>5</sup> The Commission appreciates that it may not be possible at this juncture to know exactly when a de-energization will occur and to provide this level of advanced notification. However, the electric investor-owned utilities should strive to communicate that de-energization is imminent.

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- When de-energization is initiated: notification of all affected customers/populations<sup>6</sup>
- Immediately before re-energization begins: notification of all affected customers/populations<sup>7</sup>
- When re-energization is complete: notification of all affected customers/populations

### **Who Should Be Responsible for Notification?**

- The electric investor-owned utilities, as the entity with the most knowledge of and jurisdiction to call a de-energization event and subsequent re-energization, retain ultimate responsibility for development of the communication strategy and notification in advance of, during and after a de-energization event. However, the electric investor-owned utilities should immediately begin working with the California Governor's Office of Emergency Services and local governments to develop their notification programs such that, wherever possible, the utilities' notification processes integrate into the Standardized Emergency Management System Framework, with the goal that local governments provide supplemental or secondary notification in the near future based upon pre-designed templates and scripts developed by the utilities in coordination with relevant state and local agencies. Supplemental notification does not supplant the electric investor-owned utilities' responsibility to provide notification to all customers.

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<sup>6</sup> The electric investor-owned utilities must develop methods of communicating with public safety partners recognizing that communication channels may be affected by the loss of power.

<sup>7</sup> Similarly, communication may be affected by the loss of power.

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- The utilities must work with the goal of integrating into and leveraging existing outreach and notification systems wherever possible, rather than creating duplicative and potentially conflicting systems to those employed by local jurisdictions/emergency/first responders.

## **How Should Different Customer Groups Be Identified?**

### ***First/Emergency Responders/Public Safety Partners***

- The electric investor-owned utilities must work with local and county officials to identify appropriate emergency/first responder points of contact. This may include local government points of contact for jurisdictions that share first responder resources. The electric investor-owned utilities must identify 24-hour contact points and must identify secondary contacts at a minimum and tertiary contacts if possible. The electric investor-owned utilities must also identify primary and secondary means of communication for each contact.
- The electric investor-owned utilities must provide utility personnel 24-hour points of contact, including secondary and tertiary contacts to affected local jurisdictions/first responders.
- The electric investor-owned utilities must identify clear points of contact for all other public safety partners, including affected community choice aggregators, publicly owned utilities/electric cooperatives, water and communications providers. The electric investor-owned utilities must have 24-hour contacts with secondary contacts at a minimum and tertiary contacts if possible. The electric investor-owned utilities must also have clear points of contact at the Commission, the California Governor's Office of

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Emergency Services and the California Department of Forestry and Fire Protection.

- To ensure accuracy of contacts, the electric investor-owned utilities are required to update lists annually at least two months in advance of the start of the wildfire season and conduct communication exercises prior to wildfire season to confirm their ability to rapidly disseminate information. The electric investor-owned utilities should work with points of contact to encourage proactive updating of information in the event of a change, beyond the annual update required of the utilities.

### ***Critical Facilities and Infrastructure***

- The electric investor-owned utilities must, in addition to developing their own list of critical facilities and critical infrastructure based on the adopted definition, work in coordination with first/emergency responders and local governments to identify critical facilities within the electric investor-owned utilities' service territories. The electric investor-owned utilities must identify 24-hour points of contact and, at a minimum, secondary points of contact. The electric investor-owned utilities must work together with operators of critical facilities and critical infrastructure to identify preferred points of contact (the billing contact may not be the appropriate de-energization contact) and preferred methods of communication.
- To ensure accuracy of contacts, the electric investor-owned utilities are required to update critical facility and critical infrastructure lists annually at least two months in advance of the start of wildfire season. The electric investor-owned utilities should work with points of contact to encourage proactive updating of information throughout the year in the event of a

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change, beyond the annual update required of the utilities. The electric investor-owned utilities should prioritize identification of appropriate contacts for critical facilities and infrastructure located within Tier 3 and 2 high fire threat districts, followed by adjacent jurisdictions that may be impacted in the event of de-energization.

- The electric investor-owned utilities, pursuant to Resolution ESRB-8 and in advance of the wildfire season, must proactively partner with critical facility and critical infrastructure representatives to assess the ability of each critical facility to maintain operations during de-energization events of varying lengths. The electric investor-owned utilities must help critical facility and critical infrastructure representatives assess the need for backup generation and determine whether additional equipment is needed, including providing generators to facilities or infrastructure that are not well prepared for a power shut off. Advance education of representatives and preparation of critical facilities and infrastructure is imperative to ensure that public safety is preserved during a de-energization event.

### ***Access and Functional Needs Populations***

- The electric investor-owned utilities must make a diligent effort to identify access and functional needs populations within their customer base. The electric investor-owned utilities should review available information including, but not limited to, customers on medical baseline, California Alternative Rate for Energy Program and Family Electric Assistance Program tariffs and customers that require in person notification in advance of service disconnection.<sup>8</sup> In advance of the

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<sup>8</sup> See D.12-03-054.

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2019 wildfire season, the electric investor-owned utilities should seek to identify and expand registration under their medical baseline tariffs.

- In the spirit of shared responsibility, the electric investor-owned utilities should endeavor to partner with local governments and agencies to encourage identification of access and functional needs populations through those agencies. Recognizing privacy concerns, the Commission does not require the electric investor-owned utilities to develop a comprehensive contact list of access and functional needs customers nor to share individual customer information with local jurisdictions; rather, the Commission encourages that, through local agency partnerships, the electric investor-owned utilities and local jurisdictions can together provide up front education and outreach before and communication during a de-energization event in formats appropriate to individual access and functional needs populations. The electric investor-owned utilities must also develop a plan for expanding identification of access and functional needs customers beyond those customers enrolled in existing utility programs in the event that local agency partnerships are unavailable to assist. The Commission acknowledges that identification of all access and functional needs customers is a goal that may not be fully achievable even with assistance of local jurisdictions; however, the utilities must take all reasonable steps within the boundaries of the law towards that goal in order to protect the safety of access and functional needs populations.
- The electric investor-owned utilities must update contact information for medical baseline customers and provide an opportunity for such customers to select alternative means of contact beyond their preferred

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means of contact from the utility for billing and other information.

### ***All Other Customers***

- The electric investor-owned utilities must ensure that customer contacts are up-to-date. The Commission recognizes that electric investor-owned utility customer points of contact are necessarily limited, for example a landlord-controlled account will not provide a method of contact for tenants. The electric investor-owned utilities must work with local jurisdictions to leverage all means of identifying and communicating with all people within a de-energized area, including people who may be visiting the area or not directly listed on utility accounts. The Commission expects that this will be an iterative process developed over time.

## **What Information Should be Included in Notifications in Advance of and Directly Preceding a De-Energization Event?**

### ***Advanced Outreach and Education***

- With the goal of having a common understanding of situational awareness among public safety partners throughout California, each electric investor-owned utility must clearly articulate thresholds for strong wind events as well as the conditions that define “an extreme fire hazard” (humidity, fuel dryness, temperature) that the electric investor-owned utility evaluates in considering whether to de-energize. This information may vary for different jurisdictions and topographies; however, the information must be provided to and be readily available to public safety partners and the public.<sup>9</sup> The electric investor-owned utilities are

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<sup>9</sup> For example, on the utility’s website.

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afforded discretion to evaluate real-time and on-the-ground information in determining whether to de-energize; adoption of thresholds is not determinative of de-energization.

- To aid in preparation, the electric investor-owned utilities must provide, if requested, relevant geographic information system data, including identification of critical facilities, circuits, and number of medical baseline customers, to local jurisdictions in advance of wildfire season. In addition, the utilities must provide, if requested, operational coordination with public safety partners to ensure such partners have not only the information but also the coordination with the utilities necessary to prepare for de-energization.
- In advance of the 2019 wildfire season, the electric investor-owned utilities, jointly, must immediately oversee development and execution of a statewide Public Safety Power Shut-off education campaign, developed in partnership with the California Governor's Office of Emergency Services and the California Department of Forestry and Fire Protection, that provides education tailored to the needs of stakeholders, including access and functional needs populations, in order to make citizens aware of how to prepare for and obtain information during a prolonged loss of power, including as a result of de-energization. Education and outreach must use best practices outlined in the California Alert and Warning Guidelines to maximize understanding. The electric investor-owned utilities, in coordination with the above-named agencies, must measure effectiveness of education and outreach efforts and adjust efforts accordingly.
- The electric investor-owned utilities must work with local and state public safety partners to develop scripted de-energization templates that can be used by public safety partners leading up to, during, and after a de-energization event. In order to allow jurisdictions

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with public alerting authority to send timely and appropriate messages to populations potentially impacted by a de-energization event, the utilities must develop Common Alerting Protocol compliant messages and protocols for use by the designated alert authorities. Whether local jurisdictions choose to utilize their Public Alert and Warning system to notify the public of a de-energization event is at their discretion. The electric investor-owned utilities must also work with state public safety partners (California Governor's Office of Emergency Services, California Department of Forestry and Fire Protection) to develop definitions to use for communications and a standardized nomenclature based on existing emergency frameworks.

#### ***Notification Preceding a De-Energization Event***

- The electric investor-owned utilities must convey to public safety partners at the time of first notification preceding a de-energization event information regarding the upcoming de-energization, including estimated start time of the event, estimated duration of the event, and estimated time to full restoration. The electric investor-owned utilities must use the previously established contact channels developed in advance of the 2019 wildfire season and should strive to provide contact according to the timeframes adopted in these guidelines. The electric investor-owned utilities must provide the number of medical baseline customers in the impacted area to first/emergency responders and/or local jurisdictions.
- For the 2019 wildfire season, the electric investor-owned utilities must, at the time of first notification preceding a de-energization event, make available a Geographic Information System shapefile via a secure data transfer

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process depicting the most accurate and specific information possible regarding the boundaries of the area subject to de-energization to all public safety partners whose jurisdictions or service areas will be impacted by the de-energization event, including adjacent jurisdictions or service areas that could lose power as a result of de-energization in a high fire threat district. Going forward, the electric investor-owned utilities must work to provide a secure data transfer of the de-energization boundary in Geographic Information System Representational State Transfer Service format (or other agreed upon format that is rapidly consumable by existing geospatial and situational awareness tools) and must also show affected circuits and any other information that is requested by public safety partners and can reasonably be provided by the utility. The utilities must work towards being able to provide real-time data to public safety partners.

- The electric investor-owned utilities must partner with local public safety partners to communicate with all other customers that a de-energization event is possible, the estimated start date and time of the de-energization event, the estimated length of the de-energization event, which may be communicated as a range, and the estimated time to power restoration, which again, may be communicated as a range. Communications should state when the customer can next expect communication about the de-energization event. Communication, consistent with best practices articulated in the California Alert and Warning Guidelines must answer five key recipient questions: (1) Who is the source of the warning; (2) What is the threat; (3) Does this affect my location; (4) What should I do; and (5) What is the expected duration of the event.

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Communications must also point customers towards education and outreach materials disseminated in advance of the 2019 wildfire season.

- The electric investor-owned utilities must provide up-to-date information, including a depiction of the boundary of the de-energization event, on their websites' homepage and a dedicated Public Safety Power Shut-off webpage regarding the de-energization event. The electric investor-owned utilities, in partnership with local public safety partners, must establish and communicate a 24-hour means of contact that customers may use to ask questions and/or seek information.

#### **What Methods Should the Electric Investor-Owned Utilities Use to Communicate a De-Energization Event with the Public?**

- The California Alert and Warning Guidelines state that "people rarely act on a single warning message alone. To be effective, warnings should be delivered in various formats via various media, both to increase reliability of warning delivery and to provide a sense of corroboration that will encourage recipients to take protective actions." The electric investor-owned utilities must develop notification strategies for all customer groups affected by de-energization, and the electric investor-owned utilities must partner with local and state public safety partners, whenever possible, to develop notification strategies.. In order to be effective, notifications should be delivered in multiple formats across several media channels, both to increase the potential a message successfully reaches an impacted population and to provide a sense of corroboration that will encourage individuals to take protective actions. Customer notifications should include, but are not limited to, telephonic notification, text message

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notification, social media advisories, emails, and messages to agencies that service disadvantaged communities within an impacted area to allow them to amplify any pertinent warnings. Communication methods must consider the geographic and cultural demographics of affected areas, e.g. some rural areas lack access to broadband services. Communications must also be delivered in English, Spanish, Chinese (including Cantonese, Mandarin and other Chinese languages), Tagalog and Vietnamese as well as Korean and Russian where those languages are prevalent within the utilities' service territories.

- The electric investor-owned utilities must develop a strategy for how communication will occur with affected customers once de-energization has begun and during re-energization, recognizing that communication channels may be restricted due to the loss of power. The electric investor-owned utilities should develop this strategy in coordination with public safety partners.

### **How Should the Electric Investor-Owned Utilities Communicate and Coordinate with Public Safety Partners Before and During a De-Energization Event?**

- Consistent with the State Emergency Management System,<sup>10</sup> the electric investor-owned utilities will be responsible for contacting local public safety officials in impacted jurisdictions prior to and during a de-energization event. The electric investor-owned utilities must communicate an impending de-energization event to local and state officials. The

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<sup>10</sup> PacifiCorp, as a utility that operates across state lines, requests that it operate consistent with NIMS. This is allowable; however, if a provision of NIMS conflicts with SEMS, PacifiCorp must follow the provisions mandated in SEMS.

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electric investor-owned utilities must work with public safety partners to disseminate all information in formats and through processes that are used by public safety partners during other emergencies, including developing notification messaging consistent with the California Public Alert and Warning System. The electric investor-owned utilities must partner with local and state public safety partners to develop notification strategies for all customer groups that comport with the best practices articulated in the California Statewide Alert and Warning Guidelines.

- In advance of the 2019 wildfire season, the electric investor-owned utilities must continue to partner with local jurisdictions, the California Governor's Office of Emergency Services and the California Department of Forestry and Fire Protection to develop a comprehensive, coordinated and cohesive notification framework including, but not limited to, the electric investor-owned utilities providing notification to public safety partners and public safety partners, to the extent they are willing and able, providing secondary or supplemental notification to the general public. Electric investor-owned utilities retain responsibility to ensure notification of affected customers.
- The electric investor-owned utilities, in partnership with local and state public safety partners, must develop notification strategies for access and functional needs populations up to and including in-person notification. The electric investor-owned utilities should strive to develop a coordinated positive/affirmative notification strategy with public safety partners for pre-designated access and functional needs populations. Pre-designated access and functional needs populations should be determined in coordination with public safety partners, whenever possible, but should include customers on medical

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baseline tariffs that are dependent upon electricity for the provision of life-sustaining services.

***Coordination with Emergency Operation Centers and Incident Command Systems***

- If requested by the local jurisdiction, the electric investor-owned utilities must embed a liaison officer at the local emergency operation center. When requested, the utility must also embed a liaison officer at the State Operations Center for the purpose of assessing and integrating wildfire threat data for decision-making. The liaison officers must be empowered to provide rapid and accurate information from the utilities. To ensure consistency of response across jurisdictions, the electric investor-owned utilities should have a designated lead with decision-making authority located at the utility's emergency operations center with whom embedded liaisons can communicate in real-time to obtain the most up-to-date information. This requirement does not preclude the utilities from developing a centralized communication structure that is amenable to both the utility and local jurisdictions to provide real-time coordination and situation awareness.
- Currently, the electric investor-owned utilities form an emergency operation center during each de-energization event. The electric investor-owned utilities must invite representatives from the California Office of Emergency Services, water infrastructure providers, and communication service providers. In the alternative, the utilities may develop a mutually agreeable communications structure with water infrastructure providers and communication service providers in lieu of holding seats in its emergency operations center.

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### **What Information Should be Included in Post-Event Reporting?**

- In addition to submitting a report to the Director of the Commission's Safety and Enforcement Division within 10 business days of power restoration, electric investor-owned utilities must serve their de-energization report on the service lists of this proceeding and Rulemaking 18-10-007 or their successor proceedings. Service should include a link to the report on the utility's website and contact information to submit comments to the Director of the Safety and Enforcement Division. The electric investor-owned utilities must actively contact public safety partners involved in the de-energization event to encourage them to provide feedback. The electric investor-owned utilities must also send a copy of the report to the lead local/county public safety agency for the de-energization event.
- Within 15 days of the electric investor-owned utility serving its post-event report, affected stakeholders, including public safety partners, critical facilities and local residents may serve comments on the electric investor-owned utility's post-event report in order to inform SED's reasonableness review. Comments must be submitted to the following address: Safety and Enforcement Division Director, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California, 94102. In addition, comments should be served on the service list of Rulemaking 18-12-005 or its successor proceeding.
- In addition to the reporting requirements in Resolution ESRB-8, the electric investor-owned utilities must provide the following information:
  - 1) Decision criteria leading to de-energization, including an evaluation of alternatives to

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de-energization that were considered and mitigation measures used to decrease the risk of utility-caused wildfire in the de-energized area;

- 2) A copy of all notifications, the timing of notifications, the methods of notifications and who made the notifications (the utility or local public safety partners);
- 3) If the utility fails to provide advanced notification or notification according to the minimum timelines set forth in these Guidelines, an explanation of the circumstances that resulted in such failure;
- 4) A description and evaluation of engagement with local and state public safety partners in providing advanced education and outreach and notification during the de-energization event;
- 5) For those customers where positive or affirmative notification was attempted, an accounting of the customers (which tariff and/or access and functional needs population designation), the number of notification attempts made, the timing of attempts, who made the notification attempt (utility or public safety partner) and the number of customers for whom positive notification was achieved;
- 6) A description of how sectionalization, i.e. separating loads within a circuit, was considered and implemented and the extent to which it impacted the size and scope of the de-energization event;

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- 7) An explanation of how the utility determined that the benefit of de-energization outweighed potential public safety risks;
  - 8) The timeline for power restoration (re-energization,) in addition to the steps taken to restore power as required in Resolution ESRB-8;
  - 9) Lessons learned from the de-energization event; and
  - 10) Any recommended updates to the guidelines adopted in Resolution ESRB-8 and this decision.
- The electric investor-owned utilities should refer to San Diego Gas & Electric Company's November 11-16, 2018 de-energization report, issued on December 4, 2018, as starting a place for reporting format until the Commission provides further guidance on a standard report template.
  - In addition to de-energization reports, the electric investor-owned utilities are required to submit reports on de-energization lessons learned concurrent with their 2020 Wildfire Mitigation Plans, and thereafter, including an evaluation of utility/public safety partnerships. The reports must include a copy of all educational campaigns and outreach made in advance of the wildfire season and an evaluation of their effectiveness. The Commission may consider these reports in other proceedings; however, existing or successor Wildfire Mitigation Plan proceedings are the appropriate place to file these reports at this time.
  - The Commission's Safety and Enforcement Division should develop a post-de-energization event reporting template. The

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template, at a minimum, should include the information requested herein; however, Safety and Enforcement Division has the discretion to request additional information. Safety and Enforcement Division should solicit input from stakeholders on the development of the template. The template should be adopted by the Commission via Tier 3 advice letter.

- The Commission's Safety and Enforcement Division should develop a template for the lessons learned report in advance of the 2020 Wildfire Mitigation Plan submission date. Safety and Enforcement Division should hold workshops to solicit input and facilitate cross-utility and cross-stakeholder learning to inform the development of the reports. The template should be adopted by the Commission via Tier 3 advice letter.
- The Commission's Safety and Enforcement Division will continue to review the electric investor-owned utilities reports pursuant to Resolution ESRB-8. The Commission will consider development of reasonableness criteria in Phase 2 of this rulemaking.

### **Requests to Delay De-Energization and to Re-Energize**

- The electric investor-owned utilities should continue to address requests for a de-energization delay on a case-by-case basis. The electric investor-owned utilities must only respond to de-energization delay requests from public safety partners. The electric investor-owned utilities retain ultimate authority to grant a delay and responsibility to determine how a delay in de-energization impacts public safety.
- The electric investor-owned utilities must work with public safety partners in advance of the wildfire season to develop preliminary plans for addressing emergency situations that may arise during de-energization, such

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as a non-utility caused wildfire that occurs in a de-energized area that necessitates the use of water for firefighting purposes. Although not a request to delay de-energization, such a situation could result in the public safety being better served by utility lines being re-energized.

### **De-Energization of Transmission Lines**

- The electric investor-owned utilities must design interim protocols for the de-energization of transmission lines based upon the impacts to populations across affected jurisdictions including, but not limited to, publicly-owned utilities/electric cooperatives, adjacent jurisdictions and small/multi-jurisdictional utilities and critical facilities interconnected at the transmission level. The utility must solicit input from stakeholders in developing these protocols, and the utilities shall serve the interim protocols on the service list of Rulemaking 18-12-005 within three months of issuance of this decision.
- In the event of transmission line de-energization, additional coordination may be required with the California Governor's Office of Emergency Services, the California Department of Forestry and Fire Protection, local jurisdictional public safety partners and the California Independent System Operator. The electric investor-owned utilities must also provide notice to the California Independent System Operator of transmission-level de-energization as far in advance as possible. The electric investor-owned utilities must comply with Federal Energy Regulatory Commission and North American Electric Reliability Corporation reliability standards.
- While the Commission explores development of transmission level notification and communication guidelines, the utilities

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must employ all relevant notification and communication guidelines adopted herein, in addition to those in Resolution ESRB-8, to the de-energization of transmission lines.

(End of Appendix A)

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# Appendix B

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**Appendix B**  
**Preliminary Phase 2 Issues**

1. The following list is a summary of the issues proposed for Phase 2 of R.18-12-005, *Order Instituting Rulemaking to Examine Electric Utility De-Energization of Power Lines in Dangerous Conditions*. This list is non-exhaustive and will be addressed further in a subsequent scoping memo opening Phase 2. Analysis and refinement of definitions and utilization of standard lexicon, including but not limited to:
  - a. Critical Facilities
    - i. Possible addition of transportation sector and Department of Defense facilities?
  - b. AFN populations
  - c. Medical baseline
  - d. Transmission and distribution lines
2. Evaluate and consider refinement of notification and communication guidelines, including education and outreach, to the public (including AFN populations) and public safety partners and critical facilities/infrastructure.
  - a. Guidelines for communication and notification if local jurisdiction does not participate in de-energization event.
3. Consider additional or refined processes for reasonableness review, communication protocols, mitigation measures and reporting requirements established in ESRB-8 and this decision.
4. Create comprehensive documentation of all de-energization protocols and guidelines.
5. Overarching de-energization issues

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- a. Evaluate the use of proactive de-energization and the extent to which it is being used as a method of last resort
  - b. Analysis of de-energization criteria and thresholds
    - i. Evaluate wildfire conditions and consider whether thresholds (e.g. wind speeds, weather conditions, vegetation dryness conditions, etc.) should be defined across utilities and whether to do so would promote the public safety.
    - ii. Consider whether "extreme wildfire conditions" can be defined and whether such a definition would promote the public safety.
  - c. Consider methods to develop more robust contact information for AFN populations and other priority populations, while still maintaining privacy and legal protections.
  - d. Consider how de-energization should be evaluated as a strategy against other measures, such as vegetation management, grid hardening, etc.?
6. De-energization of transmission lines
- a. Facilities, such as airports and large industrial facilities, may be connected at the transmission level and be impacted differently than in the case of distribution outages.
  - b. Consider coordination with public safety partners, CAISO, FERC, and NERC, as well as compliance with requirements from these entities.
  - c. Evaluate transmission de-energization impacts and consider how to mitigate and prepare for those impacts.

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Consider how to partner with POU's, electric cooperatives and potentially affected adjacent jurisdictions to prepare for and notice transmission level de-energization events.

7. Communication and Notification

- a. Impact of de-energization on methods for communications with the public.
  - i. Communication to all levels (public, AFN populations, first responders, critical facilities, etc.) during a de-energization event? How will the utility communicate information if communication services (broadband, text, VOIP) are down?
- b. Standardization of protocols and messaging across utilities to avoid confusion and increase understanding by customers and public safety partners.
- c. Where CCA territories exist, who should be responsible and accountable for notification, education and communication- the electric investor-owned utility, the CCA, or both?
- d. How should non-residents in the area be notified?

8. Public Education on how to prepare for wildfire season and de-energization events

- a. Practices needed by the utilities and other state partners to educate the public on de-energization and re-energization events, including what is entailed during a de-energization event, what tools are available to the public during these events, what to do in an emergency and how to receive information alerts during a power shutoff, and who the public should expect to hear from and when.

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- b. How to prepare for wildfire season, including potential de-energization.
- c. Metrics to gauge whether public education and outreach efforts are effective.

#### 9. Mitigation Measures

- a. Consider developing criteria on deployment of cooling centers and charging stations.
- b. Evaluate deployment of other power sources to critical facilities and possibly AFN populations.
  - i. ESRB-8 requirement to provide back-up generation
  - ii. Evaluation of back-up generation options.
  - iii. Effectiveness of back-up generation for multi-day de-energization events.
- c. Consideration of cost responsibility for de-energization impacts/losses.

#### 10. Re-energization

- a. Speed at which power is reinstated and timing of re-energization.
- b. Conditions for re-energization.
- c. Communications during a re-energization event.
- d. Safety concerns associated with re-energization.

#### 11. Other Issues

- a. How to address increased localized emissions and carbon dioxide emissions from the use of generators as a result of de-energization/ environmental impact of backup generation usage.
- b. Billing issues.
- c. Requests to delay de-energization.

(End of Appendix B)

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# Appendix C

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**APPENDIX C: Glossary of Useful Definitions and Abbreviations**

| A.                                      | Application   |
|---|---|
| AFN                                     | Access and functional needs populations: consists of individuals who have developmental or intellectual disabilities, physical disabilities, chronic conditions, injuries, limited English proficiency or who are non-English speaking, older adults, children, people living in institutionalized settings, or those who are low income, homeless, or transportation disadvantaged, including, but not limited to, those who are dependent on public transit or those who are pregnant |
| Alert                                   | A communication intended to redirect the attention of recipients to some previously unexpected or unknown circumstance or event   |
| AT&T                                    | AT&T Mobility Wireless Operations Holdings, Inc., Pacific Bell Telephone Company, and AT&T Corp.  |
| Abrams                                  | William B. Abrams   |
| ALJ                                     | Administrative Law Judge  |
| AR                                      | automatic reclosers   |
| Bear Valley or BVES                     | Bear Valley Electric Service, a division of Golden State Water Company  |
| CAP                                     | Common Alerting Protocol- a standardized digital message format for interoperable communication of public alerts and warnings; the core technology of the California Alert and Warning Guidelines   |
| CCA                                     | Community Choice Aggregators  |
| California Alert and Warning Guidelines | An integrated, interoperable statewide system-of-systems for public alerting and warning by local jurisdictions and state agencies in California  |
| CAISO                                   | California Independent System Operator  |

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|                     |  |
|---------------------|--|
| CAL FIRE            | California Department of Forestry and Fire Protection  |
| CalEnviroScreen     | An online tool developed by California Environmental Protection Agency's Office of Environmental Health Hazard Assessment for mapping California communities that are most affected by many sources of pollution.  |
| CalOES              | California Office of Emergency Services  |
| CARE                | California Alternate Rates for Energy  |
| CASMU               | California Association of Small and Multijurisdictional Utilities - Bear Valley, Liberty, and PacifiCorp   |
| CCSF                | The City and County of San Francisco   |
| CCTA                | California Cable and Telecommunications Association  |
| CESA                | California Energy Storage Alliance   |
| CforAT              | Center for Accessible Technology   |
| CLECA               | California Large Energy Consumers Association  |
| CMUA                | California Municipal Utilities Association   |
| CPUC or Commission  | California Public Utilities Commission or Commission   |
| Critical Facilities | Facilities that are essential to the public safety and that require additional assistance and advance planning to ensure resiliency during de-energization events. The terms 'critical facilities' and 'critical infrastructure' can be used synonymously. Police Stations; Fire Stations; Emergency Operations Centers; Medical facilities including hospitals, skilled nursing facilities, nursing homes, blood banks, health care facilities, dialysis centers and hospice facilities; Schools and licensed daycare centers; Public and private utility facilities vital to maintaining or restoring normal service, including, but not limited to, interconnected publicly-owned utilities and electric cooperatives; Facilities associated with the provision of drinking water including facilities used to pump, divert, transport, store, treat and deliver water; Communication carrier infrastructure including selective routers, central offices, head ends, cellular switches, remote terminals and cellular sites (or their functional equivalents); Jails and prisons |

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|                              |   |
|------------------------------|---|
| CSAC                         | California State Association of Counties  |
| CTIA                         | Represents the United States wireless communications industry and companies throughout the mobile ecosystem   |
| CUE                          | Coalition of California Utility Employees   |
| CUEA                         | California Utilities Emergency Association  |
| CWA                          | California Water Association  |
| D.                           | Decision  |
| DACC/EUF                     | Direct Access Customer Coalition, Energy Users Forum  |
| De-Energization              | Process by which utilities turn off electricity, usually to reduce the risk of utility-infrastructure wildfire ignitions; can be also be used during other emergencies.   |
| EBMUD                        | East Bay Municipal Utility District   |
| Emergency Response Providers | Includes federal, state, and local governmental and nongovernmental public safety, fire, law enforcement, emergency response, emergency medical services providers (including hospital emergency facilities), and related personnel, agencies and authorities |
| EOC                          | Emergency Operations Center   |
| EPUC                         | Energy Producers and Users Coalition  |
| ESRB-8                       | Commission Resolution that sets out utility de-energization procedures  |
| Farm Bureau                  | California Farm Bureau Federation   |
| FEMA                         | Federal Emergency Management Agency   |
| FERA                         | Family Electric Rate Assistance Program   |
| FERC                         | Federal Energy Regulatory Commission  |

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|                              |   |
|------------------------------|---|
| First/Emergency Responder    | Individuals who, in the early stages of an incident, are responsible for the protection and preservation of life, property, evidence, and the environment, including emergency response providers. The term "emergency response providers" includes federal, state, and local governmental and nongovernmental public safety, fire, law enforcement, emergency response, emergency medical services providers (including hospital emergency facilities), and related personnel, agencies and authorities. |
| GIS                          | Geographic Information System   |
| GIS REST                     | Geographic Information System Representational State Transfer Service   |
| GO                           | General Order   |
| HFTD                         | High Fire Threat District- areas where utility infrastructure and operations will be subject to stricter fire-safety regulations  |
| HHZ                          | High Hazard Zones   |
| HSPD-8                       | U.S. Department of Homeland Security Presidential Directive Number 8  |
| I.                           | Investigation   |
| ICS                          | Incident Command System- a management system designed to enable effective and efficient domestic incident management by integrating a combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure.   |
| IOUs or Utilities            | Investor-Owned Utilities  |
| IVR                          | Interactive Voice Response  |
| Joint Communications Parties | Frontier Communications, T-Mobile West LLC dba T-Mobile, Sprint Communications, California Company and the Small LECs, Comcast Phone of California LLC, and Verizon   |
| Joint Local Governments      | Counties of Napa, Sonoma, Mendocino, and the City of Santa Rosa   |
| The Joint Water Districts    | Municipal Water District of Orange County (MWDOC), Valley Center Municipal Water District (VCMWD), and Padre Dam Municipal Water District (PDMWD)   |

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|                  |  |
|------------------|--|
| Liberty CalPeco  | Liberty Utilities (CALPECO Electric) LLC   |
| LGSEA            | Local Government Sustainable Energy Coalition  |
| Malibu           | The County of Los Angeles, City of Malibu  |
| Medical Baseline | Customers who are eligible for Medical Baseline tariffs receive an additional allotment of electricity and/or gas per month. The tariffs are designed to assist residential customers who have special energy needs due to qualifying medical conditions. There are differences among medical baseline tariffs across the utilities. |
| Mendocino        | The County of Mendocino  |
| MGRA             | Mussey Grade Road Alliance or Mussey Grade   |
| MWDOC            | Municipal Water District of Orange County  |
| Napa             | The County of Napa   |
| NCPA             | Northern California Power Agency   |
| NERC             | North American Electric Reliability Corporation  |
| NIMS             | National Incident Management System  |
| Notification     | A communication intended to inform recipients of an unscheduled event for which contingency plans are in place.  |
| OES              | Office of Emergency Services   |
| OIR              | Order Instituting Rulemaking   |
| OSA              | The Commission's Office of Safety Advocates  |
| PacifiCorp       | Pacific Power, a division of PacifiCorp  |
| PG&E             | Pacific Gas and Electric Company   |
| PHC              | Prehearing Conference  |
| POC              | Protect Our Communities  |
| POU              | Publicly Owned Utility   |
| PSPS             | Public Safety Power Shut-Off or De-Energization  |
| Public Advocates | The Public Advocates Office of the California Public Utilities Commission  |

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|                        |   |
|------------------------|---|
| Public Safety Partners | First responders at the local, state and federal level, water and communication providers, CCAs, affected POU's/electrical cooperatives, the Commission, CalOES and CAL FIRE. Public safety partners will receive priority notification of a de-energization event.   |
| Pub. Util. Code        | Public Utilities Code   |
| R.                     | Rulemaking  |
| RCRC                   | Rural County Representatives of California  |
| Reclosers              | Apparatus that allows an energy line to re-energize   |
| Reverse 911            | A public alert system most frequently used by safety organizations to alert individuals and businesses to the risk of danger by sending a recorded voice message to landline telephones and registered cellphones within a defined geographical area.   |
| Santa Rosa             | The City of Santa Rosa  |
| SB 901                 | Senate Bill 901   |
| SBUA                   | Small Business Utility Advocates  |
| SCE                    | Southern California Edison Company  |
| SDG&E                  | San Diego Gas & Electric Company  |
| SED                    | Commission's Safety and Enforcement Division  |
| SEMS                   | Standardized Emergency Management System- the system required by Government Code §8607 (a) for managing response to multi-agency and multi-jurisdiction emergencies in California. SEMS provides for a multiple level emergency response organization and is intended to structure and facilitate the flow of emergency information and resources within and between the organizational levels. |
| Shapefiles/KMZ         | Computer file extensions used by GIS software.  |
| Sonoma                 | County of Sonoma  |
| T-Mobile               | T-Mobile West LLC dba T-Mobile  |
| TURN                   | The Utility Reform Network  |
| UCAN                   | Utility Consumers' Action Network   |

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|             |   |
|-------------|---|
|             |   |
| Warning     | A communication encouraging recipients to take immediate protective action in response to some emergent hazard or threat    |
| WEA         | Wireless Emergency Alerts - emergency messages sent by authorized government alerting authorities through a mobile carrier. |
| WMP or Plan | Wildfire Mitigation Plan  |

(End of Appendix C)

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# EXHIBIT I

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Date of Issuance 6/4/2019

Decision 19-05-037 May 30, 2019

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

Order Instituting Rulemaking to  
Implement Electric Utility Wildfire  
Mitigation Plans Pursuant to  
Senate Bill 901 (2018).

Rulemaking 18-10-007

**DECISION ON PACIFIC GAS AND ELECTRIC COMPANY'S  
2019 WILDFIRE MITIGATION PLAN PURSUANT TO SENATE BILL 901**

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## **DECISION ON PACIFIC GAS AND ELECTRIC COMPANY'S 2019 WILDFIRE MITIGATION PLAN PURSUANT TO SENATE BILL 901**

### **Summary**

Catastrophic wildfires have devastated California in recent years. The Legislature enacted Senate Bill (SB) 901 in 2018 mandating action by this Commission on Wildfire Mitigation Plans submitted by the electrical corporations we regulate. This is one in a series of decisions we are issuing to act on the 2019 Plans of the three large California investor owned utilities, the three small and multijurisdictional utilities, and two independent transmission owners. This decision acts specifically on the Wildfire Mitigation Plan of Pacific Gas and Electric Company (PG&E).

PG&E's Wildfire Mitigation Plan contains each of the elements required in SB 901, Public Utilities Code Section 8386(c). This decision requires PG&E to meet certain reporting requirements, capture data, improve its metrics for evaluating performance, and update its next Wildfire Mitigation Plan in the areas of inspection and maintenance, vegetation management, system hardening, and situational awareness.

There are several aspects of the company's planned mitigation that require improvement or other follow-up activity. These areas for improvement include the following:

- 1) Better metrics for analyzing how PG&E's proposed mitigation measures fit together, as well as the individual effectiveness of each measure;
- 2) Metrics and analysis to evaluate the quality and effectiveness of the company's inspection programs, including its "enhanced" inspection program and preexisting routine inspection program, in preventing catastrophic wildfires started by utility ignitions;
- 3) Further analysis and tracking of at-risk tree species;



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- 4) Analysis of data to determine whether PG&E's new vegetation-pole clearances have contributed to reduced ignitions, especially during critical weather conditions;
- 5) PG&E's efforts to partner with local departments of public works to develop skilled labor and other resources and address the resource constraints it alleges;
- 6) Whether recloser disabling, along with other mitigations, could reduce the need for de-energization (Public Safety Power Shutoffs or PSPS); and
- 7) Additional information on how PG&E intends to share its risk analysis with first responders and other stakeholders.

Along with this decision, the Commission is issuing a guidance decision that addresses issues that are common to all of the Wildfire Mitigation Plans, and applies to the Plans of all respondent electrical corporations. Thus, PG&E is bound by both the requirements of this decision and the general guidance decision.

#### **1. Overview of PG&E's Wildfire Mitigation Plan**

According to Pacific Gas and Electric Company (PG&E), the primary objective of its 2019 Wildfire Mitigation Plan (WMP or Plan) is to reduce the risk of potential wildfire-causing ignitions associated with PG&E's electrical facilities in areas identified as high fire risk in the Commission's fire threat map proceeding. These high-risk areas constitute more than one-half of PG&E's 70,000 square miles of service territory.

PG&E states that its Plan focuses on reducing the risk of wildfires in the Commission's High Fire-Threat District (HFTD) areas, considering wind-related outage data, CPUC-Reportable Ignition Data, topographical and climatological data, wildfire spread and consequence studies, and an egress risk score, to

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further expand the risk analysis in the HFTD areas. The Plan builds on PG&E's Community Wildfire Safety Program, which was launched in March 2018.

Key objectives identified by PG&E in its 2019 WMP include proposals for conducting enhanced safety inspections of utility assets in HFTD areas, hardening its electric system against wildfires by installing stronger, more resilient poles and covered power lines, expanding PG&E's vegetation management around its power lines, including clearing overhanging branches directly above and around power lines, and increasing situational awareness.

With respect to several mitigation measures such as enhanced vegetation management, increased inspections and system hardening, PG&E asserts that its mitigation efforts are hampered by lack of resources, including shortages in trained workers and certain equipment, as well as by other barriers such as lack of access to private property.

Although we expect more detail and analysis in future WMPs as detailed below, PG&E's WMP contains the required elements set forth in Senate Bill (SB) 901. Table 2 of PG&E's WMP contained a helpful cross reference to each item in SB 901's list of required WMP elements as compared to PG&E's Plan.

We focus below on the elements of PG&E's WMP that solicited the most comments from parties.<sup>1</sup>

## **2. Inspection and Maintenance**

### **2.1. PG&E's Proposed Inspection and Maintenance Program**

---

<sup>1</sup> On April 25, 2019, PG&E filed a second amended WMP proposing to extend the timelines on many of its major wildfire mitigation efforts. We do not act on those proposals in this decision since they were filed too late to be considered and to receive party comment. This decision does not act on the second amended WMP. Phase 2 of this proceeding will consider the matter and filings related to the second amended WMP. This decision does not approve actions proposed or described in the PG&E second amended WMP even if PG&E has already conducted those actions.

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According to its WMP,<sup>2</sup> PG&E currently uses multiple methods to conduct inspections of its distribution, transmission and substation assets. These methods include visual observations of infrastructure when performing other routine work in an area, periodic patrols and inspections of infrastructure, and targeted diagnostic and condition-based testing and monitoring. These routine inspections of PG&E's overhead and underground electric systems, including its electric substation inspections, are designed in accordance with the requirements of the Commission's General Orders (GO) 95, 165 and 174. PG&E's existing inspections involve travel to the asset, ground and air visual observation, detection and assessment of abnormal conditions, notification, prioritization and execution of repairs, and documentation needed for safe and reliable operation.

PG&E's WMP proposes new inspection procedures that it asserts will exceed the standards currently required by the Commission in its GOs and related rules. PG&E refers to these new inspection activities as its "Wildfire Safety Inspection Program" (WSIP), which will involve "accelerated" inspections of overhead electric facilities and substations in HFTD areas.<sup>3</sup> PG&E asserts these inspections will enable the company to identify and proactively repair or replace components that are at risk of initiating fires in HFTD. PG&E's plan includes targets to inspect 685,000 distribution poles, 50,000 transmission structures, and 200 substations.

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<sup>2</sup> Citations to party comments contain the filer's abbreviated name and the page reference. Intervenor comments were all filed on March 13, 2019, and electrical corporation reply comments filed on March 22, 2019. Citations to PG&E's WMP contain the title "PG&E WMP" and the page reference.

<sup>3</sup> PG&E WMP, at 53.

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PG&E states that its WSIP was developed using a risk-based approach that included a Failure Modes and Effects Analysis (FMEA). PG&E describes this analysis as utilizing a multi-disciplinary team comprised of experts in fields such as operations, engineering, and asset management to review data that could indicate equipment failure or conditions that increase ignition risk. According to PG&E, this analysis is used to target inspections to areas of risk. When WSIP inspections reveal maintenance issues or conditions that may increase fire risk, PG&E states, the problem can either be immediately corrected or recorded as a deficiency which is then reviewed and prioritized according to standardized criteria for measuring risk.

PG&E also describes its efforts to use Geographic Information System (GIS) data concerning the location of electrical facilities to target its WSIP. PG&E states that it is working to improve its GIS data, including designating a single point of contact at PG&E for all wildfire-related GIS needs. As with other areas of its WMP such as vegetation management, PG&E asserts that its WSIP is hampered by a lack of resources, including shortages in trained workers and certain equipment, as well as by other barriers such as permitting delays or lack of access to private property.

## **2.2. Parties' Comments – Inspection and Maintenance**

Parties provided significant comments on several aspects of PG&E's WSIP, including whether the WSIP represents incremental work beyond its routine inspection program. Some ratepayer advocates note that the WSIP includes a huge increase in inspection costs over the amount authorized in the last General Rate Case (GRC), but that the scope of the enhanced inspections is very similar to the scope of routine inspections.

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Specifically, the Commission's Public Advocate's Office (Cal Advocates) notes that PG&E estimates that its distribution, transmission and substation inspection costs range from a low of \$798 million to a high of \$1.396 billion, making inspection one of the highest budgeted areas in the WMP, and representing 57% of its 2019 forecast costs. This estimate is expected to cover inspections of 685,000 poles in HFTD through the WSIP plan, in addition to routine inspections.

Many parties cite the large cost increase to question whether PG&E's prior inspection program met pre-existing statutory requirements. For example, The Utility Reform Network (TURN) points out that GO 165 already requires Overhead Detail Inspections (ODI) every five years and requires that the utilities fix all identified "corrective actions" so that all structures and equipment function safely. According to TURN, the scope of the proposed enhanced inspections and repairs so closely tracks the scope required for ODI compliance that it is almost identical.

California Environmental Justice Alliance (CEJA) notes that PG&E proposes to spend over \$1 billion on inspections, an increase from \$15 million authorized in PG&E's last GRC. In this regard, CEJA cites SB 901, which requires utilities to "[m]onitor and audit the effectiveness of electrical line and equipment inspections, including inspections performed by contractors, carried out under the plan and other applicable statutes and commission rules."<sup>4</sup> CEJA suggests it is uncertain whether PG&E has collected data to support the effectiveness of its inspections under existing regulations. If not, CEJA posits this may indicate that PG&E has not reviewed data from past inspections to determine the relationship

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<sup>4</sup> Pub. Util. Code § 8386(c)(19)(C).

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between inspections, ignitions, and prevention of catastrophic wildfires. As CEJA states, in addition to not studying past inspections for lessons learned, it is not clear why PG&E must inspect the same equipment multiple times, and why it cannot combine inspections. CEJA states the increase from \$15 million in the last GRC to over \$1 billion must be accompanied by analysis in future WMPs to show how the past inspections did not comply with existing regulations and how PG&E intends to measure the effectiveness of the WSIP in preventing catastrophic wildfires. CEJA argues that without an analysis of how effective past inspections have been, it is impossible to know what aspects of PG&E's inspection practices need to be enhanced.

PG&E responds to TURN and CEJA by stating that past inspections did not focus on the specific aspects to be examined under the WMP. PG&E explains that GO 165's inspection requirements relied on a five-year inspection cycle, consistent with industry practice in 1997. The Commission noted at the time that more frequent inspections might be prudent.

According to PG&E, it is proposing to ramp up its inspections by an estimated 130-400% compared to 2018. PG&E also states that it will complete high priority corrective actions identified during the inspections, at a forecast cost of \$194 million to \$371 million in expenses and \$504 million to \$1.25 billion in capital costs. Some intervenors suggest that to address issues of possible duplication between WSIP and routine inspections, the Commission should closely monitor whether PG&E meets its existing and enhanced inspection targets.

PG&E argues that the minimum inspection cycle that was appropriate in the past may no longer be adequate given the growing threat of extreme weather and wildfires associated with climate change, justifying an accelerated inspection

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schedule and more targeted inspections. PG&E states that it is performing routine and WSIP inspections simultaneously on the 185,000 distribution structures in the HFTD areas it would have inspected in 2019 under its GO 165 inspection schedule. PG&E claims that the routine inspections will be enhanced by the elements of the WSIP. PG&E emphasizes its use of a risk-based analysis to determine what aspects of its overhead electric system could be single points of failure that could lead to fire ignitions, and allowing the WSIP to accelerate inspections of areas and infrastructure at higher risk of wildfire. Again, the company asserts that past inspections did not focus on the specific aspects examined under the WSIP.

According to PG&E, the current minimum cycle may no longer be adequate. Fire season is now extended due to prolonged periods of high temperatures, extreme dryness, tinder-dry grass, and record-high winds, increasing the number of wildfires and making them more dangerous. Due to climate change, what used to be adequate for safe operation may no longer be enough, according to PG&E.

As a number of parties note, California faces the effects of climate change, including more frequent periods of extreme weather conditions. As the Office of Safety Advocates (OSA) notes, PG&E acknowledges in its WMP that high wind corridors due to topography and location are being considered in their modeling for Risks and Drivers, but PG&E has not yet identified any areas in its territory that will be upgraded due to these conditions. As PG&E explains in its WMP:

Topography can be an important risk factor for fire danger in certain areas within PG&E's service area. For example, lee-side mountain slopes can be prone to strong downslope winds under certain weather conditions, which can cause increased risk of wires down and/or contact between uninsulated conductors in that area, leading to potential



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wildfire ignition. Winds can also be funneled through canyons and mountain passes, resulting in similar effects.<sup>5</sup>

OSA recommends that PG&E investigate unique topography within its service territory; the WMP indicates that PG&E in fact is conducting these investigations. As OSA notes, within Tier 2 and Tier 3 areas are high fire risk locations that include mountain ridges, canyons and other topographical features that create extreme wind corridors. OSA recommends, and we agree, that PG&E should utilize this information to develop targeted enhanced inspections (of both overhead distribution and transmission facilities) and determine quickly if structural improvements are necessary for their most vulnerable assets. We assume PG&E will consider these points as it conducts its topographical investigation and report those results in the 2020 WMP.

Intervenors also provided comments on PG&E's discussion of workforce barriers it expects to encounter in implementation of its WSIP. Joint Local Governments<sup>6</sup> suggest that the Commission closely monitor whether utilities use sufficiently trained personnel to carry out the inspections, and that utilities partner with local public works agencies to take advantage of the skilled labor and other resources those departments can offer. Intervenors also note that PG&E provides little detail on either specific actions or timelines for improving its GIS system, despite its claims that these efforts are critical to its inspection plans.

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<sup>5</sup> PG&E WMP, Section 3.2.4.

<sup>6</sup> Joint Local Governments include: the County of Mendocino, the County of Napa, the County of Sonoma and the City of Santa Rosa.



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### **2.3. Discussion – Inspection and Maintenance**

As a preliminary issue, we agree with the Joint Local Governments that PG&E should investigate partnering with local departments of public works, which may have qualified personnel and resources that would allow PG&E to take advantage of skilled labor and other resources from those departments to support inspection work and other aspects of its WMP. PG&E appears to be open to these efforts, and we direct the company to follow through on this strategy and provide updates in its next WMP.

Intervenors' suggestion that the magnitude of PG&E's request may call into question whether its previous inspection program met GO 165 and other requirements does raise concerns. For example, of the 685,000 poles in HFTD that PG&E plans to inspect, only 185,000 are due for inspection this year under the existing schedule for GO 165. TURN notes that, given the GO 165 requirement to conduct detailed inspections at least every five years, the remaining 500,000 poles PG&E intends to inspect this year were inspected at some point within the previous five years, and that a large percentage of these poles may have been inspected in the previous two years. If so, it seems possible that PG&E is either duplicating recent inspections unnecessarily, or that its previous inspections were not adequate to ensure safe operation.

Further, PG&E asserts that it is conducting "enhanced" inspections in part to exceed GO requirements. However, with respect to the minimum inspection frequencies provided by GO 165, GO 95, Rule 31.2 states, "Lines shall be inspected frequently and thoroughly for the purpose of ensuring they are in good condition so as to conform with these rules...." As such, it is not necessarily beyond GO 95 requirements to conduct inspections more frequently or thoroughly than specified in GO 165, as those are minimum requirements.

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When PG&E seeks cost recovery, it shall explain the increase in inspection costs over the last GRC, and we expect parties to raise this issue in future cost recovery proceedings as well. Future proceedings may also examine the issue of whether PG&E did enough in terms of inspections to comply with pre-existing GOs and regulations.

It appears that PG&E will now be doing significantly more inspections under its WMP than it did in the past, but this increase in activity is not by itself sufficient to show that its WSIP mitigates or lowers the risk of wildfire. As CEJA and others suggest, the Commission needs metrics that measure how effective the WSIP is in preventing catastrophic wildfires caused by utility ignitions. PG&E explains that its WSIP accelerates and expands inspections at areas of higher risk of wildfire, and enhances the criteria for inspections of these elements.

In its WSIP, PG&E focuses on what aspects of its overhead system could contribute to fire ignition. Based on that analysis, PG&E states that it is now increasing inspections of ignition sources in HFTD that were not contemplated when GO 165 was adopted. CEJA's recommendation that PG&E must show in future WMPs how the past inspections did not comply with existing regulations does not appear productive. However, as CEJA suggests and Pub. Util. Code Section 8386(c)(19)(C) mandates, PG&E should be required to include in its future WMP the metrics and analysis it intends to use to determine the quality and the effectiveness of all its inspection programs, including WSIP and preexisting routine inspection programs.

We note that PG&E's WSIP is in the very early stages of development and implementation. Thus, PG&E can benefit from taking seriously parties' feedback in comments and from the workshops, and continuing to work with stakeholders

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to develop meaningful ways to measure the efficacy of increased inspections and enhanced GIS capabilities, and presenting those results in next year's WMP. We also expect PG&E to continue to examine SDG&E's inspection program carefully in assessing industry best practices for monitoring and auditing the effectiveness of inspections.

We find that the accelerated approach to inspections and maintenance described in PG&E's WMP complies with the requirements of SB 901, Pub. Util. Code Section 8386(c)(9). Still, this finding does not give PG&E a blank check for the activities described in its Plan. PG&E is currently placing WSIP costs in a memorandum account. At such time as PG&E seeks cost recovery, PG&E may need to show cost-effectiveness and how elements of its WSIP are necessary to address new risks, over and above what is required by GO 165.<sup>7</sup>

### **3. System Hardening**

#### **3.1. PG&E's System Hardening Program**

PG&E proposes significant investment in system hardening, including what it describes as an ongoing, long-term (more than five years) capital investment program to rebuild portions of PG&E's overhead electric distribution system. Under this program, PG&E proposes replacing bare overhead conductor with covered conductor, replacing some infrastructure with equipment identified by the California Department of Forestry and Fire Protection (CAL FIRE) as low

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<sup>7</sup> GO 165 requirements are minimum compliance requirements only. Moreover, GO 95, Rule 31.2 requires facilities to be "inspected frequently and thoroughly" to ensure compliance with GO 95 requirements and safe operation. While PG&E (and other utilities) may have relied solely on meeting the minimum inspection requirements of GO 165, new inspection regimes do not necessarily go above and beyond existing requirements. The requirement to inspect "frequently and thoroughly" has always been in GO 95. If GO 165 inspection timeframes were insufficient, PG&E (and all utilities) should have inspected as frequently and as thoroughly as necessary to ensure facilities were in good condition and in compliance with GO 95 requirements.

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fire risk, upgrading or replacing transformers to operate with more fire-resistant fluids, installing more resilient poles to increase pole strength and fire resistance, and in rare cases, undergrounding. PG&E's ultimate goal is to upgrade approximately 7,100 circuit miles in Tier 2 and Tier 3 HFTD areas, with a goal of upgrading 150 of those circuit miles in 2019. PG&E suggests that its system hardening proposal would result in a full rebuild of the overhead distribution system. PG&E intends these activities to increase the overall strength of its electric distribution system, replace aging assets, and reduce risk from external factors, such as vegetation or animals contacting lines and "line slap" resulting from high winds that may cause lines to slap together and generate sparks.

PG&E explains that it initiated a system hardening program in 2018, pursuant to its 2017 GRC Risk Assessment Mitigation Phase (RAMP) Report, in which it proposed the targeted replacement of bare overhead conductor with covered conductor in high-risk wildfire areas. Based on subsequent analysis, PG&E proposes several additional system-hardening measures in its WMP, including the types of asset replacement and upgrades described above. PG&E proposes performing this work in HFTD, with work prioritized based on PG&E's risk modeling of the distribution circuits. This risk modeling considers factors such as the likelihood of asset failure, risk of wildfire spread and consequences, and egress risk (number of escape routes available to a community).

The proposed work would include replacement of bare overhead high voltage conductors with conductor insulated with abrasion-resistant polyethylene coats (also referred to as covered conductor). The advantages and disadvantages of covered conductor were discussed at a workshop in this proceeding on February 27, 2019. As to hardening its distribution and transmission poles by using non-wood pole material, PG&E focuses on the

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increased strength properties in steel and composite poles as compared with wood poles.

### **3.2. Parties' Comments – System Hardening**

Intervenor comments on PG&E's system hardening proposals echo some of the concerns about its inspection plan, discussed above. Overall, parties express concerns about the cost effectiveness of PG&E's system hardening activities, and the pace at which the system hardening work is expected to be implemented this year. In particular, OSA recommends that the pace of system hardening be accelerated. OSA suggests that PG&E address its labor force limitations by partnering with manufacturers to accelerate material production, and work towards developing the skilled workforce necessary to perform additional system hardening work in the areas that PG&E has identified as priorities.

The Joint Local Governments note the similarities between the PG&E's WMP and the Fire Prevention Plans (FPPs) that PG&E has been required to file with the Commission since 2012. Joint Local Governments suggest that PG&E has not provided much detail on the effectiveness of system hardening activities conducted pursuant to its FPPs, and that more information on the effectiveness of past actions could both inform the development of its WMP system hardening plans and provide insight into the expected performance of system hardening proposed in the WMP.<sup>8</sup>

OSA identifies another issue regarding PG&E's primary overhead distribution facilities. According to OSA's consultant, Liberty Consultant Group, PG&E's distribution system still uses #6 copper conductor, now recognized as

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<sup>8</sup> Joint Local Governments' Comments at 3.

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obsolete and subject to breakage and arcing risks. PG&E still has 1,959 circuit miles of #6 copper conductor in Tier 2 and 754 circuit miles of #6 copper conductor in its Tier 3 areas. OSA recommends that PG&E prioritize the replacement of its existing small #6 copper conductor located in Tier 2 and 3 with the highest-ranking conductor available in the company's circuit hardening prioritization methodology, and do so on an expedited construction schedule. PG&E responds that conductor size is one of the factors that PG&E considers within the risk model to determine what areas to replace. While PG&E agrees that #6 copper is a priority to be replaced, PG&E points out there are other small conductors that are also at high risk.

Intervenors recommend the following modifications that they assert would improve PG&E's WMP:

- PG&E should provide additional analysis to show whether its proposed covered conductor program is redundant with other wildfire mitigation activities, including vegetation management measures planned, or with de-energization, also known as Public Safety Power Shutoffs (PSPS).
- PG&E should conduct a risk analysis that considers both the likelihood and consequences of ignition to validate its prioritization model before using it as the basis for deploying covered conductor in HFTD areas.
- PG&E's plan for installation of covered conductors should be limited until their effectiveness in mitigating wildfire risk has been shown.
- PG&E should provide additional analysis to show that its proposed system hardening activities are either required or reflect best practices for mitigating the potential for catastrophic wildfires.
- Given that past inspections have shown violations of GO 95, PG&E should provide additional information

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showing that its current inspection programs meet existing requirements.

- PG&E should provide additional information on the performance of steel poles in wildfire conditions to justify their use as a mitigation measure.
- PG&E should provide more detail on how it decides whether undergrounding is appropriate, particularly with respect to areas with ingress/egress bottlenecks and in high-fire-threat zones.

In its response, PG&E explains that the system hardening section of its WMP focuses primarily on the wildfire mitigation work that it intends to do in 2019, which is targeted to address issues and geographic areas that it has identified as priorities through its risk analysis. PG&E notes that the WMPs will be filed on an annual basis, and it expects to include additional system hardening in future years.

PG&E emphasizes that the system hardening activities it proposes for 2019, though limited in size, will provide information to inform future analyses of the performance and cost effectiveness of its various system hardening measures. Because the WMPs are expected to be submitted annually, PG&E suggests that it can use the results of this year's activities to help inform future wildfire mitigation actions, in an iterative process.

PG&E also expresses its intention to address supply chain and labor issues that could impact the schedule of its system hardening program, recommends that the pace and scope of system hardening should be informed by its experience this year, and notes future plans will be informed by the 2019 experience.

PG&E defends its proposal to expand the use of covered conductors to reduce risk of ignition from vegetation contact and asserts that the benefits of



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covered conductors outweigh concerns expressed by commenters that covered conductors could result in additional high impedance faults. Finally, PG&E provides additional explanation of its plans to replace some wooden poles with composite and steel poles, which it states are more flame resistant and at lower risk of failure during both high wind and wildfire conditions.

### **3.3. Discussion – System Hardening**

Given the small percentage of bare wire conductors PG&E proposes to harden in 2019, it appears unlikely that system hardening will substantially mitigate catastrophic wildfire threat in time for the 2019 wildfire season.

While we do not assess the reasonableness of PG&E's proposed costs in this decision, it is worth noting that the labor- and equipment-intensive nature of the reconductoring proposal means it is one of the most expensive items in the WMP. PG&E estimates it will cost at least \$ 236.9 million to reductor 150 miles or 0.15 percent of its overhead system in 2019. Assuming that the 7,100 circuit miles of PG&E's system located in Tier 3 HFTD areas are eventually hardened, the magnitude of costs that the Commission will need to analyze in future GRCs is enormous. The implicit assumption in OSA's recommendation to accelerate system hardening is that PG&E can establish in future proceedings the need for and cost-effectiveness of system hardening. At this point, we have insufficient information on which to reach this conclusion.

In future WMPs, PG&E should provide more information on the efficacy and cost-effectiveness of its proposed system hardening activities, along with more information on the costs and benefits of alternative options. This detail may strengthen PG&E's plan by allowing the Commission and parties to evaluate the relative merits of different potential activities. As PG&E notes in its response to party comments, we expect the development and implementation of



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wildfire mitigation measures to be an iterative process, with annual WMP filings evolving over time as we learn more about the effectiveness of various mitigation measures.

Given the lack of information on the efficacy and cost effectiveness of many of the proposed system hardening measures, as well as the overlap of multiple mitigation approaches (*e.g.*, system hardening, enhanced vegetation mitigation, undergrounding, and de-energization) in PG&E's WMP, we expect PG&E to provide significantly more data and analysis in its future plans. This will provide a better basis for PG&E, the Commission, CAL FIRE and parties to fully analyze and evaluate the potential effectiveness of PG&E's proposed mitigation measures and how these mitigation measures fit together with minimum redundancy.

Finally, as TURN notes, it would be useful to know whether any of the ignitions in 2014-2018 occurred on circuits when reclosers were disabled under one of the existing programs. Disabling a recloser means that if a line faults, the recloser will not reestablish a connection in the line so that the line is not energized thereafter. If recloser disabling, perhaps combined with other system protection strategies, can minimize the risk of ignitions, those strategies could reduce the need for circuit reconductoring or power shutoffs. This analysis should be included in PG&E's next WMP.

Regarding the need for a skilled labor force, we encourage PG&E to partner with local entities as suggested by the Joint Local Governments.

In summary, we find that PG&E's WMP includes a system hardening component, consistent with SB 901, Pub. Util. Code Section 8386(c)(12), but that PG&E should include additional information, metrics and analysis discussed in this decision in its 2020 WMP.

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#### 4. Vegetation Management Plan

##### 4.1. PG&E's Proposed Vegetation Management Plan

Vegetation management is one of the highest cost elements of PG&E's WMP. PG&E proposes to spend between \$800 million and \$1.3 billion to support an expansion of its vegetation management program. In January 2018, the Commission adopted the HFTD Map, which increased the amount of PG&E's service area classified as posing high fire-threat. The HFTD Map replaced the previous fire threat maps adopted on an interim basis in 2012. The interim fire-threat maps also had a distinct focus on facilities in "Southern California,"<sup>9</sup> which had included only a small part of PG&E's service area (about 15%). Subsequent to the adoption of the new HFTD Map in 2018, PG&E began enhanced vegetation management (EVM) work in HFTDs.

The EVM activities described in PG&E's WMP include clearing of vegetation from directly above and around distribution lines. This work is intended to limit ignitions and downed wires due to vegetation-conductor contact. The EVM program proposed by PG&E would accomplish this by both keeping vegetation away from where powerlines can fall and removing healthy trees that could fall on powerlines. PG&E asserts all of the EVM measures exceed current regulatory requirements.<sup>10</sup>

PG&E's EVM program primarily consists of overhang clearing, targeted tree species work, and fuel reduction. This work involves two main components in HFTD areas: 1) trimming all trees to a 12-foot radius from power lines and

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<sup>9</sup> In accordance with D.12-01-032 at 48, "Southern California" was defined as consisting of the following counties: Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura.

<sup>10</sup> Table 14 of PG&E's WMP (at 70) characterizes many of the "enhanced" efforts as "exceeding" existing requirements.

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trimming all branches hanging above power lines, and 2) removing healthy trees that are identified as having the potential to hit power lines if they fall down (fall-ins). PG&E is additionally proposing to trim all overhangs above overhead wire, creating a four-foot corridor from conductor to sky. PG&E's proposed Fuel Reduction Program would reduce vegetation under and up to 15 feet on either side of power lines in HFTD areas, and PG&E further intends to target the top 10 species of trees for removal as hazardous. These 10 species caused 75% of vegetation-related fire ignitions in Tier 2 and 3 areas; however, they also comprise over half of all trees in PG&E's service territory.<sup>11</sup>

PG&E has 25,200 distribution circuit miles in HFTD areas. PG&E plans to clear overhangs from about 2,450 circuit miles in 2019 alone, which it estimates will mean the removal of approximately 305,000 trees. This is in addition to the 70,000 trees PG&E expects to remove through its pre-existing drought and tree mortality CEMA program in this time period. In comparison, the CEMA program removed about 225,000 trees over the past five years. In addition, PG&E asserts that it trims or removes approximately one million trees per year through its routine Vegetation Management programs.

As in its WMP inspection and system hardening proposals, PG&E cites a lack of qualified labor (in this instance, tree workers qualified to perform potentially hazardous vegetation management work) as a potential obstacle to the full implementation of its WMP. Similarly, PG&E predicts that the need to work with landowners and communities, and to comply with federal, state, and local permitting and environmental regulations, may pose challenges to its EVM program or create delays in its implementation. During the February 27, 2019

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<sup>11</sup> PG&E WMP, Attachment E.

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Commission Workshop on vegetation management, PG&E, along with other utilities, stated it is working to incorporate lessons learned and take corrective measures based on feedback from customers and communities.

#### **4.2. Parties' Comments – Vegetation Management**

The parties raise several concerns about PG&E's Enhanced Vegetation Management proposals, including the following:

- Will PG&E's EVM proposal result in the unnecessary removal of healthy trees?
- Will the benefits of aggressive tree trimming and tree clearing activities outweigh the costs?
- Is PG&E's proposed Fuel Reduction Program, which would reduce vegetation under and up to 15 feet on either side of power lines in HFTD areas, likely to reach a point of diminishing returns compared to a smaller clearance requirement accompanied by different mitigation measures? Is this proposal the most cost-effective use of funding for wildfire mitigation?
- Has PG&E justified expanded EVM clearance requirements that exceed regulatory requirements?
- Does or will PG&E engage in clear-cutting, removing trees without proper permits, or failure to remove tree debris after cutting or trimming?
- Has PG&E experienced other problems since it initiated EVM in 2017, and if so, what corrective measures has PG&E implemented in response to feedback?
- Should PG&E provide communities with more input or control over the wildfire mitigation measures conducted in their areas, for example allowing communities to decide between less EVM with a lower de-energization threshold or vice-versa?
- Will PG&E's EVM program actually help prevent catastrophic wildfires?

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- How will the usefulness or success of PG&E's EVM be measured?
- How will the impacts of PG&E's EVM on the risk of wildfire be distinguished from other fire prevention measures that it may take, including system hardening and targeted de-energization?
- Are the planned EVM, covered conductor, and de-energization activities redundant, or do they each solve separate problems?
- Has PG&E sufficiently engaged with local governmental entities to expedite permitting?

As Mussey Grade Road Alliance (MGRA) describes, the PG&E EVM proposal should address three distinct vegetation ignition mechanisms: 1) "fall ins," in which a tree that is tall enough to strike a power line topples into it; 2) "blow-ins," in which vegetation that is detached by high winds blows into utility infrastructure; and 3) overhanging vegetation breaks, which result in vegetation dropping onto lines from above. Parties note that all of these scenarios are more likely during high winds, and if these winds also occur during an extreme fire weather event, there is the potential for catastrophic fire ignition and spread. Vegetation-driven fires occurring under low wind conditions can also result from tree fall-in, such as the Butte fire, but these do not statistically represent the utility-related fires in California that have caused the most harm.

Some parties assert that PG&E's EVM may target significantly more trees than necessary, given the consequences of widespread tree removal. For example, trees provide support for other trees, reduce carbon, and provide other important ecological benefits which may be lost due to aggressive tree removal. CEJA in particular cautions that further information and evidence is necessary before such a large expansion of EVM, in which thousands of healthy trees could

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be cut down to maintain a significantly larger clearance. CEJA recommends more transparency in PG&E's EVM program to provide the public with information on the types of trees that the utility considers hazardous.

Several parties, including TURN, are concerned that the Commission and parties lack sufficient information to evaluate the efficacy of recent vegetation management changes or the proposed conductor to sky overhang corridor. TURN urges the Commission to order PG&E to analyze available data to determine the degree to which the new minimum clearance requirement and recommended clearance at time of trim in HFTD have contributed to a reduced incidence of ignitions, especially during critical weather conditions.

Some parties are concerned about the impact of diminishing returns for radial vegetation clearances: that the additional work to clear a few more feet around a conductor may provide little or no additional value compared to slightly smaller clearance radii. In addition, parties raised a related issue of whether PG&E needs to comply with 12 foot clearances when Table 1 of GO 95 only requires 4 feet and Appendix E recommends "a time of trim" clearance of 12 feet in HFTD areas. TURN, for example, notes that though the proposal to comply with the recommended 12-foot clearance and to trim all overhangs appears useful, insufficient data is provided to evaluate the usefulness of PG&E's radial clearance and conductor-to-sky overhang corridor proposals. Even parties that did not express serious concerns about the scope of PG&E's EVM suggest that PG&E could improve communication about its EVM activities with landowners.

In reply comments, PG&E acknowledges the merit of several suggestions from parties, including that it increase communication with landowners, and inform landowners that PG&E will remove tree-trimming debris upon request.

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PG&E also refers to the iterative nature of its WMPs, and expresses a willingness to incorporate feedback received from parties and the public in future WMPs.

On the other hand, PG&E objects to several party suggestions, noting that in some circumstances, allowing communities to make decisions to reject or customize wildfire mitigation approaches in their area could cause problems or create risks for nearby communities. For example, PG&E suggests that allowing a community to request less EVM in trade for a lower de-energization threshold could result in increased risks or more frequent de-energization of downstream communities that prefer a different approach.

PG&E disputes the claim that it has not provided sufficient information and analysis on which to determine the effectiveness of its EVM proposal, and asserts that its responses to parties' data requests support its assertion that its covered conductor and vegetation management programs address different risks and provide incremental benefits. PG&E further argues that, because it is not possible to install covered conductor across the entire HFTD before fire season, or even in the next five years, additional mitigation measures cannot wait for the full rollout of system hardening. According to PG&E, vegetation management plays an important, near-term risk management role. PG&E also asserts that CAL FIRE has more ability than PG&E to address some parties' broader concerns regarding landowner compliance with fire safety and defensible space regulations.

#### **4.3. Discussion – Vegetation Management**

Several parties, including the Joint Local Governments, TURN, MGRA and Cal Advocates question how to evaluate the relationship between measures such as EVM, system hardening and de-energization. This question raises the related issue of whether using more of one particular mitigation measure reduces the



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need for others, and what metrics should be developed to measure this. In the near term, the conservative approach is to be aggressive with these measures, but we expect far more analysis of this issue in PG&E's future WMPs. As PG&E points out, it is not possible to install covered conductor across the entire HFTD before fire season, or even in the next five years, so at least in the short term, EVM will play an important role. At the same time, PG&E must develop metrics and present analysis on the interplay between various measures. Our discussion of metrics requirements for PG&E expands on these points.

Improving communications and partnerships with local governments such as the Joint Local Governments that are parties to this proceeding may also provide additional benefits, such as local training programs for increasing PG&E's access to skilled labor needed for vegetation management. While PG&E asserts that the lack of skilled arborists is a long-term problem given the extent of PG&E territory in HFTD areas, it is a problem that the many governmental agencies located in HFTD areas may be able to help PG&E solve. PG&E must work with other stakeholders to help solve the problem, and not simply avoid conducting mitigation.

While PG&E's WMP contains a vegetation management program as required by SB 901, Pub. Util. Code Section 8386(c)(8), the program raises questions that require further analysis. It appears that the 10 species of trees PG&E intends to target as hazardous constitute 51% of the trees within PG&E's vegetation management database. MGRA points out that SDG&E's data shows that certain types of trees such as eucalyptus and sycamore are ten times more likely than oaks to cause outages. MGRA recommends that all utilities should keep a total inventory of trees in the vicinity of their equipment and use this kind



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of data when prioritizing vegetation management, rather than simply keeping track of the raw number of outages.

In future WMPs, PG&E should describe how it tracks and manages “at risk” species of trees. PG&E should reconduct its analysis to determine at-risk tree species and include all vegetation-caused outages and wire down events in the analysis, and not simply rely on vegetation-caused ignition data.

We agree with TURN that the Commission and parties lack sufficient information to evaluate the efficacy of recent vegetation management changes or PG&E’s proposed conductor-to-sky overhang corridor. We agree that PG&E should analyze available data to determine the degree to which the new minimum clearance requirement<sup>12</sup> and recommended clearance at time of trim in HFTD have contributed to a reduced incidence of ignitions, especially during critical weather conditions. This analysis is important as a means to study the diminishing return in risk reduction as a function of increased vegetation clearance distance.

This issue deserves consideration in future WMPs, including analysis of the efficacy of the new clearance, which should show how PG&E will measure whether the new clearances in HFTD have reduced the incidence of ignitions, especially during Red Flag Warning conditions or elevated Fire Potential Index (FPI) days.<sup>13</sup> It is reasonable to require PG&E to provide additional data and analysis in support of its proposals in future plans, including development of

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<sup>12</sup> The new clearance refers to the 4-foot vegetation clearance requirement for distribution lines in the HFTD adopted in 2012 where the interim fire maps were adopted. This requirement was applied to PG&E’s service territory in D.17-12-024. .

<sup>13</sup> The Commission discusses in the accompanying guidance decision reasons why taking action during Red Flag Warnings may be too limited given the common occurrence of such warnings.

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new metrics to better measure the performance of PG&E's EVM to inform future WMPs.

PG&E should only remove healthy trees if the utility has evidence that those trees pose a risk to utility electric facilities under wildfire ignition conditions, based on the opinion of a certified arborist.

Some parties commented that PG&E's healthy tree program is affected by PG&E's second amended WMP filed on April 25, 2019, a few days before the proposed decision was mailed. As noted elsewhere in this decision, this decision does not act on the second amended WMP or related filings, so any changes in the amendment are not approved by this decision.

## **5. De-Energization**

### **5.1. PG&E's De-Energization/Public Safety Power Shut-Off Program**

According to Public Utilities Code Section 8386(c)(6), each electrical corporation's WMP shall include protocols for disabling reclosers and de-energizing portions of the electrical distribution system. Most of the issues raised by parties with regard to PG&E's proposal on de-energization (also known as Public Safety Power Shut-Off or PSPS) will be addressed in the de-energization Rulemaking, R.18-12-005.

PG&E's WMP includes discussions of several aspects of its de-energization program, including the circumstances under which PG&E would consider de-energization, the potential for sectionalizing its system to allow de-energization to be targeted to smaller geographic regions, the use of reclosers in high fire risk conditions, and communication and notification procedures. One mitigation strategy is planned resilience zones, which PG&E describes as

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“areas that can be isolated from the broader grid and energized by mobile generation during PSPS events,”<sup>14</sup> which PG&E asserts will allow important community resources to safely receive electricity during de-energization events. PG&E asserts that its PSPS Program is modeled on SDG&E’s Power Shut-Off Plan and complies with Resolution ESRB-8. PG&E acknowledges that the requirements set forth in Resolution ESRB-8 will remain in effect until or unless they are superseded by a new decision in R.18-12-005, and states that it will comply with any changes to de-energization procedures that are adopted in R.18-12-005.

## **5.2. Parties’ Comments – De-Energization/PSPS**

Parties provided numerous comments and suggestions related to PG&E’s PSPS program, which we discuss only briefly because the issues are within the scope of the Commission’s de-energization rulemaking. Parties that commented on this issue include Cal Advocates, TURN, MGRA, Small Business Utility Advocates (SBUA), the California Farm Bureau, CEJA, Peninsula Clean Energy Authority (PCEA)/Sunrun Inc., and East Bay Municipal Utility District (EBMUD). A common theme in parties’ comments on PG&E’s de-energization proposal is the need for additional information on de-energization procedures in future WMPs.

The Joint Local Governments generally support PG&E’s plan to disable automatic reclosers when the fire threat level is high or extreme; however, they would like to see more information in the WMP on the practical issues relating to reclosers that must be manually disabled, including whether this could result in

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<sup>14</sup> PG&E WMP, at 9.

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delays in re-energization. The Joint Local Governments also support PG&E's efforts to sectionalize its distribution circuits in an effort to reduce the impacts of de-energization incidents. The Joint Local Governments support the proposal that in 2019, PG&E could ring-fence Tier 2 and Tier 3 HFTDs with equipment that would allow sectionalizing of lines at the boundaries of the fire threat zones.

SBUA recommends greater use of undergrounding, and opposes the use of automatic reclosers as a standard practice, asserting that this may "elevate the risk of catastrophic wildfires" upon re-energization while in contact with vegetation. TURN suggests that to minimize wildfire risk in 2019, PG&E should focus its efforts and resources on operational practices such as recloser blocking, improved situational awareness, and de-energization.

The Joint Local Governments support resilience zone development and recommend that PG&E engage with local communities when determining the appropriate use and placement of these zones. CEJA goes even further, arguing that PG&E should implement both mobile and stationary community resource centers (CRCs) for use by communities during outages. These strategies are intended to mitigate the impact of a shutoff on public safety, as required by SB 901. CEJA suggests that the details of CRCs may be discussed in the de-energization proceeding, but argues for inclusion of CRCs in utility WMPs as soon as possible, as a placeholder for developing CRCs through a community-driven process.

Other parties, including PCEA/Sunrun, support PG&E's resilience zone concept and further propose an evolution to resilience zone microgrids over time, noting the interest of community choice aggregators in increasing electric-service resilience. Similarly, SBUA supports PG&E's plan to establish resilience zones that it hopes would operate like microgrids.

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In its reply to party comments, PG&E supports the idea of engaging with local communities in developing resilience zones, and asserts that SBUA misunderstands PG&E's recloser program, which disables many reclosers on a daily basis. Otherwise, PG&E recommends deferring a detailed examination of other concerns to R.18-12-005, the ongoing de-energization proceeding.

### **5.3. Discussion – De-Energization/PSPS**

As many parties suggest, the bulk of the Commission's examination of de-energization will take place in R.18-12-005. For the purposes of this decision, the key question is whether PG&E included a discussion of de-energization in its WMP that complies with the requirements of SB 901.

Based on the information provided in PG&E's WMP and its reply comments, we find that PG&E's WMP contains a de-energization element. PG&E's de-energization program is subject to the requirements of ESRB-8, until such time as ESRB-8 is supplemented or supplanted by another decision.

With respect to the issues raised by parties, we expect that consideration of communication and coordination issues, specific questions related to the use of de-energization, and the possible use of resilience zones and community resource centers may take place in R.18-12-005, and are most appropriately addressed there. At the same time, as suggested by several parties, the Commission's review of future WMPs would benefit from the inclusion of additional information on the impacts of de-energization and answers to some of the questions raised by parties to this proceeding. We expect a future decision in R.18-12-005 to address what future WMPs should include with respect to de-energization.

## **6. Situational Awareness**

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### **61. PG&E's Situational Awareness Program**

In its WMP, PG&E discusses its Enhanced Situational Awareness and Known Local Conditions program. PG&E states that this program was created to actively monitor and/or model potential wildfire occurrence and improve timeliness and response efforts, should an ignition occur. PG&E intends the program to inform several of PG&E's other wildfire mitigation activities, including its de-energization program, Wildfire Recloser Disable Program, and emergency response efforts.

PG&E proposes to spend approximately \$31.9 million on situational awareness in its 2019 Wildfire Mitigation Plan, for the following situational awareness activities:

- Installing 200 new weather stations in 2019 at a density of one station roughly every 20 circuit miles in HFTD areas within PG&E's service area. PG&E states that this would double its weather stations.
- Installing a network of high-definition cameras (70 in 2019 and about 600 total by 2022) to assist PG&E and emergency responders to monitor over 90 percent of PG&E's HFTD areas.
- Working with fire detection algorithm developers to develop wildfire detection and alert systems utilizing satellite imagery.
- Using data from new weather stations to build advanced fire modeling capabilities into PG&E's existing meteorological models.

Using these situational awareness tools will help PG&E make decisions about when to initiate operational risk reduction measures such as PSPS and the Wildfire Recloser Disable Program.

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## **6.2. Parties' Comments - Situational Awareness**

Overall, parties do not appear to object to PG&E's Situational Awareness Plan, but have questioned how PG&E will coordinate its efforts with third parties such as local governments and first responders. Parties recommend that PG&E develop a situational awareness framework consistent with that implemented by SDG&E, and share it with first responders and local governments. Such a system would include weather stations, camera networks, fire detection, and wireless fault indicators as a best practice.

As Joint Local Governments point out, it is not clear with whom PG&E will share its data collection programs, or whether PG&E's proposed situational improvements will include a web-based or dashboard component to facilitate access by first responders and others. Parties including EBMUD also suggest that PG&E share camera and weather station information and all other critical situational information including fire and weather data with first responders and local governments.

PG&E responds that it is intending to build a situational awareness framework similar to that deployed by SDG&E. PG&E also plans to share data from its weather stations and cameras, and expects to consider ways to share information from its satellite system once that system has been fully tested and deployed. PG&E states that it coordinates with businesses, first responders, and public safety officials about emerging threats, including deploying "Public Safety Specialists" and field observers to interface with CAL FIRE incident commanders, report on field conditions, and investigate reported wildfires. PG&E further commits to ensuring that its Wildfire Safety Operations Center (WSOC) communicates with first responders in emergencies.

## **6.3. Discussion – Situational Awareness**



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It is not clear how PG&E plans to share data collected from its situational awareness systems or the results of its fire spread modeling system with local governments, first responders, and others. PG&E asserts that its fire spread modeling system will be available to be run in real time for specific existing fires to understand the predicted spread; ideally, this modelling should be available to governments and first responders who may be affected by elevated fire risk conditions.

Going forward, it is essential that PG&E find ways to share real-time information, including fire and weather data and modeling with affected agencies, governments, critical services and first responders. For example, to be most effective, the satellite fire detection system, which will provide frequently updated information to PG&E's own web application, should be directly accessible to first responders and local governments. Similarly, PG&E's Storm Outage Prediction Model, which will be updated in near real-time, should be shared with emergency response personnel outside PG&E, and in particular emergency responders should be able to view the application's dashboard directly.

Sharing this information in real time with first responders could enhance public emergency response and therefore increase public safety. As past tragic wildfires show, time is of the essence in saving lives during wildfires. The information collected and modeled by PG&E is critical to public safety and the ability of people in affected communities to respond to and escape wildfires. This information must be available in real time to local governments and first responders to help local evacuation plans to succeed in saving lives.

We understand that PG&E is not yet at a point where it has developed all the means necessary to share vital information. However, PG&E must make it a



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top priority to articulate a plan for communicating the fire and weather data and modeling information from its WSOC in real time during potential or actual emergency events with affected agencies, governments, and first responders. The information to be shared includes but is not limited to any data collected through weather stations, cameras, satellite fire detection, or fire spread modeling. Receiving this data in real time will allow first responders and local entities to determine when and where to deploy life-saving measures such as activating evacuation plans via sirens and other local communication measures, assisting the elderly and disabled during evacuations, and mobilizing additional assistance as necessary.

Though we find that PG&E's WMP contains a discussion of situational awareness plans, PG&E should provide additional information on how it intends to share the information and analysis with first responders and others via a Tier 1 Advice Letter due no later than 30 days after the Commission issues this decision. As part of this filing, PG&E shall explain fully the WSOC's decision-making criteria, the point(s) at which fire-related information will be communicated, and through what media PG&E plans to communicate this information to first responders and local government agencies. We cannot emphasize strongly enough: PG&E's wildfire-related information, data, modeling of data and communications need to be transparent and conveyed effectively and directly in real time to local decision-makers and first responders who can then pass information on to their communities.

PG&E's future WMPs must also address how PG&E has disseminated this information to governments and first responders during the previous planning year, how effective the communications and information-sharing has been, and what measures PG&E intends to take in the upcoming planning year to address

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unanswered questions and any shortcomings that it or others see in its emergency plans.

In addition, we require PG&E to investigate alternative technologies such as those discussed in the Wildfire Technology Innovation Summit sponsored by the Commission and other agencies and held on March 20-21, 2019. PG&E is required to provide more detail about alternative technologies in its next WMP, and it shall, through the workshop and comment process ordered in the accompanying guidance decision, explain how each of the alternative technologies it is exploring, if implemented, will be analyzed for effectiveness.

## **7. Emergency Preparedness/Outreach and Response**

### **7.1. PG&E's WMP Proposal - Emergency Preparedness, Outreach and Response**

Pursuant to Section 8386(c)(16), this section of the Plan includes a discussion of PG&E's emergency response plan, including public outreach and communications, as well as customer support during and after an emergency, including information and financial support. PG&E's plan describes emergency communications and outreach before, during and after a wildfire emergency.

PG&E's Fire Prevention Plan (FPP) is a comprehensive set of plans, procedures, processes, and activities related to prevention, detection, response to, and recovery from ignitions that can grow into a wildfire. The FPP is a component of PG&E's Company Emergency Response Plan (CERP), which is PG&E's overall emergency preparedness and response plan.

According to PG&E's plan, when PG&E detects a wildfire, it takes several standard actions. These actions include activating one or more emergency centers, placing personnel on alert status and having them take readiness steps, reviewing emergency plans, identifying personnel for restoration activities, and

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canceling non-critical meetings. PG&E also describes some steps it will take to keep customers informed, including utilizing specific communications channels and coordinating with local entities. The Plan details public outreach before, during and after a wildfire.

## **7.2. Parties' Comments – Emergency Preparedness Outreach and Response**

The emergency preparedness and outreach section of PG&E's WMP drew significant party comment. Parties recommend that PG&E increase its outreach and communication about wildfire preparedness, high fire threat conditions, wildfire threats, and de-energization. CEJA suggests that PG&E's Plan should include direct notification of customers in the event of a wildfire threat, to be modeled on a system SDG&E uses to directly notify customers of wildfire. CEJA explains that this is especially important for more vulnerable populations and communities and urges coordination with community-based organizations for outreach.

Parties also recommend specific actions for PG&E to take, such as increasing its use of active and direct outreach methods like community meetings, providing more education focused on wildfire risk and emergency preparation, providing online notification to businesses that provide essential services including health services providers, increasing outreach associated with possible de-energization events, and conducting outreach in both HFTD and non-HFTD areas.

In its reply comments, PG&E states it already takes many of these actions, and is open to expanding its outreach in many of the ways that parties suggest to better reach providers of critical services in communities. In its response to party comments, PG&E expresses willingness to work with Joint Local Governments to discuss communication issues in specific situations, and

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suggests that the effectiveness of communications can be addressed in future Plan proceedings or other venues identified by the Commission.

SBUA argues for better IOU outreach and education about wildfires to small business, noting that small businesses play an important role in remote locations and urban neighborhoods that do not have access to commercial centers. SBUA recommends that the Commission require the utilities to develop notification procedures tailored to small business customers, with a prioritized status for small health service providers, including primary care physicians, emergency rooms, and veterinarian services, and critical small commercial centers. SBUA explains that these categories of small businesses are particularly important during wildfire emergencies for communities that may otherwise have no access to essential goods and services. In its response, PG&E acknowledges the importance of small business, and states that it will consider small business needs in its outreach efforts.

### **7.3. Discussion – Emergency Preparedness, Outreach and Response**

Public Utilities Code Section 8386(c)(13), (16) and (17) require a WMP to contain emergency preparedness and response plans that comply with mandates involving communications with cities and counties, preparation for and restoration of service after a wildfire, and public outreach. Specifically, the statute requires the WMP sponsor to share its plan with relevant cities and counties to provide input and feedback, and update and improve the plan at least every two years. It also requires the WMP to list persons responsible for plan execution, establish procedures for notifying impacted customers, establish protocols for restoration of service, and create a workforce mobilization plan for its employees before and after a wildfire. The statute mandates that a WMP include a plan for community outreach and public awareness before, during, and

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after a wildfire in an array of languages including English, Spanish, and the top three languages in California as determined by United States census data.

While we find that PG&E's WMP contains a discussion of emergency preparedness and outreach in compliance with statutory requirements, we agree with parties there is room for improvement, particularly in the areas of communications. PG&E recognizes in its Reply Comments the importance of effective communication with local governments and first responders. As in the Situational Awareness section, in its next WMP PG&E shall provide more information on these issues, and especially how it intends to share information with first responders and local governments.

In addition, it is not clear from either the Plan itself or from PG&E's Reply Comments how the Plan provides for direct notification to customers of a wildfire threat in their area. PG&E is directed to report back to the Commission in its 2020 WMP describing the steps it has taken to facilitate communications with customers during a wildfire threat situation. We decline at this time to order PG&E to develop an outreach plan specifically targeted to small businesses, but agree that these customers should be reached through broader outreach campaigns.

PG&E is required to communicate its WMP's emergency preparedness outreach and response in specific languages. PG&E's WMP does not comply with this requirement.

Specifically, Public Utilities Code Section 8386(c)(16)(B) mandates that PG&E's plan for community outreach and public awareness before, during, and after a wildfire be communicated in English, Spanish, and the top three primary languages used in the state other than English or Spanish, as determined by the Commission based on the United States Census data. Taking official notice of

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United States Census data pursuant to Rule 13.9 of the Commission's Rules of Practice and Procedure, the Commission determines that the following languages are the three most common languages used in the state other than English or Spanish: Chinese (including Cantonese, Mandarin and other Chinese languages), Tagalog, and Vietnamese. In addition to those languages, PG&E shall provide outreach in Korean and Russian, where those languages are prevalent in its service territory. PG&E shall communicate its plan for community outreach and public awareness before, during, and after a wildfire in the above languages.

## **8. Support to Utility Customers During and After a Wildfire**

### **8.1. WMP Proposal – Support to Utility Customers During and After a Wildfire**

In R.18-03-011, the Commission adopted certain customer protections available in emergencies. The protections apply in the event the Governor of California declares a state of emergency because a disaster has either resulted in the loss or disruption of the delivery or receipt of utility service and/or resulted in the degradation of the quality of utility service. The protections adopted in D.18-08-004 include the following: (a) support for low-income customers; (b) billing adjustments; (c) deposit waivers; (d) extended payment plans; (e) suspension of disconnection and nonpayment fees; (f) repair processing and timing; (g) access to utility representatives; (h) outage reporting; and (g) emergency communications.

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## **8.2. Discussion- Support to Utility Customers During and After a Wildfire**

While parties did not specifically address R.18-03-011, PG&E is obligated to comply with the protections afforded in declared emergencies. Further, SB 901 contains several provisions related to an electrical corporation's emergency preparedness, response and communications before, during and after a wildfire.

Pub. Util. Code Sections 8386(c)(13), (16) and (17) require a WMP to contain emergency preparedness and response plans that comply with mandates involving communications with cities and counties, preparation for and restoration of service after a wildfire, and public outreach. Specifically, the statute requires the WMP filer to share its plan with relevant cities and counties to provide input and feedback, and update and improve the plan at least every two years. It also requires the WMP to list persons responsible for plan execution, establish procedures for notifying impacted customers, establish protocols for restoration of service, and create a workforce mobilization plan for its employees before and after a wildfire. The statute mandates that a WMP include a plan for community outreach and public awareness before, during, and after a wildfire in an array of languages including English, Spanish, and the top three languages in California as determined by United States census data.

Pub. Util. Code Section 8386(c)(18) requires a WMP to comply with the requirements we adopted in D.18-08-004 (R.18-03-011) requiring emergency customer support during and after a wildfire. The requirements are: (a) support for low-income customers; (b) billing adjustments; (c) deposit waivers; (d) extended payment plans; (e) suspension of disconnection and nonpayment fees; (f) repair processing and timing; (g) access to utility representatives; and (h) access to outage reporting and emergency communications.



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Decision 18-08-004 also requires an electric utility to discontinue billing and prorate any monthly access charge or minimum charges to the customer after a wildfire. Additionally, when implementing support for low-income residential customers, D.18-08-004 requires an IOU to contact all community outreach contractors and community-based organizations who assist in enrolling hard-to-reach low-income customers into CARE after a wildfire (or other listed emergency). The decision adopts a method for the IOU to track its expenses related to the customer protections.

## **9. Metrics, Monitoring and Reporting**

### **9.1. PG&E's WMP Proposal - Metrics, Monitoring and Reporting**

Section 6 of PG&E's WMP discusses Performance Indicators and Monitoring. In this section, PG&E refers to targets and indicators, rather than goals and metrics. PG&E defines a target as a work performance goal that reflects either work done to reduce risk or the quality of that work. PG&E states that it will refine these targets each year, and will evaluate its performance against the goals outlined in the previous year's Plan. PG&E intends to continue to set goals for risk reductions.

PG&E uses metrics it calls indicators to assess the Plan's performance in reducing wildfire ignitions. PG&E expects to use these indicators to identify and track trends resulting from performance of the Plan's programs. PG&E states it will monitor trends to understand the impact of its programs, and explains that it may change and reprioritize programs based on these indicators. In addition to monitoring and internal and external auditing of programs, PG&E notes an Independent Evaluator will review Plan performance and report directly to the Commission.



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PG&E includes work performance targets for 2019 for each program, as set forth in Table 9, Section 4 of its WMP. PG&E asserts that these targets are intended to enable the Commission to evaluate compliance with its Plan.

## **9.2. Parties' Comments – Metrics, Monitoring, and Reporting**

The parties' main critiques of PG&E's proposed metrics can be summarized as follows:

- Merely performing a certain amount of work does not necessarily improve safety if the right work is not selected or if the work is not done properly.
- To track performance over time and provide input into future WMPs, utilities will need to collect historical and trend data in addition to ignition data.
- Utility-specified goals for performing a certain amount of work should not be used to assess whether PG&E has complied with its Plan.
- At this initial stage in the implementation of SB 901, utility compliance with wildfire mitigation should be measured by their compliance with existing rules, regulations and standards that are designed to prevent catastrophic wildfires.
- Indicators could be useful metrics if their improvement is correlated with reduction in the risk of catastrophic wildfires.
- For future plans, PG&E should provide more detail regarding risk analysis, risk-spend efficiency, and alternative strategies.

Parties express concerns about several aspects of PG&E's proposed targets and indicators. Specifically, several parties argue that PG&E's targets concentrate too much on inputs (numbers of trees cut or miles of covered conductor installed) rather than results or outputs (the effectiveness of such mitigation in reducing ignitions, faults or wire down events). Parties assert that

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the appropriate evaluation of the WMP's effectiveness should reflect how well PG&E's proposed mitigations reduce the risk of catastrophic wildfires, rather than whether PG&E has met its own operational targets.

TURN, for example, suggests that simply performing a certain volume of work does not necessarily promote safety if the work is not properly targeted and not performed properly. Further, while PG&E's performance of the work described in its WMP should be monitored and evaluated, TURN argues that its specific targets for work to be performed should not be treated as compliance requirements triggering potential violations and penalties.

Similarly, Mr. William Abrams characterizes PG&E's proposed metrics as focusing on activities, rather than risk. PG&E disagrees and argues that its targets and indicators are both measurable and verifiable, by including specific data and numbers that can be readily verified and measured. Multiple parties suggest that PG&E should have an expected risk reduction goal/target included in its Plan for each measure.

Some parties recommend that, given the evolving and dynamic nature of conditions that can impact these indicators, PG&E should be required to provide more specific information about the time and location of ignitions or other relevant incidents such as the FPI rating, wind speed measurements, and HTFD location. Parties assert that PG&E does not discuss how data from metrics contained in its past FPPs influenced the content or direction of the WMP.

OSA proposes that additional Commission metrics be developed. For example, OSA suggests that PG&E should track the number of wires down, the number of wires down that remain energized, and its response time to wires down reports.

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Along these lines, MGRA recommends tracking performance, including outage data. MGRA suggests that if utilities collect historical and trend data, those results could be used to inform future WMPs. For example, MGRA analyzed SDG&E's outage data showing that SDG&E's vegetation management program that targeted the highest risk areas had a noticeable effect on outages in those areas when wind speed was included. MGRA believes that if circuits are redesigned over time to be more granular, PG&E could use trend data to identify the factors correlated with risk, which would allow PG&E to target mitigation measures more effectively, such as enabling isolated shut-off.

Cal Advocates and EPUC note that PG&E's WMP does not identify the risk reduction or risk spend efficiency (RSE) of its proposed mitigation measures. In its Reply, PG&E notes that such information is now found in proceedings such as RAMP and the GRC.

EPUC criticizes the lack of a causal relationship between a particular mitigation measure and indicator or outcome. As EPUC points out, PG&E will perform its proposed mitigation work and will analyze the trends in indicators, but there does not appear to be a way to connect the mitigation measure with any specific outcome. EPUC also states that because PG&E does not establish a target for actual risk reduction, we cannot evaluate whether a mitigation measure achieves its intended level of risk reduction, thus cost-effectively addressing existing and future risks. Similarly, CEJA recommends that PG&E develop metrics to assess the effectiveness of its mitigation measures, and should change its activities if data shows that those are not as effective as other options in reducing risk of catastrophic wildfires.

In its response to party comments, PG&E describes its current data collection activities, which include tracking of wires down and other aspects of

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performance recommended by parties. PG&E disputes the claim that its recommended indicators are not causally related to risk reduction. PG&E asserts that changes in wires down and equipment-caused ignitions can be correlated to where PG&E has performed system hardening, so if there are fewer such events in the areas where PG&E has conducted system hardening, this may be one indicator of the success of this program. Similarly, PG&E asserts that the amount of EVM can be correlated to vegetation-caused outages and ignitions. PG&E acknowledges there may be other factors causing wires down or ignitions, but argues that having specific measurable operational targets and programs will assist in measuring performance of the programs.

EPUC's comments suggest a need for further refinement to PG&E's metrics, and GPI discusses the value of using both activity-based and performance-based metrics. GPI and others also argue that it is not enough to compare the activity metrics with the targets; PG&E should also provide sufficient context to understand whether there is a substantial benefit from the activity.

### **9.3. Discussion – Metrics, Monitoring, and Reporting**

While PG&E discusses items that it characterizes as “metrics,” merely counting numbers of measures does not get at the statutory requirement to reduce catastrophic wildfire. While such counting may give the Commission an indication of PG&E's activities, metrics are supposed to help “evaluate the plan's performance” according to Pub. Util. Code Section 8386(c)(4). This evaluation must consider whether the Plan is effective in mitigating the risk that SB 901 is focused on: the risk of catastrophic wildfire. Pub. Util. Code Section 8386(a) (“Each electrical corporation shall construct, maintain, and operate its electrical

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lines and equipment in a manner that will minimize the risk of catastrophic wildfire posed by those electrical lines and equipment.”)

PG&E’s WMP does not contain significant analysis of the effectiveness of PG&E’s FPPs or how past experience under the FPPs informed the WMP, and the great majority of the “metrics” proposed in PG&E’s WMP are better characterized as program execution targets.

The aim of the WMP portion of the statute is clear: *“Each electrical corporation shall construct, maintain, and operate its electrical lines and equipment in a manner that will minimize the risk of catastrophic wildfire posed by those electrical lines and equipment.”* Pub. Util. Code Section 8386(a) (emphasis added). Every aspect of the Plan, including metrics, must be analyzed with this goal in mind.

Even if the risk elements associated with fire spread potential are not directly in the control of utilities, it is imperative to track data showing when and where ignitions are occurring to properly evaluate and scope the risk of catastrophic wildfires posed by electrical lines and equipment. Accordingly, metrics that track the number of elevated fire danger days (whether Red Flag Warnings, Fire Potential Index ratings, or National Fire Danger Rating System data are used as the indicator), and the number and types of potential ignition events (*e.g.*, wire down, blown fuses, vegetation contact, etc.) that occur on those days are imperative. Such metrics can provide the type of insight needed to better understand and properly analyze the risk of catastrophic fires caused by electrical lines and equipment.

We expect continuous refinement of the metrics, with input from the parties, as more experience is gained under the annual WMP filing process. As we have discussed in previous sections, many of the proposed mitigation measures target the same risks, stacking multiple mitigation measures on top of

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each other, making it nearly impossible to decipher the risk reductions attributable to individual mitigations. We cannot find, as PG&E suggests, that each measure meets a different need. In addition, with regard to “targets,” in terms of quantifying work done, we agree with the many parties that contend targets do not qualify as metrics for Plan performance. Metrics are not intended to support the Commission’s ability to determine whether the utility is in compliance with the WMP, but rather to inform the Commission on whether the programs proposed in the WMP are effective at minimizing the risk of catastrophic wildfire from electrical lines and equipment. To that end, PG&E’s “indicators” or “metrics” must identify and track trends associated with utility-caused wildfires.

The annual WMP filings will be an iterative process as information is collected and knowledge gained. However, going forward, metrics found in the WMP should explain how the programs and strategies in the Plan measurably reduce the risk of catastrophic wildfire posed by utility assets, while ensuring that the various programs target different risks and are not redundant. There must be a way to connect the mitigation measure with the outcome to evaluate the efficacy of the measure.

Metrics that would be useful and informative, and that one or more IOU proposed in a WMP, include those listed below. This decision requires PG&E to work with the Commission’s Safety and Enforcement Division (SED) on a template for reporting each of these data points in a format that is consistent with other IOUs, and orders follow-up workshop(s) led by SED.

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- Wire Down Events Within HFTD Areas;
  - The number of wire down events within HFTD areas, when the FPI is rated as very-high or higher.
- Equipment Caused Ignitions in HFTD Areas;
- Vegetation Caused Outages in HFTD Areas;
  - The number of vegetation caused outages within HFTD areas, when the FPI is rated as very-high or higher.
- Vegetation Caused Ignitions in HFTD Areas;
- Faults on Circuits in HFTD;
  - Counts of all faults on HFTD circuits associated with contact from object or equipment failures.
- Number of Conventional Blown Fuse Events.
- Number of National Fire Danger Rating System (NFDRS)<sup>15</sup> “Very Dry” and “Dry” Days.

#### **10. Should PG&E’s 2019 Wildfire Mitigation Plan Be Approved**

PG&E’s WMP contains each of the elements required by Pub. Util. Code Section 8386(c). PG&E shall comply with the reporting, metrics, advice letter, and other follow-up requirements set forth in this decision in order to address concerns with its existing WMP and improve its next WMP filings.

In response to an ALJ Ruling requesting RSEs for all its proposed WMP mitigations, PG&E points to workpapers in its 2020 GRC.<sup>16</sup> We note, however, that PG&E did not prepare a RSE analysis for WMP mitigations that are not in its 2020 GRC.

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<sup>15</sup> NFDRS is used in the United States to provide a measure of the relative seriousness of burning conditions and threat of fire.

<sup>16</sup> PG&E February 26, 2019 Response to February 21, 2019 ALJ Ruling, at 7.



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TURN's comments on the level of risk analysis needed in a WMP is useful. PG&E's WMP does not discuss how the company analyzed and prioritized risks, for example, through the use of a Multi-Attribute Value Function (MAVF). A MAVF is a key tool for combining all possible consequences of a risk event in a single measure and is critical to a quantitative risk analysis.<sup>17</sup> TURN notes that in the recent S-MAP settlement, the utilities have agreed to principles for properly constructing a MAVF and that the RAMP and rate case provide the opportunities to determine whether the utility's proposed programs are supported by a reasonable quantitative risk assessment. Because the WMPs do not include these key details, it is not possible to determine whether the portfolio of mitigations PG&E has selected for its WMP are optimal.

We expect that PG&E, in its future WMPs, will analyze the effectiveness of all its wildfire prevention measures, and in doing so will not rely solely on activity-based performance metrics such as the number of trees cleared or the miles of powerline inspected and/or hardened to evaluate the merit of their targets. Performance-based metrics such as those advocated by consumer groups, such as deaths, injuries and property damage sustained in wildfire events have a role in measuring the efficacy of PG&E's catastrophic wildfire prevention measures, although we recognize that certain wildfires may be based on factors beyond a utility's control.

## **11. Comments on Proposed Decision**

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<sup>17</sup> With a well-constructed MAVF, and other elements adopted in the Commission's S-MAP decisions, a utility can capture in one measure all of the trade-offs with a mitigation measure, such as de-energization, which can prevent the consequences of a catastrophic wildfire but has its own adverse consequences including harm to health and safety from extended blackouts, the financial harm to businesses and individuals experiencing lengthy outages, and environmental harm from use of back-up power such as diesel generators.



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The proposed decision of ALJ Sarah R. Thomas and ALJ Peter V. Allen in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. In accordance with the May 7, 2019 ALJ ruling, parties filed a single set of comments on the five decisions on electrical corporations' individual WMPs. The following parties filed comments addressing one or more of the WMP proposed decisions: RCRC on May 13, 2019; CEJA on May 16, 2019; and William B. Abrams, BVES, City of Malibu, City of Placerville, the Joint Local Governments (County of Mendocino, County of Napa, County of Sonoma, and City of Santa Rosa), EBMUD, GPI, Horizon West, Liberty, MGRA, PG&E, PacifiCorp, POC, CalPA, SDG&E, SBUA, SCE, and TURN on May 20, 2019. Reply comments were filed on May 28, 2019 by CEJA, BVES, GPI, MGRA, PG&E, PacifiCorp, POC, CalPA, SDG&E, and TURN. We have made changes throughout this decision reflecting party comments.

## **12. Assignment of Proceeding**

Michael Picker is the assigned Commissioner and Sarah R. Thomas and Peter V. Allen are the assigned ALJs in this proceeding.

### **Findings of Fact**

1. PG&E's WMP includes all of the elements listed in SB 901, Pub. Util. Code Section 8386(c).
2. Some of the elements PG&E includes in its WMP require reporting, data gathering or other follow-up to ensure PG&E's actions contribute to lowering the risk of catastrophic wildfire.
3. United States Census data shows that the top three primary languages used in California other than English and Spanish are Chinese (including Cantonese, Mandarin and other Chinese languages), Tagalog, and Vietnamese.

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4. PG&E filed a second amended WMP on April 25, 2019.

### **Conclusions of Law**

1. An electrical corporation's WMP is required to include all 19 elements listed in SB 901, Pub. Util. Code Section 8386(c), as well as any material required by the Commission.

2. PG&E's WMP contains the elements required by Pub. Util. Code Section 8386(d). Subject to the reporting, metrics, data and advice letter requirements set forth below, PG&E's WMP should be approved.

3. PG&E should conduct reporting, data gathering and other follow-up information on mitigations proposed in its WMP to ensure those mitigations contribute to lowering the risk of catastrophic wildfire.

4. PG&E should provide a summary in future WMPs of its inspections in HFTD areas to inform decisionmakers about whether the fire mitigation measures proposed in its WMP are properly directed or need adjustment.

5. PG&E should be required to include in its future WMPs the metrics it intends to use to determine the quality and the effectiveness of the WSIP in preventing catastrophic wildfires started by utility ignitions.

6. In future WMPs, PG&E should analyze the effectiveness of all of its wildfire prevention measures, and in doing so should not rely only on activity-based metrics.

7. In future WMPs, PG&E should provide more information on the efficacy and cost-effectiveness of its proposed system hardening activities, along with more information on the costs and benefits of alternative options and additional staffing.

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8. PG&E should include in future WMPs analysis of how recloser disabling, combined with other system protection strategies that can minimize the risk of ignitions, could reduce the need for circuit reconductoring or PSPS events.

9. In future WMPs, PG&E should analyze available data to determine the degree to which the new minimum clearance requirements and recommended clearance at time of trim in HFTD have contributed to a reduced incidence of ignitions, especially during critical weather conditions.

10. In future WMPs, PG&E should explain how it will take advantage of skilled labor and other resources from state and local government departments to support the company's inspection work and other aspects of its Plan.

11. In future WMPs, PG&E should provide more detailed risk analysis that weighs the potential benefits of various system hardening measures in HFTD and along the roads that provide ingress and egress for communities.

12. PG&E should provide additional information on how it intends to make its internal data and modeling results available to State and local governments and first responders through a web portal or other access point via a Tier 1 Advice Letter due no later than 30 days after the Commission issues this decision.

13. No later than its 2020 WMP, PG&E should provide specific information regarding how PG&E will provide access to situational awareness data in real time by critical service providers (*e.g.*, first responders and other local entities).

14. No later than its 2020 WMP, PG&E must include specific procedures it will use to notify critical service providers (through the WSOC or otherwise) of situational awareness information, alerts, incident reports, models for assessing fire risk, and other risk analysis. The procedures will likely be different depending on whether the information will be shared ahead of time, or in real time, during a potential or actual emergency

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15. PG&E must explain no later than its 2020 WMP how it intends to communicate effectively the fire and weather data and modeling information from its WSOC in real time during potential or actual emergency events with affected agencies, governments, or first responders.

16. PG&E's future WMPs should address how PG&E has disseminated information to governments and first responders during the previous planning year, how effective the communications and information-sharing has been, and what measures PG&E will take, in the upcoming planning year, to address any unanswered questions about PG&E's information-sharing process.

17. PG&E should provide evaluation of alternatives or comparison studies to evaluate whether all circuit miles of conductor in the HFTD should be covered. PG&E's 2020 WMP should consider alternatives to system hardening such as high impedance fault detectors, disabling reclosers and increased protection sensitivity, and additional staffing.

18. PG&E's 2020 WMP should provide analyses regarding pole materials, including fire resiliency and impacts on strength characteristics following a fire, that can inform PG&E's recommendation as to different non-wood materials for distribution versus transmission structures, and why and in what circumstances these materials are superior to wood poles.

19. PG&E's 2020 WMP should identify the number of miles that will be addressed through system hardening in 2020 and by 2024, as well as to identify if the proposed system hardening work is redundant with other risk reduction programs.

20. PG&E's 2020 WMP should analyze the relationship between enhanced vegetation management and system hardening. In particular, PG&E should propose a means to measure how various mitigation measures reduce risk of

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catastrophic wildfires, and whether system hardening will achieve the same efficiencies used alone as when used in combination with other mitigation measures.

21. PG&E's 2020 WMP should consider whether the scope of enhanced vegetation management (EVM) can be reduced in areas where PG&E has hardened its system.

22. During this cycle, PG&E should only remove healthy trees if the utility has evidence that those trees pose a risk to utility electric facilities under wildfire ignition conditions, based on the opinion of a certified arborist.

23. PG&E's 2020 WMP should include the results of PG&E's investigations into those areas in their service territory most susceptible to increased wind risk, causing or exacerbating catastrophic wildfires, and showing the results of inspections and possible prioritization of those areas for targeting system hardening.

24. PG&E's 2020 WMP should report on the results of its topographical investigation, developing targeted enhanced inspections (of both overhead distribution and transmission facilities) and whether structural improvements are necessary for its most vulnerable assets in these areas.

25. PG&E's 2020 WMP should consider prioritizing the replacement of PG&E's existing small #6 copper conductor located within Tiers 2 and 3 with the highest ranking available in their circuit hardening prioritization methodology and provide appropriate analysis supporting its determination.

26. PG&E's 2020 WMP should provide analyses evaluating the efficacy of past operational practices and investments in limiting ignitions, especially in HFTD and during high risk weather conditions.

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27. PG&E's 2020 WMP should use the quantitative risk assessment framework adopted in D.18-12-014 in the Safety Model Assessment Proceeding to evaluate and compare the cost effectiveness of each of the mitigations that were under consideration in developing the WMP. The WMP should provide the risk spend efficiency (RSE) results of the quantitative risk analysis and include an explanation of the Multiple Attribute Value Framework that was used and how it was constructed.

28. PG&E should consider Office of Safety Advocates' (OSA) points related to unique topography as it conducts its topographical investigation and reports those results in the 2020 WMP.

29. If recloser disabling, perhaps combined with other system protection strategies, can eliminate the risk of ignitions, those strategies could reduce the need for circuit reconductoring or power shutoffs. This analysis should be included in PG&E's next WMP.

30. PG&E should give the following customer support to utility customers affected by a wildfire, during and after a wildfire: (a) support for low-income customers; (b) billing adjustments; (c) deposit waivers; (d) extended payment plans; (e) suspension of disconnection and nonpayment fees; (f) repair processing and timing; (g) access to utility representatives; and (h) access to outage reporting and emergency communications.

31. Official notice is taken, pursuant to Rule 13. 9 of the Commission's Rules of Practice and Procedure, that United States Census data shows that the top three primary languages used in California other than English and Spanish are Chinese (including Cantonese, Mandarin and other Chinese languages), Tagalog, and Vietnamese. In addition to those languages the utilities should conduct

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outreach in Korean and Russian, where those languages are prevalent in its service territory.

32. PG&E should communicate its WMP's emergency preparedness outreach and response in English, Spanish, Chinese (including Cantonese, Mandarin and other Chinese languages), Tagalog, and Vietnamese as well as Korean and Russian, where those languages are prevalent in its service territory.

33. In future Wildfire Mitigation Plans, PG&E should describe how it tracks and manages "at-risk" species of trees. Pacific Gas and Electric Company should reconduct its analysis to determine proper "at-risk" trees, instead of relying on number of incidents by species and work or removal based solely on species-type, and include all vegetation caused outages and wire down events in the analysis and not simply rely on "vegetation caused ignition data."

34. All critical service providers should have a direct contact with PG&E within its Emergency Operations Team structure. PG&E should consider in future Wildfire Mitigation Plans whether certain small businesses qualify as critical services and thus should have a direct contact with PG&E's Emergency Operations Team structure.

35. In future WMPs, PG&E's metrics should measure how the programs and strategies in the Plan effectively minimize the risk of catastrophic wildfire posed by utility assets, without redundancy among programs.

36. PG&E's future WMPs should include metrics regarding customer outreach.

37. PG&E should extend bill payment arrangements to PG&E customers whose employment is impacted by wildfires.

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38. PG&E should be required to work with the Commission's Safety and Enforcement Division on a template for reporting each of these data points in a format that is consistent with other WMP filers.

39. PG&E's second amended WMP was filed too late to be considered and approved in this decision.

40. PG&E is not allowed to seek or obtain double recovery of the costs tracked in its Pub. Util. Code Section 8386(e) memorandum account in any other account, including the memorandum account described in Pub. Util. Code Section 8386(j), which the utility established with the Commission's Energy Division's approval. Pub. Util. Code Section 8386(j) describes this account as follows: "(j) Each electrical corporation shall establish a memorandum account to track costs incurred for fire risk mitigation that are not otherwise covered in the electrical corporation's revenue requirements."

## **O R D E R**

**IT IS ORDERED** that:

1. Pacific Gas and Electric Company's (PG&E's) Wildfire Mitigation Plan contains the elements required by Public Utilities Code Section 8386(c). Subject to the reporting, metrics, data and advice letter requirements set forth below, PG&E's Wildfire Mitigation Plan is approved.

2. Pacific Gas and Electric Company shall comply with the reporting, metrics, advice letter, and other follow-up information requirements set forth in this decision.

3. Pacific Gas and Electric Company shall include in its future Wildfire Mitigation Plans a summary of the results of the detailed inspections it conducts in the High Fire-Threat District Tier 2 and 3 area of its service territory to allow



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assessment of whether the fire mitigation measures proposed in the Wildfire Mitigation Plan are properly directed or need adjustment.

4. Pacific Gas and Electric Company shall in its future Wildfire Mitigation Plans include the results of its topographical investigations into those areas most susceptible to increased wind risk, causing or exacerbating catastrophic wildfires. It shall also show the results of targeted enhanced inspections (of both overhead distribution and transmission facilities), whether structural improvements are necessary for its most vulnerable assets in these areas, and prioritization of such areas for targeting system hardening.

5. Pacific Gas and Electric Company shall in future Wildfire Mitigation Plans provide analyses regarding pole materials, including fire resiliency and impacts on strength characteristics following a fire, which can inform why the utility recommends non-wood materials for distribution versus transmission structures, and why and in what circumstances these materials are superior to wood poles.

6. No later than its 2020 Wildfire Mitigation (WMP), Pacific Gas and Electric Company (PG&E) shall include specific procedures it will use to notify state and local governments and first responders of situational awareness information, alerts, incident reports, models for assessing fire risk, and other risk analysis, including providing information in real time during potential or actual emergency events. Due to the level of concern over whether the proposed system hardening work is redundant to other risk reduction programs, Pacific Gas and Electric Company shall in its 2020 Wildfire Mitigation Plan analyze the relationship between enhanced vegetation management and system hardening, and whether the scope of enhanced vegetation management can be reduced in areas where Pacific Gas and Electric Company has hardened its system. In particular, Pacific Gas and Electric Company shall develop metrics to measure

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how various mitigation activities reduce risk of catastrophic wildfires, and whether system hardening will achieve the same efficiencies used alone as when used in combination with other mitigation measures. Pacific Gas and Electric Company's metrics in future Wildfire Mitigation Plans shall explain how the programs and strategies in the Plans effectively minimize the risk of catastrophic wildfire posed by utility assets, without redundancy among programs. In future Wildfire Mitigation Plans, Pacific Gas and Electric Company shall provide more information on the efficacy and cost-effectiveness of its proposed system hardening activities, along with more information on the costs and benefits of alternative options. Pacific Gas and Electric Company shall include in its future Wildfire Mitigation Plans the metrics to determine the quality and the effectiveness of its Wildfire Safety Inspection Program in preventing catastrophic wildfires started by utility ignitions, especially in High Fire Threat District and during high-risk weather conditions.

7. During this cycle, Pacific Gas and Electric Company shall only remove healthy trees if the utility has evidence that those trees pose a risk to utility electric facilities under wildfire ignition conditions, based on the opinion of a certified arborist.

8. Pacific Gas and Electric Company shall use the quantitative risk assessment framework adopted in D.18-12-014 in the Safety Model Assessment Proceeding to evaluate and compare the cost effectiveness of each of the mitigations that were under consideration in developing the Wildfire Mitigation Plan. The Wildfire Mitigation Plan shall provide the risk spend efficiency results of the quantitative risk analysis and include an explanation of the Multi-Attribute Value Framework that was used and how it was constructed.

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9. In future Wildfire Mitigation Plans, PG&E shall describe how it tracks and manages “at-risk” species of trees. Pacific Gas and Electric Company shall reconduct its analysis to determine “at-risk” trees, instead of relying on number of incidents by species and work or removal based solely on species-type. PG&E shall include all vegetation caused outages and wire down events in the analysis and not simply rely on “vegetation caused ignition data.”

10. Pacific Gas and Electric Company shall in future Wildfire Mitigation Plans include metrics regarding customer outreach.

11. In a Tier 1 Advice Letter filing due no later than 30 days after the Commission issues this decision, Pacific Gas and Electric Company shall articulate a plan for communicating the fire and weather data and modeling information from its Wildfire Safety Operations Center in real time during potential or actual emergency events to affected agencies, governments, and first responders. All such critical service providers shall have a direct contact with Pacific Gas and Electric Company within its Emergency Operations Team structure. The Tier 1 Advice Letter must contain Pacific Gas and Electric Company’s situational awareness plans, including information on how it intends to share the information and analysis with first responders and others. As part of this filing, Pacific Gas and Electric Company shall explain fully the Wildfire Safety Operations Center’s decision-making criteria, the point(s) at which fire-related information will be communicated, and what media Pacific Gas and Electric Company plans to use to communicate this information to first responders and local government agencies and other critical service providers and its timeline for developing the process for disseminating this information.

12. Pacific Gas and Electric Company shall in its next Wildfire Mitigation Plan follow up on the Tier 1 Advice Letter by providing specific information

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regarding access to situational awareness data in real time to critical service providers (*e.g.*, first responders and other local entities), including how it will make its internal data and modeling results available to State and local governments and first responders through a web portal or other access point.

13. Pacific Gas and Electric Company shall in its next Wildfire Mitigation Plan include the specific procedures it intends to use to notify critical service providers through the Wildfire Safety Operations Center or otherwise of situational awareness information, alerts, incident reports, modeling information and risk analysis in real time.

14. Pacific Gas and Electric Company shall explain in its next Wildfire Mitigation Plan how it intends to communicate effectively the fire and weather data from its Wildfire Safety Operations Center during potential or actual emergency events with affected agencies, governments, or first responders.

15. Future Wildfire Mitigation Plans shall describe how Pacific Gas and Electric Company has disseminated this fire and weather data and modeling information to governments and first responders during the previous planning year, how effective the communications and information-sharing has been, and what measures Pacific Gas and Electric Company will take in the year covered by the relevant Wildfire Mitigation Plan to improve communications with local governmental entities, providers of critical services, and first responders.

16. No later than its 2020 Wildfire Mitigation Plan, Pacific Gas and Electric Company shall include specific procedures it will use to notify state and local governments and first responders of situational awareness information, alerts, incident reports, models for assessing fire risk, and other risk analysis, including providing information in real time during potential or actual emergency events.

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17. Pacific Gas and Electric Company's future WMPs shall also address how the utility disseminated this information the previous Wildfire Mitigation Plan cycle, the effectiveness of the communications and information-sharing, complaints or concerns expressed about the utility's communication and information-sharing, and what measures Pacific Gas and Electric Company will take in the upcoming planning year to address any unanswered questions.

18. Pacific Gas and Electric Company shall work with the Commission's Safety and Enforcement Division on a template for reporting each of the data points required in this decision in a format that is consistent with the other respondent electrical corporations.

19. Pacific Gas and Electric Company shall in future Wildfire Mitigation Plans explicitly identify any mitigation that uses new or untested technologies.

20. Pacific Gas and Electric Company (PG&E) shall in future Wildfire Mitigation Plans include the fire incident data required by Decision 14-12-015, and data on "wire down" and fault events. Pacific Gas and Electric Company shall include the following data in this reporting: (1) date and time of the wire-down event or fault; (2) location information with latitude and longitude coordinates, pole number, and location in the High Fire-Threat District areas; (3) circuit name and operating voltage; (4) type of conductor; (5) installation date; (6) number of splices in span; (7) type of each splice identified; (8) identification of failure point; (9) cause of failure; and (10) magnitude and duration of fault current. In all future ignition report filings, we direct Pacific Gas and Electric Company to include all ignition data for previously unreported ignitions, and if applicable, where the investigating fire agency determined utility facilities to be the cause of ignition.

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21. Pacific Gas and Electric Company may open the memorandum account described in Public Utilities Code Section 8386(e), which provides: “At the time it approves each plan, the commission shall authorize the utility to establish a memorandum account to track costs incurred to implement the plan.”

22. Pacific Gas and Electric Company may not seek or obtain double recovery of the costs tracked in the Section 8386(e) account authorized in the previous paragraph, and the costs tracked in the memorandum account described in Public Utilities Code Section 8386(j), which the utility established with Energy Division’s approval. The Section 8386(j) account is described in Senate Bill 901 as follows: “(j) Each electrical corporation shall establish a memorandum account to track costs incurred for fire risk mitigation that are not otherwise covered in the electrical corporation’s revenue requirements.

23. In future Wildfire Mitigation Plans, Pacific Gas and Electric Company shall explain how it will take advantage of skilled labor and other resources from state and local government departments to support the company’s inspection work and other aspects of its Wildfire Mitigation Plan.

24. Pacific Gas and Electric Company shall extend bill payment arrangements for customers whose employment is impacted by wildfires.

25. Nothing in this decision relieves Pacific Gas and Electric Company of the requirement to conform all of the activities described in its Wildfire Mitigation Plan to existing law, regulation and Commission General Orders.

26. Pacific Gas and Electric Company shall give the following customer support to utility customers affected by a wildfire, during and after a wildfire: (a) support for low-income customers; (b) billing adjustments; (c) deposit waivers; (d) extended payment plans; (e) suspension of disconnection and nonpayment fees; (f) repair processing and timing; (g) access to utility

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representatives; and (h) access to outage reporting and emergency communications.

25. Pacific Gas and Electric Company shall communicate its plan for community outreach and public awareness before, during, and after a wildfire be communicated in English, Spanish, Chinese (including Cantonese, Mandarin and other Chinese languages), Tagalog, and Vietnamese. In addition to those languages, Pacific Gas and Electric Company shall provide outreach in Korean and Russian, where those languages are prevalent in its service territory. 26. Nothing in this decision changes the notice, communication, outreach or other requirements of the Commission's de-energization decision issued concurrently in Rulemaking 18-12-005.

27. This decision does not act on the second amended Wildfire Mitigation Plan filed by Pacific Gas and Electric Company on April 25, 2019. The activities proposed or described therein are not approved, and will be examined in Phase 2 of this proceeding.

28. Rulemaking 18-10-007 remains open.

This order is effective today.

Dated May 30, 2019, at San Francisco, California.

MICHAEL PICKER  
President  
LIANE M. RANDOLPH  
MARTHA GUZMAN ACEVES  
CLIFFORD RECHTSCHAFFEN  
GENEVIEVE SHIROMA  
Commissioners

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**Appendix A -  
List of Requirements in SB 901 for WMPs**

8386.

(c) The wildfire mitigation plan shall include:

(1) An accounting of the responsibilities of persons responsible for executing the plan.

(2) The objectives of the plan.

(3) A description of the preventive strategies and programs to be adopted by the electrical corporation to minimize the risk of its electrical lines and equipment causing catastrophic wildfires, including consideration of dynamic climate change risks.

(4) A description of the metrics the electrical corporation plans to use to evaluate the plan's performance and the assumptions that underlie the use of those metrics.

(5) A discussion of how the application of previously identified metrics to previous plan performances has informed the plan.

(6) Protocols for disabling reclosers and deenergizing portions of the electrical distribution system that consider the associated impacts on public safety, as well as protocols related to mitigating the public safety impacts of those protocols, including impacts on critical first responders and on health and communication infrastructure.

(7) Appropriate and feasible procedures for notifying a customer who may be impacted by the deenergizing of electrical lines. The procedures shall consider the need to notify, as a priority, critical first responders, health care facilities, and operators of telecommunications infrastructure.

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(8) Plans for vegetation management.

(9) Plans for inspections of the electrical corporation's electrical infrastructure.

(10) A list that identifies, describes, and prioritizes all wildfire risks, and drivers for those risks, throughout the electrical corporation's service territory, including all relevant wildfire risk and risk mitigation information that is part of Safety Model Assessment Proceeding and Risk Assessment Mitigation Phase filings. The list shall include, but not be limited to, both of the following:

(A) Risks and risk drivers associated with design, construction, operations, and maintenance of the electrical corporation's equipment and facilities.

(B) Particular risks and risk drivers associated with topographic and climatological risk factors throughout the different parts of the electrical corporation's service territory.

(11) A description of how the plan accounts for the wildfire risk identified in the electrical corporation's Risk Assessment Mitigation Phase filing.

(12) A description of the actions the electrical corporation will take to ensure its system will achieve the highest level of safety, reliability, and resiliency, and to ensure that its system is prepared for a major event, including hardening and modernizing its infrastructure with improved engineering, system design, standards, equipment, and facilities, such as undergrounding, insulation of distribution wires, and pole replacement.

(13) A showing that the utility has an adequate sized and trained workforce to promptly restore service after a major event, taking into account employees of other utilities pursuant to mutual aid agreements and employees of entities that have entered into contracts with the utility.

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(14) Identification of any geographic area in the electrical corporation's service territory that is a higher wildfire threat than is currently identified in a commission fire threat map, and where the commission should consider expanding the high fire threat district based on new information or changes in the environment.

(15) A methodology for identifying and presenting enterprise-wide safety risk and wildfire-related risk that is consistent with the methodology used by other electrical corporations unless the commission determines otherwise.

(16) A description of how the plan is consistent with the electrical corporation's disaster and emergency preparedness plan prepared pursuant to Section 768.6, including both of the following:

(A) Plans to prepare for, and to restore service after, a wildfire, including workforce mobilization and repositioning equipment and employees.

(B) Plans for community outreach and public awareness before, during, and after a wildfire, including language notification in English, Spanish, and the top three primary languages used in the state other than English or Spanish, as determined by the commission based on the United States Census data.

(17) A statement of how the electrical corporation will restore service after a wildfire.

(18) Protocols for compliance with requirements adopted by the commission regarding activities to support customers during and after a wildfire, outage reporting, support for low-income customers, billing adjustments, deposit waivers, extended payment plans, suspension of disconnection and nonpayment fees, repair processing and timing, access to utility representatives, and emergency communications.

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(19) A description of the processes and procedures the electrical corporation will use to do all of the following:

(A) Monitor and audit the implementation of the plan.

(B) Identify any deficiencies in the plan or the plan's implementation and correct those deficiencies.

(C) Monitor and audit the effectiveness of electrical line and equipment inspections, including inspections performed by contractors, carried out under the plan and other applicable statutes and commission rules.

(20) Any other information that the commission may require.

**(END OF APPENDIX A)**

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**Appendix B –  
Cross Reference SB 901-Wildfire Mitigation Plans**

CROSS REFERENCE TABLE 1  
Using SB 901 Organization

| Code Reference §8386(c)  | Wildfire Mitigation Plan section |
|--|----------------------------------|
| (1) An accounting of the responsibilities of persons responsible for executing the plan.   | VI.A.                            |
| (2) The objectives of the plan.  | I.                               |
| (3) A description of the preventive strategies and programs to be adopted by the electrical corporation to minimize the risk of its electrical lines and equipment causing catastrophic wildfires, including consideration of dynamic climate change risks.  | II.                              |
| (4) A description of the metrics the electrical corporation plans to use to evaluate the plan's performance and the assumptions that underlie the use of those metrics.  | VI.B.                            |
| (5) A discussion of how the application of previously identified metrics to previous plan performances has informed the plan.  | VI.C.                            |
| (6) Protocols for disabling reclosers and deenergizing portions of the electrical distribution system that consider the associated impacts on public safety, as well as protocols related to mitigating the public safety impacts of those protocols, including impacts on critical first responders and on health and communication infrastructure. | IV.A.                            |
| (7) Appropriate and feasible procedures for notifying a customer who may be impacted by the deenergizing of electrical lines. The procedures shall consider the need to notify, as a priority, critical first responders, health care facilities, and operators of telecommunications infrastructure.  | IV.F.                            |
| (8) Plans for vegetation management.   | IV.D.                            |
| (9) Plans for inspections of the electrical corporation's electrical infrastructure.   | IV.B.                            |

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| Code Reference §8386(c)  | Wildfire Mitigation Plan section |
|--|----------------------------------|
| <p><b>(10) A list that identifies, describes, and prioritizes all wildfire risks, and drivers for those risks, throughout the electrical corporation's service territory, including all relevant wildfire risk and risk mitigation information that is part of Safety Model Assessment Proceeding and Risk Assessment Mitigation Phase filings. The list shall include, but not be limited to, both of the following:</b></p> <p><b>(A) Risks and risk drivers associated with design, construction, operations, and maintenance of the electrical corporation's equipment and facilities.</b></p> <p><b>(B) Particular risks and risk drivers associated with topographic and climatological risk factors throughout the different parts of the electrical corporation's service territory.</b></p> | III.B.(1-5)                      |
| <p><b>(11) A description of how the plan accounts for the wildfire risk identified in the electrical corporation's Risk Assessment Mitigation Phase filing.</b></p>  | III.B.6.                         |
| <p><b>(12) A description of the actions the electrical corporation will take to ensure its system will achieve the highest level of safety, reliability, and resiliency, and to ensure that its system is prepared for a major event, including hardening and modernizing its infrastructure with improved engineering, system design, standards, equipment, and facilities, such as undergrounding, insulation of distribution wires, and pole replacement.</b></p>   | IV.<br>(whole section)           |
| <p><b>(13) A showing that the utility has an adequate sized and trained workforce to promptly restore service after a major event, taking into account employees of other utilities pursuant to mutual aid agreements and employees of entities that have entered into contracts with the utility.</b></p>   | V.B.3.                           |
| <p><b>(14) Identification of any geographic area in the electrical corporation's service territory that is a higher wildfire threat than is currently identified in a commission fire threat map, and where the commission should consider expanding the high fire threat district based on new information or changes in the environment.</b></p>   | III.D.                           |
| <p><b>(15) A methodology for identifying and presenting enterprise-wide safety risk and wildfire-related risk that is consistent with the methodology used by other electrical corporations unless the commission determines otherwise.</b></p>  | III.A.                           |

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| Code Reference §8386(c)   | Wildfire Mitigation Plan section |
|---|----------------------------------|
| <p>(16) A description of how the plan is consistent with the electrical corporation's disaster and emergency preparedness plan prepared pursuant to Section 768.6, including both of the following:</p> <p>(A) Plans to prepare for, and to restore service after, a wildfire, including workforce mobilization and repositioning equipment and employees.</p> <p>(B) Plans for community outreach and public awareness before, during, and after a wildfire, including language notification in English, Spanish, and the top three primary languages used in the state other than English or Spanish, as determined by the commission based on the United States Census data.</p> | V.A.<br>V.B.                     |
| <p>(17) A statement of how the electrical corporation will restore service after a wildfire.</p>  | V.B.1.                           |
| <p>(18) Protocols for compliance with requirements adopted by the commission regarding activities to support customers during and after a wildfire, outage reporting, support for low-income customers, billing adjustments, deposit waivers, extended payment plans, suspension of disconnection and nonpayment fees, repair processing and timing, access to utility representatives, and emergency communications.</p>   | V.C.                             |
| <p>(19) A description of the processes and procedures the electrical corporation will use to do all of the following:</p> <p>(A) Monitor and audit the implementation of the plan.</p> <p>(B) Identify any deficiencies in the plan or the plan's implementation and correct those deficiencies.</p> <p>(C) Monitor and audit the effectiveness of electrical line and equipment inspections, including inspections performed by contractors, carried out under the plan and other applicable statutes and commission rules.</p>  | VI.D.                            |
| <p>(20) Any other information that the commission may require.</p>  | VII.A.                           |

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CROSS REFERENCE TABLE 2  
Using Wildfire Mitigation Plan Organization

| Wildfire Mitigation Plan section  | Code Reference §8386(c) |
|---|-------------------------|
| I. Objectives consistent with §8386(a)<br>A. Categorized by following timeframes:<br>A. Before upcoming wildfire season<br>B. Before next Plan filing<br>C. Within next 5 years   | 2                       |
| II. Description of preventive strategies and programs<br>B. Categorized by following timeframes:<br>A. Before upcoming wildfire season<br>B. Before next Plan filing<br>C. Within next 5 years  | 3                       |
| III. Risk Analysis and Risk Drivers<br>A. Safety and wildfire risk identification and assessment methodology  | 15                      |
| B. Wildfire risks and drivers list<br>C. Listed in the following categories:<br>1. Design and Construction<br>2. Inspection and Maintenance<br>3. Operational Practices<br>4. Situational/Conditional Awareness<br>5. Response and Recovery | 10                      |
| C. Description of how plan accounts for wildfire risk identified in RAMP  | 11                      |
| D. Service territory fire-threat evaluation   | 14                      |
| IV. Wildfire Prevention Strategies and Programs<br>D. Operational practices   | 6      12               |

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| <b>Wildfire Mitigation Plan section</b>   | <b>Code Reference<br/>§8386(c)</b> |    |
|---|------------------------------------|----|
| E. Inspection and maintenance plans   | 9                                  |    |
| F. System hardening to achieve highest level of safety, reliability, and resiliency |                                    |    |
| G. Vegetation management plan   | 8                                  |    |
| H. Situational awareness protocols and determination of local conditions            |                                    |    |
| I. De-energization protocol   | 7                                  |    |
| J. Alternative technologies   |                                    |    |
| K. Post-incident recovery, restoration, and remediation activities                  |                                    |    |
| V. Emergency Preparedness and Response  |                                    | 16 |
| A. General description of overall plan  |                                    |    |
| B. Description of consistency with emergency preparedness and response plan         |                                    |    |
| 1. Service restoration plan   | 17                                 |    |
| 2. Emergency communications   |                                    |    |
| 3. Workforce adequacy showing   |                                    | 13 |
| C. Customer support in emergencies  |                                    | 18 |
| 1.1.1. Protocols for compliance with CPUC requirements                              |                                    |    |

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| <b>Wildfire Mitigation Plan section</b>                                     | <b>Code Reference §8386(c)</b> |
|---|--------------------------------|
| VI. Performance Metrics and Monitoring                                      |                                |
| A. Accounting of responsibilities   | 1                              |
| B. Description of metrics and assumptions                                   | 4                              |
| C. Discussion on how previous metrics performance has informed current plan | 5                              |
| D. Processes and procedures for:  |                                |
| 1. Plan monitoring and auditing   |                                |
| 2. Identifying and correcting Plan deficiencies                             |                                |
| 3. Monitoring and auditing effectiveness of equipment and line inspections  | 19                             |
| VII. Any other information the CPUC may require                             |                                |
| A. Cost information   | 20                             |
| <b>(END OF APPENDIX B)</b>  |                                |

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## Appendix C – List of Acronyms

|                     |  |
|---------------------|--|
| A.                  | Application  |
| AT&T                | AT&T Mobility Wireless Operations Holdings, Inc., Pacific Bell Telephone Company, and AT&T Corp. |
| AB                  | Assembly Bill  |
| Abrams              | William B. Abrams  |
| ACS                 | Arc Suppression Coils  |
| AGP                 | Annual Grid Patrol   |
| Air Operations      | SCE's Air Operations Department  |
| ANSI                | American National Standards Institute  |
| AR                  | automatic reclosers  |
| Bear Valley or BVES | Bear Valley Electric Service, a division of Golden State Water Company                           |

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|               |   |
|---------------|---|
| BLF           | Branch Line Fuses   |
| BVLOS         | Beyond Visual Line of Sight                               |
| C3            | Customer Crew Communications                              |
| Cal Advocates | Public Advocates Office fka Office of Ratepayer Advocates |
| CAISO         | California Independent System Operator                    |
| CAL FIRE      | California Department of Forestry and Fire Protection     |
| Cal OES       | California Office of Emergency Services                   |
| CARE          | California Alternate Rates for Energy                     |
| CEJA          | California Environmental Justice Alliance                 |
| CB            | Circuit Breaker   |
| CCC           | Customer Contact Center                                   |
| CCSF          | The City and County of San Francisco                      |
| CCUE          | Coalition of California Utility Employees                 |
| CCTA          | California Cable and Telecommunications Association       |
| CCWD          | Contra Costa Water District                               |
| Cell          | Critical Energy Infrastructure Information                |
| CEMA          | Catastrophic Event Memorandum Account                     |

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|              |  |
|--------------|--|
| CEQA         | California Environmental Quality Act                 |
| CERP         | Company Emergency Response Plan                      |
| CFBF         | California Farm Bureau Federation                    |
| CIRT         | Centralized Inspection Review Team                   |
| Citizens     | Citizens Sunrise Transmission LLC                    |
| CLF          | current-limiting fuses                               |
| CMUA         | California Municipal Utilities Association           |
| CPUC         | California Public Utilities Commission or Commission |
| CSWC         | California State Warning Center                      |
| CUEA         | California Utilities Emergency Association           |
| CWSP         | Community Wildfire Safety Program                    |
| D.           | Decision   |
| DATC         | Duke American Transmission Company                   |
| DATC Path 15 | Trans-Elect NTD Path 15, LLC                         |
| DDS          | Distribution Design Standards                        |
| DFA          | Distribution Fault Anticipation                      |
| DFM          | Dead Fuel Moisture                                   |

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|         |   |
|---------|---|
| DIIP    | Distribution Infrared Inspection Program                    |
| DIMP    | Distribution Inspection and Maintenance Program             |
| DOH     | Distribution Overhead Construction Standards                |
| DRI     | Drought Relief Initiative                                   |
| EBMUD   | East Bay Municipal Utility District                         |
| Eel     | Edison Electric Institute                                   |
| EOC     | Emergency Operations Center                                 |
| EOI     | enhanced overhead inspections                               |
| EONS    | Emergency Outage Notification System                        |
| EPIC    | Electric Program Investment Charge                          |
| EP&R    | Emergency Preparedness and Response                         |
| EPUC/IS | Energy Producers and Users Coalition and Indicated Shippers |
| ERO     | Emergency Response Organization                             |
| ESA     | Energy Savings Assistance                                   |
| ETOR    | Estimated Time of Restoration                               |
| EVM     | enhanced vegetation management                              |

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|       |   |
|-------|---|
| FEMA  | Federal Emergency Management Agency       |
| FERA  | Family Electric Rate Assistance           |
| FERC  | Federal Energy Regulatory Commission      |
| FHPMA | Fire Hazard Prevention Memorandum Account |
| FHSZ  | Fire Hazard Severity Zone                 |
| FIA   | Fire Index Area                           |
| FiRM  | Fire Risk Mitigation                      |
| FMEA  | Failure Modes and Effects Analysis        |
| FPI   | Fire Potential Index                      |
| FPP   | Fire Prevention Plan                      |
| FRP   | fiber reinforced polymer                  |
| GIS   | Geographic and Information System         |
| GO    | General Order                             |
| GPI   | Green Power Institute                     |
| GRC   | General Rate Case                         |
| GSRP  | Grid Safety and Resiliency Program        |
| GSW   | Golden State Water Company                |

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|          |  |
|----------|--|
| HD       | high definition                        |
| Henricks | Ruth Henricks                          |
| HFRA     | High Fire Risk Areas                   |
| HFTD     | High Fire Threat District              |
| HHZ      | High Hazard Zones                      |
| HPCC     | High Performance Computing Cluster     |
| HTMP     | Hazard Tree Management Program         |
| I.       | Investigation                          |
| ICS      | Incident Command System                |
| IMT      | Incident Management Team               |
| IOUs     | Investor-Owned Utilities               |
| IPI      | Intrusive Pole Inspection program      |
| IR       | Infrared                               |
| ISA      | International Society of Arboriculture |
| ITO      | Independent Transmission Owners        |
| IVR      | Integrated Voice Recording             |
| km       | Kilometer                              |
| kV       | Kilovolt                               |

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|              |  |
|--------------|--|
| LAC          | Local Assistance Center                    |
| LA County    | Los Angeles County                         |
| LADWP        | Los Angeles Department of Water and Power  |
| Laguna Beach | The City of Laguna Beach                   |
| Liberty      | Liberty Utilities (CALPECO Electric) LLC   |
| LiDAR        | light detection and ranging technology     |
| Malibu       | The County of Los Angeles, City of Malibu  |
| MA           | Memorandum Account                         |
| MAA          | Mutual Assistance Agreements               |
| MADEC        | meter alarming for downed energy conductor |
| MAVF         | Multi-Attribute Value Framework            |
| Mendocino    | The County of Mendocino                    |
| MGRA         | Mussey Grade Road Alliance or Mussey Grade |
| Mph          | Miles per hour                             |
| MVCD         | Minimum Violation Clearance Distance       |
| Napa         | The County of Napa                         |

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|            |   |
|------------|---|
| NIMS       | National Incident Management System         |
| NEET-West  | Next Era Energy Transmission West LLC       |
| NERC       | North American Reliability Corporation      |
| NFDRS      | National Fire Danger Rating System          |
| NFPA       | National Fire Protection Association        |
| NIFC       | National Interagency Fire Center            |
| NIMS       | National Incident Management System         |
| NWS        | National Weather Service                    |
| OA         | Operability Assessment                      |
| OCP        | Overhead Conductor Program                  |
| ODI        | Overhead Detail Inspection                  |
| ODRM       | Outage Database and Reliability Metrics     |
| OEM        | Offices of Emergency Management             |
| OES        | Office of Emergency Services                |
| OIR        | Order Instituting Rulemaking                |
| OMS        | Outage Management System                    |
| OSA        | The Commission's Office of Safety Advocates |
| PacifiCorp | Pacific Power, a division of PacifiCorp     |

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|          |   |
|----------|---|
| Paradise | Town of Paradise                                |
| PCB      | polychlorinated biphenyls                       |
| PCEA     | Peninsula Clean Energy Authority                |
| PEV      | Post Enrollment Verification                    |
| PG&E     | Pacific Gas and Electric Company                |
| PI       | Pole Inspections                                |
| PIH      | Pre-installed Interconnection Hubs              |
| PLP      | Pole Loading Program                            |
| PMO      | Program Management Office                       |
| POC      | Protect Our Communities                         |
| POMMS    | PG&E Operational Mesoscale Modeling System      |
| PRC      | Public Resources Code                           |
| PSPS     | Public Safety Power Shut-Off or De-Energization |
| PTZ      | pan-tilt-zoom                                   |
| PUC      | Public Utilities Code                           |
| QA       | Quality Assurance                               |
| QC       | Quality Control                                 |

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|            |   |
|------------|---|
| QCG        | Quality Control Group                               |
| AM         | Quality Management                                  |
| QO         | Quality Oversight                                   |
| R.         | Rulemaking  |
| RAMP       | Risk Assessment Mitigation Phase                    |
| RAR        | remote-controlled automatic reclosers               |
| RAWS       | Remote Automated Weather Stations                   |
| RCRC       | Rural County Representatives of California          |
| REACH      | Relief for Energy Assistance through Community Help |
| REFCL      | Rapid Earth Fault Current Limiter                   |
| RFW        | Red Flag Warnings                                   |
| ROW        | Right-of-Way  |
| Santa Rosa | The City of Santa Rosa                              |
| SAWTI      | Santa Ana Wildfire Threat Index                     |
| SB901      | Senate Bill 901                                     |
| SBUA       | Small Business Utility Advocates                    |

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|            |   |
|------------|---|
| SCADA      | Supervisory Control and Data Acquisition          |
| SCE        | Southern California Edison Company                |
| SDG&E      | San Diego Gas & Electric Company                  |
| SE D       | Commission's Safety and Enforcement Division      |
| SIMP       | Substation Inspection and Maintenance Program     |
| SIPT       | Safety and Infrastructure Protection Teams        |
| S-MAP      | Safety Model Assessment Proceedings               |
| SOB        | Standard Operating Bulletin                       |
| Sonoma     | County of Sonoma                                  |
| SOPP       | Storm Outage Prediction Model                     |
| SoCalGas   | Southern California Gas Company                   |
| SmartMeter | Brand Name for Automated Metering Initiative      |
| SME        | Subject MaTTER Experts                            |
| Sunrun     | Sunrun Inc.                                       |
| Startrans  | Startrans IO, LLC                                 |
| T&D        | SCE's Transmission and Distribution business unit |

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|             |  |
|-------------|--|
| TBC         | Trans Bay Cable LLC                                    |
| TICII       | Transmission Infrared and Corona Inspection Initiative |
| TIMP        | Transmission Inspection and Maintenance Program        |
| TURN        | The Utility Reform Network                             |
| UAS         | Advanced Unmanned Aerial Systems                       |
| UAV         | unmanned aerial vehicle                                |
| UDI         | Underground Inspection Program                         |
| USFS        | U.S. Forest Service                                    |
| USGS        | United States Geological Survey                        |
| VM          | Vegetation Management                                  |
| WAPA        | Western Area Power Administration                      |
| WCCP        | Wildfire Covered Conductor Program                     |
| WEIMAR      | Western Energy Institute Mutual Assistance Roster      |
| WECC        | Western Electricity Coordinating Council               |
| WMP or Plan | Wildfire Mitigation Plan                               |
| WRF         | Weather Research and Forecasting                       |

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|            |   |
|------------|---|
| WRMAG      | Western Region Mutual Assistance Agreement for Electric Utilities |
| WSIP       | Wildfire Safety Inspection Program                                |
| WSOC       | Wildfire Safety Operations Center                                 |
| WSP        | Wildfire Safety Plan  |
| Zuma Beach | Hans Laetz on behalf of Zuma Beach FM Broadcasters                |

**(END OF APPENDIX C)**

No. 21-15571

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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ANTHONY GANTNER, individually and on behalf of all those  
similarly situated,

*Plaintiff-Appellant,*

v.

PG&E CORPORATION, a California Corporation, and PACIFIC  
GAS & ELECTRIC COMPANY, a California Corporation

*Defendants-Appellees.*

On Appeal from the United States District Court  
for the Northern District of California  
No. 4:20-CV-02584-HSG

Hon. Haywood S. Gilliam, Jr.,

[an appeal from an Order in the Bankruptcy Case In re: PG&E  
CORPORATION and PACIFIC GAS AND ELECTRIC COMPANY,  
Debtors, Bankruptcy Case No. 19-30088 (DM), Adv. Pro. No. 19-  
03061 (DM), Hon. Donald Montali, U.S. Bankruptcy Judge]

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**APPELLANT'S EXCERPTS OF RECORD  
VOLUME 4 OF 4**

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7  
8 **UNITED STATES BANKRUPTCY COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11 In re:  
12 PG&E CORPORATION  
13 -and-  
14 PACIFIC GAS AND ELECTRIC COMPANY,  
15  
16 Debtors  
17  
18 ANTHONY GANTNER, individually and on  
19 behalf of all those similarly situated,  
20  
21 Plaintiff,  
22  
23 vs.  
24 PG&E CORPORATION, a California  
25 Corporation, and PACIFIC GAS & ELECTRIC  
COMPANY, a California Corporation,  
26  
27 Defendants.  
28

**Case No. 19-30088 (DM)**  
**Chapter 11**  
**(Lead Case)**  
**(Jointly Administered)**

**Adv. Pro. No. 19-\_\_\_\_\_**  
**(DM)**

**CLASS ACTION COMPLAINT FOR**  
**DAMAGES AND INJUNCTIVE**  
**RELIEF**



PHILLIPS, ERLEWINE, GIVEN & CARLIN, LLP  
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(415) 398-0900

1 **I. SUMMARY OF THE CASE**

2 1. Plaintiff brings this action for damages against Defendants PG&E  
3 CORPORATION, a California Corporation, and PACIFIC GAS & ELECTRIC COMPANY, a  
4 California Corporation (collectively, “PG&E”) for damages Plaintiff and the Class suffered  
5 arising out of PG&E’s planned outages in Northern California on Oct. 9-12, Oct. 23-Nov. 1, and  
6 Nov. 20-22 (the “Outages”).

7 2. The necessity for the Outages was caused by PG&E’s own negligence in failing,  
8 over many years, to properly maintain or replace old transmission lines, leaving them vulnerable  
9 to failing and sparking deadly wildfires.

10 3. Because of the Outages, Plaintiff and the Class were without power for many  
11 days, in some cases up to 17 days total and upwards of 10 days in a row. Plaintiff was without  
12 power himself for 8-9 days total and up to 5 days in a row. As a result, Plaintiff and the Class  
13 suffered various losses including loss of habitability of their dwellings, loss of food items in  
14 their refrigerators, expenses for alternate means of lighting and power, such as candles,  
15 flashlights, batteries, and gas generators, loss of cell phone connectivity, dangerous dark  
16 conditions, lack of running water, and loss of productivity and business.

17 4. Plaintiff and the Class seek compensation for their losses, and also injunctive  
18 relief to require PG&E to properly maintain and inspect its power grid, so that planned outages  
19 will not be necessary in the future.

20 **II. JURISDICTION AND VENUE**

21 5. This adversary proceeding arises in and relates to PG&E’s Chapter 11 Case. The  
22 Court has jurisdiction to consider this adversary proceeding and over the claims against PG&E  
23 pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b).  
24 Plaintiff consents to the entry of a final order by the Court in connection with this adversary  
25 proceeding to the extent it is later determined that the Court, absent consent of the parties,  
26 cannot enter final orders or judgments consistent with Article III of the United States  
27 Constitution.  
28

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**III. THE PARTIES**

**A. PLAINTIFF ANTHONY GANTNER**

6. At all relevant times herein, Anthony Gantner (“Mr. Gantner”) was an owner and/or occupant of real property located in St. Helena, California, serviced by PG&E. Gantner is currently a resident of St. Helena, California.

**B. DEFENDANTS**

7. Defendant PG&E Corporation is an energy-based holding company headquartered in San Francisco, California. It is the parent company of Defendant Pacific Gas & Electric Company.

8. Defendant Pacific Gas & Electric Company is incorporated in California and is headquartered in San Francisco, California. Defendant Pacific Gas & Electric Company provides public utility services that include the generation, transmission, and distribution of electricity to millions of customers in Northern and Central California, including the residents of St. Helena. Pacific Gas & Electric Company is a convicted felon.

9. PG&E is jointly and severally liable for each other’s negligence, misconduct, and wrongdoing as alleged herein, because at all relevant times, each of the Defendants were the partners, principals, agents, employees, servants, and joint venturers of each other, and in doing the things alleged in this Complaint were acting within the course and scope of their authority and relationship as partners, principals, agents, employees, servants and joint venturers with the permission, knowledge, and consent of each other.

**IV. THE FACTS**

**A. PG&E IS REQUIRED TO SAFELY DESIGN, OPERATE, AND MAINTAIN ITS ELECTRICAL SYSTEMS**

10. PG&E owns, installs, constructs, operates, and maintains overhead power lines, together with supporting towers and appurtenances throughout Northern and Central California to transmit and distribute electricity to the general public for profit.

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1           11.     Electrical infrastructure is inherently dangerous and hazardous, and PG&E  
2 recognizes that. The transmission and distribution of electricity requires PG&E to exercise an  
3 increased level of care in line with the increased risk of the associated danger.

4           12.     At all times PG&E had and continues to have a duty to properly construct,  
5 inspect, repair, maintain, manage, and/or operate its transmission lines and other electrical  
6 equipment and to keep vegetation properly trimmed and maintained so as to prevent foreseeable  
7 contact with such electrical equipment.

8           13.     In the construction, inspection, repair, maintenance, management, ownership,  
9 and/or operation of its power lines and other electrical equipment, PG&E had an obligation to  
10 comply with various statutes, regulations, and standards, including the following.

11           14.     Pursuant to California Public Utilities Code § 451, “Every public utility shall  
12 furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities,  
13 equipment, and facilities . . . as are necessary to promote the safety, health, comfort, and  
14 convenience of its patrons, employees, and the public.”

15           15.     To meet this safety and service mandate, PG&E is required to comply with  
16 design standards for its electrical equipment, as stated in CPUC General Order 95. In extreme  
17 fire areas, PG&E also must ensure that its power lines can withstand winds of up to 92 miles per  
18 hour.

19           16.     PG&E must also follow standards to protect the public from the consequences of  
20 vegetation and/or trees coming into contact with its power lines and other electrical equipment.  
21 Under California Public Resources Code § 4292, PG&E is required to “maintain around and  
22 adjacent to any pole or tower which supports a switch, fuse, transformer, lightning arrester, line  
23 junction, or dead end or corner pole, a firebreak which consists of a clearing of not less than 10  
24 feet in each direction from the outer circumference of such pole or tower.”

25           17.     California Public Resources Code § 4293 mandates that PG&E must maintain  
26 clearances of four to ten feet for all of its power lines, depending on voltage. Under § 4293,  
27 “Dead trees, old decadent or rotten trees, trees weakened by decay or disease and trees or  
28

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1 portions thereof that are leaning toward the line which may contact the line from the side or may  
2 fall on the line shall be felled, cut, or trimmed so as to remove such hazard.”

3 18. CPUC General Order 165 requires PG&E to inspect its distribution facilities to  
4 maintain a safe and reliable electric system. Specifically, PG&E must conduct “detailed  
5 inspections of all of its overhead transformers in urban areas at least every five years.” PG&E is  
6 also required to conduct “intrusive” inspection of its wooden poles that have not already been  
7 inspected and are over 15 years old, every 10 years.

8 19. PG&E knew or should have known that such standards and regulations were  
9 minimum standards and that PG&E has a duty to identify vegetation which posed a foreseeable  
10 hazard to power lines and/or other electrical equipment, and manage the growth of vegetation  
11 near its power lines and equipment so as to prevent the foreseeable danger of contact between  
12 vegetation and power lines starting a fire. Further, PG&E has a duty to manage, maintain,  
13 repair, and/or replace its aging infrastructure to protect public safety. These objectives could  
14 and should have been accomplished in a number of ways, including, by not limited to, putting  
15 electrical equipment in wildfire-prone areas underground, increasing inspections, modernizing  
16 infrastructure, and/or obtaining an independent audit of its risk management programs to ensure  
17 effectiveness.

18 20. PG&E may not, consistent with its obligations under California Public Utilities  
19 Code § 451, ignore the above-referenced safety mandates until it becomes an emergency, and  
20 then pass the burden on to its consumers by shutting off their power every time weather  
21 conditions indicate an increased risk of wildfire. As California Public Utilities Code § 451  
22 states, PG&E must “furnish and maintain such adequate, efficient, just, and reasonable service”  
23 to its customers. The Outages are a blatant breach of this obligation.

24 **B. PG&E’S INEXCUSABLE HISTORY OF SAFETY FAILURES**

25 21. PG&E’s safety record is an abomination. Over the last forty years, it has been  
26 the root cause of numerous and increasingly deadly fires in California, including: San Francisco  
27 Gas Explosion (1981); Santa Rosa Gas Explosion (1991); Trauner Fire (1994); Mission  
28 Substation Electrical Fire (1996); Pendola Fire (1999); Mission Substation Electrical Fire

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1 (2003); Rancho Cordova Explosion (2008); Sims Fire (2004); Freds Fire (2004); Power Fire  
2 (2004); San Francisco Electrical Explosion (2005); Whiskey Fire (2008); San Francisco  
3 Electrical Explosion (2009); San Bruno Gas Explosion (2010); Cupertino Explosion (2011);  
4 Carmel Gas Explosion (2014); San Francisco Electrical Explosion (2015); Butte Fire in  
5 Calaveras County (2015); North Bay Fires (2017); Camp Fire (2018); Kincade Fire (2019)

6 22. These fires have resulted in billions in dollars in fines and criminal convictions  
7 against PG&E for its criminally negligent maintenance of its power lines.

8 **C. PG&E’S CORPORATE CULTURE IS THE CAUSE OF THE OUTAGES**

9 23. PG&E is a virtual monopoly in the provision of gas and electric services to the  
10 general public in almost all counties and cities across Northern and Central California.<sup>1</sup>

11 24. Over the past thirty-plus years, PG&E has been subject to numerous fines,  
12 penalties, and/or convictions as a result of its failure to abide by safety rules and regulations.  
13 Despite these recurring punishments, PG&E continues to display a shocking degree of arrogant  
14 complacency, refuses to modify its behavior, and continues to conduct its business with a  
15 conscious disregard for the safety and well-being of the public, including Plaintiff.

16 25. Rather than spend the money it obtains from customers for infrastructure  
17 maintenance and safety, PG&E funnels this funding to boost its own corporate profits and  
18 compensation. This pattern and practice of favoring profits over having a solid and well-  
19 maintained infrastructure left PG&E vulnerable to an increased risk of catastrophic events such  
20 as the myriad of wildfires its unsafe system has caused in recent years.

21 26. Many tragedies have resulted from PG&E’s enduring failure to protect the public  
22 from the dangers associated with its operations. PG&E power lines, transformers, conductors,  
23 poles, insulators, and/or other electrical equipment have repeatedly started wildfires due to  
24 PG&E’s ongoing failure to create, manage, implement, and/or maintain effective vegetation  
25 management programs for the areas near and around its electrical equipment. Further, PG&E’s  
26 aging infrastructure has caused multiple disasters throughout California.

27  
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<sup>1</sup> A few cities like Palo Alto and Sacramento provide their own gas and electric utility services.

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**1. PG&E’s Aging and Unsafe Infrastructure and Its Negligent Failure to Fix it**

27. On May 6, 2013, a report was sent to the Safety and Enforcement Division of the CPUC from the Liberty Consulting Group, retained to conduct an independent review of capital and operations and maintenance expenditures proposed by PG&E (hereinafter the “2013 Liberty Report”).<sup>2</sup> The 2013 Liberty Report concluded that: “several aspects of the PG&E distribution system present significant safety issues.” It also found: (a) “addressing risks associated with electrical distribution components has been overshadowed by electric transmission and gas facilities;” and (b) “addressing aging infrastructure and adding SCADA to the system comprise the major focuses of safety initiatives for the distribution system.”

28. In a January 17, 2019 Order issued by federal judge, the Honorable William Alsup of the Northern District of California, in a criminal case against PG&E, Judge Alsup found “the single most recurring cause of the large 2017 and 2018 wildfires attributable to PG&E’s equipment has been the susceptibility of PG&E’s distribution lines to trees or limbs falling onto them during high-wind events. This has most often occurred in rural areas where distribution lines use thirty-five to fifty-foot single poles and run through grass, brush, oak and pines. The power conductors are almost always uninsulated. When the conductors are pushed together by falling trees or limbs, electrical sparks drop into the vegetation below. During the wildfire season when the vegetation is dry, these electrical sparks pose as extreme danger of igniting wildfire.”

29. The 2013 Liberty Report found that PG&E had a “large amount of small size obsolete conductor[s] remaining on PG&E’s system.” PG&E has 113,000 miles of conductors, and over 60% of those conductors are and were highly susceptible to failure because of its size or composition. These obsolete conductors are relatively small and more susceptible to failure. As the conductor ages, it becomes even more likely to break. Extreme weather conditions, like wind and lightning, wear more on small conductors than the more modern larger ones. For these

<sup>2</sup> <http://docs.cpuc.ca.gov/publisheddocs/efile/g000/m065/k394/65394210.pdf>

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1 reasons, “[t]his conductor was once popular, but is now recognized as obsolete, due to its small  
2 size.”

3 30. In addition, since prior to 1996, PG&E has known or should have known that its  
4 choice of chemical treatments for its poles can also make its equipment unsafe. For example,  
5 PG&E uses and has used poles treated with pentachlorophenol in liquefied petroleum gas by the  
6 Cellon® process. Those poles generally experience surface decay below ground regardless of  
7 the type of wood the poles are made of. As a result, to be safe, digging inspections are required  
8 for poles treated like that. But PG&E failed to conduct proper inspections and, when PG&E has  
9 been advised of necessary repairs, PG&E has failed to do so in a timely fashion. These failures  
10 are a breach of PG&E’s obligations to the public and have caused fires.

11 31. According to a report from the Wall Street Journal from July 2019, prior to the  
12 deadly November 2018 Camp Fire, PG&E executives knew that 49 of its steel towers needed to  
13 be replaced but were not.<sup>3</sup>

14 32. An internal presentation given in 2017 stated that the average age of its  
15 transmission towers was 68 years old and that its oldest towers were 108 years old. The mean  
16 life expectancy of those towers is 65 years. In other words, the average transmission tower  
17 PG&E used was older than the average life of those towers.

18 33. In that 2017 internal presentation, PG&E recognized that it needed a plan to  
19 replace those towers and better manage its lines to prevent “structure failure resulting [in]  
20 conductor on ground causing fire.”

21 34. But PG&E repeatedly delayed upgrading its oldest transmission lines, ranking  
22 them as low-risk projects, while spending billions of dollars on other less-pressing projects,  
23 issuing dividends to its investors, and spending millions on campaign contributions.

24 35. Until the deadly Camp Fire, PG&E was not regularly climbing its towers to  
25 inspect them, despite outside consultants suggesting that the company do just that.

26 \_\_\_\_\_  
27 <sup>3</sup> [https://www.wsj.com/articles/pg-e-knew-for-years-its-lines-could-spark-wildfires-and-didnt-  
28 fix-them-11562768885](https://www.wsj.com/articles/pg-e-knew-for-years-its-lines-could-spark-wildfires-and-didnt-fix-them-11562768885)

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1           36. In June 2019, PG&E announced that its towers and lines needed thousands of  
2 repairs and shut down the Caribou Palermo line which was the root cause of the Camp Fire.  
3 However, that line was just one of many unreasonably dangerous lines PG&E maintained and  
4 continues to maintain. Indeed, in 2018, when PG&E proposed a spending plan to federal  
5 regulators for thousands of transmission-line upgrades, its risk-based system had nearly 600  
6 projects estimated at \$2.7 billion as a higher risk priority than the Caribou Palermo line which  
7 caused the Camp Fire and is now shut down.

8           37. PG&E’s treatment of the Caribou-Palermo line is indicative of its treatment of all  
9 of its outdated and dangerous equipment. Instead of fixing the problem in 2013 when PG&E  
10 was aware of it, it delayed safety work on that line for more than five years, failing to replace 49  
11 steel towers and the hardware and aluminum line on 57 towers.

12           38. The Ignacio-Mare Island line, which, on information and belief, delivers power to  
13 parts of Marin County which were impacted by the Power Outage, contains at least 28 towers  
14 which have been in place since 1921. Work on this line designed to increase the heights of the  
15 towers so the lines would be far enough away from the ground was supposed to be complete by  
16 2015 but is now not scheduled to start until 2020.

17           39. Similarly, lines which carry power through the Eldorado and Stanislaus national  
18 forests that were scheduled to be complete by 2016 is expected to start late 2020 and a line in  
19 the Los Padres National Forest which was to be upgraded in 2015 is now scheduled to start in  
20 2021.

21           40. In 2010, PG&E used a consulting firm, Quanta Technology, to assess the age and  
22 transmission of its structures. The returns were staggering. It was unable to determine the age  
23 of 6,900 towers, 3,500 were installed in the 1900s and 1910s and 60% of its structures in the  
24 230-kilovolt system were built between 1920 and 1950. Quanta suggested that PG&E climb at  
25 least a sample of those towers but PG&E didn’t do that until after the Camp Fire.

26           41. PG&E’s failure to conduct proper and regular inspections of its equipment and  
27 failure to make necessary repairs contributed to the cause of the deadly wildfires in California  
28 and were the reason Outages in the fall of 2019.



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**2. PG&E Did Not Track the Conditions of Its Aging Electrical Assets as an Enterprise-Level Risk as the 2013 Liberty Report Required**

42. Another recommendation of the 2013 Liberty Report was “the establishment of a formal asset management program in Electric Operations.” According to the report, “aging infrastructure is best addressed by having a strategic asset management program in place. These types of programs, such as the PAS 55 program, force a detailed and thorough condition assessment survey of the major assets. These types of formal programs also take failure modes into consideration. Long term sustainable plans can then be prepared to address the asset conditions. A sustainable asset management will mitigate system safety risks from aging infrastructure, which constituted a major portion of the safety items in this GRC.”

43. The 2013 Liberty Report specifically recommended that “PG&E treat aging infrastructure as an enterprise-level risk.”

44. After the release of the 2013 Liberty Report, PG&E began to publicly state that it was treating wildfires as an enterprise-level risk. However, the methodology used by PG&E to evaluate the severity of that risk was and is unscientific and was and is not based on valid statistical methodology. Instead, PG&E’s method is to engage in a group discussion where an agreement is reached on a specific risk level based on personal opinion, anecdotal evidence, and factual misconceptions. This process has led to PG&E’s failure to properly evaluate the frequency and severity of the risk posed by wildfires.

45. PG&E’s failure to treat its aging infrastructure as an enterprise-level risk in a reasonable manner contributed to PG&E being unable to trust that its aging equipment would not create or exacerbate ongoing wildfires in Northern California and caused it to cut power to millions of its customers for days at a time.

**3. PG&E’s “Run to Failure” Approach to Maintenance**

46. PG&E’s failure to address the “significant safety hazards” identified by the 2013 Liberty Report, failure to treat the conditions of its aging infrastructure as an enterprise-level risk, failure to inspect, maintain, repair or replace its aging equipment, failure to conduct an inventory of its electrical assets, and failure to ensure its infrastructure could withstand

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1 foreseeable weather conditions as required by law are all indicative of what has been called  
 2 PG&E’s “run to failure” approach to its infrastructure.

3 47. PG&E has a well-documented history of implementing this “run to failure”  
 4 approach with its aging infrastructure, ignoring necessary maintenance in order to line its own  
 5 pockets with excessive profits. According to a filing by Office of Ratepayer Advocates with the  
 6 CPUC in May 2013:

7 “However, as we saw in Section V.F.3 above, the Overland Audit explains how  
 8 PG&E systematically underfunded GT&S integrity management and  
 9 maintenance operations for the years 2008 through 2010. PG&E engaged in a  
 10 ‘run to failure’ strategy whereby it deferred needed maintenance projects and  
 11 changed the assessment method for several pipelines from ILI to the less  
 12 informative ECDA approach – all to increase its profits even further beyond its  
 13 already generous authorized rate of return, which averaged 11.2% between 1996  
 14 and 2010.

15 “Given PG&E’s excessive profits over the period of the Overland Audit, there is  
 16 no reason to believe that Overland’s example regarding GT&S operations  
 17 between 2008 and 2010 was unique. The IRP Report supplements the Overland  
 18 Audit findings with additional examples of PG&E management’s commitment to  
 19 profits over safety. Thus, it is evident that while the example of GT&S  
 20 underfunding between 2008 and 2010 might be extreme, it was not an isolated  
 21 incident; rather, it represents the culmination of PG&E management’s long  
 22 standing policy to squeeze every nickel it could from PG&E gas operations and  
 23 maintenance, regardless of the long term ‘run to failure’ impacts. And PG&E has  
 24 offered no evidence to the contrary.”<sup>4</sup>

25 48. PG&E’s failure to address this “run to failure” approach to maintenance  
 26 contributed to the wildfires that have plagued California and caused it to shut off power to its  
 27 customers rather than risk another corporate-negligence-induced disaster.

28 **4. PG&E Continually Impedes and Ignores CPUC Safety Efforts**

49. In 2007, the CPUC began working to tighten regulations on utilities and force  
 them to create maps that detail where power lines present the highest risk for wildfires. As of  
 2017, a decade later, the maps were still incomplete. And the CPUC had not adopted strict new  
 regulations.

<sup>4</sup> [ftp://ftp2.cpuc.ca.gov/PG&E20150130ResponseToA1312012Ruling/2013/03/SB\\_GT&S\\_0039691.pdf](ftp://ftp2.cpuc.ca.gov/PG&E20150130ResponseToA1312012Ruling/2013/03/SB_GT&S_0039691.pdf)

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1           50. PG&E repeatedly asked to slow down these very necessary safety efforts. In  
 2 October 2016, PG&E complained that CPUC’s plans to complete the map by March 2017 was  
 3 “too aggressive.” In July 2017, the utility called a proposed regulation to increase the wind  
 4 speed that power poles must withstand “arbitrary,” and that certain proposed regulations would  
 5 “add unnecessary costs to construction and maintenance projects in rural areas.” On Oct. 6,  
 6 2017—two days before the deadly North Bay Fires—two administrative law judges assigned to  
 7 oversee the project granted PG&E and other utilities yet another requested delay.

8           51. In response to PG&E’s repeated failure to correct its behavior and the 2010 San  
 9 Bruno explosion, the CPUC’s Safety and Enforcement Division commissioned a report,  
 10 prepared by NorthStar Consulting Group, to determine whether PG&E’s “organizational culture  
 11 and governance prioritize safety and adequately direct resources to promote accountability and  
 12 achieve safety goals and standards.” The NorthStar report concluded that while PG&E  
 13 purportedly made efforts to reduce incidents and increase safety after the 2010 San Bruno  
 14 explosion, “these efforts had been somewhat reactionary” and were not driven by a  
 15 “comprehensive enterprise-wide approach to addressing safety.”

16           52. On April 26, 2018, PG&E agreed to pay \$97.5 million because it engaged in  
 17 prohibited communications with the CPUC and failed to timely report ex parte communications  
 18 from 2010 to 2014, in violation of CPUC rules. All this, despite the fact that PG&E had been  
 19 found guilty of a felony for interfering with the federal investigation of the 2010 San Bruno  
 20 explosion.

#### 21                           **5. PG&E Repeatedly and Continuously Diverted Safety Funds**

22           53. In an investigation covering 1994 to 1998, CPUC staff accused PG&E of more  
 23 than 500,000 counts of violating state laws requiring utilities to keep trees pruned a safe distance  
 24 from overhead electric lines. Much of the incriminating information cited by CPUC  
 25 investigators was culled from the electric utility's own records.

26           54. In another investigation by the CPUC and Overland (an independent auditing  
 27 company) covering 1997 to 2012, it was uncovered that PG&E diverted more than \$100 million  
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1 in gas safety and operations money collected from customers and spent it for other purposes,  
2 including profit for stockholders and bonuses for executives.

3 55. According to the audit, from 1999 to 2010, PG&E also collected \$430 million  
4 more than its guaranteed revenue from its gas-transmission and -storage operations.

5 56. In another report, the CPUC concluded that in the three years leading up to the  
6 2010 San Bruno explosion, the company spent \$56 million annually on an incentive plan for  
7 executives and “non-employee directors,” including stock awards, performance shares and  
8 deferred compensation.

9 57. In 2016, PG&E reported \$498 million worth of fines, \$412 million of which were  
10 for “safety-related cost disallowances.”

11 58. In 2017, the year of the deadly North Bay Fires, PG&E’s CEO, Geisha Williams  
12 earned \$8.6 million, a 106% raise over the previous year. The COO, Nicholas Stavropoulos  
13 earned \$6.4 million, a raise of 88.9% over the year before.

14 59. A July 2018 investigation by CPUC investigators found that PG&E kept \$246  
15 million dollars over the last 17 years that was meant to pay for undergrounding powerlines,  
16 which can help prevent wildfires.

17 60. PG&E’s advertising campaigns highlight that avoiding accountability—and not  
18 public safety—is its top priority. Instead of allocating all available resources to maintenance  
19 and fire safety, PG&E spent millions on advertising designed to distract the public from the fact  
20 that PG&E is a six-time felon.

21 61. Prior to its recent bankruptcy, PG&E distributed almost five billion dollars in  
22 dividends to its investors despite knowing that its system was in unreasonably dangerous  
23 condition and was the cause of deadly California wildfires.

24 62. From January 1, 2017 to December 31, 2018, PG&E donated \$5.3 million to  
25 political candidates, political parties, political action committees (PACs) and ballot measures,  
26 while large swaths of the State of California burned due to its negligence and its aging and  
27 dangerous infrastructure continued to age and become even more dangerous.

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1           **D.     THE POWER OUTAGES**

2           63.     On or about October 9, 2019, PG&E began preemptively turning off power to  
3 roughly 800,000 customers in Northern and Central California, impacting more than two million  
4 people who rely on PG&E for their electricity. (PG&E counts customers on a household or  
5 business basis, so one PG&E customer impacted may impact many individuals.)

6           64.     The Outage—the first of many which PG&E calls “Public Safety Power  
7 Shutoff(s)” —impacted over 35 counties, including, Alameda, Alpine, Amador, Butte, Calaveras,  
8 Colusa, Contra Costa, El Dorado, Glenn, Humboldt, Kern, Lake, Marin, Mariposa, Mendocino,  
9 Merced, Napa, Nevada, Placer, Plumas, San Joaquin, San Mateo, Santa Clara, Santa Cruz,  
10 Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Tehama, Trinity, Tuolumne, Yolo, Yuba,  
11 Fresno, Madera, Sacramento, San Benito, San Louis Obispo, and Santa Barbara. According to  
12 PG&E, the sole purpose of the power shutdown was to “reduce the risk of catastrophic wildfire  
13 in the communities that we serve.”

14           65.     Upon the urging of Governor Newsom, PG&E agreed to provide a “one-time bill  
15 credit” for customers impacted by the October 9 Outage, in the amount of \$100 for residents and  
16 \$250 for business customers due to the “website and call center communications issues” which  
17 “exacerbated” the hardship caused by the October 9 Outage.<sup>5</sup> On information and belief, many  
18 PG&E customers had no notice whatsoever of the October 9 Outage.

19           66.     On October 10, PG&E returned power to approximately 426,000 customers  
20 because of improving weather conditions, but 312,000 customers remained without power. This  
21 despite PG&E’s weather services issuing an “all-clear” signal on Thursday afternoon. PG&E’s  
22 website indicated that wind gusts exceeded 70 mph on the evening of October 9 to 10. Notably,  
23 there is no indication that it ever came close to the 92 miles per hour threshold established by  
24 CPUC General Order 95.

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28           <sup>5</sup> <https://www.pgecurrents.com/2019/10/29/pge-statement-on-oct-9-public-safety-power-shutoff-customer-bill-credit/>

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1           67. By noon on Oct. 11, PG&E had restored power to 543,000 customers, but about  
2 195,000 customers still did not have power. By that evening 21,000 customers remained  
3 without power.

4           68. It was not until about 6 p.m. on October 12 that PG&E reported that power was  
5 restored to all the customers who were impacted by the October 9 Outage.

6           69. On October 23, 2019, PG&E once again began shutting off power to its  
7 customers to mitigate potential wildfires which might spark due to its negligently maintained  
8 power system.

9           70. The October 23 Outage began with PG&E shutting off power to about 1,000  
10 customers in San Mateo and Kern Counties in the middle of the night (around 1:00 a.m.). By  
11 mid-day PG&E had shut off power to approximately 179,000 customers in 17 counties,  
12 including, Alpine, Amador, Butte, Calaveras, El Dorado, Kern, Lake Mendocino, Napa, Nevada,  
13 Placer, Plumas, San Mateo, Sierra, Sonoma, Tehama, and Yuba.

14           71. That night, the Kincaid Fire started northeast of Geyserville in Sonoma County in  
15 an area where the power had not been shut off. Preliminary reports indicate that the fire started  
16 when PG&E's 230,000-volt transmission line failed (a broken jumper wire was found on that  
17 transmission tower near the point of ignition). That fire was not fully contained until November  
18 6, 2019, burned 77,758 acres of land, and damaged 120 buildings. Nearly 200,000 residents of  
19 Sonoma County were evacuated to mitigate the risk of the wildfire caused by PG&E.

20           72. PG&E restored power to 93% of its affected-customers by 9 p.m. on October 24  
21 and 99% by October 25, but power remained out for certain customers in Sonoma County near  
22 the Kincaid Fire.

23           73. On October 26, 2019, PG&E began its largest shutdown yet, shutting off power  
24 to 973,000 customers in portions of 37 counties in response to wind and dry conditions it feared  
25 might spark or exacerbate ongoing wildfires caused by its unreasonably dangerous  
26 infrastructure. An estimated 2.5 to 2.8 million people were impacted by the Outage. PG&E  
27 announced that it would institute this Outage in phases beginning around 5 p.m. The following  
28 counties were affected: Amador, Butte, Colusa, El Dorado, Glenn, Nevada, Placer, Plumas, An

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1 Joaquin, Sierra, Siskiyou, Shasta, Tehama, Yuba, Lake, Marin, Mendocino, Napa, Solano,  
 2 Sonoma, Yolo, Alameda, Alpine, Calaveras, Contra Costa, Humboldt, Mariposa, Mendocino,  
 3 Monterey, San Benito, San Mateo, Santa Clara, Santa Cruz, Stanislaus, Tuolumne, Siskiyou,  
 4 Trinity, Kern, Fresno, and Madera.

5 74. By 10 p.m. on October 28, 57% of the 970,000 customers had their power  
 6 restored, but PG&E was announcing yet another Outage to begin in the early morning of  
 7 October 29. No sooner had power been restored to some PG&E customers than PG&E once  
 8 again threatened another impending Outage.

9 75. On October 29, PG&E announced that it had shut off power to approximately  
 10 540,000 more customers in portions of 27 counties while at the same time announcing that it  
 11 restored power to  $\frac{3}{4}$  of the 973,000 customers impacted by the October 26 Outage.

12 76. As of 4 p.m. on October 30, 168,500 customers remained without power. By 10  
 13 a.m. on October 31, 36,745 customers were still without power. On November 1 at 4 p.m. there  
 14 were still 200 customers who had not had their power turned back on by PG&E.

15 77. In total, nearly 1.1 million customers were impacted by the October 26 and  
 16 October 29 Outages.

17 78. On November 20, 2019, PG&E shut off power to approximately 50,000  
 18 customers in Butte, Colusa, Glenn, Lake, Mendocino, Napa, Shasta, Solano, Sonoma, Tehama,  
 19 and Yolo counties to protect against expected high winds. Power was not restored for most of  
 20 those customers for a day and a half even though winds did not approach the 92-mph threshold  
 21 established by CPUC General Order 95.

22 79. In brief, instead of addressing its crumbling infrastructure to protect against  
 23 wildfires, PG&E has decided to mitigate that risk by shifting its duty to provide safe power onto  
 24 its customers to live without power for days or weeks at a time so it can avoid another  
 25 catastrophic wildfire and the attendant liabilities which come with it. Years of corporate greed  
 26 and criminal negligence have caught up to PG&E but that does not entitle it to pass the cost of  
 27 its negligence onto its consumers who did nothing but pay their bills and expect to be able to  
 28 turn their lights on so they can live their lives and conduct their businesses.



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1           **E.     PLAINTIFF’S LOSSES**

2           82.     Mr. Gantner is a resident of St. Helena, California. He grows wine grapes on his  
3 property and sells them to local wineries there. PG&E shut off Mr. Gantner’s power as part of  
4 the Outages described above from on or about October 9 to October 12, 2019, from on or about  
5 October 26 to October 31, 2019, and from on or about November 21 to November 22, 2019.

6           83.     During the October 9 to Oct. 12 Outage described above, Mr. Gantner was  
7 scheduled to harvest his Cabernet Sauvignon grapes in St. Helena, California. This harvest was  
8 significantly interfered with and disrupted as a consequence of the of October 9-12  
9 Outage. During this time, many wineries, including the winery to which Mr. Gantner was to  
10 deliver his grapes, were unable to regularly process the delivery of grapes, as received, because  
11 PG&E had shut off their power. Mr. Gantner, who was scheduled to have his grapes picked and  
12 delivered on October 11, 2019, was required on an emergency basis to reschedule the harvesting  
13 of his grapes, including the arranging of a new grape picking crew and hauling of said grapes,  
14 until October 13, 2019, a Sunday, which is not a regular day for harvesting and delivery of  
15 grapes. The costs of labor increased about \$500 because of the Sunday harvest. Upon delivery  
16 of Mr. Gantner’s 5.5 tons of grapes, the ongoing backlog for grape processing at the winery was  
17 such that they were not crushed and processed for an additional period of approximately 16  
18 hours, during which time the quality of those grapes and the wine produced therefrom were  
19 materially diminished. Plaintiff estimates that this diminution in value of the grapes is  
20 approximately \$2,500.

21           80.     In addition to the disruption in the distribution of his wine grapes, Mr. Gantner  
22 suffered loss of habitability of his house for every day PG&E shut off his power.

23           81.     Mr. Gantner did not have cell phone connectivity and the darkness at night was  
24 dangerous. The combination of the dangerous condition and the lack of an ability to reach  
25 emergency services if needed caused Mr. Gantner and those similarly situated to suffer  
26 emotional distress.

27           82.     Mr. Gantner also suffered a lack of running water because his well-water pump  
28 which needed electricity to function, was shut off.



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1           83. Mr. Gantner also suffered from lack of use of his home office, which was  
2 unusable without electricity which was supposed to be provided by PG&E.

3           84. Mr. Gantner also suffered various other losses including, loss of food items in his  
4 refrigerator, and expenses for alternate means of lighting and power, such as candles, flashlights,  
5 batteries, and gas generators.

6 **V. CLASS ACTION ALLEGATIONS**

7           85. Mr. Gantner brings this lawsuit as a class action on behalf of himself and all  
8 California residents and business owners who had their power shutoff due to PG&E’s October 9,  
9 October 23, October 26, October 28, and November 20 Outages and any subsequent voluntary  
10 Outages PG&E imposes on its customers. The proposed class is defined as: All California  
11 residents and business owners who had their power shutoff by PG&E during the October 9,  
12 October 23, October 26, October 28, or November 20, 2019 Outages and any subsequent  
13 voluntary Outages PG&E imposes on its customers during the course of litigation. Defendants,  
14 their subsidiaries, officers, directors, managing agents and members of those persons’ immediate  
15 families, the Court, Court personnel, and legal representatives, heirs, successors or assigns of  
16 any excluded person or entity are excluded from the Class.

17           86. The Class Period is defined as the period beginning October 9, 2019 and ending  
18 at the time this action proceeds to final judgment or settles (the “Class Period”).

19           87. Subject to additional information obtained through further investigation and  
20 discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or  
21 amended complaint. Plaintiff further reserves the right to name additional Class representatives  
22 and to identify subclasses as necessary and appropriate.

23           88. **Numerosity.** The Class for whose benefit this action is brought is so numerous  
24 that joinder of all Class Members is unfeasible and impracticable. While Plaintiff does not  
25 presently know the exact number of Class Members, Plaintiff is informed and believes that the  
26 entire Class consists of potentially millions of individuals and that those Class Members can be  
27 readily determined and identified through Defendants’ files and other documents maintained by  
28 Defendant and, if necessary, through appropriate discovery.

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1           89.    **Typicality.** Plaintiff’s claims are typical of the claims of the members of the  
2 Class. Plaintiff, like all Class Members, was subject to PG&E power outages due to PG&E’s  
3 negligence and suffered damages as a result. Furthermore, the factual bases of Defendants’  
4 misconduct are common to all Class Members and represent a common thread of unlawful  
5 conduct resulting in injury to all members of the Class.

6           90.    **Commonality.** Common questions of law and fact exist as to all members of the  
7 Class and predominate over any questions solely affecting individual members. Issues of law  
8 and fact common to the Class include:

- 9           a.    Whether PG&E’s conduct in maintaining its power system violated the duty of
- 10           care owed to its customers;
- 11           b.    What duty of care, PG&E owes to its customers;
- 12           c.    Whether Class Members have been damaged by Defendants’ actions or conduct;
- 13           d.    The effect upon and the extent of injuries suffered by the Class and the
- 14           appropriate amount of compensation;
- 15           e.    Whether declaratory and injunctive relief are appropriate to curtail Defendants’
- 16           conduct as alleged herein; and
- 17           f.    Whether Defendants’ acted with malice, oppression and/or fraud thereby
- 18           justifying an award of punitive damages;

19           91.    **Adequacy.** Mr. Gantner will fairly and adequately represent the interests of the  
20 Class and has no interests adverse to or in conflict with other Class Members. Mr Gantner’s  
21 retained counsel will vigorously prosecute this case, have previously been designated class  
22 counsel in cases in the State and Federal courts of California, and are highly experienced in  
23 consumer, class and complex, multi-party litigation.

24           92.    **Superiority.** A class action is superior to other available methods for the fair and  
25 efficient adjudication of this controversy since, among other things, joinder of all Class  
26 Members is impracticable, and a class action will reduce the risk of inconsistent adjudications or  
27 repeated litigation on the same conduct. Further, the expense and burden of individual lawsuits  
28 would make it virtually impossible for Class Members, Defendants, or the Court to cost-

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1 effectively redress separately the unlawful conduct alleged. Thus, absent a class action,  
2 Defendants would unjustly retain the benefits of its wrongdoing and Class Members would go  
3 without redress for the illegal and reprehensible discrimination they suffered. Plaintiff knows of  
4 no difficulties to be encountered in the management of this action that would preclude its  
5 maintenance as a class action, either with or without sub-classes.

6 93. Adequate notice can be given to Class Members directly using information  
7 maintained in Defendants’ records, or through notice by publication.

8 94. Accordingly, class certification is appropriate under Fed. R. Civ. P. 23.

9 **VI. CLAIM FOR RELIEF**

10 **FIRST CLAIM FOR RELIEF**  
11 **NEGLIGENCE**  
12 **(Against All Defendants)**

13 95. Plaintiff hereby realleges and incorporates by reference each and every allegation  
14 contained above as though the same were set forth herein in full.

15 96. The California Public Utilities Code, section 451 provides a heightened standard  
16 of care for public utility companies like PG&E, it states: “Every public utility shall furnish and  
17 maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and  
18 facilities . . . as are necessary to promote the safety, health, comfort, and convenience of its  
19 patrons, employees, and the public.”

20 97. Defendants have a virtual monopoly over the transmission and distribution of  
21 electrical power to the areas affected by the Outages and have individual contracts with all  
22 resident and businesses in those areas to whom it distributes that electrical power. The  
23 communities affected by the Outages are all dependent upon the safe transmission and  
24 distribution of that electrical for continuous residential and commercial usage, and PG&E has  
25 contractual, statutory, and public duties to provide that electrical power in a manner that  
26 promotes those individual and public interests.

27 98. The Outages were a direct and legal result of the negligence, carelessness,  
28 recklessness, and/or unlawfulness of Defendants, and/or each of them. Defendants, and/or each  
of them, breached their respective duties owed individually and/or collectively to Plaintiff and

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1 the Class by, including but not limited to: (1) failing to comply with the applicable statutory,  
 2 regulatory, and/or professional standards of care; (2) failing to timely and properly maintain,  
 3 manage, inspect, and/or monitor the subject power lines, electrical equipment, and/or adjacent  
 4 vegetation; (3) failing to make the overhead lines safe under all the exigencies created by  
 5 surrounding circumstances and conditions; (4) failing to properly cut, trim, prune, and/or  
 6 otherwise keep vegetation at a sufficient distance to avoid foreseeable contact with power lines;  
 7 (5) failing to trim and/or prune vegetation so as to avoid creation of a safety hazard with close  
 8 proximity of the subject power lines; (6) failing to conduct adequate, reasonably prompt, proper,  
 9 effective, and/or frequent inspections of the electrical transmission lines, wires, and/or  
 10 associated equipment; (7) failing to design, construct, monitor, and/or maintain high voltage  
 11 electrical transmission, and/or distribution power lines in a manner that avoids the potential to  
 12 ignite a fire during long, dry seasons by allowing vegetation to grow in an unsafe manner; (8)  
 13 failing to install the equipment necessary and/or to inspect and/or repair the equipment installed,  
 14 to prevent electrical transmission and distribution lines from improperly sagging, operating,  
 15 and/or making contact with other metal wires placed on its poles and igniting fires; (9) failing to  
 16 keep equipment in a safe condition and/or manage equipment to prevent fire at all times; (10)  
 17 failing to update outdated and dangerous equipment; (11) failing to properly train and to  
 18 supervise employees and agents responsible for maintenance and inspection of the transmission  
 19 lines and/or vegetation areas nearby these lines; and (12) shutting off power to millions of  
 20 customers to avoid further wildfires caused by its corporate negligence. Instead of doing any of  
 21 these necessary and reasonable steps to mitigate or eliminate the risk of a wildfire occurring or  
 22 spreading as a result of its outdated and unreasonably dangerous power system, PG&E breached  
 23 its duty of care to millions of its customers by shutting off their power for days at a time,  
 24 sometimes without notice.

25 99. As a direct and legal result of Defendants' actions and/or omissions, Plaintiff and  
 26 Class Members suffered various losses including loss of habitability of their dwellings, loss of  
 27 food items in their refrigerators, expenses for alternate means of lighting and power, such as  
 28

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1 candles, flashlights, batteries, gas generators, loss of cell phone connectivity, dangerous dark  
2 conditions, lack of running water, and loss of productivity and business.

3 100. As a further direct and legal result of Defendants’ actions and/or omissions,  
4 Plaintiff and Class Members have suffered and/or continue to suffer great mental pain and  
5 suffering, including worry, emotional distress, humiliation, embarrassment, anguish, anxiety,  
6 and nervousness. Plaintiff is informed and believe, and upon such information and belief allege,  
7 that such injuries have resulted in debilitating injuries in an amount according to proof at trial.

8 101. As a direct and legal result of the Defendants’ actions and/or omissions,  
9 Plaintiff and Class Members have suffered a loss of income, loss of earning capacity, loss of  
10 profits, increased expenses due to displacement, and/or other consequential economic losses in  
11 an amount according to proof at trial.

12 102. As a further direct and legal result of the Defendants’ actions and/or omissions,  
13 Plaintiff and Class Members have suffered damage to and/or a loss of personal property,  
14 including but not limited to items of peculiar value to Plaintiff and Class Members in an amount  
15 according to proof at trial.

16 103. As detailed above, Defendants’ safety record is inexcusably bad. Defendants  
17 have had several incidents that caused injury and death to California residents, and destroyed  
18 properties, and has been subject to numerous penalties, including, but not limited to record fines  
19 following the San Bruno Explosion, as a result of their failure to comply with safety standards,  
20 rules and regulations. Despite these fines and punishments, Defendants failed to modify their  
21 behavior, continuing their practice of placing their own profits over safety and conducting their  
22 business with a conscious disregard for the safety and well-being of the public and property.

23 104. The potential harms to Plaintiff from Power Outages were objectively foreseeable  
24 both in nature and in scope and were subjectively known to PG&E.

25 105. As set forth above and as will be shown by proof, there is a high degree of  
26 certainty that Plaintiff and the Class has suffered those injuries and damages, and that there is an  
27 extremely close connection between those injuries and damages and Defendants’ conduct. A  
28 high degree of moral blame is attached to Defendants’ conduct, and the policy of preventing

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1 future harm justifies both the recognition of the existence of a duty of care owed by Defendants  
2 to Plaintiff and the Class and the imposition of all damages described above.

3 106. At all times prior to the subject incident, the conduct of Defendants, by act and/or  
4 omission, acted with oppression, fraud, malice, and/or with a knowing, conscious disregard for  
5 the rights and/or safety of others. The wrongful conduct of Defendants was more than just  
6 inadvertence, error of judgment or negligence. Rather, Defendants conduct was despicable and  
7 showed malice as defined by California Civil Code § 3294. As a result, Plaintiff requests that  
8 the trier of fact, in the exercise of sound discretion of the rights and safety of others, such that  
9 additional damages for the sake of example and sufficient to punish said Defendants for their  
10 despicable conduct, in an amount reasonably related to Plaintiff’s and Class Members’ actual  
11 damages and Defendants’ wealth, yet sufficiently large enough to be an example to others and to  
12 deter Defendants and others from engaging in similar conduct in the future.

13 **PRAYER**

14 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as  
15 follows:

16 a. For special and general damages in an amount according to proof, but at least  
17 \$2,500,000,000.

18 b. For punitive and exemplary damages in an amount according to proof as allowed  
19 under California Civil Code § 3294;

20 c. For punitive and exemplary damages in an amount according to proof as allowed  
21 under California Public Utilities Code § 2106;

22 d. For an injunction ordering that Defendants, and each of them, stop continued  
23 violation of: (a) General Order No. 95, Rules 31.1-31.5, 35, 38, 43, 43.2, 44.1-44.4, and 48-48.1;  
24 (b) General Order No. 165; (c) California Public Resources Code §§ 4292, 4293; and (d)  
25 California Public Utilities Code § 451;

26 e. For attorney’s fees allowed under California Code of Civil Procedure § 1021.5;

27 f. For prejudgment interest;

28 g. For punitive damages as allowed by law;

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- h. For all costs of suit incurred herein; and
- i. For such other and further relief as the Court deems just and proper.

Dated: December 19, 2019 PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

By: /s/ Nicholas A. Carlin  
 Nicholas A. Carlin  
 Brian S. Conlon  
 Attorneys for Plaintiff

**DEMAND FOR JURY TRIAL**

Plaintiff hereby requests a trial by jury of all issues so triable.

Dated: December 19, 2019 PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

By: /s/ Nicholas A. Carlin  
 Nicholas A. Carlin  
 Brian S. Conlon  
 Attorneys for Plaintiff

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 1. Notice of Appeal from a Judgment or Order of a  
United States District Court**

Name of U.S. District Court: Northern District of California

U.S. District Court case number: 4:20-cv-02584

Date case was first filed in U.S. District Court: 04/14/2020

Date of judgment or order you are appealing: 03/26/2021

Fee paid for appeal? *(appeal fees are paid at the U.S. District Court)*

Yes  No  IFP was granted by U.S. District Court

**List all Appellants** *(List each party filing the appeal. Do not use "et al." or other abbreviations.)*

Anthony Gantner

Is this a cross-appeal?  Yes  No

If Yes, what is the first appeal case number?

Was there a previous appeal in this case?  Yes  No

If Yes, what is the prior appeal case number?

Your mailing address:

39 Mesa Street, Suite 201

City: San Francisco State: CA Zip Code: 94129

Prisoner Inmate or A Number (if applicable):

Signature /s/ Nicholas A. Carlin Date Mar 26, 2021

*Complete and file with the attached representation statement in the U.S. District Court*

*Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)*



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6  
7 Attorneys for Plaintiff/Appellant

8  
 9 **UNITED STATES DISTRICT COURT**  
 10 **NORTHERN DISTRICT OF CALIFORNIA**  
 11 **SAN FRANCISCO DIVISION**

12 ANTHONY GANTNER, individually and on  
 13 behalf of all those similarly situated,

14 Plaintiff,

15 vs.

16 PG&E CORPORATION, a California  
 17 Corporation, and PACIFIC GAS & ELECTRIC  
 18 COMPANY, a California Corporation,

19 Defendants.

Case No. 20-cv-02584HSG

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**NOTICE OF APPEAL  
 REPRESENTATION STATEMENT**

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**Appellant's Representation Statement**

Plaintiff/Appellant Anthony Gantner submits the following Representation Statement appended to the Notice of Appeal submitted herewith. Each of Appellant's representatives are registered for Electronic Filing in the 9th Circuit.

The names of all parties to the appeal and the names, addresses, and telephone numbers of their respective attorneys, are:

| Party  | Counsel   |
|--|---|
| Appellant Anthony Gantner  | PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP<br>Nicholas A. Carlin (SBN 112532)<br>(nac@phillaw.com)<br>Brian S. Conlon (SBN 303456)<br>(bsc@phillaw.com)<br>39 Mesa Street, Suite 201 - The Presidio<br>San Francisco, CA 94129<br>Tel: 415-398-0900<br>Fax: 415-398-0911<br><br>HAUSFELD LLP<br>Bonny E. Sweeney (SBN 176174)<br>(bsweeney@hausfeld.com)<br>Seth R. Gassman (SBN 311702)<br>(sgassman@hausfeld.com)<br>600 Montgomery Street<br>San Francisco, CA 94111<br>Tel: 415-633-1908<br>Fax: 415-358-4980 |
| Appellees PG&E CORPORATION,<br>and PACIFIC GAS & ELECTRIC<br>COMPANY | WEIL, GOTSHAL & MANGES LLP<br>Stephen Karotkin ( <i>pro hac vice</i> )<br>(stephen.karotkin@weil.com)<br>Theodore E. Tsekerides ( <i>pro hac vice</i> )<br>(theodore.tsekerides@weil.com)<br>Jessica Liou ( <i>pro hac vice</i> )<br>(jessica.liou@weil.com)<br>Matthew Goren ( <i>pro hac vice</i> )<br>(matthew.goren@weil.com)<br>767 Fifth Avenue<br>New York, NY 10153-0119<br>Tel: 212 310 8000   |

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| <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p>          | <p>Fax: 212 310 8007</p> <p>CRAVATH, SWAINE &amp; MOORE LLP<br/>                 Paul H. Zumbro (<i>pro hac vice</i>)<br/>                 (pzumbro@cravath.com)<br/>                 Kevin J. Orsini (<i>pro hac vice</i>)<br/>                 (korsini@cravath.com)<br/>                 Omid H. Nasab (<i>pro hac vice</i>)<br/>                 (onasab@cravath.com)<br/>                 825 Eighth Avenue<br/>                 New York, NY 10019<br/>                 Tel: 212 474 1000<br/>                 Fax: 212 474 3700</p> <p>KELLER &amp; BENVENUTTI LLP<br/>                 Tobias S. Keller ( SBN 151445)<br/>                 (tkeller@kellerbenvenuti.com)<br/>                 Jane Kim (SBN 298192)<br/>                 (jkim@kellerbenvenuti.com)<br/>                 650 California Street, Suite 1900<br/>                 San Francisco, CA 94108<br/>                 Tel: 415 496 6723<br/>                 Fax: 650 636 9251</p>   |
| <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> | <p>California Public Utilities Commission<br/>                 (Amicus)</p> <p>CALIFORNIA PUBLIC UTILITIES<br/>                 COMMISSION<br/>                 Arocles Aguilar (SBN 94753)<br/>                 (arocles.aguilar@cpuc.ca.gov)<br/>                 Geoffrey Dryvynsyde (SBN 139884)<br/>                 (geoffrey.dryvynsyde@cpuc.ca.gov)<br/>                 Candace Morey (SBN 233081)<br/> <a href="mailto:candace.morey@cpuc.ca.gov">candace.morey@cpuc.ca.gov</a><br/>                 505 Van Ness Avenue<br/>                 San Francisco, California 94102<br/>                 Tel: (415) 703-2015<br/>                 Fax: (415) 703-2262</p> <p>PAUL, WEISS, RIFKIND, WHARTON &amp;<br/>                 GARRISON LLP<br/>                 Alan W. Kornberg<br/>                 (akornberg@paulweiss.com)<br/>                 Walter Rieman (SBN 139365)<br/>                 (wrieman@paulweiss.com)<br/>                 1285 Avenue of the Americas<br/>                 New York, New York 10019<br/>                 Telephone: (212) 373-3000<br/>                 Facsimile: (212) 757-3990</p> |

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Dated: March 26, 2021

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

By: /s/ Nicholas A. Carlin  
Nicholas A. Carlin  
Brian S. Conlon  
Attorneys for Plaintiff/Appellant

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6 Attorneys for Plaintiff

7  
8 **UNITED STATES BANKRUPTCY COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11 In re:  
12 PG&E CORPORATION  
13 -and-  
14 PACIFIC GAS AND ELECTRIC COMPANY,  
15  
16 Debtors

**Case No. 19-30088 (DM)**  
**Chapter 11**  
**(Lead Case)**  
**(Jointly Administered)**

18 ANTHONY GANTNER, individually and on  
19 behalf of all those similarly situated,

20 Plaintiff,

21 vs.

22 PG&E CORPORATION, a California  
23 Corporation, and PACIFIC GAS & ELECTRIC  
24 COMPANY, a California Corporation,

25 Defendants.

**Adv. Pro. No. 19-03061 (DM)**  
**NOTICE OF APPEAL AND**  
**STATEMENT OF ELECTION TO**  
**HAVE APPEAL HEARD BY**  
**DISTRICT COURT**

1 NOTICE IS HEREBY GIVEN that Plaintiff Anthony Gantner and the proposed class he  
 2 seeks to represent in this adversary proceeding, hereby appeals from the *Order on Debtors'*  
 3 *Motion to Dismiss and Motion to Strike* [ECF No. 36] (the "Order"); and the related  
 4 *Memorandum Decision on Debtors' Motion to Dismiss and Strike* [ECF No. 34] (the  
 5 "Memorandum Decision"). A copy of the Order and Memorandum Decision are attached hereto  
 6 as Exhibit A and B respectively.

7 Pursuant to 28 U.S.C. § 158(c) and Bankruptcy Rule 8005(a), Plaintiff elects to have his  
 8 appeal from the Memorandum Decision and Order heard by the United States District Court for  
 9 the Northern District of California rather than by the Bankruptcy Appellate Panel for the Ninth  
 10 Circuit.

11 The names of all parties to the Adversary Proceeding other than Plaintiff, and the names,  
 12 addresses, and telephone numbers of their respective attorneys, are:

| Party   | Counsel  |
|---------|--|
| Debtors | WEIL, GOTSHAL & MANGES LLP<br>Stephen Karotkin ( <i>pro hac vice</i> )<br>(stephen.karotkin@weil.com)<br>Theodore E. Tsekerides ( <i>pro hac vice</i> )<br>(theodore.tsekerides@weil.com)<br>Jessica Liou ( <i>pro hac vice</i> )<br>(jessica.liou@weil.com)<br>Matthew Goren ( <i>pro hac vice</i> )<br>(matthew.goren@weil.com)<br>767 Fifth Avenue<br>New York, NY 10153-0119<br>Tel: 212 310 8000<br>Fax: 212 310 8007<br><br>CRAVATH, SWAINE & MOORE LLP<br>Paul H. Zumbro ( <i>pro hac vice</i> )<br>(pzumbro@cravath.com)<br>Kevin J. Orsini ( <i>pro hac vice</i> )<br>(korsini@cravath.com)<br>Omid H. Nasab ( <i>pro hac vice</i> )<br>(onasab@cravath.com)<br>825 Eighth Avenue<br>New York, NY 10019<br>Tel: 212 474 1000<br>Fax: 212 474 3700 |

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|--|---|
|  | KELLER & BENVENUTTI LLP<br>Tobias S. Keller (#151445)<br>(tkeller@kellerbenvenuti.com)<br>Jane Kim (#298192)<br>(jkim@kellerbenvenuti.com)<br>650 California Street, Suite 1900<br>San Francisco, CA 94108<br>Tel: 415 496 6723<br>Fax: 650 636 9251  |
| California Public Utilities Commission<br>(Amicus) | CALIFORNIA PUBLIC UTILITIES<br>COMMISSION<br>Arocles Aguilar (SBN 94753)<br>(arocles.aguilar@cpuc.ca.gov)<br>Geoffrey Dryvynsyde (SBN 139884)<br>(geoffrey.dryvynsyde@cpuc.ca.gov)<br>Candace Morey (SBN 233081)<br><a href="mailto:candace.morey@cpuc.ca.gov">candace.morey@cpuc.ca.gov</a><br>505 Van Ness Avenue<br>San Francisco, California 94102<br>Tel: (415) 703-2015<br>Fax: (415) 703-2262<br><br>PAUL, WEISS, RIFKIND, WHARTON &<br>GARRISON LLP<br>Alan W. Kornberg<br>(akornberg@paulweiss.com)<br>Walter Riemann (SBN 139365)<br>(wrieman@paulweiss.com)<br>1285 Avenue of the Americas<br>New York, New York 10019<br>Telephone: (212) 373-3000<br>Facsimile: (212) 757-3990 |

Dated: April 6, 2020 PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

By: /s/ Nicholas A. Carlin  
 Nicholas A. Carlin  
 Brian S. Conlon  
 Attorneys for Plaintiff

**U.S. District Court  
California Northern District (Oakland)  
CIVIL DOCKET FOR CASE #: 4:20-cv-02584-HSG**

Gantner v. PG&E Corporation et al  
Assigned to: Judge Haywood S Gilliam, Jr  
Case in other court: USBK, San Francisco, 19-30088/19-03061  
DM  
Ninth Circuit Court of Appeals, 21-15571  
Cause: 11:101 Bankruptcy

Date Filed: 04/14/2020  
Date Terminated: 03/26/2021  
Jury Demand: None  
Nature of Suit: 422 Bankruptcy Appeal  
(801)  
Jurisdiction: U.S. Government Defendant

**Appellant**

**Anthony Gantner**

represented by **Bonny E. Sweeney**  
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V.

**Defendant**

**PG&E Corporation**

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**Defendant****Pacific Gas & Electric Company**

represented by **Peter J. Benvenuto**  
 (See above for address)  
 LEAD ATTORNEY  
 ATTORNEY TO BE NOTICED

**Thomas B. Rupp**  
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| Date Filed | #                  | Docket Text  |
|------------|--------------------|--|
| 04/14/2020 | <a href="#">1</a>  | Notice of APPEAL FROM BANKRUPTCY COURT. Bankruptcy Court case number 19-03061 DM. Electronically Received File. Filed by Anthony Gantner. (Attachments: # <a href="#">1</a> Notice of Appeal and Statement of Election, # <a href="#">2</a> Court Certificate of Mailing, # <a href="#">3</a> Docket Report, # <a href="#">4</a> Order on Debtors Mtn to Dismiss, # <a href="#">5</a> Memorandum Decision on Debtor)(cjlS, COURT STAFF) (Filed on 4/14/2020) (Entered: 04/14/2020) |
| 04/14/2020 | <a href="#">2</a>  | Initial Case Management Scheduling Order - Bankruptcy Case. (cjlS, COURT STAFF) (Filed on 4/14/2020) (Entered: 04/14/2020)   |
| 05/07/2020 | <a href="#">3</a>  | CERTIFICATE OF USBC RECORD ON APPEAL: Bankruptcy Record on Appeal is Available Electronically at <a href="https://ecf.canb.uscourts.gov/">https://ecf.canb.uscourts.gov/</a> . (cjlS, COURT STAFF) (Filed on 5/7/2020) (Entered: 05/07/2020)   |
| 05/15/2020 | 4                  | CERTIFICATE OF USBC RECORD ON APPEAL: Bankruptcy Record on Appeal is Available Electronically at <a href="https://ecf.canb.uscourts.gov/">https://ecf.canb.uscourts.gov/</a> . (cjlS, COURT STAFF) (Filed on 5/15/2020) (Entered: 05/15/2020)  |
| 05/22/2020 | <a href="#">5</a>  | NOTICE of Appearance by Bonny E. Sweeney (Sweeney, Bonny) (Filed on 5/22/2020) (Entered: 05/22/2020)   |
| 05/22/2020 | <a href="#">6</a>  | NOTICE of Appearance by Seth R. Gassman (Gassman, Seth) (Filed on 5/22/2020) (Entered: 05/22/2020)   |
| 06/05/2020 | <a href="#">7</a>  | Appellant's Principal Brief. Appellee Brief due by 7/6/2020. (Attachments: # <a href="#">1</a> Appendix Appellant's Appendix)(Carlin, Nicholas) (Filed on 6/5/2020) Modified on 6/8/2020 (cjlS, COURT STAFF). (Entered: 06/05/2020)  |
| 07/06/2020 | <a href="#">8</a>  | Appellee's Opposition Brief. Appellant Reply Brief due by 8/5/2020. (Rupp, Thomas) (Filed on 7/6/2020) Modified on 7/7/2020 (cjlS, COURT STAFF). Modified on 7/7/2020 (cjlS, COURT STAFF). Modified on 7/9/2020 (cjlS, COURT STAFF). (Entered: 07/06/2020)   |
| 08/04/2020 | <a href="#">9</a>  | Appellant's REPLY BRIEF (Carlin, Nicholas) (Filed on 8/4/2020) (Entered: 08/04/2020)   |
| 08/04/2020 | <a href="#">10</a> | Appellant's Request for Oral Argument by Anthony Gantner. (Carlin, Nicholas) (Filed on 8/4/2020) Modified on 8/5/2020 (cjlS, COURT STAFF). (Entered: 08/04/2020)   |
| 08/05/2020 |                    | <a href="#">Electronic filing error</a> . Incorrect event used. [err101] The Proper Event is a Motion. Corrected by Clerk's Office. No further action is necessary. Re: <a href="#">10</a> MOTION filed by Anthony Gantner. (cjlS, COURT STAFF) (Filed on 8/5/2020) (Entered: 08/05/2020)  |

|            |                    |  |
|------------|--------------------|--|
| 10/20/2020 | <a href="#">11</a> | <b>ORDER by Hon. Haywood S. Gilliam, Jr. DENYING without prejudice (Dkt. No. <a href="#">10</a>) the Appellant's Request for Oral Argument. If the Court determines that it wants to hear oral argument, it will so inform the parties and schedule a date. (This is a text-only entry generated by the court. There is no document associated with this entry.)</b> (hsglc2, COURT STAFF) (Filed on 10/20/2020) (Entered: 10/20/2020) |
| 03/26/2021 | <a href="#">12</a> | <b>ORDER AFFIRMING BANKRUPTCY COURTS DISMISSAL ORDER. ***Civil Case Terminated.*** Signed by Judge Haywood S. Gilliam, Jr. on 3/26/2021. (ndrS, COURT STAFF) (Filed on 3/26/2021) (Entered: 03/26/2021)</b>  |
| 03/26/2021 | <a href="#">13</a> | NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Anthony Gantner. (Appeal fee of \$505 receipt number 0971-15759497 paid.) (Carlin, Nicholas) (Filed on 3/26/2021) (Entered: 03/26/2021)  |
| 03/30/2021 | <a href="#">14</a> | USCA Case Number 21-15571 Ninth Circuit Court of Appeals for <a href="#">13</a> Notice of Appeal to the Ninth Circuit filed by Anthony Gantner. (cjlS, COURT STAFF) (Filed on 3/30/2021) (Entered: 03/30/2021)   |

|                             |                    |                         |                   |
|-----------------------------|--------------------|-------------------------|-------------------|
| <b>PACER Service Center</b> |                    |                         |                   |
| <b>Transaction Receipt</b>  |                    |                         |                   |
| 06/23/2021 13:40:59         |                    |                         |                   |
| <b>PACER Login:</b>         | PEGC0187:2612933:0 | <b>Client Code:</b>     | 9999              |
| <b>Description:</b>         | Docket Report      | <b>Search Criteria:</b> | 4:20-cv-02584-HSG |
| <b>Billable Pages:</b>      | 3                  | <b>Cost:</b>            | 0.30              |

**JDemand, APPEAL, DISMISSED**

**U.S. Bankruptcy Court  
California Northern Bankruptcy Court (San Francisco)  
Adversary Proceeding #: 19-03061**

*Assigned to:* Judge Dennis Montali  
*Lead BK Case:* [19-30088](#)  
*Lead BK Title:* PG&E Corporation  
*Lead BK Chapter:* 11  
*Demand:* \$2500000000

*Date Filed:* 12/19/19  
*Date Dismissed:* 04/03/20

*Nature[s] of Suit:* 14 Recovery of money/property - other  
72 Injunctive relief - other  
02 Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)

***Plaintiff***

-----  
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V.

***Defendant***

**ER-522**

**PG&E Corporation**

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| Filing Date | #                                     | Docket Text   |
|-------------|---------------------------------------|---|
| 12/19/2019  | <a href="#">1</a><br>(26 pgs; 2 docs) | Adversary case <a href="#">19-03061</a> . 14 (Recovery of money/property - other), 72 (Injunctive relief - other), 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)) Complaint by Anthony Gantner against PG&E Corporation, Pacific Gas & Electric Company. Fee Amount \$350. (Attachments: # <a href="#">1</a> AP Cover Sheet) (Carlin, Nicholas) (Entered: 12/19/2019) |
| 12/19/2019  |                                       | Receipt of filing fee for Complaint(19-03061) [cmp,cmp] ( 350.00). Receipt number 30156263, amount \$ 350.00 (re: Doc# <a href="#">1</a> Complaint) (U.S. Treasury) (Entered: 12/19/2019)   |
| 12/20/2019  | <a href="#">2</a><br>(4 pgs; 2 docs)  | Summons Issued on PG&E Corporation Answer Due 1/21/2020; Pacific Gas & Electric Company Answer Due 1/21/2020 (RE: related document(s) <a href="#">1</a> Complaint filed by Plaintiff Anthony Gantner). <b>Scheduling Conference scheduled for 2/26/2020 at 10:00 AM at San Francisco Courtroom 17 - Montali.</b> (dc) Additional attachment(s)  |


|            |   |  |
|------------|---|--|
|            |   | (Certificate of Service) added on 12/20/2019 (dc). (Entered: 12/20/2019)   |
| 12/20/2019 | <a href="#">3</a><br>(4 pgs; 4 docs)    | Order Regarding Initial Disclosures and Discovery Conference. (dc) Additional attachment(s) (Certificate of Service) added on 12/20/2019 (dc). (Entered: 12/20/2019)   |
| 12/31/2019 | <a href="#">4</a><br>(4 pgs)            | Certificate of Service of <i>Sonia Akter Regarding Order Re Initial Disclosures and Discovery Conference</i> Filed by Other Prof. Prime Clerk LLC (related document(s) <a href="#">3</a> Discovery Order). (Baer, Herb) (Entered: 12/31/2019)  |
| 01/07/2020 | <a href="#">5</a><br>(1 pg)             | Summons Service Executed on PG&E Corporation 12/20/2019 . (Conlon, Brian) (Entered: 01/07/2020)  |
| 01/07/2020 | <a href="#">6</a><br>(1 pg)             | Summons Service Executed on Pacific Gas & Electric Company 12/20/2019 . (Conlon, Brian) (Entered: 01/07/2020)  |
| 01/21/2020 | <a href="#">7</a><br>(35 pgs; 2 docs)   | Motion to Dismiss Adversary Proceeding <i>Debtors Motion to Dismiss and Motion to Strike</i> Filed by Defendants PG&E Corporation, Pacific Gas & Electric Company. (Attachments: # <a href="#">1</a> Exhibit 1 - Proposed Order) (Rupp, Thomas) (Entered: 01/21/2020)  |
| 01/21/2020 | <a href="#">8</a><br>(885 pgs; 19 docs) | Declaration of Kevin J. Orsini in Support of <i>Debtors Motion to Dismiss and Motion to Strike</i> (RE: related document(s) <a href="#">7</a> Motion to Dismiss Adversary Proceeding). Filed by Defendants PG&E Corporation, Pacific Gas & Electric Company (Attachments: # <a href="#">1</a> Exhibit A # <a href="#">2</a> Exhibit B # <a href="#">3</a> Exhibit C # <a href="#">4</a> Exhibit D # <a href="#">5</a> Exhibit E # <a href="#">6</a> Exhibit F # <a href="#">7</a> Exhibit G # <a href="#">8</a> Exhibit H # <a href="#">9</a> Exhibit I # <a href="#">10</a> Exhibit J # <a href="#">11</a> Exhibit K # <a href="#">12</a> Exhibit L # <a href="#">13</a> Exhibit M # <a href="#">14</a> Exhibit N # <a href="#">15</a> Exhibit O # <a href="#">16</a> Exhibit P # <a href="#">17</a> Exhibit Q # <a href="#">18</a> Exhibit R) (Rupp, Thomas) (Entered: 01/21/2020) |
| 01/21/2020 | <a href="#">9</a><br>(2 pgs)            | Notice of Hearing on <i>Debtors Motion to Dismiss and Motion to Strike</i> (RE: related document(s) <a href="#">7</a> Motion to Dismiss Adversary Proceeding filed by Defendant Pacific Gas & Electric Company, Defendant PG&E Corporation). <b>Hearing scheduled for 3/10/2020 at 10:00 AM at San Francisco Courtroom 17 - Montali.</b> Filed by Defendants PG&E Corporation, Pacific Gas & Electric Company. (Rupp, Thomas) (Entered: 01/21/2020)  |
| 01/24/2020 | <a href="#">10</a><br>(4 pgs)           | Certificate of Service of <i>Alain B. Francoeur Regarding Debtors' Motion to Dismiss and Motion to Strike, Declaration of Kevin J. Orsini in Support of Debtors' Motion to Dismiss and Motion to Strike, Notice of Hearing on Debtors' Motion to Dismiss and Motion to Strike</i> Filed by Other Prof. Prime Clerk LLC (related document(s) <a href="#">7</a> Motion to Dismiss Adversary Proceeding, <a href="#">8</a> Declaration, <a href="#">9</a> Notice of Hearing). (Baer, Herb) (Entered: 01/24/2020)  |
| 01/31/2020 | <a href="#">11</a><br>(3 pgs)           | Notice Regarding <i>Notice Of Appearance And Request For Service Of Documents</i> Filed by Plaintiff Anthony Gantner. (Harris, Robert) (Entered: 01/31/2020)   |
| 02/05/2020 | <a href="#">12</a><br>(2 pgs)           | Document: <i>Letter to Court regarding Scheduling Conference and Discovery Deadlines.</i> (RE: related document(s) <a href="#">2</a> Summons Issued, <a href="#">3</a> Discovery Order). Filed by Defendants PG&E Corporation, Pacific Gas & Electric Company (Rupp, Thomas) (Entered: 02/05/2020)   |

|            |  |   |
|------------|--|---|
| 02/05/2020 |  | <b>DOCKET TEXT ORDER</b> (no separate order issued:) It has long been the practice of this court to move scheduling conferences set by the clerk at the beginning of an adversary proceeding to a nearby date when a party has filed and set a motion that may impact further scheduling. Doing so is obviously efficient and saves all parties time and expense not to mention that the court need only hold one hearing instead of two. While lead counsel for plaintiff may not be familiar with this practice in the bankruptcy court, co-counsel from Binder & Malter are. Thus, the court finds surprising the unwillingness of lead counsel to agree move the initial conference a mere fifteen days. The court will move the scheduling conference from February 26, 2020, at 10 AM to March 10 at 10 AM unless, no later than February 10, 2020, counsel for plaintiff files a written explanation, not to exceed five pages, explaining why the court should not move the date as requested by counsel for defendants. If plaintiff prefers to stipulate to such a continuance in the alternative, he is invited to do so with defense counsel and to advise the courtroom deputy promptly. (Montali, Dennis) (Entered: 02/05/2020) |
| 02/05/2020 | <a href="#">13</a><br>(3 pgs)          | Response <i>Plaintiff's Response to Letter Requesting Continuance of Status Conference</i> (RE: related document(s) <a href="#">12</a> Document). Filed by Plaintiff Anthony Gantner (Carlin, Nicholas) (Entered: 02/05/2020)   |
| 02/05/2020 | <a href="#">14</a><br>(2 pgs)          | Notice Regarding <i>Notice Of Appearance And Request For Service Of Documents</i> Filed by Defendants PG&E Corporation, Pacific Gas & Electric Company. (Benvenuti, Peter) (Entered: 02/05/2020)  |
| 02/06/2020 | <a href="#">15</a><br>(2 pgs)          | Document: <i>Letter to Court regarding Discovery Deadlines</i> . (RE: related document(s) Judge Docket Order). Filed by Defendants PG&E Corporation, Pacific Gas & Electric Company (Rupp, Thomas) (Entered: 02/06/2020)  |
| 02/06/2020 |  | <b>DOCKET TEXT ORDER</b> (no separate order issued:) Since the complaint deals with postpetition events, the time constraints of AB 1054 and the pending plan schedule are not so critical. Nor is a short delay in initial disclosures, etc. All pre-conference deadlines will be suspended until the hearing on the motion to dismiss on March 10, 2020, at 10 AM. (Montali, Dennis) (Entered: 02/06/2020)  |
| 02/07/2020 |  | Hearing Continued. The Scheduling Conference on 2/26/20 at 10:00 am is continued to 3/10/20 at 10:00 am per the Court's 2/5/20 Docket Text Order (related document(s): <a href="#">1</a> Complaint filed by Anthony Gantner) <b>Hearing scheduled for 03/10/2020 at 10:00 AM at San Francisco Courtroom 17 - Montali.</b> (lp) (Entered: 02/07/2020)  |
| 02/25/2020 | <a href="#">16</a><br>(31 pgs)         | Brief/Memorandum in Opposition to <i>Plaintiff's Opposition to Debtors' Motion to Dismiss and Motion to Strike</i> (RE: related document(s) <a href="#">7</a> Motion to Dismiss Adversary Proceeding). Filed by Plaintiff Anthony Gantner (Carlin, Nicholas) (Entered: 02/25/2020)  |
| 02/25/2020 | <a href="#">17</a><br>(76 pgs; 8 docs) | Declaration of Nicholas A. Carlin in In Support of <i>Opposition to Debtors' Motion to Dismiss and Motion to Strike</i> (RE: related document(s) <a href="#">7</a> Motion to Dismiss Adversary Proceeding). Filed by Plaintiff Anthony Gantner (Attachments: # <a href="#">1</a> Exhibit Exhibit 1 # <a href="#">2</a> Exhibit Exhibit 2 # <a href="#">3</a> Exhibit Exhibit 3 # <a href="#">4</a> Exhibit Exhibit 4 # <a href="#">5</a> Exhibit Exhibit 5 # <a href="#">6</a> Exhibit Exhibit 6 # <a href="#">7</a> Exhibit Exhibit 7) (Carlin, Nicholas). Related document(s) <a href="#">16</a> Opposition Brief/Memorandum filed by Plaintiff Anthony Gantner. Modified on 2/27/2020 (dc). (Entered: 02/25/2020)  |



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| 03/03/2020 | <a href="#">18</a><br>(20 pgs)        | Reply of Debtors in Support of Motion to Dismiss and Motion to Strike (RE: related document(s) <a href="#">7</a> Motion to Dismiss Adversary Proceeding). Filed by Defendant PG&E Corporation (Kim, Jane) (Entered: 03/03/2020)  |
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| <b>Billable Pages:</b>      | 7             | <b>Cost:</b>            | 0.70  |

**No. 21-15571**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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ANTHONY GANTNER, individually and on behalf of all those  
similarly situated,

*Plaintiff-Appellant,*

v.

PG&E CORPORATION, a California Corporation, and PACIFIC  
GAS AND ELECTRIC COMPANY, a California Corporation

*Defendants-Appellees.*

On Appeal from the United States District Court  
for the Northern District of California

No. 4:20-CV-02584-HSG

Hon. Haywood S. Gilliam, Jr.,

[an appeal from an Order in the Bankruptcy Case In re: PG&E  
CORPORATION and PACIFIC GAS AND ELECTRIC COMPANY,  
Debtors, Bankruptcy Case No. 19-30088 (DM), Adv. Pro. No. 19-  
03061 (DM), Hon. Donald Montali, U.S. Bankruptcy Judge]

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**APPELLEES' ANSWERING BRIEF**

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Rule 26.1 of the Circuit Rules of this Court, Appellees state: PG&E Corporation and Pacific Gas and Electric Company (collectively, “PG&E”) are organized under the laws of California. Pacific Gas and Electric Company is wholly owned by PG&E Corporation, a publicly held corporation. No publicly held corporation owns 10% or more of PG&E Corporation’s stock.

Date: August 25, 2021

**CRAVATH, SWAINE & MOORE LLP**

*/s/ Omid H. Nasab*

Omid H. Nasab

*Attorneys for Appellees PG&E Corporation  
and Pacific Gas and Electric Company*

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## INTRODUCTION

In recent years, the risk of catastrophic wildfires in California has increased dramatically. In 2020 alone, wildfires in California burned over 4.2 million acres (an area 142 times the size of San Francisco), killed 33 people, and destroyed more than 10,000 structures. PG&E is the primary utility serving Northern California. Its service territory begins to experience “Red Flag Warning” days as early as May each year and the risk of wildfires is present for a majority of the year. But particularly in the Fall—after long and dry summers have dried out vegetation—pockets of its service territory now regularly experience periods of extreme fire risk, when parched vegetation and hot weather are combined with strong, dry “Diablo” windstorms. Under these conditions, a small spark—such as a spark caused by the wind dislodging a branch from one of the tens of millions of trees that surround PG&E’s power lines and that branch making contact with a line—can turn into a catastrophic, deadly wildfire.

To address the growing threat of wildfires in California, the state legislature, the Public Utilities Commission (“CPUC”) and utility companies have worked to establish new tools and programs that mitigate the risk of wildfires caused by electric equipment. One tool that *all* major utilities in California have implemented and relied on is prospective de-energization of power lines during periods of extreme risk. Following extensive and continuing consideration of the

benefits and costs, the CPUC authorized utilities in the state, including PG&E, to implement “Public Safety Power Shutoff” (“PSPS”) events in accordance with CPUC-promulgated rules and guidelines. The CPUC has also reviewed and approved PG&E’s wildfire mitigation plans that set out PG&E’s de-energization approach. And the CPUC maintains active oversight of PSPS events implemented by utilities and continues to refine its guidelines.

Through his putative class action, lead plaintiff Anthony Gantner (“Plaintiff”) seeks to impose, through a state-law negligence claim, billions of dollars in liability for *all* PSPS events PG&E undertook in 2019 and beyond to save lives and property. The damages claimed on behalf of the putative class are damages, such as the loss of food items in the refrigerator, flowing from the loss of electricity during all power shutoffs conducted by PG&E for every PG&E customer that lost power. The core question presented by this appeal is whether allowing Plaintiff’s sweeping negligence claim to proceed would impermissibly hinder or interfere with the CPUC’s regulatory authority over PSPS events, in violation of California Public Utilities Code § 1759 (“section 1759”).

Section 1759 divests courts of jurisdiction over actions that “enjoin, restrain, or interfere with the commission in the performance of its official duties”. The California Supreme Court has held that section 1759 preempts civil lawsuits

where a plaintiff seeks to have a court impose civil liability on a defendant for conduct that is authorized by CPUC rules or guidelines.

Here, Plaintiff unabashedly seeks to do exactly that: impose civil liability for conduct permitted by the CPUC. Plaintiff's complaint does *not* allege that PG&E's PSPS events were imprudent, carried out unreasonably or performed in violation of any of the CPUC's guidelines governing power shutoffs. In Plaintiff's own words: "The Complaint does not challenge PG&E's right to institute PSPSs, whether they were necessary, *or the manner in which it instituted them*". (Appellant's Opening Brief ("Appellant's Br.") at 12 (emphasis added).) Indeed, the entire crux of Plaintiff's theory is that the PSPS events and their scope were, in fact, necessary to save lives and property because of the alleged condition of PG&E's electrical grid. Because Plaintiff seeks to impose tort liability on PG&E for damages arising from all power shutoffs regardless of PG&E's *compliance* with the CPUC's guidelines for power shutoffs, Plaintiff's claim is barred by section 1759.

This is exactly the conclusion reached by the CPUC (which appeared as an *amicus* before the Bankruptcy Court), the Bankruptcy Court and the District Court. As the District Court explained, the "CPUC's regulatory policies, as reflected in [its PSPS] guidelines and the approval of the Wildfire Safety Plan, authorize [PG&E] to decide that PSPS is warranted under certain circumstances"

and “[i]mposing liability on [PG&E] for implementing CPUC-approved PSPS events would force [PG&E] to choose between incurring potentially limitless negligence liability and protecting public safety in the manner dictated by the appropriate regulatory authority: CPUC.” (1-ER-9-10 (Dist. Ct. Order at 8-9).)

Plaintiff’s efforts to argue that PG&E’s PSPS events would not have been necessary in the first place had PG&E done a better job of maintaining its grid do not change the analysis. This argument ignores that the CPUC has authorized all of the utilities in California to engage in power shutoffs when they meet the CPUC’s guidelines—whatever their historical maintenance practices—and that all the major utilities regularly employ PSPS. But, more fundamentally, allegations about what motivated *PG&E* to institute a PSPS program is not the relevant question here. The relevant question is whether the PSPS events were authorized and regulated by the CPUC. The answer here is undisputedly “yes”, and attempting to broadly impose liability on PG&E for PSPSs notwithstanding their compliance with applicable CPUC regulations is barred by section 1759.

While it is not necessary for this Court to go beyond the threshold question of whether Plaintiff’s claim is barred by section 1759, there are two alternate reasons the Complaint should be dismissed. *First*, as the Bankruptcy Court concluded, Plaintiff’s effort to impose liability for PSPS events based on alleged poor maintenance efforts in prior years suffers from a causation gap.

Plaintiff argues that PG&E's past negligence necessitated the PSPS events. But Plaintiff failed to allege in his Complaint any facts connecting that alleged negligence to the PSPS events for which he claims damages. The PSPS events were triggered by weather conditions on a circuit-by-circuit, line-by-line basis. Plaintiff fails to connect any alleged negligence in any circuit with any particular shutoff that occurred on that circuit.

*Second*, Plaintiff's allegations fail to state a claim upon which relief may be granted due to PG&E's Tariff Rule 14. Tariff Rule 14, which governs the relationship between PG&E and its customers and has the force of law, permits PG&E to interrupt service without liability when in its sole opinion doing so is necessary for public safety. There is no dispute that is what PG&E did with the PSPS events at issue here.

### **JURISDICTIONAL STATEMENT**

For the reasons set forth in Plaintiff's jurisdictional statement in his Opening Brief, PG&E agrees that this Court has jurisdiction over this appeal.



## ISSUES PRESENTED

1. The California Supreme Court has held that section 1759 divests trial courts of subject matter jurisdiction over civil actions seeking to impose liability for CPUC-authorized conduct. Did the District Court err in finding that Plaintiff's action is preempted by section 1759 where Plaintiff seeks to impose liability on PG&E for all of its PSPS events, regardless of whether those PSPS events were authorized by the CPUC's PSPS guidelines?

2. Should this Court certify to the California Supreme Court the question of whether section 1759 preempts Plaintiff's Complaint when the California Supreme Court's precedent with respect to section 1759 preemption is clear and controlling?

3. Did the District Court abuse its discretion in denying Plaintiff leave to amend his Complaint because Plaintiff's "entire negligence theory runs afoul of § 1759's jurisdictional limitations" where Plaintiff offered no proposed amendments that attempted to remove his Complaint from the purview of section 1759 preemption?

4. Did the Bankruptcy Court err in finding that Plaintiff failed to adequately plead the necessary element of causation where Plaintiff failed to plead how PG&E's alleged failure to maintain its electric system "necessitated" the specific PSPS events by which he claims he was harmed?

5. PG&E’s Tariff Rule 14—which has the force of law—provides that PG&E shall not be liable for interruptions of service that occur when the utility decides “in its sole discretion” that doing so is necessary for public safety. Does Tariff Rule 14 shield PG&E from liability on Plaintiff’s claim where it is undisputed that PG&E’s PSPS events were necessary for public safety?

### **STATEMENT OF ADDENDUM**

Except for the materials included in the Addendum attached hereto, all pertinent statutes, regulations and rules are contained in Plaintiff’s Addendum.

### **STATEMENT OF THE CASE**

#### **I. FACTUAL BACKGROUND**

##### **A. The CPUC’s Regulation of Prospective De-energization**

The CPUC regulates the operation of electric utilities in California, including efforts related to safety and wildfire prevention. *See* Cal. Const., art. XII, §§ 1-6, *see also* Cal. Pub. Util. Code § 8386. As part of this regulation, the CPUC exercises a supervisory role over utilities’ decisions to proactively de-energize their electric lines as a public safety measure.

The CPUC first authorized a public utility to engage in planned PSPS events to reduce the risk of wildfires in April 2012, when it approved San Diego Gas & Electric’s (“SDG&E”) application to prospectively de-energize lines in certain high-fire threat conditions in Decision 12-04-024 (the “SDG&E Decision”). In making this determination, the CPUC was cognizant of the hardships power

outages cause to communities, residents and businesses, yet nevertheless found that the harms associated with fires sparked by electrical equipment merited this precautionary measure at times of high risk. (1-SER-250-252 (SDG&E Decision at 9-11).) In its Decision, the CPUC recognized that even if a system is reasonably maintained, high winds below the limit that a system's equipment is designed to withstand can still create a risk to public safety that would justify prospective de-energization. (1-SER-273 (SDG&E Decision at 32 (“[T]here is a risk that SDG&E's existing facilities may fail at wind speeds below 91 mph” so “[i]t would be extremely dangerous to prohibit SDG&E from shutting off power when SDG&E reasonably believes there is an imminent danger of energized power lines falling onto tinder dry vegetation in Santa Ana wind conditions and there are no other safety measures available”)).)

Following the 2017 California wildfire season, which, according to the CPUC, “further demonstrate[d] the fire risk in California”, the CPUC adopted ESRB-8. (2-ER-210 (ESRB-8 at 2).) In ESRB-8, the CPUC stated that “[d]e-energizing electric facilities during dangerous conditions can save lives and property and can prevent wildfires”. (2-ER-209 (ESRB-8 at 1).) It affirmed that California law “give[s] electric utilities authority to shut off electric power in order to protect public safety. This authority includes shutting off power for the prevention of fires caused by strong winds.” (2-ER-210 (ESRB-8 at 2).) And it

extended the application of the SDG&E Decision to all investor-owned utilities (“IOUs”) and enhanced the CPUC’s de-energization policies to provide “guidelines that IOUs must follow” when conducting PSPS events. (2-ER-209, 213 (ESRB-8 at 1, 5).) It also set forth certain factors the CPUC would consider in assessing the reasonableness of de-energization events, including whether the utility “reasonably believe[d] that there [was] an imminent and significant risk that strong winds will topple its power lines onto tinder dry vegetation or will cause major vegetation-related impacts on its facilities during periods of extreme fire hazard”. (2-ER-212 (ESRB-8 at 4).)

In August 2018, the California legislature passed Senate Bill 901 (Dodd) (“SB 901”), which requires utilities with equipment in areas with significant fire risk to prepare a wildfire mitigation plan that must be reviewed annually by the CPUC. Annual wildfire mitigation plans *must include* “[p]rotocols for . . . deenergizing portions of the electrical distribution system that consider the associated impacts on public safety”, as well as “protocols related to mitigating the public safety impacts” of de-energization. Cal. Pub. Util. Code § 8386(c)(6). Before approving a utility’s wildfire mitigation plan, the CPUC conducts an extensive review process that includes receiving comments from the public, local and state agencies and other interested parties, as well as providing feedback to the utilities. (2-SER-301, 307 (CPUC Rulemaking 18-10-007 at 1, 7).)

## **B. PG&E's PSPS Program**

PG&E developed its PSPS program in 2018 following the North Bay Wildfires and initiated its first PSPS event in October 2018. In advance of the 2019 wildfire season, and pursuant to SB 901, PG&E filed its 2019 Wildfire Safety Plan with the CPUC in February 2019 that included a significant expansion of its PSPS program to include all distribution and transmission lines that cross areas designated by the CPUC as "Tier 2" or "Tier 3" High Fire Threat Districts or HFTDs. (*See* 2-SER-432 (PG&E Amended 2019 Wildfire Safety Plan ("WSP") at 96.) Under the plan, PG&E looks to a combination of factors when determining if power should be turned off for safety, including: (a) a Red Flag Warning declared by the National Weather Service; (b) low humidity levels (generally 20 percent and below); (c) forecasted sustained winds generally above 25 miles per hour and wind gusts in excess of approximately 45 miles per hour, depending on location and site-specific conditions; (d) computer-simulated ignition spread and consequence modeling based on current conditions; (e) conditions of dry fuel on the ground and live vegetation; and (f) on-the-ground, real-time wildfire-related information from PG&E's Wildfire Safety Operations Center and field observations from PG&E field crews. (2-SER-433-434 (WSP at 97-98).)

The Wildfire Safety Plan also detailed PG&E's implementation of new and ongoing safety precautions to address the growing threat of extreme

weather and wildfires across its service area. For example, the plan called for PG&E to conduct fundamentally enhanced safety inspections of its electric infrastructure in high fire threat areas in advance of the 2019 fire season and repair any priority issues identified in advance of that fire season. (*See* 2-SER-388-396 (WSP at 52-60).) The enhanced inspections included ground inspections of all distribution, transmission and substation assets, as well as climbing inspections and drone inspections of every transmission tower in PG&E’s service territory. (*Id.*) The CPUC approved PG&E’s 2019 Wildfire Safety Plan in Decision 19-05-037, issued on June 4, 2019. (3-ER-395 (CPUC Decision 19-05-37).)

The Complaint alleges that PG&E executed de-energization events on October 9, October 23, October 26, October 29 and November 20, 2019 (the “2019 PSPS Events”). (4-ER-499-501 (Compl. at ¶¶ 63-78).)

**C. The CPUC’s Continuing Regulation of PSPS After 2019**

Since the 2019 PSPS Events occurred, the CPUC has continued to regulate PSPS. (1-SER-280 (CPUC Rulemaking 18-12-005 at 1).) For example, the CPUC has continued to refine its PSPS guidelines, with the latest changes announced in June 2021. (CPUC Decision Adopting Phase 3 Revised and Additional Guidelines and Rules for Public Safety Power Shutoffs (Proactive De-energizations) of Electric Facilities to Mitigate Wildfire Risk Caused by Utility Infrastructure, Decision 21-06-034, 2021 WL 2852304, at \*11-13 (Cal. P.U.C.

June 29, 2021).) In June 2021, the CPUC also issued a decision arising out of its investigation to determine whether California’s investor-owned utilities complied with the Commission’s regulations and requirements with respect to their PSPS events in late 2019. (CPUC Decision Addressing the Late 2019 Public Safety Power Shutoffs by PG&E, SCE and SDG&E to Mitigate the Risk of Wildfire Caused by Utility Infrastructure, Decision No. 21-06-014, 2021 WL 2473851 (Cal. P.U.C. June 3, 2021).)<sup>1</sup>

PG&E, along with the other utilities in California, continues to utilize PSPS as a wildfire mitigation tool under the guidance and oversight of the CPUC. (See Press Release, CPUC, *CPUC to Hold Public Briefings on Utility Readiness for 2021 Public Safety Power Shutoffs* (July 15, 2021), <https://tinyurl.com/45cjpgv97>.) Additionally, after over 1 million acres of land burned in Oregon in 2020, Oregon’s Public Utilities Commission this year adopted similar prospective de-energization guidelines for utilities in Oregon. (Press

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<sup>1</sup> PG&E requests that the Court take judicial notice of the existence of the CPUC’s recent PSPS decisions pursuant to Federal Rule of Evidence 201. Federal courts “may take judicial notice of ‘matters of public record’”. *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001). “Matters of public record” include the existence of CPUC decisions and public filings. See *Nugget Hydroelectric, L.P. v. Pac. Gas & Elec. Co.*, 981 F.2d 429, 435 (9th Cir. 1992).

Release, Oregon Public Utility Commission, *Oregon PUC Adopts New Rules for 2021 Wildfire Season* (May 20, 2021), <https://tinyurl.com/3cfy9v2y>.)<sup>2</sup>

## II. PROCEDURAL HISTORY

### A. Plaintiff's Complaint

Plaintiff filed his Complaint on December 19, 2019, initiating an adversary proceeding in PG&E's Chapter 11 proceedings. Plaintiff claims that he and members of the putative class suffered financial hardships, property damage, loss of earnings and profits and emotional distress as a result of the 2019 PSPS Events. Notably, Plaintiff does not allege that these alleged harms arose from PG&E's negligence in implementing the 2019 PSPS Events or from PG&E's violation of the CPUC's guidelines. Rather, Plaintiff alleges that the 2019 PSPS Events were necessitated by PG&E's alleged historical negligence in maintaining its electrical equipment. (*See* 4-ER-487 (Compl. ¶ 2).)

Plaintiff sought to certify a class including “[a]ll California residents and business owners who had their power shutoff by PG&E during the [2019 PSPS Events] and any subsequent voluntary Outages PG&E imposes on its customers

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<sup>2</sup> PG&E requests that the Court take judicial notice of the July 15, 2021 CPUC press release and the May 20, 2021 Oregon Public Utilities Commission press release regarding PSPS. Pursuant to Federal Rule of Evidence 201, this Court has taken judicial notice of press releases published by government agencies. *Arce v. Douglas*, 793 F.3d 968, 975 n.3 (9th Cir. 2015); *see also DeHoog v. Anheuser-Busch InBev SA/NV*, 899 F.3d 758, 763 n.5 (9th Cir. 2018).



during the course of the litigation”. (4-ER-503 (Compl. ¶ 85).) Plaintiff demands special and general damages of at least \$2.5 billion, injunctive relief and punitive and exemplary damages.

**B. PG&E’s Motion to Dismiss and the CPUC’s Amicus Brief**

On January 21, 2020, PG&E filed a motion to dismiss Plaintiff’s Complaint, including on the ground that the Bankruptcy Court lacked subject matter jurisdiction to hear the action under Federal Rule of Civil Procedure 12(b)(1) because section 1759 preempts the action. Section 1759 divests civil courts of jurisdiction over actions that “interfere with the CPUC in the performance of its official duties.” Plaintiff opposed PG&E’s motion.

The CPUC submitted an *amicus curiae* brief stating its view that “adjudication of Plaintiff’s claim, as framed by the Complaint, would hinder and interfere with enforcement of the Commission’s guidelines concerning public safety power shutoffs and the Commission’s approval of the Utility’s 2019 Wildfire Safety Plan”. (1-SER-97 (CPUC Amicus Curiae Br. (Bankr. Dkt. No. 19) (“CPUC Br.”) at 7).) The CPUC noted that the “policies reflected in those guidelines and that approval expressly authorize the Utility to decide that a public safety power shutoff is warranted under certain circumstances”. (*Id.*) But Plaintiff’s Complaint “seeks to impose liability on the Utility for exactly such decisions, without alleging that any particular decision by the Utility to conduct a

public safety power shutoff violated the Commission’s policies . . . [and] resulted from the Utility’s underlying failure to comply with any particular mandate”. (*Id.*)

On March 10, 2020, the Bankruptcy Court held oral argument on PG&E’s motion. On March 30, 2020, the Bankruptcy Court issued a decision granting PG&E’s motion to dismiss on the grounds that section 1759 preempted Plaintiff’s action. The court held that litigation of Plaintiff’s claim would hinder and interfere with the enforcement of the CPUC’s guidelines approving PSPS events, particularly since Plaintiff did not allege damages from PG&E carrying out its PSPS events unreasonably or in contravention of CPUC guidelines. (1-ER-21-22 (Bankr. Decision 8-9).) The Bankruptcy Court also found that the proximate causal connection between the alleged harms suffered by Plaintiff during the PSPS events and PG&E’s alleged negligence is “too remote” to defeat PG&E’s motion to dismiss. (1-ER-23 (Bankr. Decision at 10).) The Bankruptcy Court dismissed Plaintiff’s action with prejudice.

**C. The District Court Affirms the Bankruptcy Court’s Dismissal**

Plaintiff subsequently appealed the Bankruptcy Court’s dismissal of his Complaint to the District Court. In March 2021, the District Court issued a memorandum decision affirming the Bankruptcy Court’s dismissal of Plaintiff’s Complaint, holding that Plaintiff’s action was preempted by section 1759 because it “interfere[s] with the CPUC’s PSPS policies and ‘its broad and continuing

supervisory [and] regulatory program”’. (1-ER-10 (Dist. Ct. Order at 9).) The District Court held that the “CPUC’s regulatory policies, as reflected in [its PSPS] guidelines and the approval of the Wildfire Safety Plan, authorize [PG&E] to decide that PSPS is warranted under certain circumstances” and that “[i]mposing liability on [PG&E] for implementing CPUC-approved PSPS events would force [PG&E] to choose between incurring potentially limitless negligence liability and protecting public safety in the manner dictated by the appropriate regulatory authority: CPUC.” (1-ER-9 (Dist. Ct. Order at 8).) The District Court observed that “[u]nder California law, it is the job of the CPUC to balance the costs and benefits of PSPS events and regulate them accordingly. And it is not the job of the courts to regulate PSPS events through ad hoc imposition of negligence liability”. (1-ER-10 (Dist. Ct. Order at 9).)

The District Court likewise held that the Bankruptcy Court did not err by denying Plaintiff leave to amend because Plaintiff’s “entire negligence theory runs afoul of [section] 1759’s jurisdictional limitations”. (1-ER-11 (Dist. Ct. Order at 10).)

Plaintiff filed a notice of appeal to this Court on March 26, 2021. (2-ER-510.)

## SUMMARY OF THE ARGUMENT

The District Court’s dismissal of Plaintiff’s Complaint without leave to amend should be affirmed.

*First*, the District Court correctly found that Plaintiff’s action interferes with the CPUC’s regulation and oversight of PSPS events and is therefore preempted under section 1759. The California Supreme Court has made clear that lawsuits that seek to impose liability on public utilities for conduct that was authorized by the CPUC are barred. That is exactly what Plaintiff seeks to do in the current action—he is broadly seeking billions of dollars of damages arising from the 2019 PSPS Events, without alleging that PG&E carried out those PSPS events negligently or in a manner that violated the CPUC’s PSPS guidelines. As the CPUC noted in its *amicus* brief in the Bankruptcy Court, and as both of the lower courts correctly found, imposing liability on PG&E here interferes with the CPUC’s authorization of PSPS events through its PSPS guidelines and approval of PG&E’s Wildfire Safety Plan.

*Second*, Plaintiff fails to adequately plead a causal connection between PG&E’s alleged negligence and the harms allegedly suffered during the 2019 PSPS Events, as the Bankruptcy Court recognized. The Complaint alleges in a conclusory fashion that the 2019 PSPS Events were “necessitated” by PG&E’s history of negligent maintenance in the decades preceding the events. But Plaintiff

fails to plead a causal connection between PG&E's maintenance of any particular circuit or line and the scope of the 2019 PSPS Events, which were undisputedly conducted on a circuit-by-circuit, line-by-line basis.

*Third*, this Court should affirm the District Court's dismissal of Plaintiff's claim because Plaintiff's action is barred by PG&E's Tariff Rule 14, which governs the relationship between PG&E and its customers and has the force of law. The plain text of Tariff Rule 14 states that PG&E shall not be liable for interruptions of service that occur when the utility decides "in its sole discretion" that doing so is necessary for public safety. Plaintiff concedes that the 2019 PSPS Events were necessary to mitigate the risk of wildfire during high fire threat conditions. Thus, Tariff Rule 14 squarely applies.

### **STANDARD OF REVIEW**

The District Court's dismissal of Plaintiff's Complaint for lack of jurisdiction under Rule 12(b)(1) is reviewed *de novo*. *Naffe v. Frey*, 789 F.3d 1030, 1035 (9th Cir. 2015); *Corrie v. Caterpillar, Inc.*, 503 F. 3d 974, 979 (9th Cir. 2007). The District Court's denial of Plaintiff's request for leave to amend his Complaint is reviewed for abuse of discretion. *Kroessler v. CVS Health Co.*, 977 F.3d 803, 807 (9th Cir. 2020); *Cervantes v. Countrywide Home Loans, Inc.*, 656 F. 3d 1034, 1040 (9th Cir. 2011).

## ARGUMENT

### I. THE LOWER COURTS CORRECTLY HELD THAT SECTION 1759 PREEMPTS PLAINTIFF’S COMPLAINT.

Affirming the Bankruptcy Court’s decision below, the District Court correctly held that Plaintiff’s claim for damages caused by the 2019 PSPS Events is preempted by section 1759 because it “would interfere with the CPUC’s PSPS policies and its ‘broad and continuing supervisory [and] regulatory program.’” (1-ER-10 (Dist. Ct. Order at 9 (quoting *San Diego Gas & Elec. Co. v. Superior Ct. (Covalt)*, 13 Cal. 4th 893, 919 (1996)).) That ruling should be affirmed.

#### A. Section 1759 Preempts Civil Actions that Seek Damages for Actions Authorized by the CPUC.

“In a case requiring a federal court to apply California law, the court must apply the law as it believes the California Supreme Court would apply it”. *Kairy v. SuperShuttle Int’l*, 660 F.3d 1146, 1150 (9th Cir. 2011) (citation and internal quotation marks omitted).

California Public Utility Code § 2106 (“section 2106”) and section 1759 govern civil actions for conduct regulated by the CPUC. Section 2106 authorizes civil lawsuits against utilities for damages arising from violations of law or CPUC regulations and orders:

Any public utility which does, causes to be done, or permits any act, matter, or thing prohibited or declared unlawful, or which omits to do any act, matter, or thing required to be done, either by the Constitution, any law of this State, or any order or decision of the

commission, shall be liable to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or resulting therefrom.

Cal. Pub. Util. Code § 2106.

Section 1759, on the other hand, divests trial courts of subject matter jurisdiction over any matter that would reverse or annul a specific CPUC order, or that “would simply have the effect of undermining a general supervisory or regulatory policy of the commission, *i.e.* when it would ‘hinder’ or ‘frustrate’ or ‘interfere with’ or ‘obstruct’ that policy”. *Covalt*, 13 Cal. 4th at 918. Section 1759 provides:

No court of this state, except the Supreme Court and the court of appeal, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, as provided by law and the rules of court.

Cal. Pub. Util. Code § 1759.

The California Supreme Court has recognized that a potential conflict exists between sections 1759 and 2106 when a plaintiff attempts to bring a suit seeking damages for a utility’s violation of CPUC regulations and standards that, if the plaintiff were to prevail, would hinder or frustrate the CPUC’s supervisory or regulatory policies. *Covalt*, 13 Cal. 4th at 917-18. In the event of such conflicts, the California Supreme Court has unequivocally held that section 2106 must give

way to and be limited by section 1759: “[I]n order to resolve the potential conflict between sections 1759 and 2106, the latter section must be construed as *limited* to those situations in which an award of damages would not hinder or frustrate the commission’s declared supervisory and regulatory policies”. *Id.* (citing *Waters v. Pac. Tel. Co.*, 12 Cal. 3d 1, 4 (1974)). In doing so, the court reaffirmed “the primacy of section 1759 and the correspondingly limited role of section 2106”. *Id.* at 917.

In determining whether section 1759 applies, the California Supreme Court set out a three-part test in *Covalt*. Specifically, the court held that a lower court does not have jurisdiction over a civil action where: (1) the CPUC has the authority to regulate the conduct at issue; (2) the CPUC has exercised that authority; and (3) the action would hinder or interfere with CPUC policies. *Covalt*, 13 Cal. 4th at 923, 926, 935.

Here, Plaintiff has always conceded that the first two prongs of the *Covalt* test are met, as he must, given the CPUC’s robust and ongoing regulation of PSPS. (1-SER-111 (Plaintiff’s Opp. to Debtors’ Mot. to Dismiss and Mot. to Strike (Bankr. Dkt. 16) (“MTD Opp.”) at 7 (“Plaintiff does not dispute that the CPUC has authority to regulate and supervise the safety of public utility operations, including PSPS. Nor does Plaintiff dispute that the CPUC has exercised that authority in the realm of PSPSs through adopting resolutions and



beginning investigations.”)).) Thus, the only *Covalt* factor in dispute is whether Plaintiff’s action would hinder or interfere with the CPUC’s policies.

The California Supreme Court has held that an attempt to impose liability for utility conduct that is authorized by the CPUC meets the third prong of the *Covalt* test and constitutes improper interference with the CPUC’s regulatory authority. For example, in *Covalt*, the plaintiffs sought damages from the defendant relating to electric and magnetic fields emanating from power lines that ran close to the plaintiffs’ residence, which the plaintiffs claimed emitted high and unreasonably dangerous levels of electromagnetic radiation that the utility had failed to mitigate. At the time, “the question whether powerline electric and magnetic fields pose a danger to health had become a matter of some public concern and a source of growing controversy in the scientific community”. *Covalt*, 13 Cal. 4th at 908. The CPUC, after conducting investigations into the health effects of electrical magnetic fields, concluded that regulated utilities did not need to take action to reduce field levels from existing powerlines. *Id.* at 926-35. The court held that the plaintiffs’ nuisance claim was thus preempted because it sought to impose civil liability for conduct that the CPUC had authorized, namely *not* mitigating electromagnetic radiation from existing powerlines. *Id.* at 939.

Later, in *Hartwell Corporation v. Superior Court*, 27 Cal. 4th 256 (2002), the California Supreme Court reinforced the rule that civil liability may not

be imposed on a utility for CPUC-authorized conduct. There, the plaintiffs claimed that the defendant utilities negligently provided unsafe drinking water. *Id.* at 260-62. The court held that, notwithstanding the negligence allegations, where the utility provided water that met the CPUC's water quality thresholds, section 1759 preempted the action. *Id.* at 276 ("An award of damages on the theory that the public utilities provided unhealthy water, even if that water actually met DHS and PUC standards, would interfere with a 'broad and continuing supervisory or regulatory program' of the PUC." (quoting *Covalt*, 13 Cal. 4th at 919)). In other words, given that the CPUC determined that a certain level of contamination in drinking water was acceptable, a plaintiff could not undermine that determination by seeking to impose civil liability through the courts on a utility that had containments in the water below the level set by the CPUC, regardless of allegations that the water was contaminated negligently. *Id.*

At the same time, the court in *Hartwell* also held that the plaintiffs' claims for damages arising from the utilities' alleged *exceedances* of the CPUC's water-quality thresholds were *not* preempted under section 1759. *Id.* The CPUC had not authorized utilities to distribute water with contamination at those levels, and therefore civil liability for those claims would *assist* in enforcing the CPUC's regulations, rather than interfere. *Id.* at 277. Since then, other courts have enforced this distinction. *See, e.g., Cooney v. Cal. Pub. Utils. Comm'n,*

No. C 12-6466 CW, 2014 WL 3531270, at \*3 (N.D. Cal. July 15, 2014) (holding action was preempted where plaintiff claimed harm caused by equipment that the CPUC authorized utilities to use); *Sarale v. Pac. Gas & Elec. Co.*, 189 Cal. App. 4th 225, 242-43 (2010) (holding that “trial courts lack jurisdiction to adjudicate claims that a power utility has engaged in excessive trimming or unreasonable vegetation management when the utility has acted under guidelines or rules set forth by the commission”).

**B. Because Plaintiff’s Action Seeks to Impose Liability on PG&E for CPUC-Authorized Conduct, His Lawsuit Interferes with the CPUC’s Regulatory Authority.**

The current action is barred by the California Supreme Court’s holdings in *Covalt* and *Hartwell*. Plaintiff’s action interferes with the CPUC’s authority because it seeks to broadly impose liability for PSPS events regardless of whether those PSPS events comply with all applicable CPUC guidelines and regulations authorizing PSPSs, thereby undermining the CPUC’s carefully considered policies on whether and how to authorize PSPS events. Plaintiff does *not* allege that the PSPS events in question and the alleged harms they caused were unnecessary; to the contrary, the entire thrust of his Complaint is that the 2019 PSPS Events were, in fact, necessary. (*See* 1-SER-106 (MTD Opp. at 2 (“The Complaint does not allege that the PSPSs were not necessary and appropriate, or that CPUC’s approval of its Wildfire Safety Plan was improper, only that the

PSPSs would not have been necessary in the first place had PG&E not been negligent.”)).) Nor does Plaintiff allege that PG&E implemented the 2019 PPS Events in a manner that violated CPUC guidelines. (Appellant’s Br. at 2.) Instead, Plaintiff seeks to impose liability for harms allegedly sustained by all persons impacted by all PPS events that occurred in 2019 and beyond, regardless of whether the PPS events were carried out consistently with CPUC guidelines.

The CPUC authorized PPS events after extensive and ongoing investigations into the need for power shutoffs for the sake of public safety, and it did so for *all* utilities in California, regardless of their maintenance history. Through its 2012 SDG&E Decision and ESRB-8, the CPUC authorized PG&E and other utilities in the state to shut off power under extreme weather conditions to reduce the risk of wildfires. (*See* 2-ER-209 (ESRB-8); 1-SER-241 (SDG&E Decision).) In developing its PPS guidelines and approving the PPS programs of PG&E and other utilities, the CPUC has taken into account and balanced the competing interests and costs involved in these planned outages, including detriments to residents and businesses arising from the loss of income, food spoilage, temporary relocation, loss of productivity or habitability and health and safety risks—in short, the same harms that Plaintiff alleges he and the other putative class members have suffered. (*See* 1-SER-246-250 (SDG&E Decision at 7-11); 1-SER-184-187, 193-203 (CPUC Decision 09-09-030 at 21-24, 30-40).)

The CPUC also approved PG&E's 2019 PSPS program in PG&E's Wildfire Safety Plan. (*See* 2-SER-433-434 (WSP at 97-98).)

Like in *Covalt* and *Hartwell*, Plaintiff seeks to hold PG&E liable regardless of whether it complied with the CPUC's policies. Such a result would plainly hinder the CPUC's carefully considered authorization of PSPS events. Indeed, if Plaintiff were to prevail in his effort to impose billions of dollars of civil liability for all PSPS events regardless of whether customers were de-energized in accordance with CPUC guidelines, it would effectively gut the ability of utilities to use this essential public safety tool, notwithstanding the CPUC's determination that PSPS has a role in protecting life and property. As the District Court correctly observed, "[i]mposing liability on [PG&E] for implementing CPUC-approved PSPS events would force [PG&E] to choose between incurring potentially limitless negligence liability and protecting public safety in the manner dictated by the appropriate regulatory authority: CPUC". (1-ER-9 (Dist. Ct. Order at 8).) This undermines the CPUC's role in determining under which circumstances PSPS events are appropriate and is the type of result that section 1759 seeks to avoid.

The CPUC agrees. In its *amicus* brief filed with the Bankruptcy Court, the CPUC expressly stated that allowing Plaintiff's action to proceed would interfere with its authority. That brief is not a "bare assertion", as Plaintiff contends. Instead, the CPUC explained in its brief that the policies reflected in

ESRB-8 and the CPUC’s approval of PG&E’s Wildfire Safety Plan “expressly authorize the Utility to decide that a public safety power shutoff is warranted under certain circumstances.” (1-SER-97 (CPUC Br. at 7).) Because Plaintiff “seeks to impose liability on the Utility for exactly such decisions, *without alleging that any particular decision by the Utility to conduct a public safety power shutoff violated the Commission’s policies concerning such shutoffs, and without alleging that any particular decision by the Utility to conduct a PSPS resulted from the Utility’s underlying failure to comply with any particular mandate*”, judicial adoption of Plaintiff’s theory “would hinder and interfere with the Commission’s considered policy to allow utilities to conduct public safety power shutoffs in the interests of public safety pursuant to guidelines established by the Commission”. (1-SER-97-98 (CPUC Br. at 7-8 (emphasis added)).)

In determining whether an action would hinder or interfere with the CPUC’s authority, this Court “find[s] the PUC’s own statements regarding its jurisdictional interests to be ‘very persuasive’”. *Kairy*, 660 F.3d at 1154. This is based on this Court’s recognition that “California courts have made reference to the PUC’s *amicus* briefs filed in § 1759 cases for aid in assessing the third question in the *Covalt* analysis”, and the California Supreme Court has encouraged courts where appropriate “to solicit the views of the [CPUC] regarding whether the action is likely to interfere with the [CPUC’s] performance of its duties”. *Id.* (citation

omitted). Indeed, before the CPUC filed its brief, Plaintiff repeatedly highlighted the probative value of a statement by the CPUC. (1-SER-106 (MTD Opp. at 2 (“Significantly, the CPUC itself has not indicated in any way that this action would interfere with its regulatory authority.”)); 1-SER-109 (MTD Opp. at 5).) Plaintiff changed his opinion of the significance of the CPUC’s view only after the CPUC expressed the view that his action should be barred.

**C. Plaintiff’s Invocation of Section 2106 Does Not Save His Claim.**

The Bankruptcy Court, the District Court and the CPUC were all correct in rejecting Plaintiff’s argument that because the Complaint alleges that the 2019 PSPS Events were “necessitated” by PG&E’s poor maintenance of its equipment, the action aids in the enforcement of the CPUC’s equipment maintenance standards pursuant to section 2106 and is not preempted.

(Appellant’s Br. at 39-42.) The California Supreme Court has been clear that section 2106 is limited by and gives way to section 1759. *Covalt*, 13 Cal 4th at 917-18 (“[I]n order to resolve the potential conflict between sections 1759 and 2106, the latter section must be construed as limited to those situations in which an award of damages would not hinder or frustrate the commission’s declared supervisory and regulatory policies”). Therefore, even if a suit can fit into the parameters of section 2106 by alleging the violation of a CPUC regulation, it can only survive if it would not hinder the CPUC’s policies. *Id.* Here, Plaintiff’s

claimed damages arise directly from PG&E's PSPS events, which the CPUC permits in accordance with its guidelines. Because an award of damages, regardless of compliance with those guidelines, would interfere with the CPUC's regulation of PSPS events, section 1759 preempts Plaintiff's suit, even if it would otherwise be allowed under section 2106.

Plaintiff repeatedly emphasizes that the way in which PG&E carried out the 2019 PSPS Events is not the basis for his negligence claim, yet, to support his argument that his action is not barred by section 1759, Plaintiff cites primarily to decisions that involve claims arising directly from alleged violations of CPUC requirements. (*See* Appellant's Br. at 39-42.) As the District Court correctly noted, the cases cited by Plaintiff are inapposite. They involve damages arising from an alleged failure by the utility to comply with CPUC standards and where there was no other interference with the CPUC's authority. (1-ER-9 (Dist. Ct. Order at 8).) For example, in *PegaStaff v. Pacific Gas & Electric Company*, the court held that a program that gave preferential treatment to minority enterprises was *prohibited* by the CPUC because "utilities are not authorized or permitted to give preferential treatment to minority enterprises" and "[t]here can be no doubt that the tier system as described in PegaStaff's [complaint] is a preferential system". 239 Cal. App. 4th 1303, 1326 (2015). In *North Star Gas Company v. Pacific Gas & Electric Company*, the court held that section 1759 did not preempt



the plaintiff's lawsuit because the "gravamen of Plaintiff's claims" was that defendant *violated* the CPUC's Gas Rule 23. No. 15-cv-02575-HSG, 2016 WL 5358590, at \*13 (N.D. Cal. Sept. 26, 2016). And in *Mata v. Pacific Gas & Electric Company*, the plaintiff sought damages for an alleged failure to exercise reasonable care in determining what amount of tree trimming beyond the CPUC's minimum requirements was safe in a particular case. 224 Cal. App. 4th 309, 316-17 (2014). The court there found that there was no interference with CPUC authority because the applicable CPUC regulations, while setting *minimum* clearances (*e.g.*, four feet of clearance around conductors), also mandate that utilities must do *more* if circumstances warrant it (*e.g.*, remove a branch that is more than four feet away but poses a hazard to the line). *Id.* at 318. Thus, the court found that plaintiffs were seeking to impose liability for conduct that, if proven true, would have violated CPUC regulations. *Id.* at 320.

Other cases cited by Plaintiff involve situations where a finding of liability would not be contrary to any policy adopted by the CPUC or otherwise interfere with the CPUC's regulation of utilities because the CPUC had not exercised authority over the matter at issue. For example, in *Kairy*, the plaintiff's lawsuit required the trial court to determine whether certain airport shuttle drivers were independent contractors or employees subject to the benefits provided to employees by the California Labor Code. 660 F.3d at 1148. The CPUC took the

position that it had “not exercised authority over the employment classification of shuttle van drivers”, *id.* at 1152-53 (ellipses omitted), and that it was the jurisdictional province of “both the courts and appropriate governmental agencies, such as California’s Department of Industrial Relations (‘DIR’) . . . to determine employment status”, *id.* at 1154. This Court accepted the CPUC’s view, and accordingly found no interference. Similarly, in *Wilson v. Southern California Edison Company*, the court found that the cited standards promulgated by the CPUC did not regulate the conduct that led to the plaintiff’s harm (stray voltage). 234 Cal. App. 4th 123, 151 (2015).

Here, in contrast to those cases, the alleged damages (such as delays in harvesting wine grapes, lost food in the refrigerator and fear of the dark) arise directly from conduct that is undisputedly authorized and heavily regulated by the CPUC—PSPS events. A finding of liability in this action would interfere with the CPUC’s regulation because it would impose liability—massive liability—on conduct regardless of its compliance with the CPUC’s PSPS guidelines. Plaintiff does not dispute that the CPUC has authorized the use of the PSPS events that caused his alleged damages, nor does Plaintiff allege that PG&E has failed to comply with the CPUC’s regulation of the PSPS events. (*See* Appellant’s Br. at 2 (stating that Plaintiff does not challenge whether the 2019 PSPS Events were necessary or the manner in which they were instituted); Appellant’s Br. at 37

(stating that “whether the execution of the PSPSs met the CPUC’s standards is irrelevant” to Plaintiff’s efforts to impose liability on PG&E). Thus, despite Plaintiff’s attempts to distinguish *Covalt* and *Hartwell*, those decisions support the lower courts’ finding that Plaintiff’s action is preempted by section 1759.

**D. Whether the CPUC Has the Ability to Award Compensatory Damages Does Not Control the Preemption Analysis.**

Plaintiff’s argument, made over and over, that the CPUC’s lack of jurisdiction to award compensatory damages “alone” means that his action is not preempted is directly contrary to California Supreme Court authority. Whether the CPUC has authority to award the relief requested is not determinative of whether an action is preempted. If it were, then section 1759 would be a dead letter. That is because while the CPUC possesses a wide variety of remedies to redress violations of its guidelines and orders committed by utilities (such as awarding reparations and imposing penalties and fines), it lacks the authority to award compensatory or consequential damages. *See S. Cal. Pub. Power Auth. v. S. Cal. Gas Co. (U904E)*, No. 18-12-004, 2020 WL 823381, at \*8-9 (Cal. P.U.C. Feb. 12, 2020); *see also* Cal. Pub. Util. Code §§ 734, 2107 (setting out the CPUC’s authority to award reparations, fines and penalties). If the test were as Plaintiff claims, then the California Supreme Court would not have held in *Covalt* and *Hartwell* that any of the claims at issue there were impermissible because the CPUC could not award compensatory or consequential damages in those cases,

either. That is not the test. Instead, the California Supreme Court precedent requires assessing whether “an award of damages would . . . have the effect of undermining a general supervisory or regulatory policy of the commission”. *Covalt*, 13 Cal. 4th at 918; *see also Hartwell*, 27 Cal. 4th at 276 (“An award of damages on the theory that the public utilities provided unhealthy water, even if the water met [regulator’s] standard, ‘would plainly undermine the commission’s policy’” and “such damages actions are barred.”); *Cooney*, 2014 WL 3531270, at \*3 (holding that an action was preempted where plaintiff claimed damages for harm caused by equipment that CPUC authorized utilities to use). Because that test is met here, Plaintiff’s claim is barred.

**E. Plaintiff’s New Arguments on Appeal Should Not Be Entertained and Lack Merit.**

In a last-ditch attempt to establish that his action is not preempted, Plaintiff improperly raises a number of new arguments for the first time on appeal. These arguments are untimely and, in any event, lack merit.

“Normally, [this Court] will not consider an issue first raised on appeal and not presented to the district court.” *United States v. Vance Crooked ARM*, 788 F.3d 1065, 1072 n.5 (9th Cir. 2015). “Before the appellate court will address such an argument, the plaintiff must show exceptional circumstances why the issue was not raised below.” *Taylor v. Sentry Life Ins. Co.*, 729 F.2d 652, 655-56 (9th Cir. 1984). Here, with respect to each of Plaintiff’s new arguments on

appeal, Plaintiff does not even attempt to explain why such exceptional circumstances are present.

*First*, Plaintiff fails to explain why exceptional circumstances exist to entertain on appeal his argument that his action does not interfere with the CPUC's authority because, effective July 1, 2021, the Office of Energy Infrastructure Safety will oversee PSPSs, not the CPUC. (Appellant's Br. at 12, 19.) The legislative act Plaintiff cites as the basis for this argument was enacted on July 12, 2019, five months before Plaintiff filed his Complaint. (Cal. Pub. Util. Code § 326; A.B. No. 111, Cal. Leg. (2019).) Yet, Plaintiff failed to raise this point in his opposition to PG&E's motion to dismiss, or during the District Court appeal. To the contrary, Plaintiff affirmatively conceded at every stage of proceedings that the CPUC had the authority to regulate the relevant PSPS events and exercised that authority. (*See* 1-SER-31 (Dist. Ct. Appellant's Br. at 22 ("Plaintiff does not dispute that the first and second parts of the *Covalt* test are satisfied."))).)

In any event, Plaintiff's argument is misguided. While the Office of Energy Infrastructure Safety assumed on July 1, 2021 the functions previously handled by one division of the CPUC (the Wildfire Safety Division), the CPUC continues to regulate PSPS. As the CPUC noted in a July 15, 2021 press release announcing PSPS-related briefings with numerous California utilities, the CPUC

maintains its “ongoing efforts to hold utilities accountable for safely implementing Public Safety Power Shutoff (PSPS) events” and “oversees the utilities’ execution of PSPS events and has been driving improvements”. (Press Release, CPUC, *CPUC to Hold Public Briefings on Utility Readiness for 2021 Public Safety Power Shutoffs* (July 15, 2021), <https://tinyurl.com/45cjp97>.) Nothing in the law cited by Plaintiff is to the contrary.

*Second*, Plaintiff’s belated claim that his lawsuit does not interfere with the CPUC’s regulatory authority over PSPS events because the CPUC, in a June 2021 decision regarding the 2019 PSPS Events, “did not address whether PG&E’s negligence caused it to shut off the power, or whether it should be liable if that were the case” is a non-sequitur. (Appellant’s Br. at 28.) The June 2021 CPUC decision is part of the CPUC’s ongoing regulation of PSPS. The Decision set out various new go-forward requirements for all California utilities when conducting PSPS events and ordered them to forgo in the future collecting certain rates from customers tied to sales not realized because of PSPS events. In Plaintiff’s words, it also “addressed the implementation of the PSPSs and whether PG&E considered appropriate factors in deciding to institute them”. (*Id.*) The fact that the CPUC did not look into or address the peculiar theory of civil liability advanced by Plaintiff here—that all PSPS shutoffs for all customers in 2019 were needed because of negligent grid maintenance—in a single decision does not

control the pre-emption analysis. What controls, according to the California Supreme Court's precedent, is that Plaintiff seeks to broadly impose liability for alleged damages arising from a CPUC-authorized activity, regardless of PG&E's compliance with the CPUC's guidelines for engaging in that activity. *Hartwell*, 27 Cal. 4th at 276.

*Third*, the statement from an April 2021 CPUC filing in PG&E's probation proceedings regarding a proposed probation condition that would require PG&E, subject to CPUC approval, to add a specific trigger to its 2021 PSPS protocol based on a formula for "tree over strike" exposure does not help Plaintiff. (Appellant's Br. at 35-36.) In that filing, the CPUC noted that it does not approve "specific models, methodologies, criteria or assumptions" to be used by utilities in PSPS decision-making, but nevertheless repeated that it had "approved guidelines for electric utilities to use in their PSPS decision-making process" and that the utilities' decisions regarding the operations of their electric systems are "subject to the CPUC's regulatory oversight and enforcement". (Appellant's Mot. to Take Judicial Notice, Ex. 2, Dkt. 12 at 30.) Indeed, the CPUC proposed a revised probation condition that would "provide the CPUC with a role and the flexibility necessary to review, oversee and respond to PG&E's use of an untested criterion in PSPS decision-making", demonstrating its ongoing role in the oversight and regulation of PSPSs. (*Id.* at 31.) Accordingly, the CPUC's letter does nothing to

disturb the CPUC’s view that Plaintiff’s lawsuit “hinder[s] and interfere[s] with enforcement of the [CPUC’s] guidelines concerning public safety power shutoffs and the [CPUC]’s approval of the Utility’s 2019 Wildfire Safety Plan”. (1-SER-97 (CPUC Br. at 7).)<sup>3</sup>

**F. Certification to the California Supreme Court Is Not Necessary.**

Plaintiff requests certification to the California Supreme Court, but only if this Court were to agree with the Bankruptcy Court, the District Court and the CPUC that Plaintiff’s claim is barred by section 1759. (Appellant’s Br. at 43.) Because the California Supreme Court’s precedent with respect to section 1759 is

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<sup>3</sup> In furtherance of his erroneous argument, Plaintiff also cites to the Appendix to the Wildfire Safety Division’s Strategic Roadmap, published in December 2020, which was not before the lower courts and of which Plaintiff has not requested the Court take judicial notice. (Appellant’s Br. at 34-35.) In that Appendix, the CPUC affirms that utilities have statutory authority to implement PSPS events and discusses the ongoing steps the CPUC is taking to regulate PSPSs, in light of the impact of PSPSs on the community. Contrary to Plaintiff’s assertion, nowhere in the Appendix does the CPUC suggest that private utilities should assume civil liability for economic damages caused by PSPS events that comply with current CPUC guidelines, or that imposing such economic liability would further the CPUC’s PSPS-related policies. Instead, the CPUC addresses the “longer-term planning and investments” that are needed to ultimately reduce the need for PSPS and proposes that, in the short term, the consequences of PSPS to communities that Plaintiff cites in his brief “can be managed through a combination of improved customer outreach and coordination with local authorities”, not civil liability for utilities. Wildfire Safety Division, *Appendix: Global Strategies for Utility Wildfire Mitigation*, at 10 (Dec. 2020), [https://energysafety.ca.gov/wp-content/uploads/docs/strategic-roadmap/final\\_appendix\\_1\\_globalstrategies\\_wsd.pdf](https://energysafety.ca.gov/wp-content/uploads/docs/strategic-roadmap/final_appendix_1_globalstrategies_wsd.pdf).



clear and controlling, there is no need for the Court to refer this matter to the California Supreme Court if it agrees with the lower courts. Certification is only appropriate in cases where there is no controlling precedent from the state's highest court. Cal. R. Ct. 8.548 (“Supreme Court may decide a question of California law if: (1) The decision could determine the outcome of a matter pending in the requesting court; *and* (2) [i]here is no controlling precedent”.) (emphasis added). This Court has declined to certify questions where “there are no conflicting California Court of Appeal decisions” and there is “no reason to doubt that the California Supreme Court” would reach an outcome consistent with its prior rulings. *Herrera v. Zumiez, Inc.*, 953 F.3d 1063, 1070 (9th Cir. 2020).

Here, there is binding precedent from the California Supreme Court regarding the application of section 1759. As discussed above, the California Supreme Court has held that if there is a conflict between section 1759 and section 2106, section 1759 must be given “primacy”. *Covalt*, 13 Cal. 4th at 917-935. The California Supreme Court has likewise been clear that civil actions are preempted when plaintiffs seek to impose liability on utilities for conduct that the CPUC has authorized. *See Hartwell*, 27 Cal. 4th at 266; *Covalt*, 13 Cal. 4th at 917-935; *Sarale*, 189 Cal. App. 4th at 242-43. Plaintiff has offered no reason to doubt that the California Supreme Court would stray from this controlling precedent. Accordingly, certification is not warranted.

**G. The Lower Courts Did Not Err by Denying Plaintiff Leave to Amend.**

This Court reviews a lower court's dismissal of a case without leave to amend for abuse of discretion. A court does not abuse its discretion by denying a plaintiff leave to amend where "any amendment would be an exercise in futility". *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1298 (9th Cir. 1998). Such is the case here.

The District Court properly exercised its discretion in affirming the Bankruptcy Court's dismissal with prejudice because Plaintiff's "entire negligence theory runs afoul of § 1759's jurisdictional limitations". (1-ER-11 (Dist. Ct. Order at 10).) In arguing to the District Court that the Bankruptcy Court abused its discretion, Plaintiff failed to identify if and how he could amend his Complaint to cure this fundamental defect. Neither of the two ways in which Plaintiff proposed to amend his allegations would remove his action from the purview of section 1759 preemption. Instead, Plaintiff suggested to the District Court that he could (1) allege that specific PG&E negligence in maintaining its grid necessitated particular outages, or (2) make it clear that he is only seeking "recovery for those PSPSs impacting him and the rest of the proposed class resulting from PG&E's well-documented history of inadequate grid maintenance." (1-SER-81-82 (Appellant's Dist. Ct. Reply Br. (Dist. Ct. Dkt. No. 9) at 24-25; *see also* Appellant's Br. at 22).) At most, those amendments could potentially address only

the causation gap identified by the Bankruptcy Court.<sup>4</sup> But those points would do nothing to cure the Complaint running afoul of section 1759. Plaintiff's theory of negligence, which rests on alleged negligence in grid maintenance "necessitating" the PSPS events to save lives and property, would be no different with those amendments and would continue to run afoul of section 1759 by seeking to impose civil liability for PSPS events regardless of PG&E's compliance with CPUC guidelines governing such shutoffs. As such, the District Court did not abuse its discretion in denying leave to amend. *See Carrico v. City and Cnty. of San Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011) (denying leave to amend when plaintiffs failed to "propose any specific allegations" that could cure the defect in their complaint).

In his brief to this Court, Plaintiff also intimates that PG&E violated CPUC guidelines by failing to use PSPS as a last resort to mitigate wildfire risk. (Appellant's Br. at 20-21.) This new theory of liability is not alleged in Plaintiff's Complaint and is contrary to the arguments that Plaintiff tirelessly made in the

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<sup>4</sup> Even if Plaintiff could amend his Complaint to fill the causation gap, Plaintiff's Complaint should still be dismissed with prejudice because of PG&E's Tariff Rule 14. *See infra* Section III. However, if the Court were to affirm the dismissal of the Complaint *solely* on the basis of failure to allege causation, PG&E agrees that such a dismissal should be without prejudice.

lower courts and, indeed, in this Court. Any such argument is therefore waived. *Vance Crooked ARM*, 788 F.3d at 1072 n.5; *Taylor*, 729 F.2d at 655-56.

In any event, as the District Court put it, given that Plaintiff's entire theory is that the PSPS events were *necessary* because of the alleged historical negligence, Plaintiff "would be unable to amend without contradicting his initial complaint". (1-ER-11 (Dist. Ct. Order at 10 (citing *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)); *see also* 1-SER-106 (MTD Opp. at 2 ("The Complaint does not allege that the PSPSs were not necessary and appropriate, or that CPUC's approval of its Wildfire Safety Plan was improper . . .")); 1-SER-107 (MTD. Opp. at 3 ("Plaintiff brings this action on behalf of himself and a putative class against PG&E, *not for its decision to shut off power* for hundreds of thousands of its customers, but for its negligent actions and omissions which necessitated those decisions . . . ." (emphasis added))); 1-SER-108 (MTD Opp. at 4 ("The PSPSs (*whether or not justified in the moment*) were the result of PG&E's negligence . . . ." (emphasis added)); 1-SER-114 (MTD Opp. at 10 ("[T]his case is not about whether the shutoffs were appropriate or how PG&E handled them . . . .")); 1-SER-87 (App. Resp. to CPUC Amicus Br. (Bankr. Dkt. 25) at 1 ("[T]he Complaint does not seek in any way to interfere in the decision to conduct a shutdown or its implementation . . . .")); 1-SER-89 (App. Resp. to CPUC Amicus Br. at 3 ("[T]he Complaint does not allege that the shutoffs

should not have been done *or that they violated Commission policies.*” (emphasis added)); *id.* (“[W]hether or not the implementation [of the PSPSs] was in compliance with Commission mandates is irrelevant to the case”); 1-SER-13 (Appellant’s District Court Opening Brief (Dist. Ct. Dkt. 7) (“Appellant’s Dist. Ct. Br.”) at 4 (“[T]he Complaint does not contend that PG&E should not have implemented the PSPSs at issue, or that it implemented them improperly . . . ”)); 1-SER-25 (Appellant’s Dist. Ct. Br. at 16 (“[T]he CPUC’s policy concerning how PG&E conducts PSPSs has nothing to do with whether PG&E was negligent in causing the need for PSPSs in the first instance”)); 1-SER-36 (Appellant’s Dist. Ct. Br. at 27 (“[W]hether the execution of the PSPSs met the CPUC’s standards is irrelevant—the claim here is that PG&E’s negligence is what necessitated the PSPSs”)). Thus, even if Plaintiff were to argue—which he has not—that he could do more than simply patch up his deficient causation allegations, the only way in which he could amend his Complaint to avoid section 1759 preemption would be to take a position wholly contrary to the position that he has repeatedly taken throughout the life of this case, which should not be permitted. *Airs Aromatics, LLC v. Victoria’s Secret Stores Brand Mgmt., Inc.*, 744 F.3d 595, 600 (9th Cir. 2014) (“A party cannot amend pleadings to ‘directly contradict an earlier assertion made in the same proceeding.’” (quoting *Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th Cir. 1990))).

Further, Plaintiff’s assertion that the CPUC “conceded” that Plaintiff could amend to state a claim is not correct. (*See* Appellant’s Br. at 49.) During oral argument before the Bankruptcy Court, the court asked whether counsel for the CPUC agreed that “[i]f there was some negligent conduct *in carrying out a PSPS*, there might be liability.” (2-ER-146 (Bankr. Hr’g Tr. at 17) (emphasis added).) It was during this exchange that counsel for the CPUC agreed there could be, but stated it would depend on the allegations.<sup>5</sup> That is different than saying that Plaintiff can make *his* Complaint viable. The core of Plaintiff’s claim is that civil liability should be imposed on PG&E for all PSPS events, irrespective of whether PG&E carries out a PSPS event in accordance with CPUC guidelines. (1-SER-106 (MTD Opp. at 2 (“The Complaint does not allege that the PSPSs were not necessary and appropriate, or that CPUC’s approval of its Wildfire Safety Plan was improper, only that the PSPSs would not have been necessary in the first place had PG&E not been negligent.”))).) Counsel for the CPUC was clear that this theory of liability is barred. (*See* 2-ER-149-150 (Bankr. Hr’g Tr. at 20-21) (“It’s tied to the fact that it’s seeking to impose liability for actions that the Commission

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<sup>5</sup> Counsel for the CPUC stated that “there could be a set of circumstances . . . in which you might have a negligence claim that could work. But . . . the generalized allegations in the complaint that PGE’s failure to maintain its entire grid, in the Commission’s view, runs afoul of Section 1759.” (2-ER-148-149 (Bankr. Hr’g Tr. at 19-20).)\_

authorized and that are not alleged to have been in violation of a Commission rule or order. And so for those reasons, Your Honor, the Commission believes that Section 1759 bars plaintiff's claims.”.)

## **II. THE BANKRUPTCY COURT DID NOT ERR BY FINDING THAT PLAINTIFF FAILED TO PLEAD CAUSATION.**

Even if Plaintiff's action were not preempted by section 1759, Plaintiff fails to allege a claim because, as the Bankruptcy Court correctly found, “the proximate causal connection between the harms suffered by Plaintiff during the blackouts (loss of habitability of his dwelling, loss of cell phone connectivity) and the conditions pre-dating those blackouts is too remote to defeat the MTD”. (1-ER-23 (Bankr. Decision at 10).) As a result, the dismissal of Plaintiff's Complaint was proper under Rule 12(b)(6).<sup>6</sup>

A complaint is subject to dismissal under Rule 12(b)(6) where Plaintiff fails to plead “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation and internal quotation marks omitted). Under California law, in order for a negligence claim to proceed, a defendant's breach of his duty of care must be both the actual cause and the proximate cause of the plaintiff's injury. *Novak v.*

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<sup>6</sup> Because it dismissed Plaintiff's Complaint for lack of subject matter jurisdiction, the District Court did not reach the issue of whether Plaintiff's action also failed to state a claim.

*Cont'l Tire N. Am.*, 22 Cal. App. 5th 189, 195-97 (2018). In order to meet this test, the alleged negligence must be a substantial factor in causing the injury and “there must be some reasonable connection between the original negligence and its consequences, between the harm threatening and the harm done.” *Id.* at 197 (citation and internal quotation marks omitted).

As discussed above, Plaintiff does not allege that his losses were caused by PG&E’s failure to use reasonable diligence in initiating and executing the 2019 PSPS Events and other PSPS events thereafter. Instead, Plaintiff alleges in a conclusory fashion that PG&E’s alleged system-wide failure to reasonably maintain its electric equipment “necessitated” the 2019 PSPS Events, however reasonably and lawfully those events were carried out.

The Complaint lacks any specific factual allegations connecting PG&E’s alleged negligence to the scope of the different 2019 PSPS Events, as is required to make out a claim under Plaintiff’s theory. The Complaint comes nowhere close to alleging that the specific circuits that affect Plaintiff (or any individual in the putative class) were de-energized because of maintenance concerns, notwithstanding that PG&E de-energized in 2019 on a circuit-by-circuit or line-by-line basis and the PSPS events at issue involved hundreds of different circuits and lines. (*See, e.g.*, 2-SER-431-434 (WSP 95-98).) Instead, Plaintiff merely alleges that PG&E’s failure to conduct inspections and make repairs—as



described primarily in reports published years before in 2010 and 2013—made the 2019 outages a necessity. (*See, e.g.*, 4-ER-487 (Compl. at ¶ 2 (“The necessity for the Outages was caused by PG&E’s own negligence in failing, over many years, to properly maintain or replace old transmission lines, leaving them vulnerable to failing and sparking deadly wildfires.”))).

On appeal, Plaintiff argues that the Complaint “set[s] forth in detail” the causal connection between PG&E’s alleged negligent maintenance of its grid and the 2019 PSPS Events because he alleges (a) PG&E must ensure that its power lines can withstand winds of up to 92 miles per hour and (b) for two of the 2019 PSPS Events, “there is no indication that [wind speeds] ever came close to the 92 miles per hour threshold established by CPUC General Order 95”. (Appellant’s Br. at 46.) These allegations fail to establish the necessary link between the alleged negligence and PSPS. Plaintiff’s logic ignores the fact that design limits for equipment do not speak at all to the risk of wind causing *vegetation* to strike a line, regardless of how sturdy it is. Further, the CPUC has rejected the notion of limiting PSPS events to only when wind speeds reach the design limit for a line and has recognized that it would be “extremely dangerous” not to authorize PSPS events at wind speeds below the design limits if conditions otherwise warranted de-energization. (1-SER-271 (SDG&E Decision at 32).)

Furthermore, the statements Plaintiff cites from Judge Alsup, (Appellant’s Br. at 7-8, 46), made in the context of PG&E’s criminal probation proceedings stemming from the 2010 San Bruno Gas Explosion—without the presentment of evidence regarding what creates the need for PSPS and without the presentment of evidence regarding the other utilities that regularly employ PSPS in California and beyond—are not pleaded or referenced in the Complaint and are not relevant to analyzing whether the current Complaint pleads causation. *In re Turbodyne Techs., Inc. Sec. Litig.*, 2000 WL 33961193, at \*10 (C.D. Cal. Mar. 15, 2000) (“In deciding a motion to dismiss, courts may not ‘take into account additional facts asserted in a memorandum opposing the motion to dismiss, because such memoranda do not constitute pleadings under Rule 7(a)’” (quoting *Schneider v. Cal. Dep’t of Corr.*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998))).<sup>7</sup>

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<sup>7</sup> Plaintiff’s argument that the Bankruptcy Court erred procedurally by considering PG&E’s causation argument, (Appellant’s Br. at 47-48), ignores the fact that Plaintiff had ample opportunity to address his causation problem through his supplemental briefing and during oral argument on PG&E’s motion to dismiss. *El Pollo Loco, Inc. v. Hashim*, 316 F. 3d 1032, 1040-41 (9th Cir. 2003) (court may consider new issues raised in reply if it gives the opposition an opportunity to respond).

**III. ALTERNATIVELY, PLAINTIFF’S ACTION SHOULD BE DISMISSED BECAUSE IT IS BARRED BY PG&E’S TARIFF RULE 14.**

This Court may affirm the lower court’s order to dismiss “on any ground supported by the record”. *In re Jones*, 657 F.3d 921, 924 (9th Cir. 2011) (quoting *Leavitt v. Soto*, 171 F.3d 1219, 1223 (9th Cir. 1999)). As PG&E argued in the courts below, the Complaint is also subject to dismissal for failure to state a claim under Rule 12(b)(6) because PG&E’s Tariff Rule 14 provides that PG&E may cut off power without liability to customers when, in PG&E’s “sole opinion”, it is necessary for public safety. (2-SER-320 (Tariff Rule 14).) Having dismissed the Complaint for lack of jurisdiction under section 1759, neither lower court examined this issue.<sup>8</sup>

It is undisputed that Plaintiff and members of the putative class are PG&E customers. (4-ER-503 (Compl. ¶ 85 (defining the proposed class as “[a]ll California residents and business owners who had their power shutoff by PG&E during the . . . Outages and any subsequent voluntary Outages PG&E imposes on its customers during the course of litigation”))).) PG&E’s obligations to its

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<sup>8</sup> Plaintiff’s assertion that the “[t]he Bankruptcy Court was correct to reject PG&E’s Tariff Rule 14 argument” misstates the record. (Appellant’s Br. at 22, n.7.) Having dismissed Plaintiff’s Complaint pursuant to section 1759, the Bankruptcy Court did not discuss PG&E’s Tariff Rule 14 argument, let alone “reject” it.

customers are governed by its tariff rules, which “have the force and effect of law”. *Dollar-A-Day Rent-A-Car Sys. v. Pac. Tel. & Tel. Co.*, 26 Cal. App. 3d 454, 457 (1972); *see also Dyke Water Co. v. Pub. Utils. Comm’n*, 56 Cal. 2d 105, 107 (1961) (noting that, when a tariff rule is published and filed with the CPUC, it has “the force and effect of a statute, and any deviations therefrom are unlawful unless authorized by the commission”); *Duggal v. G.E. Capital Commc’ns Servs.*, 81 Cal. App. 4th 81, 82 (2000) (“filed tariffs are the equivalent of federal regulations which have the force of law”); 1-SER-154 (Appellant’s Dist. Ct. Br. at 38-39).

PG&E’s Tariff Rule 14 provides that “PG&E will exercise reasonable diligence and care to furnish and deliver a continuous and sufficient supply of electrical energy to the customer, but does not guarantee continuity or sufficiency of supply.” (2-SER-320 (Tariff Rule 14).) Paragraph 4 says that PG&E may interrupt service without liability to its customers when “in PG&E’s sole opinion”, an interruption is necessary for public safety:

PG&E specifically maintains the right to interrupt its service deliveries, without liability to the Customers or electric service providers (ESPs) affected, when, in PG&E’s sole opinion, such interruption is necessary for reasons including, but not limited to, the following:

1. Safety of a customer, a PG&E employee, or the public at large . . . .

(*Id.*)

A plain reading of PG&E’s Tariff Rule 14 provides that the decision to shut off a customer’s power cannot trigger liability to the customer when in PG&E’s sole opinion it is necessary for public safety. It is undisputed that the PSPS events that are the subject of the Complaint are “service interruptions” caused by PG&E’s determination that they were necessary for the safety of the public at large. (1-SER-119 (MTD Opp. at 15 n.6 (“the Complaint does not dispute that PG&E’s PSPSs were necessary for safety purposes . . .”).) Accordingly, Tariff Rule 14 bars liability to Plaintiff and other customers for losses arising from the 2019 PSPS Events.

In the courts below, Plaintiff made three arguments to defeat the plain text of Tariff Rule 14, none of which has merit. *First*, Plaintiff argued that contrary to Rule 14’s text, Tariff Rule 14 does not govern liability for PSPS events because it was approved prior to the creation of the PSPS program and thus is wholly unrelated to the PSPS events. Plaintiff is correct that Tariff Rule 14 was written before the specific type of service interruption at issue here—PSPS events—was contemplated. But the fact that the Tariff predates PG&E’s PSPS policy does not nullify its plain text meaning, which is *directly* applicable. PSPS

events are service interruptions for the purpose of public safety and thus squarely fall in the purview of Tariff Rule 14.

*Second*, Plaintiff argued that comments made by the CPUC in its denial of SDG&E's request to add similar language to its tariff in connection with SDG&E's proposed PSPS program mean that Tariff Rule 14 does not apply to PSPS generally. In that decision, the CPUC noted that PG&E's Tariff Rule 14 was not approved in connection with any PSPS application by PG&E, and therefore did not constitute a "reasonable precedent" for approving the adoption of similar language by SDG&E in connection with its proposed PSPS (which the CPUC also rejected at the time). (1-SER-235 (CPUC Decision 09-09-030 at 69).) The CPUC's statement does not mean that *PG&E's* Tariff, as written and in force today, does not apply to interruptions of service for public safety under the umbrella of a PSPS event. It squarely does.

*Third*, Plaintiff argued that PG&E's reading of Tariff Rule 14 is inconsistent with *Tesoro Refining & Marketing Company v. Pacific Gas & Electric Company*, where a district court held that under a different provision of Rule 14, PG&E could not be absolved of liability for certain transmission-related outages caused by its failure to exercise reasonable diligence. 146 F. Supp. 3d 1170, 1189 (N.D. Cal. 2015). Importantly, that case dealt with the interpretation of a different clause of Rule 14, which provides that "PG&E shall not be liable . . . for damages

or losses resulting from interruption due to transmission constraint, allocation of transmission or intertie capacity, or other transmission related outage”. *Id.* at 1176. There, the court rejected the argument that the inclusion of “other transmission related outage” broadly absolved PG&E for all transmission outages, regardless of whether they were caused by PG&E’s negligence. *Id.* The holding in that case rested on reading the clause “or other transmission related outage” to mean outages caused by factors outside of PG&E’s control, in part because all of the other examples of transmission outages specifically listed in that provision address matters *outside* of PG&E’s control (*i.e.*, “interruption due to transmission constraint, allocation of transmission or intertie capacity”). *Id.* at 1184-85 (“The broad reading that PG&E proposes . . . is incongruent in comparison to the more specific limitations of liability discussed above . . .”). In contrast, the paragraph of Tariff Rule 14 that is relevant to this case (paragraph 4) focuses on power outages that in PG&E’s sole opinion are necessary for the safety of an employee, a customer or the public. The 2019 PSPS Events undisputedly fall within that category. Accordingly, the holding in *Tesoro* is inapplicable.

### **CONCLUSION**

The District Court’s order should be affirmed.

Dated: August 25, 2021

CRAVATH, SWAINE & MOORE LLP

/s/ Omid H. Nasab  
Omid H. Nasab

*Attorneys for Appellees PG&E Corporation and  
Pacific Gas and Electric Company*



## STATEMENT OF RELATED CASES

Pursuant to Circuit Rule 28-2.6, the undersigned attorney states the following:

Defendants-Appellees are unaware of any related cases currently pending in this court.

Dated: August 25, 2021

CRAVATH, SWAINE & MOORE LLP

By: /s/ Omid H. Nasab  
Omid H. Nasab

*Attorneys for Appellees PG&E Corporation and  
Pacific Gas and Electric Company*

## CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify that:

This brief complies with the type-volume limitation of Cir. R. 32-1 because this brief contains 12,152 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word Times New Roman 14-point font.

Dated: August 25, 2021

CRAVATH, SWAINE & MOORE LLP

By: /s/ Omid H. Nasab  
Omid H. Nasab

*Attorneys for Appellees PG&E Corporation and  
Pacific Gas and Electric Company*

**STATUTORY ADDENDUM**  
(pursuant to Circuit Rule 28-2.7)

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West's Annotated California Codes  
Constitution of the State of California 1879 (Refs & Annos)  
Article XII. Public Utilities (Refs & Annos)

West's Ann.Cal.Const. Art. 12, § 1

§ 1. Commission; membership vacancies; removal

[Currentness](#)

Section 1. The Public Utilities Commission consists of 5 members appointed by the Governor and approved by the Senate, a majority of the membership concurring, for staggered 6-year terms. A vacancy is filled for the remainder of the term. The Legislature may remove a member for incompetence, neglect of duty, or corruption, two thirds of the membership of each house concurring.

**Credits**

(Added by A.C.A. No. 36, approved Nov. 5, 1974.)

[Notes of Decisions \(10\)](#)

West's Ann. Cal. Const. Art. 12, § 1, CA CONST Art. 12, § 1  
Current with urgency legislation through Ch. 145 of 2021 Reg.Sess

West's Annotated California Codes  
Constitution of the State of California 1879 (Refs & Annos)  
Article XII. Public Utilities (Refs & Annos)

West's Ann.Cal.Const. Art. 12, § 2

§ 2. Establishment of procedures; hearings, investigations, issuance of orders

[Currentness](#)

Sec. 2. Subject to statute and due process, the commission may establish its own procedures. Any commissioner as designated by the commission may hold a hearing or investigation or issue an order subject to commission approval.

**Credits**

(Added by A.C.A. No. 36, approved Nov. 5, 1974.)

[Notes of Decisions \(31\)](#)

West's Ann. Cal. Const. Art. 12, § 2, CA CONST Art. 12, § 2  
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Constitution of the State of California 1879 (Refs & Annos)  
Article XII. Public Utilities (Refs & Annos)

West's Ann.Cal.Const. Art. 12, § 3

§ 3. Classification; control by Legislature; additional classes

[Currentness](#)

Sec. 3. Private corporations and persons that own, operate, control, or manage a line, plant, or system for the transportation of people or property, the transmission of telephone and telegraph messages, or the production, generation, transmission, or furnishing of heat, light, water, power, storage, or wharfage directly or indirectly to or for the public, and common carriers, are public utilities subject to control by the Legislature. The Legislature may prescribe that additional classes of private corporations or other persons are public utilities.

**Credits**

(Added by A.C.A. No. 36, approved Nov. 5, 1974.)

[Notes of Decisions \(44\)](#)

West's Ann. Cal. Const. Art. 12, § 3, CA CONST Art. 12, § 3

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Constitution of the State of California 1879 (Refs & Annos)  
Article XII. Public Utilities (Refs & Annos)

West's Ann.Cal.Const. Art. 12, § 4

§ 4. Transportation of passengers and property; rates; rules; increases

[Currentness](#)

Sec. 4. The commission may fix rates and establish rules for the transportation of passengers and property by transportation companies, prohibit discrimination, and award reparation for the exaction of unreasonable, excessive, or discriminatory charges. A transportation company may not raise a rate or incidental charge except after a showing to and a decision by the commission that the increase is justified, and this decision shall not be subject to judicial review except as to whether confiscation of property will result.

**Credits**

(Added by A.C.A. No. 36, approved Nov. 5, 1974.)

[Notes of Decisions \(27\)](#)

West's Ann. Cal. Const. Art. 12, § 4, CA CONST Art. 12, § 4  
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West's Annotated California Codes  
Constitution of the State of California 1879 (Refs & Annos)  
Article XII. Public Utilities (Refs & Annos)

West's Ann.Cal.Const. Art. 12, § 5

§ 5. Additional authority and jurisdiction of commission; review; eminent domain

[Currentness](#)

Sec. 5. The Legislature has plenary power, unlimited by the other provisions of this constitution but consistent with this article, to confer additional authority and jurisdiction upon the commission, to establish the manner and scope of review of commission action in a court of record, and to enable it to fix just compensation for utility property taken by eminent domain.

**Credits**

(Added by A.C.A. No. 36, approved Nov. 5, 1974.)

[Notes of Decisions \(73\)](#)

West's Ann. Cal. Const. Art. 12, § 5, CA CONST Art. 12, § 5  
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Constitution of the State of California 1879 (Refs & Annos)  
Article XII. Public Utilities (Refs & Annos)

West's Ann.Cal.Const. Art. 12, § 6

§ 6. Duties of commission

[Currentness](#)

Sec. 6. The commission may fix rates, establish rules, examine records, issue subpoenas, administer oaths, take testimony, punish for contempt, and prescribe a uniform system of accounts for all public utilities subject to its jurisdiction.

**Credits**

(Added by A.C.A. No. 36, approved Nov. 5, 1974.)

[Notes of Decisions \(82\)](#)

West's Ann. Cal. Const. Art. 12, § 6, CA CONST Art. 12, § 6  
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West's Annotated California Codes  
Public Utilities Code (Refs & Annos)  
Division 1. Regulation of Public Utilities (Refs & Annos)  
Part 1. Public Utilities Act (Refs & Annos)  
Chapter 2. The Public Utilities Commission: Organization (Refs & Annos)

West's Ann.Cal.Pub.Util.Code § 326

§ 326. Wildfire Safety Division; creation; duties; transfer of functions to Office of Energy Infrastructure Safety

Effective: July 12, 2019

[Currentness](#)

(a) By January 1, 2020, the commission shall establish the Wildfire Safety Division within the commission, located in Sacramento, California. The Wildfire Safety Division shall do all of the following:

(1) Oversee and enforce electrical corporations' compliance with wildfire safety pursuant to Chapter 6 (commencing with [Section 8385](#)) of Division 4.1.

(2) In consultation with the California Wildfire Safety Advisory Board, develop and recommend to the commission performance metrics to achieve maximum feasible risk reduction to be used to develop the wildfire mitigation plan and evaluate an electrical corporation's compliance with that plan. For this purpose, "maximum feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

(3) Develop a field audit program for wildfire mitigation plan compliance by each electrical corporation.

(4) Consult with the Office of Emergency Services in the office's management and response to utility public safety power shutoff events and utility actions for compliance with public safety power shutoff program rules and regulations.

(5) Support efforts to assess and analyze fire weather data and other atmospheric conditions that could lead to catastrophic wildfires and to reduce the likelihood and severity of wildfire incidents that could endanger the safety of persons, properties, and the environment within the state.

(6) Retain appropriate staff that includes experts in wildfire, weather, climate change, emergency response, and other relevant subject matters.

(7) Review, as necessary, in coordination with the California Wildfire Safety Advisory Board and necessary commission staff, safety requirements for electrical transmission and distribution infrastructure and infrastructure and equipment attached to that electrical infrastructure, and provide recommendations to the commission to address the dynamic risk of climate change and to mitigate wildfire risk.

(b) Effective July 1, 2021, all functions of the Wildfire Safety Division shall be transferred to the Office of Energy Infrastructure Safety established pursuant to [Section 15473 of the Government Code](#).

**Credits**

(Added by [Stats.2019, c. 81 \(A.B.111\)](#), § 7, eff. July 12, 2019.)

West's Ann. Cal. Pub. Util. Code § 326, CA PUB UTIL § 326  
Current with urgency legislation through Ch. 145 of 2021 Reg.Sess

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## California Statutes Annotated - 2019

West's Annotated California Codes

Public Utilities Code ([Refs & Annos](#))

Division 1. Regulation of Public Utilities ([Refs & Annos](#))

Part 1. Public Utilities Act ([Refs & Annos](#))

Chapter 4. Regulation of Public Utilities ([Refs & Annos](#))

Article 2. Rates ([Refs & Annos](#))

West's Ann.Cal.Pub.Util.Code § 734

§ 734. Reparation for overcharges; commission order

Effective: January 1, 2015

[Currentness](#)

When complaint has been made to the commission concerning a rate for a product or commodity furnished or service performed by a public utility, and the commission has found, after investigation, that the public utility has charged an unreasonable, excessive, or discriminatory amount therefor in violation of any of the provisions of this part, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection if no discrimination will result from that reparation. No order for the payment of reparation upon the ground of unreasonableness shall be made by the commission when the rate in question has, by formal finding, been declared by the commission to be reasonable, and no assignment of a reparation claim shall be recognized by the commission except assignments by operation of law as in cases of death, lack of legal capacity to make decisions, bankruptcy, receivership, or order of court.

### Credits

(Stats.1951, c. 764, p. 2051, § 734. Amended by [Stats.2014, c. 144 \(A.B.1847\)](#), § 51, eff. Jan. 1, 2015.)

West's Annotated California Codes  
Public Utilities Code (Refs & Annos)  
Division 1. Regulation of Public Utilities (Refs & Annos)  
Part 1. Public Utilities Act (Refs & Annos)  
Chapter 11. Violations (Refs & Annos)

West's Ann.Cal.Pub.Util.Code § 2107

§ 2107. Residuary penalty

Effective: January 1, 2019

[Currentness](#)

Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than one hundred thousand dollars (\$100,000), for each offense.

**Credits**

(Stats.1951, c. 764, p. 2098, § 2107. Amended by [Stats.1993, c. 222 \(S.B.485\), § 1](#); [Stats.2011, c. 523 \(S.B.879\), § 2](#); [Stats.2018, c. 626 \(S.B.901\), § 37, eff. Jan. 1, 2019.](#))

[Notes of Decisions \(10\)](#)

West's Ann. Cal. Pub. Util. Code § 2107, CA PUB UTIL § 2107  
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2019 California Assembly Bill No. 111, California 2019-2020 Regular Session


CALIFORNIA BILL TEXT

**TITLE: Wildfire agencies: public utilities: safety and insurance**

VERSION: Adopted

July 12, 2019

Committee on Budget

 Image 1 within document in PDF format.

SUMMARY: An act to amend Section 11552 of, to add Chapter 16 (commencing with Section 8899.70) to Division 1 of Title 2 of, and to add Part 7.3 (commencing with Section 15470) to Division 3 of Title 2 of, the Government Code, to amend Sections 10089.6 and 10089.7 of, and to add Section 10089.55 to, the Insurance Code, and to add Section 326 to, and to repeal and add Section 326.1 of, the Public Utilities Code, relating to wildfire agencies, and making an appropriation therefor, to take effect immediately, bill related to the budget.

**TEXT:**

Assembly Bill No. 111

CHAPTER 81

An act to amend Section 11552 of, to add Chapter 16 (commencing with Section 8899.70) to Division 1 of Title 2 of, and to add Part 7.3 (commencing with Section 15470) to Division 3 of Title 2 of, the Government Code, to amend Sections 10089.6 and 10089.7 of, and to add Section 10089.55 to, the Insurance Code, and to add Section 326 to, and to repeal and add Section 326.1 of, the Public Utilities Code, relating to wildfire agencies, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor July 12, 2019. Filed with Secretary of State July 12, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 111, Committee on Budget. Wildfire agencies: public utilities: safety and insurance.

Existing law establishes various programs for the prevention, detection, and mitigation of wildfires. Other existing law establishes the California Earthquake Authority (CEA), administered under the authority of the Insurance Commissioner, to transact insurance in this state as necessary to sell policies of basic residential earthquake insurance.

This bill would create in state government the California Catastrophe Response Council to oversee the CEA and the Wildfire Fund Administrator, who this bill would require the council to appoint. The council would be composed of the Governor, the Treasurer, the commissioner, and the Secretary of the Natural Resources Agency, or their designees, and 3 members of the public appointed by the Governor, one member appointed by the Senate Committee on Rules, and one member appointed by the Speaker of the Assembly, who would serve 4-year staggered terms.

Existing law establishes in state government the Natural Resources Agency, consisting of various departments, under the supervision of the Secretary of the Natural Resources Agency.

This bill would establish the Office of Energy Infrastructure Safety within the Natural Resources Agency under the supervision of a director appointed by the Governor. The bill would provide that, on and after July 1, 2021, the office is the successor to, and is vested with, all of the duties, powers, and responsibilities of the Wildfire Safety Division described below.

The California Constitution establishes the Public Utilities Commission and authorizes the commission to exercise ratemaking and rulemaking authority over all public utilities, as defined, subject to control by the Legislature. The Public Utilities Act authorizes the commission to supervise and regulate every public utility, including electrical corporations, and to do all things that are necessary and convenient in the exercise of that power and jurisdiction.

This bill would require the commission, on or before January 1, 2020, to establish the Wildfire Safety Division within the commission. The bill would require the division to take specified actions related to wildfire safety.

This bill would establish the California Wildfire Safety Advisory Board consisting of 7 members appointed by the Governor, Speaker of the Assembly, and Senate Committee on Rules, as provided, who would serve 4-year staggered terms. The bill would require the board, among other actions, to advise and make recommendations related to wildfire safety to the division.

This bill would appropriate \$47,600,000 from the Public Utilities Commission Utilities Reimbursement Account and \$2,500,000 from the Public Utilities Commission Public Advocate's Office Account to the commission for the purpose fulfilling its duties under this act.

This bill would repeal Section 326.1 of the Public Utilities Code as added by AB 1054 of the 2019-20 Regular Session.

This bill would become operative only if AB 1054 of the 2019-20 Regular Session becomes effective before January 1, 2020.



This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 16 (commencing with Section 8899.70) is added to Division 1 of Title 2 of the Government Code, to read:

#### CHAPTER 16. CALIFORNIA CATASTROPHE RESPONSE COUNCIL

8899.70. (a) There is hereby created in state government the California Catastrophe Response Council to oversee the California Earthquake Authority to the extent provided in Section 10089.6 of the Insurance Code and the Wildfire Fund Administrator.

(b) The council shall be composed of the following nine members.

(1) The Governor or the Governor's designee.

(2) The Treasurer or the Treasurer's designee.

(3) The Insurance Commissioner or the Insurance Commissioner's designee.

(4) The Secretary of the Natural Resources Agency or the secretary's designee.

(5) Three members of the public appointed by the Governor.

(6) A member appointed by the Senate Committee on Rules.

(7) A member appointed by the Speaker of the Assembly.

(c) The members appointed by the Senate Committee on Rules, the Speaker of the Assembly, and the three members appointed by the Governor shall have four-year staggered terms. The Governor's initial appointees shall serve two-year terms.

(d) Until a majority of the council is appointed, the governing board of the California Earthquake Authority shall assume the authorities and duties of the council.

8899.71. For purposes of conducting the business of the council, a quorum shall be five members.

8899.72. The council shall appoint the Wildfire Fund Administrator and oversee the administrator's operation, management, and administration of the Wildfire Fund established pursuant to Section 3284 of the Public Utilities Code. The administrator shall have relevant experience in claims administration, the management of claims trusts, or other relevant experience. Until the administrator is appointed, the California Earthquake Authority shall exercise the powers of the administrator.

SEC. 2. Section 11552 of the Government Code is amended to read:

11552. (a) Effective January 1, 1988, an annual salary of eighty-five thousand four hundred two dollars (\$85,402) shall be paid to each of the following:

- (1) Commissioner of Business Oversight.
- (2) Director of Transportation.
- (3) Real Estate Commissioner.
- (4) Director of Social Services.
- (5) Director of Water Resources.
- (6) Director of General Services.
- (7) Director of Motor Vehicles.
- (8) Executive Officer of the Franchise Tax Board.
- (9) Director of Employment Development.
- (10) Director of Alcoholic Beverage Control.
- (11) Director of Housing and Community Development.
- (12) Director of Alcohol and Drug Programs.
- (13) Director of Statewide Health Planning and Development.

- (14) Director of the Department of Human Resources.
- (15) Director of Health Care Services.
- (16) Director of State Hospitals.
- (17) Director of Developmental Services.
- (18) State Public Defender.
- (19) Director of the California State Lottery.
- (20) Director of Fish and Wildlife.
- (21) Director of Parks and Recreation.
- (22) Director of Rehabilitation.
- (23) Director of the Office of Administrative Law.
- (24) Director of Consumer Affairs.
- (25) Director of Forestry and Fire Protection.
- (26) The Inspector General pursuant to Section 6125 of the Penal Code.
- (27) Director of Child Support Services.
- (28) Director of Industrial Relations.
- (29) Director of Toxic Substances Control.
- (30) Director of Pesticide Regulation.
- (31) Director of Managed Health Care.
- (32) Director of Environmental Health Hazard Assessment.
- (33) Director of California Bay-Delta Authority.

(34) Director of California Conservation Corps.

(35) Director of Technology.

(36) Director of Emergency Services.

(37) Director of the Office of Energy Infrastructure Safety.

(b) The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 3. Part 7.3 (commencing with Section 15470) is added to Division 3 of Title 2 of the Government Code, to read:

#### PART 7.3. CALIFORNIA ENERGY INFRASTRUCTURE SAFETY ACT

15470. (a) The state has long recognized the critical nature of its energy and communication infrastructure, in its importance in driving the engine of the state's prosperity, in the hardships placed on the state's residents in the absence of the services the infrastructure provides, and in the devastation that can occur when the operators of the infrastructure lose operational control of the infrastructure. To ensure that the operations of energy and communication infrastructure within the state will be managed adequately, the Legislature finds and declares all of the following are necessary:

(1) To provide for a state office to be known and referred to as the Office of Energy Infrastructure Safety, within the Natural Resources Agency, and to prescribe the powers and duties of the director of that office.

(2) To provide for the coordination of functions among state entities with jurisdiction over other functions of the state's energy and communication service providers.

(3) To authorize the establishment of such organizations and the taking of such actions as are necessary and proper to carry out the provisions of this part.

(b) It is further declared to be the purpose of this part and the policy of this state that all environmental, health, and safety functions of this state shall be coordinated as far as possible with the comparable functions of its political subdivisions, of the federal government, including its various departments and agencies, of other states, and of private agencies of every type, to the

end that the most effective use may be made of all manpower, resources, and facilities in managing the environmental, health, and safety of energy and communication infrastructure in the state.

15471. This part may be cited as the "California Energy Infrastructure Safety Act."

15472. For purposes of this part:

(a) "Director" means the Director of the Office of Energy Infrastructure Safety.

(b) "Office" means Office of Energy Infrastructure Safety.

15473. (a) There is in state government, within the Natural Resources Agency, the Office of Energy Infrastructure Safety. The office shall be under the supervision of the Director of the Office of Energy Infrastructure Safety, who shall have all rights and powers of a head of an office as provided by this code.

(b) The director shall be appointed by, and hold office at the pleasure of, the Governor. The appointment of the director is subject to confirmation by the Senate.

(1) The director shall receive an annual salary as set forth in Section 11552.

(2) The Governor may appoint a deputy director of the office. The deputy director shall hold office at the pleasure of the Governor.

(c) In carrying out the provisions of this part, the director may:

(1) Cooperate and contract with public and private agencies for the performance of such acts, the rendition of such services, and the affording of such facilities as may be necessary and proper.

(2) Do such other acts and things as may be necessary and incidental to the exercise of powers and the discharge of duties conferred or imposed by the provisions of this part.

15474. Nothing in this part shall operate to prevent the office from formally recognizing committees or boards established by or with segments of the private sector, public agencies, or both the private sector and public agencies, that control facilities, resources, or the provision of services essential to the operation of energy or communication infrastructure.

15475. The office is the successor to, and, effective July 1, 2021, is vested with, all of the duties, powers, and responsibilities of the Wildfire Safety Division, including, but not limited to, the power to compel information and conduct investigations. All laws prescribing the duties, powers,

and responsibilities of the Wildfire Safety Division to which the office succeeds, together with all lawful rules and regulations established under those laws, are expressly continued in force.

15476. The Public Utilities Commission and the office shall enter into a memorandum of understanding to cooperatively develop consistent approaches and share data related to electric infrastructure safety. The commission and the office shall share results from various safety activities, including relevant inspections and regulatory development.

SEC. 4. Section 10089.6 of the Insurance Code is amended to read:

10089.6. (a) (1) There is hereby created the California Earthquake Authority, which shall be administered and governed by the governing board described in Section 10089.7 under the authority of the commissioner and overseen by the California Catastrophe Response Council solely with regard to any administrative or support services the authority may provide to, or for the benefit of, the Wildfire Fund created pursuant to Section 3284 of the Public Utilities Code or the Wildfire Fund Administrator created pursuant to Section 8899.72 of the Government Code. All other businesses or activities of the authority unrelated to the Wildfire Fund shall be governed solely by the board. The authority shall have the powers conferred by this chapter. The authority shall be authorized to transact insurance in this state as necessary to sell policies of basic residential earthquake insurance in the manner set forth in Sections 10089.26, 10089.27, and 10089.28. The authority shall have no authority to transact any other type of insurance business.

(2) The authority shall be authorized to exercise the powers of the Wildfire Fund Administrator as provided in Section 3281 of the Public Utilities Code until the appointment of the administrator by the council.

(b) (1) The investments of the authority shall be limited to those securities eligible under Section 16430 of the Government Code.

(2) The rights, obligations, and duties owed by the authority to its insureds, beneficiaries of insureds, and applicants for insurance shall be the same as the rights, obligations, and duties owed by insurers to its insureds, beneficiaries of insureds, and applicants for insurance under common law, regulations, and statutes. The authority shall be liable to its insureds, beneficiaries of insureds, and applicants for insurance as an insurer is liable to its insureds, beneficiaries of insureds, and applicants for insurance under common law, regulations, and statutes.

(c) The operating expenses of the authority shall be capped at not more than 6 percent of the premium income received by the authority. The funds shall be available to pay any advocacy fees awarded in a proceeding under subdivision (c) of Section 10089.11.

(d) For purposes of this section, the term "operating expenses of the authority" excludes solely the following:

(1) The costs of and transaction expenses associated with risk-transfer purchases, including the purchase of reinsurance and with capital-market contracts.

(2) The expense of securing and repaying bonds.

(3) The cost of repayment of bonds guaranteed, insured, or otherwise backed by any department or agency of the United States or of this state, or by any private entity.

(4) Payments to third parties for all of the following services provided to the authority:

(A) Investment.

(B) Loss-modeling.

(C) Legal services.

(5) Costs associated with the authority's efforts to acquaint the public with and market authority products, promote earthquake preparedness, and earthquake-loss mitigation under the authority's duly adopted strategic plan.

(6) Producer compensation.

(7) Participating insurer fees and reimbursement amounts arising under written contracts.

(8) Amounts paid by the authority to support research in seismic science and seismic engineering.

(9) Loans, grants, and expenses to support and maintain the authority's earthquake loss-mitigation goals and programs, whether conducted by the authority alone or in collaboration with or by other persons.

(10) The costs of and loss-adjustment expenses associated with adjusting and paying policyholder claims for earthquake losses that are incurred by the authority under its earthquake insurance policies, including all costs and expenses associated with claim-related litigation, provided that all of those costs and expenses shall be reported to the Legislature in the manner required by subdivision (e) of Section 10089.13.

(11) Any cost incurred to provide administrative services and other support to or for the benefit of the Wildfire Fund created pursuant to Section 3284 of the Public Utilities Code, which cost shall be borne by the Wildfire Fund.

(e) The board may authorize the authority to contract with the Wildfire Fund created under Section 3284 of the Public Utilities Code to provide services and other support as the Wildfire Fund may require.

SEC. 5. Section 10089.7 of the Insurance Code is amended to read:

10089.7. (a) The authority shall be governed by a three-member governing board consisting of the Governor, the Treasurer, and the Insurance Commissioner, each of whom may name designees to serve as board members in their place. The Speaker of the Assembly and the Chairperson of the Senate Committee on Rules shall serve as nonvoting, ex officio members of the board, and may name designees to serve in their place.

(b) The board shall be advised by an advisory panel whose members shall be appointed by the Governor, except as provided in this subdivision. The advisory panel shall consist of four members who represent insurance companies that are licensed to transact fire insurance in the state, two of whom shall be appointed by the commissioner, two licensed insurance agents, one of whom shall be appointed by the commissioner, and three members of the public not connected with the insurance industry, at least one of whom shall be a consumer representative. In addition, the Speaker of the Assembly, and the Chairperson of the Senate Committee on Rules may each appoint one member of the public not connected with the insurance industry. Panel members shall serve for four-year terms, which may be staggered for administrative convenience, and panel members may be reappointed. The commissioner shall be a nonvoting, ex officio member of the panel and shall be entitled to attend all panel meetings, either in person or by representative.

(c) The board shall have the power to conduct the affairs of the authority and may perform all acts necessary or convenient in the exercise of that power. Without limitation, the board may: (1) employ or contract with officers and employees to administer the authority; (2) retain outside actuarial, geological, and other professionals; (3) enter into other obligations relating to the operation of the authority; (4) invest the moneys in the California Earthquake Authority Fund; (5) obtain reinsurance and financing for the authority as authorized by this chapter; (6) contract with participating insurers to service the policies of basic residential earthquake insurance issued by the authority; (7) issue bonds payable from and secured by a pledge of the authority of all or any part of the revenues of the authority to finance the activities authorized by this chapter and sell those bonds at public or private sale in the form and on those terms and conditions as the Treasurer shall approve; (8) pledge all or any part of the revenues of the authority to secure bonds and any repayment or reimbursement obligations of the authority to any provider of insurance or



a guarantee of liquidity or credit facility entered into to provide for the payment of debt service on any bond of the authority; (9) employ and compensate bond counsel, financial consultants, and other advisers determined necessary by the Treasurer in connection with the issuance and sale of any bonds; (10) issue or obtain from any department or agency of the United States or of this state, or any private company, any insurance or guarantee of liquidity or credit facility determined to be appropriate by the Treasurer to provide for the payment of debt service on any bond of the authority; (11) engage the commissioner to collect revenues of the authority; (12) issue bonds to refund or purchase or otherwise acquire bonds on terms and conditions as the Treasurer shall approve; (13) exercise the powers of the California Catastrophe Response Council created in Section 8899.70 of the Government Code until a majority of the council members are appointed; and (14) perform all acts that relate to the function and purpose of the authority, whether or not specifically designated in this chapter.

(d) The authority shall reimburse board and panel members for their reasonable expenses incurred in attending meetings and conducting the business of the authority.

(e) (1) There shall be a limited civil immunity and no criminal liability in a private capacity, on account of any act performed or omitted or obligation entered into an official capacity, when done or omitted in good faith and without intent to defraud, on the part of the board, the panel, or any member of either, or on the part of any officer, employee, or agent of the authority. This provision shall not eliminate or reduce the responsibility of the authority under the covenant of good faith and fair dealing.

(2) In any claim against the authority based upon an earthquake policy issued by the authority, the authority shall be liable for any damages, including damages under Section 3294 of the Civil Code, for a breach of the covenant of good faith and fair dealing by the authority or its agents.

(3) In any claim based upon an earthquake policy issued by the authority, the participating carrier shall be liable for any damages for a breach of a common law, regulatory, or statutory duty as if it were a contracting insurer. The authority shall indemnify the participating carrier from any liability resulting from the authority's actions or directives. The board shall not indemnify a participating carrier for any loss resulting from failure to comply with directives of the authority or from violating statutory, regulatory, or common law governing claims handling practices.

(4) A licensed insurer, its officers, directors, employees, or agents, shall not have any antitrust civil or criminal liability under the Cartwright Act (Part 2 (commencing with Section 16600) of Division 7 of the Business and Professions Code) by reason of its activities conducted in compliance with this chapter. Further, the California Earthquake Authority shall be deemed a joint arrangement established by statute to ensure the availability of insurance pursuant to subdivision (b) of Section 1861.03.

(5) Subject to Section 10089.21, this chapter shall not be construed to limit any exercise of the commissioner's power, including enforcement and disciplinary actions, or the imposition of fines and orders to ensure compliance with this chapter, the rules and guidelines of the authority, or any other law or rule applicable to the business of insurance.

(6) Except as provided in paragraph (3) and by any other provision of this chapter, liability on the part of, and a cause of action, shall not be permitted in law or equity against, any participating insurer for any earthquake loss to property for which the authority has issued a policy unless the loss is covered by an insurance policy issued by the participating insurer. A policy issued by the authority shall not be deemed to be a policy issued by a participating insurer.

(f) The Attorney General, in the Attorney General's discretion, shall provide a representative of the Attorney General's office to attend and act as antitrust counsel at all meetings of the panel. The Attorney General shall be compensated for legal service rendered in the manner specified in Section 11044 of the Government Code.

(g) The authority may sue or be sued and may employ or contract with that staff and those professionals the board deems necessary for its efficient administration.

(h) (1) The authority may contract for the services of a chief executive officer, a chief financial officer, a chief mitigation officer, and an operations manager, and may contract for the services of reinsurance intermediaries, financial market underwriters, modeling firms, a computer firm, an actuary, an insurance claims consultant, counsel, and private money managers. These contracts shall not be subject to otherwise applicable provisions of the Government Code and the Public Contract Code, and for those purposes, the authority shall not be considered a state agency or other public entity. Other employees of the authority shall be subject to civil service provisions.

(2) When the authority hires multiple private money managers to manage the assets of the California Earthquake Authority Fund, other than the primary custodian of the securities, the authority shall consider small California-based firms who are qualified to manage the money in the fund. The purpose of this provision is to prevent the exclusion of small qualified investment firms solely because of their size.

(i) Members of the board and panel, and their designees, and the chief executive officer, the chief financial officer, the chief mitigation officer, and the operations manager of the authority shall be required to file financial disclosure statements with the Fair Political Practices Commission. The appointing authorities for members and designees of the board and panel shall, when making appointments, avoid appointing persons with conflicts of interest. Section 87406 of the Government Code, the Milton Marks Postgovernment Employment Restrictions Act of 1990, shall

apply to the authority. Members of the board, the chief financial officer, the chief executive officer, the chief operations manager, the chief counsel, and any other person designated by the authority shall be deemed to be designated employees for the purpose of that act. In addition, no member of the board, nor the chief financial officer, the chief executive officer, the chief operations manager, and the chief counsel, shall, upon leaving the employment of the authority, seek, accept, or enter into employment or a consulting or other contractual arrangement for the period of one year with any employer or entity that entered into a participating agreement, or a reinsurance, bonding, letter of credit, or private capital markets contract with the authority during the time the employee was employed by the authority, which that member or employee had negotiated or approved, or participated in negotiating. A violation of these provisions shall be subject to enforcement pursuant to Chapter 11 (commencing with Section 91000) of Title 9 of the Government Code.

(j) The board shall establish the duties of, and give direction to, the chief mitigation officer, to support and enhance the authority's appropriate efforts to create and maintain all of the following:

(1) Program activities that mitigate against seismic risks, for the benefit of homeowners, other property owners, including landlords with smaller holdings, and the general public of the state.

(2) Collaboration with academic institutions, nonprofit entities, and commercial business entities in joint efforts to conduct mitigation-related research and educational activities, and conduct program activities to mitigate against seismic risk.

(3) Programs to provide financial assistance in the form of loans, grants, credits, rebates, or other financial incentives to further efforts to mitigate against seismic risk, including, but not limited to, structural and contents retrofitting of residential structures.

(4) Collaborations and joint programs with subdivisions and programs of local, state, and federal governments and with other national programs that may further California's disaster preparedness, protection, and mitigation goals.

(5) Other programs, support efforts, and activities deemed appropriate by the board to further the authority's appropriate mitigation and mitigation-related goals.

(k) The authority may accept grants and gifts of property, real or personal, tangible and intangible, and services for the Earthquake Loss Mitigation Fund, created pursuant to Section 10089.37, or the related residential retrofit program from federal, state, and local government sources and private sources.

(l) The Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) applies to meetings of the board and the panel.

SEC. 6. Section 10089.55 is added to the Insurance Code, to read:

10089.55. The board shall conduct the affairs of the authority with respect to transacting earthquake insurance, including administering the California Earthquake Authority Fund. Except as provided in paragraph (2) of subdivision (a) of Section 10089.6, the board has no authority to administer the Wildfire Fund. At every meeting of the board, the board shall post an agenda that clearly identifies the meeting as relating to the business of earthquake insurance.

SEC. 7. Section 326 is added to the Public Utilities Code, to read:

326. (a) By January 1, 2020, the commission shall establish the Wildfire Safety Division within the commission, located in Sacramento, California. The Wildfire Safety Division shall do all of the following:

- (1) Oversee and enforce electrical corporations' compliance with wildfire safety pursuant to Chapter 6 (commencing with Section 8385) of Division 4.1.
- (2) In consultation with the California Wildfire Safety Advisory Board, develop and recommend to the commission performance metrics to achieve maximum feasible risk reduction to be used to develop the wildfire mitigation plan and evaluate an electrical corporation's compliance with that plan. For this purpose, "maximum feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.
- (3) Develop a field audit program for wildfire mitigation plan compliance by each electrical corporation.
- (4) Consult with the Office of Emergency Services in the office's management and response to utility public safety power shutoff events and utility actions for compliance with public safety power shutoff program rules and regulations.
- (5) Support efforts to assess and analyze fire weather data and other atmospheric conditions that could lead to catastrophic wildfires and to reduce the likelihood and severity of wildfire incidents that could endanger the safety of persons, properties, and the environment within the state.

(6) Retain appropriate staff that includes experts in wildfire, weather, climate change, emergency response, and other relevant subject matters.

(7) Review, as necessary, in coordination with the California Wildfire Safety Advisory Board and necessary commission staff, safety requirements for electrical transmission and distribution infrastructure and infrastructure and equipment attached to that electrical infrastructure, and provide recommendations to the commission to address the dynamic risk of climate change and to mitigate wildfire risk.

(b) Effective July 1, 2021, all functions of the Wildfire Safety Division shall be transferred to the Office of Energy Infrastructure Safety established pursuant to Section 15473 of the Government Code.

SEC. 8. Section 326.1 is added to the Public Utilities Code, to read:

326.1. (a) There is hereby established the California Wildfire Safety Advisory Board. The board shall advise the Wildfire Safety Division established pursuant to Section 326.

(b) The board shall consist of seven members. Five members shall be appointed by the Governor, one member shall be appointed by the Speaker of the Assembly, and one member shall be appointed by the Senate Committee on Rules. The members of the board shall serve four-year staggered terms. The initial members of the board shall be appointed by January 1, 2020. The Governor shall designate three of the initial members who shall serve two-year terms. Members of the board shall be selected from industry experts, academics, and persons with labor and workforce safety experience or other relevant qualifications and shall represent a cross-section of relevant expertise including, at all times, at least three members experienced in the safe operation, design, and engineering of electrical infrastructure.

(c) The board shall meet no less often than quarterly and alternate meeting locations between northern, central, and southern California, when feasible.

(d) Members of the board who are not salaried state service employees shall be eligible for reasonable compensation, not to exceed a per diem of four hundred dollars (\$400), for attendance at board meetings.

(e) All reasonable costs incurred by the board, including staffing, travel at state travel reimbursement rates, and administrative costs, shall be reimbursed through the public utilities reimbursement account and shall be part of the budget of the commission. The commission shall consult with the board in the preparation of this portion of the commission's proposed annual budget.

(f) Communications by the board, its staff, and individual members of the board are not subject to the commission's ex parte rules set forth in Article 1 (commencing with Section 1701) of Chapter 9.

SEC. 9. The amount of forty-seven million six hundred thousand dollars (\$47,600,000) is hereby appropriated from the Public Utilities Commission Utilities Reimbursement Account and two million five hundred thousand dollars (\$2,500,000) from the Public Utilities Commission Public Advocate's Office Account to the Public Utilities Commission for the purpose fulfilling its duties under this act.

SEC. 10. Section 326.1 of the Public Utilities Code, as added by Assembly Bill 1054 of the 2019-20 Regular Session, is repealed.

SEC. 11. This bill shall become operative only if Assembly Bill 1054 of the 2019-20 Regular Session becomes effective before January 1, 2020.

SEC. 12. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

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**No. 21-15571**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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ANTHONY GANTNER, individually and on behalf of all those  
similarly situated,

*Plaintiff-Appellant,*

v.

PG&E CORPORATION, a California Corporation, and PACIFIC  
GAS AND ELECTRIC COMPANY, a California Corporation

*Defendants-Appellees.*

On Appeal from the United States District Court  
for the Northern District of California

No. 4:20-CV-02584-HSG

Hon. Haywood S. Gilliam, Jr.,

[an appeal from an Order in the Bankruptcy Case In re: PG&E  
CORPORATION and PACIFIC GAS AND ELECTRIC COMPANY,  
Debtors, Bankruptcy Case No. 19-30088 (DM), Adv. Pro. No. 19-03061  
(DM), Hon. Donald Montali, U.S. Bankruptcy Judge]

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**APPELLEES' SUPPLEMENTAL EXCERPTS OF RECORD**

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<sup>1</sup> "D.Ct. Dkt." refers to *Gantner v. PG&E Corp. et al.*, Case No. 4:20-cv-02584-HSG (N.D.Cal.)

<sup>2</sup> "Bankr. Dkt." refers to *Gantner v. PG&E Corp. et al.*, Adv. Pro. 19-03061 (N.D. Cal. Bankr.) (Adversary Proceeding in *In re PG&E Corp. and Pacific Gas and Electric Company*, Case No. 19-30088-DM (N.D.Cal. Bankr.)).



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**No. 21-15571**

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**APPELLEES' SUPPLEMENTAL EXCERPTS OF RECORD**

**VOLUME 1 OF 2**

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CASE NO. 4:20-CV-02584-HSG

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

|  |   |
|--|---|
| <p>In re:<br/>PG&amp;E CORPORATION<br/>-and-<br/>PACIFIC GAS AND ELECTRIC<br/>COMPANY,<br/><br/>Debtors</p>  | <p>Case No. 19-30088 (DM)<br/>Chapter 11<br/>(Lead Case)<br/>(Jointly Administered)</p> |
| <p>ANTHONY GANTNER, individually and<br/>on behalf of all those similarly situated,<br/>Plaintiff/Appellant,<br/><br/>vs.<br/><br/>PG&amp;E CORPORATION, a California<br/>Corporation, and PACIFIC GAS &amp;<br/>ELECTRIC COMPANY, a California<br/>Corporation,<br/>Defendants/Appellees.</p> | <p>Adv. Pro. No. 19-03061 (DM)</p>  |

Appeal from the Order on Debtors’ Motion to Dismiss  
and Motion to Strike dated April 3, 2020  
Hon. Donald Montali, U.S. Bankruptcy Judge

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## I. INTRODUCTION

In the fall of 2019, months after seeking Chapter 11 protection from lawsuits filed in the wake of several catastrophic wildfires caused by its negligently maintained power transmission lines, PG&E imposed an unprecedented series of power blackouts, called “Public Safety Power Shutoffs” or “PSPSs.” These blackouts, some of which lasted up to ten days, cut off power to more than 800,000 PG&E customers in Northern California.

PG&E’s negligence in maintaining its power grid made the PSPSs necessary. Indeed, PG&E’s years-long failure to trim or remove vegetation near and around its distribution lines, and its failure to replace or repair aging infrastructure, ensured that common and recurring weather conditions would spark fires that could and have destroyed entire communities, causing the deaths of at least 117 people since 2010.

PG&E is a convicted felon. The Honorable William H. Alsup, who is supervising PG&E’s probation, recently castigated the utility for its ongoing failure to properly maintain the safety of its grid.

As Judge Alsup noted, this negligent maintenance has persisted for years, continued after PG&E filed for bankruptcy in January 2019, and continues to the present day. Judge Alsup made clear that PG&E’s ongoing negligent maintenance caused the PSPSs:

[W]e must continue to tolerate PSPSs as the lesser evil until PG&E has come into compliance with state law and the grid is safe to operate in high winds. But as segments of lines do come into compliance and do become safe, PG&E should configure the grid to keep those segments energized, while denying power to the unsafe segments.

See Appellant’s Appendix (“AA”) 1283 [Order Modifying Conditions of Probation, *U.S. v. PG&E*, No. CR 14-0715 WHA (N.D. Cal. Apr. 29, 2020), Dkt. 1186, at 13]. PG&E itself conceded in a recent filing with the California Public Utilities Commission (“CPUC”), the state regulatory body that oversees PG&E operations, that some of its transmission lines within the potential PSPS scope are not healthy and present a high wildfire risk. See Amended PG&E Public Safety Power Shutoff (PSPS) Report to the CPUC October 9-12 De-Energization Event, at 9 (Nov. 8, 2019).<sup>1</sup>

The blackouts caused substantial hardship and damages to the affected customers, including, among others, loss of habitability, expenses for alternate power sources, loss of food items in refrigerators, loss of mobile phone usage, and business interruption losses. On December 19, 2019, Plaintiff Anthony Gantner (“Plaintiff”), a resident of St. Helena, on behalf of himself and all other affected PG&E customers, filed this negligence class action, as an Adversary Proceeding in PG&E’s bankruptcy, seeking at least \$2.5 billion in damages for the class.

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<sup>1</sup> The document is available at:  
[https://www.pge.com/pge\\_global/common/pdfs/safety/emergency-preparedness/natural-disaster/wildfires/PSPS-Report-Letter-10.09.19-amend.pdf](https://www.pge.com/pge_global/common/pdfs/safety/emergency-preparedness/natural-disaster/wildfires/PSPS-Report-Letter-10.09.19-amend.pdf)

PG&E moved to dismiss the Complaint, arguing: first, that the CPUC's regulatory regime preempted Plaintiff's negligence claims; and second, that PG&E is immune from liability under PG&E Electric Rule No. 14, also known as Tariff Rule 14, which limits PG&E's liability for certain energy interruptions due to energy market fluctuations. In reply, PG&E also argued for the first time that the Complaint did not sufficiently allege causation. And PG&E moved to strike the class allegations. The bankruptcy court granted the motion to dismiss without leave to amend, basing its ruling entirely on the CPUC preemption argument, not even mentioning PG&E's Tariff Rule 14 argument, and failing to reach PG&E's motion to strike.<sup>2</sup>

To find preemption, the bankruptcy court erred in interpreting the interplay between two California statutes. California Public Utilities Code § 2106, makes utilities liable for damages their negligence causes.<sup>3</sup> There is an exception to this rule under §1759 *if* the utility can make a factual showing that such action would actually hinder or interfere with the CPUC's ability to regulate it.

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<sup>2</sup> Unsurprisingly, the bankruptcy court did not consider PG&E's Tariff Rule 14 argument, given that this Rule does not apply to PSPS events or outages caused by PG&E's own negligence. *Tesoro Ref. & Mktg. Co. LLC v. Pac. Gas & Elec. Co.*, 146 F. Supp. 3d 1170 (N.D. Cal. 2015).

<sup>3</sup> All further statutory references are to the California Public Utilities Code unless otherwise stated.

Here, neither PG&E nor the CPUC, made any such showing. Both simply made conclusory assertions, without any facts or any explanation as to how or why preemption applied. The mere fact that this action seeks money damages from PG&E is not sufficient or even relevant. In fact, as part of the currently proposed Chapter 11 reorganization plan, which the CPUC has approved, PG&E will be paying some \$25 billion in damages to wildfire victims, insurance companies, municipalities, and others for damages caused by wildfires that resulted from the same negligent maintenance that led to the need for the PSPSs. If requiring PG&E to pay \$25 billion in wildfire damages will not interfere with the CPUC's ability to regulate PG&E, then neither will paying \$2.5 billion for PSPS damages.

PG&E tried to confuse the issue below. It emphasized that the CPUC regulates the way power companies can implement PSPSs. But the Complaint does not contend that PG&E should not have implemented the PSPSs at issue, or that it implemented them improperly; rather, the Complaint simply alleges that the reason PG&E was forced to implement the PSPSs in the first place was its negligent maintenance.

To the extent PG&E disputes the factual underpinnings of the Complaint, and whether those facts supposedly interfere with the CPUC's ability to regulate PG&E, PG&E's motion to dismiss is simply not the right place to bring such fact-based challenges. The facts must be viewed in the light most favorable to the non-

moving party—Plaintiff—something the bankruptcy court appeared to get backwards.

PG&E’s causation argument—which the bankruptcy court erred in addressing because it was raised for the first time on reply—also fails. In apparent *dicta*, the bankruptcy court stated: “In any event, the proximate causal connection between the harms suffered by Plaintiff during the blackouts (loss of habitability of his dwelling, loss of cell phone connectivity) and the conditions pre-dating those blackouts is too remote to defeat the MTD, given that such PSPS events can be necessitated by high winds even when equipment is adequately maintained.” (AA 1243.)

But this unsupported conclusion—which is contrary to Judge Alsup’s findings in the criminal case—demonstrates the existence of a key factual question that cannot be resolved on a motion to dismiss. Specifically, would the PSPSs have been required if PG&E had adequately maintained its lines and equipment? Contrary to the bankruptcy court’s decision, the Complaint sufficiently alleges that but for PG&E’s negligent maintenance, the PSPSs would not have been required.

Finally, the bankruptcy court erred when it failed to grant leave to amend the Complaint, despite the fact that Plaintiff requested leave to amend and proffered relevant additional facts, and despite the CPUC conceding at oral argument that Plaintiff could amend to state a case for negligence against PG&E.

This Court, therefore, should reverse the dismissal of the Complaint.

## **II. JURISDICTIONAL STATEMENT**

Plaintiff appeals from a decision and order of the bankruptcy court dismissing his complaint against PG&E without leave to amend. The bankruptcy court's decision was dated March 30, 2020, and its subsequent order was dated April 3, 2020. (AA 1234-44 (Decision); 1245-46 (Order).) The bankruptcy court had jurisdiction over this adversary proceeding under 28 U.S.C. §§ 1334 and 157; its decision and order are final and appealable under 28 U.S.C. § 158(a)(1).

Plaintiff timely filed his notice of appeal on April 6th, well within the 14 days prescribed by Fed. R. Bankr. P. 8002. (AA 1247-1250.) He elected to have his appeal heard by the district court pursuant to 28 U.S.C. § 158(c) and Fed. R. Bankr. P. 8005(a). (AA 1248.) This Court therefore has jurisdiction over this appeal.

## **III. STATEMENT OF THE ISSUES AND STANDARDS OF REVIEW**

1. Whether the bankruptcy court erred by granting PG&E's Motion to Dismiss.
2. Whether the bankruptcy court erred by deciding that Plaintiff's negligence claim was preempted by § 1759.



3. Whether the bankruptcy court erred by considering PG&E's argument, raised for the first time on reply, that Plaintiff had not sufficiently alleged causation.
4. Whether the bankruptcy court abused its discretion by failing to grant Plaintiff leave to amend the Complaint.

**Issues 1-3** are reviewed *de novo*. *In re Park at Dash Point*, 985 F.2d 1008, 1010 (9th Cir. 1993) (bankruptcy court interpretation of state law reviewed *de novo*); *In re Jakubaitis*, 604 B.R. 562, 569 (B.A.P. 9th Cir. 2019) (mixed question of law and fact reviewed *de novo*); *In re EPD Inv. Co., LLC*, 523 B.R. 680, 684 (B.A.P. 9th Cir. 2015) (order granting motion to dismiss reviewed *de novo*). *De novo* review means the Court “considers the matter anew, as if no bankruptcy court ruling was rendered.” *In re Jakubaitis*, 604 B.R. at 569.

**Issue 4** is reviewed for abuse of discretion. *Ditto v. McCurdy*, 510 F.3d 1070, 1079 (9th Cir. 2007). Nonetheless, “dismissal without leave to amend is improper unless it is clear, upon *de novo* review, that the complaint could not be saved by *any* amendment.” *Gompper v. VISX*, 298 F.3d 893, 898 (9th Cir. 2002) (emphasis added).

#### IV. STATEMENT OF THE CASE

##### A. Factual Background

###### 1. PG&E's Negligent Maintenance of Its Power Grid Necessitated the Public Safety Power Shutoffs

On January 29, 2019, following a particularly gruesome 2018 fire season, PG&E sought bankruptcy protection. In October and November 2019, while still in bankruptcy, PG&E shut off power to customers in at least five distinct PSPSs. (AA 14-16.)

Hundreds of thousands of households and businesses were affected by these PSPSs, suffering loss to person and property. (AA 2, 21-22.) Plaintiff contends that these losses resulted from PG&E's negligence, that for years PG&E breached its legal obligation to maintain a reasonably safe power grid, and that its failure to do so led to the need for the particular PSPSs in issue here. (AA 3-16, 20-21.)

PG&E's failures in this regard are well-documented. Another court in this District recently detailed PG&E's failures in its years-long supervision of the company's criminal probation. (*See* AA 1271-83 [Order Modifying Conditions of Probation, *U.S. v. PG&E*, No. CR 14-0715 WHA (N.D. Cal. Apr. 29, 2020), Dkt. 1186]; AA 1289-1380 [May 28, 2020 Transcript of Teleconference Proceedings].) There, Judge Alsup made the connection between PG&E's history of mismanagement in maintaining its power grid and the need to employ PSPSs.

PG&E “cannot safely deliver power to California,” Judge Alsup began. “For years, in order to enlarge dividends, bonuses, and political contributions, PG&E cheated on its maintenance of its grid—to the point that the grid became unsafe to operate during our annual high winds, so unsafe that the grid itself failed and ignited many catastrophic wildfires.” (AA 1271.) PG&E uses PSPSs, the Court noted, precisely because of the risk its unsafe grid poses. (AA 1274-76.)

In addition to reciting PG&E’s woeful safety record, Judge Alsup made certain factual findings pertinent here. The court found that PG&E’s distribution lines and its transmission lines remain in disrepair; that it has systematically failed to comply with California law as well as its own plan to maintain the four-foot clearance required between limbs and power lines, with hundreds of miles of unsafe lines and thousands of “risk” trees noted by inspectors (but not identified by PG&E); and that PG&E’s transmission towers suffer from “defective and worn-out hardware” which its own inspections failed to capture and thus were not being addressed as they should be. (AA 1276-81.)

And Judge Alsup specifically recognized that the negligent maintenance made the PSPSs necessary: “We must continue to tolerate PSPSs as the lesser evil,” Judge Alsup concluded, “until PG&E has come into compliance with state law and the grid is safe to operate in high winds. But as segments of lines do come into compliance and do become safe, PG&E should configure the grid to keep

those segments energized, while denying power to the unsafe segments.” (AA 1283.)

## 2. The CPUC’s Role

The CPUC is charged with regulating PG&E. PG&E and the CPUC emphasized below that the CPUC has exercised authority over *how* and *when* energy utilities like PG&E may shut off power to its customers to avoid potential wildfires. That is true, but irrelevant.

In 2018, the CPUC adopted Resolution ESRB-8 to strengthen customer notification requirements before de-energization events such as the PSPSs and ordered utilities to develop “de-energization” programs. (AA 465-73.) The CPUC approved such a program as part of PG&E’s Wildfire Safety Plan in 2019. (AA 684-773.) That program set forth certain guidelines and minimum standards for PG&E’s implementation of PSPSs. (AA 684-773.)

The CPUC had and has no power, however, to award damages to customers because of a PSPS. Indeed, the CPUC disclaimed any such role when it adopted Resolution ESRB-8. “This resolution . . . is *not* the venue,” it announced, to consider any “financial liability” to PG&E’s customers because of its use of PSPSs. (AA 469 [emphasis added].)

That “venue” is here in this lawsuit.

## **B. Procedural History**

### **1. The Complaint**

Plaintiff filed his class action complaint as an adversary proceeding in PG&E’s bankruptcy, asserting a single claim of negligence against PG&E for its failure to maintain a reasonably safe power grid. The Complaint does not challenge PG&E’s right to institute PSPSs. Rather, Plaintiff seeks compensation for the losses he and millions of other Californians suffered as a result of the PSPSs, which he contends were necessary as a result of PG&E’s negligent actions and omissions in maintaining its power grid. (AA 2, 9-11, 16-17.)

Plaintiff seeks special and general tort damages, punitive and exemplary damages as allowed under Cal. Civil Code § 3294 and Cal. Pub. Util. Code § 2106 (discussed below), and an injunction ordering PG&E to cease violating California Public Utilities Commission General Orders Nos. 95 and 165, Cal. Pub. Res. Code §§ 4292 and 4293, and Cal. Pub. Util. Code § 451.<sup>4</sup> (AA 23-24.)

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<sup>4</sup> General Order No. 95 sets forth design standards for PG&E’s electrical equipment, including that PG&E must ensure that its power lines can withstand winds of up to 92 miles per hour. General Order 165 requires PG&E to inspect its distribution facilities to maintain a safe and reliable electric system. Cal. Pub. Res. Code § 4292 requires PG&E to “maintain around and adjacent to any pole or tower which supports a switch, fuse, transformer, lightning arrester, line junction, or dead end or corner pole, a firebreak which consists of a clearing of not less than 10 feet in each direction from the outer circumference of such pole or tower.” Cal. Pub. Res. Code § 4293 mandates that PG&E must maintain clearances of four to ten feet for all power lines, depending on voltage. Under § 4293, “Dead trees, old

## **2. PG&E’s Motion to Dismiss and Strike Class Claims**

PG&E moved to dismiss the Complaint or, in the alternative, strike its class claims. (AA 25-54.) PG&E argued that § 1759 preempted Plaintiff’s claim; that under Tariff Rule 14, PG&E was authorized to interrupt service without liability when, in its sole opinion, it was necessary for public safety; and that Plaintiff’s class claims failed on predominance and ascertainability grounds. (AA 41-53.)

Specifically, PG&E argued that Plaintiff’s action would hinder or interfere with the CPUC’s policies concerning PSPSs, and that absent this litigation Plaintiff and the class had recourse through the CPUC. (AA 45-48.)

## **3. Plaintiff’s Opposition**

In opposition, Plaintiff argued that the case was not barred by § 1759 because it did not interfere with the CPUC’s regulatory authority over PSPSs, to the contrary it reinforced it, and his action sought damages the CPUC cannot award. (AA 1005-14.) Plaintiff also argued that Tariff Rule 14 does not apply, and that PG&E’s motion to strike was premature and Plaintiff’s class claim was well-pled. (AA 1014-24.) Finally, Plaintiff asked for leave to amend in the event the bankruptcy court found the allegations of his complaint lacking. (AA 1025.)

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decadent or rotten trees, trees weakened by decay or disease and trees or portions thereof that are leaning toward the line which may contact the line from the side or may fall on the line shall be felled, cut, or trimmed so as to remove such hazard.” Section 451 requires PG&E to “furnish and maintain such adequate, efficient, just, and reasonable service” to its customers.

#### 4. PG&E's Reply, the CPUC's Amicus Brief, and the Hearing

On reply, PG&E added a new argument: That Plaintiff failed to sufficiently plead that PG&E's negligence caused his injuries. (AA 1106, 1111-13.) The same day PG&E filed its reply, the CPUC filed an amicus brief on preemption. (AA 1122-29.) The CPUC argued, in similarly conclusory manner, that the action would interfere with its regulatory authority over PG&E. (AA 1127-29.)

Plaintiff moved to strike the new argument in PG&E's reply. (AA 1130-32.) Plaintiff also filed a response to the CPUC's brief arguing that the CPUC failed to show how holding PG&E liable in damages for its own negligence would or could interfere with its authority and that the bankruptcy court was not bound by the CPUC's opinion in any event. (AA 1148-52.)

At oral argument, Plaintiff's counsel specifically pointed the Court to a document referenced by PG&E in its moving papers (Amended PG&E Public Safety Power Shutoff (PSPS) Report to the CPUC October 9-12 De-Energization Event, which PG&E's itself cited in its opening brief (AA 39 & fn. 8))—that reads (at. p.9 of that report): “Assessment results confirm asset health and low wildfire risk *for the majority of transmission lines* within the potential PSPS scope, resulting in the ability to safely maintain power on these lines and to reduce

customer impacts.”<sup>5</sup> (AA 1205 (Trans. 27:3-6 [emphasis added]).) Plaintiff’s counsel proffered the reasonable inference from PG&E’s statement that, if the “majority” of lines were healthy and low risk, then there was a minority which were not, and that was the reason PG&E instituted the PSPSs for those areas. (AA 1205 [Trans. 27:12-18].) Judge Alsup’s subsequent findings, which post-date the bankruptcy court’s decision, are even more direct on the subject.

For its part, the CPUC made one critical concession: It informed the bankruptcy court that Plaintiff could likely amend to state a claim that the CPUC agreed would *not* be preempted: “I would think there could be a set of circumstances with specific shutdowns and specific power lines, in which you might have a negligence claim that could work.” (AA 1197-98 [Trans. 19:23-20:1].)

## **5. The Bankruptcy Court’s Decision and Order**

In a Memorandum of Decision dated March 30, 2020, the bankruptcy court granted PG&E’s motion to dismiss on a single ground: “The court is dismissing this adversary proceeding because it is preempted by Public Utilities Code section 1759.” (AA 1244.) The decision stated that Plaintiff’s negligence claim “interferes with the CPUC’s exclusive regulatory authority over . . . shutoffs”

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<sup>5</sup> That document is available at:

[https://www.pge.com/pge\\_global/common/pdfs/safety/emergency-preparedness/natural-disaster/wildfires/PSPS-Report-Letter-10.09.19-amend.pdf](https://www.pge.com/pge_global/common/pdfs/safety/emergency-preparedness/natural-disaster/wildfires/PSPS-Report-Letter-10.09.19-amend.pdf)



because Plaintiff failed to allege “that [PG&E] exceeded the authority vested in it by the CPUC when it executed the PSPS events, and thus any damages incurred by parties as a result of these events must be addressed by the CPUC and not this court.” (AA 1242.)

The bankruptcy court rejected Plaintiff’s argument that § 1759 does not apply. The court reasoned—without any further explanation—that because the CPUC had already exercised its authority to regulate PSPSs before the PSPSs at issue, “any claim for damages caused by PSPS events approved by the CPUC, even if based on [ ] pre-existing events that may or may not have contributed to the necessity of the PSPS events, would interfere with the CPUC’s policy-making decisions.” (AA 1243.)

Finally, despite stating that the only ground for granting the motion was § 1759 preemption, and without addressing that PG&E did not raise any causation argument until reply, the court added that “the proximate causal connection between the harms suffered by Plaintiff during the blackouts . . . and the conditions pre-dating those blackouts is too remote to defeat the MTD, given that such PSPS events can be necessitated by high winds even when equipment is adequately maintained.” (AA 1243.)

On April 3rd, the bankruptcy court issued its Order dismissing the complaint without leave to amend. (AA 1246.) This appeal followed.

## V. SUMMARY OF THE ARGUMENT

The bankruptcy court's decision to dismiss this action without leave to amend was erroneous and should be reversed.

*First*, § 1759 does not preempt this case. PG&E failed to satisfy its burden to prove that § 1759 preemption applied and the bankruptcy court failed to conduct the requisite analysis under *San Diego Gas & Electric Co. v. Superior Court (Covalt)*, 13 Cal. 4th 893 (1996).

This action does not hinder or interfere with the CPUC's exercise of regulatory authority. Instead, it seeks to compensate customers who suffered harm because of PG&E's negligent maintenance of its power grid. The CPUC is not capable of providing this type of relief. Finding PG&E negligent, and that its customers are entitled to compensation for the harm they suffered because of that negligence, does nothing to interfere with the CPUC's regulation of PSPS implementations. *Covalt*, 13 Cal. 4th at 939.

Put plainly, the CPUC's policy concerning how PG&E conducts PSPSs has nothing to do with whether PG&E was negligent in causing the need for PSPSs in the first instance. And awarding damages for such negligence does not interfere with the CPUC's regulatory authority, nor is it contrary to any policy of that regulatory body. *Hartwell Corp. v. Superior Court (Santamaria)*, 27 Cal. 4th 256, 275 (2002). The CPUC's conclusory assertion to the contrary does not carry the

legal or factual weight necessary to find that preemption exists. *Wilson v. S. California Edison Co.*, 234 Cal. App. 4th 123 (2015).

As if to underscore the point, the CPUC just gave its approval to the proposed PG&E reorganization plan calling for PG&E to pay some \$25 billion to wildfire victims, municipalities, and subrogation insurers as compensation for the same negligence giving rise to the claims here. That compensation, like that sought here, complements the CPUC's authority under § 8386(a) to ensure that PG&E maintains its electrical lines in a manner that will "minimize the risk of catastrophic wildfires." That is, it provides a strong financial incentive for PG&E to fix its grid. *PegaStaff v. Pac. Gas & Elec. Co.*, 239 Cal. App. 4th 1303, 1321–22 (2015).

*Second*, PG&E's causation argument was both untimely and without merit. In *dicta*, the court indicated that Plaintiff failed to sufficiently allege a "proximate causal connection" between PG&E's negligence and the harm he suffered. (AA 1243.) Not so. The Complaint sufficiently alleges that PG&E's negligent maintenance of its grid caused the need for the PSPS events that injured him. This causal link thus meets the substantial factor test applied in California. *City of Modesto v. Dow Chem. Co.*, 19 Cal. App. 5th 130, 156 (Cal. Ct. App. 2018), *as modified on denial of reh'g* (Feb. 6, 2018), *review denied* (Apr. 25, 2018), *as*

*modified on denial of reh'g*, (Feb. 6, 2018) *and review filed*, (Feb. 20, 2018) *and review denied*, (Apr. 25, 2018).

The bankruptcy court *speculated* that even with adequate maintenance the PSPSs could have been “necessitated by high winds,” but the Complaint alleges just the opposite. The bankruptcy court is not entitled to make factual findings against a Plaintiff at the Rule 12 stage of the proceedings—it must take his allegations as true and construe them in the light most favorable to him. *Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001). In any case, PG&E raised its causation argument for the first time on reply; it was legal error for the bankruptcy court to consider it. *U.S. ex rel. Giles v. Sardie*, 191 F. Supp. 2d 1117, 1127 (C.D. Cal. 2000).

*Third*, the bankruptcy court erred when it failed to grant Plaintiff leave to amend. *Eminence Capital v. Aspeon*, 316 F.3d 1048, 1053 (9th Cir. 2003). Judge Alsup’s recent probation order makes plain that Plaintiff could amend to tie the state of PG&E’s grids even more specifically to the PSPSs. Even the CPUC’s counsel conceded that Plaintiff could amend to assert more specific causation allegations that would support the negligence claim. (AA 1197-98 [Trans. 19:23-20:1].)

*Fourth*, while the bankruptcy court’s decision was in error, it correctly did not address either the Tariff Rule 14 argument or the motion to strike the class

allegations. As is implicit from their absence from the bankruptcy court decision, both those arguments fail. *Tesoro Ref. & Mktg. Co. LLC v. Pac. Gas & Elec. Co.*, 146 F. Supp. 3d 1170 (N.D. Cal. 2015), is well-reasoned, directly on point, and holds that Tariff Rule 14 does not insulate PG&E from liability for its own negligence. Further, Tariff Rule 14 does not apply to PSPSs in any event. And PG&E's motion to strike is premature. It asks the court to rule on issues properly addressed at class certification with the benefit of discovery.

## **VI. ARGUMENT**

### **A. Legal Standards**

Federal Rule of Civil Procedure 8(a) requires that a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief.”

The Section 1759 preemption inquiry is properly considered under Rule 12(b)(6) standards. *See N. Star Gas Co. v. Pac. Gas & Elec. Co.*, No. 15-CV-02575-HSG, 2016 WL 5358590, at \*6–16 (N.D. Cal. Sept. 26, 2016). “Dismissal under 12(b)(6) is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.” *Mendiondo v. Centinela Hosp.*, 521 F.3d 1097, 1104 (9th Cir. 2008). To survive a Rule 12(b)(6) motion, a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible when a plaintiff pleads “factual content that allows the

court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Courts “accept all factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party.” *Winter ex rel. United States v. Gardens Reg'l Hosp. & Med. Ctr., Inc.*, 953 F.3d 1108, 1114 & n.4 (9th Cir. 2020).

**B. The Bankruptcy Court’s Decision that § 1759 Preempts this Action Was Error**

Section 2016 provides for a private right of action against public utilities:

Any public utility which does, causes to be done, or permits any act, matter, or thing prohibited or declared unlawful, or which omits to do any act, matter, or thing required to be done, either by the Constitution, any law of his State, or any order or decision of the commission, shall be liable to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or resulting therefrom. If the court finds that the act or omission was willful, it may, in addition to the actual damages, award exemplary damages. An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person.

Despite this, PG&E argued below that Plaintiff’s action was preempted by

§ 1759(a) which provides:

No court of this state, except the Supreme Court and the court of appeal, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, as provided by law and the rules of court.

Plaintiff is not asking this Court to “review, reverse, correct, or annul any order or decision of the [CPUC] or to “suspend or delay the execution or operation thereof, or to enjoin, restrain” the CPUC from anything. As a result, PG&E argued that this action somehow would “interfere with the [CPUC] in the performance of its official duties” without ever explaining how or why.

The mere fact that this action relates to PSPSs and that the CPUC regulates how PSPSs are implemented does not mean that this action “interferes” with the CPUC’s “performance of its official duties.” “It has never been the rule in California that the [CPUC] has *exclusive* jurisdiction over any and all matters having any reference to the regulation and supervision of public utilities.” *Vila v. Tahoe Southside Water Util.*, 233 Cal. App. 2d 469, 477 (1965) (emphasis in original).

The California Supreme Court set out the pertinent test for § 1759 preemption in *Covalt*, 13 Cal. 4th 893. The *Covalt* test has three components: “(1) whether CPUC had the authority to adopt a regulatory policy on the subject matter of the litigation; (2) whether CPUC has exercised that authority; and (3) whether action in the case before the court would hinder or interfere with CPUC’s exercise of regulatory authority.” *N. Star Gas Co.*, 2016 WL 5358590, at \*9 (citing *Kairy v. SuperShuttle Int’l*, 660 F.3d 1146, 1150 (9th Cir. 2011)).

All three prongs must be answered in the affirmative for preemption to apply, and PG&E bears the burden to demonstrate that such preemption is warranted. *Chamber of Commerce v. City of Seattle*, 890 F.3d 769, 795 (9th Cir. 2018) (burden to show preemption is on party asserting it); *Hadley v. Kellogg Sales*, 273 F. Supp. 3d 1052, 1076 (N.D. Cal. 2017) (same). While Plaintiff does not dispute that the first and second parts of the *Covalt* test are satisfied, the third prong is most assuredly not.

This action seeks to compensate customers who suffered harm because of PG&E's negligent maintenance of its power grid. That negligence led to PG&E's need to implement the PSPSs, which in turn caused harm to the customers impacted by the loss of power. In this, these customers sit in the same position, legally speaking, as victims of wildfires caused by that negligence.

Neither PG&E nor the CPUC has demonstrated that awarding damages for that negligence hinders or interferes with the standards and guidelines the CPUC has adopted and approved for PSPSs. By their terms, those standards and guidelines ensure only that when PG&E chooses to implement a PSPS, it does so in as narrowly tailored and least disruptive a way as possible.

But those standards and guidelines weren't meant to insulate PG&E from any customer loss arising from a PSPS. And indeed, the CPUC said as much, at least before Plaintiff filed this lawsuit. (AA 469 ("This resolution . . . is *not* the



venue,” to consider any “financial liability” to PG&E’s customers because of its use of PSPSs.) Denying this claim on preemption grounds would insulate PG&E from compensating affected customers. And that is a demonstrably wrong result.

**1. This Action Does Not Hinder or Interfere with the CPUC’s Exercise of Regulatory Authority**

**a. The Bankruptcy Court Did Not Properly Apply the *Covalt* Test**

The bankruptcy court failed to apply the *Covalt* test *at all*, which resulted in the court’s incorrect conclusion. Its analysis of the timing of PG&E’s negligent conduct rather than whether a finding of negligence here would interfere with any CPUC policy or conclusion was, simply, mistaken. (AA 1242-43.)

In *Covalt*, the court considered whether § 1759 preempted a nuisance claim based on property damage caused by San Diego Gas & Electric’s (“SDG&E’s”) powerlines producing electric and magnetic fields that *the CPUC had found* not to be dangerous. *Covalt*, 13 Cal. 4th at 917. The *Covalt* court determined that a damages award in the nuisance case would be inconsistent with the CPUC’s policies and conclusions because such finding “would be inconsistent with the commission’s conclusion, reached after consulting with DHS, studying the reports of advisory groups and experts, and holding evidentiary hearings, that the available evidence does not support a reasonable belief that 60 Hz electric and magnetic fields present a substantial risk of physical harm, . . .” *Covalt*, 13 Cal. 4th at 939.

Here, by contrast, the bankruptcy court conducted no such analysis. If it had, it would have yielded the opposite result. Unlike in *Covalt*, there is no direct conflict between a conclusion already reached by the CPUC and any findings needed to sustain liability in this case. To award damages here, the factfinder would have to find: (1) PG&E negligently maintained its power grid; (2) PG&E's negligent maintenance of its power grid caused it to shut off power to Plaintiff and the Class; and (3) PG&E's negligence was a substantial factor in causing Plaintiff's (and the Class's) injuries. See Judicial Council of California Civil Jury Instructions (CACI) 400. Those findings would not conflict in any way with any CPUC policy or conclusion on the subject of PSPSs.

The Ninth Circuit's decision in *Kairy*, 660 F.3d 1146, is instructive. In that case, a former driver sued a passenger stage corporation for wages and benefits on the theory that he was misclassified as an independent contractor. The company moved to dismiss based on § 1759 preemption and the trial court granted the dismissal. The Ninth Circuit reversed, holding that the *Covalt* test's third prong was not satisfied, because the employee/independent contractor determination the court would have to make to decide the case would not hinder or interfere with the CPUC's jurisdiction. *Id.* at 1156.

**b. The Bankruptcy Court Failed to Properly Analyze § 1759 Preemption under *Hartwell***

In *Hartwell*, 27 Cal. 4th 256, the California Supreme Court further clarified the line between cases that interfere with the CPUC’s regulatory authority and those that do not. Plaintiffs challenged both the adequacy of federal and state drinking water standards and compliance with those standards, seeking damages and injunctive relief. *Id.* at 276, 279. The utilities demurred based on § 1759, a trial court granted that motion, and the court of appeal affirmed.

But the California Supreme Court reversed in part, articulating an additional basis to affirm a court’s jurisdiction over a utility’s actions:

An award of damages is barred by section 1759 if it would be contrary to a policy adopted by the [CPUC] and would interfere with its regulation of public utilities. On the other hand, superior courts are not precluded from acting in aid of, rather than in derogation of, the [CPUC’s] jurisdiction.

*Id.* at 275 (internal citation omitted). The court explained that “a court has jurisdiction to enforce a [utility’s] legal obligation to comply with [CPUC] standards and policies and to award damages for violations” and allowed plaintiffs to pursue damages claims based on a theory that the utility failed to meet those standards. *Id.* at 275–76.

The bankruptcy court failed to analyze either whether an award of damages would be contrary to a CPUC policy or whether it would interfere with its regulation of PG&E. Neither necessary condition is satisfied here. A damages

award is not contrary to any CPUC policy concerning PSPSs or powerline safety. Were it contrary, PG&E would not have agreed to pay \$25 billion to fire victims, municipalities, and insurers because of its negligent maintenance of its powerlines. And, as noted above, a damages award here does not interfere with any CPUC regulation.

**c. The CPUC’s Conclusory Assertion that an Action Interferes with its Regulatory Authority Carries No Weight**

The CPUC’s bald assertion that this action would interfere with it regulating PG&E does not mean that it does. (AA 1122-29.) In *Wilson*, 234 Cal. App. 4th 123, the utility appealed from a jury verdict awarding tort damages for negligently allowing uncontrolled currents into a customer’s home from an electrical substation located next door. The CPUC filed an amicus brief asserting, much like it does here, that it had an ongoing policy and program and that a superior court adjudication prior to a CPUC finding of wrongdoing “would interfere with the Commission’s authority to interpret and apply its own orders, decisions, rules and regulations . . .” *Wilson*, 234 Cal. App. 4th at 148 (quoting the CPUC’s brief).

The court disagreed, holding that it was not sufficient for the CPUC to have issued general regulations on the subject and set forth design requirements to find § 1759 preemption. Because there was no evidence that the CPUC had investigated or regulated the specific stray voltage issue on which liability hinged,

the Court found that “the lawsuit would not interfere with or hinder any supervisory or regulatory policy of the [C]PUC.” *Id.* at 151. So too here. At the end of the day it is up to the courts, not the CPUC, to make this call.

**d. Whether PG&E Met the CPUC’s Minimum PSPS Standards is Irrelevant**

The bankruptcy court’s focus on whether PG&E met the minimum requirements set by the CPUC for PSPSs is misplaced. (AA 1242.) While the CPUC did not authorize or approve any particular PSPS or approve of PG&E’s conduct during these events retroactively as of the filing of this brief, whether the execution of the PSPSs met the CPUC’s standards is irrelevant—the claim here is that PG&E’s negligence is what necessitated the PSPSs.

Even if PG&E had met the minimum requirements the CPUC set for electrical lines and equipment safety and PSPSs—and it has not—it would still not be insulated from a negligence lawsuit. *PegaStaff*, 239 Cal. App. 4th at 1320.

In *Mata v. Pac. Gas & Elec. Co.*, 224 Cal. App. 4th 309 (2014), *as modified on denial of reh’g* (Mar. 26, 2014), heirs of a decedent electrocuted by overhead powerlines while trimming trees brought a negligence action against PG&E alleging it failed to exercise due care in maintaining vegetation clearance near the power line. The superior court granted summary adjudication in PG&E’s favor on a negligence per se cause of action because PG&E indisputably met its clearance

obligations under CPUC General Order No. 95 for that power line. The superior court then granted PG&E's subsequent motion to dismiss based on § 1759.

The court of appeal reversed. It found that CPUC rules establishing minimum clearance requirements did not relieve PG&E "of its obligation to exercise reasonable care to avoid causing harm to others, or . . . its responsibility for failing to do so." *Mata*, 224 Cal. App. 4th at 318; *see also Nevis v. Pac. Gas & Elec. Co.*, 43 Cal. 2d 626, 630 (1954) ("Compliance with the general orders of the [CPUC] does not establish as a matter of law due care by the power company, but merely relieves it 'of the charge of negligence per se.'").

Likewise, in *Wilson*, 234 Cal. App. 4th 123, the court of appeal found that compliance with a minimum standard did not insulate a utility from negligence liability. *See also PegaStaff*, 239 Cal. App. 4th at 1320 ("merely meeting [minimum] requirements does not necessarily insulate a utility from a superior court suit").

Here, the CPUC has in no way indicated that PG&E may perform PSPSs without liability to its customers, whether or not it follows CPUC guidelines and rules. Courts in this district uniformly agree that § 1759 dismissal is inappropriate in this circumstance. *See, e.g., N. Star Gas*, 2016 WL 5358590, at \*13-15 (Gilliam, Jr., J.) (denying motion to dismiss based on § 1759 when case does not involve complex interpretive challenges and damages finding would not hinder or

impede any CPUC policy); *see also Mangiaracina v. BNSF Ry. Co.*, No. 16-CV-05270-JST, 2019 WL 1975461, at \*14 (N.D. Cal. Mar. 7, 2019) (Tigar, J.) (denying motion for summary judgment based on § 1759 when finding of negligence would not invalidate CPUC standards and plaintiffs seek damages based on past negligence).

## 2. This Action Is in Aid of, and Complements, the CPUC's Jurisdiction

“[C]ourts are not precluded from acting in aid of, rather than in derogation of, the [CPUC's] jurisdiction.” *Hartwell*, 27 Cal. 4th at 275. In *Vila*, 233 Cal. App. 2d 469, the case on which *Hartwell* relies, the court found no preemption because the action, premised on a violation of a CPUC regulation, would aid rather than degrade the CPUC's regulatory authority. *Id.* at 479.

*Cundiff v. GTE California*, 101 Cal. App. 4th 1395 (2002) follows this line of authority. There, plaintiffs sued phone utilities for charging rental fees for nonexistent or obsolete phones. *Id.* at 1400-02. The court of appeal reversed the granting of a demurrer on § 1759 grounds based on interference with the CPUC's billing regulations because plaintiffs were not challenging the CPUC's decision to allow defendants to rent phones, but the manner in which defendants billed them under the regulations. *Id.* at 1406.

That court relied on *Cellular Plus v. Superior Court*, 14 Cal. App. 4th 1224, 1245 (1993). There, the court allowed an antitrust action for price-fixing against

cell phone companies despite the CPUC's regulation of pricing because plaintiffs did not challenge the CPUC's right to set rates for cellular service or have the commission change its rates. *Cundiff*, 101 Cal. App. 4th at 1407.

The same is true here. Plaintiff is not challenging the CPUC's right to regulate PG&E's PSPSs, or PG&E's maintenance of its lines. Nor is Plaintiff seeking to change those regulations. Rather, this action "actually furthers policies of [the CPUC]" because it incentivizes PG&E to provide safe and reliable electricity to its customers. *Cundiff*, 101 Cal. App. 4th at 1408; *see also Nwabueze v. AT&T*, No. C 09-1529 SI, 2011 WL 332473, at \*16 (N.D. Cal. Jan. 29, 2011) ("A lawsuit for damages . . . would not interfere with any prospective regulatory program" since "a finding of liability would not be contrary to any policy adopted by the CPUC or otherwise interfere with the CPUC's regulation.").

*PegaStaff*, 239 Cal. App. 4th 1303 further illustrates the distinction between actions hindering the exercise of the CPUC's authority (which are barred) and those complementing it (which may go forward in court). In *PegaStaff*, a non-minority run staffing agency sued PG&E and others, alleging that PG&E's new tier structure that rewarded minority enterprises over others in response to new California Public Utilities Code sections and a CPUC general order designed to encourage the use of minority enterprises, negatively affected its business and discriminated against it. The trial court granted PG&E's motion for judgment on



the pleadings on the basis that § 1759 precluded jurisdiction. The court of appeal reversed.

In that case, despite plaintiff alleging that PG&E set up its preference system to comply with CPUC rules, the court found that PG&E's alleged conduct was not necessary to comply with the Code sections, rules, and decisions at issue and in fact the CPUC had not authorized or permitted the alleged conduct. Therefore, the court concluded that an award of damages or injunctive relief would enforce, not obstruct, the CPUC regulation. *PegaStaff*, 239 Cal. App. 4th at 1327-28 (citing *Hartwell*, 27 Cal. 4th at 275).

The facts here are even stronger than in *PegaStaff*. Plaintiff's negligence claim is based on PG&E repeatedly violating its duty of care to its customers and, in the process, violating §§ 451, 8386(a), the Cal. Pub. Res. Code § 4292, 4293, and CPUC General Orders Nos. 95 & 165 culminating in it shutting off power to hundreds of thousands of customers. (AA 4-5, 7-13, 20-21.) The CPUC did not specifically authorize PG&E to violate these statutes or orders.

Further, the nature of the relief sought is relevant to whether an action would hinder or interfere with the CPUC's exercise of regulatory authority. *PegaStaff*, 239 Cal. App. 4th at 1318. "If the nature of the relief sought . . . fall[s] outside the [C]PUC's constitutional and statutory powers, the claim will not be barred by section 1759." *PegaStaff*, 239 Cal. App. 4th at 1318; *Mangiaracina*, 2019 WL

1975461, at \*14 (“the Court finds further support [for its denial of defendant’s motion to dismiss based on § 1759] in the fact that Plaintiffs seek damages based on past negligence, which the CPUC lacks the power to adjudicate.”).

It is undisputed that the CPUC has stated that it does not have the authority to award tort damages, which is what Plaintiff seeks. (AA 1050 (“[T]his Commission does not have authority to award damages, as requested by Complainant, but only reparations. . . . Accordingly, Complainant's request in this regard for an award of damages is outside of Commission jurisdiction.”); AA 1033-34; *Mangiaracina*, 2019 WL 1975461, at \*14 (CPUC lacks power to adjudicate damages based on past negligence). This alone means that the bankruptcy court erred in finding §1759 preemption. *PegaStaff*, 239 Cal. App. 4th at 1318.

**C. The Bankruptcy Court’s Conclusion that Plaintiff Failed to Sufficiently Allege Causation is Wrong**

In *dicta*, the bankruptcy court suggests that the motion to dismiss could also have been granted because Plaintiff had not sufficiently alleged causation. (AA 1243.) This argument fails on its merits. And it never should have been considered in the first instance.

To state a negligence claim Plaintiff must allege: (1) PG&E was negligent; (2) Plaintiff was harmed; and (3) PG&E’s negligence was a substantial factor in

causing Plaintiff's harm. CACI 400. There is no dispute that the Complaint satisfies the first two elements.

The third element is also satisfied. "A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm." CACI 430. Further, "A person's negligence may combine with another factor to cause harm . . . [Defendant] cannot avoid responsibility just because some other person, condition, or event was also a substantial factor in causing [plaintiff]'s harm." CACI 431; *Uriell v. Regents of Univ. of California*, 234 Cal. App. 4th 735, 746–47 (2015). "Direct proof of every link in the chain of causation . . . is not required." *City of Modesto*, 19 Cal. App. 5th at 156.

The bankruptcy court appeared to mistakenly believe that PG&E's negligence maintenance of its power grid had to be the only cause of Plaintiff's injury or that the Court was free to imply other possible causes of Plaintiff's injury into Plaintiff's allegations. (AA 1243.) But that is wrong. The bankruptcy court was required to accept Plaintiff's allegations as true on the motion to dismiss and construe them in the light most favorable to him. *Lee*, 250 F.3d at 679. To muse that they might not is well beyond the purview of the court's consideration of a Rule 12 motion.

The causal connection between PG&E’s negligent maintenance of its grid is set forth in detail in the Complaint (AA 4 [Compl. ¶ 15 (“In extreme fire areas, PG&E also must ensure that its power lines can withstand winds of up to 92 miles per hour”)]; AA 14 [¶ 66 (For the October 9 and 10 PSPSs, “there is no indication that it ever came close to the 92 miles per hour threshold established by CPUC General Order 95)]; AA 16 [¶ 78 (for the November 20 PSPS “winds did not approach the 92-mph threshold”)]. Judge Alsup’s recent Probation Order attempting to further reign in PG&E’s abuses further supports the causal connection. (*See supra*, at § IV.A.1.)<sup>6</sup>

The court’s task “is not to decide whether a *particular* plaintiff’s injury was reasonably foreseeable in light of a *particular* defendant’s conduct, but rather to evaluate more generally whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed.” *Id.* at 772 (emphasis in original, internal quotation omitted). “[F]oreseeability is not to be measured by what is more probable than not, but includes whatever is likely enough in the setting of modern life that a reasonably thoughtful [person] would take account of it in guiding practical

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<sup>6</sup> Nor do the policy considerations attendant with proximate cause favor insulating PG&E from liability for its negligence. *Cabral v. Ralphs Grocery Co.*, 51 Cal. 4th 764, 779 (2011) (“[T]he question of ‘the closeness of the connection between the defendant’s conduct and the injury suffered’ [citation] is strongly related to the question of foreseeability itself.”)

conduct.” *Bigbee v. Pac. Tel. & Tel. Co.*, 34 Cal. 3d 49, 57 (1983) (internal quotation marks omitted).

Plaintiff’s damages were certainly a foreseeable consequence of PG&E’s failure to maintain its power grid safely. PG&E should have anticipated that if they failed to maintain their grid to stand up to conditions that regularly affect that grid, they would either: (1) cause fires; or (2) cause damages to customers by shutting off power.<sup>7</sup>

In any case, the bankruptcy court should never have considered PG&E’s improperly raised causation argument. *See U.S. ex rel. Giles*, 191 F. Supp. 2d at 1127 (“It is improper for a moving party to introduce new facts or different legal arguments in the reply brief than those presented in the moving papers.”); *see also State of Nev. v. Watkins*, 914 F.2d 1545, 1560 (9th Cir. 1990) (“[Parties] cannot

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<sup>7</sup> In its opening brief below, PG&E argued that the negligence claim should be dismissed because of the economic loss rule and because the allegations do not support emotional distress damages. PG&E did not make those arguments in reply or at the hearing and appears to have abandoned them. In any case, the economic loss rule does not apply to services, only goods. *Ladore v. Sony Computer Entm't Am., LLC*, 75 F. Supp. 3d 1065, 1075–76 (N.D. Cal. 2014). And the Complaint pleads facts sufficient to make out a direct victim claim (AA 3-5 [detailing PG&E’s duty to its customers]). *See* § 451 (PG&E has pre-existing relationship with its customers and duty to furnish and maintain “adequate, efficient, just, and reasonable service.”); *Langley v. Pac. Gas & Elec. Co.*, 41 Cal. 2d 655, 662 (1953) (“By undertaking to supply electricity to plaintiff, defendant obligated itself to exercise reasonable care toward him, and failure to exercise such care has the characteristics of both a breach of contract and a tort.”).

raise a new issue for the first time in their reply briefs.” (citations omitted)); *Dytch v. Yoon*, No. C-10-02915-MEJ, 2011 WL 839421, at \*3 (N.D. Cal. Mar. 7, 2011) (“Defendant’s argument . . . was raised for the first time her reply brief. As a result, it would be improper for the Court to consider it.”).<sup>8</sup>

The bankruptcy court’s causation *dicta* was wrong and it was legal error for the court to even consider that argument. This Court may not rely on it as a basis to affirm.

#### **D. The Bankruptcy Court Abused its Discretion by Failing to Grant Plaintiff Leave to Amend the Complaint**

The bankruptcy court abused its discretion when it decided not to permit Plaintiff leave to amend. *Eminence Capital*, 316 F.3d at 1053 (district court abused its discretion by denying plaintiffs leave to amend where allegations were not frivolous, plaintiffs’ allegations were in good faith, and it appeared plaintiffs had reasonable chance of successfully stating claim if given another opportunity). The bankruptcy court did not address the issue in its decision and did not even evaluate whether Plaintiff could amend to fix what it perceived to be fatal

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<sup>8</sup> PG&E’s argument that it only realized Plaintiff alleged negligence based on its negligent maintenance of its power grid via Plaintiff’s opposition, not his Complaint is absurd. The second paragraph of the Complaint put PG&E on notice of Plaintiff’s position: “The necessity for the outages was caused by PG&E’s own negligence in failing over many years, to properly maintain or replace old transmission lines, leaving them vulnerable to failing and sparking deadly wildfires.” (AA 2.)

deficiencies. While Plaintiff strongly disputes that the operative complaint is deficient, there is no doubt Plaintiff could amend the Complaint to address the bankruptcy court's concerns if need be.

The CPUC conceded that Plaintiff could amend to state a claim that it believed would not be preempted: "I would think there could be a set of circumstances with specific shutdowns and specific power lines, in which you might have a negligence claim that could work." (AA 1197-98 [Trans. 19:23-20:1].) If more specific allegations concerning the PSPSs and the specific power lines is what is needed, Plaintiff should have been given the opportunity to allege those facts. PG&E's representation to the CPUC that "the majority of transmission lines within the potential PSPS scope" are healthy and present a "low wildfire risk" certainly implies that some were not and caused the need for the PSPSs. (*See supra*, at § IV.B.4.) Plaintiff should have been given the chance to discover those details if he was required to plead them.

Judge Alsup's recent order likewise demonstrates that Plaintiff is capable of clearly drawing that connection for the court. (AA 1271-83.) For instance, the thousands of hazardous limbs and trees across PG&E's power grid in 2019 and the "defective and worn-out hardware" of its transmission towers caused a heightened risk of fire necessitating PSPSs which would not exist if PG&E had properly,

inspected, trimmed vegetation and trees around, and updated its grid as it was supposed to. (AA 1276-81.)

**E. PG&E’s Alternative Tariff 14 and Motion to Strike Class Claims Arguments Were Properly Rejected**

While the bankruptcy court did not address PG&E’s argument that Tariff Rule 14 dictates dismissal under Rule 12(b)(6) or that Plaintiff’s class claims should be struck, for the reasons set forth in Plaintiff’s opposition to those motions, both should be rejected. *See* AA 1015-20 [Tariff Rule 14]; AA 1020-24 [Motion to Strike].)

The bankruptcy court rightfully failed to even address PG&E’s frivolous Tariff Rule 14 argument. Tariff Rule 14<sup>9</sup> was approved in 1997 in connection with the energy grid deregulation of the 1990s which led to blackouts caused by market forces and is “wholly unrelated” to PSPS liability.<sup>10</sup> (AA 153.)

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<sup>9</sup> As part of its regulatory authority, the CPUC may require utilities to file “tariffs” which contain “rules, contracts, privileges, and facilities which in any manner affect or relate to rates, tolls, rentals, classifications, or services.” *Waters v. Pac. Tel. Co.*, 12 Cal. 3d 1, 6 (1974) (quoting § 489). “If approved by the CPUC, such rules have the effect of law.” *Tesoro*, 146 F. Supp. 3d at 1176. PG&E’s Tariff Rule 14 is one such rule. But it does not apply to limit PG&E’s liability in this case.

<sup>10</sup> In short, the output of energy was no longer dependent on PG&E alone, but other participants as well. It therefore makes sense that PG&E would want to call out (and the CPUC would approve) that, barring its own negligence, PG&E may interrupt its service deliveries to its customers and electric service providers (ESPs) for safety reasons. It does not, however, make sense that the CPUC would allow PG&E to insulate itself from liability for its own negligence simply because ESPs were given direct access to their power supply to compete with them.



Tariff Rule 14 generally provides some immunity for PG&E from liability for power outages, but only where it exercises “reasonable diligence and care,” which it did not do here.

*Tesoro*, 146 F. Supp. 3d 1170 is well-reasoned, directly on point, and holds that Tariff Rule 14 does not insulate PG&E from liability. Together with the history and context of Tariff Rule 14, *Tesoro* dictates that PG&E’s Tariff Rule 14 did not provide the bankruptcy court an alternate basis to dismiss this case.

PG&E’s alternative motion to strike class claims failed to assert any legitimate basis to support striking the class claims, was premature in that it asked the court to rule on matters properly considered at class certification after discovery, and was otherwise meritless because Plaintiff’s class allegations were proper.

## VII. CONCLUSION

For all the foregoing reasons, the Court should reverse the bankruptcy court's Decision and Order and remand for further proceedings.

Dated: June 5, 2020      PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

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## CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. Bankr. P. 8015(a)(7), the undersigned certifies that Appellant's Principal Brief complies with the type-volume limitation and that the Appellant's Principal Brief contains 9,234 words (excluding the cover page, tables, signature blocks and required certificates) as counted by the computer program used to prepare the Appellant's Principal Brief.

Dated: June 5, 2020

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

By: /s/ Brian S. Conlon  
Brian S. Conlon

## CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2020, I electronically filed APPELLANT'S PRINCIPAL BRIEF with the Clerk of the Court of the United States District Court, Northern District of California by using the CM/ECF system.

I certify that all parties of record to this appeal either are registered CM/ECF users, have registered for electronic notice, or have consented in writing to electronic service, and that service will be accomplished through the CM/ECF system.

The parties of record who are being served through CM/ECF system are as follows:

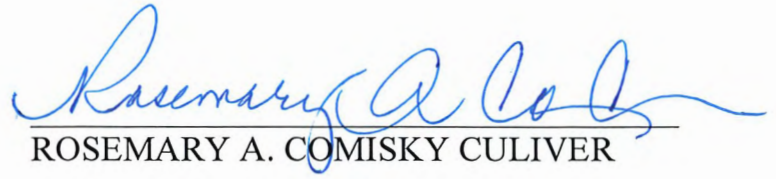
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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: June 5, 2020



ROSEMARY A. COMISKY CULIVER

CASE NO. 4:20-CV-02584-HSG

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

|  |   |
|--|---|
| <p>In re:<br/>PG&amp;E CORPORATION<br/>-and-<br/>PACIFIC GAS AND ELECTRIC<br/>COMPANY,<br/>Debtors</p>   | <p>Case No. 19-30088 (DM)<br/>Chapter 11<br/>(Lead Case)<br/>(Jointly Administered)</p> |
| <p>ANTHONY GANTNER, individually and<br/>on behalf of all those similarly situated,<br/>Plaintiff/Appellant,<br/><br/>vs.<br/><br/>PG&amp;E CORPORATION, a California<br/>Corporation, and PACIFIC GAS &amp;<br/>ELECTRIC COMPANY, a California<br/>Corporation,<br/>Defendants/Appellees.</p> | <p>Adv. Pro. No. 19-03061 (DM)</p>  |

Appeal from the Order on Debtors’ Motion to Dismiss  
and Motion to Strike dated April 3, 2020  
Hon. Donald Montali, U.S. Bankruptcy Judge

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## I. INTRODUCTION

As Plaintiff explained in his Principal Brief, the Court should overturn the bankruptcy court decision and permit Plaintiff to pursue his claim against PG&E for the negligent maintenance of its power grid, negligence which necessitated power shutoffs throughout Northern California and caused harm to Plaintiff and the approximately 800,000 PG&E customers he seeks to represent. PG&E's Opposition only further demonstrates the bankruptcy court's error.

*First*, on the subject of preemption, Plaintiff does not challenge any finding made by the California Public Utilities Commission ("CPUC") in support of authorizing PG&E to conduct any of the "Public Safety Power Shutoffs" ("PSPSs") at issue here. Plaintiff merely seeks to hold PG&E liable for having to conduct PSPSs in the first place because of its negligent failure to maintain its grid. As alleged in the Complaint, and confirmed by Judge Alsup in parallel criminal proceedings, that negligence was in clear contravention of CPUC rules and regulations. Thus, far from hindering the CPUC's regulatory authority, this lawsuit is entirely supportive of and complementary to that authority. Nowhere in the CPUC rules governing PSPSs do considerations of PG&E's negligence in maintaining its power grid factor into the decision to implement a PSPS. So, by definition, the CPUC's regulation of PSPSs does not require the CPUC to make any findings or conclusions with respect to that subject before authorizing a PSPS.

And PG&E has pointed to nothing in the CPUC's decision making impacted by finding PG&E liable for the negligence alleged here.

*Second*, PG&E's argument that Tariff Rule 14 precludes Plaintiff's suit is also wrong. As Judge Spero held in *Tesoro Refining & Marketing Co. v. Pacific Gas & Electric Co.*, 146 F. Supp. 3d 1170, 1184 (N.D. Cal. 2015), and as the plain text of the Tariff makes clear, Tariff Rule 14 does not protect PG&E from its own negligence. PG&E's attempt to parse the text of that rule to avoid *Tesoro's* holding is pure sophistry and explains why the bankruptcy court's decision ignored this argument altogether.

*Third*, the Complaint adequately alleges that PG&E's negligence in failing to maintain its power grid necessitated the PSPSs, causing Plaintiff's harm. This is precisely the same negligence that caused fire victims harm. In support of this argument, PG&E wrongly demands unnecessary specificity from Plaintiff and asks the Court to construe facts in the Complaint in PG&E's favor rather than Plaintiff's. Both positions are contrary to Rule 12 jurisprudence.

*Finally*, while Plaintiff's Complaint more than adequately alleges a viable cause of action, PG&E's demand—again to which the bankruptcy court acquiesced—that Plaintiff be given no opportunity to amend his Complaint is against Fed. R. Civ. P. 15(a) as well as clear Circuit law on the subject. It also

ignores the CPUC's concession, when pressed by the bankruptcy court at oral argument, that Plaintiff could plead a claim for negligence "that could work."

## II. ARGUMENT

### A. Plaintiff's Claim Is Not Preempted by Section 1759; An Award of Damages in This Case Would Not Interfere with the CPUC's Performance of its Duties

PG&E spends much of its brief discussing the history of CPUC's regulation and oversight of PG&E and other utilities as to when and how they should be allowed to shut off power to their customers. That discussion is entirely irrelevant to this motion.

Plaintiff's negligence claim against PG&E does not hinge on whether PG&E acted in accordance with regulatory protocol for PSPSs. Plaintiff's claim hinges on whether PG&E complied with its duty to maintain its power grid, and whether its failure to do so resulted in some or all of the PSPSs at issue here.

None of the CPUC decisions and orders cited by PG&E in its Opposition say that a utility's past negligence in maintaining its facilities has anything to do with the CPUC's decision whether to approve a PSPS. The factors the CPUC considers relate to necessity, safety and notification of customers. [*See e.g.*, ESRB-8, at AA0468.] For the purposes of implementation of a PSPS, it does not matter *why* the PSPS is necessary, just that it is.

That distinction is crucial. According to PG&E, Plaintiff seeks to hold it liable for imposing all PSPSs, full stop. *See* Opposition at 12. And that, PG&E says, is preempted by Section 1759 as interpreted by the California Supreme Court in *San Diego Gas & Elec. Co. v. Superior Court (Covalt)*, 13 Cal. 4th 893 (1996), and its progeny. But PG&E does not get to recast Plaintiff’s claim as a wholesale attack on PSPSs (which it is not) to conform to its legal argument. And *Covalt* and the other cases interpreting Section 1759 make it abundantly clear that the claim Plaintiff actually asserts is not preempted.

**1. Plaintiff Seeks Damages for PG&E’s Failure to Maintain its Power Grid**

Plaintiff has said—in the Complaint, in the briefing and argument below, and now in this appeal—that he does not challenge the CPUC’s decision to approve the PSPSs, nor does he challenge the way PG&E implemented those shutoffs, in accordance with the regulatory protocol for doing so. Instead, Plaintiff alleges that PG&E’s failure to maintain its power grid in compliance with state law and CPUC regulations necessitated the PSPSs *in the first place*.

For example, as alleged in the Complaint (see AA 4-5), Section 451 of the California Public Utilities Code requires PG&E to “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.” Various CPUC General

Orders (for example, Nos. 95 & 165) require PG&E to comply with design standards for its electrical equipment, to ensure that its power lines can withstand high winds, and to inspect its distribution facilities. Cal. Pub. Res. Code § 4292 provides that PG&E must “maintain around and adjacent to any pole or tower which supports a switch, fuse, transformer, lightning arrester, line junction, or dead end or corner pole, a firebreak,” and Cal. Pub. Res. Code § 4293 requires that PG&E maintain “clearances of four to ten feet for all of its power lines.” Plaintiff alleges that PG&E failed in its duty to comply in whole or in part with all of the above. (AA 5-16, 20-22.) And Judge Alsup agrees. (AA 1271-83.)

Yet PG&E continues to assert that Plaintiff seeks to “impose liability for PSPS events authorized by the CPUC,” and to “hold PG&E responsible despite the fact that its conduct complied with the CPUC’s policies.” *See* Opposition at 12. But compliance with *some* CPUC rules and regulations (i.e., those relating to implementation of PSPSs) is not a free pass for violation of others (i.e., those relating to power grid maintenance).

Two core principles underlying *Covalt* and its progeny doom PG&E’s preemption argument.

**First**, a lawsuit for damages hinders or interferes with the CPUC’s exercise of authority if, *and only if*, for plaintiff to win, the court or jury must make findings inconsistent with the CPUC’s policy findings and conclusions. *Covalt*, 13 Cal. 4th

at 939. Here, Plaintiff's negligence claim does not depend on any factual findings inconsistent with the CPUC's conclusions nor its decision making regarding the implementation of PSPSs.

**Second**, *Hartwell Corp. v. Superior Court (Santamaria)*, 27 Cal. 4th 256 (2002), as well as several lower court decisions, hold that a claim aiding in the enforcement of CPUC policies does not hinder or interfere with the CPUC's regulatory authority. Because Plaintiff's negligence claim seeks to enforce state law and CPUC regulations requiring PG&E to maintain its power grid in a safe and reliable manner, liability for the negligence claimed here would not hinder or frustrate the CPUC's policies.

## **2. A Win for Plaintiff Does Not Require Any Finding that Conflicts with CPUC Regulatory Policy**

In *Covalt*, the California Supreme Court articulated and applied a test for determining when a damages action against a utility would undermine a general supervisory or regulatory policy of the CPUC. 13 Cal. 4th at 918-19 (citing *Waters v. Pac. Tel. Co.*, 12 Cal. 3d 1 (1974)). The *Covalt* test requires the court, first, to examine the elements of the plaintiff's claim, and then determine whether, for the plaintiff to win, the court or jury must make findings inconsistent with the CPUC's conclusions. 13 Cal. 4th at 939 ("[T]o award such damages on a nuisance theory the trier of fact would be required to find that reasonable persons viewing the matter objectively (1) would experience a substantial fear that the fields cause



physical harm and (2) would deem the invasion so serious that it outweighs the social utility of SDG&E's conduct. Such findings, however, would be inconsistent with the commission's conclusion [to the contrary].”).

To win here, Plaintiff must prove that PG&E breached a duty in maintaining its power grid and that this breach of duty (read: negligence) was a substantial factor in causing Plaintiff harm. None of these findings would conflict with the CPUC’s policies regarding PSPSs. Even now PG&E fails to give a single example of how these findings would interfere with or hinder the CPUC’s regulatory authority over PSPSs.<sup>1</sup>

Instead, it resorts here to threatening California citizens with further harm should Plaintiff’s claim be allowed to proceed. *See* Opposition at 13 (stating that a finding of liability here would “gut” PG&E’s ability to implement the “essential public safety tool” of PSPSs). The Court should not give any credence to this threat. If a PSPS is necessary, surely PG&E will not risk causing more deadly wildfires and incurring tens of billions more in damages to wildfire victims, just to

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<sup>1</sup> PG&E cites in its Opposition (at 13) the CPUC’s *amicus* brief, which contains no factual or evidentiary foundation, or official findings of the CPUC, for the bare statement that Plaintiff “seeks to impose liability on the Utility . . . without alleging that any particular decision by the Utility to conduct a public safety power shutoff resulted from the Utility’s underlying failure to comply with any particular mandate.” But that statement is demonstrably incorrect. As detailed above, the Complaint robustly alleges PG&E’s underlying failure to comply with numerous maintenance and safety statutes and CPUC regulations.

avoid liability here. More to the point, such argument is irrelevant: it is the frustration of CPUC's regulatory authority that matters for preemption purposes.

Courts have soundly rejected the argument—that just because the CPUC authorizes certain conduct of the utility, a claim against the utility related to that conduct is preempted—time and time again. *See, e.g., Cundiff v. GTE California Inc.*, 101 Cal. App. 4th 1395, 1406 (2002) (damages claim by customers charged for renting nonexistent or obsolete phones not preempted even though CPUC approved utility's ability to rent phones); *Cellular Plus, Inc. v. Superior Court*, 14 Cal. App. 4th 1224, 1245 (1993) (price-fixing claim was not preempted despite CPUC determination that defendant's rates were reasonable); *Stepak v. Am. Tel. & Tel. Co.*, 186 Cal. App. 3d 633 (1986) (damages claim by minority shareholders challenging merger not preempted even though CPUC approved merger). As the Ninth Circuit held, where, as here, a legal claim would precipitate “a distinct inquiry from the one that would be made by the PUC in a regulatory proceeding,” the claim is *not* preempted. *Kairy v. SuperShuttle Int'l*, 660 F.3d 1146, 1156 (9th Cir. 2011). Here, a finding that PG&E's negligent maintenance caused it to implement a PSPS would be distinct from the CPUC's determination whether the PSPS was necessary (given the then-existing state of the grid) and implemented properly.

On the other hand, in decisions finding damages actions preempted, plaintiffs' claims are predicated on findings that directly contradict CPUC regulations or policies. *See, e.g., Brian T. v. Pac. Bell*, 210 Cal. App. 3d 894 (1989) (damages and injunctive relief claim challenging telephone company's failure to provide customer-level ability to block sexually explicit messages preempted where CPUC considered subject, made findings, and adopted central-station blocking method). Thus, a legal claim must do more than simply touch on an area in which the CPUC has regulated; the claim must *conflict* with the regulation, policy, or conclusions of the CPUC. Here, Plaintiff's claim that PG&E negligently failed to maintain a safe power grid not only does not conflict with PSPS policy but assists in enforcing CPUC maintenance regulations.

### **3. Plaintiff's Action Complements the CPUC's Regulatory Authority**

As the *Hartwell* decision and other cases make clear, actions that concurrently complement or aid the CPUC in supervising and regulating public utilities are not preempted under Section 1759. *Hartwell*, 27 Cal. 4th at 275; *PegaStaff v. Pac. Gas & Elec. Co.*, 239 Cal. App. 4th 1303 (2015); *Cundiff*, 101 Cal. App. 4th at 1408–12; *see generally* Plaintiff's Principal Brief at 29-32.

PG&E concedes as much in its Opposition (at 11-12):

At the same time, [*Hartwell*] also held that plaintiffs' claims for damages arising from the utilities' alleged *exceedances* of the CPUC's water-quality thresholds were not preempted under PUC § 1759. . . .

The CPUC had not authorized utilities to distribute water with contamination at those levels, and therefore civil liability for those claims would assist in enforcing the CPUC's regulations, rather than interfere.

Here, Plaintiff simply seeks to hold PG&E liable for violating CPUC's regulations regarding maintenance of its grid. *See* AA 3-5, 7-13 (Compl. ¶¶ 10-20, 27-62).

As PG&E points out, the plaintiffs in *PegaStaff* and *N. Star Gas Co. v. Pac. Gas & Elec. Co.*, No. 15-CV-02575-HSG, 2016 WL 5358590 (N.D. Cal. Sept. 26, 2016), sought damages "arising from an alleged failure by the utility to comply with CPUC standards." *See* Opposition at 14. Just like the plaintiffs in *PegaStaff* and *North Star*, Plaintiff here seeks damages arising from PG&E's failure to comply with CPUC and other legal standards governing the maintenance of its power grid.

PG&E tries to distinguish *Mata v. Pacific Gas & Electric Co.*, 224 Cal. App. 4th 309 (2014) and *Wilson v. S. California Edison Co.*, 234 Cal. App. 4th 123 (2015). But like the plaintiffs in those cases, Plaintiff here alleges that PG&E knew or should have known that the laws and regulations cited in the Complaint imposed minimum maintenance standards, and that PG&E had a duty to identify foreseeable hazards, manage vegetation to prevent foreseeable danger of contact between power lines and equipment, and maintain or replace its aging infrastructure to protect public safety. AA 5 (Compl. ¶ 19). Because Plaintiff seeks

to impose liability “for conduct that, if proven true, would have run afoul of CPUC regulations” (*Mata*, 224 Cal. App. 4th at 320), Plaintiff’s claim is not preempted.

**B. The Bankruptcy Court Was Right to Ignore PG&E’s Tariff Rule 14 Argument**

Reiterating an argument it made below—an argument that the bankruptcy court did not even deem worthy of consideration and which was too much even for the CPUC, which did not join in it—PG&E once again argues that Tariff Rule 14 precludes Plaintiff’s suit. But Tariff Rule 14 only provides PG&E immunity when it exercises “reasonable diligence and care.” Where, as alleged here, PG&E exercised no such diligence or care, Tariff Rule 14 provides no such immunity. *Tesoro*, 146 F. Supp. 3d at 1184.

That should be the beginning and the end of the analysis.<sup>2</sup> Tariff Rule 14 was approved in 1997 in connection with direct access deregulation and is “wholly unrelated” to power company desires to insulate themselves from liability for public safety power shutoffs. (AA 153 (PG&E’s Ex. B (D. 09-09-030) at 65-66).) The direct access legislation (§ 330, *et seq.*) that precipitated PG&E’s amendment

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<sup>2</sup> PG&E cites only a one-page unpublished San Francisco Superior Court summary judgment order in support of its position to the contrary, which this Court may not consider. *Sarmiento v. Sealy, Inc.*, No. 18-CV-01990-JST, 2019 WL 3059932, at \*6 (N.D. Cal. July 12, 2019) (unpublished California Superior Court decision is not citable in Northern District of California). As if to underscore the absence of any reasoned basis for that position, that order provides zero analysis, dismissing a complaint without explanation.

to Tariff Rule 14 made PG&E one of many bidders on a wholesale energy market in its own service area, diminishing the degree to which it controlled power supplied within those areas. *Tesoro*, 146 F. Supp. 3d at 1184 (citing § 330; *CPUC Decision 95-12-063*, 64 CPUC 2d 1 (1995)). Because the output of energy was no longer dependent on PG&E alone, it made sense that PG&E would want a rule that, *barring its own negligence*, PG&E might interrupt its service deliveries to its customers and electric service providers (ESPs) for safety reasons.

None of this means that PG&E can insulate itself from liability for its own negligence. It means precisely the opposite. As the CPUC stated after Tariff Rule 14 became effective: “In the energy services industry, PG&E is only protected from damages that are beyond its control; however, it is responsible for reasonable damages resulting from its negligence.” (AA 1078.)

In *Tesoro*, the plaintiff, a refinery, sued PG&E for damages resulting from a power outage PG&E’s negligence caused. 146 F. Supp. 3d 1170. PG&E argued that certain liability limitation language in the Tariff Rule immunized it from liability. The court held that it did not, finding that the purpose of Tariff Rule 14’s liability limitation was related to deregulation/access, not to PG&E’s own negligence. And the *Tesoro* court specifically rejected PG&E’s argument that the liability limitation applied to the “or other transmission-related outage, planned or

unplanned” language, holding that it did not relieve PG&E of liability for its own negligence. *Id.* at 1185.

Now, PG&E pivots to argue that the fourth paragraph (the paragraphs are not numbered) of Tariff Rule 14 allows PG&E to interrupt service without liability to customers, claiming that the third paragraph, —which *Tesoro* addressed—is “a different section” of Tariff Rule 14. *See* Opposition at 23. But these paragraphs are not separate provisions read independently of one another. Just read the rule: The fourth paragraph is a subset of the “outage, planned or unplanned” language in the third. And as *Tesoro* holds, Tariff Rule 14 does not absolve PG&E of liability for its own negligence in connection with an “outage, planned or unplanned.” 146 F. Supp. 3d at 1176 (citation omitted).

The third paragraph’s liability waiver language is also much broader than the fourth’s such that the *Tesoro* court’s rejection of a liability waiver in the former necessarily logically means that no waiver was intended or approved by the latter. The third paragraph begins “Under no circumstances shall PG&E be liable to its customers or their agents for any local or system deficiencies . . .” while the fourth paragraph begins “PG&E specifically maintains the right . . .”

The “under no circumstances” language is broader, while the “maintains the right” language is a necessary limitation on what is to follow. The narrower fourth paragraph cannot create immunities when the third paragraph did not do so. *See*

*United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988) (“Statutory construction . . . is a holistic endeavor.”).

But PG&E goes further still, somehow reading in its favor a CPUC proceeding in which the CPUC considered the question of whether Tariff Rule 14 absolved SDG&E from liability for PSPSs and *found that it did not*. In that proceeding (D.09-09-030), SDG&E requested authority to amend its rule to include the statement that SDG&E may shut off power “without liability to its customers.” (AA 150.) In support, SDG&E argued that the language in PG&E’s Tariff Rule 14 should be adopted in connection with SDG&E’s proposed PSPSs. The CPUC declined, noting that PG&E’s language “was approved in 1997 as part of the Commission’s direct access program” and that different context “concerned the interruption of energy supplied by energy marketers to direct access customers,” not PSPSs, which are “wholly unrelated.”<sup>3</sup> (AA 151, 153.)

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<sup>3</sup> PG&E’s reading also conflicts with the other tariff rules of its fellow public utility providers, which do not provide for those utilities to escape liability for their own negligence. (AA 1098 (S. Cal. Edison Tariff Rule 14)) (“SCE will not be liable for interruption or shortage of supply, nor for any loss or damage occasioned thereby, if such interruption or shortage results from any cause not within its control.”); AA 1101 (SDG&E Tariff Rule 14) (“The utility will not be liable for interruption or shortage or insufficiency of supply, or any loss or damage occasioned thereby, if same is caused by inevitable accident, act of God, fire, strikes, riots, war or any other cause not within its control.”).



### **C. The Complaint Pleads a Causal Connection Between PG&E's Negligence and Plaintiff's Harm**

PG&E is also wrong when it argues that the Complaint fails to plead a causal connection between PG&E's negligence and harm to Plaintiff. The Complaint as initially pled makes that connection clear. PG&E failed to properly maintain its power lines, later forcing PG&E to undertake PSPSs causing harm to Plaintiff.

PG&E's arguments to the contrary depend on a demand for unnecessary specificity in the Complaint and a refusal to acknowledge that, on a motion to dismiss, facts must be viewed in the light most favorable to *Plaintiff*. The bankruptcy court was wrong to accept PG&E's argument. In fact, it was wrong to even consider it because PG&E failed to raise the argument until its reply.

#### **1. PG&E's Negligence Caused Plaintiff's Harm**

Plaintiff's Principal Brief describes in detail the Complaint's causation allegations. In short, PG&E failed to maintain its power lines to ensure that those lines withstood 92 mile per hour winds, as they were required to do. That forced PG&E to initiate PSPSs even when winds were not at that threshold. *See* Principal Brief, at 34.

These facts are consistent with Plaintiff's theory that PG&E's failure to maintain its grid led to the power shut offs that harmed Plaintiff. Nothing more is

required at this stage of the proceedings to show causation to survive PG&E's motion to dismiss.

This is all the more so given the Complaint's other allegations of PG&E negligence, including that PG&E failed to "create, manage, implement, and/or maintain effective vegetation management programs for the areas near and around its electrical equipment" (AA 6 (Compl. ¶ 26)) and that PG&E failed "to cut, trim, prune and/or otherwise keep vegetation at a sufficient distance to avoid foreseeable contacts with power lines; [] failing to trim and/or prune vegetation so as to avoid creation of a safety hazard with close proximity of the subject power lines" (AA 21 (Compl. ¶ 98)).<sup>4</sup> "Taken as true, [PG&E's] negligent conduct [] could be sufficiently likely to result in the kind of harm Plaintiff alleges." *Thieme v. Cobb*, No. 13-CV-03827-MEJ, 2015 WL 1477718, at \*6 (N.D. Cal. Mar. 31, 2015) (citing *Jackson v. Ryder Truck Rental, Inc.*, 16 Cal. App. 4th 1830, 1839 (1993)).

In response, PG&E once again argues that Plaintiff must allege a connection between specific 2019 PSPSs and Plaintiff's harm. *See, e.g.*, Opposition at 17

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<sup>4</sup> PG&E's argument, made without citation, that it did not have to maintain its equipment to withstand 92-MPH winds because "design limits for equipment do not speak at all to the risk of wind causing vegetation to strike a line," *see* Opposition at 19, is irrelevant. PG&E is entitled to argue that it was not negligent even though it failed to maintain its equipment and trim and prune vegetation properly, but that does not alter the reasonable inference that PG&E's failure to maintain its equipment to design limitations is indicative of negligence. Of course, this inference became a finding of fact in the criminal proceeding before Judge Alsup.

(“Plaintiff does not allege that his losses were caused by PG&E’s failure to use reasonable diligence in initiating and executing these [PSPSs]”); *id.* at 21 (“The Complaint fails because it contains no specific factual allegations connecting PG&E’s alleged negligence to the scope of the different PSPS events that PG&E implemented in 2019.”). This argument suffers from at least two fatal flaws.

**First**, a defendant on a motion to dismiss does not get the benefit of its interpretation of the facts. The Court must “accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). To justify the PSPSs, PG&E itself pointed to the aggregate health of a “majority of transmission lines.” *See* AA 1205 [Trans. 27:12-18] (referencing Amended PG&E Public Safety Power Shutoff (PSPS) Report to the CPUC October 9-12, 2019 De-Energization Event, Nov. 8, 2019, at 9). This means by reasonable and necessary inference that a minority of transmission lines were *unhealthy*. The Complaint amplifies that point:

The Ignacio-Mare Island line, which, on information and belief, delivers power to parts of Marin County which were impacted by the Power Outage, contains at least 28 towers which have been in place since 1921. Work on this line designed to increase the heights of the towers so the lines would be far enough away from the ground was supposed to be complete by 2015 but is now not scheduled to start until 2020.

*See, e.g.*, AA 9 (Compl. ¶ 38). The discovery process will clarify which parts of the grid were unhealthy and which utility customers were impacted by those PSPSs necessitated by unhealthy lines.

**Second**, the law does not require the specificity PG&E demands. As alleged, PG&E’s conduct led to foreseeable harm. It was foreseeable that PG&E’s failure to maintain its power grid would lead to forced power-outages that would then harm people such as Plaintiff. Further specificity connecting particular acts of negligence with particular PSPSs is not required at the pleading stage. *Ballard v. Uribe*, 41 Cal. 3d 564, 573, n.6 (1986) (“[A] court’s task . . . is not to decide whether a *particular* plaintiff’s injury was reasonably foreseeable in light of a *particular* defendant’s conduct, but rather to evaluate more generally whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed on the negligent party.”); *City of Modesto v. Dow Chem. Co.*, 19 Cal. App. 5th 130, 153 (2018), *as modified on denial of reh’g* (Feb. 6, 2018), *review denied* (Apr. 25, 2018) (“Direct proof of each link in a chain of causation is not required.”).

PG&E refers to certain factual allegations—including that PG&E failed to properly inspect and maintain power lines and that it failed to repair aging infrastructure, both of which the Complaint alleges resulted in PG&E being forced to shut off power to people such as Plaintiff—as “conclusory.” *See* Opposition at

18. But these allegations are not conclusory. *Ashcroft v. Iqbal*, on which PG&E relies, defines “conclusory” to mean “legal conclusions couched as factual allegations.” 556 U.S. 662, 676 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Recitations of PG&E’s conduct plainly do not fit this definition. They describe conduct or actions—they are *facts*.

Those facts, as well as the other allegations in the Complaint—including that PG&E had a pattern and practice of favoring profits over having a well-maintained infrastructure (AA 6 (Compl. ¶ 25)), that PG&E has been subject to findings that it failed to properly maintain its grid (AA 7 (Compl. ¶¶ 27-29)), and that “PG&E repeatedly delayed upgrading its oldest transmission lines, ranking them as low-risk projects, while spending billions of dollars on other less-pressing projects, issuing dividends to its investors, and spending millions on campaign contributions,” (AA 8 (Compl. ¶ 29) among other allegations—further establish the necessary causal link between PG&E’s negligence and Plaintiff’s harm.

As Plaintiff pled:

In brief, instead of addressing its crumbling infrastructure to protect against wildfires, PG&E has decided to mitigate that risk by shifting its duty to provide safe power onto its customers to live without power for days or weeks at a time so it can avoid another catastrophic wildfire and the attendant liabilities which come with it. Years of corporate greed and criminal negligence have caught up to PG&E but that does not entitle it to pass the cost of its negligence onto its consumers who did nothing but pay their bills and

expect to be able to turn their lights on so they can live their lives and conduct their businesses.

(AA 16 (Compl. ¶ 79).)

Of course, if these facts are insufficient to create the necessary link between PG&E’s negligent actions and Plaintiff’s harm, Plaintiff can amend the Complaint to allege facts sufficient to find causation, as even PG&E implicitly concedes when it references Judge Alsup’s findings.<sup>5</sup> See Section II.D., below. Urging the Court (at page 19-20 of the Opposition) to ignore those findings for present purposes because they do not appear in the Complaint (Judge Alsup ruled after Plaintiff filed the Complaint) is like the Wizard of Oz telling Dorothy to ignore the little man behind the curtain.

## **2. The Court Improperly Considered PG&E’s Causation Argument**

PG&E argues that the bankruptcy court properly considered its belated causation argument for two reasons—*first*, that Plaintiff “clarified” its theory of causation only in its opposition to PG&E’s motion to dismiss, and *second*, that the late argument is acceptable because Plaintiff had an opportunity to respond.

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<sup>5</sup> Judge Alsup’s ruling describes in detail PG&E’s negligent maintenance of its power lines, including that the “hundreds of fallen limbs and trees also remain proof positive of how unsafe PG&E had allowed its maintenance backlog to become.” (AA 1276.) PG&E’s argument (at page 20 of the Opposition) that this somehow affirms a defect in the Complaint once again relies on the assumption that Plaintiff must link specific PSPSs to specific PG&E acts of negligence. As explained above, that contention is wrong.

But PG&E cannot sandbag Plaintiff with a new argument on reply because it claims to have misread or misunderstood the Complaint. Were that the case, any interpretation a defendant took on a motion to dismiss that needed clarification in response would allow for new arguments to be made in reply, thereby blowing the rule to pieces. Indeed, Plaintiff's theory of causation was clear from the very beginning of the Complaint, rendering this entire argument moot. *See* AA 2 (Compl. ¶ 2 (“The necessity for the outages was caused by PG&E’s own negligence in failing over many years to properly maintain or replace old transmission lines, leaving them vulnerable to failing and sparking deadly wildfires.”)); *see also* AA 7-13 (Compl. ¶¶ 27-62 (describing many pre-PSPS incidents of PG&E negligence)).

PG&E also misapplies the cases allowing for consideration of an argument made on reply where the opposition is given an “opportunity to respond.” *See* Opposition at 21. While it is true that the causation argument was partially addressed below, Plaintiff was never provided the opportunity to respond to *PG&E* with supplemental briefing addressing the causation argument.

PG&E’s authority, like *El Pollo Loco, Inc. v. Hashim*, 316 F.3d 1032, 1040 (9th Cir. 2003), does not say otherwise. There, the court considered an argument raised for the first time in reply because to not consider it “would have effectively stripped [plaintiff] of its right to argue” against a newly raised argument—a far

different scenario than what exists here, where PG&E could have raised the issue in its initial papers and did not. And the court in *Lux EAP, LLC v. Bruner*, 811 F. App'x 405 (9th Cir. 2020), found that the district court did not abuse its discretion when considering an argument raised on reply only because the plaintiff was given “the opportunity to respond in supplemental briefing—an offer [the plaintiff] declined”—and an offer not even made to Plaintiff here.

**D. Should the Court Affirm Dismissal, Plaintiff Is Entitled to Amend His Complaint**

As it must, PG&E concedes that, if the dismissal stands, the Complaint can be amended to cure any perceived causation issues. PG&E does not really contest that allegations demonstrating causation could be added to the Complaint. *See* Opposition at 24-25 (arguing that “no set of facts would cure the lack of subject matter jurisdiction,” but remaining silent on whether additional facts could cure any perceived causation issues).

PG&E’s argument that any amendment would be futile necessarily rests on its flawed preemption argument. But even were its preemption argument correct, amendment would still be proper. When the party opposing amendment relies on futility, as PG&E does here, “such denial is improper unless it is *clear* that no amendment could save the pleading.” *Josef K. v. California Physicians' Serv.*, No. 18-CV-06385-YGR, 2019 WL 688075, at \*4 (N.D. Cal. Feb. 19, 2019) (citations omitted). As Judge Gonzalez-Rogers explained, Rule 15(a) “imposes a



presumption in favor of granting leave to amend.” *Id.* In that case, the Court found the complaint preempted under ERISA, but nevertheless granted leave to amend.

*Id.*

The standard for amendment means that Plaintiff can amend even if it would require a different legal theory for an amended complaint to survive. The Court should permit Plaintiff “to amend his claims in the Complaint to challenge the proper defendants and to present any viable claim.” *Harris v. Amgen, Inc.*, 573 F.3d 728, 737 (9th Cir. 2009); *see also Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 725–27 (9th Cir. 2000) (holding that district court abused its discretion in denying ERISA beneficiary leave to amend complaint to add previously unpleaded but cognizable theory of relief).

The sole case PG&E cites in support of its position that amendment would be futile because preemption is at issue—*ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*—only analyzes preemption in the context of issue preclusion. 754 F.3d 754, 762 (9th Cir. 2014) (noting only that finding of preemption can be granted “preclusive effect” for future litigations). It did not address the futility standard for amending a complaint at all.

Even in its amicus brief (at 6-7), the CPUC limited its arguments only to preemption of Plaintiff’s claim “as framed.” (AA1127-1128). And the CPUC’s counsel agreed at oral argument below that the Complaint could be amended to

plead a claim that did not hinder or interfere with the CPUC’s regulatory authority. *See, e.g.*, Principal Brief, at 18.

PG&E cites CPUC’s counsel as stating that Plaintiff is ““seeking to impose liability for actions that the Commission authorized and that are not alleged to have been in violation of a Commission rule or order.”” *See* Opposition at 25 (citing AA 1198-99 at 20:22-23:2). PG&E must know that incorrectly describes Plaintiff’s claims—those claims do not seek to impose liability for actions related to carrying out PSPSs, but for negligence pre-dating any such actions. That statement also does nothing to diminish the CPUC concession made just before that bit that a complaint could be drafted “in which you might have a negligence claim that could work.” (AA 1197-98 [Trans. 19:23-20:1].)

Should the Court decide that the current complaint is deficient, Plaintiff should be afforded the opportunity to draft such a workable negligence claim. *See* Fed. R. Civ. P. 15(a); *Josef K.*, 2019 WL 688075, at \*4. On amendment, for example, Plaintiff could include additional allegations like Paragraph 38, which connects specific PG&E negligence to particular outages that caused damage to Plaintiff and members of the proposed class. Plaintiff could also make it clear, if needs be, that he does not object to PSPSs writ large, or to the regulatory framework for implementing them, and that he only seeks recovery for those

PSPSs impacting him and the rest of the proposed class resulting from PG&E's well-documented history of inadequate grid maintenance.

### III. CONCLUSION

For all the foregoing reasons, as well as those articulated in Appellant's Principal Brief, the Court should reverse the bankruptcy court's Decision and Order and remand for further proceedings.

Dated: August 4, 2020

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## CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. Bankr. P. 8015(a)(7), the undersigned certifies that Appellant's Principal Brief complies with the type-volume limitation and that the Appellant's Principal Brief contains 5,939 words (excluding the cover page, tables, signature blocks and required certificates) as counted by the computer program used to prepare the Appellant's Principal Brief.

Dated: August 4, 2020

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

By: /s/ Brian S. Conlon

Brian S. Conlon

## CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2020, I electronically filed APPELLANT'S REPLY BRIEF with the Clerk of the Court of the United States District Court, Northern District of California by using the CM/ECF system.

I certify that all parties of record to this appeal either are registered CM/ECF users, have registered for electronic notice, or have consented in writing to electronic service, and that service will be accomplished through the CM/ECF system.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: August 4, 2020

  
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11 **UNITED STATES BANKRUPTCY COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN FRANCISCO DIVISION**

14 In re:  
15 PG&E CORPORATION  
16 -and-  
17 PACIFIC GAS AND ELECTRIC COMPANY,  
18 Debtors

**Case No. 19-30088 (DM)**  
**Chapter 11**  
**(Lead Case)**  
**(Jointly Administered)**

19 ANTHONY GANTNER, individually and on  
20 behalf of all those similarly situated,  
21 Plaintiff,

**Adv. Pro. No. 19-03061 (DM)**

**PLAINTIFF'S RESPONSE TO BRIEF  
OF AMICUS CURIAE CALIFORNIA  
PUBLIC UTILITIES COMMISSION**

22 vs.

23 PG&E CORPORATION, a California  
24 Corporation, and PACIFIC GAS & ELECTRIC  
25 COMPANY, a California Corporation,  
26 Defendants.

**Date: March 10, 2020**  
**Time: 10:00 a.m. (Pacific Time)**  
**Place: USBC, Courtroom 17**  
**San Francisco, CA**

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## I. INTRODUCTION

The PG&E shutdowns in 2019 caused harm to over 800,000 customers. Customers typically lost hundreds of dollars' worth of spoiled food, hundreds of dollars more in expenses for flashlights, generators, etc., had to endure days if not weeks of no power, no hot water, in many cases no phone service (because so many phones are now internet based), and no internet, not to mention business losses, medical issues caused by equipment not getting power, and at least one death. All due to PG&E's negligence in maintaining its power grid.

Now, the California Public Utilities Commission (the "Commission"), after years of abject failure in its regulation of PG&E, allowing PG&E to prioritize corporate profits, executive compensation and dividends to its Wall Street shareholders over taking care of the basic maintenance and safety of its electrical grid, resulting in explosions, catastrophic fires and mass outages (Complaint ¶¶ 21-79), has filed an amicus brief in support of allowing PG&E to entirely avoid responsibility to its customers for the damages caused to them by these planned blackouts.

The Commission asserts, without any factual, evidentiary, or logical basis, that holding PG&E responsible for its own negligence would interfere with the Commission's ability to regulate PG&E in connection with power shutdowns. But the Commission is dead wrong: the Complaint does not seek in any way to interfere in the decision to conduct a shutdown or its implementation, it only seeks to create a vehicle in the debtors' bankruptcy cases for the determination and assertion of administrative damages caused by such shutdowns if the need for them was caused by PG&E's negligence. Accordingly, Public Utilities Code § 1759 is not applicable and the case is not preempted.

Significantly, the Commission does not even attempt to address or justify PG&E's other argument that Tariff Rule 14 immunizes it from liability. Presumably because, as set forth in Plaintiff's Opposition Brief, the Commission has already gone on record to say that Tariff Rule 14 immunity does not apply to PSPS events.

## II. THE COURT IS NOT BOUND BY AN OPINION OF THE CPUC

This Court is not bound by the CPUC's opinion concerning whether its regulatory authority is hindered by this action. For instance, in *Wilson v. Southern California Edison Co.*,

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1 234 Cal. App. 4th 123 (2015), SCE appealed from a jury verdict awarding tort damages for  
2 negligently allowing uncontrolled currents into a customer's home from an electrical substation  
3 located next door. The CPUC filed an amicus brief asserting, much like it does here, that it had  
4 an ongoing policy and program and that a superior court adjudication prior to a CPUC finding of  
5 wrongdoing "would interfere with the Commission's authority to interpret and apply its own  
6 orders, decisions, rules and regulations . . ." *Wilson*, 234 Cal. App. 4th at 148 (quoting the  
7 CPUC's brief). The *Wilson* court disagreed with the CPUC and held that it was not sufficient  
8 for the CPUC to have issued general regulations on the subject and set forth design requirements  
9 to find the § 1759 requirements were satisfied. Because there was no evidence that the CPUC  
10 had investigated or regulated the specific stray voltage issue on which liability hinged, the Court  
11 found that "the lawsuit would not interfere with or hinder any supervisory or regulatory policy  
12 of the [C]PUC." *Id.* at 151. Similarly, there is no indication that the Commission has ever held  
13 any hearings, public or private, or that it has done any type of investigation or regulation on the  
14 issue of whether PG&E's negligent maintenance of its power lines necessitated the PSPSs at  
15 issue. Nor is there any indication that any hearings were conducted on whether it should take  
16 the position it is taking here, in attempting to prevent over 800,000 PG&E ratepayers and  
17 customers from recovering damages caused by PG&E negligence – damages which the  
18 Commission does not have the power to order PG&E to pay.

### 19 **III. SECTION 1759 OF THE CALIFORNIA PUBLIC UTILITIES CODE DOES** 20 **NOT BAR THIS ACTION**

21 The Commission argues that that the litigation "as framed by the Complaint" would  
22 interfere with the Commission's regulatory authority. The Commission spends most of its brief  
23 reciting the *Covalt* three factor test, the background of its regulation of PG&E, and the 2019  
24 shutdowns, none of which is in dispute.

25 It is not until page seven, the second to last page of the brief, that it addresses - in a  
26 single paragraph - the central issue of whether this lawsuit would interfere with its regulatory  
27 authority. And here there is nothing but the bare assertion that it would.

28 The Commission argues that the Complaint "seeks to impose liability on the Utility for  
exactly such decisions [the shutoffs], without alleging that any particular decision by the Utility

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1 to conduct a public safety power shutoff violated the Commission’s policies concerning such  
2 shutoffs, and without alleging that any particular decision by the Utility to conduct a public  
3 safety power shutoff resulted from the Utility’s underlying failure to comply with any particular  
4 mandate.” (ECF No. 19 at p. 7.) But the Complaint does not allege that the shutoffs should not  
5 have been done or that they violated Commission policies. To the contrary, it alleges that **they**  
6 **were made necessary** by PG&E’s past negligence; whether or not the implementation was in  
7 compliance with Commission mandates is irrelevant to the case.

8 The Commission then argues that the Complaint “appears to rest on the theory that in  
9 light of the Utility’s alleged generalized failure to maintain its infrastructure, any decision by the  
10 Utility to conduct a public safety power shutoff—in the recent past or future—necessarily gives  
11 rise to a claim against the Utility for negligence. Judicial adoption of such a theory would  
12 hinder and interfere with the Commission’s considered policy to allow utilities to conduct public  
13 safety power shutoffs in the interests of public safety pursuant to guidelines established by the  
14 Commission.” (ECF No. 19 at pp. 7-8.) Again, this does not say **how** or in **what manner** the  
15 Commission’s regulatory authority would be interfered with or give any examples. And the  
16 Complaint does not contend that PG&E should be liable in damages for every shutdown – just  
17 the ones that were caused by its negligence.

18 Moreover, the Complaint alleges specific negligence tied to specific shutdowns. For  
19 example, the Complaint alleges: “The Ignacio-Mare Island line, which, on information and  
20 belief, delivers power to parts of Marin County which were impacted by the Power Outage,  
21 contains at least 28 towers which have been in place since 1921. Work on this line designed to  
22 increase the heights of the towers so the lines would be far enough away from the ground was  
23 supposed to be complete by 2015 but is now not scheduled to start until 2020.” (ECF No. 1 at p.  
24 9 & ¶ 38.)

25 But more importantly, the Complaint alleges in great detail PG&E’s negligent  
26 maintenance of its **entire grid** (¶¶ 7-48), and that it was this negligence which necessitated the  
27 shutdowns (¶ 98). The shutdowns affected 41 of California’s 58 counties (¶ 64), virtually every  
28 county that PG&E serves, including Napa County, where Mr. Gantner lives (¶ 82). To suggest

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1 that Plaintiff would need to specifically allege at this stage that a particular shutdown was due to  
2 a particular tree that had not been properly trimmed is absurd. Plaintiff is not yet privy to  
3 PG&E's internal documents, but that is what discovery is for.

4 In ruling on a motion to dismiss, courts can and must draw reasonable inferences from  
5 the allegations. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). It is certainly reasonable to infer  
6 from the allegations in the Complaint that the shutdowns in 2019 were necessitated by PG&E's  
7 negligent maintenance of its entire grid, especially considering that these massive shutdowns  
8 have never occurred in the past. One would have to bury one's head in the sand to suggest  
9 otherwise.

10 Finally, the Commission's whole argument regarding the specificity of the causation  
11 allegations is contradictory. If its position is that making PG&E liable for damages for its own  
12 negligence would interfere with the Commission's regulatory authority, what does it matter  
13 whether the Complaint had more specificity in alleging causation?

14 The bottom line is that the Commission simply fails to show how holding PG&E liable  
15 in damages for its own negligence in causing a shutdown would or could interfere with its  
16 ability to regulate PG&E. To say that just because the Commission provides regulatory  
17 guidance on PSPSs, PG&E cannot be liable for its negligence resulting in the need for a PSPS,  
18 is akin to saying that PG&E should not be liable for negligently causing the San Bruno  
19 explosion or the wildfires just because the Commission regulates aspects of PG&E's conduct  
20 related to those disasters. And it does not take that position.

21 At best, whether this case actually interferes with the Commission's regulatory authority  
22 is an issue of fact which cannot be resolved at the pleading stage. Accordingly, the Court should  
23 deny the motion to dismiss.

24 Dated: March 9, 2020

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

25  
26  
27 By: /s/ Nicholas A. Carlin

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Brian S. Conlon

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**In re:**

**PG&E CORPORATION**

**-and-**

**PACIFIC GAS AND ELECTRIC COMPANY,**

**Debtors.**

**ANTHONY GANTNER, individually and on  
behalf of all those similarly situated**

**Plaintiff,**

**vs.**

**PG&E CORPORATION, a California  
Corporation, and PACIFIC GAS &  
ELECTRIC COMPANY, a California  
Corporation,**

**Defendants.**

**SER-91**

Adversary Proceeding No. 19-03061-DM

Chapter 11 Case No. 19-30088 (DM)

(Lead Case)

(Jointly Administered)

**BRIEF OF THE CALIFORNIA  
PUBLIC UTILITIES COMMISSION  
AS AMICUS CURIAE RESPECTING  
DEFENDANTS' MOTION TO  
DISMISS**

1 The California Public Utilities Commission (the “*Commission*”) respectfully submits this  
 2 brief as amicus curiae as of right<sup>1</sup> respecting the motion to dismiss this adversary proceeding (the  
 3 “*Action*”) filed by Defendants (collectively, “*PG&E*”), to the extent that PG&E’s motion is  
 4 based on Section 1759 of the California Public Utilities Code.<sup>2</sup>

### 5 Preliminary Statement

6 Plaintiff’s Complaint seeks to bring a putative class action against Pacific Gas and  
 7 Electric Company (the “*Utility*”) and PG&E Corporation. The putative class consists of  
 8 California residents and business owners whose power was shut off by the Utility during October  
 9 and November 2019 or whose power is shut off by the Utility during voluntary outages over the  
 10 course of the litigation. Plaintiff alleges that the Utility’s negligence was responsible for the  
 11 power shutoffs in October and November 2019. Plaintiff asserts a single claim for negligence.

12 Section 1759 of the California Public Utilities Code bars the assertion of claims under  
 13 California law that would interfere with the Commission’s regulatory authority. In the  
 14 Commission’s view, litigation and adjudication of Plaintiff’s claim, as framed by the Complaint,  
 15

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16 <sup>1</sup> Federal Rule of Bankruptcy Procedure 8017(a)(2) authorizes “a state” to file a brief as  
 17 amicus curiae “without the consent of the parties or leave of court.” Section 307 of the  
 18 California Public Utilities Code authorizes the General Counsel of the Commission to  
 19 represent and appear for the people of the State of California and the Commission in all  
 20 actions and proceedings involving any question under the Public Utilities Code or any act or  
 21 order of the Commission. As this brief addresses a question under section 1759 of the Public  
 22 Utilities Code and various actions and proceedings of the Commission, this brief is the brief  
 of a state for purposes of Rule 8017(a)(2) and section 307. *See Kairy v. Supershuttle Int’l*,  
 No. 10-16150 (9th Cir. Aug. 12, 2011), ECF No. 48 (order holding that the Commission was  
 entitled to file an amicus brief as of right under Fed. R. App. P. 29(a), which contains a  
 provision that is materially identical to Fed. R. Bankr. P. 8017(a)(2), and Cal. Pub. Util. Code  
 § 307). The Commission respectfully submits that it is independently entitled to file this  
 brief as of right under 11 U.S.C. § 1109(b).

23 As a courtesy, counsel for the Commission sought the consent of the parties to the Action for  
 24 the filing of this brief, although counsel stated to the parties that in the Commission’s view,  
 the Commission is entitled to file this brief as of right. Counsel for PG&E consented to the  
 filing of the brief. Counsel for Plaintiff declined to consent to the filing of the brief unless  
 25 counsel for Plaintiff was provided with a copy of the brief in advance of filing.

26 <sup>2</sup> The filing and contents of this amicus brief are not intended as, and should not be construed  
 27 as, a waiver of any objections or defenses that the State of California, the Commission, or  
 any other agency, unit, or entity of the State of California may have to this Court’s  
 jurisdiction over the State of California, the Commission, or such other agency, unit, or entity  
 based upon the Eleventh Amendment to the United States Constitution or related principles  
 28 of sovereign immunity or otherwise, all of which objections and defenses are hereby  
 reserved.

1 would interfere with the Commission’s regulatory authority. The claim should therefore be  
2 dismissed. The Commission expresses no view concerning any other issue raised by the  
3 Complaint or the briefing on PG&E’s motion.

#### 4 **Background**

5 The Commission is a constitutional agency of the State of California that regulates  
6 privately owned electrical corporations and gas corporations. *See* Cal. Const. art. XII; Cal. Pub.  
7 Util. Code § 216(a), (b). The Commission regulates the Utility, which is an investor-owned  
8 public utility that supplies electricity and natural gas to consumers in northern and central  
9 California. *See PegaStaff v. Pac. Gas & Elec. Co.*, 239 Cal. App. 4th 1303, 1311 (Ct. App. 1st  
10 Dist. 2015).

#### 11 **A. The Commission’s De-Energization Guidelines**

12 Electric utilities that are regulated by the Commission may shut off power in  
13 circumstances defined by the California Public Utilities Code and the Commission’s decisions.  
14 *See* Cal. Pub. Util. Code §§ 399.2(a), 451.

15 In April 2012, the Commission promulgated de-energization guidelines that permitted  
16 San Diego Gas & Electric Company to shut off power when strong winds, heat events, and other  
17 conditions made a power shutoff “necessary to protect public safety.” Decision Granting  
18 Petition to Modify Decision 09-09-030 and Adopting Fire Safety Requirements for San Diego  
19 Gas & Electric Company, Decision 12-04-024, at 25 (Cal. P.U.C. Apr. 19, 2012), *available at*  
20 *Adv. Pro. ECF No. 8-3*. In July 2018, the Commission adopted Resolution ESRB-8, which,  
21 among other things, extended those guidelines to all investor-owned utilities, including the  
22 Utility. *See* Resolution Extending De-Energization Reasonableness, Notification, Mitigation,  
23 and Reporting Requirements in Decision 12-04-024 to All Electric Investor Owned Utilities  
24 (“Resolution ESRB-8”), 2018 WL 3584003, at \*1 (Cal. P.U.C. July 12, 2018), *available at Adv.*  
25 *Pro. ECF No. 8-5*, at 1. The Commission may review any decision by a utility to shut off power  
26 for reasonableness.

27 In December 2018, the Commission opened a rulemaking to further examine the de-  
28 energization policies and guidelines adopted in Decision 12-04-024 and Resolution ESRB-8.

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1 That rulemaking is focused on establishing guidelines and protocols concerning when a utility  
2 should conduct a public safety power shutoff. *See* Order Instituting Rulemaking to Examine  
3 Electric Utility De-Energization of Power Lines in Dangerous Conditions, 2018 WL 6830158  
4 (Cal. P.U.C. Dec. 13, 2018), *available at* Adv. Pro. ECF No. 8-6.

5 **B. The Commission’s Approval of the Utility’s 2019 Wildfire Safety Plan**

6 On September 21, 2018, the Governor of California signed SB-901 into law. Act of  
7 Sept. 21, 2018, ch. 626, 2018 Cal. Legis. Serv. 1 (West). Among other things, SB-901 added  
8 several new provisions to section 8386 of the California Public Utilities Code. *Id.* § 38, 2018  
9 Cal. Legis. Serv. at 30. Those new provisions require California utilities to prepare and submit  
10 “Wildfire Mitigation Plans” to the Commission. Cal. Pub. Util. Code § 8386(b). Wildfire  
11 Mitigation Plans must contain, among other things, “[p]rotocols for . . . deenergizing portions of  
12 the electrical distribution system that consider the associated impacts on public safety.” *Id.*  
13 § 8386(c)(6).

14 On February 6, 2019, the Utility filed its 2019 Wildfire Safety Plan with the  
15 Commission.<sup>3</sup> The Utility’s 2019 Wildfire Safety Plan specified factors that the Utility considers  
16 in deciding whether to conduct a public safety power shutoff.<sup>4</sup> The Commission approved the  
17 Utility’s 2019 Wildfire Safety Plan on June 4, 2019. *See* Decision on Pacific Gas and Electric  
18 Company’s 2019 Wildfire Mitigation Plan, Decision 19-05-037, 2019 WL 2474177 (Cal. P.U.C.  
19 June 4, 2019), *available at* Adv. Pro. ECF No. 8-9.

20 **C. The Commission’s Investigations into the Compliance of California’s Utilities  
21 with the Commission’s Regulations and Requirements with Respect to  
22 Public Safety Power Shutoffs**

23 On November 12, 2019, the Commission ordered the Utility to show cause why the  
24 Commission should not sanction the Utility for its failure to communicate with its customers  
25 properly during public safety power shutoffs in October and November 2019. *See* Assigned  
26 Commissioner and Assigned Administrative Law Judge’s Ruling Directing Pacific Gas and

27 <sup>3</sup> *See* Pacific Gas and Electric Company Amended 2019 Wildfire Safety Plan, *available at*  
[https://www.pge.com/pge\\_global/common/pdfs/safety/emergency-preparedness/natural-  
28 disaster/wildfires/Wildfire-Safety-Plan.pdf](https://www.pge.com/pge_global/common/pdfs/safety/emergency-preparedness/natural-disaster/wildfires/Wildfire-Safety-Plan.pdf).

<sup>4</sup> *Id.* § 4.6.1.



1 Electric Company to Show Cause, Rulemaking 18-12-005 (Cal. P.U.C. Nov. 12, 2019), *available*  
2 *at* Adv. Pro. ECF No. 8-17. That investigation remains ongoing.

3 The next day, the Commission instituted a new investigation to determine whether  
4 California’s utilities prioritized safety and complied with the Commission’s regulations and  
5 requirements with respect to their public safety power shutoffs in late 2019. *See* Order  
6 Instituting Investigation on the Commission’s Own Motion on the Late 2019 Public Safety  
7 Power Shutoff Events, 2019 WL 6179011 (Cal. P.U.C. Nov. 13, 2019), *available at* Adv. Pro.  
8 ECF No. 8-16. That investigation remains ongoing. The Commission may consider taking  
9 action if it finds that violations of statutes, its decisions, or its general orders have been  
10 committed and if it finds that action is necessary to enforce compliance. *Id.* at \*4.

11 **D. This Action**

12 Plaintiff in this Action seeks to impose liability on the Utility based on five public safety  
13 power shutoffs that, according to the Complaint, the Utility initiated on or about October 9, 23,  
14 26, and 29, 2019, and November 20, 2019. Compl. ¶¶ 63, 69-78. Plaintiff alleges that these  
15 power shutoffs affected customers in “over 35 counties” in California. *Id.* ¶ 64.

16 The Complaint defines the proposed class to include “[a]ll California residents and  
17 business owners who had their power shutoff by PG&E during the October 9, October 23  
18 October 26, October 28 [*sic*], or November 20, 2019 Outages and any subsequent voluntary  
19 Outages PG&E imposes on its customers during the course of litigation,” except for certain  
20 persons with ties to the Utility or the Court. *Id.* ¶ 85. The Complaint asserts a single claim for  
21 negligence. *Id.* ¶¶ 95-106.

22 The Complaint does not allege that the Utility, in deciding to conduct the public safety  
23 power shutoffs at issue, failed to comply with the Commission’s guidelines in this area or with  
24 the Utility’s 2019 Wildfire Safety Plan. The Complaint instead generally alleges that the  
25 Utility’s negligent design and maintenance of its facilities for many years resulted in the need for  
26 the public safety power shutoffs “in the first place.” Plaintiff’s Opposition to Debtors’ Motion to  
27 Dismiss and Motion to Strike 2, Adv. Pro. ECF No. 16; *see* Compl. ¶¶ 27-48. The Complaint  
28 cites provisions of California statutory law and an order by the Commission that impose certain

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1 mandates on the Utility. Compl. ¶¶ 14-18 (citing Cal. Pub. Util. Code § 451, Cal. Pub. Res.  
2 Code §§ 492, 493, and Cal. P.U.C. General Order 165). The Complaint, however, does not  
3 allege that any particular failure to comply with any particular mandate resulted in any particular  
4 public safety power shutoff. See Compl. ¶ 98. Instead, the Complaint broadly alleges the  
5 following theory of liability:

6 In brief, instead of addressing its crumbling infrastructure to  
7 protect against wildfires, PG&E has decided to mitigate that risk  
8 by shifting its duty to provide safe power onto its customers to live  
9 without power for days or weeks at a time so it can avoid another  
10 catastrophic wildfire and the attendant liabilities which come with  
11 it. Years of corporate greed and criminal negligence have caught  
12 up to PG&E but that does not entitle it to pass the cost of its  
13 negligence onto its consumers who did nothing but pay their bills  
14 and expect to be able to turn their lights on so they can live their  
15 lives to conduct their businesses.

16 *Id.* ¶ 79.

### 17 Argument

#### 18 Section 1759 of the California Public Utilities Code Bars Plaintiff's Claim

19 Section 1759 of the California Public Utilities Code provides: “No court of this state,  
20 except the Supreme Court and the court of appeal . . . shall have jurisdiction to review, reverse,  
21 correct, or annul any order or decision of the commission or to suspend or delay the execution or  
22 operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of  
23 its official duties, as provided by law and the rules of court.” Cal. Pub. Util. Code § 1759(a).

24 Under the decision of the Supreme Court of California in *San Diego Gas & Electric Co.*  
25 *v. Superior Court (Covalt)*, 13 Cal. 4th 893, 923, 926, 935 (1986), section 1759 bars the  
26 assertion of a claim under California law if (1) the Commission has the authority to adopt a  
27 regulatory policy concerning the subject matter of the claim; (2) the Commission has exercised  
28 that authority; and (3) litigation and adjudication of the claim would hinder or interfere with the  
relevant policy or policies adopted by the Commission. In the Commission's view, Plaintiff's  
claim, as framed in the Complaint, is barred by the three-part test announced in *Covalt*.

First, the parties to this Action agree that the Commission has authority under California  
law to regulate public safety power shutoffs. See Debtors' Motion to Dismiss and Motion to

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1 Strike 13, Adv. Pro. ECF No. 7; Plaintiff's Opposition to Debtors' Motion to Dismiss and  
2 Motion to Strike 7, Adv. Pro. ECF No. 16.

3 Second, at the time of the wildfires in October and November 2019, the Commission had  
4 exercised that authority by adopting guidelines governing, among other subjects, the  
5 circumstances in which an investor-owned utility may conduct a public safety power shutoff.  
6 *See* Decision Granting Petition to Modify Decision 09-09-030 and Adopting Fire Safety  
7 Requirements for San Diego Gas & Electric Company, Decision 12-04-024 (Cal. P.U.C. Apr. 19,  
8 2012), *available at* Adv. Pro. ECF No. 8-3; Resolution ESRB-8, 2018 WL 3584003 (Cal. P.U.C.  
9 July 12, 2018), *available at* Adv. Pro. ECF No. 8-5. The Commission had also exercised that  
10 authority by approving the Utility's 2019 Wildfire Safety Plan. *See supra*, p. 4. The  
11 Commission continues to exercise that authority through the ongoing rulemakings and  
12 investigations described above. *See supra*, p. 4-5.

13 Third, the Commission believes that litigation and adjudication of Plaintiff's claim, as  
14 framed by the Complaint, would hinder and interfere with enforcement of the Commission's  
15 guidelines concerning public safety power shutoffs and the Commission's approval of the  
16 Utility's 2019 Wildfire Safety Plan. The policies reflected in those guidelines and that approval  
17 expressly authorize the Utility to decide that a public safety power shutoff is warranted under  
18 certain circumstances. The Complaint, however, seeks to impose liability on the Utility for  
19 exactly such decisions, without alleging that any particular decision by the Utility to conduct a  
20 public safety power shutoff violated the Commission's policies concerning such shutoffs, and  
21 without alleging that any particular decision by the Utility to conduct a public safety power  
22 shutoff resulted from the Utility's underlying failure to comply with any particular mandate. The  
23 Complaint appears to rest on the theory that in light of the Utility's alleged generalized failure to  
24 maintain its infrastructure, any decision by the Utility to conduct a public safety power shutoff—  
25 in the recent past or future—necessarily gives rise to a claim against the Utility for negligence.  
26 Judicial adoption of such a theory would hinder and interfere with the Commission's considered  
27  
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1 policy to allow utilities to conduct public safety power shutoffs in the interests of public safety  
2 pursuant to guidelines established by the Commission.<sup>5</sup>

3 **Conclusion**

4 PG&E's motion to dismiss, to the extent that motion is based on section 1759 of the  
5 California Public Utilities Code, should be granted.

6 Dated: March 4, 2020

7 Respectfully submitted,

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5 The Commission's position with respect to section 1759 is based on, and limited to, the  
allegations in the Complaint before the Court.

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10  
11 **UNITED STATES BANKRUPTCY COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN FRANCISCO DIVISION**

14 In re:  
15 PG&E CORPORATION  
16 -and-  
17 PACIFIC GAS AND ELECTRIC COMPANY,  
18 Debtors

**Case No. 19-30088 (DM)**  
**Chapter 11**  
**(Lead Case)**  
**(Jointly Administered)**

19 ANTHONY GANTNER, individually and on  
20 behalf of all those similarly situated,  
21 Plaintiff,

**Adv. Pro. No. 19-03061 (DM)**  
**PLAINTIFF'S OPPOSITION TO**  
**DEBTORS' MOTION TO DISMISS**  
**AND MOTION TO STRIKE**

22 vs.

23 PG&E CORPORATION, a California  
24 Corporation, and PACIFIC GAS & ELECTRIC  
25 COMPANY, a California Corporation,  
26 Defendants.

**Date: March 10, 2020**  
**Time: 10:00 a.m. (Pacific Time)**  
**Place: USBC, Courtroom 17**  
**San Francisco, CA**

27  
28  
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1 **I. INTRODUCTION**

2 As this case moves swiftly toward confirmation of a negotiated plan, a huge and  
3 heretofore unresolved issue merits immediate attention: the obligation of this estate to  
4 administer and pay the administrative priority claims of the millions of people harmed by  
5 PG&E's<sup>1</sup> post-petition planned power shutoffs (referred to by PG&E as "PSPSs"). The aim of  
6 this class action is to allow the many persons injured by PG&E's actions to have representation  
7 and participate in these bankruptcy cases in a meaningful fashion, and for a means of payment  
8 of more than \$2.5 billion in damages they suffered to be fashioned—and agreed upon—before  
9 the failure to do so becomes a potentially fatal confirmation issue.

10 Plaintiff has no desire to see payments to fire victims decrease. In fact, there is a  
11 substantial overlap between the class members and those same fire victims. Unfortunately,  
12 PG&E has chosen to hide behind inapplicable utility law defenses rather than to respond  
13 substantively to yet another group of people and businesses it injured. PG&E must be  
14 encouraged to engage with Plaintiff and the class to reach a consensual resolution for treatment  
15 under the proposed plan should their motion to dismiss be denied.

16 Contrary to the misleading opening line of PG&E's motion to dismiss, Plaintiff is not  
17 trying to "relitigate" anything. The issues raised and relief sought in this case—damages caused  
18 by the PSPSs in October and November of 2019 which were necessitated by PG&E's negligence  
19 in maintaining its grid—have never been litigated. Nor could they have been, since the  
20 California Public Utilities Commission ("CPUC" or the "Commission") does not have the  
21 authority to order PG&E to pay damages.

22 By its motion, PG&E does not challenge Plaintiff's central contention that it was  
23 negligent in maintaining its grid, and that the PSPSs in October and November of 2019 were a  
24 direct result of that negligence. Instead, PG&E asserts that it is immune to these negligence  
25 claims because they are supposedly pre-empted by the California Public Utilities Code ("PU  
26 Code"), and by Tariff Rule 14. But these arguments have no merit.

27  
28  

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<sup>1</sup> "PG&E" as used herein, shall mean Debtors and moving parties PG&E Corporation and Pacific Gas & Electric Company.

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1 Section 2106 of the PU Code specifically authorizes, and numerous cases have  
2 recognized, that regulated utilities like PG&E are subject to actions for damages for negligence.  
3 The only exception is where, under PU Code §1759, the action would “interfere with the  
4 commission in the performance of its official duties.” Plaintiff’s class action would not interfere  
5 with that supervisory power. The Complaint does not allege that the PSPSs were not necessary  
6 and appropriate, or that CPUC’s approval of its Wildfire Safety Plan was improper, only that the  
7 PSPSs would not have been necessary in the first place had PG&E not been negligent.

8 The amount of the claimed damages does not interfere with the CPUC’s regulatory  
9 authority either. On this point, consistent with PU Code § 2106, the Commission has made clear  
10 the distinction between “reparations,” defined as relief limited to a refund or adjustment to a  
11 utility charge for a service, as opposed to “consequential damages,” defined as an amount  
12 sufficient to compensate a party injured by the utility’s negligence. (Carlin Decl. ¶ 2 & Ex. 1  
13 (CPUC Decision (D.) 14-03-032), at pp. 7-9.)<sup>2</sup> In that case, the CPUC stated that it “has  
14 repeatedly ruled that only the Superior Court has the power to award consequential damages as  
15 opposed to reparations.” (*Id.*) And if the amount of damages alone were enough to interfere  
16 with CPUC’s regulatory authority, then the \$25 billion or so PG&E is paying to the wildfire  
17 victims and their insurers would surely interfere with that authority far more than the \$2.5  
18 billion alleged here.

19 Significantly, the CPUC itself has not indicated in any way that this action would  
20 interfere with its regulatory authority. And to the extent PG&E tries to make any kind of factual  
21 showing on this ground, that showing would go well beyond the four corners of the Complaint  
22 and is not subject to determination at the pleading stage.

23 PG&E’s Tariff Rule 14 argument is equally misguided. Tariff Rule 14 was adopted after  
24 the deregulation craze of the 1990s to provide immunity to PG&E from liability for power  
25 shutoffs caused by fluctuations in the power market. The CPUC itself has specifically ruled,  
26

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27 <sup>2</sup> Plaintiff agrees with PG&E that the Court can and should take judicial notice of relevant  
28 CPUC public records. It should also take judicial notice of the other documents submitted as  
exhibits to the Carlin Declaration that are also public records. *Lee v. City of Los Angeles*, 250  
F.3d 668, 688-89 (9th Cir. 2001).

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1 however, that Tariff Rule 14 does not immunize utilities from liability for their own negligence,  
2 a point set forth by the Commission in the very decisions cited by PG&E in support of its claim  
3 of Tariff Rule 14 immunity. By those decisions, the CPUC instead found that the language of  
4 PG&E's Tariff Rule 14 was not developed with reference to and did not apply to PSPSs (D.09-  
5 09-030, at pp. 68-69), and the court in *Tesoro Refining & Marketing Co. LLC v. Pac. Gas &*  
6 *Elec. Co.*, 146 F.Supp.3d 1170 (N.D. Cal. 2015) agreed.

7 Finally, PG&E argues somewhat incoherently that the Court should strike Plaintiff's  
8 class claims because somehow the named Plaintiff's claims are not typical of the class and  
9 therefore the Complaint does not show predominance or ascertainability. But this argument is  
10 entirely premature. Whether a class representative is adequate or typical is determined at the  
11 class certification stage, not the pleading stage. And in any event, Mr. Gantner's claims  
12 certainly are typical and representative, as he suffered both personal and business-related  
13 damages as a result of the PSPSs. And even if Mr. Gantner turned out not to be an adequate  
14 class representative, counsel would be entitled to replace him or supplement him with other  
15 class representatives. Sub-classes are, of course, a possibility as well. But this should all be  
16 dealt with at the class certification stage.

17 Accordingly, PG&E's motions should be denied in their entirety.

## 18 **II. THE COMPLAINT**

19 Plaintiff brings this action on behalf of himself and a putative class against PG&E, not  
20 for its decisions to shut off power for hundreds of thousands of its customers, but for its  
21 negligent actions and omissions which necessitated those decisions, injuring him and millions of  
22 other people. (Compl. ¶ 2.)

23 In the Fall of 2019, PG&E shut off power to some 800,000 customers in at least five  
24 distinct so-called PSPSs. (Compl. ¶¶ 63-79.) Millions of people were impacted by these events,  
25 which lasted up to 17 days total and 10 days in a row. (Compl. ¶ 3.) As a result of these PSPSs,  
26 Plaintiff and the Class (as defined in the Complaint) suffered various losses, including loss of  
27 habitability of their dwellings, loss of food items in their refrigerators, expenses for alternate  
28 means of light and power, loss of cell phone connectivity, dangerous and dark conditions, lack

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1 of running water, loss of productivity and business, loss of personal property, and mental pain  
2 and suffering. (Compl. ¶¶ 3, 99-102.)

3 The Complaint details PG&E's obligation to "furnish and maintain such adequate,  
4 efficient, just and reasonable service" to its customers under California law (Compl. ¶¶ 10-20)  
5 and its failure to do so over the past 30 years, culminating in the PSPSs damaging Plaintiff and  
6 the Class (Compl. ¶¶ 21-79). The PSPSs (whether or not justified in the moment) were the  
7 result of PG&E's negligence, including, but not limited to twelve distinct categories of negligent  
8 conduct iterated in the Complaint. (Compl. ¶ 98.) Instead of doing its duty of mitigating or  
9 eliminating the risk of wildfire by maintaining a reasonably safe power grid, PG&E breached its  
10 duty of care, resulting in PG&E being forced to shut off its customers' power for days at a time,  
11 sometimes without notice. (Compl. ¶ 98.)

12 Plaintiff defines the Class as: "All California residents and business owners who had  
13 their power shut off by PG&E during the October 9, October 23, October 26, October 28, or  
14 November 20, 2019 Outages and any subsequent voluntary Outages PG&E imposes on its  
15 customers during the course of litigation" (the "Class"). (Compl. ¶ 85.) Plaintiff alleges that a  
16 class action is appropriate because the Class is so numerous that joinder is unfeasible and  
17 impracticable; Plaintiff is typical because he was subject to the PSPSs and suffered damages  
18 based on PG&E's common course of conduct; common questions of law and fact predominate,  
19 including what duty of care PG&E owed its customers in maintaining its power system and  
20 whether PG&E's conduct violated that duty of care. Plaintiff is an adequate representative  
21 because he has no interest adverse to the Class and is represented by experienced class action  
22 litigators. A class action is also superior to piecemeal adjudication of the Class claims. (Compl.  
23 ¶¶ 88-92.)

24 As relief, Plaintiff, on behalf of himself and the Class, seeks, among other things, special  
25 and general tort damages, punitive and exemplary damages as allowed under California Civil  
26 Code § 3294 and California Public Utilities Code § 2106, and an injunction ordering PG&E to  
27 cease violating California Public Utility Commission General Orders Nos. 95 and 165,  
28

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1 California Public Resources Code §§ 4292 and 4293, and California Public Utilities Code § 451.  
 2 (Compl. Prayer.)

### 3 **III. THE CPUC'S ROLE**

4 PG&E spends seven pages of its motion detailing the history of the CPUC's regulation  
 5 of public utility de-energization. Much of that history is irrelevant because, for better or worse,  
 6 PG&E had no de-energization program before 2018.

7 The CPUC's 2018-to-present activity has been limited to setting forth minimum  
 8 standards for PG&E to follow in deciding whether to shut off its customers' power, approving  
 9 wildfire mitigation plans which include de-energization aspects, and investigating PG&E's late-  
 10 2019 PSPSs. That investigation is ongoing. But the CPUC has most recently indicated that  
 11 "PG&E's performance during PSPS events in 2019 was unacceptable and cannot be repeated in  
 12 2020." (Carlin Decl. ¶ 3 & Ex. 2 (CPUC R. 18-12-005, Jan. 30, 2020), at \*3.)

13 The CPUC has not evidenced any intention to award damages to customers as a result of  
 14 its investigation (it does not have the power to do so) or investigate whether PG&E created the  
 15 danger it sought to mitigate through PSPSs by virtue of its own negligence. In ESRB-8  
 16 (PG&E's Exhibit E) the Commission stated that "this resolution is not the venue" to discuss  
 17 "financial liability" associated with PSPSs. (ESRB-8 at p. 5.)

18 To date, the CPUC has expressed no position on whether its regulatory authority will be  
 19 impacted in any way by this Action. At this stage in the litigation, the Court should conclude  
 20 from this absence of involvement that the CPUC does not believe the Action interferes with its  
 21 regulatory authority.

### 22 **IV. ARGUMENT**

#### 23 **A. This Court has Subject Matter Jurisdiction: Plaintiff's Negligence Claim is 24 Not Barred by PU Code § 1759**

25 PG&E's Rule 12(b)(1) motion presents a facial attack on the subject matter jurisdiction  
 26 of this Court. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (facial attack  
 27 is one where challenger asserts that allegations are insufficient on their face to invoke federal  
 28 jurisdiction as opposed to "factual" attack which challenges truth of allegations which would  
 otherwise support jurisdiction); *Utility Cost Management, LLC v. Freeman Expositions, Inc.*,

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1 No. CV 16-01516-BRO (RAOx), 2016 WL 9343761, at \*2-3 (C.D. Cal. Apr. 8, 2016) (Rule  
2 12(b)(1) attack based on PU Code § 1759 preemption is facial). Accordingly, factual allegations  
3 of the Complaint are taken as true and construed in the light most favorable to Plaintiff. *A White  
4 and Yellow Cab, Inc. v. Uber Technologies, Inc.*, No. 15-cv-05163-JSW, 2017 WL 1208384, at  
5 \*3 (N.D. Cal. Mar. 31, 2017).

6 But PG&E’s characterization of this motion as a Rule 12(b)(1) motion is misleading and  
7 incorrect—presumably done to try to shift the burden of proof to the plaintiffs on this issue.  
8 This court has subject matter jurisdiction because PG&E is in Chapter 11 Bankruptcy and this  
9 case had to be filed here as an adversary proceeding.<sup>3</sup> The proper framing of the issue—  
10 whether the case is in state or federal court—is whether the PU Code preempts claims for  
11 damages, and in that case, as the party asserting preemption, PG&E bears the burden of proving  
12 that preemption applies. *Chamber of Commerce v. City of Seattle*, 890 F.3d 769, 795 (9th Cir.  
13 2018) (burden to show preemption is on party asserting it); *Hadley v. Kellogg Sales Co.*, 273 F.  
14 Supp. 3d 1052, 1076 (N.D. Cal. 2017).

15 The PU Code contains two sections potentially impacting a litigant’s ability to seek relief  
16 in a civil action against PG&E. The first is § 2106, which provides explicitly that a party may  
17 bring a claim for damages against a regulated entity:

18 Any public utility which does, causes to be done, or permits any act, matter, or  
19 thing prohibited or declared unlawful, or which omits to do any act, matter, or  
20 thing required to be done, either by the Constitution, any law of this State, or any  
21 order or decision of the commission, shall be liable to the persons or corporations  
22 affected thereby for all loss, damages, or injury caused thereby or resulting  
23 therefrom. If the court finds that the act or omission was willful, it may, in  
24 addition to the actual damages, award exemplary damages. An action to recover  
25 for such loss, damage, or injury may be brought in any court of competent  
26 jurisdiction by any corporation or person.

27 The second is § 1759, which states:

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28 <sup>3</sup> See 28 U.S.C. § 157(a) (providing that any proceeding related to a case under title 11 shall be referred to the bankruptcy judges for the district), (b)(2)(O) (bankruptcy judge may hear all core proceedings arising under title 11, including, “other proceedings affecting the liquidation of the assets of the estate . . .”).

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1 No court of this state, except for the Supreme Court and the court of appeal, to  
2 the extent specified in this article, shall have jurisdiction to review, reverse,  
3 correct, or annul any order or decision of the commission or to suspend or delay  
4 the execution or operation thereof, or to enjoin, restrain, or interfere with the  
5 commission in the performance of its official duties, as provided by law and the  
6 rules of court.

7 As California courts have recognized for 55 years, “It has never been the rule in  
8 California that the [CPUC] has *exclusive* jurisdiction over any and all matters having any  
9 reference to the regulation and supervision of public utilities.” *Vila v. Tahoe Southside Water*  
10 *Utility*, 233 Cal. App. 2d 469, 477 (1965) (emphasis in original). Instead, the California  
11 Supreme Court has developed a three-prong test—which takes into account § 1759’s limitations  
12 and § 2106’s right of action—to determine whether an action is barred by § 1759.

13 For PG&E to prevail on its theory that this Court may not hear this action, it must prove  
14 that (1) the CPUC has authority to adopt regulatory policy on the issue in question; (2) the  
15 CPUC has exercised that regulatory authority; and (3) the action would hinder or interfere with  
16 the CPUC’s exercise of that regulatory authority. *PegaStaff v. Pac. Gas & Electric Co.*, 239  
17 Cal. App. 4th 1303, 1315 (2015) (citing *San Diego Gas & Elec. Co. v. Sup Ct. (Covalt)*, 13 Cal.  
18 4th 893 (1996)).

19 Plaintiff does not dispute that the CPUC has authority to regulate and supervise the  
20 safety of public utility operations, including PSPSs. Nor does Plaintiff dispute that the CPUC  
21 has exercised that authority in the realm of PSPSs through adopting resolutions and beginning  
22 investigations.

23 However, PG&E is wrong that this action would hinder or interfere with the CPUC’s  
24 exercise of its regulatory authority. This action seeks to provide relief to customers harmed by  
25 PG&E’s negligence. Awarding damages to the Class does nothing to hinder or interfere with  
26 the protocols and checks the CPUC is implementing, or is in the process of implementing, to  
27 ensure that PSPSs are as narrowly tailored and least disruptive as possible. In fact, by seeking to  
28 require PG&E to comply with applicable laws and regulations, the Complaint advances rather  
than hinders that policy. In addition, since the CPUC does not have the power to award  
damages, and PG&E has stated publicly that it does not intend to make any further payments or

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1 credits to its customers for these PSPSs (see pg. 12, *infra*), denying jurisdiction here would  
2 effectively insulate PG&E entirely from compensating affected customers.

3 **1. This Action Reinforces and Complements the CPUC's Regulatory**  
4 **Authority**

5 *PegaStaff v. Pac. Gas & Elec. Co.* illustrates the distinction between actions hindering  
6 the exercise of the CPUC's authority (which are barred) and those which complement it (which  
7 may go forward in court). 239 Cal. App. 4th 1303 (2015). In *PegaStaff*, a non-minority run  
8 staffing agency sued PG&E and others, alleging that PG&E's new tier structure which rewarded  
9 minority enterprises over others in response to new California Public Utilities Code sections and  
10 a CPUC general order designed to encourage the use of minority enterprises, negatively  
11 impacted its business and discriminated against it. The trial court granted PG&E's motion for  
12 judgment on the pleadings on the basis that PU Code § 1759 precluded jurisdiction. The Court  
13 of Appeal reversed.

14 In that case, despite plaintiff alleging that PG&E set up its preference system to comply  
15 with CPUC rules, the court found that PG&E's alleged conduct was not necessary to comply  
16 with the Code sections, rules, and decisions at issue and in fact the CPUC had not authorized or  
17 permitted the alleged conduct. Therefore, the court reasoned that an award of damages or  
18 injunctive relief would enforce, not obstruct, the CPUC regulation. *PegaStaff*, 239 Cal. App. 4th  
19 at 1327-28 (citing *Hartwell Corp. v. Superior Court*, 27 Cal. 4th 256, 275 (2002) ("superior  
20 courts are not precluded from acting in aid of, rather than in derogation of, the [C]PUC's  
21 jurisdiction").

22 The facts here are even stronger than in *PegaStaff*. Plaintiff's negligence claim is based  
23 on PG&E repeatedly, over many years, violating its duty of care to its customers and, in the  
24 process, violating PU Code § 451, the California Public Resources Code §§ 4292, 4293, and  
25 CPUC General Orders Nos. 95 & 165, culminating in it shutting off power to hundreds of  
26 thousands of customers for days at a time. (Compl ¶¶ 14-20, 27-62, 98.)

27 Further, the Complaint alleges that PG&E violated the very statute it now relies on in  
28 asserting § 1759 preemption. PU Code § 8386(a) states: "Each electrical corporation shall  
construct, maintain, and operate its electrical lines and equipment in a manner that will minimize

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1 the risk of catastrophic wildfire posed by those electrical lines and equipment.” Plaintiff alleges  
 2 that PG&E has not done that. (Compl. ¶¶ 21-62.) That’s why it caused myriad fires and that’s  
 3 why it resorted to PSPSs which damaged Plaintiff and the Class. That the statute also requires  
 4 PG&E to establish “[p]rotocols for . . . deenergizing portions of the electrical distribution system  
 5 that consider the associated impacts on public safety” does not mean that the CPUC’s authority  
 6 will be undermined by awarding damages to impacted customers. PU Code § 8386(c)(6).

7 **2. Even if PG&E Had Met the CPUC’s Minimum Safety Standards, this**  
 8 **Action does not Interfere with the CPUC’s Regulatory Authority**

9 Even if PG&E had met the minimum requirements set by the CPUC for electrical lines  
 10 and equipment safety and PSPSs (it has not), that does not insulate it from a negligence lawsuit.  
 11 *PegaStaff*, 239 Cal. App. 4th at 1320.

12 In *Mata v. Pacific Gas & Electric Co.*, 224 Cal. App. 4th 309 (2014), heirs of a decedent  
 13 electrocuted by overhead powerlines while trimming trees brought a negligence action against  
 14 PG&E alleging it failed to exercise due care in maintaining vegetation clearance near the power  
 15 line. The superior court in that case granted summary adjudication in PG&E’s favor on a  
 16 negligence per se cause of action because PG&E indisputably met its clearance obligations  
 17 under CPUC Order No. 95 for that power line. The superior court then granted PG&E’s  
 18 subsequent motion to dismiss based on § 1759.

19 The court of appeal reversed. It found that the CPUC had established rules for minimum  
 20 clearance but this did not mean that PG&E was relieved “of its obligation to exercise reasonable  
 21 care to avoid causing harm to others, or relieved of its responsibility for failing to do so.” *Id.* at  
 22 318; *see also Nevis v. Pacific Gas & Electric Co.*, 43 Cal. 2d. 626, 630 (1954) (“Compliance  
 23 with the general orders of the [CPUC] does not establish as a matter of law due care by the  
 24 power company, but merely relieves it ‘of the charge of negligence *per se.*’”); *Kairy v.*  
 25 *SuperShuttle Int’l*, 660 F.3d 1146, 1156 (9th Cir. 2011) (finding that court’s actions would not  
 26 hinder or interfere with CPUC’s jurisdiction and third prong of *Covalt* was not satisfied because  
 27 court would be making distinct inquiry from CPUC).  
 28

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1 Likewise, in *Wilson v. Southern California Edison Co.*, 234 Cal. App. 4th 123 (2015),  
 2 the court of appeal found that compliance with a minimum standard did not insulate a utility  
 3 from negligence liability. In that case, SCE appealed from a jury verdict awarding tort damages  
 4 for negligently allowing uncontrolled currents into a customer's home. The CPUC asserted in  
 5 an amicus brief that it had ongoing policies and programs and that a superior court award could  
 6 "unintentionally result in new or inconsistent requirements" and thus the court did not have  
 7 jurisdiction. *Wilson*, 234 Cal. App. 4th at 148. The *Wilson* court disagreed, holding that in the  
 8 absence of the CPUC blessing the minimum requirement as fully meeting the utility's  
 9 obligation, "merely meeting [minimum] requirements does not necessarily insulate a utility from  
 10 a superior court suit." *PegaStaff*, 239 Cal. App. 4th at 1320.

11 Here, the CPUC has in no way indicated that PG&E may perform PSPSs without  
 12 liability to its customers, so long as it follows CPUC guidelines and rules, or its own half-page  
 13 outline of "PSPS Decision Factors" in its Wildfire Safety Plan.<sup>4</sup> In fact, as noted above, the  
 14 CPUC's last word on the subject indicates that PG&E's 2019 PSPSs were "unacceptable" to the  
 15 CPUC. But again, this case is not about whether the shutoffs were appropriate or how PG&E  
 16 handled them, it is about **why** they had to be done in the first place.

17 Courts in this district uniformly agree that § 1759 dismissal is inappropriate in this  
 18 circumstance. *Mangiaracina v. BNSF Ry. Co.*, No. 16-CV-05270-JST, 2019 WL 1975461, at  
 19 \*14 (N.D. Cal. Mar. 7, 2019) (denying motion for summary judgment based on § 1759 when  
 20 finding of negligence would not invalidate CPUC standards and plaintiffs seek damages based  
 21 on past negligence); *N. Star Gas Co. v. Pac. Gas & Elec. Co.*, No. 15-CV-02575-HSG, 2016  
 22 WL 5358590, at \*13-15 (N.D. Cal. Sept. 26, 2016) (denying motion to dismiss based on § 1759

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24 <sup>4</sup> See PG&E Amended (Feb. 6, 2019) Wildfire Safety Plan, at pp. 97-98 (available at  
 25 [https://www.pge.com/pge\\_global/common/pdfs/safety/emergency-preparedness/natural-](https://www.pge.com/pge_global/common/pdfs/safety/emergency-preparedness/natural-disaster/wildfires/Wildfire-Safety-Plan.pdf)  
 26 [disaster/wildfires/Wildfire-Safety-Plan.pdf](https://www.pge.com/pge_global/common/pdfs/safety/emergency-preparedness/natural-disaster/wildfires/Wildfire-Safety-Plan.pdf)). In its revised and as-yet-unapproved April 25,  
 27 2019 Wildfire Safety Plan (available at  
 28 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M283/K824/283824582.PDF>), PG&E  
 attempts to give itself indefinite extensions on completing necessary inspections and safety  
 measures, making their safety targets less definite, and expanding its PSPS scope to include high  
 voltage transmission lines which may impact larger areas. The CPUC has not approved this  
 plan.

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1 when case does not involve complex interpretive challenges and damages finding would not  
2 hinder or impede any CPUC policy).

### 3                   **3.       This Action Seeks Damages that the CPUC Cannot Award**

4                   The nature of the relief sought in the case is relevant to whether an action would hinder  
5 or interfere with the CPUC’s exercise of regulatory authority. *PegaStaff*, 239 Cal. App. 4th at  
6 1318. Indeed, “if the nature of the relief sought . . . fall[s] outside the [C]PUC’s constitutional  
7 and statutory powers, the claim will not be barred by section 1759.” *PegaStaff*, 239 Cal.  
8 App.4th at 1318; *Mangiaracina*, 2019 WL 1975461, at \*14 (“the Court finds further support [for  
9 its denial of defendant’s motion to dismiss based on § 1759] in the fact that Plaintiffs seek  
10 damages based on past negligence, which the CPUC lacks the power to adjudicate.”).

11                   Here, Plaintiff seeks tort damages of the kind the CPUC is not capable of awarding. *See*  
12 *Debtors’ Mot. to Dismiss and to Strike* at p. 18 (“the CPUC does not have the ability to award  
13 tort damages”); *Mangiaracina*, 2019 WL 1975461, at \*14 (CPUC lacks power to adjudicate  
14 damages based on past negligence).

15                   In fact, the CPUC has reiterated many times that it does not have authority to award  
16 compensatory or consequential damages:

17                   [T]his Commission **does not have authority to award damages**, as requested by  
18 Complainant, but only reparations. In this regard, reparations are limited to a  
19 refund or adjustment of all or part of the utility charge for a service or group of  
20 services. By contrast, damages compensate an injured party for injury alleged to  
21 be caused by a tortious [sic] act, or to replace the value of performance of a  
22 breached obligation. Complainant does not seek any refund of some or all of  
23 SCE's billed electric charges. Complainant's requested relief thus does not  
24 constitute reparations. Accordingly, **Complainant's request in this regard for  
25 an award of damages is outside of Commission jurisdiction.**

26 Carlin Decl. ¶ 4 & Ex. 3 (D. 20-01-031), at \*5 (emphasis added); Carlin Decl. ¶ 2 & Ex. 1 (D.  
27 14-03-032), at \*4-5 (“it is not within this Commission’s power to grant the requested  
28 compensatory damages”; “This Commission has repeatedly ruled that only the Superior Court  
has the power to award consequential damages as opposed to reparations.”).

PG&E attempts to downplay this reality by citing sections of the PU Code that permit  
the CPUC to award other types of relief, but this relief is not at all similar and is not for the type

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1 of harms alleged in this case, *see, e.g.*, § 532 (providing CPUC authority to permit public  
 2 utilities to refund or remit portions of rates as the CPUC considers “just and reasonable”); § 734  
 3 (CPUC may, upon complaint “concerning a rate . . . or service performed by a public utility”  
 4 and after the CPUC has found that “the public utility has charged an unreasonable, excessive, or  
 5 discriminatory amount,” order the public utility make “due reparation to the complainant”); §§  
 6 2107, 2108 (providing for penalties of between \$500 and \$100,000 for public utilities who fail  
 7 to comply with the Constitution, the PU Code or the CPUC’s decisions, etc.)

8 But this case is not about PG&E charging unreasonable rates and it does not ask that  
 9 PG&E pay the State of California penalties for its negligent conduct. Like in *PegaStaff*, the  
 10 relief sought here “is not in the nature of disgorgement of profits or other revenues explicitly  
 11 approved, or the allocation of which was determined, by the [C]PUC.” 239 Cal. App. 4th at  
 12 1329. This class action lawsuit asks PG&E to pay its customers for the damages they suffered  
 13 as a result of PSPSs which occurred because of PG&E’s negligence. (Compl. ¶¶ 98-106 &  
 14 Prayer.) This is precisely the type of damage claim for past harm which does not interfere with  
 15 or obstruct the CPUC’s regulatory authority. *Mangiaracina*, 2019 WL 1975461, at \*14;  
 16 *PegaStaff*, 239 Cal. App. 4th at 1329 (“damages claims based on past conduct that was not  
 17 approved by the CPUC, even though related to subject matter over which the [C]PUC does  
 18 exercise regulatory authority” does not interfere with CPUC’s regulatory abilities); *Hartwell*, 27  
 19 Cal. App. 4th at 277 (“a lawsuit for damages based on past violations of water quality standards  
 20 would not interfere with . . . a prospective regulatory program”); *Mata*, 224 Cal. App. 4th at 320  
 21 (CPUC remedies are “essentially prospective in nature”; CPUC “cannot evaluate and rectify  
 22 individual claims for damages resulting from a utility’s failure to exercise reasonable care . . .”).

23 Further, PG&E has signaled that it will not pay damages for PSPSs. PG&E has provided  
 24 a one-time bill credit to customers affected by just the first PSPS at issue, totaling \$86 million  
 25 (typically \$100 per household), but has stated categorically in its most recent SEC 10-K filing  
 26 that it will not make any more such payments:

27 On October 29, 2019, PG&E Corporation and the Utility announced that they  
 28 would issue credits to customers with respect to the October 9, 2019 PSPS event.  
 PG&E Corporation and the Utility recorded a charge of \$86 million reflecting a

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1 one-time bill credit for customers impacted by the October 9, 2019 PSPS event in  
 2 the fourth quarter of 2019. As of the date of this filing, PG&E Corporation and  
 3 the Utility do not expect to issue any similar customer credits in connection with  
 any other PSPS events (whether past events or in the future).”

4 PG&E Form 10-K for the Fiscal Year Ended December 31, 2019 (available at  
 5 [https://www.sec.gov/ix?doc=/Archives/edgar/data/75488/000100498020000009/pcg-  
 6 20191231.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/75488/000100498020000009/pcg-20191231.htm)). So this case is the only way PG&E customers will be able to recover for their  
 7 damages.

8 Plaintiff seeks injunctive relief as well, but in the form of PG&E complying with its legal  
 9 obligations. (*See* Compl. Prayer, d.) Awarding such injunctive relief could not possibly  
 10 interfere with the CPUC’s regulatory authority but would only underscore PG&E’s obligation to  
 11 comply with the rules the Legislature and the CPUC has set for it.<sup>5</sup> *PegaStaff*, 239 Cal. App. 4th  
 12 at 1330 (when there is no CPUC determination that PG&E complied with Order and regulations  
 13 applicable to injunctive relief request, there is “no reason to conclude that section 1759 bars  
 14 [plaintiff’s] prayer for injunctive relief”); *N. Star*, 2016 WL 5358590, at \*13 (“California law  
 15 permits courts to entertain actions for both damages and injunctive relief against regulated  
 16 utilities where those actions seek to enforce, rather than challenge, obligations created by CPUC  
 17 regulations.”).

18 The cases cited by PG&E in favor of § 1759 preemption are inapposite:

- 19 • *Cooney v. Cal. Pub. Util. Comm’n*, No. C 12-6466 CW, 2014 WL 3531270 (N.D.  
 20 Cal. July 15, 2014) was a *pro se* case claiming that radio waves released by smart  
 21 meters injured her and forced her to move to Florida. There, the CPUC  
 22 specifically authorized defendants to purchase the equipment she alleged was  
 23 dangerous and the court found that any finding that the product was unsafe would  
 24 undermine the CPUC’s decision. *Id.* at \*3. Here, the CPUC has not specifically

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27 <sup>5</sup> In any case, it is premature for the Court to consider this issue. *Fishman v. Tiger Nat. Gas, Inc.*  
 28 No. C 17-05351 WHA, 2018 WL 1242076, at \*5 (N.D. Cal. Mar. 8, 2018) (holding that while  
 an injunction may interfere with CPUC’s regulatory function, addressing that problem on  
 motion to dismiss was premature).

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1 authorized any of PG&E's allegedly negligent activity. And it is not the  
2 propriety of the PSPSs themselves which this lawsuit challenges.

- 3 • *Covalt* is similar to *Cooney* in that the Court determined that a damages award in  
4 that case would undermine the CPUC's conclusions concerning the safety of  
5 electromagnetic fields. *Covalt*, 13 Cal. 4th at 947-49. There is no such risk here  
6 given that the CPUC has not concluded (and there is no reason to believe it will  
7 conclude) that PG&E's power lines and equipment were safe and sufficiently  
8 minimized the risk of wildfires (which they clearly were not).
- 9 • *Guerrero v. Pacific Gas & Elec. Co.*, 230 Cal. App. 4th 567 (2014) was a  
10 ratepayer action against PG&E for restitution, not for damages. The CPUC has  
11 explicit statutory authority to award that relief. It does not have the authority to  
12 award the damages Plaintiff seeks on behalf of the class here.
- 13 • *Schell v. S. Cal. Edison Co.*, 204 Cal. App. 3d 1039 (1988) and *Anchor Lighting*  
14 *v. S. Cal. Edison Co.*, 142 Cal. App. 4th 541 (2006) were also ratepayer actions  
15 concerned with whether a customer was charged a proper rate—an issue  
16 exclusively entrusted to the CPUC with California Supreme Court oversight for  
17 constitutionality only.

18 Nor does the \$2.5 billion stated in the Complaint as damages, if awarded, interfere with  
19 the CPUC's authority to regulate PG&E. No one is claiming that the \$25 billion slated to be  
20 paid out to fire victims and their insurers would interfere with the CPUC's ability to regulate  
21 PG&E, because just like the \$2.5 billion sought here, it won't.

22 **B. Tariff Rule 14 Does Not Permit PG&E to Immunize Itself from Its Own**  
23 **Negligence**

24 PG&E argues, in the alternative, that Plaintiff's negligence claim should be dismissed for  
25 failure to state a claim under Fed. R. Civ. P. 12(b)(6) based on PG&E's Tariff Rule 14 (PG&E's  
26 Ex. R). Like facial 12(b)(1) motions, 12(b)(6) motions require courts to take all factual  
27 allegations in the operative pleading "as true and construed in the light most favorable to  
28 [p]laintiffs." *Lee*, 250 F.3d at 679 (internal quotation marks omitted). Indeed, "factual

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1 challenges to plaintiff's complaint have no bearing on the legal sufficiency of the allegations  
2 under Rule 12(b)(6).” *Id.* at 689

3 In support of its position, PG&E cites only a one-page unpublished and uncitable San  
4 Francisco Superior Court summary judgment order. The Court may not consider that order.  
5 *Sarmiento v. Sealy, Inc.*, Case No. 2019 WL 3059932, at \*6 & n.7 (N.D. Cal. July 12, 2019)  
6 (unpublished California Superior Court decision is not citable in Northern District of California,  
7 citing California Rules of Court 8.1115; Civil Local Rule 3-4(e)); *see also* N.D. Cal. Bank. L.R.  
8 1001-2(a) (Civil Local Rule 3-4 is incorporated by reference in all bankruptcy cases).<sup>6</sup>

9 There is a more recent case in this district directly on point: *Tesoro Refining &*  
10 *Marketing Co. LLC v. Pac. Gas & Elec. Co.*, 146 F.Supp.3d 1170 (N.D. Cal. 2015). In that  
11 case, the district court denied PG&E's motion for summary judgment based on its claim that it  
12 immunized itself under Tariff Rule No. 14. The court held that Tariff Rule 14 was not intended  
13 to and did not absolve PG&E of liability for its own negligence. *Id.* at 1187. This Court should  
14 follow *Tesoro*.

### 15 1. Tariff Rule 14 Does Not Apply to PSPS Liability.

16 Tariff Rule 14 does not even apply to PSPS liability. Tariff Rule 14 was approved in  
17 1997 in connection with direct access deregulation and is “wholly unrelated” to PSPS liability.  
18 *See* PG&E's Ex. B (D. 09-09-030) at 65-66 (“PG&E's Tariff Rule 14 stems from D.97-10-087,  
19 which concerned the interruption of energy supplied by energy marketers to direct access  
20 customers” and is “wholly unrelated” to SDG&E's desire to insulate itself from liability for  
21 public safety power shutoffs).

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22  
23 <sup>6</sup> That summary judgment decision was based on PG&E submitting unrefuted evidence that it  
24 shut power off for safety purposes. Here, the Complaint does not dispute that PG&E's PSPSs  
25 were necessary for safety purposes but the facts it does allege (which must be construed in the  
26 light most favorable to Plaintiff) are that PG&E negligently created the condition that  
27 necessitated the shutdown. It would be inequitable and contrary to the policies of this state to  
28 allow PG&E to negligently create a dangerous condition and be exempt from liability for that  
decision. *Pacific Venture Corporation v. Huey*, 15 Cal. 2d 711, 717 (1940) (“It appears to be  
well settled that a person cannot avoid liability for the nonperformance of an obligation by  
placing such performance beyond his control by his own voluntary act.”).

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1 The direct access legislation (PU Code § 330, et seq.) which precipitated PG&E's  
 2 amendment to Tariff Rule 14 made PG&E one of many bidders on a wholesale energy market in  
 3 its own service area, such that the degree to which it controlled power supplied within those  
 4 areas diminished. *Tesoro*, 146 F. Supp. 3d at 1184 (citing PU Code § 330; CPUC Decision 95-  
 5 12-063, 64 CPUC 2d 1 (1995)). The output of energy was no longer dependent on PG&E alone,  
 6 but other participants as well. It therefore makes sense that PG&E would want to call out (and  
 7 the CPUC would approve) that, barring its own negligence, PG&E may interrupt its service  
 8 deliveries to its customers and electric service providers (ESPs) for safety reasons. It does not,  
 9 however, make sense that the CPUC would allow PG&E to insulate itself from liability for its  
 10 own negligence simply because ESPs were given direct access to their power supply to compete  
 11 with them.

12 In fact, the direct access legislation expresses the contrary goal of ensuring reliable  
 13 electric services. *See, e.g.*, PU Code § 330(g) (“Reliable electric service is of utmost importance  
 14 to the safety, health, and welfare of the state's citizenry and economy. It is the intent of the  
 15 Legislature that electric industry restructuring should enhance the reliability of the  
 16 interconnected regional transmission systems, and provide strong coordination and enforceable  
 17 protocols for all users of the power grid.”); (h) (“It is important that sufficient supplies of  
 18 electric generation will be available to maintain the reliable service to the citizens and  
 19 businesses of the state.”); (i) (Reliable electric service depends on conscientious inspection and  
 20 maintenance of transmission and distribution systems . . .”).<sup>7</sup>

21 The CPUC considered the very question whether PG&E's Tariff Rule 14 absolves it  
 22 from liability for PSPSs and decided that it does not. In D.09-09-030, SDG&E requested

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24 <sup>7</sup> PG&E's reading also conflicts with the tariff rules of its fellow public utility providers, which  
 25 do not provide for those utilities to escape liability for their own negligence. *See* Carlin Decl. ¶  
 26 7 & Ex. 6 (S. Cal. Edison Tariff Rule 14) (“SCE will not be liable for interruption or shortage of  
 27 supply, nor for any loss or damage occasioned thereby, if such interruption or shortage results  
 28 from any cause not within its control.”); Carlin Decl. ¶ 8 & Ex. 7 (SDG&E Tariff Rule 14)  
 (“The utility will not be liable for interruption or shortage or insufficiency of supply, or any loss  
 or damage occasioned thereby, if same is caused by inevitable accident, act of God, fire, strikes,  
 riots, war or any other cause not within its control.”).

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1 authority to amend its Tariff Rule 14 to include the statement that SDG&E may shut off power  
 2 “without liability to its customers.” SDG&E argued that the language in PG&E’s Tariff Rule 14  
 3 should be adopted in connection with SDG&E’s proposed PSPSs. The CPUC declined, noting  
 4 that PG&E’s language “was approved in 1997 as part of the Commission’s direct access  
 5 program” and that different context “concerned the interruption of energy supplied by energy  
 6 marketers to direct access customers,” not PSPSs which are “wholly unrelated.” The  
 7 Commission found “There is **no evidence** that PG&E’s Tariff Rule 14 was filed to implement a  
 8 power shut-off program like the one proposed by SDG&E.” D.09-09-030 at 68 (emphasis  
 9 added). It then concluded: “PG&E’s Tariff Rule 14 was filed to implement direct access and,  
 10 therefore, **does not constitute a reasonable precedent for** revising SDG&E’s Tariff Rule 14  
 11 for **the purpose of implementing a power shut-off program.**” *Id.* at 69 (emphasis added).<sup>8</sup>

## 12 2. *Tesoro* is Not Distinguishable.

13 PG&E’s attempt to distinguish *Tesoro* is thus meaningless since Tariff Rule 14 simply  
 14 doesn’t apply to limit liability for PSPSs. And in any event, PG&E’s effort to distinguish  
 15 “paragraph 3” (they are not actually numbered) from “paragraph 4” is illogical and unavailing.

16 Tariff Rule 14 states, in pertinent part (emphasis added):

17 **[Par. 1] PG&E will exercise reasonable diligence and care to furnish and**  
 18 **deliver a continuous and sufficient supply of electric energy to the customer,**  
 19 but does not guarantee continuity or sufficiency of supply. PG&E will not be  
 20 liable for interruption or shortage or insufficiency of supply, or any loss or  
 21 damage of any kind of character occasioned thereby, if same is caused by  
 inevitable accident, act of God, fire, strikes, riots, war, **or any other cause**  
**except that arising from its failure to exercise reasonable diligence.** . . .

22 [Par. 3] Under no circumstances shall PG&E be liable to its customers or their  
 23 agents for any local or system deficiencies in supply stemming from inadequate  
 24 power bids or power deliveries over the Independent System Operator (ISO) grid.  
 Similarly, PG&E shall not be liable to any customer, or electric service provider,

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26 <sup>8</sup> Regarding D.09-09-030 and D.12-12-024 (PG&E’s Ex. C), PG&E could have become a party  
 27 at any time (as S. Cal. Edison did) but chose not to, despite 09-09-030 holding explicitly that the  
 28 language of its Tariff Rule 14 did not apply in this context. PG&E never sought any  
 clarification of D.09-09-030 or an explicit exemption for PSPSs. The Court should not give  
 PG&E an exemption it never asked for, which the CPUC refused to give SDG&E.

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1 for damages or losses resulting from interruption due to transmission constraint,  
2 allocation of transmission or intertie capacity, **or other transmission related**  
3 **outage, planned or unplanned.**

4 [Par. 4] PG&E specifically maintains the right to interrupt its service deliveries,  
5 without liability to the Customers or electric service providers (ESPs) affected,  
6 when, in PG&E's sole opinion, such interruption is necessary for reasons  
7 including, but not limited to, the following: 1. Safety of a customer, a PG&E  
8 employee, or the public at large. . . .

9 This "reasonable diligence and care" standard is essentially a negligence standard and in  
10 accord with PU Code § 451 ("Every public utility shall furnish and maintain such adequate,  
11 efficient, just, and reasonable service . . . to promote the safety, health, comfort, and  
12 convenience of its patrons, employees, and the public."). *Ramirez v. Plough, Inc.*, 6 Cal. 4th  
13 539, 546 (1993).

14 In *Tesoro*, 146 F.Supp.3d 1170, the plaintiff, a refinery, sued PG&E for damages  
15 resulting from a power outage allegedly caused by PG&E's negligence. PG&E argued that the  
16 language in paragraph 3 immunized it from liability. The court held that it did not, finding that  
17 the purpose of Tariff Rule 14's liability limitation was related to deregulation/access, not to  
18 PG&E's own negligence. And the *Tesoro* court (at 1185) specifically rejected PG&E's  
19 argument that the liability limitation applied to the "or other transmission related outage,  
20 planned or unplanned" language in paragraph 3, holding that it did not relieve PG&E of liability  
21 for its own negligence.

22 Paragraph 4—on which PG&E solely relies—is simply a subset of the "outage, planned  
23 or unplanned" language in paragraph 3, providing some examples of when it can shut off power.  
24 But *Tesoro* holds that Tariff Rule 14 does not absolve PG&E of liability for its own negligence  
25 in connection with an "outage, planned or unplanned." *Tesoro*, 146 F.Supp.3d at 1176 (citation  
26 omitted).

27 Moreover, the phrase "maintains the right" which starts the paragraph makes plain that  
28 there is no new or additional immunity bestowed on PG&E by virtue of this paragraph. And  
PG&E was *not* exempt from negligence actions for failing to provide power prior to Tariff Rule  
14 being amended. *See, e.g., Langley v. Pac. Gas & Elec. Co.*, 41 Cal. 2d 655, 660-61 (1953)  
(interpreting previous version of Tariff Rule 14 and holding that "[i]n no way, however do [the

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1 provisions] abrogate the defendant’s general duty to exercise reasonable care in operating its  
 2 system to avoid unreasonable risks of harm to the persons and property of its customers”).  
 3 Further, as the CPUC stated after Tariff Rule 14 became effective, “In the energy services  
 4 industry, PG&E is only protected from damages that are beyond its control; however it is  
 5 responsible for reasonable damages resulting from its negligence.” (Carlin Decl. ¶ 5 & Ex. 4 (R.  
 6 00-02-004), at \*25.).<sup>9</sup>

7 In addition, paragraph 3’s liability waiver language is much broader than paragraph 4’s  
 8 such that the *Tesoro* court’s rejection of a liability waiver in the paragraph 3 context necessarily  
 9 dictates that no waiver was intended or approved by paragraph 4. Paragraph 3 begins “Under no  
 10 circumstances shall PG&E be liable to its customers or their agents for any local or system  
 11 deficiencies . . .” while paragraph 4 begins “PG&E specifically maintains the right . . .” The  
 12 “under no circumstances” language is broader and encompasses a situation in which “in  
 13 PG&E’s sole opinion” paragraph 3 occurs, while the “maintains the right” language is a  
 14 necessary limitation on what is to follow. In short, no additional immunities are created by  
 15 paragraph 4.

16 Further, to the extent there is any doubt concerning the interpretation of Tariff Rule 14, it  
 17 should be resolved in Plaintiff’s favor, especially at this early stage in the litigation. *Pink Dot,*  
 18 *Inc. v. Teleport Comms. Grp.*, 89 Cal. App. 4th 407, 415 (2001) (“The rule has been stated many  
 19 times that if there is an ambiguity in a tariff any doubt in its interpretation is to be resolved in  
 20 favor of the [non-drafter and against the utility].”); *Waters v. Pac. Tel. Co.*, 12 Cal. 3d 1, 10  
 21 (1974) (“[A] provision which is intended to limit one’s liability for negligence must clearly and  
 22 explicitly express that purpose . . .”).

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23  
 24  
 25 <sup>9</sup> PG&E, in its Advice Letter supporting Tariff Rule 14, told the CPUC that the new language  
 26 was “required for direct access” but did not say anything about insulating itself from negligence  
 27 liability. (Carlin Decl. ¶ 6 & Ex. 5 (Advice Letter Re Tariff 14, *Tesoro*, ECF No. 89-9), at p. 7.)  
 28 Instead PG&E stated, “This filing will not increase any rate or charge, cause the withdrawal of  
 service, or conflict with any rate schedule or rule.” *Id.* PG&E’s current interpretation of Tariff  
 Rule 14 conflicts with the long-settled rule that PG&E is liable for its own negligence. *See*  
*Langley*, 41 Cal. 2d at 660-61; Carlin Decl. ¶ 5 & Ex. 4.

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1 Therefore, the court must deny PG&E's Rule 12(b)(6) motion.<sup>10</sup>

2 **C. PG&E's Motion to Strike Should Be Denied**

3 **1. PG&E Failed to Assert any Legitimate Basis to Support a Rule 12(f)**  
4 **Motion**

5 Rule 12(f) permits a court to strike only redundant, immaterial, impertinent, or  
6 scandalous matter from a complaint. *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973-  
7 74 (9th Cir. 2010). Motions to strike are disfavored and should not be granted "unless the  
8 matter to be stricken clearly could have no possible bearing on the subject of the litigation."  
9 *Platte Anchor Bolt, Inc. v. IHI, Inc.*, 352 F. Supp. 2d 1048, 1057 (N.D. Cal. 2004); *see also*  
10 *Colaprico v. Sun Microsystems, Inc.*, 758 F. Supp. 1335, 1339 (N.D. Cal. 1991). "While a court  
11 has the authority to grant a motion to strike class claims at the pleading stage, such motions are  
12 rarely successful." *Lee v. Hertz Corp.*, 330 F.R.D. 557, 562 (N.D. Cal. 2019); *see also Cruz v.*  
13 *Sky Chiefs, Inc.*, No. C-12-02705 DMR, 2013 WL 1892337, at \*6 (N.D. Cal. May 6, 2013)  
14 (Collecting cases and noting that "many courts have recognized that the sufficiency of class  
15 allegations are better addressed through a class certification motion, after the parties have had an  
16 opportunity to conduct some discovery.").

17 PG&E does not claim that Plaintiff's class allegations are redundant, immaterial,  
18 impertinent, or scandalous. This Court's inquiry should end there. *Whittlestone*, 618 F.3d at  
19 974; *Meyer v. Nat'l Tenant Network, Inc.*, 10 F. Supp. 3d 1096, 1104 (N.D. Cal. 2014) (rejecting

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22 <sup>10</sup> In a footnote, PG&E argues that the negligence claim should be dismissed even if its Tariff  
23 Rule 14 argument is wrong, because of the economic loss rule and because the allegations don't  
24 support emotional distress damages. But the economic loss rule does not apply to services, only  
25 goods. *Ladore v. Sony Computer Entm't Am., LLC*, 75 F. Supp. 3d 1065, 1075-76 (N.D. Cal.  
26 2014). And in any event, the Complaint pleads facts sufficient to make out a direct victim claim  
27 (Compl. ¶¶ 10-20 [detailing PG&E's duty to its customers]). *See* PU Code § 451 (PG&E has  
28 pre-existing relationship with its customers and duty to furnish and maintain "adequate,  
efficient, just, and reasonable service."); *Langley*, 41 Cal.2d at 662 ("By undertaking to supply  
electricity to plaintiff, defendant obligated itself to exercise reasonable care toward him, and  
failure to exercise such care has the characteristics of both a breach of contract and a tort.").

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1 motion to strike class claims when “Defendant has not explained what about those class  
2 allegations are ‘redundant, immaterial, or impertinent and scandalous matter’”).

3 **2. Plaintiff’s Class Claim is Well-Pled and Meets Rule 23(b)**  
4 **Requirements**

5 Plaintiff’s class claim is well-pled, and he expects it to be upheld when a motion for  
6 certification proceeds. Plaintiff plainly alleges a common course of conduct impacting himself  
7 and each member of the proposed class. *See, e.g.*, Compl. ¶ 98 (setting forth twelve categories  
8 of common conduct upon which Plaintiff and the Class’s negligence claim is based). Indeed,  
9 besides the limited allegations under the header “PLAINTIFF’S LOSSES” and “PLAINTIFF  
10 ANTHONY GANTNER” which deal specifically with Plaintiff’s personal experience of the  
11 PSPSs, the entire complaint is dedicated to issues common to the class, *i.e.*, PG&E’s negligent  
12 maintenance of its power grid and the PSPSs. *Senne v. Kansas City Royals Baseball Corp.*, 934  
13 F.3d 918, 938 (9th Cir. 2019) (“A proposed (b)(3) class may be certified as long as ‘one or more  
14 of the central issues in the action are common to the class and can be said to predominate . . .  
15 even though other important matters will have to be tried separately, such as damages or some  
16 affirmative defenses peculiar to some individual class members.’”) (internal citation omitted).

17 PG&E seeks to strike Plaintiff’s class claims on essentially two bases: (1)  
18 ascertainability; and (2) predominance/typicality. But the Ninth Circuit has rejected  
19 ascertainability as a requirement to certify a class, much less a basis to strike class allegations.  
20 *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1124 n.4 (9th Cir. 2017) (Ninth Circuit has no  
21 “ascertainability” prerequisite for certification).

22 Defendants cite five cases—all decided before *Briseno*—in support of its incorrect  
23 contention that courts in this District “routinely” strike class claims based on ascertainability and  
24 predominance grounds:

- 25 • *Tietsworth v. Sears*, 720 F. Supp. 2d 1123, 1146 (N.D. Cal. 2010) (products  
26 liability case where class included all purchasers of product when not all  
27 purchasers experienced any problem; granted leave to amend);

28  
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- 1 • *Hovsepien v. Apple, Inc.*, No. 08–5788 JF (PVT), 2009 WL 5069144, at \*6 (N.D. Cal. 2009) (class definition includes individuals who did not experience defect; struck without prejudice on third opportunity to define class);
- 2
- 3
- 4 • *Sanders v. Apple, Inc.*, 672 F. Supp. 2d 978 (N.D. Cal. 2009) (false advertising class action, class definition contained individuals who had not purchased product and who did not see advertising; stricken with leave to amend);
- 5
- 6
- 7 • *Lyons v. Bank of Am., NA*, No. C 11-1232 CW, 2011 WL 6303390, at \*7 (N.D. Cal. Dec. 16, 2011) 2011 WL 63033902011 WL 6303390 (leave to amend granted; proposed class had many non-injured members); and
- 8
- 9
- 10 • *Stearns v. Select Comfort Retail Corp.*, 763 F. Supp. 2d 1128 (N.D. Cal. 2010) (discussed below).
- 11

12 All of these cases, other than *Lyons* (which relies on *Tietzworth* and its since-discredited ascertainability analysis), were decided by Judge Jeremy Fogel. Judge Fogel’s heightened and idiosyncratic review of ascertainability and predominance at the motion to dismiss stage is an outlier. It has not been endorsed by any other judge in the District since *Briseno* or by the Ninth Circuit. Courts decide these issues at the class certification stage, after discovery. *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 942 (9th Cir. 2009) (“Our cases stand for the unremarkable proposition that often the pleadings alone will not resolve the question of class certification and that some discovery will be warranted.”); *Boddie v. Signature Flight Support Corp.*, No. 19-CV-03044-DMR, 2019 WL 3554383, \*4 (N.D. Cal. Aug. 5, 2019) (“It is premature to determine whether class treatment is appropriate” before complaint answered, discovery commenced, or class certification motion filed); *Cholakyan v. Mercedes-Benz USA, LLC*, 796 F. Supp. 2d 1220, 1246 (C.D. Cal. 2011) (collecting cases); *In re NVIDIA GPU Litig.*, No. C 08–04312 JW, 2009 WL 4020104, \*13 (N.D. Cal. Nov. 19, 2009) (“A determination of the ascertainability and manageability of the putative class in light of the class allegations is best addressed at the class certification stage of the litigation”); *Shein v. Canon U.S.A., Inc.*, No. CV–08–07323CASEX, 2009 WL 3109721, \*10 (C.D. Cal. Sept. 22, 2009) (“The Court finds that these matters are more properly decided on a motion for class certification, after the parties have

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1 had an opportunity to conduct class discovery and develop a record”); *In re Jamster Mktg. Litig.*,  
2 No. 05CV0819 JM (CAB), 2009 WL 1456632, \*7 (S.D. Cal. May 22, 2009) (“Even though the  
3 arguments of [the defendant] may ultimately prove persuasive, the court declines to address  
4 issues of class certification at the present time. Piece-meal resolution of issues related to the  
5 prerequisites for maintaining a class action do not serve the best interests of the court or  
6 parties”).

7 Even in the decisions PG&E cites, the motion is granted with leave to amend or without  
8 prejudice, except *Stearns* which had previously given plaintiffs two opportunities to amend their  
9 class allegations. The individualized issues which drove the *Stearns* analysis—statute of  
10 limitations and notice, cure, and reliance elements in plaintiffs’ express warranty claim—are  
11 entirely irrelevant here. *Stearns*, 763 F. Supp. 2d at 1153.

12 PG&E’s typicality argument should also be rejected. “Typicality focuses on the class  
13 representative’s claim—but not the specific facts from which the claim arose—and ensures that  
14 the interest of the class representative ‘aligns with the interests of the class.’” *Just Film, Inc. v.*  
15 *Buono*, 847 F.3d 1108, 1116 (9th Cir. 2017). That Plaintiff may have suffered some different  
16 injuries than other class members is irrelevant: “The requirement of typicality is not primarily  
17 concerned with whether each person in a proposed class suffers the same type of damages;  
18 rather it is sufficient for typicality if the plaintiff endured a course of conduct directed against  
19 the class.” *Id.* at 1118. The Complaint clearly alleges that Plaintiff endured the same course of  
20 conduct PG&E directed at the Class (years of negligent maintenance of power system and  
21 subsequent PSPSs).

22 Likewise, to satisfy predominance on *class certification* (not to survive a motion to  
23 strike), Plaintiff must “show that damages are capable of measurement on a classwide basis, in  
24 the sense that the whole class suffered damages traceable to the same injurious course of  
25 conduct underlying plaintiffs’ legal theory.” *Just Film*, 847 F.3d at 1120. Contrary to PG&E’s  
26 argument, the presence of individualized damages cannot, by itself, defeat class certification  
27 under Rule 23(b)(3). *Id.* PG&E’s other argument concerning predominance—that there were  
28 multiple PSPSs at different places and times—at most supports subclasses. But given Plaintiff’s

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1 legal theory that PG&E’s own negligence caused each and every PSPS, even that is not  
2 appropriate here. The predominant issue is PG&E’s negligence and whether that caused the  
3 PSPSs.

4 PG&E’s argument about the class including as-yet-uninjured individuals ignores binding  
5 authority and non-controversial class action litigation practice. *See, e.g., Briseno*, 844 F.3d  
6 1121, 1124 (affirming class certification order certifying class of purchasers of Wesson Oils  
7 “through the final disposition of this and any and all related actions”); *Shaw v. AMN Healthcare,*  
8 *Inc.*, 326 F.R.D. 247, 258, 275 (N.D. Cal. 2018) (certifying class of nurses in wage and hour  
9 action who worked between a past date and “the date of class notice”); *In re Arris Cable Modem*  
10 *Consumer Litig.*, 327 F.R.D. 334, 374-75 (N.D. Cal. 2018) (certifying class of purchasers of  
11 product “on or after” date certain); *U.S. ex rel. Terry v. Wasatach Advantage Grp., LLC*, 327  
12 F.R.D. 395, 408, 422 (E.D. Cal. 2018) (certifying class of tenants “starting four years prior to  
13 the date of filing this Complaint through the final resolution of this matter”).

14 Finally, PG&E points to this Court’s *dicta* in its order dismissing a Camp Fire adversary  
15 proceeding. Those Camp Fire victims had pre-petition claims which could not be properly  
16 asserted through an adversary proceeding. Their remedy was and is the pre-petition claims  
17 process, not a class action, and thus a denial of class treatment was not prejudicial to that  
18 proposed class.

19 Here, Plaintiff asserts post-petition administrative claims and those claims have not yet  
20 been part of the claims process and made the subject of a noticed bar date in the Chapter 11  
21 case. Plaintiff’s PSPS negligence claims should be allowed to proceed as a class action, so that  
22 Plaintiff’s claims may be efficiently adjudicated and ultimately paid out.

23 Further, the variety of damages this Court was concerned about in certifying a fire victim  
24 class is not a concern here. Indeed, the damages are more like the “smaller claims that may  
25 differ in amount but involve the same basic fact pattern and method of calculation of damages”  
26 the Court noted would be certifiable. *Order Granting Motion to Dismiss First Amended*  
27 *Complaint, Herndon v. PG&E Corp.*, Adv. Pro. No. 19-03005, Dkt. 35 at 11 (Bankr. N.D. Cal.  
28 July 10, 2019).

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1 **V. CONCLUSION**

2 For all the forgoing reasons, the Court should deny PG&E’s Motion to Dismiss and to  
3 Strike in its entirety. If the Court decides to grant any of PG&E’s motion, it should give  
4 Plaintiff leave to amend. *Gompper v. VISX, Inc.*, 298 F.3d 893, 898 (9th Cir. 2002) (quoting  
5 *Polich v. Burlington N., Inc.*, 942 F.2d 1467, 1472 (9th Cir.1991) (“Dismissal without leave to  
6 amend is improper unless it is clear, upon *de novo* review, that the complaint could not be saved  
7 by any amendment.”)).

8 Dated: February 25, 2020

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14 **UNITED STATES BANKRUPTCY COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**  
16 **SAN FRANCISCO DIVISION**

16 In re:  
17 PG&E CORPORATION,  
18 - and -  
19 PACIFIC GAS AND ELECTRIC  
COMPANY,  
20 Debtors.  
21 \_\_\_\_\_  
ANTHONY GANTNER, individually and  
22 on behalf of all those similarly situated,  
23 Plaintiff,  
24 v.  
25 PG&E CORPORATION, a California  
Corporation, and PACIFIC GAS &  
ELECTRIC COMPANY, a California  
26 Corporation,  
Defendants.

Case No. 19-30088 (DM)  
Chapter 11  
(Lead Case)  
(Jointly Administered)  
Adv. Pro. No. 19-03061  
**DEBTORS' MOTION TO DISMISS AND  
MOTION TO STRIKE**  
Date: March 10, 2020  
Time: 10:00 a.m. (Pacific Time)  
Place: United States Bankruptcy Court  
Courtroom 17, 16th Floor  
San Francisco, CA 94102  
Objection Deadline: February 25, 2020

27  
28 SER-130

1 **MOTION**

2 PG&E Corporation (“**PG&E Corp.**”) and Pacific Gas and Electric Company (the  
3 “**Utility**”), as debtors and debtors in possession (collectively, “**PG&E**” or the “**Debtors**”) in the  
4 above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), and as Defendants in the above-  
5 captioned adversary proceeding (the “**Adversary Proceeding**”), hereby move this Court pursuant  
6 to Rules 12(b)(1), 12(b)(6) and 12(f) of the Federal Rules of Civil Procedure (the “**Federal Rules**”),  
7 as made applicable to the Adversary Proceeding by Rule 7012 of the Federal Rules of Bankruptcy  
8 Procedure (the “**Bankruptcy Rules**”), and sections 105 and 362 of title 11 of the United States  
9 Code (the “**Bankruptcy Code**”) (i) to issue an order dismissing the Adversary Proceeding; or (ii)  
10 to the extent the Adversary Proceeding is not dismissed, to issue an order striking the class claims.

11 This Motion is supported by the *Debtors’ Memorandum of Points and Authorities*  
12 included herein.

13 A proposed form of order granting the relief requested herein is annexed hereto as  
14 **Exhibit 1** (the “**Proposed Order**”).

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28 **SER-131**

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PRELIMINARY STATEMENT**

3 Putative Class Plaintiff's ("**Plaintiff**'s") purported class action complaint (the  
4 "**Complaint**") is an attempt to re-litigate the decision of the California Public Utilities Commission  
5 ("**CPUC**") to authorize PG&E's Wildfire Safety Plan, including PG&E's program to temporarily  
6 shut off power in areas where tinder dry vegetation and strong winds create extreme and potentially  
7 deadly fire risk. Following deadly and destructive wildfires in California in 2017 and 2018,  
8 California passed a statute that, among other things, requires PG&E and other utilities to submit a  
9 wildfire safety plan to the CPUC for review, approval, and oversight. PG&E submitted such a plan  
10 in 2019, and the CPUC approved it. The CPUC is now actively engaged in oversight of that plan,  
11 including reviewing the power shutoffs that are the subject of Plaintiff's lawsuit.

12 Plaintiff seeks damages arising from several power shutoffs in 2019 and *any* in  
13 future years conducted pursuant to PG&E's Wildfire Safety Plan. In doing so, Plaintiff seeks to  
14 interfere with PG&E's authority to shut off power for public safety and the CPUC's authority to  
15 review, authorize and regulate PG&E's actions in doing so. Allowing such an action to go forward  
16 could have grave consequences, by interfering with the CPUC's and PG&E's balancing of the  
17 considerations for power shutoffs in the interest of public safety.

18 Plaintiff's Complaint should be dismissed for at least two reasons. *First*, under  
19 California Public Utilities Code § 1759, this Court lacks jurisdiction to hear the claim. Federal  
20 courts consistently have held that § 1759 divests them of jurisdiction to hear cases that would  
21 interfere with an area the CPUC regulates. The de-energization events at issue were part of a  
22 broader public safety program that the CPUC supervised and approved to reduce the increasing risk  
23 of wildfires. The CPUC authorized de-energization events after numerous decisions and  
24 resolutions that specifically took into account the negative effects of power outages on residents  
25 and business owners and balanced that potential harm with the benefits of reducing the risk of life  
26 threatening wildfires in extreme fire threat conditions. Civil lawsuits seeking to impose massive  
27 liability for shutting off power for public safety would fundamentally alter the calibrated balancing  
28 of considerations that the CPUC has been tasked with performing. Because Plaintiff's Complaint

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1 interferes with the ongoing regulatory actions of the CPUC with respect to public safety power  
2 shutoffs, Plaintiff's Complaint should be dismissed. *Second*, even if this Court finds that it does  
3 have jurisdiction to hear the action, Plaintiff's claim fails at the outset because PG&E's relevant  
4 tariff—a document filed with and reviewed by the CPUC that governs the rights and liabilities  
5 between PG&E and its customers and has the force of law—provides that PG&E may interrupt  
6 service without liability to customers if, in PG&E's "sole opinion", it is necessary for public safety.  
7 There is no allegation in the Complaint denying that, in PG&E's opinion, it *was* necessary to  
8 temporarily interrupt service for public safety.

9           In addition to the entire Complaint being subject to dismissal, Plaintiff's class  
10 allegations also fail and should be stricken because they do not meet the predominance and  
11 ascertainability requirements of Rule 23. The range of injuries allegedly suffered by putative class  
12 members varies significantly, rendering the class fundamentally defective. Plaintiff alleges that his  
13 grape harvest was delayed and ultimately lost value due to a backlog for grape processing at a  
14 winery where he sold his grapes. This alleged injury cannot possibly be shared by the class of "all  
15 California residents and business owners who had their power shutoff" that Plaintiff seeks to  
16 represent. Similarly, Plaintiff's causation arguments vary across plaintiffs in the purported class.  
17 Plaintiff alleges that the 2019 PSPS events were caused by PG&E's negligent maintenance of its  
18 electrical equipment. Under PG&E's Wildfire Safety Plan, however, electric lines are not subject  
19 to de-energization on a state-wide basis. Instead, they are based on the weather conditions  
20 prevailing in discrete geographic areas or on a line-by-line basis. The question of whether an  
21 allegedly negligent failure in the past to inspect a particular facility caused a line to be de-energized  
22 in 2019 is necessarily specific to the specific line and plaintiff in question. Finally, the purported  
23 class is not even ascertainable because it includes "all California residents and business owners  
24 who had their power shutoff due to PG&E's October 9, October 23, October 26, October 28, and  
25 November 20 Outages *and any subsequent voluntary Outages*", a group that necessarily includes  
26 countless individuals with no injury to speak of. Compl. ¶ 85 (emphasis added). Because of the  
27 numerous deficiencies in Plaintiff's proposed class, this Court should strike those class claims at  
28 the pleading stage.

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## 1 II. BACKGROUND

2 Wildfire risk in the state of California is greater now than ever before. A confluence  
3 of unprecedented climate conditions, including increased temperatures, extended periods of  
4 drought, bark beetle infestations and unusually high winds have significantly increased the risk that  
5 a downed electrical line will cause a catastrophic fire. The tragic consequences of the 2017 and  
6 2018 Northern California wildfires make clear just how important it is to minimize the risk of future  
7 wildfires. As a result, electrical utilities in the state of California, including PG&E and its peer  
8 utilities, have developed and implemented a variety of wildfire risk mitigation measures. These  
9 measures were developed through a deliberative process, and per California law are subject to the  
10 CPUC's approval and supervision.

11 De-energization, often referred to by PG&E as "public safety power shutoff" or  
12 "PSPS", is a key part of these mitigation efforts. De-energization involves proactively shutting off  
13 electricity during dangerous weather and fire conditions to reduce the risk of utility infrastructure  
14 starting catastrophic wildfires.

### 15 A. Regulation of De-Energization by the CPUC

16 The CPUC regulates the operation of electric utilities in California, including efforts  
17 related to safety and wildfire prevention. *See* Cal. Const., art. XII, §§ 1–6; *San Diego Gas & Elec.*  
18 *Co. v. Super. Ct. (Covalt)*, 13 Cal. 4th 893, 923-24 (1996) (explaining that the CPUC "has  
19 comprehensive jurisdiction over questions of public health and safety arising from utility  
20 operations"). In addition, the CPUC exercises a supervisory role over utilities' decisions to  
21 proactively de-energize their electric lines as a public safety measure.

#### 22 1. De-Energization Before the 2017 Wildfires

23 The first California utility to develop a permanent proactive de-energization  
24 program was San Diego Gas & Electric Company ("SDG&E"). *See* Application of San Diego Gas  
25 & Electric Company (U 902-E), Filed Dec. 22, 2008, attached as Orsini Decl. Ex. A.<sup>1</sup> On December

26 <sup>1</sup> Federal courts "may take judicial notice of 'matters of public record'". *Lee v. City of Los Angeles*,  
27 250 F.3d 668, 689 (9th Cir. 2001). "Matters of public record" includes the existence and subject  
28 matter of CPUC decisions and public filings. *See Nugget Hydroelectric, L.P. v. Pac. Gas & Elec.*  
*Co.*, 981 F.2d 429, 435 (9th Cir. 1992) (taking judicial notice of CPUC decisions).

1 22, 2008, SDG&E submitted a de-energization plan to the CPUC, seeking permission to shut off  
2 electricity to certain distribution and/or tie lines during periods of extreme weather conditions and  
3 in limited high fire risk areas. *Id.* at 1. This measure was prompted in part by several deadly  
4 wildfires that had occurred within SDG&E's service territory the year before. *Id.* at 2-3.

5           The CPUC initially denied SDG&E's application on September 18, 2009, stating  
6 that it would approve SDG&E's plan only if SDG&E could demonstrate that "shutting off power  
7 results in a net reduction in wildfire ignitions during hazardous fire conditions" and "the benefits  
8 of SDG&E's Power Shut-off Plan outweigh the adverse impacts". *See* CPUC Decision 09-09-030  
9 (Sept. 18, 2009), at 41, attached as Orsini Decl. Ex. B. The CPUC acknowledged that SDG&E had  
10 the authority—and, indeed, the obligation—under California Public Utilities Code §§ 451 and  
11 399.2(a) to shut off power if necessary to protect public safety, but rejected the plan set forth by  
12 SDG&E. *Id.* at 61. In April 2012, the CPUC revisited its 2009 decision on SDG&E's application,  
13 holding that SDG&E could de-energize after carefully balancing the threat of an ignition against  
14 the serious risks associated with shutting off power, even if wind gusts did not exceed the design  
15 limits for SDG&E's system. *See* CPUC Decision 12-04-024 (Apr. 26, 2012), at 30, attached as  
16 Orsini Decl. Ex. C. In making this determination, the CPUC was cognizant of the hardships that  
17 power shutoffs bring to communities, residents and businesses, yet nevertheless found that the  
18 harms associated with fires sparked by electrical equipment merited such a drastic precautionary  
19 measure. *See e.g., id.* at 7-8 (reviewing concerns from groups regarding adverse effects of power  
20 shutoffs on persons with disabilities); *see also* CPUC Decision 09-09-030, at 21-23, 31-40  
21 (reviewing negative effects of power shutoffs such as loss of communication networks, adverse  
22 impact on water supply, costs to prepare for shutoff events, costs incurred during shutoff events,  
23 loss of food and medications and loss of economic activity). The CPUC also recognized that even  
24 if a system is reasonably maintained, high winds below the design limit can still create a risk to  
25 public safety. CPUC Decision 12-04-024, at 32 ("[T]here is a risk that SDG&E's existing facilities  
26 may fail at wind speeds below 91 mph" so "[i]t would be extremely dangerous to prohibit SDG&E  
27 from shutting off power when SDG&E reasonably believes there is an imminent danger of  
28

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1 energized power lines falling onto tinder dry vegetation in Santa Ana wind conditions and there are  
2 no other safety measures available”).

3 In authorizing de-energization under certain circumstances, the CPUC reserved its  
4 rights to approve de-energization plans going forward and to review specific de-energization  
5 decisions to assess whether they were, in the CPUC’s judgment, reasonable. *Id.* at 30. That same  
6 year, the CPUC also held that any investor-owned utility that wanted to include proactive  
7 de-energization in its fire-prevention plan was required to file an application with the CPUC for  
8 authority to do so. *See* CPUC Decision 12-01-032 (Jan. 18, 2012), at 175-76, attached as Orsini  
9 Decl. Ex. D.

## 10 2. Current De-Energization Requirements

11 Following the 2017 California wildfire season, which, according to the CPUC,  
12 “further demonstrate[d] the fire risk in California”, the CPUC adopted ESRB-8, which enhanced  
13 the CPUC’s de-energization policies and extended application of CPUC Decision 12-04-024 to all  
14 investor-owned utilities. CPUC Resolution ESRB-8 (July 16, 2018), at 1, 2, 5, attached as Orsini  
15 Decl. Ex. E. The CPUC set forth several factors it may consider when reviewing a decision to de-  
16 energize for reasonableness, including whether (1) the decision to shut off power was necessary to  
17 protect public safety; (2) the utility relied on alternatives to de-energization, to the extent available;  
18 (3) the utility “reasonably believe[d] that there [was] an imminent and significant risk that strong  
19 winds will topple its power lines onto tinder dry vegetation or will cause major vegetation-related  
20 impacts on its facilities during periods of extreme fire hazard”; (4) the utility considered efforts to  
21 mitigate the adverse impacts of de-energization; and (5) other factors, as appropriate. *Id.* at 4  
22 (emphasis in original). In addition, ESRB-8 requires that utilities submit a report to the CPUC  
23 following public safety power shutoffs within 10 days after each de-energization event, as well as  
24 after events where the utility provided notification to local governments, agencies and customers  
25 of a possible de-energization. *Id.* at 5.

26 Following the Camp Fire, the CPUC opened an Order Instituting Rulemaking in  
27 December 2018 “to examine its rules allowing electric utilities under the Commission’s jurisdiction  
28 to de-energize power lines in case of ~~dangerous~~ conditions that threaten life or property in

1 California”. CPUC Rulemaking 18-12-005 (Dec. 19, 2018), at 1, attached as Orsini Decl. Ex. F.  
2 The goal of the rulemaking is to refine the practice of de-energization to “ensure it enhances public  
3 safety while minimizing unintended consequences”. *Id.* at 3. Since then, the CPUC has issued a  
4 Phase I decision with respect to communication and notification protocols and opened a second  
5 phase to address additional aspects of PSPS processes and practices. *See* CPUC Decision  
6 19-05-042 (June 4, 2019), attached as Orsini Decl. Ex. G; *Assigned Commissioner’s Phase 2*  
7 *Scoping Memo and Ruling* (Aug. 14, 2019), attached as Orsini Decl. Ex. H. The CPUC has also  
8 indicated that it will address issues raised by interested parties with regard to utility de-energization  
9 plans during the course of this rulemaking. *See, e.g.,* CPUC Decision 19-05-037 (June 4, 2019),  
10 at 28, attached as Orsini Decl. Ex. I.

### 11 3. Wildfire Mitigation Plans

12 In August 2018, the California legislature passed Senate Bill (“SB”) 901 (Dodd),  
13 which requires utilities with equipment in areas with significant fire risk to prepare a wildfire  
14 mitigation plan annually for review by the CPUC. Annual wildfire mitigation plans must include  
15 “[p]rotocols for . . . deenergizing portions of the electrical distribution system that consider the  
16 associated impacts on public safety”, as well as “protocols related to mitigating the public safety  
17 impacts” of de-energization. Cal. Pub. Util. Code § 8386(c)(6). In October 2018, the CPUC  
18 opened Rulemaking 18-10-007 to oversee a formal rulemaking process for receiving comments  
19 from the public, local and state agencies, and other interested parties, regarding utility wildfire  
20 mitigation plans. *See* CPUC Rulemaking 18-10-007 (Oct. 25, 2018), attached as Orsini Decl. Ex.  
21 J; Comments of the CPUC in Response to Order to Show Cause, *United States v. Pacific Gas and*  
22 *Electric Co.*, No. CR 14-0175 WHA (N.D. Cal. Jan. 28, 2019), Dkt. 987, at 10, attached as Orsini  
23 Decl. Ex. K. After compliance with “all applicable rules, regulations, and standards, as  
24 appropriate” was verified, the CPUC approved the wildfire mitigation plans submitted by utilities.  
25 *See* CPUC Decision 19-05-036 (June 3, 2019), at 13 (quoting Cal. Pub. Util. Code § 8386(d)),  
26 attached as Orsini Decl. Ex. L.

27  
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1           **B.     PG&E’s PSPS Program**

2           PG&E developed its PSPS program in 2018 following the North Bay Wildfires.  
3 PG&E’s 2018 PSPS program provided a framework for proactively de-energizing distribution lines  
4 and 60 kV and 70 kV transmission lines that traversed Tier 3 high fire threat districts (“HFTD”) when  
5 warranted by fire risk conditions. Pursuant to this program, PG&E initiated its first PSPS event on  
6 October 14, 2018. The event impacted approximately 60,000 customers.

7           In advance of the 2019 wildfire season, and pursuant to SB 901, PG&E filed its 2019  
8 Wildfire Safety Plan with the CPUC on February 6, 2019.<sup>2</sup> The Wildfire Safety Plan detailed PG&E’s  
9 implementation of new and ongoing safety precautions to address the growing threat of extreme  
10 weather and wildfires across its service area. For example, the plan called for PG&E to conduct  
11 enhanced safety inspections in advance of the 2019 fire season of electric infrastructure in high-fire  
12 threat areas to facilitate a proactive approach to repairing or replacing components that are at-risk of  
13 initiating fires. *See* WSP at 52-60. The enhanced inspections included ground inspections of all  
14 distribution, transmission and substation assets, as well as climbing inspections and drone inspections  
15 of every transmission tower in PG&E’s service territory. *Id.* PG&E committed to immediately  
16 address anything identified as an imminent threat to public safety. *Id.* at 8.

17           PG&E’s Wildfire Safety Plan also included a significant expansion of its PSPS  
18 program to include all distribution and transmission lines that cross Tier 2 and Tier 3 HFTD areas.  
19 Under the plan, PG&E is required to carefully review a combination of factors when determining if  
20 power must be turned off for safety, including: (a) a Red Flag Warning declared by the National  
21 Weather Service; (b) low humidity levels, generally 20 percent and below; (c) forecasted sustained  
22 winds generally above 25 miles per hour and wind gusts in excess of approximately 45 mph, depending  
23 on location and site-specific conditions; (d) computer simulated ignition spread and consequence  
24 modeling based on current conditions; (e) conditions of dry fuel on the ground and live vegetation;

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26 \_\_\_\_\_  
27 <sup>2</sup> *See* PG&E Amended 2019 Wildfire Safety Plan (Feb. 6, 2019) (“WSP”),  
28 [https://www.pge.com/pge\\_global/common/pdfs/safety/emergency-preparedness/natural-  
disaster/wildfires/Wildfire-Safety-Plan.pdf](https://www.pge.com/pge_global/common/pdfs/safety/emergency-preparedness/natural-disaster/wildfires/Wildfire-Safety-Plan.pdf).



1 and (f) on-the-ground, real-time wildfire related information from PG&E's Wildfire Safety Operations  
2 Center and field observations from PG&E field crews. *See* WSP at 97-98.

3 The CPUC approved PG&E's Wildfire Safety Plan in Decision 19-05-037, issued on  
4 June 4, 2019.<sup>3</sup> *See* CPUC Decision 19-05-037, at 2. United States District Judge William Alsup also  
5 made compliance with PG&E's Wildfire Safety Plan a condition of PG&E's probation. *See* Order  
6 Adopting New Conditions of Probation, *United States v. Pac. Gas & Elec. Co.*, No. CR 14-0175 WHA  
7 (N.D. Cal. Apr. 3, 2019), Dkt. 961, at 1-2, attached as Orsini Decl. Ex. M.

8 On September 4, 2019, PG&E filed with the CPUC its first progress report on the  
9 guidelines set forth in Appendix A of CPUC Decision 19-05-042. The progress report also included  
10 PG&E's interim protocol for de-energization of transmission lines.<sup>4</sup> On January 15, 2020, PG&E filed  
11 with the CPUC an updated progress report for its Wildfire Safety Plan that included an update on the  
12 commitments PG&E made regarding its PSPS program.<sup>5</sup>

### 13 C. The 2019 PSPS Events and the CPUC's Order Instituting Investigation

14 During the 2019 wildfire season, PG&E executed de-energization events on October 9,  
15 October 23, October 26, October 29 and November 20, 2019 (the "2019 PSPS Events").<sup>6,7</sup> Compl. at  
16 ¶¶ 63-78. Leading up to each of the 2019 PSPS Events, PG&E forecast high wind speeds, low  
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18  
19 <sup>3</sup> PG&E filed a Second Amended Wildfire Safety Plan on April 25, 2019. *See* PG&E Second  
20 Amendment to PG&E's (U 39 E) Wildfire Mitigation Plan (Apr. 25, 2019),  
21 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M283/K824/283824582.PDF>. The CPUC  
22 indicated that it would consider the Second Amended Wildfire Safety Plan during Phase 2 of the  
23 Wildfire Mitigation Plan proceedings. *See* CPUC Decision 19-05-037, at 4 n.1.

24 <sup>4</sup> *See generally* PG&E Progress Report on Implementation of De-Energization Guidelines (Sept. 4,  
25 2019), [https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/News\\_Room/NewsUpdates/2019/9-4-19%20Pacific%20Gas%20and%20Electric%20PSPS%20Progress%20Report.pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/News_Room/NewsUpdates/2019/9-4-19%20Pacific%20Gas%20and%20Electric%20PSPS%20Progress%20Report.pdf).

26 <sup>5</sup> *See generally* Updated Progress Report of PG&E (U 39 E) Wildfire Mitigation Plan (Jan. 15,  
27 2020), [https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/News\\_Room/NewsUpdates/2020/R1810007%20PGE%20WMP%20Status%20Update%201-15-20.pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/News_Room/NewsUpdates/2020/R1810007%20PGE%20WMP%20Status%20Update%201-15-20.pdf).

28 <sup>6</sup> PG&E has agreed to provide a credit of \$100 for residents and \$250 to business customers for  
issues with PG&E's call center and website during the October 9, 2019 PSPS event.

<sup>7</sup> Although not referenced in the Complaint, PG&E also executed a de-energization event on June 7,  
2019. *See* PG&E's PSPS Report to the CPUC June 7-9, 2019 De-Energization Event,  
[https://www.cpuc.ca.gov/uploadedFiles/CPUCPublic\\_Website/Content/Utilities\\_and\\_Industries/Energy\\_-\\_Electricity\\_and\\_Natural\\_Gas/PSPS%20Report%20Letter\\_06-21-19.pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUCPublic_Website/Content/Utilities_and_Industries/Energy_-_Electricity_and_Natural_Gas/PSPS%20Report%20Letter_06-21-19.pdf).



1 humidity levels and critically dry fuel levels.<sup>8</sup> After each of the events, PG&E personnel patrolled all  
2 sections of de-energized PSPS circuits for safety prior to re-energizing. During these patrols, PG&E  
3 personnel collectively identified hundreds of instances of vegetation and infrastructure damage and  
4 hazard issues, including instances where vegetation fell or blew onto or near de-energized lines. These  
5 patrols revealed many lines where a fire could have been ignited but for de-energization. For example,  
6 for the October 9-12 PSPS event, PG&E's current information indicates that 44 instances of vegetation  
7 damage likely would have caused arcing and 12 instances of infrastructure damage likely would have  
8 caused arcing. *See* Response of PG&E to Request for Information on PSPS, *United States v. Pac. Gas*  
9 *& Elec. Co.*, No. CR 14-0175 WHA (N.D. Cal. Oct. 30, 2019), Dkt. 1110, at 2-3, attached as Orsini  
10 Decl. Ex. N. Four such instances from the 2019 PSPS events are depicted below.<sup>9</sup>



24 <sup>8</sup> *See e.g.*, PG&E's Amended PSPS Report to the CPUC October 9-12, 2019 De-Energization Event,  
25 (Nov. 8, 2019), at 3-8, [https://www.pge.com/pge\\_global/common/pdfs/safety/emergency-  
preparedness/natural-disaster/wildfires/PSPS-Report-Letter-10.09.19-amend.pdf](https://www.pge.com/pge_global/common/pdfs/safety/emergency-preparedness/natural-disaster/wildfires/PSPS-Report-Letter-10.09.19-amend.pdf).

26 <sup>9</sup> The photographs can be found in the following reports submitted to the CPUC: PG&E's Amended  
27 PSPS Report to the CPUC October 9-12, 2019 De-Energization Event, at Appendix D; PG&E's  
28 PSPS Report to the CPUC October 26 & 29 De-Energization Event (Nov. 18, 2019), at Appendix C,  
[https://www.pge.com/pge\\_global/common/pdfs/safety/emergency-preparedness/natural-  
disaster/wildfires/PSPS-Report-Letter-10.26.19.pdf](https://www.pge.com/pge_global/common/pdfs/safety/emergency-preparedness/natural-disaster/wildfires/PSPS-Report-Letter-10.26.19.pdf).



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12 In accordance with ESRB-8, after each of the PSPS events in 2019, PG&E filed a report  
13 with the CPUC. Following the October 9-12 PSPS event, the CPUC sent PG&E a letter ordering  
14 PG&E to conduct an after-action review, take immediate corrective actions and file a response and  
15 weekly updates until all corrective actions were addressed. *See* Letter from Marybel Batjer to William  
16 Johnson (Oct. 14, 2019), at 2, attached as Orsini Decl. Ex. O. The CPUC also ordered PG&E  
17 executives to appear and provide public testimony at an Emergency Meeting on October 18, 2019. *Id.*  
18 at 2-3. In November 2019, the CPUC opened an Order Instituting Investigation “to determine whether  
19 California’s investor-owned utilities prioritized safety and complied with the Commission’s  
20 regulations and requirements with respect to their Public Safety Power Shutoff (PSPS) events in late  
21 2019”. CPUC Order Instituting Investigation 19-11-013 (Nov. 13, 2019), at 1, attached as Orsini Decl.  
22 Ex. P. The CPUC also issued an Order to Show Cause in Rulemaking 18-12-005 directing PG&E to  
23 show why it should not be sanctioned for violating the communication/notification requirements in  
24 ESRB-8. CPUC Order to Show Cause in Rulemaking 18-12-005 (Nov. 12, 2019), at 1, attached as  
25 Orsini Decl. Ex. Q. The CPUC’s investigation into the 2019 PSPS events remains ongoing.

26 **D. Plaintiff’s Allegations**

27 On December 19, 2019, Plaintiff filed a complaint initiating an adversary  
28 proceeding alleging that the 2019 PSPS events were caused by PG&E’s negligent maintenance of

1 its electrical equipment. Compl. ¶ 41 (“PG&E’s failure to conduct proper and regular inspections  
2 of its equipment and failure to make necessary repairs . . . were the reason [for the] Outages in the  
3 fall of 2019.”); *id.* ¶¶ 2, 98. Plaintiff alleges that the members of the putative class suffered financial  
4 hardships, property damage, loss of earnings and profits and emotional distress as a result of the  
5 2019 PSPS events. *Id.* ¶¶ 99-102. Plaintiff seeks to certify a class including “[a]ll California  
6 residents and business owners who had their power shutoff by PG&E during the [2019 PSPS  
7 events] and any subsequent voluntary Outages PG&E imposes on its customers during the course  
8 of litigation”. *Id.* ¶ 85. Plaintiff demands special and general damages of at least \$2.5 billion,  
9 injunctive relief and punitive and exemplary damages. *Id.* at 23.

10 The Complaint is silent regarding the Wildfire Safety Plan or PG&E’s decision to  
11 implement the 2019 PSPS Events. Plaintiff makes no allegations to suggest that the 2019 PSPS  
12 events were conducted in a manner inconsistent with PG&E’s Wildfire Safety Plan or CPUC  
13 requirements. The Complaint also is silent on the various wildfire mitigation protocols undertaken  
14 by PG&E between 2017 and the 2019 PSPS events. Instead, Plaintiff simply concludes, without  
15 any factual allegations, that alleged past equipment failures, corporate greed and unrelated  
16 regulatory violations caused the 2019 PSPS events. *Id.* ¶¶ 41, 98.

### 17 **III. ARGUMENT**

#### 18 **A. The Complaint Should Be Dismissed Under Rule 12(b)(1) Because Plaintiff’s** 19 **Claims Are Preempted by California Public Utilities Code § 1759.**

20 Rule 12 of the Federal Rules of Civil Procedure (the “**Federal Rules**”) is made  
21 applicable in adversary proceedings through Rule 7012 of the Federal Rules of Bankruptcy  
22 Procedure (the “**Bankruptcy Rules**”). Under Federal Rule 12(b)(1), a complaint must be dismissed  
23 if this Court does not have subject matter jurisdiction over the cause of action. *Brands v. First*  
24 *Transit, Inc.*, 278 Fed. App’x. 722, 724 (9th Cir. 2008). When a defendant moves to dismiss a  
25 complaint for lack of subject matter jurisdiction, the plaintiff bears the burden of proving that the  
26 court has jurisdiction to decide the claim. *Hexom v. Or. Dep’t of Transp.*, 177 F.3d 1134, 1135  
27 (9th Cir. 1999).

28 **SER-146**

1           This Court lacks jurisdiction to hear this Complaint under § 1759 of the California  
2 Public Utilities Code. Section 1759 reflects a policy choice by the California legislature that civil  
3 trial courts should not entertain actions that interfere with the duties and supervisory power of the  
4 CPUC. Under § 1759(a), “[n]o court of this state, except the Supreme Court and the court of  
5 appeal . . . shall have jurisdiction to review, reverse, correct, or annul any order or decision of the  
6 commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or  
7 interfere with the commission in the performance of its official duties, as provided by law and the  
8 rules of court.” As the California Supreme Court has explained, in enacting § 1759, the Legislature  
9 divested courts of subject matter jurisdiction over actions that not only would reverse or annul a  
10 specific CPUC order, but also those actions that “would simply have the effect of undermining a  
11 general supervisory or regulatory policy of the commission, *i.e.*, when it would ‘hinder’ or  
12 ‘frustrate’ or ‘interfere with’ or ‘obstruct’ that policy”. *Covalt*, 13 Cal. 4th at 918 (footnote  
13 omitted). Federal courts have held that § 1759 likewise deprives them of jurisdiction over state law  
14 claims that interfere with the CPUC’s regulatory authority. *See Rosen v. Uber Techs. Inc.*, 164 F.  
15 Supp. 3d 1165, 1174, 1177 (N.D. Cal. 2016) (holding § 1759 barred tort claims because judicial  
16 intervention would interfere with the CPUC’s ongoing regulatory authority); *Cooney v. Cal. Pub.*  
17 *Util. Comm’n*, No. C 12-6466 CW, 2014 WL 3531270, at \*3 (N.D. Cal. July 15, 2014) (dismissing  
18 state law claims under § 1759 “where the relief granted would undermine a regulatory regime  
19 established by the CPUC”).

20           In determining whether § 1759 applies, federal courts apply the three part *Covalt*  
21 test. *See, e.g., Rosen*, 164 F. Supp. 3d at 1172 (noting that “[f]ederal courts use the same *Covalt*  
22 test” as state courts). In *Covalt*, the California Supreme Court held that a lower court does not have  
23 jurisdiction over a civil action where: (1) the CPUC has the authority to regulate the conduct at  
24 issue; (2) the CPUC has exercised that authority; and (3) the action would hinder or interfere with  
25 CPUC policies.<sup>10</sup> 13 Cal. 4th at 923, 926, 935.

26 \_\_\_\_\_  
27 <sup>10</sup> Private actions to recover tort damages are authorized under California Public Utilities Code  
28 § 2106 where damages arise from a violation of CPUC regulations. But § 2106 is “limited to those  
situations in which an award of damages would not hinder or frustrate the commission’s declared  
supervisory and regulatory policies”. *Waters v. Pac. Tel. Co.*, 12 Cal. 3d 1, 4 (1974).



1 Plaintiff seeks damages arising from the 2019 PSPS events, *and any subsequent*  
2 PSPS events that occur prior to resolution of the action. *See* Compl. at ¶ 85. The 2019 PSPS events  
3 were conducted pursuant to a program approved by the CPUC and under its supervision, including  
4 an ongoing investigation of those events. As explained below, California Public Utilities Code  
5 § 1759 preempts private Plaintiffs from bringing an action that would interfere with the supervision  
6 and regulation of an area by the CPUC. *See Hartwell Corp. v. Super. Ct.*, 27 Cal. 4th 256, 275-79  
7 (2002) (holding that claims that the public utilities provided unhealthy water, even though they met  
8 the commission standard, “interfere[s] with a ‘broad and continuing supervisory or regulatory  
9 program’” and are barred by § 1759). Accordingly, this Court does not have jurisdiction over these  
10 claims.

11 **1. The CPUC has the authority to regulate public safety power shutoffs.**

12 The first part of the *Covalt* test is to determine whether the CPUC “ha[s] the  
13 authority to adopt a regulatory policy on the subject matter of the litigation”. *Rosen*, 164 F. Supp.  
14 3d at 1174. In determining whether the CPUC has authority to regulate certain conduct, courts look  
15 to the underlying statutes, mandates from the legislature and the CPUC’s own statements regarding  
16 its authority over the conduct. *Kairy v. SuperShuttle Int’l*, 660 F. 3d 1146, 1151 (9th Cir. 2011)  
17 (recognizing that “both the general regulatory powers granted to the [C]PUC and the [C]PUC’s  
18 own interpretation of its jurisdictional authority in a decision concerning [the conduct]” indicate  
19 that the first prong of the *Covalt* test is met); *Covalt*, 13 Cal. 4th at 924-25 (finding authority  
20 conveyed by California Public Utilities Code).

21 The CPUC unquestionably has authority to regulate and supervise public safety  
22 power shutoffs. California law authorizes the CPUC to require every utility to “construct, maintain,  
23 and operate” its system in a manner that will “safeguard the health and safety of its employees, . . .  
24 customers, and the public”. Cal. Pub. Util. Code § 768; *Covalt*, 13 Cal.4th at 924 (explaining that  
25 the CPUC “has comprehensive jurisdiction over questions of public health and safety arising from  
26 utility operations”). The CPUC has cited “its broad jurisdiction over matters regarding the safety  
27 of public utility operations and facilities” as providing authority to regulate power shutoffs. CPUC  
28 Decision 12-04-024, at 30; CPUC Resolution 15-08-008, at 8. Further, in SB 901, the California

1 legislature enlarged the CPUC's existing regulatory tools to mitigate the risk of wildfires and  
2 oversee utilities' wildfire mitigation programs in part by requiring that the CPUC review and  
3 approve wildfire mitigation plans submitted by the utilities, which could include de-energization  
4 protocols. SB 901 § 38, 2018 Leg. (Cal. 2018).

5 **2. The CPUC has exercised its authority to regulate public safety power**  
6 **shutoffs.**

7 The second prong of the *Covalt* test is met where the CPUC has actually exercised  
8 its authority to adopt a policy on the conduct in question. *Covalt*, 13 Cal. 4th at 926-34; *Sarale v.*  
9 *Pac. Gas & Elec. Co.*, 189 Cal. App. 4th 225, 237-39 (2010). In *Covalt*, for example, the California  
10 Supreme Court found that the CPUC exercised its authority to regulate electromagnetic safety  
11 requirements where the CPUC investigated the effects of electromagnetic fields, developed  
12 guidelines for policies on line construction and continued to revise and develop its policies with  
13 further Orders Instituting Investigation, interim regulations and decisions. 13 Cal. 4th at 926-934.  
14 Courts have also found that the CPUC exercised its authority where it developed regulations on the  
15 conduct in question and enforced those regulations. *See, e.g., Sarale*, 189 Cal. App. 4th at 237-40  
16 (finding that the CPUC exercised authority where it adopted regulations on minimum tree trimming  
17 requirements).

18 This prong of the *Covalt* test is met because the CPUC has adopted policies on  
19 public safety power shutoffs by developing guidelines for the implementation of PSPS plans for all  
20 investor-owned utilities in the state and maintaining a supervisory role in reviewing utilities'  
21 decisions to take such measures. As discussed above, the CPUC gave SDG&E authority to de-  
22 energize its lines for public safety purposes in 2012 even if wind speeds did not exceed equipment  
23 design requirements, creating guidelines for such events. *See* CPUC Decision 12-04-024, at 29-32.  
24 In 2018, the CPUC extended the requirements it established for SDG&E to all investor-owned  
25 utilities through Resolution ESRB-8. CPUC Resolution ESRB-8, at 9. This resolution requires  
26 that public utilities submit a report to the CPUC within 10 days of each PSPS event and the CPUC  
27 retains the authority to review and assess the de-energization decision to determine whether it was  
28 reasonable. *Id.* at 5. The CPUC has ~~been~~ **SEB-149** to review and develop these requirements and

1 guidelines, issuing an Order Instituting Rulemaking in December 2018 to further examine the de-  
2 energization policies and guidelines it adopted in its earlier decisions, CPUC Rulemaking 18-12-  
3 005, at 1, and adopting revised communication and notification guidelines for PSPS events in  
4 June 2019, CPUC Decision 19-05-042, at 2.

5 **3. This action would hinder or interfere with the CPUC's policies for public**  
6 **safety power shutoffs.**

7 This action would hinder or interfere with the CPUC's ongoing regulatory authority  
8 over public safety power shutoff events because it seeks to undermine policy decisions by the  
9 CPUC. *See, e.g., Cooney*, 2014 WL 3531270 at \*3 (holding that a claim was preempted by § 1759  
10 because finding in favor of plaintiffs would be contrary to CPUC's policy that installation of certain  
11 products was consistent with state directives).

12 Here, Plaintiff's action directly interferes with the CPUC's policy decisions. The  
13 CPUC reviewed and approved PG&E's 2018 PSPS program as outlined in its Wildfire Safety Plan  
14 in June 2019, after extensive public input and review. *See* CPUC Decision 19-05-037, attached as  
15 Orsini Decl. Ex. I. This process involved the CPUC providing feedback on an initial outline,  
16 receiving comments from objectors, and holding pre-hearing conferences where interested parties  
17 were invited to speak. *See id.* PG&E's PSPS decisions in October and November 2019 were  
18 undertaken in accordance with this Wildfire Safety Plan and the guidelines set forth in Resolution  
19 ESRB-8 and the CPUC's subsequent orders. The CPUC's authorization of power shutoffs pursuant  
20 to ESRB-8 and its review and approval of PG&E's PSPS program that calls for power shutoffs  
21 when there are hot, gusty winds and tinder dry vegetation reflects a policy judgment that PSPS  
22 events under those conditions are warranted.

23 Plaintiff's action seeks billions in monetary damages and punitive and exemplary  
24 awards for alleged losses arising from the 2019 PSPS events and any future PSPS events. If  
25 Plaintiff prevails, PG&E would be held liable for taking precautionary measures authorized by the  
26 CPUC to prevent wildfires. This is interference. *See Covalt*, 13 Cal. 4th at 939 (finding that  
27 damages claim relating to electric and magnetic fields emanating from power lines "would interfere  
28 with the policy of the commission on power line electric and magnetic fields" because such recovery

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1 would be inconsistent with the commission’s conclusion that the electromagnetic field at issue do  
2 not present a substantial risk of physical harm); *Hartwell*, 27 Cal. 4th at 278 (holding that superior  
3 court is preempted from hearing claims alleging that utility did not provide safe drinking water  
4 where quality standards set by the CPUC were met). For example, the CPUC specifically approved  
5 a PSPS program for PG&E and SDG&E that would allow utilities to de-energize where wind  
6 speeds were below the design limits for equipment. *See* CPUC Decision 12-04-024, at 32. By his  
7 action, Plaintiff seeks to hold PG&E liable for power shutoffs unless the wind speeds exceed such  
8 limits. *See* Compl. ¶¶ 66, 78 (noting that wind speeds during the October 10, 2019 and November  
9 20, 2019 PSPS events never did not reach “the 92 miles per hour threshold established by CPUC  
10 General Order 95”).

11 Further, the threat of massive civil liability and injunctive relief for de-energization  
12 decisions plainly and significantly interferes with the balance that the CPUC has struck for guiding  
13 utility decisions on when to interrupt service. It also interferes with PG&E’s ability to comply with  
14 its Wildfire Safety Plan (and consequently one of its probation conditions prescribed by Judge  
15 Alsup), because that Plan calls for PG&E to initiate PSPS events when hot, windy weather and  
16 tinder dry vegetation warrants it.

17 Furthermore, Plaintiff’s action interferes with the CPUC’s ongoing supervision and  
18 investigation of the PSPS events. California courts have found that a civil action interferes with  
19 the CPUC duties where there is an existing CPUC investigation into the allegedly unlawful conduct.  
20 *See Guerrero v. Pac. Gas & Elec. Co.*, 230 Cal. App. 4th 567, 576 (2014) (civil action preempted  
21 under § 1759 where CPUC investigating utility’s conduct at issue); *Schell v. S. Cal. Edison Co.*,  
22 204 Cal. App. 3d 1039, 1046 (1988) (action interfered with CPUC’s authority because issues raised  
23 in plaintiffs’ cause of action were pending before the CPUC in three cases). For example, in  
24 *Guerrero*, the plaintiff filed a class action complaint following the San Bruno gas explosion,  
25 seeking restitution and disgorgement for PG&E’s allegedly “wrongful diversion of more than \$100  
26 million in rates it collected over a 13-year period that” plaintiff alleged “should have been expended  
27 on natural gas pipeline safety projects”. 230 Cal. App. 4th at 569-70. The Court held that the  
28 action was preempted under § 1759 because the civil action would “hold PG&E liable for charging

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1 rates expressly authorized by the [C]PUC, and that remain under the [C]PUC's consideration". *Id.*  
2 The CPUC had approved PG&E's prior rates and "[t]he impact of the expenses to be incurred by  
3 PG&E for gas transmission improvements as a result of the San Bruno explosion, and the  
4 relationship those expenses may bear to past natural gas rates and PG&E's past practices, remain a  
5 focus of the ongoing administrative proceedings initiated by the [C]PUC in the explosion's  
6 aftermath." *Id.* at 577.

7           Similarly, here, the CPUC is supervising and investigating the 2019 PSPS events.  
8 On November 13, 2019, the CPUC issued an Order Instituting Investigation into the October 2019  
9 PSPS events. *See generally* CPUC Order Instituting Investigation 19-11-013. The investigation  
10 will determine whether investor-owned utilities, including PG&E, "prioritized safety and complied  
11 with the Commission's regulations and requirements" with respect to their October 2019 PSPS  
12 events. The investigation will review the utilities' actions prior to, during and after the PSPS events  
13 and the quality of their "internal coordination, situational awareness, external  
14 communication . . . pre-planning and execution". *Id.* at 2. The CPUC also issued an Order to Show  
15 Cause in Rulemaking 18-12-005 directing PG&E to show why it should not be sanctioned for  
16 violating the communication/notification requirements in ESRB-8. CPUC Order to Show Cause  
17 in Rulemaking 18-12-005, at 1. The CPUC has also indicated that it may exercise its authority to  
18 impose penalties under California Public Utilities Code §§ 2107 and 2108 in connection with the  
19 PSPS events. *See id.* at 5. Plaintiff's civil action interferes with these investigations because this  
20 Court could reach the opposite conclusion as the CPUC and hold PG&E liable for harm arising  
21 from PSPS that the CPUC finds to be reasonable, or vice versa. *See Anchor Lighting v. S. Cal.*  
22 *Edison Co.*, 142 Cal. App. 4th 541, 551-52 (2006) (action preempted because CPUC previously  
23 dismissed similar claims in regulatory proceeding); *Covalt*, 13 Cal. 4th at 939 (action preempted  
24 because it would find defendant liable for construction and safety standards CPUC deemed  
25 reasonable).

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1                   **4. The purported class is not without recourse if this Court finds that it does not have jurisdiction.**

2                   To the extent Plaintiff disagrees with the CPUC's criteria for PSPS events, the  
3 proper method to dispute them is through the rulemaking process. Where an aggrieved party seeks  
4 to challenge a CPUC decision or policy that they claim is harmful, they may file a petition for  
5 judicial review of that decision or policy directly to the California Supreme Court or court of appeal.  
6 Cal. Pub. Util. Code §§ 1756(a), 1758(a). Further, if the purported class does in fact allege that the  
7 execution of the PSPS events was unreasonable or failed to comply with CPUC standards, they  
8 may file a complaint with the CPUC under California Public Utilities Code § 1702. These damages  
9 overlap substantially with the relief sought by Plaintiff in this lawsuit. Although the CPUC does  
10 not have the ability to award tort damages, it does have the authority to award rate refunds where  
11 it is considered "just and reasonable", *id.* § 532, or reparations, *id.* § 734. The CPUC may also  
12 issue fines and penalties against PG&E if it finds that the utility did not comply with CPUC policies  
13 to deter further violations. *Id.* §§ 2107, 2108. The available remedies thus lie before the CPUC,  
14 not this Court. *See Sarale*, 189 Cal. App. 4th at 244 (finding that § 1759 "does not leave plaintiffs  
15 without a remedy for excessive tree trimming" where "their remedy lies before the commission  
16 rather than in superior court").

17                   **B. The Complaint Should Be Dismissed Because Tariff Rule 14 Authorizes PG&E  
18 To Interrupt Service Without Liability When In PG&E's Sole Opinion It Is  
19 Necessary for Public Safety.**

20                   Even if this Court finds that it has jurisdiction over Plaintiff's action, the Complaint  
21 should be dismissed because it fails as a matter of law.

22                   Under Federal Rule 12(b)(6), a Bankruptcy Court may dismiss a complaint if it fails to  
23 "state a claim upon which relief can be granted". To avoid dismissal under Federal Rule 12(b)(6), a  
24 plaintiff must aver in the complaint "sufficient factual matter, accepted as true, to state a claim to relief  
25 that is plausible on its face". *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

26                   The putative class here is composed of PG&E customers.<sup>11</sup> Compl. ¶ 85 (defining the  
27 proposed class as "All California residents and business owners who had their power shutoff by PG&E

28 <sup>11</sup> PG&E has no duty to any non-customer claimants as a result of an interruption in service. *White v. Southern Cal. Edison Co.*, 25 Cal. App. 4th 448 (1994) ("In the absence of a contract . . . a

1 during the [Outages] and any subsequent voluntary Outages PG&E imposes on its customers during  
 2 the course of litigation.”) PG&E’s obligations to its customers are governed by its tariff rules. Utility  
 3 tariffs are filed with and reviewed by the CPUC and “have the force and effect of law”. *Dollar-A-Day*  
 4 *Rent-A-Car Sys. v. Pac. Tel. & Tel. Co.*, 26 Cal. App. 3d 454, 457 (1972); *Duggal v. G.E. Capital*  
 5 *Commc’ns. Servs.*, 81 Cal. App. 4th 81, 82 (2000) (“filed tariffs are the equivalent of federal  
 6 regulations which have the force of law”); *Dyke Water Co. v. Public Utilities Comm’n*, 56 Cal. 2d 105,  
 7 107 (1961) (noting that, when a tariff rule is published and filed with the CPUC, it has “the force and  
 8 effect of a statute, and any deviations therefrom are unlawful unless authorized by the commission”).

9 A plain reading of PG&E’s Tariff Rule 14 provides that the decision to shut off a  
 10 customer’s power cannot trigger liability when, in PG&E’s “sole opinion”, it is necessary for public  
 11 safety.<sup>12</sup> Paragraph 4 of Electric Rule No. 14 provides that PG&E “maintains the right to interrupt its  
 12 service deliveries, without liability to the Customers or electric service providers (ESPs) affected,  
 13 when, *in PG&E’s sole opinion*, such interruption is necessary for . . . [s]afety of a customer, a PG&E  
 14 employee, or the public at large”. PG&E Electric Rule No. 14, CPUC Sheet No. 19762-E (emphasis  
 15 added), attached as Orsini Decl. Ex. R.

16 The Complaint here is barred by paragraph 4 of Tariff Rule 14. Plaintiff does not  
 17 dispute that PG&E initiated its PSPS events for public safety. Indeed, he acknowledges it. Compl. ¶  
 18 98 (Defendants “shut[] off power to millions of customers to avoid further wildfires”). And there is  
 19 no allegation that PG&E did not hold the view that the shutoffs were necessary for public safety.  
 20

21  
 22 utility owes no duty to a person injured as a result of an interruption of service or a failure to provide  
 23 service.”) (citation omitted).

24 <sup>12</sup> In a case for damages arising from a power outage, a California court granted summary judgment  
 25 in PG&E’s favor based on a plain reading of the language of paragraph 4 of Tariff Rule 14. *Melvin*  
 26 *L. Cockhren II vs. Pac. Gas & Elec. Co. et al.*, No. CGC-13-529137 (Cal. Super. Ct. Aug. 27, 2014).  
 27 Other reported cases dealing with service interruptions do not address paragraph 4 of Tariff Rule 14.  
 28 *See Langley v. Pac. Gas & Elec. Co.*, 41 Cal. 2d 655, 660 (1953) (discussing paragraph 1 of Tariff  
 Rule 14, which relates to PG&E’s duty to exercise reasonable diligence in furnishing a sufficient  
 supply to its customers); *Tesoro Refining & Mktg. Co. LLC v. Pac. Gas & Elec. Co.*, 146 F. Supp. 3d  
 1170 (N.D. Cal. 2015) (interpreting paragraph 3 of Tariff 14, a separate provision that relates to  
 “transmission related outages” and does not contain the “sole opinion” provision in paragraph 4).

1 Accordingly, the Complaint fails to allege facts that could subject PG&E to liability to its Customers  
2 for a service disruption.<sup>13</sup>

3 **C. The Court Should Strike the Plaintiff's Class Claims Because They Fail on**  
4 **Predominance and Ascertainability Grounds.**

5 Even if the Court does not dismiss the Complaint outright, it should strike Plaintiff's  
6 class allegations because he fails to show that a class action is appropriate. "Under Rules 23(c)(1)(A)  
7 and 23(d)(1)(D), as well as pursuant to Rule 12(f), this Court has authority to strike class allegations  
8 prior to discovery if the complaint demonstrates that a class action cannot be maintained." *Tietsworth*  
9 *v. Sears*, 720 F. Supp. 2d 1123, 1146 (N.D. Cal. 2010). A putative class must satisfy the requirements  
10 of Federal Rule of Civil Procedure 23(a)—numerosity, commonality, typicality, and adequacy. *See*  
11 *Fed. R. Civ. P. 23(a)*. Here, the class must also satisfy Rule 23(b)(3)'s requirements that "questions  
12 of law common to class members predominate over any questions affecting individual members, and  
13 that a class action is superior to other methods for fairly and efficiently adjudicating the controversy".  
14 *Fed. R. Civ. P. 23(b)(3)*. Finally, the class must be ascertainable. *See Hovsepian v. Apple, Inc.*, No.  
15 08-5788 JF (PVT), 2009 WL 5069144, at \*2 (N.D. Cal. Dec. 17, 2009).

16 Courts in this District routinely strike claims at the pleading stage where the  
17 complaint's class definition fails on predominance or ascertainability grounds. *See, e.g., Tietsworth*,  
18 720 F. Supp. 2d at 1147-48 (striking class claims on predominance grounds where they "involve  
19 elements that are individual to each purported class member" as illustrated by the "varying factual  
20 allegations made by the various named plaintiffs"); *id.* at 1146-47 (striking class claims on  
21 ascertainability grounds where the class definition includes individuals who "have not experienced  
22 any problems"); *Sanders v. Apple, Inc.*, 672 F. Supp. 2d 978, 991 (N.D. Cal. 2009) (predominance and  
23 ascertainability); *Lyons v. Bank of Am., NA*, No. C 11-1232 CW, 2011 WL 6303390, at \*7 (N.D. Cal.

24 \_\_\_\_\_  
25 <sup>13</sup> Even if the Court finds jurisdiction over Plaintiff's claims, and the claims survive the explicit  
26 liability carve out in Tariff 14, the types of damages he seeks are not compensable under a  
27 negligence theory. Plaintiff alleges two categories of damages: economic losses and emotional  
28 distress. The former would be barred by the economic loss doctrine. *See Robinson Helicopter Co.*  
*v. Dana Corp.*, 34 Cal. 4th 979, 989-90 (2004); *Terpin v. AT&T Mobility*, 399 F. Supp. 3d 1035,  
1048-49 (C.D. Cal. 2019). The latter would also be barred because Plaintiff has not alleged personal  
injury, a bystander theory of liability or sufficient facts to make out a direct victim claim. *See*  
*Burgess v. Super. Ct.*, 2 Cal. 4th 1064, 1071 (1992).

1 Dec. 16, 2011) (ascertainability); *Hovsepien*, 2009 WL 5069144, at \*6 (ascertainability).<sup>14</sup> In *Stearns*  
2 *v. Select Comfort Retail Corp.*, 763 F. Supp. 2d 1128 (N.D. Cal. 2010), for example, the class claims  
3 were defective on both grounds. There, the plaintiffs sued a bed manufacturer alleging negligence and  
4 various other claims on behalf of all individuals “who used and/or purchased [a particular type of  
5 bed]” during the class period “and whose beds contained mold”, *id.* at 1152. Addressing  
6 predominance, the Court accepted the defendants’ argument that “the action will become  
7 unmanageable” because of “the differing claims of property damage” across the class, as illustrated  
8 by one plaintiff’s “unique claim that they had to replace their HVAC system”. *Id.* The Court further  
9 emphasized that “claims [were] inappropriate for class treatment” where they “involve elements that  
10 are individual to each purported class member, such as the provision of notice”, and would require “an  
11 individualized inquiry as to each class member’s individual circumstances”. *Id.* at 1152-53.  
12 Addressing ascertainability, the Court rejected the putative class because it “[did] not exclude persons  
13 ... who have not suffered any damages at all”. *Id.* at 1152. Acknowledging that “attempts to amend  
14 class-wide allegations appear to be futile”, the Court struck the class allegations. *Id.* at 1153.  
15 Similarly, in its order dismissing the Camp Fire adversary proceeding, this Court noted that wildfire  
16 claims were not amenable for class treatment because “common questions of fact do not exist, as each  
17 claimant has suffered his or her own damages”. *Order Granting Motion to Dismiss First Amended*  
18 *Complaint, Herndon v. PG&E Corp.*, Adv. Pro. No. 19-03005, Dkt. 35 at 11 (Bankr. N.D. Cal. July  
19 10, 2019).

20 Like the failed class in *Stearns*, Plaintiff’s class allegations are demonstrably defective  
21 and fail on both predominance and ascertainability grounds. The putative Class Plaintiff’s description  
22 of his own highly atypical injury makes plain that individual factual questions overwhelm any  
23 commonalities across the class. *See* Fed. R. Civ. P. 23(a), (b)(3); Compl. ¶¶ 82-83, 80-84. According  
24 to the Complaint, Plaintiff complains that he “was required on an emergency basis to reschedule the

25 \_\_\_\_\_  
26 <sup>14</sup> The Ninth Circuit has more recently declined to use the term “ascertainability”, but in doing so  
27 approved of “address[ing] the types of alleged definitional deficiencies other courts have referred to  
28 as ‘ascertainability’ issues,” such as vague or overbroad class definitions, “through analysis of Rule  
23’s enumerated requirements.” *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1124 n.4 (9th Cir.  
2017).

1 harvesting of his grapes” to a Sunday and that “the quality of those grapes and the wine produced  
2 therefrom were materially diminished” due to a “backlog for grape processing at the winery”. *Id.* ¶ 83.  
3 This unique claim cannot be shared by the class of “all California residents and business owners who  
4 had their power shutoff” or may have their power shutoff that Plaintiff seeks to represent. *Id.* ¶ 85.

5 Plaintiff’s remaining, incidental allegations of injury are no more amenable to class  
6 treatment. Among the losses, Plaintiff alleges emotional distress—a highly individualized form of  
7 injury—due to a lack of cell phone connectivity and fear of the dark. *Id.* ¶ 81. And his more tangible  
8 allegations of harm are no less particularized: “lack of use of his home office”, *id.* ¶ 83; “loss of food  
9 items in his refrigerator”, *id.* ¶ 84; “his well-water pump ... was shut off”, *id.* ¶ 82; “expenses for  
10 alternate means of lighting and power”, *id.* ¶ 84, and “loss of habitability of his house”, *id.* ¶ 80.

11 For each class member, the Court would be required to determine which, if any, of these “various  
12 losses” were suffered and whether such harm was caused by the challenged outages. *Id.* ¶ 3. Such  
13 individualized concerns will necessarily predominate over class-wide considerations, rendering class  
14 treatment unwarranted. *See also Abbott v. American Elec. Power, Inc.*, 2012 WL 3260406 at \*4-5  
15 (S.D. W. Va. Aug. 8, 2012) (finding common issues of law or fact did not predominate “because the  
16 issues of causation and damages will require highly individualized determinations” where “[e]ach  
17 customer potentially have incurred different injuries”).

18 Proving the cause of the putative class members’ diverse and idiosyncratic injuries is  
19 likewise ill-suited to class wide resolution. In its dismissal of the Camp Fire adversary proceeding,  
20 this Court noted the difficulties in conducting a class action alleging a wide variety of disparate  
21 injuries. *Herndon*, Adv. Pro. No. 19-03005, Dkt. 35 at 10 (“victims of the Camp Fire and other fires  
22 have suffered different types of injuries ranging from loss of property to loss of life to loss of  
23 prospective economic advantage. These disparate claims will likely present different questions of law  
24 and fact that could not be appropriately addressed or resolved in the context of a class action.”). As  
25 the Complaint makes clear, the complained-of conduct involves a number of different outages  
26 implemented over different geographical areas, over an extended period of time and impacting diverse  
27 groups of individuals in diverse locations. *See id.* ¶¶ 63-78 (describing four discrete outages that began  
28 and ended at different times for different customers in different counties). Even if PG&E’s alleged

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1 failure to maintain its infrastructure was relevant to the issue concerning the power outages, as Plaintiff  
2 contends, such conduct—which is inherently location specific—only highlights the inappropriateness  
3 of a class action. Proving the connection between the alleged negligent maintenance of a particular  
4 line and the shutoffs of specific power lines would require an individualized causation analysis. From  
5 the face of the Complaint, class treatment is inappropriate. *Stearns*, 763 F. Supp. 2d at 1152-53; *see*  
6 *also Abbott*, 2012 WL 3260406 at \*4 (“When examining the causation element in class actions against  
7 a public utility, courts have generally found that a power outage cannot be viewed as a single event  
8 that is the result of a single cause . . . This makes a class-wide causation analysis impossible and  
9 requires the court to make individualized causation determinations for each customer’s claim.”).<sup>15</sup>

10 Plaintiff’s class allegations also fail on ascertainability grounds due to the inclusion of  
11 putative class members who have suffered no harm whatsoever. Where a class includes members  
12 whose injuries are purely hypothetical, “[s]uch members have no injury and no standing to sue”. *See*  
13 *Hovsepian*, 2009 WL 5069144, at \*6. The class therefore is not ascertainable. *See id.* (“[T]he class  
14 is not ascertainable because it includes members who have not experienced any problems with their  
15 iMac display screens.”); *Tietsworth*, 720 F. Supp. 2d at 1146. Here, Plaintiff’s putative class is defined  
16 to include “all California residents and business owners who had their power shutoff due to PG&E’s  
17 October 9, October 23, October 26, October 28, and November 20 Outages and any subsequent  
18 voluntary Outages”. Compl. ¶ 85. This definition sweeps in individuals whose injury is purely  
19 conjectural—residents who experience “any subsequent” outages but have not yet experienced any  
20 power loss. *Id.* And it sweeps in individuals who have suffered no injury: those who went unharmed  
21 by the outages. Accordingly, this Court should strike these class claims at the pleading stage.

22  
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25 <sup>15</sup> These shortcomings with respect to predominance are compounded, where, as here, individual  
26 class members would have to demonstrate that their purely economic damages are not barred from  
27 recovery by the economic loss doctrine. *See Andrews v. Plains All American*, 777 Fed. App’x. 889,  
28 891 (9th Cir. 2019) (holding the district court abused its discretion in granting class certification  
where individual class members would, among other things have “to present varying evidence as to . . .  
whether the economic loss doctrine bars recovery.”).

1 **IV. CONCLUSION**

2 For the reasons set forth above, the Debtors respectfully request that the Court dismiss  
3 the Adversary Proceeding, or, in the alternative, strike the class allegations in Plaintiff's Complaint.

4 WHEREFORE the Debtors respectfully request entry of orders granting (i) the relief  
5 requested herein and (ii) such other and further relief as the Court may deem just and appropriate.

6  
7  
8 Dated: January 21, 2020

9 **WEIL, GOTSHAL & MANGES LLP**  
10 **CRAVATH, SWAINE & MOORE LLP**  
11 **KELLER & BENVENUTTI LLP**

12 /s/ Kevin J. Orsini  
13 Kevin J. Orsini

14 *Attorneys for Debtors and Debtors in Possession*

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28 **SER-159**



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13 **UNITED STATES BANKRUPTCY COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

15 In re:  
16 PG&E CORPORATION,  
- and -  
17 PACIFIC GAS AND ELECTRIC  
18 COMPANY,  
19 Debtors.

Case No. 19-30088 (DM)  
Chapter 11  
(Lead Case)  
(Jointly Administered)  
Adv. Pro. No. 19-03061

20 ANTHONY GANTNER, individually and  
on behalf of all those similarly situated,

21 Plaintiff,

22 v.

23 PG&E CORPORATION, a California  
Corporation, and PACIFIC GAS &  
24 ELECTRIC COMPANY, a California  
Corporation,

25 Defendants.

**DECLARATION OF KEVIN J. ORSINI  
IN SUPPORT OF DEBTORS' MOTION  
TO DISMISS AND MOTION TO STRIKE**

Date: March 10, 2020  
Time: 10:00 a.m. (Pacific Time)  
Place: United States Bankruptcy Court  
Courtroom 17, 16th Floor  
San Francisco, CA 94102

26 Objection Deadline: February 25, 2020

27  
28 SER-160

1 Pursuant to 28 U.S.C. § 1746, I, Kevin J. Orsini, hereby declare under penalty of perjury as follows:

2 1. I am a Member of Cravath, Swaine & Moore LLP, counsel to Pacific Gas and Electric  
3 and PG&E Corporation (collectively, “PG&E” or the “Debtors”) in the above-captioned Chapter 11  
4 Cases. I am admitted to practice in the State of New York and am admitted to practice before this  
5 Court *pro hac vice*. I submit this Declaration in Support of Debtors’ Motion to Dismiss and Motion  
6 to Strike. I have personal knowledge of the facts set forth in this declaration except as otherwise  
7 stated.

8 2. Attached hereto as Exhibit A is a true and correct copy of the Application of San Diego  
9 Gas & Electric Company (U 902-E), filed December 22, 2008.

10 3. Attached hereto as Exhibit B is a true and correct copy of the California Public Utilities  
11 Commission (“CPUC”) Decision Denying Without Prejudice San Diego Gas & Electric Company’s  
12 Application to Shut Off Power During Periods of High Fire Danger (Decision 09-09-030), issued  
13 September 18, 2009.

14 4. Attached hereto as Exhibit C is a true and correct copy of the CPUC Decision Granting  
15 Petition to Modify Decision 09-09-030 and Adopting Fire Safety Requirements for San Diego Gas &  
16 Electric Company (Decision 12-04-024), issued April 26, 2012.

17 5. Attached hereto as Exhibit D is a true and correct copy of the CPUC Decision Adopting  
18 Regulations to Reduce Fire Hazards Associated with Overhead Power Lines and Communication  
19 Failures (Decision 12-01-032), issued January 18, 2012.

20 6. Attached hereto as Exhibit E is a true and correct copy of the CPUC Resolution  
21 Extending De-Energization Reasonableness, Notification, Mitigation and Reporting Requirements in  
22 Decision 12-04-024 to All Electric Investor Owned Utilities (Resolution ESRB-8), issued July 16,  
23 2018.

24 7. Attached hereto as Exhibit F is a true and correct copy of the CPUC Order Instituting  
25 Rulemaking to Examine Electric Utility De-Energization of Power Lines in Dangerous Conditions  
26 (Rulemaking 18-12-005), issued December 19, 2018.

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1           8.       Attached hereto as Exhibit G is a true and correct copy of the CPUC Decision Adopting  
2 De-Energization (Public Safety Power Shut-off) Guidelines (Phase 1 Guidelines) (Decision 19-05-  
3 042), issued June 4, 2019.

4           9.       Attached hereto as Exhibit H is a true and correct copy of the Assigned Commissioner's  
5 Phase 2 Scoping Memo and Ruling (Rulemaking 18-12-005), filed August 14, 2019.

6           10.      Attached hereto as Exhibit I is a true and correct copy of the CPUC Decision on Pacific  
7 Gas and Electric Company's 2019 Wildfire Mitigation Plan Pursuant to Senate Bill 901 (Decision 19-  
8 05-037), issued June 4, 2019.

9           11.      Attached hereto as Exhibit J is a true and correct copy of the CPUC Order Instituting  
10 Rulemaking to Implement Electric Utility Wildfire Mitigation Plans Pursuant to Senate Bill 901  
11 (Rulemaking 18-10-007), issued October 25, 2018.

12          12.      Attached hereto as Exhibit K is a true and correct copy of Comments of the CPUC in  
13 Response to Order to Show Cause, *United States v. Pac. Gas & Elec. Co.*, No. CR 14-0175 WHA  
14 (N.D. Cal. Jan. 28, 2019), Dkt. 987.

15          13.      Attached hereto as Exhibit L is a true and correct copy of the CPUC Guidance Decision  
16 on 2019 Wildfire Mitigation Plans Submitted Pursuant to Senate Bill 901 (Decision 19-05-036), issued  
17 June 3, 2019.

18          14.      Attached hereto as Exhibit M is a true and correct copy of the Order Adopting New  
19 Conditions of Probation, *United States v. Pac. Gas & Elec. Co.*, No. CR 14-0175 WHA (N.D. Cal.  
20 Apr. 3, 2019), Dkt. 1040.

21          15.      Attached hereto as Exhibit N is a true and correct copy of the Response of PG&E to  
22 Request for Information on PSPS, *United States v. Pac. Gas & Elec. Co.*, No. CR 14-0175 WHA  
23 (N.D. Cal. Oct. 30, 2019), Dkt. 1110.

24          16.      Attached hereto as Exhibit O is a true and correct copy of the Letter from Marybel  
25 Batjer, CPUC President, to William Johnson, CEO of Pacific Gas and Electric Company, dated  
26 October 14, 2019.

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1           17.     Attached hereto as Exhibit P is a true and correct copy of the CPUC Order Instituting  
2 Investigation on the Commission’s Own Motion on the Late 2019 Public Safety Power Shutoff Events,  
3 (Investigation 19-11-013), issued November 13, 2019.

4           18.     Attached hereto as Exhibit Q is a true and correct copy of the Assigned Commissioner  
5 and Assigned Administrative Law Judge’s Ruling Directing PG&E To Show Cause Why It Should  
6 Not Be Sanctioned By The Commission For Violation of Public Utilities Code Sections 451  
7 Commission Decision 19-05-042 And Resolution ESRB-8 (Rulemaking 18-12-005), filed November  
8 12, 2019.

9           19.     Attached hereto as Exhibit R is a true and correct copy of PG&E Electric Rule No. 14,  
10 CPUC Sheet No. 19762-E.

11                     I declare under penalty of perjury that, to the best of my knowledge and after reasonable  
12 inquiry, the foregoing is true and correct.

13  
14 Dated: January 21, 2020

15   /s/ Kevin J. Orsini

16   Kevin J. Orsini  
17   Cravath, Swaine & Moore LLP

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28   SER-163

# EXHIBIT B

SER-164

ALJ/TIM/jt2

**Date of Issuance 9/18/2009**

Decision 09-09-030 September 10, 2009

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

Application of San Diego Gas & Electric  
Company for Review of its Proactive  
De-Energization Measures and Approval  
of Proposed Tariff Revisions (U902E).

Application 08-12-021  
(Filed December 22, 2008)

**DECISION DENYING WITHOUT PREJUDICE  
SAN DIEGO GAS & ELECTRIC COMPANY'S APPLICATION TO  
SHUT OFF POWER DURING PERIODS OF HIGH FIRE DANGER**

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- 1 -

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A.08-12-021 ALJ/TIM/jt2

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**DECISION DENYING WITHOUT PREJUDICE  
SAN DIEGO GAS & ELECTRIC COMPANY'S APPLICATION TO  
SHUT OFF POWER DURING PERIODS OF HIGH FIRE DANGER**

**1. Summary of Decision**

This decision denies, without prejudice, San Diego Gas & Electric Company's (SDG&E) application to shut off power to certain areas when hazardous fire conditions are present. SDG&E has not met its burden to demonstrate that the benefits of shutting off power outweigh the significant costs, burdens, and risks that would be imposed on customers and communities in the areas where power is shut off.

Today's decision directs SDG&E to make a good faith effort to develop a comprehensive fire prevention program in collaboration with all stakeholders. Parties are encouraged to use the Commission's Alternative Dispute Resolution process for this purpose. The agreed-upon fire prevention program must be based on a cost-benefit analysis that demonstrates (1) the program will result in a net reduction in wildfire ignitions, and (2) the benefits of the program outweigh any costs, burdens, or risks the program imposes on customers and communities.

**2. Summary of SDG&E's Application**

In Application (A.) 08-12-021, SDG&E asks the Commission to review its Emergency Power Shut-Off Plan (referred to hereafter as "the Power Shut-Off Plan").<sup>1</sup> Under its Power Shut-Off Plan, SDG&E will turn off electricity to certain

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<sup>1</sup> We interpret SDG&E's request for Commission review of its Power Shut-Off Plan as a request for Commission authorization to implement the Power Shut-Off Plan.

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regions during periods of high fire danger in order to prevent its overhead power lines from igniting potentially catastrophic wildfires. SDG&E intends to implement its Power Shut-Off Plan in time for the 2009 autumn fire season in Southern California.

SDG&E anticipates that providers of essential services, such as police departments and hospitals, may need to increase their use of electricity in the hours leading up to an announced power shut-off event in order to prepare for the event. SDG&E requests that electric usage by these customers during the period immediately preceding a shut-off event be exempted from (1) the determination of peak demand changes, (2) critical peak pricing, and (3) the demand response program.

Finally, SDG&E requests authority to revise Electric Tariff Rule 14. The existing Tariff Rule 14 states that SDG&E is not liable to its customers for an interruption in service “caused by inevitable accident, act of God, fire, strikes, riots, war or any other cause not within its control.” SDG&E seeks to revise Tariff Rule 14 to explicitly state that SDG&E will not be liable for any costs or adverse impacts that customers experience due to the Power Shut-Off Plan.

### **3. Procedural Background and Chronology**

SDG&E filed A.08-12-021 on December 22, 2008. Notice of A.08-12-021 appeared in the Daily Calendar on December 30, 2008. SDG&E served copies of A.08-12-021 on the San Diego Office of Emergency Services; the San Diego County Red Cross; and all State Legislators and members of Congress who represent any part of SDG&E’s service territory. SDG&E also mailed a notice of A.08-12-021 to (1) all cities and counties in SDG&E’s service territory, and (2) all customers in areas subject to the Power Shut-Off Plan. In addition, SDG&E published notice of A.08-12-021 in newspapers of general circulation.

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The following parties filed protests to A.08-12-021: Pacific Bell Telephone Company d/b/a/ AT&T California and affiliated entities (together, "AT&T");<sup>2</sup> the California Cable and Telecommunications Association (CCTA); CTIA-The Wireless Association (CTIA); the Commission's Consumer Protection and Safety Division (CPSD); the Commission's Division of Ratepayer Advocates (DRA); and a consortium of six municipal water districts (together, "the Water Districts").<sup>3</sup> SDG&E filed a reply on February 9, 2009.

A prehearing conference (PHC) was held on February 10, 2009. The following parties filed PHC statements: AT&T; CCTA; CoxCom, Inc., and Cox California Telecom, L.L.C. (together, "Cox"); CPSD and DRA (together, "CPSD/DRA"); CTIA; Disability Rights Advocates (DisabRA); the Mussey Grade Road Alliance (the Alliance); the San Diego County Superintendent of Schools ("the School Districts"); SDG&E; Southern California Edison Company (SCE); Time Warner Cable Inc. (Time Warner); Utility Consumers Action Network (UCAN); and the Water Districts. An Assigned Commissioner's Ruling and Scoping Memo was issued on February 26, 2009, pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure (Rule).

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<sup>2</sup> The entities filing the AT&T protest were Pacific Bell Telephone Company (U-1001-C); AT&T Communications of California, Inc. (U-5002-C); TCG San Francisco (U-5454-C); TCG Los Angeles, Inc. (U-5462-C); TCG San Diego (U-5389-C); AT&T Mobility LLC; New Cingular Wireless PCS, LLC (U-3060-C); Cagal Cellular Communications Corporation (U-3021-C); Santa Barbara Cellular Systems, Ltd. (U-3015-C); and Visalia Cellular Telephone Company (U-3014-C) d/b/a AT&T Mobility LLC.

<sup>3</sup> The Water Districts are Valley Center Municipal Water District, Ramona Municipal Water District, Padre Dam Municipal Water District, Rainbow Municipal Water District, Fallbrook Public Utilities District, and Yuima Municipal Water District.

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There were no evidentiary hearings. The formal record was developed primarily through the direct written testimony submitted by SDG&E with its Application,<sup>4</sup> informational filings submitted by SDG&E, and written comments submitted by all the parties. The factual assertions in these documents were verified in accordance with Rule 1.11. The following table shows the chronology of the informational filings and written comments.

| <b>Date 2009</b> | <b>Document</b>                           | <b>Party Filing Document</b>   |
|------------------|---|--|
| March 13         | Informational Filing                      | SDG&E  |
| March 27         | Opening Comments                          | AT&T; the Alliance; CCTA and Time Warner (together, CCTA); CPSD/DRA; Cox; CTIA; DisabRA; SDG&E; SCE; the School Districts; the Water Districts; and UCAN |
| April 3          | Informational Filing                      | SDG&E  |
| April 10         | Reply Comments                            | AT&T; the Alliance; CCTA; CPSD/DRA; Cox; the California Farm Bureau (CFB); DisabRA; SDG&E; SCE; the School Districts; the Water Districts; and UCAN      |
| April 10         | Informational Filing                      | SDG&E  |
| April 17         | Reply to Informational Filing on April 10 | DisabRA; and jointly by the School Districts and the Water Districts   |

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<sup>4</sup> SDG&E provided the direct written testimony of the following witnesses with their subject topics in parentheses: David L. Geier (Policy); Sohrab A. Yari (Engineering and Operations); Joe Velasquez (Customer Issues); and Greg Lawless (Special Needs and Low-Income customer Issues).

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| <b>Date 2009</b> | <b>Document</b>   | <b>Party Filing Document</b>                      |
|------------------|---|---|
| May 12           | Comments re: Portable Backup Generators to Pump Water for Fire Fighting Purposes                                      | SDG&E and CPSD/DRA                                |
| May 19           | Reply to Comments Filed on May 12   | SDG&E and DisabRA                                 |
| May 26           | Additional Comments re: Portable Backup Generators  | The Alliance, CPSD/DRA, and SDG&E                 |
| June 10          | Further Comments re: Portable Backup Generators   | SDG&E and the Water Districts                     |
| June 30          | Comments re: (1) Use of San Diego County's Reverse 911 System, and (2) County Oversight of Portable Backup Generators | The Alliance, SDG&E, and the Water Districts      |
| July 2           | Reply to the Comments Filed on June 30, 2009  | DisabRA; SDG&E; and jointly by CCTA, Cox and CTIA |

Two public participation hearings (PPHs) were held in San Diego County. One was held in Alpine on April 7, 2009, and the second in Valley Center on April 8, 2009. Both PPHs were held in areas subject to the Power Shut-Off Plan. In addition, a public workshop was held in Valley Center on April 8, 2009, to obtain input from local governmental agencies regarding the impact of the Power Shut-Off Plan on public health, safety, and welfare. Workshop participants included the San Diego County Sheriff Department, the San Diego County Office of Emergency Services, the San Diego County Air Pollution Control District, the School Districts, and the Water Districts.

There was considerable public participation in this proceeding. More than 100 members of the public, elected representatives, government officials, and representatives of community organizations spoke at the PPHs and public

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workshop, and there were many letters and email sent to the Commission. The public's input was carefully considered in crafting today's decision.

#### **4. Summary of Parties' Positions**

All the intervening parties except SCE oppose SDG&E's Power Shut-Off Plan. Most of the comments received from the public also oppose the Plan. Those who oppose the Plan believe it will do little to prevent wildfires while increasing the risk of wildfires from other sources. They also contend that shutting off power will impose burdens on SDG&E's customers that outweigh any likely benefit.

Those who support SDG&E's Power Shut-Off Plan believe that shutting off power when fire risks are high is a reasonable precaution against the possibility of catastrophic wildfires being ignited by power lines.

#### **5. Commission Jurisdiction and Standard of Review**

SDG&E's Application to shut off power under specified circumstances in order to eliminate the risk of power-line fires is subject to Pub. Util. Code § 451<sup>5</sup> which states, in relevant part, as follows:

Every public utility shall 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.

SDG&E has a duty under § 451 to provide electric service in a way that protects the safety of its customers, employees, and the public at large. The

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<sup>5</sup> All statutory references are to the Public Utilities Code unless otherwise indicated.

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central issue in this proceeding is whether SDG&E should be relieved of its duty when, as SDG&E asserts, there is a heightened risk that its power lines could ignite a catastrophic wildfire.

The California Constitution<sup>6</sup> and the Public Utilities Code<sup>7</sup> provide the Commission with broad jurisdiction on matters regarding the safety of electric utility facilities and operations, including authority to promulgate regulations regarding the safety of overhead power lines.<sup>8</sup> Electric utilities are required by § 702 to “obey and comply” with such requirements.

The provision of electricity to the public carries some risk. Every year, people are injured and killed by contact with power lines, and numerous fires are started when foreign objects (e.g., balloons and tree branches) contact power lines. Despite the risks, electric utilities have a duty to provide electricity to the public because, as stated in § 330(g), “electric service is of utmost importance to the safety, health, and welfare of the state's citizenry and economy.” To minimize the risks, the Commission has promulgated safety regulations governing electric utility operations and facilities.<sup>9</sup> In addition, electric utilities may suspend service when necessary to protect public safety. For example, if a vehicle crashes into a utility pole, the electric utility may shut off the power line until the accident is cleared and pole is repaired.

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<sup>6</sup> Cal. Constitution, Article XII, §§ 3 and 6.

<sup>7</sup> Pub. Util. Code §§ 216, 701, and 768.

<sup>8</sup> Pub. Util. Code §§ 8037 and 8056. *See also* Pub. Util. Code §§ 761, 768, and 770.

<sup>9</sup> *See, for example*, General Orders 95 and 128.



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SDG&E's Application to shut off power under certain conditions in order to prevent wildfires places two fundamental goals in conflict: the need for continuous electric service versus the need for public safety. While there are always trade offs, today's decision endeavors to achieve both goals using our judgment, experience, and expertise in regulating electric utilities.

## **6. Summary of SDG&E's Community Fire Safety Program**

Santa Ana winds occur annually in Southern California during the fall and early winter. These strong, dry, offshore winds have led to some of California's largest and most damaging fires. Over the past decade, wildfires fanned by Santa Ana winds have burned hundreds of thousands of acres in San Diego County, caused billions of dollars of damage, and killed numerous people. In October 2003 and 2007, wildfires driven by Santa Ana winds spiraled out of control to become devastating firestorms.

SDG&E is currently implementing a multi-pronged program to reduce the likelihood of strong winds causing power-line fires. The major elements of the program, which SDG&E calls the Community Fire Safety Program, are summarized below. SDG&E represents that it developed its Community Fire Safety Program after consulting with local governments, public safety agencies, the Red Cross, various community groups, and other stakeholders.

### **6.1. Hardening of Facilities**

SDG&E uses the term "hardening of facilities" to describe physical improvements to its overhead electric transmission and distribution system in areas that are prone to wildfires. SDG&E states the hardened facilities will be better able to withstand Santa Ana winds, which should lessen the risk of keeping power on during windy conditions. The hardened facilities will also be

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more resistant to damage from wildfires, potentially reducing the time needed to restore power after a fire.

The steps SDG&E is taking to harden its overhead power lines include the replacement of wood poles with steel poles, use of heavier wire conductors, increased spacing between conductors, and expanded use of conductor spacers. The hardened facilities are designed to withstand wind gusts of 85 miles per hour (mph). SDG&E is also implementing limited conversion of overhead power lines to underground lines in order to make the electric service provided to some essential public service infrastructure, such as selected water utility pump stations, less susceptible to outages from Santa Ana winds and wildfires. Because placing facilities underground is quite expensive, this form of hardening will be implemented sparingly.

The hardening of facilities will have little effect on SDG&E's Power Shut-Off Plan. Areas served by hardened above-ground facilities will remain subject to the Plan, even though such facilities will be better able to withstand high winds and fires. Only the few areas that are served by newly undergrounded facilities will be removed from the Power Shut-Off Plan.

## **6.2. Power Line Re-Closers**

Many of SDG&E's power lines have switches known as "re-closers" that automatically de-energize circuits if unusually high electric currents are detected, and then automatically restore power. Under the Community Fire Safety Program, SDG&E will modify the operation of re-closers for overhead power

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lines in the areas of high fire risk. When an Elevated Fire Condition<sup>10</sup> is present, SDG&E will adjust the operation of re-closers to allow either one or two re-energization attempts, depending on the location. If a circuit fails to re-close following the specified one or two attempts, the re-closer will be turned off remotely until the line is inspected and the re-closer is manually reset. Re-closers that cannot be monitored remotely will be turned off.<sup>11</sup>

SDG&E will turn off re-closers when a Red Flag Warning is declared by the National Weather Service for high winds and/or low humidity. When an outage occurs due to the operation of a re-closer, there will be a visual patrol of the line to ensure that it is safe to restore power. Although inspecting the line will increase the duration of the outage, SDG&E believes this step is warranted by the heightened fire risk conditions, especially since high-wind conditions increase the likelihood of damage to overhead facilities.<sup>12</sup>

### **6.3. Inspection of Overhead Power Lines**

As part of its Community Fire Safety Program, SDG&E has implemented expanded inspections of overhead power lines and associated facilities in areas of high fire risk. The expanded inspections exceed current regulatory requirements.

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<sup>10</sup> SDG&E defines an “Elevated Fire Condition” as occurring when live vegetation fuel moisture is 75% or less as measured by the California Department of Forestry and Fire (Cal Fire).

<sup>11</sup> The planned operation of re-closers is described in Exhibit SDG&E-2, p. 11. Turning off re-closers prevents automatic attempts to re-energize the line.

<sup>12</sup> SDG&E is considering the use of a new technology that sends a low-energy pulse through faulted power lines to determine if it is safe to re-energize. These devices might reduce restoration time.

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#### **6.4. Vegetation Management**

SDG&E maintains clearance for approximately 72,000 trees located near overhead power lines in areas of high fire risk. SDG&E is working with local governments, public safety agencies, the Commission, and the legislature to modify laws and regulations to allow for increased vegetation management.

#### **6.5. Staging Personnel**

As part of its Community Fire Safety Program, SDG&E will stage personnel in or near Power Shut-Off Areas<sup>13</sup> when an Elevated Fire Condition is present or a Red Flag Warning for high winds and/or low humidity is declared.<sup>14</sup> The purpose of staging personnel is to improve response times.

#### **6.6. Emergency Power Shut-Off Plan**

The final element of SDG&E's Community Fire Safety Program is the Power Shut-Off Plan. The purpose of this Plan is to de-energize overhead power lines when certain criteria are met in order to eliminate power lines as an ignition source when fire risks are high. SDG&E intends to implement its Plan on September 1, 2009. Power shut-off events will most likely occur during the September - December fire season in Southern California, but power will be shut off whenever the criteria are met.

##### **6.6.1. Power Shut-Off Criteria**

SDG&E's Power Shut-Off Plan calls for power to be shut off in certain areas when all five of the following criteria are met in those areas.

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<sup>13</sup> The term "Power Shut-Off Areas" is defined later in today's decision.

<sup>14</sup> The planned staging of personnel is summarized in Exhibit SDG&E-2, p. 13.

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**Criterion 1: Live Fuel Moisture.** The less moisture in living plants, the higher the fire risk. SDG&E intends to use a live fuel moisture level of 75% or less as one of the five criteria for initiating a power shut-off event.<sup>15</sup> SDG&E will obtain measurements of live fuel moisture from Cal Fire and the United States (U.S.) Forest Service.

**Criterion 2: Non-Living Fuel Moisture.** The less moisture in dead vegetation, the higher the fire risk. SDG&E intends to use a non-living fuel moisture level of 10% or less as the second criterion for initiating a power shut-off event.<sup>16</sup> Measurements of this criterion are made hourly at Remote Automatic Weather Stations (RAWS) operated by Cal Fire, the U.S. Forrest Service, and the U.S. Bureau of Land Management.

**Criterion 3: Relative Humidity.** The risk of wildfires is inversely proportional to the amount of moisture in the air, also known as relative humidity.<sup>17</sup> The lower the relative humidity, the higher the fire risk. SDG&E intends to use a relative humidity of 20% or less as the third criterion for initiating a power shut-off event. Measurements of relative humidity are readily available from RAWS.

**Criterion 4: Red Flag Warning.** The risk of wildfires increases when there is low humidity, high winds, and/or dry lightning. The National Weather

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<sup>15</sup> Live fuel moisture is the amount of moisture, expressed as a percentage of weight, in a living fuel sample compared to that sample when oven dry.

<sup>16</sup> Non-living fuel moisture is the amount of moisture in a non-living wood dowel expressed as a percent of the dry weight of that wood.

<sup>17</sup> Relative humidity is the ratio of actual moisture in a given volume of air at a given temperature compared to the total amount of moisture that volume of air could hold.

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Service declares a “Red Flag Warning,” its highest fire alert, when any of the following conditions are forecasted:

- Relative Humidity is 10% or less (for a duration of 10 hours or more) with no associated wind criteria.
- Relative Humidity is 15% or less, with sustained winds of 25 mph or more and/or frequent gusts of 35 mph or more (for duration of 6 hours or more).
- Dry lightning that is not accompanied by enough precipitation to significantly wet fuels that are critically dry.

SDG&E plans to use Red Flag Warnings for low humidity and/or high winds, but not dry lightning, as the fourth criterion for initiating a power shut-off event.

**Criterion 5: High Winds.** High winds are a significant fire hazard for power lines. High winds can topple utility poles, detach power lines, blow flammable debris onto power lines, and cause trees to fall onto power lines. Power-line fires that occur during high winds spread faster and are more difficult to extinguish.

SDG&E intends to use wind speed as the final criterion for initiating a power shut-off event. The criterion is sustained winds of 35 mph, or gusts of 55 mph accompanied by sustained winds of 30 mph.<sup>18</sup> These wind speeds are at 10 meters above ground level, which corresponds to the top of utility poles. However, the actual measurements of wind speeds will be made by the RAWS at

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<sup>18</sup> Wind speeds are measured at RAWS and are reported once per hour. The reported sustained wind speed is the average wind speed during the ten-minute interval prior to the hourly report. The reported maximum gust speed is the maximum wind speed recorded for any six-second interval since the prior hourly report.

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six meters above ground level. SDG&E estimates that wind speeds at 6 meters are 15% less than wind speeds at 10 meters. The wind-speed criterion at 6 meters, where the actual measurements will be made, is sustained winds of 30 mph, or gusts of 48 mph accompanied by sustained winds of 25 mph.

#### **6.6.2. Re-Energization of Power Lines**

After SDG&E shuts off power, SDG&E will not re-energize until sustained winds drop to 25 mph or less for two hours and the affected power lines have been visually inspected to ensure that it is safe to re-energize. SDG&E will monitor weather data to determine when inspections can begin.

If requested by an outside agency, SDG&E will re-energize prior to sustained winds staying at 25 mph or less for two hours, but only after SDG&E has deemed it safe to re-energize. SDG&E anticipates the process of re-energizing its lines, including inspections, could take up to two hours.

#### **6.6.3. Power Shut-Off Areas**

SDG&E's Power Shut-Off Plan applies to all circuits with overhead facilities that pass through regions designated by SDG&E as "Highest Risk Fire Areas." In general, these are areas with a high fuel load and strong winds. The geographic areas served by the circuits that are included in the Power Shut-Off Plan are called "Potential De-Energization Areas" (referred to hereafter as "Power Shut-Off Areas"). The Power Shut-Off Areas extend beyond the Highest Risk Fire Areas because circuits do not stop at the boundaries of these regions.

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There are 17 Power Shut-Off Areas. Each Area is associated with its own RAWS that is located in or near the Area, for a total of 17 RAWS.<sup>19</sup> Appendix A of today's decision contains a map that shows the 17 Power Shut-Off Areas and the 17 RAWS. There is some overlap of Power Shut-Off Areas. Thus, individual customers may be in two or more Power Shut-Off Areas.

SDG&E will be able to turn off power in each Power Shut-Off Area individually.<sup>20</sup> SDG&E believes it is extremely unlikely there will be a need to shut off power to all 17 Areas simultaneously. Should the need to shut off power occur, SDG&E believes it will be limited to only a few Areas, which will minimize the number of people affected by an outage.

#### **6.6.4. Number of Affected People and Customers**

SDG&E estimates there are 59,130 electric customers (meters) and 129,976 people living in the Power Shut-Off Areas, or about 4% of the total electric customers and population served by SDG&E. In addition, there are approximately 160 SCE customers served by SDG&E "fringe area circuits" who may be subject to SDG&E's Power Shut-Off Plan. SDG&E and SCE are taking steps to ensure inter-utility coordination on this matter.

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<sup>19</sup> The RAWS monitor and automatically report three of the five criteria used by SDG&E's Power Shut-Off Plan. The two criteria that are not monitored by the RAWS are (1) the Red Flag Warnings declared by the National Weather Service, and (2) live fuel moisture, which is provided periodically by Cal Fire and the U.S. Forrest Service.

<sup>20</sup> There is some overlap between Power Shut-Off Areas. Consequently, shutting off power in one Area could affect another Area to the extent the two Areas overlap.

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The following table shows the estimated number of customers (meters) and people (residents) subject to the Power Shut-Off Plan in 2009, broken down by the 17 Power Shut-Off Areas.

| <b>Number of Meters and Residents in Power Shut-Off Areas</b>  |                            |                               |                              |                              |                             |
|--|----------------------------|-------------------------------|------------------------------|------------------------------|-----------------------------|
| <b>Area by<br/>RAWS Name</b>   | <b>Total<br/>Meters</b>    | <b>Residential<br/>Meters</b> | <b>Commercial<br/>Meters</b> | <b>Industrial<br/>Meters</b> | <b>Residents</b>            |
| Alpine   | 18,566                     | 15,615                        | 2,943                        | 8                            | 42,205                      |
| Ammo Dump  | 1,736                      | 1,139                         | 597                          | 0                            | 3,289                       |
| Bell Canyon  | 68                         | 7                             | 56                           | 5                            | 81                          |
| Cameron  | 4,231                      | 3,363                         | 865                          | 3                            | 7,908                       |
| Camp Elliott   | 2,882                      | 2,565                         | 317                          | 0                            | 8,199                       |
| Descano  | 8,436                      | 6,806                         | 1,624                        | 6                            | 17,089                      |
| Goose Valley   | 18,027                     | 15,136                        | 2,885                        | 5                            | 45,580                      |
| Julian   | 3,294                      | 2,393                         | 901                          | 0                            | 4,001                       |
| Mount Laguna   | 286                        | 226                           | 60                           | 0                            | 391                         |
| Oak Grove  | 640                        | 394                           | 246                          | 0                            | 1,272                       |
| Palomar  | 1,310                      | 885                           | 424                          | 1                            | 1,126                       |
| Pine Hills   | 2,387                      | 1,659                         | 728                          | 0                            | 3,706                       |
| Potrero  | 2,471                      | 1,890                         | 581                          | 0                            | 5,423                       |
| Ranchita   | 1,116                      | 747                           | 369                          | 0                            | 1,802                       |
| San Miguel   | 2,298                      | 1,977                         | 321                          | 0                            | 6,119                       |
| Talega   | 19                         | 0                             | 17                           | 2                            | 19                          |
| Valley Center  | 13,886                     | 10,815                        | 3,062                        | 9                            | 29,932                      |
| <b>Total <sup>1</sup></b>  | <b>81,653 <sup>1</sup></b> | <b>65,617</b>                 | <b>15,996</b>                | <b>39</b>                    | <b>178,142 <sup>1</sup></b> |
| <b>Note 1:</b> Due to overlapping Areas, the sum of the meters in individual Areas (81,653) is greater than the total meters (59,130), and the sum of the residents in individual Areas (178,142) is greater than the total residents (129,976). |                            |                               |                              |                              |                             |

SDG&E has identified approximately 902 Medical Baseline customers in the Power Shut-Off Areas. Of these, 590 require life support equipment. There

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are also approximately 5,700 customers in the Power Shut-Off Areas who participate in the California Alternative Rates for Energy (CARE) program.

Some customers will be removed from the Power Shut-Off Plan in 2009 due to a project that is currently underway to place certain overhead power lines underground. When the project is complete, it will remove approximately 2,300 customers from the Power Shut-Off Plan, including 14 water pumping stations, leaving 56,830 customers affected by the Plan.

SDG&E estimates that the duration of power shut-off events will range from 12 to 72 hours, and that the average number of residents affected by each event will be 18,600. This estimate of residents excludes approximately 160 SCE customers (meters) subject to SDG&E's Power Shut-Off Plan.

#### **6.6.5. Customer Education**

SDG&E believes it is important for customers to understand the Power Shut-Off Plan so they can prepare for power shut-off events before they occur. To this end, SDG&E has mailed information packets to all customers in the Power Shut-Off Areas. The package included a cover letter, program fact sheet, list of frequently asked questions, map of the impacted areas, a guide for developing an emergency plan, an unplanned outage fact sheet, a portable generator fact sheet, and a customer contact form. SDG&E will continue to mail a package annually to customers in Power Shut-Off Areas that contains the previously identified information.

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SDG&E will survey its Special Needs Customers<sup>21</sup> to ascertain each customer's readiness for a power shut-off event and any transportation needs they may have. Special Needs Customers with mobility restrictions who cannot remain in their homes without electricity (as identified through customer surveys) will be provided round trip transportation to appropriate facilities. Similarly, customers with special needs for diet, medication, and medical equipment will be provided round trip transportation to acute care facilities or hospitals in accordance with their needs and insurance restrictions. All transportation will be at SDG&E's expense.

SDG&E has made significant outreach efforts to Essential Customers, i.e., customers who provide services that are essential to public health, safety, and welfare. SDG&E defines Essential Customers as including the following:

- A. Fire, police, and prison facilities.
- B. Lighting for streets, highways, and other public areas.
- C. National defense agencies.
- D. Hospitals and convalescent homes.
- E. Public, private, and municipal utilities that provide services that are essential for public health and safety (i.e., electric, gas, water, communication, and sewage disposal utilities).
- F. Public transportation.
- G. Radio and broadcasting stations that transmit emergency information.

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<sup>21</sup> SDG&E defines Special Needs Customers as those who participate in the Medical Baseline Allowance and/or Life Support programs.

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- H. Residential customers who use medical life support equipment.
- I. Schools K-12.<sup>22</sup>

Essential Customers are not exempt from the Power Shut-Off Plan. Due to the nature of their loads, most Essential Customers are prepared to operate during outages. For example, hospitals and skilled nursing facilities have back-up generation to support critical load for 12 to 72 hours.

SDG&E has contacted all Essential Customers in the Power Shut-Off Areas to discuss the Power Shut-Off Plan. SDG&E will continue to contact all Essential Customers prior to each fire season to help them plan for power shut-off events.

#### **6.6.6. Customer Notice of Power Shut-Off Events**

SDG&E will attempt to provide all customers with two notices when a power shut-off event appears likely. The first notice will occur at approximately four to six hours prior to the forecasted shut-off event. SDG&E will use its outbound dialer system to send telephone alerts to affected customers. The outbound dialing system can make more than 20,000 calls per hour, including calls to communications devices commonly used by persons with hearing, speech, and/or vision disabilities. The first notice will indicate that high fire risk conditions are forecast to occur, that SDG&E may shut off power, and that customers should prepare for a power shut-off event.

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<sup>22</sup> SDG&E treatment of schools as Essential Customers is limited to customer education and notice. SDG&E does not treat schools as Essential Customers with respect to SDG&E's proposed tariff provisions for demand normalization, critical peak pricing, and demand response.

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The second notice will occur two to three hours prior to the forecasted shut-off event. This second notice will have a more urgent tone about the need to prepare for the expected shut-off event. If the forecast changes and SDG&E determines that a power shut-off event is no longer likely, SDG&E will use its outbound dialer system to notify customers.

Essential Customers will be notified at the same times as other customers, but through phone calls and e-mails consistent with the individual customer preferences. SDG&E will also alert the Red Cross and 2-1-1 when a shut-off event is forecasted.

It is possible that the first forecast that SDG&E receives indicates a shut-off event could occur in three hours or less. In this situation, only one notice will be provided. In the unlikely event that a shut-off event occurs with no warning, SDG&E will notify customers as soon as practicable. Customers with functioning land lines or registered cell phones will receive a call.

#### **6.6.7. Mitigation of Adverse Impacts on Customers**

SDG&E acknowledges that shutting off power imposes hardships on customers, particularly low income customers and customers with medical needs. SDG&E will implement a variety of measures to mitigate the hardships, such as providing advance warning of an impending shut-off event whenever possible so customers can prepare; providing \$250 debit cards to customers participating in the CARE and/or Medical Baseline programs; opening shelters in the areas where power is shut off; and transporting customers who depend on life support equipment to appropriate medical facilities when a shut-off event is declared. SDG&E does not request additional funding in rates for these mitigation efforts in 2009.

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SDG&E will contact all impacted Special Needs Customers in person or by telephone to discuss their emergency readiness and medical transportation needs in the case of a power shut-off event. Because Special Needs Customers are recertified bi-annually, SDG&E will use this opportunity to again discuss their emergency readiness and medical transportation needs. Once the power shut-off event is over and the Special Needs Customers are back home, there will be an in-person visit by an SDG&E employee to deliver assistance, followed by a live-person phone call to discuss the service level and overall experience.

SDG&E also recognizes that shutting off power will prevent the Water Districts from using many of their electric-powered pumps, which could disrupt the supply of water used to fight fires. To mitigate this adverse impact, SDG&E will procure a pool of six portable backup generators (four 400 kW and two 750 kW) that can be dispatched to the Water Districts during power shut-off events. The six portable generators are intended to support 20 critical pump stations with loads of 100 kW or greater. SDG&E will install and own the wiring and permanent electric transfer safety switches at these 20 facilities. The total estimated cost of the six generators and wiring is \$3.9 million.<sup>23</sup>

If more than six generators are needed to provide water for fire-fighting purposes, SDG&E will re-energize any part of its system if ordered to do so by

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<sup>23</sup> At the all-party meeting held on July 6, 2009, SDG&E stated that it would procure a pool of 31 portable generators. Six would be for the Water Districts, ten for evacuation centers, and 15 for schools. SDG&E also proposed to pre-wire 110 sites to accept the portable generators. Ten of these sites would be evacuation centers, 20 sites would be critical pump stations, and the remainder would be schools. SDG&E did not state who will ultimately pay for the generators and wiring. (Reporter's Transcript, pp. 39-40.)

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the incident commander. For example, if all six generators have been deployed to Water District facilities and additional Water District pump stations need to be brought on line at locations that remain de-energized, SDG&E could re-energize the circuit(s) serving the pump stations after conducting a safety inspection.

SDG&E is willing to own and maintain a pool of six generators for a two-year period. SDG&E believes that two years is enough time for the Water Districts to procure and install emergency back-up generation they should have for any of a number of emergency situations.

SDG&E does not intend to procure a pool of portable generators or install wiring for critical pump stations with a load of less than 100 kW. SDG&E believes that back-up generators for loads of less than 100 kW should be the responsibility of the individual Water Districts.

#### **6.6.8. Cost of the Power Shut-Off Plan**

SDG&E states that the costs for its Power Shut-Off Plan will depend on the frequency and scope of shut-off events. Assuming two events per year, the annual costs will be in the range of \$7 - \$11 million. Startup costs will be in the range of \$14 - \$24 million.<sup>24</sup> These estimates do not include any costs that result from Commission requirements that are adopted in this proceeding. SDG&E does not seek ratepayer funding for costs incurred in 2009.<sup>25</sup>

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<sup>24</sup> At the all-party meeting held on July 6, 2009, SDG&E stated that its startup costs would be in the range of \$24 - \$36 million. (Reporter's Transcript, pp. 39 - 40.)

<sup>25</sup> SDG&E does not state if or when it will request ratepayer funding of costs incurred in 2010 and future years.

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The above costs for the Power Shut-Off Plan are incremental to normal operating and maintenance costs and do not include other expenses for SDG&E's Community Fire Safety Program such as system hardening.

## **7. Review of SDG&E's Power Shut-Off Plan**

### **7.1. Position of the Parties**

#### **7.1.1. SDG&E**

SDG&E asserts that its Power Shut-Off Plan is needed to address the serious fire danger that occurs when strong Santa Ana winds blow across SDG&E's service territory. The severity of the danger is demonstrated by the firestorms of October 2003 and October 2007. In October 2007, Santa Ana winds reportedly caused SDG&E's overhead power lines to ignite the Witch Fire, the Guejito Fire, and the Rice Fire.<sup>26</sup> The Witch Fire and Guejito Fire combined into a single wildfire that burned 197,990 acres and 1,624 buildings (including 440 homes), and killed two people. The Rice Fire burned 9,000 acres and 248 buildings (including 240 homes). There were no deaths. SDG&E is concerned that failure to shut off power during severe conditions could lead to firestorms like those in 2003 and 2007.

SDG&E used historical data to "backcast" the number of times it would have shut off power had its Power Shut-Off Plan been in effect in prior years. The following table lists the backcast of shut-off events, with an "event" defined

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<sup>26</sup> The Commission is currently investigating the Witch Fire and Guejito Fire in Investigation (I.) 08-11-006 and the Rice Fire in I.08-11-007. Today's decision does not prejudice any issues being addressed in those Investigations.

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as any calendar day in which power would have been shut off. A single calendar day in which power is shut off at multiple locations is counted as one event.

| Backcast of Power Shut-Off Events During Red Flag Warnings |                |                          |        |                      |  |                     |                          |
|--|----------------|--------------------------|--------|----------------------|--|---------------------|--------------------------|
| Event Date/<br>Time  | RAWS           | Vegetation Fuel Moisture |        | Relative<br>Humidity | Sustained Wind or<br>Gusts @ 6 Meters  | Duration<br>(Hours) | # Meters/<br># of People |
|  |                | Non-Living               | Living |                      |  |                     |                          |
|  |                | < 10%                    | < 75%  | < 20%                | <u>At 6 meters</u><br>• Sustain > 30 mph,<br><u>or</u><br>• Sustain > 25 mph<br>+ gusts > 48 mph |                     |                          |
| <b>Event 1</b>   |                |                          |        |                      |  |                     |                          |
| 2/9/02<br>@ 1500   | Cameron        | Note 1                   | 71%    | 12%                  | Sustain 26 mph<br>Gusts 48 mph   | 24 hours            | 4,231/<br>10,587         |
| 2/9/02<br>@ 2230   | Descanso       | 4%                       | 71%    | 11%                  | Sustain 27 mph<br>Gusts 59 mph   | 18 hours            | 8,436/<br>21,299         |
| <b>Event 2</b>   |                |                          |        |                      |  |                     |                          |
| 2/10/02<br>@ 0050  | Alpine         | 5%                       | 71%    | 7%                   | Sustain 28 mph<br>Gusts 52 mph   | 13 hours            | 18,566/<br>48,078        |
| 2/10/02<br>@ 0410  | Potrero        | Note 1                   | 71%    | 10%                  | Sustain 26 mph<br>Gusts 53 mph   | 12 hours            | 2,471/<br>6,043          |
| <b>Event 3</b>   |                |                          |        |                      |  |                     |                          |
| 2/25/02<br>@ 1720  | Ammo<br>Dump   | 10%                      | 58%    | 10%                  | Sustain 37 mph<br>Gusts 37 mph   | 3 hours             | 1,736/<br>3,889          |
| <b>Event 4</b>   |                |                          |        |                      |  |                     |                          |
| 1/5/03<br>@ 2320   | Ammo<br>Dump   | 6%                       | 74%    | 12%                  | Sustain 33 mph<br>Gusts 45 mph   | 11 hours            | 1,736/<br>3,889          |
| <b>Event 5</b>   |                |                          |        |                      |  |                     |                          |
| 1/6/03<br>@ 0130   | Bell<br>Canyon | 7%                       | 74%    | 7%                   | Sustain 38 mph<br>Gusts 62 mph   | 7 hours             | 68/<br>81                |
| 1/6/03<br>@ 0220   | Talega         | 0%                       | 74%    | 8%                   | Sustain 36 mph<br>Gusts 39 mph   | 7 hours             | 19/<br>19                |
| <b>Event 6</b>   |                |                          |        |                      |  |                     |                          |
| 1/7/03<br>@ 1220   | Bell<br>Canyon | 7%                       | 74%    | 20%                  | Sustain 38 mph<br>Gusts 65 mph   | 3 hours             | 68/<br>81                |

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| Backcast of Power Shut-Off Events During Red Flag Warnings |                 |                          |        |                      |  |                     |                          |
|--|-----------------|--------------------------|--------|----------------------|--|---------------------|--------------------------|
| Event Date/<br>Time  | RAWS            | Vegetation Fuel Moisture |        | Relative<br>Humidity | Sustained Wind or<br>Gusts @ 6 Meters  | Duration<br>(Hours) | # Meters/<br># of People |
|  |                 | Non-Living               | Living |                      |  |                     |                          |
|  |                 | < 10%                    | < 75%  | < 20%                | <u>At 6 meters</u><br>• Sustain > 30 mph,<br><u>or</u><br>• Sustain > 25 mph<br>+ gusts > 48 mph |                     |                          |
| <b>Event 7</b>   |                 |                          |        |                      |  |                     |                          |
| 10/26/03<br>@ 1230   | Descanso        | Note 1                   | 64%    | 4%                   | Sustain 27 mph<br>Gusts 56 mph   | 6 hours             | 8,436/<br>21,299         |
| <b>Event 8</b>   |                 |                          |        |                      |  |                     |                          |
| 12/16/04<br>@ 1820   | Ammo<br>Dump    | 4%                       | 66%    | 18%                  | Sustain 34 mph<br>Gusts 39 mph   | 13 hours            | 1,736/<br>3,889          |
| 12/16/04<br>@ 1500   | Cameron         | 6%                       | 66%    | 18%                  | Sustain 26 mph<br>Gusts 50 mph   | 3 hours             | 4,231/<br>10,587         |
| <b>Event 9</b>   |                 |                          |        |                      |  |                     |                          |
| 12/24/04<br>@ 0900   | Cameron         | 7%                       | 66%    | 4%                   | Sustain 28 mph<br>Gusts 49 mph   | 5 hours             | 4,231/<br>10,587         |
| <b>Event 10</b>  |                 |                          |        |                      |  |                     |                          |
| 2/8/06<br>@ 0630   | Bell<br>Canyon  | 2%                       | 72%    | 4%                   | Sustain 29 mph<br>Gusts 48 mph   | 17 hours            | 68/<br>81                |
| <b>Event 11</b>  |                 |                          |        |                      |  |                     |                          |
| 11/30/06<br>@ 0520   | Ammo<br>Dump    | 9%                       | 58%    | 8%                   | Sustain 31 mph<br>Gusts 37 mph   | 3 hours             | 1,736/<br>3,889          |
| <b>Event 12</b>  |                 |                          |        |                      |  |                     |                          |
| 10/21/07<br>@ 2222   | Ammo<br>Dump    | 9%                       | 66%    | 7%                   | Sustain 30 mph<br>Gusts 35 mph   | 38 hours            | 1,736/<br>3,889          |
| 10/21/07<br>@ 2303   | Cameron         | 0%                       | 66%    | 9%                   | Sustain 28 mph<br>Gusts 51 mph   | 18 hours            | 4,231/<br>10,587         |
| 10/21/07<br>@ 1933   | Descanso        | 3%                       | 66%    | 10%                  | Sustain 26 mph<br>Gusts 52 mph   | 28 hours            | 8,436/<br>21,299         |
| 10/21/07<br>@ 2058   | Goose<br>Valley | 8%                       | 66%    | 8%                   | Sustain 29 mph<br>Gusts 50 mph   | 13 hours            | 18,027/<br>46,634        |
| 10/21/07<br>@ 1214   | Potrero         | 0%                       | 66%    | 8%                   | Sustain 27 mph<br>Gusts 51 mph   | 49 hours            | 2,471/<br>6,043          |

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| Backcast of Power Shut-Off Events During Red Flag Warnings  |                  |                          |        |                      |  |                     |                          |
|---|------------------|--------------------------|--------|----------------------|--|---------------------|--------------------------|
| Event Date/<br>Time   | RAWS             | Vegetation Fuel Moisture |        | Relative<br>Humidity | Sustained Wind or<br>Gusts @ 6 Meters  | Duration<br>(Hours) | # Meters/<br># of People |
|   |                  | Non-Living               | Living |                      |  |                     |                          |
|   |                  | < 10%                    | < 75%  | < 20%                | <u>At 6 meters</u><br>• Sustain > 30 mph,<br><u>or</u><br>• Sustain > 25 mph<br>+ gusts > 48 mph |                     |                          |
| <b>Event 13</b>   |                  |                          |        |                      |  |                     |                          |
| 10/22/07<br>@ 0653  | Alpine           | 4%                       | 66%    | 9%                   | Sustain 27 mph<br>Gusts 51 mph   | 5 hours             | 18,566/<br>48,078        |
| 10/22/07<br>@ 0014  | Julian           | 6%                       | 66%    | 15%                  | Sustain 29 mph<br>Gusts 57 mph   | 30 hours            | 3,294/<br>7,817          |
| 10/22/07<br>@ 0313  | Valley<br>Center | 6%                       | 66%    | 0%                   | Sustain 26 mph<br>Gusts 50 mph   | 10 hours            | 13,886/<br>34,326        |
| <b>Event 14</b>   |                  |                          |        |                      |  |                     |                          |
| 10/14/08<br>@ 0403  | Cameron          | 0%                       | 73%    | 13%                  | Sustain 30 mph<br>Gusts 40 mph   | 7 hours             | 4,231/<br>10,587         |
| <b>Note 1:</b> Data for the "Non-living Fuel Moisture" was not available at the RAWS at that time. However, nearby RAWS reported data that met the criterion. |                  |                          |        |                      |  |                     |                          |

SDG&E's backcast shows that power shut-off events would have occurred 14 times in the last eight years. The duration of the backcast events ranges from 3 hours to 49 hours, with an average of 13 hours.<sup>27</sup> Duration includes the time that power is shut off due to exceeding the shut-off criteria plus the time required for the inspection and restoration process. The number of customers (meters) affected by each backcast event ranges from 68 to 35,746, with an average of 9,475 customers. The number of residents (people) affected by each

<sup>27</sup> The average duration of 13 hours is the resident-weighted average.

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event ranges from 100 to 90,221, with an average of 23,826 residents. SDG&E believes this information shows that an average shut-off event will be far less disruptive to the public than the devastating firestorms that could occur if power is not shut off.

SDG&E identified 167 fires from August 2003 through early 2009 that in some way relate to its power lines. Most fires were insignificant. Of the 167 incidents, 13 are associated with high winds. SDG&E provided the following information for each of the 13 wind-related power-line fires: (a) date the fire started; (b) location; (c) size in acres; (d) injuries and/or property damage, if known; (e) how the fire was ignited; (f) why the fire is associated with high winds; and (g) whether shutting off power might have prevented the fire.

The information for (a) – (f) is provided in the following table. For (f), SDG&E does not know the exact wind speed at the time of the fire. The rationale for labeling a fire as wind related comes from incident reports for each fire. With respect to (g) regarding whether the Power Shut-Off Plan might have prevented the fire, SDG&E does not know for 10 of the fires because of a lack of data. In three cases (Fire Event Nos. 2, 11, and 13 in the following table), SDG&E is confident that all five criteria of its Power Shut-Off Plan were met.

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| Historical Data for Wind-Related Power-Line Fires                 |              |                      |               |  |  |
|---|--------------|----------------------|---------------|--|--|
| Fire Event  | Date Started | Location             | Size in Acres | Injuries & Property Damage             | Wind-Related Cause of Fire                                   |
| 1   | 12/16/04     | Wynola               | 5             | None noted                             | Power line down from heavy winds                             |
| 2   | 12/16/04     | Descanso             | 1             | None noted                             | Power line down from heavy winds                             |
| 3   | 12/17/04     | Ramona               | 1             | None noted                             | Power line down from heavy winds                             |
| 4   | 2/19/05      | Fallbrook            | 1             | None noted                             | Tree branch into power line from high winds                  |
| 5   | 2/7/06       | Laguna Niguel        | 1             | None noted                             | Tree branch into power line from high winds                  |
| 6   | 6/27/06      | Fallbrook            | 1             | None noted                             | Tree branch into power line from high winds                  |
| 7   | 10/27/06     | Boulder Creek        | 2             | None noted                             | Power line down from heavy winds                             |
| 8   | 11/30/06     | San Ysabel           | 130           | Damage to bridge; loss of pasture land | Power line down. High winds of 40 mph w/gusts to 60 mph      |
| 9   | 12/27/06     | Camp Pendleton       | 3             | None noted                             | Power line down from heavy winds                             |
| 10  | 3/3/07       | Jamul                | 0.1           | None noted                             | Tree branch into power line from high winds                  |
| 11  | 10/21/07     | Guejito, San Pasqual | 197,990*      | Extensive damage & injuries*           | Alleged contact w/conductor. High winds observed in area.    |
| 12  | 10/21/07     | Witch, Ramona        | 197,990*      | Extensive damage & injuries*           | Alleged arcing between power lines. Santa Ana winds in area. |
| 13  | 10/22/07     | Rice, Rainbow        | 9,472         | Extensive damage & injuries            | Alleged tree branch into power line from high winds          |
| * Witch and Guejito acreage, injuries, and damage are aggregated. |              |                      |               |  |  |

SDG&E cautions that while past experience is instructive, future power shut-off events and power-line fires may not follow historical patterns. SDG&E anticipates there will be fewer power-line fires in the future due to its Community Fire Safety Program and Power Shut-Off Plan.

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SDG&E believes that the parties who oppose its Power Shut-Off Plan overestimate the risk of fires being ignited by candles, barbeques, portable generators, and other sources when SDG&E shuts off power. To illustrate the small risk of fires from other sources, SDG&E cited statistical information maintained by the State Fire Marshal that shows during the five-year period of 2003 – 2007 there were 55,636 equipment-related fires in all of California, of which 71 were ignited by generators and 243 by grills, hibachis, and barbeques.

### **7.1.2. Opposition Parties**

SDG&E's Power Shut-Off Plan is opposed by the Alliance, AT&T, CCTA, CFB, Cox, CPSD, CTIA, DRA, DisabRA, the School Districts, the Water Districts, and UCAN (collectively, the "Opposition Parties"). They contend that SDG&E's Power Shut-Off Plan will eliminate one ignition source but create many others. This is because customers without electricity will use other means for lighting and cooking, such as candles, lanterns, fireplaces, barbecues, and camp stoves. In addition, some customers may resort to providing their own power with portable generators that are not maintained and/or operated properly. AT&T notes that the U. S. Fire Administration has issued a warning about the fire hazard posed by generators.<sup>28</sup>

The Opposition Parties assert that SDG&E has presented no evidence that its Power Shut-Off Plan will reduce the overall risk of wildfires. Rather, SDG&E's Plan reduces one risk but increases others. The risk that is reduced is the one for which SDG&E might be held liable - fires caused by its power lines. The risks that are increased are those for which SDG&E would not be held liable.

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<sup>28</sup> [www.usfa.dhs.gov/citizens/all\\_citizens/co/generator.shtm](http://www.usfa.dhs.gov/citizens/all_citizens/co/generator.shtm).

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The Opposing Parties note that SDG&E has identified 13 power-line fires since 2003 that are linked to high-wind events, but only three of these fires would have been prevented had its Power Shut-Off Plan been in effect at the time. The Opposing Parties question the benefit of shutting off power 13 times to prevent three fires. CCTA opines that the three fires could have been prevented by better maintenance, making SDG&E's Power Shut-Off Plan unnecessary.

The Alliance and CPSD contend that SDG&E has selected a wind-speed criterion that is too low, which will cause needless power shut-off events. They state that SDG&E is required by General Order 95 to design, construct, and maintain power lines that can withstand wind speeds well in excess of SDG&E's wind-speed criterion.

Finally, the Opposing Parties believe that the Power Shut-Off Plan will impose many significant costs, burdens, and risks on customers and communities in the areas where power is shut off. They argue that SDG&E has not conducted a cost-benefit analysis of the claimed benefits of its Power Shut-Off Plan versus the many adverse impacts. These adverse impacts are summarized below.

**Disruption of Communications Networks.** Communications providers rely on commercial power to provide landline telephone service, cable TV, internet, and wireless telephone service. Network facilities located in the Power Shut-Off Areas can function when commercial power is shut off by using onsite backup batteries and generators, but service could start to fail for many customers after 4 - 12 hours as batteries are exhausted and generator fuel is consumed. To keep networks functioning, the exhausted batteries would need to be replaced with fresh batteries or portable generators, and the generators would need to be refueled. This could become a herculean task during a widespread

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and prolonged power shut-off event, as there are hundreds of sites in the Power Shut-Off Areas where backup power would be needed to keep communications networks functioning.<sup>29</sup> Communications providers are concerned that if backup generators are not installed or refueled in time due to distance, terrain, traffic, blocked roads, or other obstacles, customers could lose communications services, including copper-based landline service, cable TV service, internet service, and/or wireless service.

Communications providers estimate they will incur significant costs to respond to power shut-off events. The actual costs will vary depending on how widespread the shut off is, how long it lasts, and other factors. They will also lose an unknown amount of revenue if service is disrupted.

**Loss of Communications at Customer Premises.** Even if communications networks continue to function during a power shut-off event, the loss of power at customers' premises could cause many customers to lose access to communications services. For example, AT&T provided information that shows approximately 37% of households use only cordless phones for their landline service. Cordless phones rely on commercial power at customers' premises and are not usually sold with back-up batteries. As a result, thousands of households could be without landline service during a power shut-off event. Some of these households may have cell phones, but they might not be able to recharge cell phone batteries when power is shut off.

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<sup>29</sup> AT&T alone has hundreds of remote terminals in the Power Shut-Off Areas where calls carried by its landline network are aggregated and disaggregated. These remote terminals collectively serve tens of thousands of lines, and have an industry standard of about eight hours of battery backup.



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Customers who subscribe to cable voice services receive a modem with battery back-up for up to eight hours. Voice service will be lost after eight hours.

Many residents rely on broadband internet for “over-the-top” phone service (e.g., Vonage, Skype, and MagicJack). However, desktop computers will not function without power, and laptop computers will be unable to access the internet because the Wi-Fi modems that connect laptops to the internet will be without power. Only those customers who subscribe to wireless data services will be able to access the internet with a laptop, but only if the wireless networks are functioning and only for as long as laptop batteries hold out.

Large communications customers such as government agencies, financial institutions, and hospitals are often served by on-site equipment rooms with battery backup for short outages. These equipment rooms usually cannot accommodate portable generators. SDG&E estimates there are about 10,930 commercial customers in the shut-off area. Extended outages could force many commercial customers to curtail or halt their operations.

**Public Safety Impacts of Degraded Communications.** The loss of communications caused by a power shut-off event would adversely affect public health, safety, and welfare. These adverse impacts include:

- The loss of communications would occur during periods of high fire risk. Residents may not be able to call 911 to report fires. The delayed reporting of fires could allow fires to escape initial attack and spiral out of control.
- Residents may not be able to call 911 to report crimes, medical emergencies, and vehicle accidents. The delayed response to emergencies of all types poses a serious risk to lives and public safety in general.
- First responders may not be able to communicate with each other or the public via cell phones. The inability of first

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responders to communicate effectively could impede coordinated and timely responses to emergencies.

- Residents may not be able to receive emergency information such as evacuation notices disseminated through reverse 911.
- Health monitoring services and security services that rely on telecommunications may not function. Many seniors and persons with disabilities may not be able to use their “lifeline” emergency button when power is shut off.

**Loss of News and Information.** Government agencies depend on television and the internet to disseminate emergency information. During the 2003 and 2007 firestorms, television and internet media provided around-the-clock coverage of events and disseminated emergency information to residents throughout the area. SDG&E’s Power Shut-Off Plan could cut off this important source of emergency information, since most televisions and computers will not work without external power.

**Customers with Disabilities.** Shutting off power for an extended period would impose a number of hardships on people with disabilities. First, many people with disabilities depend on electric-powered devices. If power is shut off, people who use electric wheelchairs will find their mobility limited once the batteries run down. People with hearing or vision disabilities who rely on specialized communications equipment will not be able to communicate with the outside world.<sup>30</sup> People who take medications that must remain refrigerated may be forced to leave their homes in order to find a location with refrigeration

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<sup>30</sup> DRA reports that most of the equipment provided by the Deaf and Disabled Telecommunications Program needs external power to operate.

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facilities. Similarly, people with medical conditions that require them to maintain their environment at a certain temperature may have to evacuate because the loss of power makes temperature control impossible.

Second, SDG&E estimates there are 902 Medical Baseline Customers in the Power Shut-Off Areas, including 590 customers who rely on life support equipment. Many of these individuals will have to evacuate if there is an extended outage. Because these people have serious medical conditions, any evacuation creates some risk.

SDG&E plans to offer free transportation to medically fragile customers if a power shut-off event is called. However, any care provided at the hospital or other medical facility would be the customers' responsibility. This will result in hefty medical bills for the customers or their insurance providers.

Third, people with disabilities rely on communications services to stay in contact with caregivers and other essential resources. If an outage occurs, many people with disabilities will need additional assistance. Any breakdown in communications places people with disabilities at risk of having health and medical needs go unmet.

Finally, disabled people are disproportionately low-income and can ill afford the costs of purchasing provisions for power shut-off events, such as landline phones, flashlights, coolers, spare batteries, and backup generators. Consequently, SDG&E's Plan will force many customers with disabilities to evacuate their homes and incur the costs and inconvenience that such evacuation entails. Even if some disabled persons could afford a generator, they may not be able to operate it due to mobility or vision impairments.

**Adverse Impact on Schools.** There are 65 public elementary schools, middle schools, and high schools in the Power Shut-Off Areas that serve

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approximately 19,867 students. None of these schools has backup power. All the affected schools use phone systems that need external power to operate.

During a power shut-off event, the schools affected by the event will be without internet, television, and phone service, which creates health and safety issues on three fronts. First, if a student is seriously hurt during an outage, the school may not be able to contact emergency services in a timely manner. Second, if there is an emergency outside of the school, such as a major wildfire, the school may not receive timely warning, thereby compromising the school's ability to protect children and staff. Third, schools without power may not be able to meet health and safety requirements, such as providing water from wells, lighting, and air conditioning. The School Districts estimate that it would cost several million dollars to prepare for power shut-off events.

The School Districts are very concerned about the loss of Average Daily Attendance (ADA) funding from the State, which is the main source of funds for the School Districts. If a lengthy power shut-off event occurs, schools may have to cancel school days, causing a loss of ADA funds. The Education Code provides for waivers of ADA requirements if an emergency is established to the satisfaction of the State Superintendent of Public Instruction. The School Districts are worried that a power shut-off event might not be deemed an emergency, resulting in a loss of ADA funds.

**Adverse Impact on Water Supply.** The Water Districts have 39 "critical pump stations" in the Power Shut-Off Areas that do not have backup power. These pump stations provide water to tens of thousands of customers and for fire fighting purposes. If SDG&E shuts off power, the supply of water in the areas served by the affected critical pump stations will be limited to whatever is on hand in tanks and small reservoirs. If a fire breaks out, the heavy demand for

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water to fight the fire could exhaust the available supply within hours. The lack of water to fight fires could be disastrous, as the fires would be occurring during periods of high fire danger (i.e., when winds are high, humidity is low, and vegetation is dry).

The Water Districts estimate that it would cost \$8 million to install backup generators and associated wiring at the 39 critical pump stations. They also state that SDG&E's proposal to procure a pool of six portable generators for use by the Water Districts during power shut-off events is insufficient. SDG&E's backcast shows that during the October 2007 firestorm, SDG&E would have shut off power to more than 30 critical pump stations simultaneously.

**Adverse Impact on Sewage Service.** Several of the Water Districts provide sewer service. In order to avoid spills or unlawful discharges, the Water Districts will need to rent generators during power shut-off events to keep sewer facilities operating.

**Costs to Prepare for a Power Shut-Off Event.** Customers could incur significant costs to prepare for a power shut-off event. Such costs could include the purchase of landline phones; flashlights and portable radios; extra batteries for flashlights, radios, laptop computers, and communications devices; coolers to store perishable foods and medications; candles, camp stoves, and lanterns; and backup generators and fuel.

**Costs Incurred During a Power Shut-Off Event.** Many customers could incur significant costs due to a power shut-off event. Such costs could include the rental of portable generators; lost business revenues; lodging and restaurant costs for residents who leave the area while power is shut off; loss of refrigerated foods and medicines; and general loss of public convenience.

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**Impacts on Low Income Customers.** Low income customers might not be able to afford the loss of refrigerated foods and medications, or to take actions to mitigate the impacts of shut-off events, such as evacuating to a hotel, eating at restaurants, or buying batteries, coolers, and generators.

**Portable Generators.** Customers without power may use portable generators to provide electricity for their appliances and lights. The use of portable generators poses a fire risk for the reasons described previously, but that is not the only hazard. UCAN states that owners of portable generators may need to store 20 gallons of fuel on site in order to power a generator through a shut-off event lasting 72 hours. If a wildfire passes through the property, the fuel could explode with deadly consequences for residents and fire crews.

In addition, some residents may connect their generators to the electrical wiring of their homes. If “do-it-yourselfers” do not disconnect their electrical panels from the utility system, the generators would energize utility lines, thereby nullifying SDG&E’s intent to reduce ignitions from power lines. This would also pose a danger to utility employees because power lines would be “hot” when the workers do not expect it.

Finally, generators emit dangerous levels of carbon monoxide (CO). UCAN cites a study that shows portable generators were implicated in 96% of poisonings from CO following hurricanes Charley and Jeanne in Florida in 2004.

**Loss of Traffic Lights and Street Lights.** Traffic lights and street lights depend on commercial power. The loss of traffic lights and street lights during power shut-off events would increase the risk of vehicle accidents, particularly at night. Crash victims may not be able to summon help if the wireless network has ceased functioning. The loss of traffic lights could also delay the arrival of first responders to the scene of the accident or other emergency. If a general

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evacuation is declared due to an approaching wildfire, the lack of traffic signals and street lights could slow the evacuation and place many lives at risk.

**Hampering Evacuations.** Shutting off power could hamper evacuation efforts because customers might not receive timely notices to evacuate for the reasons stated previously. In addition, elderly and disabled persons may not be able to open their garage doors without electric garage door openers, trapping them in their homes. Evacuations from homes at night will be slower and more difficult without lights. Loss of power to traffic lights and street lights may impede and disrupt evacuations. Loss of power to fueling stations might trap evacuees without sufficient fuel in their vehicles.

The October 2007 firestorm demonstrates that concerns about evacuating during a power shut-off event are warranted. On October 21, 2007, the Witch Fire started at 12:35 p.m. near the community of Ramona. If the Power Shut-Off Plan had been in effect, SDG&E would have shut-off power to Ramona at 8:58 p.m. Sixteen minutes later, at 9:14 p.m., residents of Ramona received reverse 911 calls to evacuate.<sup>31</sup> Fortunately, power was on, and residents were able to receive reverse 911 calls and to evacuate at night with the aid of lights in their homes and on the streets.

**Diversion of Public Safety Personnel.** Shutting off power would divert police and sheriff personnel from their primary missions. For example, officers would need to direct traffic at intersections where traffic lights no longer function until temporary stop signs could be set up. Police and fire department

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<sup>31</sup> Reporter's Transcript of the all party meeting held on July 6, 2009, p. 47.

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personnel might have to drive longer distances to find gas stations with working pumps to refuel emergency vehicles.

Police and sheriff personnel would be diverted at a time when many burglar alarms and security lights would not function, providing increased opportunity for criminal activity.

**Loss of Economic Activity.** Many businesses could not operate without commercial power. For example, some retail businesses could not function without scanners at checkout stands, gas stations could not pump fuel, and many restaurants could not cook. Employees who rely on computers could not work.

**Setting the Stage for Catastrophic Wildfires.** The simultaneous occurrence of the all of the above circumstances under high fire risk conditions (e.g., loss of communications, lack of water, disruption of traffic, disabled and elderly residents trapped in their homes, etc.) would increase the potential for catastrophic wildfires.

### **7.1.3. SCE**

SCE is the only party that supports SDG&E's Power Shut-Off Plan. SCE opines that shutting off power is better than running the risk of igniting catastrophic fires like those that occurred in October 2003 and October 2007.

SCE does not currently have a power shut-off plan in effect. However, in 2003 SCE implemented a temporary program to shut off power to rural areas where the Governor had declared a state of emergency due to the fire risk posed by the large number of dead trees killed by bark beetles. The purpose of SCE's power shut-off program was to protect against the possibility of strong winds causing dead trees to fall onto its power lines and igniting a wildfire. The region affected by SCE's program had 34,500 customers (meters), and was dividend into 11 areas where power could be shut off independently from each other.

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SCE implemented its power shut-off program in 2003 on its own initiative and obtained Commission authorization sometime later. SCE terminated the program in August 2005, after the dead and diseased trees had been cleared from the region. During the time SCE's power shut-off program was in effect, SCE shut off power one time. The shut-off occurred on October 26-27, 2003, in the Idyllwild area. It affected approximately 4,000 customers and lasted 26 hours. When SCE inspected its power lines prior to re-energization, it found six locations where trees had fallen onto the lines. SCE views its program as a success because it prevented what could have been a catastrophic wildfire.

## **7.2. Discussion**

We will approve SDG&E's Power Shut-Off Plan only if we are convinced that the need to shut off power to protect public safety takes precedence over the vital necessity of keeping power on. There is a strong presumption that power should stay on. As the California Legislature recognized in § 330(g), "[r]eliable electric service is of utmost importance to the safety, health, and welfare of the state's citizenry and economy."

There are two threshold issues we must consider in deciding whether to approve SDG&E's Power Shut-Off Plan. The first issue is whether shutting off power results in a net reduction in wildfire ignitions during hazardous fire conditions. The second issue is whether the benefits of SDG&E's Power Shut-Off Plan outweigh the adverse impacts. If SDG&E's Power Shut-Off Plan fails either test, then SDG&E's Application for Commission approval of its Plan should be denied. SDG&E has the burden of demonstrating that its Power Shut-Off Plan passes both tests.



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### **7.2.1. Impact on the Number of Wildfires**

We begin our analysis of SDG&E's Power Shut-Off Plan by assessing whether it will reduce the number of wildfires during periods of high fire danger. There is no doubt that shutting off power eliminates the risk of power lines igniting fires. However, the Opposition Parties have demonstrated that shutting off power increases the risk of fires starting from sources other than power lines. This is because people who do not have power in their homes will light candles or lanterns when the sun goes down; will use barbeques and camp stoves to cook food, especially when faced with the loss of costly groceries in a freezer or refrigerator that is not receiving power;<sup>32</sup> and will use fireplaces for heat, light, and cooking. All of these actions create new ignition sources. In addition, some customers may use portable generators to power their appliances and homes. AT&T cites the following warning from the U. S. Fire Administration regarding the fire hazard posed by generators:

Before refueling the generator, turn it off and let it cool. Fuel spilled on hot engine parts could ignite.<sup>33</sup>

UCAN notes that sparks from vehicles are responsible for 11.6% of fires.<sup>34</sup> Shutting off power could increase the number of miles driven by forcing people in the areas where power is shut off to drive long distances to find restaurants

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<sup>32</sup> Customers with gas stoves and ovens will still be able to cook but many of these customers will have to use matches to light the cooking fire. The use of matches increases the risk of fire because explosive levels of gas could accumulate if customers cannot light the stove or oven by the second or third try.

<sup>33</sup> [www.usfa.dhs.gov/citizens/all\\_citizens/co/generator.shtm](http://www.usfa.dhs.gov/citizens/all_citizens/co/generator.shtm).

<sup>34</sup> UCAN Comments filed March 27, 2009, p. 5.

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and retail stores where power is on so they can eat and buy groceries, batteries, gasoline, and other necessities. The increased driving would exacerbate the risk of vehicle-ignited fires.

The risk of customers igniting fires increases as the number of affected customers increases and the length of the outage increases. SDG&E's backcast shows that SDG&E would have shut off power on October 22, 2007, to 35,746 meters serving 90,221 residents. The meter-weighted average duration of the shut-off would have been 23.8 hours, or about one full day. We believe it is likely that if SDG&E ever shuts off power to 90,211 residents for one full day, the residents would collectively light tens of thousands of candles, lanterns, camp stoves, barbecues, and fireplaces, and turn on numerous portable generators. This would present a significant risk of wildfire ignitions that could equal or exceed the risk of ignitions from power lines.<sup>35</sup>

The Alliance provided information that shows power-line fires constitute about 3% of all wildfires and only 1% of significant wildfires (i.e., fires greater than 100 acres) in Southern California.<sup>36</sup> Thus, wildfires that are not started by power lines constitute 97% to 99% of all wildfires. Anything that increases the number of fires caused by sources other than power lines, even by a small fraction, is a greater threat to public safety than the threat from power-line fires.

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<sup>35</sup> Fires started by any of these ignition sources could spread to nearby wildlands, especially in Santa Ana wind conditions.

<sup>36</sup> The Alliance's Comments filed March 27, 2009, p. 10, and Appendix A, pp. 14, 16, and 23. See also the Water Districts' Comments filed April 19, 2009, p. 3.

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SDG&E provided no evidence or analysis that shows its Power Shut-Off Plan will result in a net reduction in wildfire ignitions during periods of high fire danger. SDG&E suggests that the threat of wildfire ignitions from sources other than power lines will be reduced by its customer education efforts, which will help customers to prepare for power shut-off events. We agree this will help to some extent. Nevertheless, a significant and irreducible risk will remain. When SDG&E shuts off power, customers will have to use alternative means to light their homes at night, cook their food, and power their appliances, all of which increases the risk of wildfire ignitions.

SDG&E downplays the threat of wildfire ignitions from other sources by citing information from the State Fire Marshal that shows during a recent five-year period there were 55,636 equipment-related fires in all of California, of which 71 were caused by generators; 253 were caused by grills, hibachis, barbeques, and charcoal lighters; and 347 were caused by fireplaces and chimneys.<sup>37</sup> SDG&E believes its education campaign will reduce what it views as an already meager threat of wildfires from generators and other sources.

We see portable generators, grills, hibachis, barbeques, and fireplaces (referred to hereafter as “other fire sources” or “other sources”) as a much more serious fire risk than SDG&E. The information that SDG&E obtained from the State Fire Marshal shows there were 671 fires caused by generators, grills,

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<sup>37</sup> SDG&E Comments filed June 30, 2009, p. 7, Fn. 3, citing a report titled “Fires by Equipment Involved in Ignition, 2003-2007” prepared by the State Fire Marshall at [http://osfm.fire.ca.gov/cairs/pdf/firesbyeignition2003\\_07.pdf](http://osfm.fire.ca.gov/cairs/pdf/firesbyeignition2003_07.pdf). SDG&E’s motion to take official notice of this information pursuant to Rule 13.9 and Evidence Code §§ 452(c) and 452(h) was granted by the assigned Administrative Law Judge (ALJ) in a ruling issue on August 6, 2009.

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hibachis, barbeques, fireplaces, charcoal lighters, and chimneys compared to 343 power-line fires.<sup>38</sup> The reported number of fires from other sources does not reflect the impact of SDG&E's Power Shut-Off Plan because the Plan has never been put into effect. For example, we would expect there would normally be very few generator fires in SDG&E's service territory because there would be little need for SDG&E's customers to use portable generators on a day-to-day basis. However, if a power shut-off event occurs, then every affected customer with a portable generator would have a need to use it. The number of people using generators during a shut-off event may be significant, as SDG&E stated that "a large number of people in the backcountry have portable generators."<sup>39</sup> The upshot is that the risk of fires from other sources would be multiplied manyfold during a power shut-off event, perhaps surpassing the risk of wind-related power-line fires that the Power Shut-Off Plan is intended to address.<sup>40</sup>

In its comments on the proposed decision, SDG&E asserts that the data from the State Fire Marshall shows that shutting off power will prevent many types of fires besides power-line fires. For instance, the data shows that during the five-year period of 2003-2007, thousands of fires were caused by electrical appliances, wiring, transformers, and motors. During a power shut-off event,

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<sup>38</sup> It is important to keep in mind that the 671 fires from other sources and the 343 power-line fires are categorized as equipment-related fires. There is no information on how many of these fires resulted in wildfires.

<sup>39</sup> Reporter's Transcript of the all party meeting held on July 6, 2009, p. 73.

<sup>40</sup> As noted previously in today's decision, wind is not a factor in most fires associated with SDG&E's power lines. This suggests that wind was not a factor in causing most of the 343 power-line fires reported by the State Fire Marshall.

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none of these ignition sources would be capable of starting a fire, including: soldering equipment (91 fires), power tools (138 fires), clothes dryers (1,058 fires), dishwashers (84 fires), microwave ovens (167 fires), toasters and toaster ovens (83 fires), electrical wiring (562 fires), electric distribution/power transfer equipment (155 fires), extension cords (76 fires), and fans (378 fires).

We agree that shutting off power will eliminate many sources of ignition while the power is shut off. However, it is unclear to what extent, if any, there will be a net reduction in the number ignitions. The timing of many activities that require electric power – such as using dishwashers, clothes dryers, and power tools – will simply be shifted to when power is on. Furthermore, it is likely that when customers receive notice of a forecasted power shut-off event, there will be a spike in the use of electric devices and appliances as customers rush to prepare for the shut-off event (e.g., charging batteries and cell phones) and complete activities that require power (e.g., cooking meals and washing dishes and clothes) before power is shut off.<sup>41</sup> These activities will increase the number of ignition sources immediately prior to a shut off event.<sup>42</sup> If a fire were

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<sup>41</sup> SDG&E anticipates that Essential Customers will increase their use of electricity to prepare for a noticed shut-off event. (Exhibit SDG&E-3, pp. JSV-17 – 19.) We believe that many other customers will likewise need to increase their use of electricity to prepare for a shut-off event.

<sup>42</sup> It is possible that customers may use their appliances less efficiently in an effort to prepare for a power shut off event that will likely last 12 to 72 hours (e.g., wash less than a full load of clothes). The inefficient use of appliances could result in greater use of appliances immediately before and after a power shut-off event and thereby increase the number of appliance-related ignitions. Customer might also overload their appliances in order to get as much done as possible before a shut-off event

*Footnote continued on next page*

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to ignite, it would occur at a time when the overall fire hazard is increasing (i.e., when humidity is dropping and winds are becoming stronger).

SDG&E also argues in its comments on the proposed decision that its Power Shut-Off Plan will not significantly increase the risk of generator-related fires. SDG&E states there are more than 5,000 outages per year on its system, and that its Plan will cause only one to two additional outages annually.

We are not persuaded by SDG&E's argument. The 5,000 outages that occur annually are not comparable, on average, to outages that will occur under the Power Shut-Off Plan. Outages under the Power Shut-Off Plan will last far longer than the typical outage. During the 10-year period of 1999-2008, the average minutes of sustained outages per SDG&E customer was 101.62 minutes per year, or less than two hours.<sup>43</sup> In contrast, outages under the Power Shut-Off Plan will last 12 to 72 hours.

Given the relatively short duration of the vast majority of the 50,000 outages that have occurred over the last decade, it is likely that many customers with generators may choose to wait out a typical outage based on their experience that it will last only a few hours at most, rather than going through the inconvenience of pulling their generators from storage, fueling them, turning

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(e.g., washing more than a full load of clothes), which could increase the risk of appliances sparking a fire.

<sup>43</sup> See ALJ Ruling dated August 5, 2009, taking official notice of the System Average interruption Duration Index pursuant to Rule 13.9 of the Commission's Rules of Practice and Procedure and California Evidence Code §§ 452(c) and 452(h). The 10-year annual average of minutes of sustained outages per SDG&E customer includes the widespread and prolonged outages that occurred due to firestorms in October 2003 and October 2007. (Response of SDG&E Response to Water and School District Joint Motion for Official Notice filed July 20, 2009, p. 6, Fn. 5.)

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them on, connecting appliances, and then returning the generators to storage when the outage ends.

On the other hand, when SDG&E notifies customers of a forecasted outage under its Power Shut-Off Plan, customers will know in advance that the outage could last up to 72 hours because of SDG&E's previous customer education efforts.<sup>44</sup> These circumstances lead us to conclude that outages under the Power Shut-Off Plan will (1) spur much greater use of generators than typical outages, and (2) significantly increase the risk of generator-related fires.

For the previous reasons, we find that SDG&E has not met its burden to demonstrate that its Power Shut-Off Plan will reduce the overall number of wildfires occurring during hazardous fire conditions. Based on the available information, we conclude that it is more likely than not that SDG&E's Plan will increase the risk of wildfire ignitions during hazardous fire conditions.

### **7.2.2. Historical Data on Power-Line Fires**

We next review the available historical data on wind-related fires ignited by SDG&E's power lines for insight on weighing the costs and benefits of SDG&E's Power Shut-Off Plan. SDG&E reports that its power lines have been involved in 13 wind-related fires since August 2003. Ten of these fires were

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<sup>44</sup> SDG&E's customer education for its Power Shut-Off Plan includes workshops and advice for the safe installation, connection, and operation of generators, which indicates that SDG&E anticipates widespread use of generators during outages under its Power Shut-Off Plan. (Exhibit SDG&E-3, page JSV-16 and Attachment A.) Customers in power Shut-Off Areas may also be more likely to purchase generators in the future to prepare for the possibility of lengthy outages under the SDG&E's Power Shut-Off Plan. The increased number of generators increases the risk of generator-related fires during outages under the Power Shut-Off Plan as well as during any of the other 5,000 outages that occur annually.



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minor, burning a total of 145 acres. There were no injuries. Only one of the ten fires caused property damage, which was limited to the loss of pasture land and unspecified damage to a bridge.

The remaining three wind-related fires involving SDG&E's power lines occurred during the October 2007 firestorm. These were the Guejito, Rice, and Witch Fires. All three were major wildfires. We are currently investigating the causes of these fires in I.08-11-007 and I.08-11-006.

SDG&E's backcast of power shut-off events purports to show that if SDG&E's Power Shut-Off Plan had been in effect in prior years, it would have prevented three of the 13 wind-related fires involving SDG&E's power lines. The three fires that would have been prevented are listed in the following table:

| <b>Fires That SDG&amp;E Believes Would have Been Prevented By Its Power Shut-Off Plan</b> |                 |              |
|---|-----------------|--------------|
| <b>Date</b>   | <b>Location</b> | <b>Acres</b> |
| 12/16/04  | Descanso        | 1            |
| 10/21/07  | Guejito         | 197,990*     |
| 10/22/07  | Rice            | 9,472        |
| * <b>Note:</b> Includes the area burned in both the Guejito and Witch Fires.              |                 |              |

The Descanso Fire in the above table was a minor, 1-acre fire. The Guejito and Rice Fires were major wildfires, the causes of which are currently being investigated in I.08-11-007 and I.08-11-006, respectively. Until the investigations



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are complete, we cannot say whether SDG&E's Power Shut-Off Plan would have prevented these two fires.<sup>45</sup>

It is important to recognize that SDG&E's Power Shut-Off Plan would not have prevented the Witch Fire, which was allegedly ignited by SDG&E's power lines on October 21, 2007.<sup>46</sup> After it was ignited, the Witch Fire moved west and merged with the Guejito Fire on October 22, 2009.<sup>47</sup> The Witch Fire moved into the Guejito area at the exact time that SDG&E would have shut off power to the Guejito area under its Power Shut-Off Plan. This demonstrates that major wildfires can occur in areas where power is shut off. As discussed in more detail below, shutting off power in areas where major wildfires are burning creates significant risks to public safety.

### **7.2.3. Shutting Off Power During Major Wildfires**

SDG&E's Power Shut-Off Plan does nothing to prevent wildfires started by sources other than power lines, which constitute about 97% of all wildfires and 99% of significant wildfires (i.e., fires greater than 100 acres) in Southern California. The Cedar Fire in San Diego County during the October 2003

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<sup>45</sup> SDG&E acknowledges that the "role power lines played in [the Witch, Guejito and Rice Fires] has not been determined with certainty." (Joint Comments filed by the School Districts and the Water Districts on April 17, 2009, p. 4, quoting an SDG&E data response provided to DisabRA.)

<sup>46</sup> The cause of the Witch Fire is currently being investigated in I.08-11-006.

<sup>47</sup> See Cal Fire's report "California Fire Siege 2007, An Overview" at [http://www.fire.ca.gov/fire\\_protection/downloads/siege/2007/Overview\\_CompleteFinal.pdf](http://www.fire.ca.gov/fire_protection/downloads/siege/2007/Overview_CompleteFinal.pdf), p. 84. The School Districts and Water Districts' joint motion to take official notice of the report pursuant to Rule 13.9 and Evidence Code § 452(h) was granted by the assigned ALJ in a ruling issue on August 5, 2009.

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firestorm demonstrates the serious threat from wildfires ignited by sources other than power lines. The Cedar Fire is the largest fire in California's recorded history. It started when a lost hunter lit a signal fire, and it eventually burned 280,275 acres, destroyed more than 2,200 structures, and killed 14 people.<sup>48</sup>

As discussed previously, the Witch Fire demonstrates that major wildfires can occur in an area at the same time that SDG&E would shut off power to the area under its Power Shut-Off Plan. Shutting off power increases the public safety risk of wildfires, including the 99% of significant wildfires that are not started by power lines. The heightened risks include:

- Shutting off power could disrupt landline and wireless telephone service. SDG&E recognizes this, and warns its customers that they may lose phone service during a power shut-off event.<sup>49</sup> Without phone service, customers may not be able to report fires, which could delay the initial attack by firefighters and thereby increase the chance of wildfires growing to catastrophic size. Such fires would be occurring at the exact time when there is the greatest potential for the rapid spread of wildfires (i.e., when winds are strong, humidity is low, and vegetation is dry).
- Customers without power may not be able to use their telephones, televisions, radios, and computers. Thus, those who work or live in an area where power is shut off will lose their primary means to learn of approaching fires, evacuation notices, and other critical information. A report on the October 2007 firestorm that was jointly prepared by Cal Fire, the U.S. Forest Service, and the San Diego County Office of Emergency Services

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<sup>48</sup> Cal Fire's report "California Fire Siege 2003, The Story" at ([http://www.fire.ca.gov/fire\\_protection/downloads/2003FireStoryInternet.pdf](http://www.fire.ca.gov/fire_protection/downloads/2003FireStoryInternet.pdf), pp. 72-73.) We take official notice of Cal Fire's report pursuant to Rule 13.9.

<sup>49</sup> Exhibit SDG&E-3, Appendix A, Fact Sheet.

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highlighted the vital importance of communications during evacuations and other emergencies. The Report stated: “A vital component in any evacuation or emergency situation is communication. During the October fire siege, the Reverse 911 system was employed on a large scale, and was key to reaching thousands of citizens. Previous evacuation communications, such as those employed in the 2003 fire siege, depended on residents watching the news, listening to radio broadcasts or waiting for a personal visit from law enforcement officials giving evacuation orders. The Reverse 911 system contacted nearly 200,000 citizens with recorded phone messages relevant to their communities.”<sup>50</sup>

- People with disabilities rely disproportionately on communications devices that need to be plugged into a power outlet to operate, such as TTYs and computers, making them vulnerable to being cut off from communications with the outside world during a power shut-off event. Shutting off power would place such people at risk of not receiving a notice to evacuate due to an oncoming wildfire. In addition, people with disabilities are more likely to need assistance in evacuating. The inability to receive evacuation notices or to call for assistance could have deadly consequences.<sup>51</sup>
- Electric garage door openers will not work when power is shut off. If wildfire forces an evacuation, customers who are elderly or have disabilities may not be able to open their garage doors manually, potentially trapping them in their homes. Trapped customers may not be able to call for help if telephone service is disrupted.

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<sup>50</sup> See “California Fire Siege 2007: An Overview,” at p. 86. The School Districts and Water Districts’ joint motion to take official notice of the report pursuant to Rule 13.9 was granted by the assigned ALJ in a ruling issue on August 5, 2009.

<sup>51</sup> DisabRA’s comments on the Proposed Decision of Commissioner Simon, p. 12.

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- Loss of power to traffic signals and street lights may cause traffic accidents and impede evacuations, particularly at night.
- The Water Districts have 39 electric-powered pump stations in SDG&E's Power Shut-Off Areas that are critical to maintaining the supply of water, but which have no backup power.<sup>52</sup> If power is shut off to any of these 39 pump stations while a wildfire is burning, the supply of stored water in the area served by the pump station could be exhausted within hours, leaving no water to fight fires. In order to satisfy the immense demand for water during a major wildfire, the Water Districts must pump around the clock.<sup>53</sup>

SDG&E did not provide any evidence or analysis that shows the benefits from the reduction in the number of power-line fires made possible by its Power Shut-Off Plan exceeds the increase in public-safety risk from wildfires that threaten communities in areas where power is shut off.

SDG&E intends to mitigate the risk of shutting off power to critical pump stations by forming a pool of six large portable generators for use by the Water Districts during power shut-off events. We agree with the Water Districts that six generators are not enough. During the October 2007 firestorm, SDG&E would have shut off power to more than 30 critical pump stations simultaneously.<sup>54</sup>

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<sup>52</sup> Water Districts Comments filed on June 10, 2009, pp. 1-2. The 39 pump stations without backup power excludes pump stations that will be removed from the Power Shut-Off Areas during 2009 after the conversion of certain overhead power lines to underground lines pursuant to SDG&E Advice Letter 2075-E. (Ibid.)

<sup>53</sup> Water Districts Comments filed on May 19, 2009, p. 13.

<sup>54</sup> Water Districts Comments filed on June 10, 2009, p. 1 and Appendix A.

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SDG&E states that it will restore power to any area threatened by a wildfire if ordered to do so by a public-safety agency. However, restoring power to communities already threatened by a wildfire does not mitigate the risk that while power is shut off, residents may not be able to report fires. This could delay the initial attack by firefighters and thereby increase the chance of large scale wildfires. SDG&E also states that it may take as long as two hours to restore power once it is ordered to do so.<sup>55</sup> During that interval, lives and property would be at increased risk from fast-moving wildfires driven by strong Santa Ana winds.

#### **7.2.4. SCE's Power Shut-Off Program**

The only precedent for SDG&E's Power Shut-Off Plan is a temporary program that SCE implemented in 2003. The fact that SCE instituted a shut-off program does not mean that SDG&E should be allowed to do the same.

SCE's shut-off program was instituted in response to emergency conditions that arose from the tremendous number of trees that had been killed by bark beetles. On March 7, 2003, the Governor issued an emergency proclamation that, among other things, directed utilities to clear dead and diseased trees near power lines due to the fire hazard. SCE was concerned that until the trees were removed, high winds could cause dead and diseased trees to fall onto its power lines and ignite wildfires. After the dead and diseased trees were removed, SCE ended its power shut-off program in 2005.

The lesson we draw from SCE's power shut-off program is that it may be appropriate to implement a power shut-off program when emergency conditions

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<sup>55</sup> SDG&E Comments filed July 2, 2009, p. 2.

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are present, but the program should end when the emergency is over. SDG&E's Power Shut-Off Plan is not limited to emergency conditions, but applies to situations that occur annually (e.g., sustained winds of 35 mph). SDG&E is required by General Order 95 to design, construct, and maintain its power-line facilities to operate safely under these regularly occurring conditions.<sup>56</sup>

### **7.2.5. Costs and Benefits**

The Opposition Parties have identified many significant costs, burdens, and risks that shutting off power imposes on customers and communities in the areas where power is shut off. These adverse impacts were summarized previously and are not repeated here.<sup>57</sup> SDG&E has proposed several measures to mitigate the adverse impacts, including the opening of shelters; offering free medical transport; providing \$250 debit cards to customers participating in the CARE and Medical Baseline Programs; and procuring a pool of six large portable generators for use by the Water Districts. SDG&E does not seek ratepayer funding for mitigation costs incurred in 2009.

We commend SDG&E for its willingness to undertake extensive and costly mitigation measures. However, SDG&E provided no evidence or analysis that shows the benefits of its Power Shut-Off Program, as mitigated, outweigh the many significant adverse impacts on customers and communities. Given this fundamental lack of information, we cannot find that the Power Shut-Off Plan is in the public interest.

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<sup>56</sup> CPSD/DRA Comments filed May 26, 2009, pp. 9-11. There is no dispute that SDG&E may shut off power when high winds exceed General Order 95 design standards.

<sup>57</sup> See the previous summary in today's decision of the Opposition Parties' position on SDG&E's Power Shut-Off Plan.

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SDG&E contends that shutting off power is better than risking the chance of more firestorms like those that devastated San Diego County in October 2003 and October 2007. SDG&E states that unless decisive action is taken, it is only a matter of time before the next catastrophic firestorm.

We agree that every reasonable action should be taken to avoid firestorms. However, SDG&E has not demonstrated that shutting off power is likely to decrease the number of wildfires. Nor did SDG&E cite a single fire during the October 2003 firestorm that was ignited by its power lines. Thus, shutting of power would have done nothing to prevent the October 2003 firestorm.

On the other hand, SDG&E's power lines have been implicated in three of the many fires that collectively comprise the October 2007 firestorm. These were the Guejito, Rice, and Witch Fires.<sup>58</sup> We are currently investigating these fires in I.08-11-007 and I.08-11-006. Until the investigations are complete, we decline to speculate on the causes of these fires. At this point in time, there is no basis to conclude that SDG&E's Power Shut-Off Plan is an appropriate response to the October 2007 firestorm.<sup>59</sup>

SDG&E asserts that its Power Shut-Off Plan is not based on costs and benefits. Rather, it is meant to protect public safety. SDG&E observes that

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<sup>58</sup> SDG&E states that its Power Shut-Off Plan would have prevented the Guejito and Rice Fires, but not the Witch Fire.

<sup>59</sup> SDG&E acknowledges that the "role power lines played in [the October 2007 fires] has not been determined with certainty." (Joint Comments filed by the School Districts and the Water Districts on April 17, 2009, at p. 4, quoting an SDG&E data response to DisabRA.)



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several Public Utilities Code sections require SDG&E to operate its system in a safe manner. (§§ 330, 399, 451, 761, 762, 768, and 770).

We agree that the Public Utilities Code ranks public safety as a top priority. We further agree that a safe electric system is one which is operated to prevent fires. However, operating a safe system also includes the reliable provision of electricity. Without power, numerous unsafe conditions can occur. Traffic signals do not work, life support systems do not work, water pumps do not work, and communication systems do not work. As the California Legislature recognized in § 330(g), “[r]eliable electric service is of utmost importance to the safety, health, and welfare of the state’s citizenry and economy.” In short, there is a strong presumption that power should remain on for public safety reasons.

#### **7.2.6. Conclusion**

SDG&E’s Power Shut-Off Plan would impose significant costs, burdens, and risks on the customers and communities in the areas where power is shut off. In light of these hardships, SDG&E’s Power Shut-Off Plan should be adopted only if SDG&E demonstrates that its Plan will improve public safety. While the Power Shut-Off Plan will eliminate power lines as a source of ignition during hazardous fire conditions, it will create many new sources of ignition and exacerbate the risk to public safety from fires that occur in areas where power is shut off. SDG&E provided no evidence or analysis that shows its Plan will improve public safety overall. Based on our review of the record, we believe it is more likely than not that SDG&E’s Power Shut-Off Plan would, on balance, negatively affect public health, safety, and welfare.

We conclude for the previous reasons that SDG&E’s Application should be denied without prejudice. Because SDG&E’s Application is denied, there is no

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need to decide if the shut-off criteria proposed by SDG&E are reasonable or to address ancillary issues raised in SDG&E's application pertaining to demand normalization, critical peak pricing, and demand response.

Although today's decision rejects SDG&E's proposed Power Shut-Off Plan, we recognize that SDG&E's power lines pose an ongoing fire hazard.<sup>60</sup> We commend SDG&E for its concern for fire safety and its extensive efforts to implement measures to protect the public, both in this proceeding and with its broader Community Fire Safety Program. We encourage SDG&E to continue its efforts, particularly with respect to its inspections of overhead power lines, hardening its facilities in fire-prone areas, and sound vegetation management.

In an effort to ensure steady progress in reducing the fire hazard of overhead power lines, we will direct SDG&E to make a good faith effort to develop a comprehensive fire-prevention program in collaboration with all stakeholders.<sup>61</sup> Parties may use the Commission's Alternative Dispute Resolution (ADR) process for this purpose. If ADR is selected, SDG&E and the parties should agree on the type of Commission ADR process they would like to use and then contact the Commission's ADR coordinator for assistance. Information about the Commission's ADR program, the types of ADR available,

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<sup>60</sup> SDG&E and the Commission have implemented numerous measures to reduce the fire hazard to an acceptable level, including (i) the elements of SDG&E's Community Fire Safety Program other than its Power Shut-Off Plan, and (ii) the Commission's General Order 95.

<sup>61</sup> SDG&E should invite the following stakeholders to participate in the collaborative process: the parties to A.08-12-021, the San Diego County Office of Emergency Services, Cal Fire, the San Diego County Sheriff's Department, and major healthcare providers. Other stakeholders may participate as well.

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and how to request ADR is available at the Commission's website at <http://www.cpuc.ca.gov/PUC/adr/>.

The agreed-upon fire-prevention program must be based on a cost-benefit analysis that demonstrates (A) the program will likely result in a net reduction in wildfire ignitions, and (B) the benefits of the program outweigh any costs, burdens, or risks the program imposes on customers and communities. The cost-benefit model proposed by the Alliance may provide a reasonable conceptual framework. SDG&E shall confer with the other stakeholders, including the parties to A.08-12-021, for the purpose of reaching a consensus on (1) the design and conduct of the cost-benefit study, and (2) the development and submittal of a joint fire-prevention program.

The cost-benefit study shall assess whether re-closer devices<sup>62</sup> and/or measures to harden SDG&E's system can be used instead of the drastic step of shutting off power. If not, the study should assess if it is cost effective to spend money on re-closer devices and hardening if power will be shut off anyway.

If the cost-benefit study finds the public-safety benefits of shutting off power outweigh the many attendant costs, burdens, and risks, the study should include a careful assessment of the criteria that should be used to trigger a shut-off event, particularly wind speed. There are many complex engineering

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<sup>62</sup> At the all-party meeting held on July 6, 2009, SDG&E stated for the first time that the re-closer policy it is implementing as part of its Community Fire Safety Program would have prevented the Witch Fire in October 2007 had the re-closer policy been in effect at that time. (Reporter's Transcript, p. 68.) The new re-closer policy is separate from SDG&E's Power Shut-Off Plan. SDG&E did not address whether its new re-closer policy would be just as effective at preventing wildfires as its Power Shut-Off Plan, but with considerably fewer impacts on customers and communities.

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factors and public safety considerations that need to be thoroughly evaluated in determining the wind-speed criteria.<sup>63</sup> Similarly, Cal Fire states that several of the criteria proposed by SDG&E in the instant proceeding (i.e., non-living fuel moisture, relative humidity, and wind speed) place unwarranted confidence in the accuracy and reliability of the RAWS system. The cost-benefit study needs to assess to what extent it is appropriate to rely on RAWS data for determining when to shut off power. In addition, the cost-benefit study should consider what mitigation measures should be implemented to eliminate or reduce the inevitable adverse impacts caused by shutting off power. Particular attention should be placed on mitigating the adverse impacts on people with disabilities, providers of essential services, and schools.

Finally, the cost-benefit study should endeavor to identify and assess environmental impacts, if any, of agreed-upon fire-prevention measures.

At the conclusion of the collaborative process, SDG&E may file an application for approval of the jointly developed fire-prevention program. The application should include (1) a copy of the previously described cost-benefit study; (2) detailed plans and timelines for mitigating any adverse impacts on customers and communities; and (3) a proponent's environmental assessment, if appropriate. If the collaborative process does not result in a consensus proposal, SDG&E may file an application containing its own proposed fire-prevention program. SDG&E's proposed fire-prevention program shall be based upon the

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<sup>63</sup> CPSD and the Alliance have identified several potential deficiencies in the wind-speed criteria that SDG&E proposed in A.08-12-021. These deficiencies are summarized in the Alliance's Comments on the Proposed Decision, pp. 6-8.

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previously described cost-benefit study and its application shall include the previously identified documents and information. If SDG&E chooses to not file an application, it shall file and serve a notice of its decision on the service list for A.08-12-021. The notice shall include an explanation for SDG&E's decision.

Our denial of SDG&E's application does not affect SDG&E's authority under § 451 and § 399.2(a) to shut off power in emergency situations when necessary to protect public safety. These laws state, in relevant part, as follows:

**§ 451:** Every public utility shall 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.

**399.2 (a)(1):** It is the policy of this state, and the intent of the Legislature, to reaffirm that each electrical corporation shall continue to operate its electric distribution grid in its service territory and shall do so in a safe, reliable, efficient, and cost-effective manner.

**399.2 (a)(2):** In furtherance of this policy, it is the intent of the Legislature that each electrical corporation shall continue to be responsible for operating its own electric distribution grid including, but not limited to, owning, controlling, operating, managing, maintaining, planning, engineering, designing, and constructing its own electric distribution grid, emergency response and restoration, service connections, service turnons and turnoffs, and service inquiries relating to the operation of its electric distribution grid, subject to the commission's authority.

SDG&E's statutory obligation to operate its system safely requires SDG&E to shut off its system if doing so is necessary to protect public safety. For example, there is no dispute that SDG&E may need to shut off power in order to protect public safety if Santa Ana winds exceed the design limits for SDG&E's

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system and threaten to topple power lines onto tinder dry brush.<sup>64</sup> Any decision by SDG&E to shut off power under its existing statutory authority may be reviewed by the Commission pursuant to its broad jurisdiction over matters regarding the safety of public utility operations and facilities. The Commission may decide at that time whether SDG&E's decision to shut off power was reasonable and qualifies for an exemption from liability under Tariff Rule 14.

Our denial of the SDG&E's Application does not signal any diminishment in our resolve to protect Californians from the wildfire-related risks of overhead power lines. We take very seriously our obligation to protect public safety on matters within the scope of our jurisdiction. There is perhaps no better example of our commitment to protecting the public than General Order 95. This General Order is over 500 pages long and contains comprehensive guidelines for the design, construction, and maintenance of overhead electric lines. These guidelines are specifically intended to provide the public with a high level of protection from the hazards associated with overhead power lines, including fire-related risks.

The paramount importance we place on public safety can be seen by our current investigations of the October 2007 wildfires. (I.08-11-007 and I.08-11-006) The ultimate objective of these investigations is to identify the root causes of the wildfires so that corrective actions can be taken to prevent future wildfires. We also have an ongoing rulemaking proceeding (Rulemaking 08-11-005) to consider

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<sup>64</sup> There is disagreement between SDG&E on the one hand, and CPSD, DRA, and the Alliance on the other hand, regarding how the wind-loading standards for power line facilities set forth in General Order 95 should be interpreted in terms of setting a threshold for shutting off power. Today's decision does not resolve this dispute.

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new regulations to reduce the fire hazards associated with utility operations and facilities. On August 20, 2009, we issued our first decision in Rulemaking (R.) 08-11-005 adopting such regulations.<sup>65</sup> Additional regulations to reduce fire hazards will be considered in R.08-11-005 in the near future.

We commend SDG&E for its concern for fire safety and its extensive efforts to implement measures to protect the public, both in this proceeding and with its broader Community Fire Safety Program. We encourage SDG&E to continue its efforts, particularly with respect to its inspections of overhead power lines, hardening its facilities in fire-prone areas, and sound vegetation management.

#### **8. Electric Tariff Rule 14**

SDG&E's Electric Tariff Rule 14 requires SDG&E to exercise "reasonable diligence and care to furnish and deliver a continuous and sufficient supply of electric energy to the customer, and to avoid any shortage or interruption of delivery of same."<sup>66</sup> Tariff Rule 14 also states that SDG&E will not be held liable for an interruption in service "caused by inevitable accident, act of God, fire, strikes, riots, war or any other cause not within its control."

SDG&E requests authority to amend Tariff Rule 14 to include the statement that SDG&E may shut off power "without liability to Customers"

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<sup>65</sup> See D.09-08-029. Among other things, D.09-08-029 requires utilities to take the following actions in extreme and very high fire treat zones in Southern California: (i) increase the frequency of patrols of overhead facilities in order to identify and correct potential fire hazards; and (ii) increase the minimum clearance between overhead power lines and vegetation at the time of trim.

<sup>66</sup> Tariff Rule 14, Section A.

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when in “SDG&E’s sole opinion such interruption is necessary for . . . [an] [e]mergency affecting or likely to affect SDG&E’s distribution system.”<sup>67</sup> The text of SDG&E’s proposed revisions to Tariff Rule 14 mirrors PG&E’s current Tariff Rule 14.

SDG&E’s proposed revisions to Tariff Rule 14 are not contingent on Commission approval of SDG&E’s Power Shut-Off Plan. Rather, SDG&E sees these as separate matters.

## **8.1. Position of the Parties**

### **8.1.1. SDG&E**

SDG&E avers that its proposed revisions to Tariff Rule 14 will help customers understand that power may be shut off unexpectedly in order to protect public safety. SDG&E also asserts that customers are currently responsible for any losses they might occur when power is shut off for safety reasons, and that the proposed revisions to Tariff Rule 14 will not change that.

SDG&E maintains that PG&E’s current Tariff Rule 14 is an appropriate template for revising SDG&E’s Tariff Rule 14 even though PG&E’s Tariff was not adopted as a part of a fire-safety program. Rather, it was approved in 1997 as part of the Commission’s direct access program. SDG&E submits that PG&E’s Tariff Rule 14 is not limited to situations involving direct access; it covers safety and interruption of service in a general sense.

### **8.1.2. SCE**

SCE supports SDG&E’s proposed revisions to Tariff Rule 14.

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<sup>67</sup> Exhibit SDG&E-3, Appendix C.



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### **8.1.3. The Opposition Parties**

The Opposition Parties assert that SDG&E's proposed revisions to Tariff Rule 14 will unfairly shift all costs and liabilities for power shut-off events to the customers and communities in the areas where power is shut off.

The Opposition Parties dismiss SDG&E's assertion that PG&E's Tariff Rule 14 is an appropriate template for revising SDG&E's Tariff Rule 14. They state that PG&E's Tariff Rule 14 was implemented as part of the direct access program, not a fire-safety program.

## **8.2. Discussion**

It appears that the main purpose of SDG&E's proposed revisions to Tariff Rule 14 is to allow SDG&E to shut off power in a manner consistent with its Power Shut-Off Plan, without liability to its customers or others. Because today's decision denies SDG&E's request for authority to implement its Power Shut-Off Plan, we decline to authorize the proposed changes to SDG&E's Tariff Rule 14. Our denial of SDG&E's proposed revisions to Tariff Rule 14 means we do not have to decide whether the proposed tariff language would permit SDG&E to shut off power under the circumstances described in its Power Shut-Off Plan.

SDG&E argues that the proposed revisions will help its customers understand that SDG&E may need to shut off power unexpectedly in order to protect public safety. SDG&E does not explain why revising Tariff Rule 14 will achieve this objective, particularly if few customers ever read Tariff Rule 14. We believe that most customers already expect that SDG&E will shut off power when necessary to protect public safety, thereby making SDG&E's proposed revisions to Tariff Rule 14 superfluous.

SDG&E also argues that it should be allowed to revise its Tariff Rule 14 to mirror PG&E's Tariff Rule 14. We disagree. As noted by several parties, the



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revisions to PG&E's tariff were made in a different context. PG&E's Tariff Rule 14 stems from D.97-10-087, which concerned the interruption of energy supplied by energy marketers to direct access customers. Thus, the revisions to PG&E's Tariff Rule 14 were wholly unrelated to the main purpose of SDG&E's proposed revisions to its Tariff Rule 14. Nor does SDG&E explain why a tariff filed by PG&E more than a decade ago to implement direct access is appropriate today given all the ensuing changes to direct access.

### **9. Proceeding Category and Need for Hearings**

In Resolution ALJ 176-3228, dated January 29, 2009, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were needed. The Assigned Commissioner's Ruling and Scoping Memo (Scoping Memo) dated February 26, 2009, affirmed these preliminary determinations, but left open the possibility that hearings would not be held by requiring parties to file motions for evidentiary hearings by April 10, 2009. The evidentiary hearings, if held, were set to begin on April 30, 2009.

There were no motions for evidentiary hearings. After consulting with the assigned Commissioner, the assigned Administrative Law Judge (ALJ) issued a ruling on April 15, 2009, that canceled the previously scheduled evidentiary hearings.

Rule 7.5 requires that the Commission to approve a change to the preliminary determination on the need for hearings. Today's decision affirms that evidentiary hearings are not needed in this proceeding.

### **10. Comments on the Alternate Proposed Decision**

The proposed decision of the assigned Commissioner and the alternate proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311, and comments were allowed pursuant to

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Rule 14.3. Comments were filed on August 31, 2009, by Cal Fire, a coalition of communications providers,<sup>68</sup> CPSD, DisabRA, DRA, the Alliance, the County of San Diego, SDG&E, the School Districts, the Water Districts, and UCAN. Reply comments were filed on September 8, 2009, by Cal Fire, a coalition of communications providers, CPSD, DisabRA, DRA, the Alliance, and the County of San Diego, SDG&E, the School Districts, and the Water Districts. These comments and reply comments are reflected, as appropriate, in today's decision.

### **11. Assignment of the Proceeding**

Timothy Alan Simon is the assigned Commissioner for A.08-12-021 and Timothy Kenney is the assigned ALJ.

### **Findings of Fact**

1. The purpose of SDG&E's Power Shut-Off Plan is to prevent the ignition of wildfires by shutting off power lines during hazardous fire conditions.
2. Although shutting off power eliminates the risk of power lines igniting fires, it also increases the number of potential ignition sources as people use alternate means for cooking, lighting, and power, such as candles, lanterns, fireplaces, barbeques, hibachis, camp stoves, and portable generators.
3. Wildfires that occur in areas where power is shut off are a much greater threat to public safety than wildfires that occur where power is on.
4. SDG&E's Power Shut-Off Plan imposes significant costs, burdens, and risks on customers and communities in areas where power is shut off.

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<sup>68</sup> The coalition of communications providers consist of CCTA, AT&T and affiliates, CoxCom, Inc., Cox California Telcom, L.L.C., dba Cox Communications, CTIA-The Wireless Association, and Time Warner Cable.

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5. SDG&E did not demonstrate that its Power Shut-Off Plan will result in an overall reduction in the number of wildfires, or that the public safety benefits of its Plan exceed the significant costs, burdens, and risks that are imposed on customers and communities in areas where power is shut off.

6. SDG&E's power lines pose an ongoing fire hazard. SDG&E and the Commission have implemented numerous measures to reduce the fire hazard to an acceptable level, including (i) the elements of SDG&E's Community Fire Safety Program other than its Power Shut-Off plan, and (ii) the Commission's General Order 95.

7. The purpose of the Commission's ADR program is to facilitate informal resolution of disputes in order to improve decision making, conserve Commission resources, and to identify parties' fundamental interests.

8. One purpose of SDG&E's proposed revisions to Tariff Rule 14 is to allow SDG&E to shut off power in a manner consistent with its Power Shut-Off Plan.

9. SDG&E's proposed revisions to Tariff Rule 14 will do little to help its customers understand that power may be shut off unexpectedly in order to protect public safety because most customers will never read the Tariff.

10. Most customers already expect that SDG&E will shut off power when necessary to protect public safety, thereby making SDG&E's proposed revisions to Tariff Rule 14 superfluous.

11. There is no evidence that PG&E's Tariff Rule 14 was filed to implement a power shut-off program like the one proposed by SDG&E.

12. In Resolution ALJ 176-3228, dated January 29, 2009, the Commission preliminarily determined that there was a need for evidentiary hearings in this proceeding. The preliminary determination on the need for hearings was

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affirmed in the Scoping Memo, but the Scoping Memo also directed parties to file motions for evidentiary hearings.

13. There were no motions for evidentiary hearings.

### **Conclusions of Law**

1. A.08-12-021 should be denied without prejudice because SDG&E has not met its burden to demonstrate that (i) its Power Shut-Off Plan will decrease the number of wildfires, and (ii) the benefits of its Power Shut-Off Plan outweigh the significant costs, burdens, and risks imposed on customers and communities in the areas where power is shut off under the Plan.

2. SDG&E should make a good faith effort to develop a comprehensive fire-prevention program in collaboration with other stakeholders, including the parties to A.08-12-021, that is based on a thorough and detailed cost-benefit analysis that addresses the matters identified in the body of today's decision.

3. SDG&E has authority under §§ 451 and 399.2(a) to shut off power in emergency situations when necessary to protect public safety. Any decision by SDG&E to shut off power may be reviewed by the Commission pursuant to its broad jurisdiction regarding the safety of public utility operations and facilities.

4. Because today's decision does not authorize SDG&E to implement its Power Shut-Off Plan, there is no need to (i) adopt SDG&E's proposed revisions to Tariff Rule 14, or (ii) decide if the proposed revisions would permit SDG&E to shut off power under the circumstances described in its Power Shut-Off Plan.

5. PG&E's Tariff Rule 14 was filed to implement direct access and, therefore, does not constitute a reasonable precedent for revising SDG&E's Tariff Rule 14 for the purpose of implementing a power shut-off program.

6. SDG&E's proposed revisions to Electric Tariff Rule 14 should be denied.

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7. There is no need for evidentiary hearings in this proceeding. This changed determination on the need for hearings should be approved by the Commission in accordance with Rule 7.5 of the Commission's Rules of Practice and Procedure.

8. The following Order should be effective immediately.

## **O R D E R**

**IT IS ORDERED** that:

1. San Diego Gas & Electric Company's Application (A.) 08-12-021 is denied without prejudice. Any future application filed by San Diego Gas & Electric Company to implement a power shut-off program shall include a cost-benefit study that addresses the matters identified in the body of today's decision.

2. Within 30 days from the effective date of today's decision, San Diego Gas & Electric Company shall initiate a collaborative process with other stakeholders, including the parties to A.08-12-021, for the purpose of reaching a consensus on (i) the design and conduct of the cost-benefit study identified in the previous ordering paragraph, and (ii) the development and submittal of a joint fire-prevention program. San Diego Gas & Electric Company and the parties may use the Commission's Alternative Dispute Resolution program for this purpose. If Alternative Dispute Resolution is selected, San Diego Gas & Electric Company and the parties shall attempt to agree on the type of Commission Alternative Dispute Resolution process they would like to use and then contact the Commission's Alternative Dispute Resolution coordinator for assistance.

3. At the conclusion of the collaborative process described in the previous ordering paragraph, San Diego Gas & Electric Company may file an application for approval of the jointly developed fire-prevention program. The application

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shall include (i) a copy of the cost-benefit study that is described in the body of today's decision; (ii) detailed plans and timelines for mitigating any adverse impacts on customers and communities; and (iii) a proponent's environmental assessment, if appropriate. If the collaborative process does not result in a consensus proposal, San Diego Gas & Electric Company may file an application containing its own proposed fire-prevention program. San Diego Gas & Electric Company's proposal shall be based on the previously identified cost-benefit study and its application shall include the previously identified documents and information. If San Diego Gas & Electric Company chooses to not file an application, it shall file and serve a notice of its decision on the service list for A.08-12-021. The notice shall include an explanation for San Diego Gas & Electric Company's decision.

4. There is no need for evidentiary hearings in this proceeding.
5. A.08-12-021 is closed.

This Order is effective today.

Dated September 10, 2009, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
Commissioners

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I reserve the right to file a concurrence.

/s/ RACHELLE B. CHONG  
Commissioner

I will file a dissent.

/s/ TIMOTHY ALAN SIMON  
Commissioner

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## **Appendix A: Map of the 2009 Power Shut-Off Areas**

**(END OF APPENDIX A)**

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# EXHIBIT C

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ALJ/TIM/avs

Date of Issuance 4/26/2012

Decision 12-04-024 April 19, 2012

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

Application of San Diego Gas & Electric  
Company for Review of its Proactive  
De-Energization Measures and Approval  
of Proposed Tariff Revisions (U902E).

Application 08-12-021  
(Filed December 22, 2008)

**DECISION GRANTING PETITION TO MODIFY DECISION 09-09-030  
AND ADOPTING FIRE SAFETY REQUIREMENTS  
FOR SAN DIEGO GAS & ELECTRIC COMPANY**

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**DECISION GRANTING PETITION TO MODIFY DECISION 09-09-030  
AND ADOPTING FIRE SAFETY REQUIREMENTS FOR  
SAN DIEGO GAS & ELECTRIC COMPANY**

**1. Summary of Decision**

Today's decision grants Disability Rights Advocates' petition to modify Decision (D.) 09-09-030 to require San Diego Gas & Electric Company (SDG&E) to provide notice and mitigation, to the extent feasible and appropriate, whenever SDG&E shuts off power for public-safety reasons.

Today's decision also provides the following guidance regarding the Commission's determination in D.09-09-030 that SDG&E has authority under California Public Utilities Code Section 451 and Section 399.2(a) to shut off power in order to protect public safety when strong Santa Ana winds exceed the design basis for SDG&E's system and threaten to topple power lines onto tinder dry vegetation. First, today's decision provides more details regarding the specific Santa Ana wind conditions that may trigger a power shut-off event. Second, today's decision lists the factors the Commission may consider in determining if a decision by SDG&E to shut off power was reasonable and qualifies for an exemption from liability under SDG&E's Electric Tariff Rule 14.

**2. Background**

Santa Ana winds are strong, dry winds that occur periodically in Southern California. In October 2007, Santa Ana winds swept across Southern California and caused dozens of wildfires. The conflagration burned 780 square miles, killed 17 people, and destroyed thousands of homes and buildings. Hundreds of thousands of people were evacuated at the height of the fires. Transportation was disrupted over a large area for several days, including many road closures. Portions of the electric power network, public communication systems, and

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community water sources were destroyed. Several of the worst wildfires were reportedly ignited by power lines. These included the Grass Valley Fire (1,247 acres); the Malibu Canyon Fire (4,521 acres); the Rice Fire (9,472 acres); the Sedgewick Fire (710 acres); and the Guejito and Witch Fires (197,990 acres). The total area burned by these five power-line fires was more than 334 square miles.<sup>1</sup>

In response to the widespread devastation, San Diego Gas & Electric Company (SDG&E) filed Application (A.) 08-12-021 for authority to shut off electric power as a fire-prevention measure when Santa Ana winds reach a sustained speed of 35 miles per hour (mph) or wind gusts reach 55 mph accompanied by sustained winds of 30 mph. The Commission denied SDG&E's application in Decision (D.) 09-09-030, finding that SDG&E had not demonstrated that the fire-prevention benefits from its plan to shut off power outweighed the significant costs, burdens, and risks imposed on customers and communities in areas where power is shut off.

Importantly, D.09-09-030 distinguished between its denial of SDG&E's application and SDG&E's statutory authority under Pub. Util. Code § 451 and § 399.2(a)<sup>2</sup> to shut off power in emergency situations:

Our denial of SDG&E's application does not affect SDG&E's authority under § 451 and § 399.2(a) to shut off power in emergency situations when necessary to protect public safety... SDG&E's statutory obligation [under § 451 and § 399.2(a)] to operate its system safely requires SDG&E to shut

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<sup>1</sup> Decision 12-01-032 at 5 - 6. The Rice, Guejito, and Witch Fires were in SDG&E's service territory. The Guejito and Witch Fires merged to become one fire.

<sup>2</sup> All statutory references are denoted by the symbol "§" and refer to the California Public Utilities Code unless otherwise noted.

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off its system if doing so is necessary to protect public safety. For example, there is no dispute that SDG&E may need to shut off power in order to protect public safety if Santa Ana winds exceed the design limits for SDG&E's system and threaten to topple power lines onto tinder dry brush. (D.09-09-030 at 61 - 62.)

The Commission concluded in D.09-09-030 that if SDG&E were to exercise its statutory authority to shut off power, the Commission could review SDG&E's decision after the fact for reasonableness.<sup>3</sup>

Although D.09-09-030 denied SDG&E's power shut-off plan, the decision encouraged SDG&E to develop and submit an improved shut-off plan. To this end, D.09-09-030 directed SDG&E to make a good-faith effort to develop a comprehensive fire-prevention program in collaboration with all stakeholders. The fire-prevention program had be based on a cost-benefit analysis that demonstrates (1) the program will result in a net reduction in wildfire ignitions, and (2) the benefits of the program outweigh any costs, burdens, or risks the program imposes on customers and communities. At the conclusion of the collaborative process, SDG&E was authorized to file an application for approval of the jointly developed fire-prevention program. If the collaborative process did not result in a consensus proposal, SDG&E was authorized to file an application containing its own proposed fire-prevention program.<sup>4</sup>

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<sup>3</sup> D.09-09-030 at 62.

<sup>4</sup> D.09-09-030, Ordering Paragraphs 1 - 3.

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As required by D.09-09-030, SDG&E initiated a collaborative process to develop a comprehensive fire-prevention program. One of participants was Disability Rights Advocates (DisabRA).<sup>5</sup>

On September 7, 2010, DisabRA filed a petition to modify D.09-09-030 pursuant to Rule 16.4 of the Commission's Rules of Practice and Procedure. The petition states that SDG&E informed the parties during the collaborative process that SDG&E intends to shut off power when strong winds exceeds the design basis for its utility poles and other factors (e.g., a declared Red Flag Warning) concurrently dictate such action. DisabRA's petition seeks to modify D.09-09-030 to require SDG&E to take appropriate and feasible steps to warn and protect its customers whenever it shuts off power pursuant to its statutory authority.

Responses to DisabRA's petition were filed by SDG&E, the County of San Diego, the Mussey Grade Road Alliance (MGRA), Southern California Edison Company (SCE), and jointly by the Commission's Consumer Protection and Safety Division (CPSD) and Division of Ratepayer Advocates (DRA). DisabRA filed a reply on October 18, 2010.

A key issue raised in the responses to DisabRA's petition concerns the wind speed at which SDG&E may exercise its statutory authority to shut off power. Briefly, SCE and SDG&E assert that the Commission's General Order (GO) 95 requires electric utilities to design overhead power-line facilities to

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<sup>5</sup> On September 8, 2011, the Center for Accessible Technology (CforAT) filed a motion for party status in this proceeding. The motion states that CforAT should replace DisabRA in this proceeding, and that DisabRA will cease to participate as an active party in this proceeding. The motion was granted in a ruling dated October 7, 2011. Today's decision uses "DisabRA" to refer to both DisabRA and CforAT.

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withstand a wind speed of 56 mph, and that electric utilities may exercise their statutory authority to shut off power when wind gusts exceed 56 mph.<sup>6</sup> In contrast, CPSD and DRA contend that GO 95 requires overhead power-line facilities to withstand wind gusts of at least 91 mph, and that it would be unreasonable for SDG&E to shut off power at winds speeds below 91 mph.

On June 3, 2011, the assigned Administrative Law Judge (ALJ) issued a ruling that directed SDG&E to file comments containing specified information about (1) the design of its overhead power-line facilities with respect to wind loads, and (2) the performance of its facilities in windy conditions. The other parties were also invited to file comments on these matters.

Opening comments were filed on July 25, 2011, by CPSD, MGRA, SCE, SDG&E, and a coalition of Communications Providers.<sup>7</sup> Reply comments were filed on August 12, 2011, by CPSD, MGRA, SCE, and SDG&E.<sup>8</sup> The parties were also provided an opportunity by the ALJ ruling dated June 3, 2011, to request an evidentiary hearing on wind-speed issues. There were no requests for an evidentiary hearing, and none was held.

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<sup>6</sup> GO 95 specifies several different wind-load requirements. Today's decision will use the wind-load requirements for overhead power-line facilities classified as Grade A and located in the Light-Loading District, unless otherwise indicated.

<sup>7</sup> The Communications Providers are several AT&T entities and affiliates; CoxCom, Inc. and Cox California Telcom, LLC; CTIA-The Wireless Association; Time Warner Cable; and the California Cable & Telecommunications Association.

<sup>8</sup> MGRA filed amended comments and reply comments on September 2, 2011. CPSD filed amended reply comments on September 7, 2011.



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### **3. DisabRA's Petition to Modify D.09-09-030**

#### **3.1. Summary of the Petition**

DisabRA represents that SDG&E has refused to commit to any plan for notifying customers when SDG&E anticipates that it will shut off power for safety reasons pursuant to its statutory authority, or for helping customers to cope with statutory shut offs by providing shelter, evacuation assistance, generators, or financial assistance.

DisabRA is concerned that shutting off power without notice or mitigation will place SDG&E's residential customers at serious risk, especially those with disabilities. To ensure that the public is protected in the event of a statutory shut off, DisabRA asks the Commission to modify D.09-09-030 to (1) require SDG&E to take appropriate and feasible steps to warn and protect its customers whenever SDG&E shuts off power pursuant to its statutory authority; and (2) state that the Commission's after-the-fact review of a statutory shut-off may assess the adequacy of the notice and mitigation provided by SDG&E.

#### **3.2. Summary of Responses to the Petition**

##### **3.2.1. CPSD and DRA**

CPSD and DRA support DisabRA's petition to modify D.09-09-030. CPSD and DRA argue that shutting off power without sufficient mitigation would be contrary to D.09-09-030, which rejected SDG&E's proposed shut-off plan because it would, on balance, do more harm than good.

##### **3.2.2. County of San Diego**

The County of San Diego supports DisabRA's petition. The County believes that granting the petition will provide an incentive for SDG&E to implement reasonable mitigation requests from stakeholders, and also prevent SDG&E from shifting all costs for an outage to SDG&E's customers, even though some of these costs are more cost-effectively borne by SDG&E.

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### **3.2.3. MGRA**

MGRA supports DisabRA's petition. At the same time, MGRA agrees with the general principle that it may be prudent to shut off power to prevent power-line fire ignitions during extreme weather conditions.

### **3.2.4. SCE**

SCE opposes DisabRA's petition because it could adversely affect SCE's ability to respond to emergencies. Although SCE has no plans to shut off power based on pre-defined weather conditions, SCE does de-energize circuits when necessary for public safety. For example, SCE will shut off power when debris hits a power line during a wind storm, vegetation contacts a power line, or a power line is down for any reason (e.g., pole hit by a vehicle). In situations like these, SCE endeavors to notify customers, but SCE says it has no obligation to do so if emergency conditions require an immediate shut-off. Mitigation for all outages, whatever the cause, is addressed by SCE's Service Guarantee Program, which applies when an unplanned outage exceeds 24 hours.

SCE is concerned that a requirement to notify customers prior to de-energizing a power line would take precedence over public safety. SCE opines that uncertainty about whether a condition is "dangerous enough" to permit immediate shut-off without customer notification, and to what extent the utility must implement mitigation beyond its service guarantee, should not be occupying the minds of utility decision-makers during emergency situations.

### **3.2.5. SDG&E**

SDG&E opposes DisabRA's petition to modify D.09-09-030. SDG&E argues that the petition is unnecessary because SDG&E is implicitly obligated by §§ 399.2 and 451 to provide customer notification and other mitigation when feasible and appropriate. For public-safety outages, SDG&E will provide a

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pre-recorded telephone notice to the general population, and additional personal notification to medical baseline customers, life support customers, and assigned commercial accounts. SDG&E's notification system includes text capability to reach those with hearing disabilities. SDG&E will also implement mitigation measures when emergency conditions require SDG&E to shut off power.

SDG&E contends that to the extent DisabRA's petition is interpreted as a proposal for a new and higher standard, the proposal should be rejected for three reasons. First, the standard is vague. The petition does not identify any specific notice or mitigations requirements.

Second, the petition does not address the potential conflict between the existing public-safety obligation and a new standard for customer notification and mitigation. Imposing a new imperative without identifying its precise requirements or how it interacts with existing obligations may result in unintended negative consequences that undermine public safety.

Finally, to the extent DisabRA seeks to require SDG&E to implement the mitigation measures proposed by SDG&E in A.08-12-021, the petition does not address the feasibility of those mitigation measures in the context of a statutory shutoff event. SDG&E's application involved a proactive shut-off plan, whereas a statutory shutoff event is reactive and applies only where conditions threaten immediate harm to SDG&E's system. It may not be possible to implement the mitigation measures proposed in A.08-12-021 in every emergency situation.

### **3.3. Discussion**

In D.09-09-030, the Commission held that SDG&E has authority under § 399.2 and § 451 to shut off power during emergencies when necessary to

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protect public safety.<sup>9</sup> DisabRA seeks to modify D.09-09-030 to require SDG&E to take all feasible and appropriate steps to (1) notify customers of statutory shutoff events, and (2) mitigate the costs and risks that statutory shutoff events impose on customers. DisabRA also seeks to modify D.09-09-030 to state that the Commission's review of a statutory shutoff event may assess the adequacy of the notice and mitigation provided by SDG&E. The Commission has broad jurisdiction under the California Constitution and the Public Utilities Code to grant or deny DisabRA's petition.<sup>10</sup>

SDG&E acknowledges that it is implicitly obligated by § 399.2 and § 451 to provide notice and mitigation, to the extent feasible and appropriate, whenever its shuts off power.<sup>11</sup> Therefore, we conclude that it is reasonable to adopt DisabRA's petition to modify D.09-09-030, as doing so merely formalizes an existing requirement.

It is not possible to anticipate every emergency situation where power may be shut off for safety reasons and then specify the exact notice and mitigation measures that should be implemented in each situation. In general, SDG&E should provide as much notice as feasible before shutting off power so the affected providers of essential services (e.g., schools, hospitals, prisons, public safety agencies, telecommunications utilities, and water districts) and customers who are especially vulnerable to power interruptions (e.g., customers who rely on medical life-support equipment) may implement their own emergency plans.

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<sup>9</sup> D.09-09-030, Conclusion of Law 3.

<sup>10</sup> California Constitution Article XII, §§ 3 and 6, and Pub. Util. Code §§ 216, 701, 761-770, 8037, and 8056.

<sup>11</sup> SDG&E Response at 2 - 3.

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Once power is shut off, SDG&E should focus its resources on restoring power as soon as possible. Any remaining resources should be concentrated on providing other mitigation to the extent feasible and appropriate under the circumstances.

#### **4. Authority to Shut Off Power in Hazardous Wind Conditions**

##### **4.1. Introduction**

In D.09-09-030, the Commission held that SDG&E has authority pursuant to § 451 and § 399.2(a) to shut off power, if necessary to protect public safety, when strong Santa Ana winds threaten to topple power lines onto tinder dry brush.<sup>12</sup> SDG&E subsequently informed DisabRA that most of SDG&E's overhead power lines are designed to withstand wind gusts of 56 mph, and that SDG&E may shut off power as a safety precaution when wind gusts exceed 56 mph. This prompted DisabRA to file its petition to modify D.09-09-030, which we addressed above in today's decision.

In their joint response to DisabRA's petition, CPSD and DRA raised the corollary issue of SDG&E's authority to shut off power when wind speeds exceed 56 mph. CPSD and DRA argue that GO 95 requires SDG&E's system to withstand a wind speed of at least 91 mph, and that SDG&E would be in violation of D.09-09-030 and GO 95 if it shut off power below 91 mph. We conclude that SDG&E's authority to shut off power at wind speeds between 56 mph and 91 mph has a clear nexus with DisabRA's petition and, therefore, should be addressed by today's decision.

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<sup>12</sup> D.09-09-030 at 61 - 62.

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#### **4.2. Summary of GO 95 Requirements for Wind Loads**

To better understand the positions of the parties, summarized below, we first review GO 95 requirements for wind loads. Rule 43 of GO 95 divides California into a Heavy-Loading District and a Light-Loading District. The Light-Loading District is all parts of California where the elevation is 3,000 feet or less. Rule 43.2(A) requires power-line facilities in the Light-Loading District with cylindrical surfaces (e.g., utility poles) to withstand a horizontal wind pressure of 8 pounds per square foot (psf). Facilities with flat surfaces (e.g., crossarms) must withstand a horizontal wind load of 13 psf. Approximately 90% of SDG&E's overhead power-line facilities are in the Light-Loading District.

Rule 44 prescribes an initial safety factor<sup>13</sup> for each power-line element (e.g., poles and crossarms) at the time of installation that can vary based on the material (e.g., wood or metal) and the grade of construction. Most of SDG&E's power-line facilities are Grade A or Grade B construction.<sup>14</sup> Rule 44.3 allows the safety factor to degrade over time, but not below a safety factor of one or two-thirds of the safety factor at the time of installation, whichever is higher, at which time the facility must be reconstructed or replaced.

Rule 48 requires overhead power-line facilities to be designed and constructed so they "will not fail" at a wind force equal to the wind load

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<sup>13</sup> Rule 44 defines "safety factors" as "the minimum allowable ratios of ultimate strengths of materials to the maximum working stresses."

<sup>14</sup> The grades of construction are A, B, C and F, with "A" being the highest. Utility poles with both power lines and communications lines attached must be Grade A. Utility poles with only distribution-level power lines attached may be Grade B.

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specified in Rule 43 multiplied by the applicable safety factor in Rule 44. Rule 48 states, in relevant part, as follows:

Structural members and their connection shall be designed and constructed so that the structures and parts thereof **will not fail** or be seriously distorted at any load less than their maximum working loads ... specified in Rule 43 ... multiplied by the safety factor specified in Rule 44. (Emphasis added.)

The following Table 1 shows the minimum wind loads (in psf and mph)<sup>15</sup> that must be used for the design and construction of certain Grade A facilities in the Light-Loading District pursuant to Rules 43, 44, and 48:

| <b>Table 1</b>   |                       |                                |                                    |                                     |                      |
|--|-----------------------|--------------------------------|------------------------------------|-------------------------------------|----------------------|
| <b>GO 95 Wind Load Requirements for the Light-Loading District</b> |                       |                                |                                    |                                     |                      |
| <b>Selected Grade A Power-Line Elements</b>                        |                       |                                |                                    |                                     |                      |
| <b>Line Element</b>  | <b>Rule 43.2(A)</b>   | <b>Rule 44.1</b>               | <b>Rule 44.3</b>                   | <b>Rule 48</b>                      |                      |
|  | <b>Working Load A</b> | <b>Initial Safety Factor B</b> | <b>Replacement Safety Factor C</b> | <b>Working Load x Safety Factor</b> | <b>Initial A x B</b> |
| <b>Replacement A x C</b>   |                       |                                |                                    |                                     |                      |
| <b>Wood Pole</b>   | 8 psf<br>56 mph       | 4                              | 2.67                               | 32 psf<br>112 mph                   | 21.3 psf<br>91 mph   |
| <b>Steel Pole</b>  | 8 psf<br>56 mph       | 1.5                            | 1.0                                | 12 psf<br>69 mph                    | 8 psf<br>56 mph      |
| <b>Wood Crossarm (flat surface)</b>                                | 13 psf<br>71 mph      | 2                              | 1.33                               | 26 psf<br>101 mph                   | 17.33 psf<br>82 mph  |
| <b>Steel Crossarm (flat surface)</b>                               | 13 psf<br>71 mph      | 1.5                            | 1.0                                | 19.5 psf<br>87 mph                  | 13 psf<br>71 mph     |

<sup>15</sup> Today's decision assumes that the relationship between wind load in psf and wind velocity (V) in mph is given by the equation: Wind load (psf) = 0.00256V<sup>2</sup>. The values for mph used by today's decision are rounded to the nearest whole number.



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The following Table 2 shows the minimum wind loads (in psf and mph) that must be used for the design and construction of certain Grade B facilities in the Light-Loading District pursuant to Rules 43, 44, and 48:

| <b>Table 2</b>   |                       |                                |                                    |                                     |                          |
|--|-----------------------|--------------------------------|------------------------------------|-------------------------------------|--------------------------|
| <b>GO 95 Wind Load Requirements for the Light-Loading District</b> |                       |                                |                                    |                                     |                          |
| <b>Selected Grade B Power-Line Elements</b>                        |                       |                                |                                    |                                     |                          |
|  | <b>Rule 43.2(A)</b>   | <b>Rule 44.1</b>               | <b>Rule 44.3</b>                   | <b>Rule 48</b>                      |                          |
|  | <b>Working Load A</b> | <b>Initial Safety Factor B</b> | <b>Replacement Safety Factor C</b> | <b>Working Load x Safety Factor</b> |                          |
| <b>Line Element</b>  |                       |                                |                                    | <b>Initial A x B</b>                | <b>Replacement A x C</b> |
| <b>Wood Pole</b>   | 8 psf<br>56 mph       | 3                              | 2.0                                | 24 psf<br>97 mph                    | 16 psf<br>79 mph         |
| <b>Steel Pole</b>  | 8 psf<br>56 mph       | 1.25                           | 1.0                                | 10 psf<br>63 mph                    | 8 psf<br>56 mph          |
| <b>Wood Crossarm (flat surface)</b>                                | 13 psf<br>71 mph      | 2                              | 1.33                               | 26 psf<br>101 mph                   | 17.3 psf<br>82 mph       |
| <b>Steel Crossarm (flat surface)</b>                               | 13 psf<br>71 mph      | 1.25                           | 1.0                                | 16.3 psf<br>80 mph                  | 13 psf<br>71 mph         |

Table 1 shows that Rule 48 requires a Grade A wood pole in the Light-Loading District to be designed so it “will not fail” at a wind speed of 112 mph at the time of installation, and that a Grade A wood pole must be replaced when it no longer meets the “will not fail” standard at a wind speed of 91 mph due to age-related deterioration or other causes.

Similarly, Table 2 shows that Rule 48 requires a Grade B wood pole in the Light-Loading District to be designed so it “will not fail” at a wind speed of 97 mph at the time installation, and that a Grade B wood pole must be replaced when it no longer meets the “will not fail” standard at a wind speed of 79 mph due to age-related deterioration or other causes.

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Although Rule 48 establishes an explicit “will not fail” standard, other provisions in GO 95 appear to implicitly recognize that wood utility poles are not failsafe in severe wind conditions. These other provisions are briefly described below in the summary of SCE’s and SDG&E’s positions.

### **4.3. Summary of the Parties’ Positions**

#### **4.3.1. The Communications Providers**

The Communications Providers maintain that SDG&E’s statutory authority to shut off power in windy conditions cannot be based on wind speed alone. Each situation must be assessed to determine if public safety is better served by leaving power on, or shutting it off. Other factors besides wind conditions may be relevant, such as whether a Red Flag Warning is in effect.

#### **4.3.2. CPSD and DRA**

CPSD and DRA assert that Rule 48 requires SDG&E to design and construct overhead power-line facilities that “will not fail” at the wind speeds listed in the last column in Tables 1 and 2 above. For example, Table 1 shows that a Grade A wood pole must withstand a wind speed of at least 91 mph without failure. CPSD and DRA argue that it is unreasonable for SDG&E to shut off power at 56 mph because this is far below what is required by GO 95.

CPSD acknowledges that the strength of wood poles can vary. In fact, CPSD provided several graphs and tables that show the probability that wood poles will fail at various wind speeds based on the specifications for wood poles in GO 95, Rule 48.1, Table 5, Footnote C. CPSD states that although the strength of wood pole varies, that has no effect on the Rule 48 requirement that Grade A wood poles “will not fail” at a wind speed of 91 mph.

CPSD does not believe the data presented by SDG&E, summarized below, demonstrates that SDG&E should shut off power when wind speeds exceed

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56 mph. Even though SDG&E identified almost 1,000 power-line failures and 13 power-line fires attributable to strong winds, CPSD opines that many of these incidents may have been caused by noncompliance with GO 95.

CPSD contends that the Commission is not limited to the options of either keeping power on and risking catastrophic power-line fires, or shutting off power when wind speeds exceed 56 mph. There are other measures that can be taken to reduce the risk of power-line fires. For example, SDG&E has modified its automatic re-closers so that SDG&E will no longer re-energize power lines automatically after a re-closer shuts off power to a circuit during a high-wind event. Instead, SDG&E will inspect its facilities to determine if electric power can be restored safely. CPSD believes this measure alone might have prevented the devastating Witch Fire in 2007.

#### **4.3.3 MGRA**

MGRA states that SDG&E is required to provide safe and reliable electric service in conditions typically found in its service area. SDG&E's service area is dense with flammable vegetation and regularly experiences strong winds during dry conditions. MGRA submits that an infrastructure which even occasionally ignites fires in these conditions is not suitably robust and safe.

MGRA agrees with the Commission's conclusion in D.09-09-030 that there are weather conditions when the risk of power-line fires outweighs other considerations and justifies shutting off power. MGRA further notes that SDG&E's comments establish that power-line failures and fires can occur when wind gusts exceed 56 mph. If this does not comply with GO 95, MGRA recommends that the Commission establish a remediation plan to have SDG&E's system brought up to the correct standard over time.

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#### **4.3.4. SCE**

SCE interprets GO 95 as requiring overhead power lines to withstand the wind loads specified in Rule 43. For facilities with a cylindrical surface in the Light-Loading District, Rule 43.2(A) sets a requirement of 8 psf, which equates to a wind speed of 56 mph. The purpose of the safety factor required by Rule 44 and Rule 48, according to SCE, is to ensure that facilities are built stronger than necessary for the design load of 56 mph established by Rule 43.

SCE states that one reason Rules 44 and 48 require overhead power-line facilities to be built stronger than necessary is the inherent variability of materials. In the case of wood poles, Rule 48.1, Table 5, lists the strength for several species of wood. For example, the strength of Douglas Fir poles is 8,000 pounds per square inch (psi) with a coefficient of variation (COV) of 0.20. Multiplying 8,000 psi by a COV of 0.20 gives a standard deviation of 1,600. Thus, the strength of 68% of Douglas Fir poles is between 6,400 psi and 9,600 psi, and the strength of 95% of Douglas Fir poles is between 4,800 psi and 11,200 psi. A Douglas Fir pole can be anywhere in this range and comply with GO 95.

SCE explains that because there is wide variability in the strength of wood poles, Rule 44 requires new Grade A wood poles to have a safety factor of 4.0 to protect against the structural failure of wood poles. In contrast, the required safety factor for new Grade A steel poles is only 1.5 because the variability of material strength for steel poles is much less (i.e., the COV is smaller).

To illustrate the variability of wood poles, SCE calculated an estimated rate of pole failures at various wind speeds. Assuming a sufficiently large sample of new Grade A wood poles in the Light-Loading District that are fully loaded, identically installed, and identically exposed to wind velocities, approximately 0.01% of all such poles will fail at a wind speed of 56 mph. These rare failures

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will occur simply because the actual strength of the failed poles will be far below the assumed average strength of 8,000 psi.

SCE represents that as wind speeds increase, the statistical probability of pole failures will rise. Using the same assumptions as above, 0.02% of new Grade A wood poles could be expected to fail at 60 mph, 0.10% at 70 mph, 13.7% at 100 mph, and 50% at 112 mph. SCE cautions that the actual frequency of pole failures should be less than calculated because (1) many poles are not loaded to their maximum GO 95 capacity, (2) wind does not impose an equal load on all poles at all times, and (3) wind usually blows at other than the 90° angle assumed in GO 95.

SCE notes that although Rule 44 requires a higher safety factor for wood poles relative to most facilities attached to the poles (e.g., crossarms), there is no reason to expect that the facilities attached to wood poles will fail at lower wind speeds than the poles themselves. SCE agrees with SDG&E that the pole, rather than the components attached to it, should fail first due to wind-related loads.<sup>16</sup>

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<sup>16</sup> SDG&E Opening Comments at 103.

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With respect to a utility's decision to shut off power in hazardous weather conditions, SCE states that power-line facilities should not be operated to within a hair's breadth of their theoretical failure point. It is impossible to know when the actual failure point will be reached for any particular structure because:

- Wind speed is variable from moment to moment. It is not feasible to shut off power at the precise moment when wind speed exceeds the design limit of overhead power-line facilities.
- Wind speed is variable from place to place. It is impossible to know the wind speed everywhere on the system. As wind speed approaches the design limit at a location on the system where wind speed is measured, it is possible that wind speeds are exceeding the design limit elsewhere on the system where wind speed is not measured.
- The strength of wood is inherently variable. There is a statistical possibility that a particular wood pole or crossarm will fail before the design limit is reached.

SCE identifies several other factors that should be considered when deciding whether to shut off power due to a potential fire hazard. These include the number of customers affected, possible fire damage, fire-suppression resources, and weather conditions (e.g., wind, temperature, and humidity).

SCE opines that it is not practical to develop rules for when it will always be appropriate to shut off power given the many factors and uncertainties that affect a utility's decision to shut off power. Thus, shutting off power must remain a discretionary decision for the utility based on the utility's knowledge, expertise, and contemporaneous conditions on its system.

SCE disagrees with CPSD and DRA's "never fail" interpretation of Rule 48. Their interpretation would require utilities to construct their facilities to a new and higher standard that would cost billions of dollars. For example, utilities

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would have to install many more poles than presently, and replace existing poles with larger poles. SCE believes that such changes are unwarranted because there is no showing that the utilities' long-standing interpretation of GO 95 has resulted in an unacceptable rate of pole failures.

#### **4.3.5. SDG&E**

SDG&E joins SCE in disagreeing with CPSD and DRA's interpretation of Rule 48 as requiring that Grade A wood poles "will not fail" at wind speeds below 91 mph. SDG&E argues that Rule 43 establishes the design standard for wind loads, not Rule 48. SDG&E posits that the Rule 43 wind speeds which facilities must withstand are listed in Column A of Tables 1 and 2 above. For example, Column A of Table 1 shows that Grade A poles must withstand wind gusts of 56 mph.

SDG&E avers that the purpose of the safety factor required by Rule 44 and Rule 48 is to ensure that power-line facilities are built stronger than necessary for the design loads specified in Rule 43, consistent with sound engineering principles. The adoption of CPSD and DRA's interpretation of Rule 48 as establishing the design loads, and not Rule 43, would force a major change in the way California utilities design their systems.

SDG&E provided extensive information regarding the performance of its overhead power-line facilities in windy conditions. Table 1 of SDG&E's comments lists every known incident from January 1, 2000 to mid-2011 where an electrical or structural failure occurred on SDG&E's system which SDG&E attributes to strong winds. SDG&E's Table 1 lists a total of 969 failures. Most failures were electrical failures. Pole failures, which include failures of poles, crossarms, guys, insulators, and braces, comprise less than 10% of the incidents reported in SDG&E's Table 1.

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SDG&E's Table 2 lists every known incident from January 1, 2000 to mid-2011 where a wind-related failure of SDG&E's overhead power-line facilities may have ignited a fire, although fault may yet to be determined. The approximate size of the fire and any damage caused by the fire are also provided. SDG&E lists a total of 13 fires, including the Witch, Rice, and Guejito Fires in October 2007, which together burned more than 207,000 acres.

SDG&E's Table 3 lists every incident from January 1, 2000 to mid-2011 for which SDG&E has records where an anemometer reported a wind speed of at least 56 mph. Table 3 includes the date, location, start time, length of time above 56 mph, and the maximum measured wind speed for each incident.

SDG&E's Table 4 shows that most wind-related failures occurred on a small number of days with strong winds. In particular, there were seven severe wind events encompassing 12 days that accounted for 53% of all wind-related failures during the period of January 1, 2000 through mid-2011.<sup>17</sup> SDG&E's Table 5 shows that most of the severe wind events and associated failures listed in Table 4 occurred when the fire threat was extremely high.

SDG&E also provided information regarding the design of its overhead power-line facilities. SDG&E states that it has 8,431 miles of overhead power-line facilities, all of which comply with GO 95. SDG&E represents that 90% of its overhead facilities (approximately 7,552 miles) are in the Light-Loading District defined by Rule 43.2 and are designed to withstand a wind speed of 56 mph. Approximately 9% of SDG&E's overhead facilities (762 miles) are in the Heavy-Loading Districts defined by Rule 43.1 and are designed to withstand a

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<sup>17</sup> SDG&E's Table 4 shows a total of 521 failures during the 12 days listed in Table 4.

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wind speed of 48 mph. Approximately 1% of SDG&E's overhead facilities (90 miles) are designed to withstand a wind speed of 85 mph pursuant to National Electric Safety Code Rule 250C.

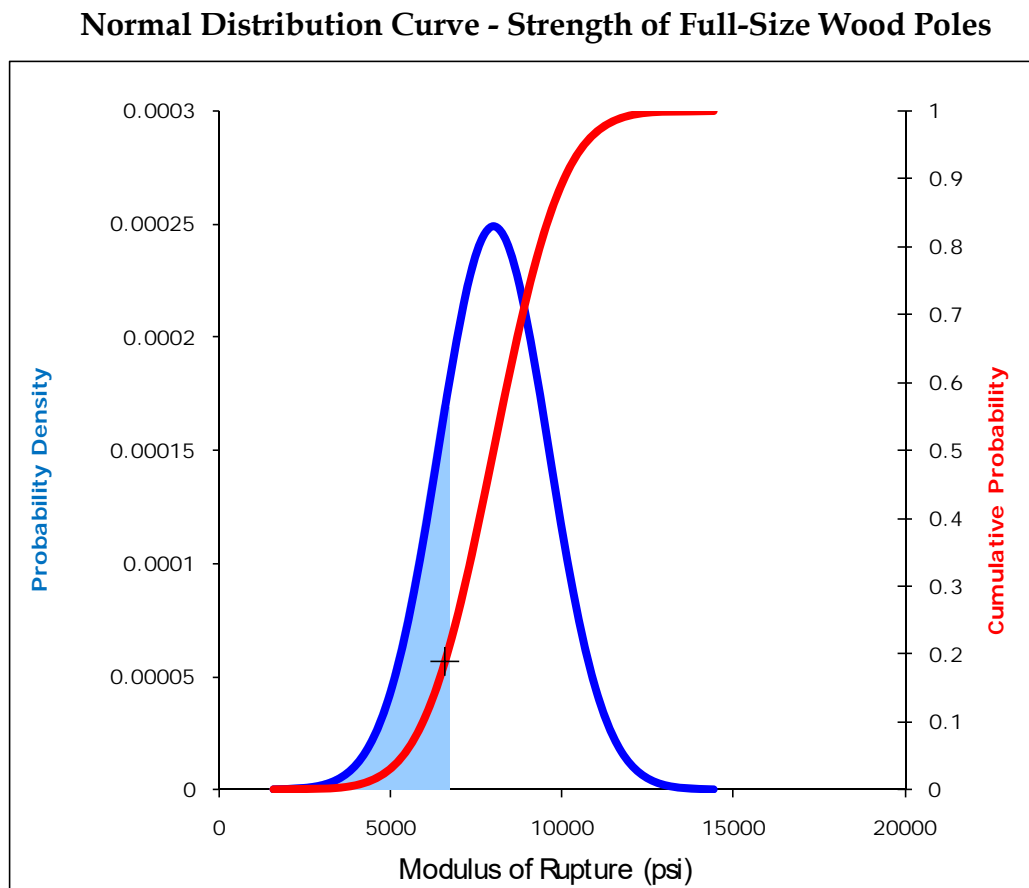
As noted previously, 90% of SDG&E's overhead power-line facilities are designed to withstand a wind speed of 56 mph. For these facilities, the rate of failure is very low at wind speeds below 56 mph, but rises sharply when wind gusts reach and exceed the design basis of 56 mph.

SDG&E explains that GO 95 recognizes that wood utility poles do not have uniform strength. In particular, Rule 48.1, Table 5 (Wood Strengths) specifies average strengths for wood poles, with 50% of wood poles stronger than the values listed in Rule 48.1, Table 5, and 50% weaker.



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For Douglas Fir poles and Southern Yellow Pine poles, Rule 48.1, Table 5, specifies a modulus of rupture<sup>18</sup> of 8,000 psi for poles that comply with American National Standards Institute (2002) standard O5.1 (ANSI O5.1). SDG&E states that all of its wood poles meet ANSI 05.1. SDG&E represents that ANSI 05.1 indicates that the COV for the modulus of rupture (MOR) is 0.20 (or 20%). The mean value of 8,000 psi, coupled with a COV of 20%, defines a normal distribution for the strength of wood poles shown in the following Figure 5 of SDG&E's comments:



<sup>18</sup> Modulus of rupture is the breaking point for a material subjected to a bending force.

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Based on the assumed strength distribution for wood poles in the above graph, SDG&E's Table 6 provided the estimated failure rates for fully loaded Grade A wood poles and Grade B wood poles at various wind speeds.

The estimated failure rates in SDG&E's Table 6 are a worst-case scenario in that it assumes all of SDG&E's poles are loaded to the maximum allowed by GO 95. However, SDG&E's wood poles are typically loaded at 70% to 80% of the maximum allowed by GO 95 at the time of installation, and SDG&E's installed poles have an average remaining strength of 95%. SDG&E's Tables 7 and 8 show the estimated failure rates at various wind speeds for wood poles with 70% utilization and 5% degradation, and 80% utilization and 5% degradation.

In terms of operating its overhead power-line system, SDG&E will not shut off power based on wind conditions alone. SDG&E will consider all relevant circumstances, including concurrent temperature, humidity, and vegetation moisture. If SDG&E does shut off power, SDG&E will restore power when the conditions that created the public-safety hazard have abated. This comports with SDG&E's operating practices with respect to all power outages.

#### **4.4. Discussion**

In D.09-09-030, the Commission held that SDG&E has statutory under § 451 and § 399.2(a) to shut off power in emergency situations when necessary to protect public safety. These laws state, in relevant part, as follows:

**§ 451:** Every public utility shall 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.

**§ 399.2 (a)(1):** It is the policy of this state, and the intent of the Legislature, to reaffirm that each electrical corporation shall continue to operate its electric distribution grid in its service

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territory and shall do so in a safe, reliable, efficient, and cost-effective manner.

**§ 399.2 (a)(2):** In furtherance of this policy, it is the intent of the Legislature that each electrical corporation shall continue to be responsible for operating its own electric distribution grid including, but not limited to, owning, controlling, operating, managing, maintaining, planning, engineering, designing, and constructing its own electric distribution grid, emergency response and restoration, service connections, service turnons and turnoffs, and service inquiries relating to the operation of its electric distribution grid, subject to the commission's authority.

We affirm our holding in D.09-09-030 that SDG&E's statutory obligation to operate its system safely requires SDG&E to shut off its system if doing so is necessary to protect public safety. We also affirm our determination in D.09-09-030 that SDG&E may need to shut off power to protect public safety if strong Santa Ana winds threaten to topple power lines onto tinder dry brush.

#### **4.4.1. SDG&E's Design Standard for Wind Loads**

We next consider the design of SDG&E's power-line facilities with respect to wind loads. As a general rule, utility poles are more likely to break due to strong winds than other power-line components.<sup>19</sup> Therefore, today's decision will focus on utility poles.

Most of SDG&E's Grade A and Grade B wood poles are in the Light-Loading District. SDG&E provided extensive and uncontroverted comments that show its Grade A and Grade B wood poles in the Light-Loading District are designed to withstand wind gusts of 56 mph. As a result, SDG&E's Grade A and

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<sup>19</sup> SDG&E Opening Comments at 103.

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Grade B wood poles rarely fail at wind gusts below 56 mph. However, when wind gusts exceed SDG&E's design basis of 56 mph, the rate of pole failures increases markedly.

The following Table 3 reproduces SDG&E's estimated failure rates for its Grade A and Grade B wood poles, assuming new poles are loaded at 70% or 80% of the maximum capacity allowed by GO 95, and aged poles have 95% of their remaining strength.

| <b>Table 3</b>  |                           |                          |                         |                          |                           |                          |                         |                          |
|---|---------------------------|--------------------------|-------------------------|--------------------------|---------------------------|--------------------------|-------------------------|--------------------------|
| <b>Estimated Failure Rates for SDG&amp;E's Wood Poles from Strong Winds For New Poles (100% remaining strength) and Aged Poles (95% remaining strength)</b> |                           |                          |                         |                          |                           |                          |                         |                          |
|   | <b>Grade A Wood Poles</b> |                          |                         |                          | <b>Grade B Wood Poles</b> |                          |                         |                          |
| <b>Wind Speed (mph)</b>   | <b>New 70% Utilized</b>   | <b>Aged 70% Utilized</b> | <b>New 80% Utilized</b> | <b>Aged 80% Utilized</b> | <b>New 70% Utilized</b>   | <b>Aged 70% Utilized</b> | <b>New 80% Utilized</b> | <b>Aged 80% Utilized</b> |
| 60  | 0.0030%                   | 0.0037%                  | 0.0054%                 | 0.0068%                  | 0.0113%                   | 0.0149%                  | 0.0233%                 | 0.0313%                  |
| 70  | 0.0126%                   | 0.0166%                  | 0.0262%                 | 0.0353%                  | 0.0656%                   | 0.0907%                  | 0.1551%                 | 0.2180%                  |
| 80  | 0.0577%                   | 0.0796%                  | 0.1350%                 | 0.1898%                  | 0.3835%                   | 0.5485%                  | 0.9841%                 | 1.4166%                  |
| 90  | 0.2683%                   | 0.3813%                  | 0.6788%                 | 0.9761%                  | 2.0336%                   | 2.9336%                  | 5.2135%                 | 7.3963%                  |
| 100   | 1.174%                    | 1.695%                   | 3.044%                  | 2.116%                   | 8.789%                    | 12.267%                  | 20.249%                 | 26.966%                  |
| 110   | 4.545%                    | 6.469%                   | 11.149%                 | 15.394%                  | 27.797%                   | 36.094%                  | 51.675%                 | 62.094%                  |
| 120   | 14.395%                   | 19.630%                  | 30.854%                 | 39.630%                  | 59.871%                   | 70.050%                  | 84.135%                 | 90.585%                  |
| <b>Source:</b> SDG&E Opening Comments at 110 - 11, Tables 7 and 8.  |                           |                          |                         |                          |                           |                          |                         |                          |

Table 3 represents the "as built" condition of SDG&E's Grade A and Grade B wood poles, and denotes the lower and upper bounds for most of SDG&E's wood poles. Table 3 shows that SDG&E's Grade A wood poles will fail at an estimated rate of 30 to 68 poles per million at 60 mph, 126 to 353 poles per million at 70 mph, and so on. Similarly, Table 3 shows that SDG&E's Grade B wood poles will fail at an estimated rate of 113 to 313 poles per million at 60 mph, 656 to 2,180 poles per million at 70 mph, and so on.

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In reality, SDG&E's wood poles will probably fail at a lower rate than estimated in Table 3 for the following reasons:

- Table 3 assumes the wind is blowing at a 90-degree angle relative to the structure, which imposes the maximum wind load on the structure. Wind that hits a structure at a 90-degree angle imposes twice the load compared to a 30-degree angle. Although wind often blows at a 90-degree angle relative to a vertical utility pole with a cylindrical surface, the wind angle is typically less than 90 degrees for most facilities attached to a utility pole, such as crossarms and conductors (which transfer their wind loads to the utility poles to which they are attached).
- The drag coefficients used in calculations to determine the wind load for cylindrical surfaces are assumed to be 1.0 for conservatism. However, the actual coefficients are usually less than 1.0, especially at higher wind speeds. Thus, the real wind loads on utility poles are typically lower than calculated.
- Poles are interconnected by wires and share wind loads.
- The estimated failure rates in Table 3 assume the utility poles are Douglas Fir or Southern Pine with an average MOR of 8,000 psi and a COV of 0.20. However, all of SDG&E's wood poles comply with ANSI 05.1-1992.<sup>20</sup> Appendix C, Table C.1, of ANSI 05.1-1992 shows that for wood poles with a length of 50 feet or less, Coastal Douglas Fir poles have an MOR of 9,620 psi with a COV of 0.135; Interior Douglas Fir poles have an MOR of 8,020 psi with a COV of 0.179; and Southern Pine poles have an MOR of 10,190 psi with a COV of 0.169.<sup>21</sup> Consequently, many poles installed by SDG&E are stronger than assumed in Table 3.

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<sup>20</sup> SDG&E Opening Comments at 107.

<sup>21</sup> We take official notice of ANSI 05.1-1992 pursuant §§ 701 and 1701, and Rule 13.9 of the Commission's Rules of Practice and Procedure.

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Although Table 3 likely overstates the risk that SDG&E's wood poles will fail due to strong winds, there is a clearly a risk that SDG&E's existing wood poles may fail when winds exceed 56 mph, with the risk increasing exponentially with wind speed. This risk is described quantitatively by the engineering calculations that are tabulated in SDG&E's comments,<sup>22</sup> and evidenced by the dozens of SDG&E poles that have failed over the years during strong winds.<sup>23</sup>

We are not persuaded by CPSD's argument that most failures of SDG&E's overhead power-line facilities during strong winds may be due to substandard facilities. Although we do not discount the possibility of some substandard facilities, SDG&E's comments show there is a real and quantifiable risk that existing facilities which are not substandard (according to SDG&E) will fail when exposed to strong winds.

#### **4.4.2. Shutting Off Power in Hazardous Wind Conditions**

The failure of SDG&E's overhead power-line facilities during strong Santa Ana winds poses a significant fire hazard and threat to public safety. SDG&E's comments show that during the period of January 1, 2000 through mid-2011, there were two instances where strong Santa Ana winds occurred simultaneously with a Red Flag Warning declared by the National Weather Service. During these two Santa Ana wind events, there were 149 failures of SDG&E's overhead power-line facilities, including 16 pole failures, which

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<sup>22</sup> SDG&E Opening Comments, Tables 6, 7 and 8 at 109 - 111. (See also SCE's Opening Comments at 8 - 9, and CPSD's Opening Comments at 13 - 17.)

<sup>23</sup> SDG&E Opening Comments, Table 1 at 4 - 79, and Table 4 at 98.

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purportedly ignited three wildfires.<sup>24</sup> These three fires together burned more than 207,000 acres (323 square miles) and caused widespread devastation.<sup>25</sup>

In D.09-09-030, the Commission held that SDG&E has statutory authority under § 451 and § 399.2(a) to shut off power to protect public safety if Santa Ana winds exceed the design basis for SDG&E's system and threaten to topple power lines onto tinder dry brush. The record of this proceeding establishes that SDG&E will likely face the situation where strong Santa Ana winds exceed SDG&E's design basis of 56 mph for its overhead power-line facilities, presenting SDG&E with the dilemma of keeping vital power flowing in a dangerous situation, or shutting off power to protect the public from potentially catastrophic wildfires ignited by wind-damaged power-line facilities.

SDG&E will be in the best position to determine when power should be shut off to protect public safety. Only SDG&E has the detailed knowledge of its facilities that is needed to make this decision in real time based on contemporaneous local weather conditions.

As a general principle, SDG&E should keep power flowing when wind speeds exceed 56 mph. Without power, numerous unsafe conditions can occur. Traffic signals do not work, medical life support equipment does not work, water pumps do not work, and communication systems do not work. As the California Legislature recognized in § 330(g), "[r]eliable electric service is of utmost importance to the safety, health, and welfare of the state's citizenry and

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<sup>24</sup> SDG&E Opening Comments, Table 1 at 5 - 12 and 50 - 54. The three fires were the Rice, Guejito, and Witch Fires.

<sup>25</sup> SDG&E Opening Comments, Table 2 at 89, and Table 4 at 98. Today's decision does not find that SDG&E's power-line facilities did, in fact, ignite fires.



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economy.” Consequently, SDG&E should shut off power only as a last resort, and only when SDG&E is convinced there is a significant risk that strong Santa Ana winds will topple power lines onto flammable vegetation. This is consistent with SDG&E’s Commission-approved tariffs, which acknowledge that SDG&E has an obligation to provide electrical service on a continuous basis.<sup>26</sup>

Any decision by SDG&E to shut off power under its statutory authority may be reviewed by the Commission pursuant to its broad jurisdiction over matters regarding the safety of public utility operations and facilities. The Commission may decide at that time whether SDG&E’s decision to shut off power was reasonable and qualifies for an exemption from liability under SDG&E’s Electric Tariff Rule 14. This tariff rule provides that SDG&E will not be held liable for an interruption in service “caused by inevitable accident, act of God, fire, strikes, riots, war or any other cause not within its control.”<sup>27</sup>

In assessing whether SDG&E’s decision to shut off power was reasonable and should be exempt from liability under Tariff Rule 14, we may consider the following factors. First, there is a strong presumption that power should remain on for public safety reasons.<sup>28</sup> SDG&E will have the burden of demonstrating that its decision to shut off power was necessary to protect public safety.

Second, SDG&E should rely on other measures, to the extent available, as an alternative to shutting off power. These measures include reliance on

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<sup>26</sup> SDG&E’s Tariff Rule 14 (A) states: “The utility will exercise reasonable diligence and care to furnish and deliver a continuous and sufficient supply of electric energy to the customer, and to avoid any shortage or interruption of delivery of same.”

<sup>27</sup> Tariff Rule 14, Section A.

<sup>28</sup> D.09-09-030 at 57.



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sensitive relay settings to shut off power in milliseconds if there is an electrical failure caused by power lines falling to the ground and disabling reclosers to keep power off until SDG&E can inspect its facilities to determine if it is safe to re-energize its power lines. As CPSD notes, these measures might have prevented the catastrophic Witch Fire in October 2007 without shutting off power prematurely.

Third, the data provided by SDG&E shows that most facilities do not fail in strong winds, and most failures do not result in a fire. SDG&E must reasonably believe there is an imminent and significant risk that strong Santa Ana winds will topple its power lines onto tinder dry vegetation during periods of extreme fire hazard. The factors that SDG&E should consider, and which we may evaluate after the fact, include the following:

- The wind speed at the location(s) where power is shut off and the wind direction to the extent this affects the wind load on the facilities.
- The type of facilities at the location(s) where power is shut off (e.g., Grade A or Grade B, wood or steel, etc.); the wind load design basis for the facilities; the age and condition of the facilities; and the percent utilization (i.e., the actual safety factor).
- The calculated risk of wind-caused structural failures.
- The vegetation conditions where power is shut off (e.g., vegetation fuel load and fuel-level moisture).
- Whether the National Weather Service has declared a Red Flag Warning due to extremely low humidity or low humidity plus strong winds.

The above factors are illustrative, not inclusive.

Fourth, we may consider SDG&E's efforts to mitigate the adverse impacts on the customers and communities in areas where SDG&E shuts off power. Such

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mitigation must include appropriate and feasible steps to warn and protect its customers whenever SDG&E shuts off power in Santa Ana wind conditions pursuant to its statutory authority. Appropriate mitigation might include, for example, alternate sources of electric power for critical public services such as schools and water utilities.

Finally, we may consider other factors, as appropriate, to assess whether SDG&E's decision to shut off power was reasonable and should be exempt from liability under Tariff Rule 14.

We decline to adopt CPSD and DRA's position that SDG&E should be prohibited from shutting off power at wind speeds below 91 mph (for Grade A facilities). As noted previously, there is a risk that SDG&E's existing facilities may fail at wind speeds below 91 mph. It would be extremely dangerous to prohibit SDG&E from shutting off power when SDG&E reasonably believes there is an imminent danger of energized power lines falling onto tinder dry vegetation in Santa Ana wind conditions and there are no other safety measurers available (e.g., automatic re-closers) to prevent a fire.

So that we may monitor shutoff events, SDG&E shall notify the Director of CPSD no later than 12 hours after SDG&E shuts off power because, in part, SDG&E believes that strong winds could cause a structural failure of SDG&E's overhead power-line facilities. After the shut off has ended, SDG&E shall provide a report to the Director of CPSD that includes (i) an explanation of SDG&E's decision to shut off power; (ii) all factors considered by SDG&E in its decision to shut off power, including wind speed, temperature, humidity, and vegetation moisture in the vicinity of the de-energized circuits; (iii) the time, place, and duration of the shutoff event; (iv) the number of affected customers, broken down by residential, medical baseline, commercial/industrial, and other;

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(v) any wind-related damage to SDG&E's overhead power-line facilities in the areas where power is shut off; (vi) a description of the notice to customers and any other mitigation provided by SDG&E; and (vii) any other matters that SDG&E believes are relevant to the Commission's assessment of the reasonableness of SDG&E's decision to shut off power.

SDG&E shall submit the report no later than 10 business days after the shutoff event ends. The report shall be verified by an SDG&E officer pursuant to Rule 1.11 of the Commission's Rules of Practice and Procedure.

CPSD may investigate each reported incident and prepare an order instituting investigation, if appropriate. The need for, and the outcome of, any investigation proceeding will be decided on a case by case basis taking into account all facts and circumstances.

We recognize that in D.09-09-030, the Commission authorized SDG&E to file an application for approval of a comprehensive fire-prevention program, including a provision to shut off power during periods of strong winds. However, as discussed previously in today's decision and in D.09-09-030, SDG&E has statutory authority to shut off power when necessary to protect public safety, subject to after-the-fact review by the Commission. The application contemplated by D.09-09-030 does not apply to the exercise of SDG&E's statutory authority to shut off power.

#### **4.4.3. Design Requirements**

Today's decision does not determine if SDG&E has correctly interpreted and applied GO 95 wind-load design requirements. We will address the appropriate design standards on a prospective basis in Phase 3 of Rulemaking 08-11-005. There, we will convene workshops where parties will develop proposals for revising GO 95 to include (1) a new High Fire-Threat

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District where there is an elevated risk of power-line fires occurring and spreading rapidly; and (2) design standards for overhead power-line facilities in the new High Fire-Threat District. These workshops will also assess if the new design standards developed in Phase 3 should apply to existing facilities and, if so, to develop a plan, timeline, and cost estimate for upgrading existing facilities.<sup>29</sup>

## **5. Comments on the Proposed Decision**

The proposed decision of the assigned ALJ for this proceeding was mailed to the parties in accordance with Pub. Util. Code § 311, and comments were allowed in accordance with Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on April 9, 2012, by the Communications Providers, DisabRA, MGRA, SCE, and SDG&E. Reply comments were filed on April 16, 2012, by CPSD and SDG&E. These comments have been reflected, as appropriate, in the final decision adopted by the Commission.

## **6. Assignment of the Proceeding**

Timothy Alan Simon is the assigned Commissioner and Timothy Kenney is the assigned ALJ for this proceeding.

## **Findings of Fact**

1. Santa Ana winds are strong, dry winds that occur from time to time in SDG&E's service territory. Santa Ana winds can damage overhead power-line facilities. Fires ignited by wind-damaged power lines can spread rapidly in Santa Ana wind conditions and cause enormous destruction.

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<sup>29</sup> D.12-01-032 at 121 - 123 and Ordering Paragraph 8.

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2. SDG&E has used a design basis for wind loads of 56 mph for most of its overhead power-line facilities. There is a risk that such facilities will experience structural failures when wind gusts exceed 56 mph. The risk of failure increases exponentially as wind speed increases.

3. De-energizing overhead power lines eliminates the risk that power lines will ignite fires during Santa Ana winds, but it also imposes significant costs, burdens, and risks on the customers and communities where power is shut off.

### **Conclusions of Law**

1. SDG&E has authority under Pub. Util. Code § 399.2(a) and § 451 to shut off power in emergency situations when necessary to protect public safety, including the situation where strong Santa Ana winds exceed the design basis for SDG&E's overhead power-line facilities and threaten to topple energized power lines onto tinder dry brush.

2. SDG&E should provide notice and mitigation to its customers, to the extent feasible and appropriate, whenever SDG&E shuts off power pursuant to its statutory authority.

3. DisabRA's petition to modify D.09-09-030 should be granted.

4. Any decision by SDG&E to shut off power under its statutory authority, including the adequacy of any notice given and any mitigation measures implemented by SDG&E, may be reviewed by the Commission pursuant to its broad jurisdiction over matters regarding the safety of public utility operations and facilities. The Commission may decide at that time whether SDG&E's decision to shut off power was reasonable and qualifies for an exemption from liability under SDG&E's Electric Tariff Rule 14.

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5. SDG&E should notify the Director of CPSD within 12 hours whenever SDG&E shuts off power because, in part, SDG&E believes that strong winds could cause a structural failure of SDG&E's overhead power-line facilities. After the shut-off event has ended, SDG&E should submit a report to the Director of CPSD that includes the information specified in the body of today's decision.

6. Because this decision affects public safety, this decision should be effective immediately.

## **O R D E R**

**IT IS ORDERED** that:

1. Disability Rights Advocates' petition to modify Decision 09-09-030 is granted. San Diego Gas & Electric Company (SDG&E) shall take appropriate and feasible steps to provide notice and mitigation to its customers whenever SDG&E shuts off power pursuant to its statutory authority.

2. San Diego Gas & Electric Company (SDG&E) shall notify the Director of the Commission's Consumer Protection and Safety Division (CPSD) no later than 12 hours after SDG&E shuts off power because, in part, SDG&E believes that strong winds could cause structural failures of SDG&E's overhead power-line facilities. After the shut-off event has ended, SDG&E shall submit a report to the Director of CPSD that includes (i) an explanation of SDG&E's decision to shut off power; (ii) all factors considered by SDG&E in its decision to shut off power, including wind speed, temperature, humidity, and vegetation moisture in the vicinity of the de-energized circuits; (iii) the time, place, and duration of the power shutoff event; (iv) the number of affected customers, broken down by residential, medical baseline, commercial/industrial, and other; (v) any wind-related damage to SDG&E's overhead power-line facilities in the areas

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where power is shut off; (vi) a description of the customer notice and any other mitigation provided by SDG&E; and (vii) any other matters that SDG&E believes are relevant to the Commission's assessment of the reasonableness of SDG&E's decision to shut off power. SDG&E shall submit the report no later than 10 business days after the shutoff event ends. The report shall be verified by an SDG&E officer in accordance with Rule 1.11 of the Commission's Rules of Practice and Procedure.

3. Application 08-12-021 is closed.

This Order is effective today.

Dated April 19, 2012, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
TIMOTHY ALAN SIMON  
MICHEL PETER FLORIO  
CATHERINE J.K. SANDOVAL  
MARK J. FERRON  
Commissioners

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# EXHIBIT F

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ALJ/UNC/mph

Date of Issuance 12/19/2018

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

Order Instituting Rulemaking to  
Examine Electric Utility  
De-Energization of Power Lines in  
Dangerous Conditions.

FILED  
PUBLIC UTILITIES COMMISSION  
DECEMBER 13, 2018  
SAN FRANCISCO, CALIFORNIA  
RULEMAKING 18-12-005

**ORDER INSTITUTING RULEMAKING**

**Summary**

The Commission opens this Order Instituting Rulemaking (OIR) to examine its rules allowing electric utilities under the Commission's jurisdiction to de-energize power lines in case of dangerous conditions that threaten life or property in California. The Commission recently adopted de-energization rules in Resolution ESRB-8,<sup>1</sup> which built on Decision (D.) 12-04-004. Resolution ESRB-8 will remain in effect during the pendency of this proceeding unless and until the Commission explicitly modifies or rescinds it.

California is experiencing an increase in wildfire events due to a number of factors, including an extended period of drought, upwards of 10 years, increased fuel for fires, and unprecedented conditions that are leading to extreme weather events. Exacerbating wildfire conditions are energized power lines and the

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<sup>1</sup> Resolution Extending De-Energization Reasonableness, Notification, Mitigation and Reporting Requirements in Decision 12-04-024 to All Electric Investor Owned Utilities (July 16, 2018), available at <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M218/K186/218186823.PDF>.

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potential of these lines to either spark or worsen an existing wildfire. To mitigate these and other risks, electric utilities have in the past used the option of proactively shutting down power to specific power lines to limit the impact or damage of these lines to communities in situations where the utilities are aware of dangerous conditions. However, de-energization can leave communities and essential facilities without power, which brings its own risks and hardships, particularly for vulnerable communities.

This proceeding will focus on the following issues:

- Examining conditions in which proactive and planned de-energization is practiced;
- Developing best practices and ensuring an orderly and effective set of criteria for evaluating de-energization programs;
- Ensuring electric utilities coordinate with state and local level first responders, and align their systems with the Standardized Emergency Management System framework (SEMS)<sup>2</sup>;
- Mitigating the impact of de-energization on vulnerable populations;
- Examining whether there are ways to reduce the need for de-energization;
- Ensuring effective notice to affected stakeholders of possible de-energization and follow-up notice of actual de-energization; and
- Ensuring consistency in notice and reporting of de-energization events.

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<sup>2</sup> SEMS is the system required by Government Code Section 8607(a) for managing emergencies involving multiple jurisdictions and agencies.

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We will serve this OIR broadly, and seek input from affected communities, governments, first responders and other stakeholders. Staff has planned workshops in different parts of the state to receive input on de-energization. We intend to examine how de-energization has affected California thus far, and to refine our approach to the practice to ensure it enhances public safety while minimizing unintended consequences.

The Commission-jurisdictional electric corporations (collectively, Investor Owned Utilities or IOUs) that are required to participate in this proceeding are Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), Liberty Utilities/CalPeco Electric (Liberty), Bear Valley Electric Service, a division of Golden State Water Company (Bear Valley), and Pacific Power, a division of PacifiCorp (PacifiCorp). The Commission also invites the input of all stakeholders in guiding our approach.

In October 2018, the Commission opened a rulemaking, R.18-10-007, to implement the portions of SB 901 (Dodd) related to Wildfire Mitigation Plans. Pertinent to this proceeding, Public Utilities Code Section 8386(c)(6) requires the plans to include:

- 6) Protocols for disabling reclosers and deenergizing portions of the electrical distribution system that consider the associated impacts on public safety, as well as protocols related to mitigating the public safety impacts of those protocols, including impacts on critical first responders and on health and communication infrastructure.

Because of the important role de-energized power lines can play in ensuring public safety and the public's keen interest in the impact of de-energization on their communities, the Commission will address the implementation and logistics for de-energization of power lines in this

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proceeding. Though this detailed examination will take place outside of the initial Wildfire Mitigation Plans OIR, we recognize that de-energization will be one element considered in the annual plans. In future years, the outcome of this proceeding may guide the portion of utilities' wildfire mitigation plans required per Section 8386(c)(6).

## 1. Background

Devastating wildfires have become a regular occurrence in California. The Commission is examining the impact of wildfires and other emergencies in several proceedings,<sup>3</sup> but this proceeding will focus specifically on proactive electric power line de-energization. California Public Utilities Code (Pub. Util. Code) Sections 451 and 399.2(a) give electric utilities authority to shut off electric power in order to protect public safety. This authority includes shutting off power for the prevention of fires where strong winds, heat events, and related conditions are present.

The Commission considered and allowed SDG&E to engage in proactive de-energization in Application (A.) 08-12-021, resulting in Decision (D.) 12-04-024. That decision allowed SDG&E authority to shut off power as a fire-prevention measure against severe Santa Ana winds. SDG&E requested this authority after the 2007 wildfire season that resulted in the Rice, Witch and Guejito wildfires discussed in D.17-11-033 (on rehearing, D.18-07-025). The Commission allowed SDG&E to de-energize its lines in emergency situations

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<sup>3</sup> Those proceedings include Rulemaking (R.) 18-10-007, Order Instituting Rulemaking to Implement Electric Utility Wildfire Mitigation Plans Pursuant to Senate Bill 901 (2018); R.18-03-011, Order Instituting Rulemaking Regarding Emergency Disaster Relief Program; and R.15-06-009, Physical Security of the Electric System and Disaster and Emergency Preparedness.

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when necessary to protect public safety and adopted certain review and notice requirements when proactive de-energization takes place.

Over a period of several years, the utility deployed important new tools, such as weather sensors focused on many highly local sites capable of measuring real time wind speeds and atmospheric conditions, carefully placed video monitors, and employed sophisticated weather and wind modelling software. Over time, the company developed detailed profiles of specific geographic features (canyons and hills and not just peaks) and the settlements located nearby, and developed risk profiles for possible infrastructure failure under potential weather conditions, with the goal of limiting the scope of de-energization and avoiding power cutoffs to essential services that are critical during emergencies. Through careful observation of operation during weather events, the utility has improved the effectiveness of the program. Decision 12-04-024 provided for after-the-fact Commission reasonableness review of SDG&E's de-energization decisions, required community notice and mitigation measures, and mandated reporting to the Commission on de-energization events.

We explained the stark new reality of wildfire events in California in Resolution ESRB-8:

The 2017 California wildfire season was the most destructive wildfire season on record, and saw multiple wildfires burning across California, including five of the 20 most destructive wildland-urban interface fires in the state's history. Devastating fires raged in Santa Rosa, Los Angeles, and Ventura, and the Thomas Fire proved to be the largest wildfire in California history. These fires further demonstrated the fire risk in California. As a result of the fires and critical fire weather conditions, both the President of the United States and the Governor of California issued State of Emergency declarations. Resolution ESRB-8 at 2.

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The Commission's Safety and Enforcement Division (SED) reviewed SDG&E's de-energization events that occurred in December 2017. SED reached the following conclusions:

- SDG&E faced a real and significant risk of wildfires and its de-energization decisions were based on an adequate risk assessment.
- Prior to deciding to de-energize specific circuits, SDG&E considered and implemented other mitigation strategies, including adjustments of recloser settings, vegetation management, and inspection and monitoring during the extreme fire risk conditions.
- SDG&E considered location-specific wind speeds and the age, condition, and loading of facilities on the circuits and reasonably believed that there was an imminent and significant fire hazard.
- SDG&E made reasonable efforts to mitigate the adverse impacts on customers and communities in areas where SDG&E de-energized circuits.

SED concluded that SDG&E's actions appear to have been reasonable under the factors specified in D.12-04-024 and that SDG&E complied with the decision's reporting requirements.<sup>4</sup>

Resolution ESRB-8 extended the de-energization notice, reporting and reasonableness review requirements to all electric IOUs (PG&E, SCE, Liberty, Bear Valley and PacifiCorp) and adopted additional measures to supplement the

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<sup>4</sup> SED, Review of San Diego Gas & Electric Company December 2017 De-Energization Events, May 2018, [http://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Website/Content/About\\_Us/Organization/Divisions/News\\_and\\_Outreach\\_Office/May%202018%20SED%20Review%20of%20SDGE%20December%202018%20Deenergization%20Events\\_.pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Website/Content/About_Us/Organization/Divisions/News_and_Outreach_Office/May%202018%20SED%20Review%20of%20SDGE%20December%202018%20Deenergization%20Events_.pdf).

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D.12-04-024 requirements. The new measures included more detailed reporting and additional public outreach, notification and mitigation.

The year 2018 has brought additional devastating wildfires all over the state – including the recent Camp Fire in Butte County, the largest in California’s history with the greatest death toll. At the same time as the Camp Fire, huge fires also burned in Los Angeles and Ventura Counties. In addition, the IOUs have called numerous de-energization events and the Commission has received a large volume of input from the public, government agencies and other first responders concerned about the practice. It is therefore prudent to examine how the Resolution ESRB-8 process is working, and to determine whether additional refinement is appropriate. We also seek to enhance stakeholder involvement in examining our de-energization requirements. To that end, staff will hold at least two workshops, as noted in the schedule below, and we expect to conduct other outreach around the state to allow input from local communities, first responders and others with concerns about wildfire and de-energization.

## **2. Preliminary Scoping Memo**

The Commission will conduct this rulemaking in accordance with Article 6 of the Commission's Rules of Practice and Procedure, “Rulemaking.”<sup>5</sup> As required by Rule 7.1(d), this OIR includes a preliminary scoping memo as set forth below, and preliminarily determines the category of this proceeding and the need for hearing.

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<sup>5</sup> All references to “Rules” are to the Commission’s Rules of Practice and Procedure unless otherwise indicated.



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## 2.1. Issues

The scope of this proceeding is electric IOU de-energization. The following issues are preliminarily determined to be within the scope of the proceeding:

1. Conditions in which proactive and planned de-energization is practiced;
  - a. Should the Commission limit de-energization in specific ways?
  - b. Should we develop metrics for determining when de-energization is appropriate?
  - c. How much discretion should the IOUs have in calling de-energization events?
  - d. Are there other guidelines we should apply to de-energization?
2. Best practices and a set of criteria for evaluating development of effective programs;
  - a. What are the best tools that can be applied to different landscapes and fire conditions across California?
  - b. Are there tools deployed by the National Weather Service (*e.g.*, Santa Ana Wind Warnings) used in specific locations in California that should be adapted and deployed elsewhere?
  - c. How should programs be designed for use of new technologies and for continuous improvement?
3. Notification to the public, local governments, critical facilities, and emergency responders.
  - a. What are the best ways to notify the aforementioned parties of a planned de-energization event and when power will be restored in the event of de-energization?
  - b. Do notification standards differ for vulnerable populations?

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4. Electric utility coordination with state and local level first responders when they call a de-energization event.
  - a. How do the IOUs coordinate with state and local first responders?
  - b. What is working and what is not working in this coordination?
  - c. What changes are required to ensure better coordination?
5. The extent to which the electric utilities' systems are in compliance with and align their systems with California's Standardized Emergency Management System framework (SEMS).
  - a. What are the SEMS requirements?
  - b. What do the IOUs do to meet these requirements?
  - c. What additional steps should we require to ensure the IOUs are acting in a way that furthers the SEMS process, if appropriate?
6. How to mitigate the impact of de-energization on vulnerable populations.
  - a. What are the impacts of de-energization on vulnerable populations, and what can the Commission and IOUs do to minimize these impacts?
  - b. What are the requirements and process for sharing contact information to the extent permissible by law?
7. How to reduce the need for de-energization, if possible.
8. Examine the need for community and first responder notification improvements.
  - a. How are the current notification requirements working?
  - b. What additional notice requirements should we consider?

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- c. What notification is occurring that we should discontinue, if any, due to lack of effectiveness? For example, are repeated notices causing notice fatigue and reducing the effectiveness of notice?
  9. Examine best practices around the country or the world in implementing de-energization.
    - a. Should the Commission extend such practices to the California electric IOUs?
    - b. What is the cost of such best practices?
    - c. Would conforming California's rules to those of other jurisdictions or countries achieve greater safety for California's residents?
  10. Develop reporting and notice requirements that best serve Californians.
    - a. What reporting and notification templates exist?
    - b. What are the best types of notification and reporting (understandable, timely, effective, complete)?
    - c. Should all IOUs use a standard notification and reporting format?
    - d. Whom should the IOUs notify of de-energization and how should they ensure their notification lists are current and relevant?
  11. What data should be collected when IOUs initiate a de-energization event, during and after these events?
  12. Other de-energization issues that the assigned Commissioner and Administrative Law Judge may deem appropriate.

### **3. Categorization; *Ex Parte* Communications; Need for Hearing**

Rule 7.1(d) of the Commission's Rules of Practice and Procedure requires that an order instituting rulemaking preliminarily determine the category of the proceeding and the need for hearing. As a preliminary matter, we determine

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that this proceeding is quasi-legislative, because our consideration and approval of this matter would establish policy or rules affecting a class of regulated utilities. Accordingly, *ex parte* communications are permitted without restriction or reporting requirement pursuant to Article 8 of the Rules

We are also required to preliminarily determine if hearings are necessary. We preliminarily determine that hearings are not necessary.

#### 4. Preliminary Schedule

The preliminary schedule for this proceeding is as follows:

##### SCHEDULE

| EVENT   | DATE  |
|---|---|
| Comments on OIR filed and served, with responses to questions in "Preliminary Scoping Memo" | 45 days from issuance of OIR  |
| Staff Workshop 1:<br>Northern California  | December 14, 2018, 9:00 a.m.-12:30 p.m.<br>Santa Rosa Veteran's Memorial Building, Lodge Room<br>1351 Maple Ave., Santa Rosa CA 95404<br><b>Remote Access:</b> <ul style="list-style-type: none"> <li>• WebEx: <a href="https://bit.ly/2KdtB61">https://bit.ly/2KdtB61</a>, meeting number 710 613992, Password: Mitigation</li> <li>• Listen-only call-in number 1-877-820-7831, access code 479881</li> </ul> |
| Staff Workshop 2:<br>Southern California  | January 9, 2019, 9:00 a.m.-12:30 p.m.<br>Calabasas Founders Hall, 100 Civic Center Way<br>Calabasas, CA 91302<br><b>Remote Access:</b> <ul style="list-style-type: none"> <li>• WebEx: <a href="https://bit.ly/2RU90ef">https://bit.ly/2RU90ef</a>, meeting number 717 534 465, Password: Mitigation,</li> <li>• Listen-only call-in number 1-877-820-7831, access code 479881</li> </ul>                       |
| Prehearing conference   | February 6, 2019, 10:30 a.m., Commission hearing room A, 505 Van Ness Avenue, San Francisco, CA.  |

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| EVENT                                      | DATE                                      |
|--|---|
| Scoping memo                               | February 2019                             |
| Prehearing conference                      | Wednesday, February 6, 2019 at 10:30 a.m. |
| Opening comments                           | March 2019                                |
| Reply comments                             | April 2019                                |
| Proposed Decision on de-energization rules | Summer 2019                               |
| Final Decision                             | Summer 2019                               |

The prehearing conference (PHC) will be held for the purposes of (1) taking appearances, (2) discussing schedule and process, and (3) informing the scoping memo. The PHC shall be held beginning at 10:30 a.m. on February 6, 2019 in the Commission Courtroom, 505 Van Ness Avenue, San Francisco, California.

The assigned Commissioner or the assigned Administrative Law Judge(s) (ALJ) may change the schedule to promote efficient and fair administration of this proceeding.

As noted in the schedule above, staff are holding two workshops on de-energization issues to gather input from first responders, affected communities and other stakeholders. Notice of these workshops has been posted on the Commission's Daily Calendar. In the event that additional workshops are held, notice will be posted on the Commission's Daily Calendar to inform the public that a decision-maker or an advisor may be present at those meetings or workshops. Parties shall check the Daily Calendar regularly for such notices.

## 5. Respondents

PG&E, SCE, SDG&E, Liberty, Bear Valley and PacifiCorp are named as respondents to this proceeding.

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## 6. Service of OIR

This OIR shall be served on all respondents.

In addition, in the interest of broad notice, this OIR will be served on the official service lists for the following proceedings:

- Rulemaking 18-10-007, Order Instituting Rulemaking Implement Electric Utility Wildfire Mitigation Plans Pursuant to Senate Bill 901 (2018);
- Rulemaking 18-03-011, Order Instituting Rulemaking regarding Emergency Disaster Relief Program;
- Rulemaking 15-05-006, Order Instituting Rulemaking to Develop and Adopt Fire-Threat Maps and Fire-Safety Regulations;
- Rulemaking 15-06-009, Order Instituting Rulemaking Regarding Policies, Procedures and Rules for Regulation of Physical Security for the Electric Supply Facilities of Electrical Corporations Consistent with Public Utilities Code Section 364 and to Establish Standards for Disaster and Emergency Preparedness Plans for Electrical Corporations and Regulated Water Companies Pursuant to Public Utilities Code Section 768.6;
- Application 15-09-010, Application of San Diego Gas & Electric Company for Authorization to Recover Costs Related to the 2007 Southern California Wildfires Recorded in the Wildfire Expense Memorandum Account (WEMA);
- Application 17-07-011, Application of Pacific Gas and Electric Company for Authority to Establish the Wildfire Expense Memorandum Account;
- Application 18-04-001, Application of Southern California Edison Company to Establish the Wildfire Expense Memorandum Account;
- Application 18-09-002, Application of Southern California Edison Company for Approval of Its Grid Safety and Resiliency Program; and

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- Application 08-12-021, Application of San Diego Gas & Electric Company for Review of its Proactive De-Energization Measures and Approval of Proposed Tariff Revisions.

In addition, in the interest of broad notice, this OIR will be served on the following agencies named in SB 901, and organizations representing local governments:

- State Board of Forestry and Fire Protection (CAL FIRE)
- California Energy Commission
- State Air Resources Control Board
- California Governor's Office of Emergency Services
- California Department of Fish and Wildlife
- California Infrastructure and Economic Development Bank
- California Office of Planning and Research
- California Department of Parks and Recreation
- California State Association of Counties
- League of California Cities
- California Native American Heritage Commission
- California Municipal Utilities Association
- California State Sheriffs' Association
- California Fire Chiefs' Association

Service of the OIR does not confer party status or place any person who has received such service on the Official Service List for this proceeding, other than respondents. Instructions for obtaining party status or being placed on the official service list are given below.

## **7. Filing and Service of Comments and Other Documents**

Filing and service of comments and other documents in the proceeding are governed by the Commission's Rules of Practice and Procedure.

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## **8. Addition to Official Service List**

Addition to the official service list is governed by Rule 1.9(f) of the Commission's Rules of Practice and Procedure.

Respondents are parties to the proceeding (see Rule 1.4(d)) and will be immediately placed on the official service list.

Any person will be added to the "Information Only" category of the official service list upon request, for electronic service of all documents in the proceeding, and should do so promptly in order to ensure timely service of comments and other documents and correspondence in the proceeding.

(See Rule 1.9(f).) The request must be sent to the Process Office by e-mail ([process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov)) or letter (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California 94102). Please include the Docket Number of this rulemaking in the request.

Persons who file comments on this OIR become parties to the proceeding (see Rule 1.4(a)(2)) and will be added to the "Parties" category of the official service list upon such filing. In order to assure service of comments and other documents and correspondence in advance of obtaining party status, persons should promptly request addition to the "Information Only" category as described above; they will be removed from that category upon obtaining party status.

## **9. Subscription Service**

Persons may monitor the proceeding by subscribing to receive electronic copies of documents in this proceeding that are published on the Commission's website. There is no need to be on the official service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission's website at <http://subscribecpuc.cpuc.ca.gov/>.

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## 10. Intervenor Compensation

Intervenor Compensation is permitted in this proceeding. Any party that expects to claim intervenor compensation for its participation in this Rulemaking must file a timely notice of intent to claim intervenor compensation. (*See* Rule 17.1(a)(2).) Intervenor compensation rules are governed by §§ 1801 et seq. of the Public Utilities Code. Parties new to participating in Commission proceedings may contact the Commission's Public Advisor.

## 11. Public Advisor

Any person or entity interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in San Francisco at (415) 703-2074 or 1-(866) 849-8390 or e-mail [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov). The TTY number is 1-(866) 836-7825.

Therefore, **IT IS ORDERED** that:

1. This Order Instituting Rulemaking is adopted to examine the Commission's rules regarding electric utility de-energization practices pursuant to Public Utilities Code Sections 451 and 399.2(a) and Rule 6.1 of the Commission's Rules of Practice and Procedure.
2. The preliminary categorization is quasi-legislative.
3. The preliminary determination is that a hearing is not needed.
4. The preliminary scope of issues is as stated above.
5. A prehearing conference is set for 10:30 a.m. on Wednesday, February 6, 2019 at the Commission's offices in San Francisco, California.
6. The preliminary schedule for the proceeding is set forth in Section 3.1 above.
7. Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, Liberty Utilities (CalPeco Electric), Bear

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Valley Electric Service, a division of Golden State Water Company, and Pacific Power, a division of PacifiCorp, are respondents to this Order Instituting Rulemaking.

8. Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, Liberty Utilities (CalPeco Electric), Bear Valley Electric Service, a division of Golden State Water Company, and Pacific Power, a division of PacifiCorp shall, and any other person may, file and serve comments of not more than 20 pages responding to this Order Instituting Rulemaking (OIR) not later than 45 days from the issuance of this OIR.

9. Comments on this Order Instituting Rulemaking should address the scope and schedule of this proceeding, and its interaction with other related proceedings.

10. The Executive Director will cause this Order Instituting Rulemaking to be served on all respondents and on the service lists for the following Commission proceedings: Rulemaking (R.) 18-10-007, R.18-03-011, R.15-05-006, R.15-06-009, Application (A.) 15-09-010, A.17-07-011, A.18-04-001, A.18-09-002, and A.08-12-021. In addition, the Executive Director will cause this Order Instituting Rulemaking to be served on the following agencies and organizations: State Board of Forestry and Fire Protection (CAL FIRE), California Energy Commission, State Air Resources Control Board, California Office of Emergency Services, California Department of Fish and Wildlife, California Infrastructure and Economic Development Bank, California Office of Planning and Research, California Department of Parks and Recreation, California State Association of Counties, League of California Cities, California Municipal Utilities Association, California Native American Heritage Commission, California State Sheriffs' Association and California Fire Chiefs' Association.

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11. Any party that expects to claim intervenor compensation for its participation in this Rulemaking must timely file its notice of intent to claim intervenor compensation. (*See* Rule 17.1(a)(2).)

This order is effective today.

Dated December 13, 2018, at San Francisco, California.

MICHAEL PICKER

President

CARLA J. PETERMAN

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

Commissioners

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**No. 21-15571**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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ANTHONY GANTNER, individually and on behalf of all those  
similarly situated,

*Plaintiff-Appellant,*

v.

PG&E CORPORATION, a California Corporation, and PACIFIC  
GAS AND ELECTRIC COMPANY, a California Corporation

*Defendants-Appellees.*

On Appeal from the United States District Court  
for the Northern District of California

No. 4:20-CV-02584-HSG

Hon. Haywood S. Gilliam, Jr.,

[an appeal from an Order in the Bankruptcy Case In re: PG&E  
CORPORATION and PACIFIC GAS AND ELECTRIC COMPANY,  
Debtors, Bankruptcy Case No. 19-30088 (DM), Adv. Pro. No. 19-03061  
(DM), Hon. Donald Montali, U.S. Bankruptcy Judge]

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**APPELLEES' SUPPLEMENTAL EXCERPTS OF RECORD**

**VOLUME 2 OF 2**

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*Attorneys for Defendants-Appellees*

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# EXHIBIT J

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ALJ/PVA/SRT/jt2

**Date of Issuance 10/25/2018**

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

Order Instituting Rulemaking to  
Implement Electric Utility Wildfire  
Mitigation Plans Pursuant to Senate  
Bill 901 (2018).

FILED  
PUBLIC UTILITIES COMMISSION  
OCTOBER 25, 2018  
SAN FRANCISCO, CALIFORNIA  
RULEMAKING 18-10-007

**ORDER INSTITUTING RULEMAKING**

**Summary**

The Commission opens this Order Instituting Rulemaking (OIR) to implement the provisions of Senate Bill 901<sup>1</sup> related to electric utility wildfire mitigation plans. This OIR will provide guidance on the form and content of the initial wildfire mitigation plans, provide a venue for review of the initial plans, and develop and refine the content of and process for review and implementation of wildfire mitigation plans to be filed in future years.

**1. Background**

Devastating wildfires have become a regular occurrence in California. Senate Bill (SB) 901 starkly recites a litany of statistics showing that wildfires have grown larger and more intense over the last several decades, resulting in loss of life and property, ecological devastation, increases in future fire risk, and

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<sup>1</sup> Stats. 2018, Ch. 626.

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significant greenhouse gas emissions. In response, SB 901 attempts to address these changes by directing a variety of actions in multiple contexts.<sup>2</sup>

New provisions of Public Utilities Code Section 8386, enacted as part of SB 901, require all California electric utilities to prepare and submit wildfire mitigation plans that describe the utilities' plans to prevent, combat and respond to wildfires affecting their service territories.<sup>3</sup> This proceeding focuses on this requirement, and is the vehicle for the review and implementation of the electric utilities' wildfire mitigation plans.<sup>4</sup>

The Commission-jurisdictional electric corporations that are required to participate in this proceeding are Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), Liberty Utilities/CalPeco Electric (Liberty), Bear Valley Electric Service, a division of Golden State Water Company (Bear Valley), and Pacific Power, a division of PacifiCorp (PacifiCorp). The Commission also invites the input of all stakeholders in guiding our approach. The Commission has long worked with the California Department of Forestry and Fire Protection (CAL FIRE) on improving wildfire mitigation, and based on that work and input from the parties, this rulemaking will include development of proposed guidance for what the electric utilities' wildfire mitigation plans should contain.

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<sup>2</sup> Many of the actions directed to be taken by SB 901 are outside the purview of this Commission, such as changes to timber harvest plans, and are not addressed in this Order Instituting Rulemaking (OIR).

<sup>3</sup> The required elements of the wildfire mitigation plans under Section 8386 are set forth in Appendix A.

<sup>4</sup> SB 901 included other Commission-related provisions in addition to the wildfire mitigation plans. Those provisions will be addressed in other proceedings.

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The provisions of SB 901 relating to the Commission's review and implementation of wildfire mitigation plans include short turnaround times for much of the necessary action by the Commission. Accordingly, at times this proceeding may move very quickly, with either shortened deadlines or fewer rounds of input. All parties should be prepared to act on short deadlines and be as cooperative and forthcoming as possible so we can meet the legislative mandate, consistent with due process.

This rulemaking is the first step in implementing one central aspect of the sweeping requirements of SB 901. Because of California's recent experience that the wildfire season is beginning sooner and ending later, the Commission determines that it is important to have the initial set of electric utility wildfire mitigation plans approved as close to the beginning of summer 2019 as possible. The Commission does not expect to achieve perfection in the short time that will be available for the initial review and implementation of the first wildfire mitigation plans, but will work with the parties to make the best use of that time to develop useful wildfire mitigation plans. The Commission will also use this proceeding to further refine its approach to the review and implementation of subsequent electric utility wildfire mitigation plans.

## **2. Preliminary Scoping Memo**

The Commission will conduct this rulemaking in accordance with Article 6 of the Commission's Rules of Practice and Procedure, "Rulemaking."<sup>5</sup> As required by Rule 7.1(d), this OIR includes a preliminary scoping memo as set

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<sup>5</sup> All references to "Rules" are to the Commission's Rules of Practice and Procedure unless otherwise indicated.



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forth below, and preliminarily determines the category of this proceeding and the need for hearing.

## **2.1. Issues**

The scope of this proceeding is limited to only the wildfire mitigation plans of California's electric utilities required by Section 8386 as modified by SB 901. The scope of this proceeding does not encompass the topic of wildfire mitigation measures generally, which is an issue much broader than the utilities' wildfire mitigation plans, and involves non-utility actors and other federal, state, and local decision makers. The scope of this proceeding also does not include utility recovery of costs related to wildfire mitigation plans, which Section 8386 requires be addressed in general rate case applications. The Commission's approval of wildfire mitigation plans in this proceeding is not a substitute – implicit or explicit – for the Commission's review in a general rate case whether the associated costs are just and reasonable.<sup>6</sup> The Commission will not consider or approve explicit expenditures in wildfire mitigation plans in this proceeding; however, in evaluating the proposed plans the Commission may weigh the potential cost implications of measures proposed in the plans. This proceeding is accordingly categorized as ratesetting.

The focus of this proceeding will be on the language in Public Utilities Code Section 8386, as modified by SB 901. The full text of amended Section 8386 is set forth in Appendix A. Section 8386 contains a detailed list of the required contents of the plans, and the items to be included in the plans are all within the scope of the proceeding. In this proceeding the Commission will consider,

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<sup>6</sup> “The commission shall consider whether the cost of implementing each electrical corporation's plan is just and reasonable in its general rate case application.” (Section 8386(g).)

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among other things, how to interpret and apply the statute's list of required plan elements, as well as whether additional elements beyond those required in statute should be included in the wildfire mitigation plans. Parties will be asked for specific and detailed input on their interpretation of Section 8386, including their views on the meaning of the provisions listed for inclusion in wildfire mitigation plans. Other provisions of SB 901 that affect our consideration, interpretation, or approval of the wildfire mitigation plans may also be within the scope of this proceeding.<sup>7</sup>

Section 8386 contains a three-month window for Commission approval of the wildfire mitigation plans for all respondents. This timeframe is extremely ambitious for a matter of this magnitude and far shorter than typical deadlines applicable to Commission proceedings. The scope and schedule for this proceeding will reflect this short statutory deadline for approval of the plans. The initial wildfire mitigation plans will be filed in this proceeding, pursuant to a schedule and direction to be set forth in more detail in the Scoping Memo. An opportunity to comment on the directions for the wildfire mitigation plans will be provided after the Scoping Memo is issued. The respondent utilities are directed to work cooperatively with Commission staff to ensure that the filed plans are complete and clearly organized.

This proceeding is also the vehicle for development and refinement of guidance for the content of future wildfire mitigation plans. After the

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<sup>7</sup> While SB 901 also addresses utilities' compliance with their approved wildfire mitigation plans and penalties for non-compliance, those issues will not be addressed in this proceeding at this time, but are likely to be part of a separate proceeding. An issue that may be considered later in this proceeding is whether, and if so, how, the Commission may decide to stagger the compliance periods for each electric utility. (Section 8386(b).)

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Commission approves the initial wildfire mitigation plans, the Commission will determine how it will address subsequent rounds of annual plans. We expect to learn from our experience addressing the initial set of plans filed in this proceeding, and use that experience to inform our approach to future plans.<sup>8</sup> The categorization of future phases of this proceeding, including establishing rules for wildfire mitigation plans, may be revisited at a later date. Any statutory changes related to wildfire mitigation plans may also be considered in this proceeding.

### **3. Categorization; *Ex Parte* Communications; Need for Hearing**

Rule 7.1(d) of the Commission's Rules of Practice and Procedure requires that an order instituting rulemaking preliminarily determine the category of the proceeding and the need for hearing. As a preliminary matter, we determine that this proceeding is categorized as ratesetting. Accordingly, *ex parte* communications are subject to the restrictions and reporting requirements set forth in Article 8 of the Rules.

We are also required to preliminarily determine if hearings are necessary. We preliminarily determine that hearings are not necessary.

#### **3.1. Preliminary Schedule**

The preliminary schedule for initial activities in this proceeding is as follows:

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<sup>8</sup> For example, the Commission could adopt a standardized template for wildfire mitigation plans.

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**SCHEDULE**

| <b>EVENT</b>   | <b>DATE</b>   |
|--|---|
| Comments on OIR filed and served                         | 10 days from issuance of OIR  |
| Prehearing conference                                    | November 14, 2018, 10:30 a.m.,<br>Commission hearing room A,<br>505 Van Ness Avenue, San<br>Francisco.                      |
| Scoping memo   | December 2018   |
| Comments on instructions for initial Plans               | 10 days after Scoping Memo<br>issued  |
| Wildfire mitigation plans filed                          | February 2019   |
| Opening comments on initial wildfire<br>mitigation plans | 20 days after Plan filing   |
| Reply comments on initial wildfire mitigation<br>plans   | 10 days after opening<br>comments   |
| Decision on initial wildfire mitigation plans            | Three months from Plan<br>filing/service, unless extended<br>pursuant to SB 901, Pub. Utils.<br>Code § 8386(e) <sup>9</sup> |

The prehearing conference (PHC) will be held for the purposes of (1) taking appearances, (2) discussing schedule and process, and (3) informing the scoping memo. The PHC shall be held beginning at 10:30 a.m. on November 14, 2018 in the Commission Courtroom, 505 Van Ness Avenue, San Francisco, California.

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<sup>9</sup> Section 8386(e) provides that “The commission shall approve each plan within three months of its submission, unless the commission makes a written determination, including reasons supporting the determination that the three-month deadline cannot be met and issues an order extending the deadline.”

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The assigned Commissioner or the assigned Administrative Law Judge(s) (ALJ) may change the schedule to promote efficient and fair administration of this proceeding.

If there are any workshops or other public meetings in this proceeding, notice of such workshops will be posted on the Commission's Daily Calendar to inform the public that a decision-maker or an advisor may be present at those meetings or workshops. Parties shall check the Daily Calendar regularly for such notices.

#### **4. Respondents**

PG&E, SCE, SDG&E, Liberty, Bear Valley and PacifiCorp are named as respondents to this proceeding.

#### **5. Service of OIR**

This OIR shall be served on all respondents.

In addition, in the interest of broad notice, this OIR will be served on the official service lists for the following proceedings:

- Rulemaking 15-05-006, Order Instituting Rulemaking to Develop and Adopt Fire-Threat Maps and Fire-Safety Regulations;
- Rulemaking 15-06-009, Order Instituting Rulemaking Regarding Policies, Procedures and Rules for Regulation of Physical Security for the Electric Supply Facilities of Electrical Corporations Consistent with Public Utilities Code Section 364 and to Establish Standards for Disaster and Emergency Preparedness Plans for Electrical Corporations and Regulated Water Companies Pursuant to Public Utilities Code Section 768.6;
- Application 15-09-010, Application of San Diego Gas & Electric Company for Authorization to Recover Costs Related to the 2007 Southern California Wildfires Recorded in the Wildfire Expense Memorandum Account (WEMA);

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- Application 17-07-011, Application of Pacific Gas and Electric Company for Authority to Establish the Wildfire Expense Memorandum Account;
- Application 18-04-001, Application of Southern California Edison Company to Establish the Wildfire Expense Memorandum Account;
- Application 18-09-002, Application of Southern California Edison Company for Approval of Its Grid Safety and Resiliency Program; and
- Application 08-12-021, Application of San Diego Gas & Electric Company for Review of its Proactive De-Energization Measures and Approval of Proposed Tariff Revisions.

In addition, in the interest of broad notice, this OIR will be served on the following agencies named in SB 901, and organizations representing local governments:

- State Board of Forestry and Fire Protection (CAL FIRE)
- California Energy Commission
- State Air Resources Control Board
- California Office of Emergency Services
- California Department of Fish and Wildlife
- California Infrastructure and Economic Development Bank
- California Office of Planning and Research
- California Department of Parks and Recreation
- California State Association of Counties
- League of California Cities
- California Native American Heritage Commission
- California Municipal Utilities Association

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Service of the OIR does not confer party status or place any person who has received such service on the Official Service List for this proceeding, other than respondents. Instructions for obtaining party status or being placed on the official service list are given below.

**6. Filing and Service of Comments and Other Documents**

Filing and service of comments and other documents in the proceeding are governed by the Commission's Rules of Practice and Procedure.

**7. Addition to Official Service List**

Addition to the official service list is governed by Rule 1.9(f) of the Commission's Rules of Practice and Procedure.

Respondents are parties to the proceeding (see Rule 1.4(d)) and will be immediately placed on the official service list.

Any person will be added to the "Information Only" category of the official service list upon request, for electronic service of all documents in the proceeding, and should do so promptly in order to ensure timely service of comments and other documents and correspondence in the proceeding. (See Rule 1.9(f).) The request must be sent to the Process Office by e-mail ([process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov)) or letter (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California 94102). Please include the Docket Number of this rulemaking in the request.

Persons who file comments on this OIR become parties to the proceeding (see Rule 1.4(a)(2)) and will be added to the "Parties" category of the official service list upon such filing. *In order to assure service of comments and other documents and correspondence in advance of obtaining party status, persons should*

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*promptly request addition to the "Information Only" category as described above; they will be removed from that category upon obtaining party status.*

## **8. Subscription Service**

Persons may monitor the proceeding by subscribing to receive electronic copies of documents in this proceeding that are published on the Commission's website. There is no need to be on the official service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission's website at <http://subscribecpuc.cpuc.ca.gov/>.

## **9. Intervenor Compensation**

Intervenor Compensation is permitted in this proceeding. Any party that expects to claim intervenor compensation for its participation in this Rulemaking must file a timely notice of intent to claim intervenor compensation. (*See* Rule 17.1(a)(2).) Intervenor compensation rules are governed by §§ 1801 et seq. of the Public Utilities Code. Parties new to participating in Commission proceedings may contact the Commission's Public Advisor.

## **10. Public Advisor**

Any person or entity interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in San Francisco at (415) 703-2074 or (866) 849-8390 or e-mail [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov). The TTY number is (866) 836-7825.

Therefore, **IT IS ORDERED** that:

1. This Order Instituting Rulemaking is adopted pursuant to Senate Bill 901, Stats. 2018, Ch. 626 and Rule 6.1 of the Commission's Rules of Practice and Procedure.

2. The preliminary categorization is ratesetting.

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3. The preliminary determination is that a hearing is not needed.
4. The preliminary scope of issues is as stated above.
5. A prehearing conference is set for 10:30 a.m. on November 14, 2018 at San Francisco, California.
6. The preliminary schedule for the proceeding is set forth in Section 3.1 above.
7. Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, Liberty Utilities (CalPeco Electric), Bear Valley Electric Service, a division of Golden State Water Company, and Pacific Power, a division of PacifiCorp, are respondents to this Order Instituting Rulemaking.
8. Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, Liberty Utilities (CalPeco Electric), Bear Valley Electric Service, a division of Golden State Water Company, and Pacific Power, a division of PacifiCorp shall, and any other person may, file and serve comments of not more than 20 pages responding to this Order Instituting Rulemaking (OIR) not later than 10 days from the issuance of this OIR.
9. Comments on this Order Instituting Rulemaking should address the scope and schedule of this proceeding, and its interaction with other related proceedings.
10. The Executive Director will cause this Order Instituting Rulemaking to be served on all respondents and on the service lists for the following Commission proceedings: Rulemaking (R.) 15-05-006, R.15-06-009, Application (A.) 15-09-010, A.17-07-011, A.18-04-001, and A.18-09-002, A.08-12-021. In addition, the Executive Director will cause this Order Instituting Rulemaking to be served on the following agencies and organizations: State Board of Forestry and Fire

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Protection (CAL FIRE), California Energy Commission, State Air Resources Control Board, California Office of Emergency Services, California Department of Fish and Wildlife, California Infrastructure and Economic Development Bank, California Office of Planning and Research, California Department of Parks and Recreation, California State Association of Counties, League of California Cities, California Municipal Utilities Association and California Native American Heritage Commission.

11. Any party that expects to claim intervenor compensation for its participation in this Rulemaking must timely file its notice of intent to claim intervenor compensation. (*See* Rule 17.1(a)(2).)

This order is effective today.

Dated October 25, 2018, at San Francisco, California.

MICHAEL PICKER  
President  
CARLA J. PETERMAN  
LIANE M. RANDOLPH  
MARTHA GUZMAN ACEVES  
CLIFFORD RECHTSCHAFFEN  
Commissioners

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# **Appendix A**

## **Amended Section 8386**

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8386.

(a) Each electrical corporation shall construct, maintain, and operate its electrical lines and equipment in a manner that will minimize the risk of catastrophic wildfire posed by those electrical lines and equipment.

(b) Each electrical corporation shall annually prepare and submit a wildfire mitigation plan to the commission for review and approval, according to a schedule established by the commission, which may allow for the staggering of compliance periods for each electrical corporation. The Department of Forestry and Fire Protection shall consult with the commission on the review of each wildfire mitigation plan. Prior to approval, the commission may require modifications of the plans. Following approval, the commission shall oversee compliance with the plans pursuant to subdivision (h).

(c) The wildfire mitigation plan shall include:

(1) An accounting of the responsibilities of persons responsible for executing the plan.

(2) The objectives of the plan.

(3) A description of the preventive strategies and programs to be adopted by the electrical corporation to minimize the risk of its electrical lines and equipment causing catastrophic wildfires, including consideration of dynamic climate change risks.

(4) A description of the metrics the electrical corporation plans to use to evaluate the plan's performance and the assumptions that underlie the use of those metrics.

(5) A discussion of how the application of previously identified metrics to previous plan performances has informed the plan.

(6) Protocols for disabling reclosers and deenergizing portions of the electrical distribution system that consider the associated impacts on public safety, as well as protocols related to mitigating the public safety impacts of those protocols, including impacts on critical first responders and on health and communication infrastructure.

(7) Appropriate and feasible procedures for notifying a customer who may be impacted by the deenergizing of electrical lines. The procedures shall consider the need to notify, as a priority, critical first responders, health care facilities, and operators of telecommunications infrastructure.

(8) Plans for vegetation management.

(9) Plans for inspections of the electrical corporation's electrical infrastructure.

(10) A list that identifies, describes, and prioritizes all wildfire risks, and drivers for those risks, throughout the electrical corporation's service territory, including all relevant wildfire risk and risk mitigation information that is part of Safety Model Assessment Proceeding and Risk Assessment Mitigation Phase filings. The list shall include, but not be limited to, both of the following:

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- (A) Risks and risk drivers associated with design, construction, operations, and maintenance of the electrical corporation's equipment and facilities.
- (B) Particular risks and risk drivers associated with topographic and climatological risk factors throughout the different parts of the electrical corporation's service territory.
- (11) A description of how the plan accounts for the wildfire risk identified in the electrical corporation's Risk Assessment Mitigation Phase filing.
- (12) A description of the actions the electrical corporation will take to ensure its system will achieve the highest level of safety, reliability, and resiliency, and to ensure that its system is prepared for a major event, including hardening and modernizing its infrastructure with improved engineering, system design, standards, equipment, and facilities, such as undergrounding, insulation of distribution wires, and pole replacement.
- (13) A showing that the utility has an adequate sized and trained workforce to promptly restore service after a major event, taking into account employees of other utilities pursuant to mutual aid agreements and employees of entities that have entered into contracts with the utility.
- (14) Identification of any geographic area in the electrical corporation's service territory that is a higher wildfire threat than is currently identified in a commission fire threat map, and where the commission should consider expanding the high fire threat district based on new information or changes in the environment.
- (15) A methodology for identifying and presenting enterprise-wide safety risk and wildfire-related risk that is consistent with the methodology used by other electrical corporations unless the commission determines otherwise.
- (16) A description of how the plan is consistent with the electrical corporation's disaster and emergency preparedness plan prepared pursuant to Section 768.6, including both of the following:
  - (A) Plans to prepare for, and to restore service after, a wildfire, including workforce mobilization and prepositioning equipment and employees.
  - (B) Plans for community outreach and public awareness before, during, and after a wildfire, including language notification in English, Spanish, and the top three primary languages used in the state other than English or Spanish, as determined by the commission based on the United States Census data.
- (17) A statement of how the electrical corporation will restore service after a wildfire.
- (18) Protocols for compliance with requirements adopted by the commission regarding activities to support customers during and after a wildfire, outage reporting, support for low-income customers, billing adjustments, deposit waivers, extended payment plans, suspension of disconnection and nonpayment fees, repair processing and timing, access to utility representatives, and emergency communications.

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(19) A description of the processes and procedures the electrical corporation will use to do all of the following:

(A) Monitor and audit the implementation of the plan.

(B) Identify any deficiencies in the plan or the plan's implementation and correct those deficiencies.

(C) Monitor and audit the effectiveness of electrical line and equipment inspections, including inspections performed by contractors, carried out under the plan and other applicable statutes and commission rules.

(20) Any other information that the commission may require.

(d) The commission shall accept comments on each plan from the public, other local and state agencies, and interested parties, and verify that the plan complies with all applicable rules, regulations, and standards, as appropriate.

(e) The commission shall approve each plan within three months of its submission, unless the commission makes a written determination, including reasons supporting the determination, that the three-month deadline cannot be met and issues an order extending the deadline. Each electrical corporation's approved plan shall remain in effect until the commission approves the electrical corporation's subsequent plan. At the time it approves each plan, the commission shall authorize the utility to establish a memorandum account to track costs incurred to implement the plan.

(f) The commission's approval of a plan does not establish a defense to any enforcement action for a violation of a commission decision, order, or rule.

(g) The commission shall consider whether the cost of implementing each electrical corporation's plan is just and reasonable in its general rate case application. Nothing in this section shall be interpreted as a restriction or limitation on Article 1 (commencing with Section 451) of Chapter 3 of Part 1 of Division 1.

(h) The commission shall conduct an annual review of each electrical corporation's compliance with its plan as follows:

(1) Three months after the end of an electrical corporation's initial compliance period as established by the commission pursuant to subdivision (b), and annually thereafter, each electrical corporation shall file with the commission a report addressing its compliance with the plan during the prior calendar year.

(2) (A) Before March 1, 2021, and before each March 1 thereafter, the commission, in consultation with the Department of Forestry and Fire Protection, shall make available a list of qualified independent evaluators with experience in assessing the safe operation of electrical infrastructure.

(B) (i) Each electrical corporation shall engage an independent evaluator listed pursuant to subparagraph (A) to review and assess the electrical corporation's compliance with its plan. The engaged independent evaluator shall consult with, and operate under the direction of, the Safety and Enforcement Division of the commission. The independent evaluator shall issue a report on July 1 of each year

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in which a report required by paragraph (1) is filed. As a part of the independent evaluator's report, the independent evaluator shall determine whether the electrical corporation failed to fund any activities included in its plan.

(ii) The commission shall consider the independent evaluator's findings, but the independent evaluator's findings are not binding on the commission, except as otherwise specified.

(iii) The independent evaluator's findings shall be used by the commission to carry out its obligations under Article 1 (commencing with Section 451) of Chapter 3 of Part 1 of Division 1.

(iv) The independent evaluator's findings shall not apply to events that occurred before the initial plan is approved for the electrical corporation.

(3) The commission shall authorize the electrical corporation to recover in rates the costs of the independent evaluator.

(4) The commission shall complete its compliance review within 18 months after the submission of the electrical corporation's compliance report.

(i) An electrical corporation shall not divert revenues authorized to implement the plan to any activities or investments outside of the plan.

(j) Each electrical corporation shall establish a memorandum account to track costs incurred for fire risk mitigation that are not otherwise covered in the electrical corporation's revenue requirements. The commission shall review the costs in the memorandum accounts and disallow recovery of those costs the commission deems unreasonable.

(End of Appendix A)

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# EXHIBIT R

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**Pacific Gas and Electric Company**

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San Francisco, California

Revised Cal. P.U.C. Sheet No. 19762-E  
 Cancelling Revised Cal. P.U.C. Sheet No. 15526-E

**ELECTRIC RULE NO. 14**  
 SHORTAGE OF SUPPLY AND INTERRUPTION OF DELIVERY

Sheet 1

**END USE CUSTOMERS AND THEIR AGENTS**

PG&E will exercise reasonable diligence and care to furnish and deliver a continuous and sufficient supply of electric energy to the customer, but does not guarantee continuity or sufficiency of supply. PG&E will not be liable for interruption or shortage or insufficiency of supply, or any loss or damage of any kind of character occasioned thereby, if same is caused by inevitable accident, act of God, fire, strikes, riots, war, or any other cause except that arising from its failure to exercise reasonable diligence.

PG&E shall be the sole judge of whether it is operationally able to receive or deliver electric energy through its electric distribution system. Such judgement shall be non-discriminatory and without regard to the supplier or electric service provider to the end-use customer.

Under no circumstances shall PG&E be liable to its customers or their agents for any local or system deficiencies in supply stemming from inadequate power bids or power deliveries over the Independent System Operator (ISO) grid. Similarly, PG&E shall not be liable to any customer, or electric service provider, for damages or losses resulting from interruption due to transmission constraint, allocation of transmission or intertie capacity, or other transmission related outage, planned or unplanned. (T)

PG&E specifically maintains the right to interrupt its service deliveries, without liability to the Customers or electric service providers (ESPs) affected, when, in PG&E's sole opinion, such interruption is necessary for reasons including, but not limited to, the following:

1. Safety of a customer, a PG&E employee, or the public at large.
2. Breach of code or regulation on either PG&E-owned or customer-owned facilities.
3. Emergency affecting or likely to affect PG&E's distribution system, the ISO grid or any other system through which PG&E directly or indirectly receives power.
4. Maintenance, improvements, repairs, or expansion of PG&E's distribution system.

(Continued)

Advice 2328-E-B  
 Decision 02-12-045

Issued by  
**Robert S. Kenney**

Vice President, Regulatory Affairs

Date Filed January 23, 2003  
 Effective January 1, 2003  
 Resolution E-3813



**Pacific Gas and Electric Company**

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San Francisco, California

Revised Cal. P.U.C. Sheet No. 15527-E  
 Cancelling Revised Cal. P.U.C. Sheet No. 11326-E

**ELECTRIC RULE NO. 14**  
 SHORTAGE OF SUPPLY AND INTERRUPTION OF DELIVERY

Sheet 2

When PG&E deems it necessary to make repairs or improvements to its system, PG&E will have the right to suspend temporarily the delivery of electric energy. In all such cases, reasonable notice will be given to the affected Customers, or their agents, and the making of such repairs or improvements will proceed as rapidly as may be practicable. If practicable, and without additional cost to PG&E, such work will be done at a time that will cause the least inconvenience to the majority of those involved. In some instances, PG&E will be required to initiate an interruption upon order of the ISO so work may be done on the ISO transmission grid. In those instances, PG&E will make best efforts attempt to provide affected customers, or their agents, with notice, but shall not be liable for interruption if notice cannot be provided in a timely manner. PG&E will be responsible for answering all outage related inquiries by the customer and its ESP. (T)

In case of shortage of supply and during the period of such shortage, PG&E will make such apportionment of its available supply of energy among its customers, consistent with transmission allocation provided by the ISO by zone, and orders or directions provided by the California Public Utilities Commission, acting either directly or by a power administrator or other official appointed by it for that purpose. In the absence of such order or direction by the California Public Utilities Commission, PG&E will, in times of shortage, apportion its available supply of energy among all customers in the manner which it deems most fair, reasonable, and appropriate for the efficient operation of its distribution system and that of the ISO grid. (T)

A Scheduling Coordinator or an ESP may be authorized, under a commercial contract with its customers, to apportion its available supply of energy among its customers. PG&E will accept requests for and make delivers of these apportioned supplies as long as such deliveries do not affect PG&E's ability to deliver service to other end-use Customers, regardless of supplier, that would otherwise not be affected by the shortage or apportionment thereof. (N)

(Continued)

|          |           |                                    |            |                  |
|----------|-----------|------------------------------------|------------|------------------|
| Advice   | 1737-E    | Issued by                          | Date Filed | January 29, 1998 |
| Decision | 97-10-087 | <b>Robert S. Kenney</b>            | Effective  | March 10, 1998   |
|          |           | Vice President, Regulatory Affairs | Resolution |                  |



**ELECTRIC RULE NO. 14**  
**SHORTAGE OF SUPPLY AND INTERRUPTION OF DELIVERY**

Sheet 3

**ELECTRIC EMERGENCY PLAN ROTATING BLOCK OUTAGES FOR TRANSMISSION LEVEL CUSTOMERS (N)**

For the purposes of this Section only, transmission level customers are those customers that are served from a "single customer substation" as defined in PG&E's Electric Rule 1 or without transformation at one of the standard transmission voltages specified in PG&E's Electric Rule 2, Section B.1.

Transmission level customers, except for those customers meeting the CPUC's criteria for essential use or those otherwise exempt from rotating outages in accordance with CPUC Decisions, will be incorporated into PG&E's rotating outage block plan and subjected to load interruptions when rotating block outages are ordered by the ISO. PG&E will, to the extent practical, follow the applicable principles and procedures specified in PG&E's Electric Rule 14, by the CPUC, and by the ISO. To the extent feasible, PG&E will coordinate rotating outages applicable to customers who are fossil fuel producers, pipeline operators and users to minimize disruption to public health and safety. PG&E shall not include a transmission level customer in an applicable rotating outage block if the customer's inclusion would jeopardize system integrity. Transmission level customers who are not exempt from rotating outages may submit an Optional Binding Mandatory Curtailment (OBMC) Plan to PG&E in accordance with PG&E's Electric Schedule OBMC. If PG&E approves a customer's OBMC Plan, the customer will become exempt from rotating outages and will be subject to the terms and conditions of PG&E's Electric Schedule OBMC and its associated agreement.

Non-exempt transmission level customers shall be required to undergo rotating outages applicable to the customer's assigned rotating outage block by either (1) implementing the load reduction on their own initiative, in accordance with subsection a, below; or (2) having PG&E implement the load reduction through PG&E-owned remote-controlled equipment in accordance with subsection b, below. A transmission level customer shall normally be subject to the provisions of subsection a. If PG&E approves a transmission level customer's request to have PG&E implement the customer's load reduction, then the customer will be subject to the provisions of subsection b, below. If a transmission level customer subject to subsection a, below, exceeds the threshold specified in subsection c below, then the customer will be subject to the provisions of subsection c.(i) or (ii), below. (N)

(Continued)

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**ELECTRIC RULE NO. 14** Sheet 4  
**SHORTAGE OF SUPPLY AND INTERRUPTION OF DELIVERY**

A. Customer-Implemented Load Reduction (N)

Notification of Required Load Reduction. When the ISO orders implementation of rotating outages, PG&E shall notify transmission level customers in an affected rotating outage block to drop their load. Within 30 minutes of such notification, the customer must drop its load down to or below its Authorized Residual Ancillary Load. Unless otherwise notified by PG&E to do so, the customer shall not return the dropped load to service until 90 minutes after PG&E sent the notification to the customer to drop its load.

Method of Notification to Drop Load. PG&E will notify transmission level customers through a call to a telephone number designated by the customer. The customer is responsible for informing PG&E, in writing, of the telephone number and contact name for purposes of receiving the notification of a rotating outage. If the customer does not provide PG&E with a telephone number, PG&E will notify the customer in writing of the number to be utilized, which will be the official number for notification, unless the customer provides an alternate number to PG&E within 15 days of the customer's receipt of such written notice. The telephone number may be to a customer owned and maintained business telephone, cellular phone, or separately designated telephone line. If PG&E makes two attempts to notify the customer to drop load in conjunction with a rotating outage, and such attempts are unanswered, the 30 minutes notification period in which to drop the load will commence with the time of the second call, even if the call was unanswered.

Excess Energy Charges. If a transmission level customer fails to drop load within 30 minutes of notification by PG&E, and/or fails to maintain the entire load drop until 90 minutes after the time notification was sent to the customer, PG&E shall assess Excess Energy Charges of \$6 per kWh for all kWh usage in excess of the Authorized Residual Ancillary Load. Such charges will be based on the total kWh usage during the applicable rotating outage penalty period, less the product of Authorized Residual Ancillary Load in kW and the applicable rotating outage penalty period in hours. If applicable, Excess Energy Charges will be determined by PG&E following the rotating outage and applied to the customer's energy bill. Failure to make payment within the timeframe specified in PG&E's Electric Rules 8 and 9 may result in termination of service pursuant to PG&E's Electric Rule 11.

(N)

(Continued)

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**ELECTRIC RULE NO. 14**  
 SHORTAGE OF SUPPLY AND INTERRUPTION OF DELIVERY

Sheet 5

A. Customer-Implemented Load Reduction (Cont'd.) (N)

Authorized Residual Ancillary Load. Authorized Residual Ancillary Load is load that is deemed to be equivalent to five (5) percent of the customer's recorded Maximum Demand from the customer's prior billing month. This minimum load level is used as a proxy to allow for no-load transformer losses and ancillary substation equipment loads.

For customers that are net-generators, Excess Energy Charges shall not apply during periods of pre-scheduled verifiable generator maintenance or if the customer's generator suffers a verified forced outage. The scheduled maintenance must be approved in advance by both the ISO and PG&E, but approval may not be unreasonably withheld.

B. PG&E-Implemented Load Reduction

Non-exempt transmission level customers may seek, in writing, to have PG&E drop the customer's entire load during all applicable rotating outages. If PG&E agrees to such an arrangement, PG&E will implement the load drop by using one of the following methods:

1. For transmission level customers whose load can be dropped by existing PG&E remote-controlled equipment, PG&E will implement the load drop during a rotating outage applicable to the customer. The customer will be responsible for dropping load in accordance with the provisions of subsection a, above, including receiving Notification and being subject to Excess Energy charge provisions, until PG&E has provided written notice to the customer of the effective date that PG&E will assume the responsibility for curtailing the customer's load. After receiving written notice from PG&E, the customer will not receive Notification or be subject to the Excess Energy Charge provisions set forth in subsection a, above. PG&E shall be the sole judge of the suitability of utilizing existing PG&E remote-controlled equipment to shed the customer's load. PG&E or the customer may terminate the arrangements under this subsection upon thirty (30) days advance written notice.

(N)

(Continued)

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**ELECTRIC RULE NO. 14**  
SHORTAGE OF SUPPLY AND INTERRUPTION OF DELIVERY

Sheet 6

- B. PG&E-Implemented Load Reduction (Cont'd.) (N)
  - 2. For transmission level customers whose load cannot be dropped by existing PG&E remote-controlled equipment, the customer must request the installation of such remote-controlled equipment at the customer's expense in accordance with PG&E's Electric Rule 2, Section I, Special Facilities. The customer will be responsible for dropping load in accordance with the provisions of subsection a, above, including receiving Notification and being subject to Excess Energy Charge provisions, until all of the following have been completed: 1) payment by the customer for the installation of such equipment, 2) installation and testing of such equipment is complete, and 3) PG&E has provided written notice to the customer of the effective date that PG&E will assume the responsibility for curtailing the customer's load. After the three (3) requirements listed above have been met, the customer will not receive Notification or be subject to the Excess Energy Charge provisions set forth in subsection a, above. PG&E or the customer may terminate their arrangements under this subsection upon thirty (30) days advance written notice.
  
- C. Non-compliance
 

A non-exempt transmission level customer subject to subsection a, above, shall be considered non-compliant with a single rotating outage event if the customer fails to reduce its load, averaged over the applicable rotating outage penalty period, to a level equal to or less than twenty (20) percent of the customer's recorded Maximum Demand from the customer's prior billing month.

If a customer is non-compliant during any three (3) rotating outages in a three (3) year period, then the customer will be reassigned to the manual rotating outage block that is expected be curtailed next, and the customer will be expected to comply as required pursuant to subsection a, above, with subsequent applicable rotating outages. Further, such a customer must select, via written notice to PG&E, one of the two options below within fifteen (15) days after receiving written notice from PG&E. A customer failing to make a selection within the specified time frame will default to subsection c.(ii) below. The three (3) year period shall commence with the first failure to drop load as specified in this subsection.

(Continued)

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**ELECTRIC RULE NO. 14**  
 SHORTAGE OF SUPPLY AND INTERRUPTION OF DELIVERY

Sheet 7

- C. Non-compliance (Cont'd.) (N)
1. Subject to PG&E's Electric Schedule E-OBMC Optional Binding Mandatory Curtailment Plan. The customer shall become subject to PG&E's Electric Schedule OBMC. The customer shall submit an OBMC Plan, in accordance with PG&E's Electric Schedule E-OBMC, within thirty (30) days of receiving written notice from PG&E. Pending the submittal of the OBMC Plan by the customer and pending the review and acceptance of the OBMC Plan by PG&E, the customer will remain responsible for dropping load in accordance with the provisions of subsection a, above, including the receiving of Notification and being subject to Excess Energy Charge provisions. Customers subject to this subsection that in turn fail to meet one or more requirements specified in PG&E's Electric Schedule E-OBMC shall be transferred to subsection c.(ii), below.
  2. PG&E Implemented Load Reductions. PG&E shall proceed with one of the following: (1) For those customers where PG&E already has load drop equipment with remote-control capability installed, PG&E will drop the customer's entire load for all applicable subsequent rotating outages in accordance with the provisions of subsection b, above, except the customer shall not have the option to terminate their obligations under subsection b. PG&E shall be the sole judge of the suitability of utilizing existing PG&E remote-controlled equipment to shed the customer's load. (2) For customers where PG&E does not have load drop equipment with remote-control capability installed, PG&E shall install such equipment at the customer's expense in accordance with PG&E's Electric Rule 2, Section I, Special Facilities. After such equipment has been installed, PG&E will drop the customer's entire load for all applicable subsequent rotating outages in accordance with the provisions of subsection b, above, except the customer shall not have the option to terminate their obligations under subsection b. Pending the installation of such equipment, the customer will remain responsible for dropping load in accordance with the provisions of subsection a, above, including receiving the Notification and being subject to Excess Energy Charge provisions. (N)

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*Pacific Gas and  
Electric Company*<sup>®</sup>

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# **Pacific Gas and Electric Company Amended 2019 Wildfire Safety Plan**

**February 6, 2019**



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**Attachments:**

- A: Fire Potential Index Methodology and Background**
- B: Critical Services**
- C: Description of Routine Facilities Inspections**
- D: Risks and Drivers Identified in RAMP**
- E: Cost Estimates for 2019 Plan Programs**

### Glossary of Acronyms and Abbreviations

| Acronym            | Term/Definition  |
|--------------------|--|
| AHJ                | Agency Having Jurisdiction   |
| ALJ Ruling         | <i>Administrative Law Judge's Ruling on Wildfire Mitigation Plan Template, And Adding Additional Parties as Respondents</i> , issued January 17, 2019 in R.18-10-007 |
| CAL FIRE           | California Department of Forestry and Fire Protection  |
| Cal OES            | California Office of Emergency Services  |
| CARE               | California Alternate Rate for Energy   |
| CEMA               | Catastrophic Event Memorandum Account  |
| CEQA               | California Environmental Quality Act   |
| CERP               | Company Emergency Response Plan  |
| CIRT               | Centralized Inspection Review Team   |
| CPUC or Commission | California Public Utilities Commission   |
| CWSP               | Community Wildfire Safety Program  |
| D.                 | Decision   |
| DFM                | Dead Fuel Moisture   |
| EAM                | Electric Asset Management  |
| EEI                | Edison Electric Institute  |
| EOC                | Emergency Operations Center  |
| EP&R               | Emergency Preparedness and Response  |
| EPIC               | Electric Program Investment Charge   |
| ESA                | Energy Savings Assistance  |
| ETOR               | Estimated Time of Restoration  |
| EVM                | Enhanced Vegetation Management   |

| <b>Acronym</b>      | <b>Term/Definition</b>                          |
|---------------------|---|
| FIA                 | Fire Index Area                                 |
| FMEA                | Failure Modes and Effects Analysis              |
| FPI                 | Fire Potential Index                            |
| FPP                 | Fire Prevention Plan                            |
| GO                  | General Order                                   |
| GRC                 | General Rate Case                               |
| HFTD                | High Fire-Threat District                       |
| HHZ                 | High Hazard Zones                               |
| IBEW                | International Brotherhood of Electrical Workers |
| ICS                 | Incident Command Structure                      |
| IOU                 | Investor-Owned Utility                          |
| IVR                 | Integrated Voice Recording                      |
| km                  | Kilometer                                       |
| kV                  | Kilovolt  |
| MAA                 | Mutual Assistance Agreements                    |
| mph                 | miles per hour                                  |
| NWS                 | National Weather Service                        |
| OA                  | Operability Assessment                          |
| OEM                 | Original Equipment Manufacturer                 |
| OES                 | Office of Emergency Services                    |
| OP                  | Ordering Paragraph                              |
| PEV                 | Post Enrollment Verification                    |
| PG&E or the Company | Pacific Gas and Electric Company                |

| <b>Acronym</b> | <b>Term/Definition</b>                              |
|----------------|---|
| PIH            | Pre-installed Interconnection Hubs                  |
| Plan           | Wildfire Safety Plan                                |
| POMMS          | PG&E Operational Mesoscale Modeling System          |
| PRC            | Public Resources Code                               |
| PSPS           | Public Safety Power Shutoff                         |
| PUC            | Public Utilities Code                               |
| QA             | Quality Assurance                                   |
| QC             | Quality Control                                     |
| QM             | Quality Management                                  |
| R.             | Rulemaking  |
| RAMP           | Risk Assessment and Mitigation Phase                |
| REACH          | Relief for Energy Assistance through Community Help |
| ROW            | Right-of-Way  |
| SB 901         | Senate Bill 901                                     |
| SCADA          | Supervisory Control and Data Acquisition            |
| SDG&E          | San Diego Gas & Electric                            |
| SIPT           | Safety and Infrastructure Protection Teams          |
| SMAP           | Safety Model Assessment Proceeding                  |
| SMEs           | Subject Matter Experts                              |
| SmartMeter™    | Brand Name for Automated Metering Initiative (AMI)  |
| SOPP           | Storm Outage Prediction Model                       |
| T&D            | Transmission and Distribution                       |
| U.S.           | United States                                       |



| <b>Acronym</b> | <b>Term/Definition</b>             |
|----------------|------------------------------------|
| USFS           | United States Forest Service       |
| VM             | Vegetation Management              |
| VP             | Vice President                     |
| WSIP           | Wildfire Safety Inspection Program |
| WSP or Plan    | Wildfire Safety Plan               |
| WSOC           | Wildfire Safety Operations Center  |

## 1. Introduction and Objectives of Plan

### 1.1. Executive Summary

Pacific Gas and Electric Company (PG&E or the Company) takes seriously the critical role it plays in preventing wildfires caused by electrical equipment in Northern California. We understand the urgency of the situation, that lives could be at stake and that we need to move even more quickly. This Wildfire Safety Plan (WSP or Plan) describes the enhanced, accelerated, and new programs that PG&E is and will aggressively continue to implement to prevent wildfires in 2019 and beyond. To address increasing wildfire risk, in addition to aggressively implementing new approaches to manage it, PG&E believes shutting off power will likely be necessary and may need to be performed more frequently due to the extreme weather events and dry vegetation conditions. To that end, PG&E is expanding its Public Safety Power Shutoff (PSPS) program to prevent wildfires from occurring and is implementing new ways to reduce its impacts to first responders and vulnerable customers, including those with medical needs.

PG&E submits this Plan pursuant to Senate Bill (SB) 901 requiring all California electric utilities to prepare plans on constructing, maintaining, and operating their electrical lines and equipment to minimize the risk of catastrophic wildfire. The California Public Utilities Commission (CPUC or Commission) established a schedule for submission and review of the initial wildfire mitigation plans, and a process for review and implementation of plans to be filed in future years. PG&E is providing this Plan consistent with the statutory requirements and direction provided by the CPUC in its *Order Instituting Rulemaking to Implement Electric Utility Wildfire Mitigation Plans Pursuant to Senate Bill 901 (2018)*, Rulemaking (R.) 18-10-007 (Wildfire OIR).

This Plan describes PG&E's proposed programs and strategies, recognizing that it will take a major collective effort to prevent wildfires. We welcome the input and feedback of our communities, customers, community leaders, first responders, and others to collaboratively solve the unprecedented wildfire risk facing our state.

SER-337

Filing this Plan is an important milestone. But PG&E has not been waiting for regulatory action. Instead, since the October 2017 North Bay wildfires and the 2018 Camp Fire, PG&E has proactively implemented enhanced wildfire safety programs with urgency. In this Plan, PG&E describes the actions we have already taken, and the actions we intend to take, to prevent wildfires in 2019 and beyond. Preventing wildfires outright is likely impossible. However, PG&E is approaching the issue with urgency to do everything we can to prevent our facilities from creating public safety risks. PG&E's efforts include significant expansions in its PSPS program and its situational awareness capabilities, vegetation management, inspections of electric distribution and transmission facilities, system hardening, enhanced controls, and other programs designed to make PG&E's customers and the communities that we serve safer. In designing this approach, PG&E benchmarked with several utilities including San Diego Gas & Electric Company (SDG&E) and several Australian utilities, with variations that reflect differences in our territory or system design.

This work is inherently hazardous and must be done safely, with quality and care. There are execution risks to accomplish the expanded and accelerated scope of work planned by PG&E. The availability of equipment, qualified personnel, and legal/regulatory issues (such as land rights and environmental permitting requirements) can impact the timing and scope of the programs proposed in this Plan. As described more in Section 4 below, PG&E intends to work aggressively to resolve these execution risks as they arise, including working with existing contractors and suppliers to increase available resources as quickly as possible. Going forward, PG&E will continue to enhance and build upon these programs as we learn from our experience and our collaboration with customers, communities, and industry experts.

Table 1 below provides an overview of PG&E's wildfire reduction measures, followed by a summary narrative, describing PG&E's 2019 wildfire related programs.

**TABLE 1: 2019 PROGRAM OVERVIEW<sup>1</sup>**

| <b>Wildfire Reduction Measure</b>  | <b>2018 (Approx.)</b>  | <b>2019 (Approx.)</b>   | <b>Percentage/ Capacity Increase (Approx.)</b> | <b>2019 Planned Work Completion by June<sup>2</sup></b> |
|------------------------------------|--|---|--|---|
| Vegetation Management <sup>3</sup> | 160,000 trees worked   | 375,000 trees worked  | 235%   | 42%   |
|                                    | 760 miles of fuel reduction, overhang clearing, or Enhanced Vegetation Management (EVM)                          | 2,450 miles of EVM  | 320%   | 40%   |
| Inspections - Distribution         | 517,500 distribution poles for routine inspections   | 685,000 distribution poles in High Fire Threat District (HFTD) areas with enhanced inspections in five months <u>in addition to</u> routine inspections | 130% -400% (excluding substations)             | 100%  |
| Inspections - Transmission         | 9,400 transmission structures with enhanced inspections<br>76,000 routine inspections of transmission structures | 40,600 transmission structures with enhanced inspections <sup>4</sup> in four months <u>in addition to</u> routine inspections                          |  | 100%  |
| Inspections - Substations          | 6,500 routine annual inspections   | 200 enhanced risk-based inspections in the HFTD areas in four months <u>in addition to</u> routine inspections  |  | 100%  |
| System Hardening <sup>5</sup>      | 17 circuit miles-tree wire projects  | 150 circuit miles   | 880%   | 30%   |

<sup>1</sup> Numbers in Table 1 are approximated for purposes of presentation in this table.

<sup>2</sup> Completion dates are current estimates and may change depending on external factors such as the availability of equipment and qualified personnel, including third-party vendors and suppliers, as well potential legal or regulatory challenges to tree removal, vegetation management, and system hardening.

<sup>3</sup> Includes trees removed under PG&E's Drought and Tree Mortality work vegetation management (CEMA) work, accelerated wildfire risk reduction vegetation management (AWRR), and EVM for 2018 and CEMA and EVM for 2019.

<sup>4</sup> Including drone and helicopter inspections and climbing of all transmission towers.

<sup>5</sup> With the exception of light-duty steel poles, the System Hardening work will be performed for distribution.

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**TABLE 1: 2019 PROGRAM OVERVIEW<sup>6</sup>  
(CONTINUED)**

| <b>Wildfire Reduction Measure</b> | <b>2018 (Approx.)</b>  | <b>2019 (Approx.)</b>   | <b>Percentage/Capacity Increase (Approx.)</b> | <b>2019 Planned Work Completion by June<sup>7</sup></b> |
|-----------------------------------|--|---|---|---|
| Situational Awareness             | 200 weather stations   | 400 additional weather stations   | 200%  | 50%   |
|                                   | 9 cameras  | 70 additional cameras   | 780%  | 42%   |
|                                   | N/A  | Developing fire spread model capabilities – Phase 1 <sup>8</sup>            | N/A   | 100%  |
| Resilience Zones                  | N/A  | At least 1 resilience zone operationalized                                  | N/A   | N/A   |
| PSPS                              | 7,100 distribution circuit miles in Program (Tier 3 HFTD areas)        | 25,200 distribution circuit miles in Program (Tier 2 and Tier 3 HFTD areas) | 355%  | 100%  |
|                                   | 370 circuit miles of transmission lines at 70 kilovolt (kV) and below  | 5,500 circuit miles of transmission lines at 500kV and below                | 1,485%  | 100%  |
|                                   | 570,000 electric customer premises potentially impacted by PSPS events | 5.4 million electric customer premises potentially impacted by PSPS events  | 950%  | 100% <sup>9</sup>                                       |

The following summary narrative describes in more detail PG&E's wildfire reduction programs and measures:

- Vegetation Management:
  - Expanded Removal of Trees: PG&E forecasts working (trimming or

<sup>6</sup> Numbers in Table 1 are approximated for purposes of presentation in this table.

<sup>7</sup> Completion dates are current estimates and may change depending on external factors such as the availability of equipment and qualified personnel, including third-party vendors and suppliers, as well potential legal or regulatory challenges to tree removal, vegetation management, and system hardening.

<sup>8</sup> Phase 1 includes modeling asset fire spread risks for overhead lines in Tier 2 and Tier 3. Later phases include more granular analysis and refined outputs.

<sup>9</sup> All 5.4 million electric customer premises to be notified of the potential for PSPS impacts by June 2019.

removing) approximately 375,000 trees in 2019 that have a higher potential to fail including at-risk species in addition to dead, dying or other hazard trees.

- Enhanced Vegetation Management: PG&E will perform EVM on approximately 2,450 circuit miles in HFTD areas by the end of 2019, including targeted removal of vegetation fuels under and adjacent to power lines.
- Inspections:
  - Expanded Inspections: By May 31, 2019, PG&E will perform enhanced inspections of its electrical assets in HFTD areas, including approximately 685,000 distribution poles, 50,000<sup>10</sup> transmission structures, and 200 substations. These enhanced inspections include ground inspections, drone and helicopter inspections where needed, and climbing inspections of every transmission tower.
  - Corrective Actions: PG&E will take immediate action to address any issues identified as an imminent risk to public or employee safety.
- System Hardening: System hardening reduces potential fire risk associated with the overhead distribution system and includes replacing bare overhead conductor with covered conductor, select undergrounding where appropriate, replacing equipment with equipment identified by the California Department of Forestry and Fire Protection (CAL FIRE) as low fire risk, upgrading or replacing transformers to operate with more fire-resistant fluids, and installing more resilient poles to increase pole strength and fire resistance.
  - 2019: PG&E will complete approximately 150 miles of hardening the highest risk circuits in HFTD areas in 2019.
  - Beyond 2019: PG&E will be hardening 7,100 circuit miles in HFTD areas that it has identified through ignition modeling and field analysis as the highest risk. The pace of hardening will accelerate as PG&E aggressively works to resolve supply and qualified personnel challenges.
- Situational Awareness: PG&E is swiftly increasing its situational awareness—its knowledge of local weather and environmental conditions—to obtain real time information on a more granular level. This type of information is critical for both wildfire prevention and PSPS events, and is accessible to respective fire response agencies.
- Enhanced Controls:
  - Reclosers: In 2019, PG&E will add Supervisory Control and Data Acquisition (SCADA) capability to allow for remote reclose blocking. The expanded SCADA capability will enable remote operation of 100 percent

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<sup>10</sup> Inclusive of 9,400 inspections completed in December 2018.

of the line reclosers in Tiers 2 and 3 HFTD areas by June 1, 2019.

- Additional Measures: PG&E has introduced other measures to prevent potential ignitions, including strengthened personnel work procedures, deploying Safety and Infrastructure Protection Teams (SIPT) with fire-fighting capabilities, and operating heavy-lift helicopters for enhanced fire suppression and restoration efforts, available at CAL FIRE's discretion. These measures will be in place by June 1, 2019.
- Public Safety Power Shutoff:
  - Program Initiation (2018): PG&E implemented its PSPS Program to proactively de-energize lines that traverse Tier 3 HFTD areas under extreme fire risk conditions in 2018. To develop the PSPS Program, PG&E worked extensively with SDG&E to understand and implement best practices from SDG&E's de-energization program, while addressing unique issues presented by PG&E's service area (which differs in terrain, weather, and population).
  - Program Expansion and Criteria Evolution (2019): PG&E is significantly expanding the PSPS program scope to include high voltage transmission lines and the highest fire risk areas (Tier 2 (elevated fire risk) and Tier 3 (extreme fire risk)) as referenced in the HFTD Map adopted by the CPUC. In addition, PG&E is further evaluating its PSPS decision criteria to reduce the level of judgment in the criteria to the extent feasible.
  - Working with Customers: PG&E will be working with customers to provide them with information regarding PSPS events generally, and to provide the most up to date information before and during PSPS events. This includes alerting 5.4 million PG&E electric customer premises of the potential for PSPS events. Extensive customer outreach will begin in the first quarter of 2019 and will continue throughout the year. To the extent possible, PG&E will alert customers that a PSPS event could occur within 48 hours. PG&E is actively exploring and developing additional services and programs to support our customers during PSPS events with a focus in the short term on customers who require a continuous electric supply for life support, as well as critical services (i.e., first responders, hospitals, telecom, and water agencies).

## **1.2. Plan Overview and Objectives**

PG&E's Plan details the aggressive steps that it is taking, and will continue to take, to address the urgent need to prevent wildfires. PG&E will submit its Plan to the Commission annually for review and approval. PG&E expects the Plan will evolve over time as PG&E receives new information, more experience, and input from our communities, first responders, regulators and others through this proceeding and other

venues, on how PG&E can best prevent wildfires and improve the overall safety of its system. In addition to receiving feedback and input through the regulatory process, as part of our collaborative efforts to address the risk of catastrophic wildfires, PG&E is partnering with industry and academic experts. These partnerships, which are described in more detail in Sections 3 and 4, allow PG&E to leverage state-of-the-art thinking in fields that range from wildfire evacuation to probabilistic risk assessment. However, as explained above, PG&E is not waiting for the completion of the regulatory process or review in other venues to act; it is acting now.

One key foundational component informing PG&E's initial Plan is that wildfire risks are differentiated across California. This Plan is intended to reflect that differentiation given the unique design and geography of PG&E's 70,000-square-mile service area, as well as the fact that more than half (52 percent) of PG&E's service area is identified as extreme (Tier 3) or elevated (Tier 2) fire-threat areas according to the CPUC's HFTD Map.<sup>11</sup> The wildfire safety strategies and programs described in this Plan are specifically intended to address PG&E's unique geographic service area.

PG&E's programs are designed to reduce ignition drivers and risk-event frequency associated with overhead electric facilities in high fire-threat areas, as indicated by the CPUC's HFTD Map. To develop the Plan, PG&E extensively analyzed wildfire risk factors to determine which factors have the highest incident rates and potential fire spread characteristics and potential alternatives to determine what additional operational actions, enhancements to existing programs, or other measures that will most effectively address those risks. To achieve the Plan objectives, PG&E will use a risk-based approach, meaning the highest risk areas will be addressed first, and will do more work than outlined in this Plan if it can do so without compromising safety or quality.

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<sup>11</sup> The HFTD Map, adopted by the Commission in January 2018, designates three types of fire threat area: Tier 3 (extreme risk), Tier 2 (elevated risk), and a much smaller Zone 1 (made up of areas on the CAL FIRE/ United States Forest Service (USFS) High Hazard Zones (HHZ) map that are not subsumed within Tier 2 and Tier 3 HFTD areas). See Decision (D.) 17-12-024, p. 158, Ordering Paragraph (OP) 12, and Appendix D.



As directed by Administrative Law Judge Thomas in the *Administrative Law Judge's Ruling on Wildfire Mitigation Plan Template, and Adding Additional Parties as Respondents* issued January 17, 2019 (ALJ Ruling), in this section PG&E is providing a summary of the objectives of its 2019 Plan. The ALJ Ruling also directed that objectives be broken down by time period: (1) before the upcoming wildfire season; (2) before the filing of the next WSP; and (3) within five years. For each objective, PG&E has indicated programs that will be completed with these time periods or, in certain cases, over a longer period. PG&E intends to continue to enhance these measures over time. The details regarding the timing of each objective are provided in Table 3 in Section 2.1, and further information about each program is provided in Section 4 of the Plan.

1. **Objective – Vegetation Management:** To address the potential for ignition from contact between PG&E facilities and vegetation through comprehensive vegetation management. PG&E will achieve critical milestones for this objective by the dates described below and will continue these efforts long-term (more than five years).
  - Enhanced Vegetation Management: Focusing vegetation management efforts on high-risk species of vegetation, vegetation with the most potential to come into contact with overhead electric facilities in the highest risk areas, and targeted fuel reductions (e.g., clearing of dry brush): approximately 1,000 circuit miles in HFTD areas by June 30, 2019, with approximately 2,450 circuit miles in total in HFTD areas by December 31, 2019.
2. **Objective – Enhanced Inspections and System Hardening:** To address the potential for ignition as a result of equipment failure through enhanced inspections and system hardening. PG&E plans to achieve critical milestones for this objective by the dates described below.
  - Enhanced and Accelerated Inspection and Repair Programs: Conduct accelerated and enhanced fire ignition-based inspections and repairs of overhead electric facilities in HFTD and adjacent areas. Inspections of all transmission structures, and substations in HFTD areas by May 1, 2019, and for distribution poles in HFTD areas by May 31, 2019. Anything identified as an imminent threat to public safety during an inspection will be addressed immediately.
  - System Hardening: Revising distribution design standards to increase overall strength and mitigate against impacts of external contacts (e.g., vegetation or wire-on-wire contacts) of approximately: 45 circuit

miles by June 30, 2019; 150 circuit miles in total by December 31, 2019; and 7,100 circuit miles over a 10-year time horizon.

- 3. Objective – Situational Awareness:** To obtain real-time knowledge of localized conditions that affect wildfire risk in order to operate the system to reduce risk of wildfires, including installing approximately: 200 weather stations and 30 cameras by June 30, 2019; 400 new weather stations in total by September 1, 2019; 71 new cameras in total by December 31, 2019; and 1,300 weather stations within five years. PG&E will grant fire agencies access to control the cameras, consistent with an approach taken by SDG&E.
- 4. Objective – Operational Practices:** To perform electric system operations in a manner that reduces the possibility of wildfire ignition in times of elevated fire danger conditions and reduces fire spread including use of PSPS, enhanced operational practices, personnel work procedures, SIPT, and aviation resources. PG&E's goal is to achieve this objective by June 1, 2019, and the refinement of these activities will continue on an ongoing basis.
- 5. Objective – Reducing Public Impact:** To reduce the impact on the public of wildfire safety measures. PG&E plans to achieve critical milestones for this objective by June 1, 2019, and will continue to enhance these measures through near-term (before filing the 2020 WSP) and long-term (more than five years) milestones.
  - Sectionalizing and Distribution Circuits: Upgrading devices with SCADA to minimize de-energization impacts and allow for increased targeting of the PSPS program: all existing line reclosers in Tiers 2 and 3 will be SCADA enabled by June 1, 2019 and additional sectionalizing taking place over the next 5+ years.
  - Resilience Zones: Configuring areas that can be isolated from the broader grid and energized by mobile generation during PSPS events: Complete pilot site before June 1, 2019 which will inform and dictate how the program should evolve in the future to better serve the needs of our customers; continue to research and add additional resilience zones as needed.
- 6. Objective – Research:** PG&E, in partnership with experts and academics, is researching and evaluating a number of potential innovative technologies to address wildfire risk and will enhance its programs accordingly. Due to the inherent uncertainty of any new technology, the timing of implementation is unknown at this time. PG&E will implement new technologies as they become viable. PG&E will update the CPUC and parties on the progress of and results from this research in its annual WSP submissions.
- 7. Objective – Wildfire Response:** To respond more quickly and effectively to major wildfires, regardless of the source of ignition (e.g., third party, lightning, etc.), and to prepare to rebuild and recover from a disaster safely, efficiently, effectively, and consistently. PG&E's plan is to be ready to meet this objective by June 1, 2019 by developing the wildfire response and

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post-incident recovery capabilities described in this Plan.

This Plan is designed to address the risk of wildfire ignitions associated with electric facilities located in HFTD areas and to comply with the requirements of SB 901; and, where there are risks that cannot immediately be addressed, includes an expanded PSPS program to prevent wildfires. This Plan does not describe all ongoing operations and maintenance work that PG&E performs and will continue to perform that also help to reduce wildfire risk. Much of this ongoing work is performed in accordance with regulatory safety requirements, such as General Orders (GO) issued by the CPUC and California Public Resources Code (PRC) sections 4292 and 4293 for vegetation management.

This Plan does describe the additional work that PG&E proposes for 2019 to address wildfire risk. This additional work is focused on the high fire-risk areas designated by the CPUC's HFTD Map. As PG&E learns more, it will continue to improve and evolve these programs and may expand or re-prioritize the work described in this Plan. Table 2 below identifies the SB 901 requirements for wildfire mitigation plans, and the location in PG&E's Plan where each requirement is addressed.

**TABLE 2: PLAN COMPLIANCE WITH CALIFORNIA PUBLIC UTILITIES CODE (PUC) § 8386(C)**

| <b>Information Required by PUC § 8386(c)</b>   | <b>Location(s) of Required Information in Plan</b> |
|--|--|
| (1) An accounting of the responsibilities of persons responsible for executing the Plan.   | Section 6.1  |
| (2) The objectives of the Plan.  | Section 1  |
| (3) A description of the preventive strategies and programs to be adopted by PG&E to minimize the risk of its electrical lines and equipment causing catastrophic wildfires, including consideration of dynamic climate change risk.   | Section 2.1, Section 4                             |
| (4) A description of the metrics PG&E plans to use to evaluate the Plan's performance and the assumptions that underlie the use of those metrics.  | Section 6.2  |
| (5) A discussion of how the application of previously identified metrics to previous plan performances has informed the Plan.  | Section 6.3  |
| (6) Protocols for disabling reclosers and deenergizing portions of the electrical distribution system that consider the associated impacts on public safety, as well as protocols related to mitigating the public safety impacts of those protocols, including impacts on critical first responders and on health and communication infrastructure.   | Section 4.1.1, Section 4.6                         |
| (7) Appropriate and feasible procedures for notifying a customer who may be impacted by the deenergizing of electrical lines.  | Section 4.6.3                                      |
| (8) Plans for vegetation management.   | Section 4.4  |
| (9) Plans for inspections of PG&E's electrical infrastructure.   | Section 4.2  |
| (10) A list that identifies, describes, and prioritizes all wildfire risks, and drivers for those risks, throughout the electrical corporation's service territory, including all relevant wildfire risk and risk mitigation information that is part of Safety Model Assessment Proceeding (SMAP) and Risk Assessment Mitigation Phase filings.   | Section 3.2  |
| (11) A description of how the Plan accounts for the wildfire risk identified in PG&E's Risk Assessment Mitigation Phase filing.  | Section 3.2.1                                      |
| (12) A description of the actions PG&E will take to ensure its system will achieve the highest level of safety, reliability, and resiliency, and to ensure that its system is prepared for a major event, including hardening and modernizing its infrastructure with improved engineering, system design, standards, equipment, and facilities, such as undergrounding, insulation of distribution wires, and pole replacement. | Section 4.3  |
| (13) A showing that PG&E has an adequate sized and trained workforce to promptly restore service after a major event, taking into account employees of other utilities pursuant to mutual aid agreements and employees of entities that have entered into contracts with PG&E.   | Section 5.1.4                                      |
| (14) Identification of any geographic area in PG&E's service territory that is a higher wildfire threat than is currently identified in a CPUC fire threat map, and where the CPUC should consider expanding the HFTD area based on new information or changes in the environment.   | Section 3.4  |
| (15) A methodology for identifying and presenting enterprise-wide safety risk and wildfire-related risk that is consistent with the methodology used by other electrical corporations.   | Section 3.1  |

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**TABLE 2: PLAN COMPLIANCE WITH CALIFORNIA PUBLIC UTILITIES CODE (PUC) § 8386(C)  
(CONTINUED)**

| Information Required by PUC § 8386(c)  | Location(s) of Required Information in Plan |
|--|---|
| (16) A description of how the Plan is consistent with PG&E's disaster and emergency preparedness plan prepared pursuant to P.U. Code § 768.6.  | Section 5.1.1                               |
| (17) A statement of how PG&E will restore service after a wildfire.  | Section 4.8, Section 5.1.2                  |
| (18) Protocols for compliance with requirements adopted by the CPUC regarding activities to support customers during and after a wildfire, outage reporting, support for low-income customers, billing adjustments, deposit waivers, extended payment plans, suspension of disconnection and nonpayment fees, repair processing and timing, access to utility representatives, and emergency communications. | Section 5.2                                 |
| (19) A description of the processes and procedures PG&E will use to monitor and audit the implementation of the Plan, identify any deficiencies in the Plan, and monitor and audit the effectiveness of electrical line and equipment inspections.   | Section 6.4                                 |

## 2. Program Overview and Climate Change Risk and Strategy

### 2.1. Overview of Strategies and Programs

Pursuant to PUC Section 8386(c)(3) and the ALJ Ruling, in this section, PG&E provides an overview of the strategies and programs in the Plan to reduce the risk of wildfires. Risk analysis and drivers are addressed in greater detail in Section 3 and PG&E's strategies and programs, as well as the targets, are described in Sections 4 through 6.

In response to the wildfires that occurred in 2017, PG&E initiated the Community Wildfire Safety Program (CWSP) to work closely with fire responders, customers, and communities, to implement new and enhanced safety measures to help reduce the risk of wildfires, as well as improve situational awareness and emergency response. The CWSP utilizes a risk-based approach to identify and address the assets most at risk of wildfire ignition and in areas with greatest potential fire spread. The comprehensive risk assessments performed as part of the CWSP, as well as geospatial modeling on both the volume and the location of fire incidents in PG&E's service area, have significantly informed the development of wildfire and safety programs.

Specifically, the CWSP includes a risk-based vegetation management approach for specific areas of PG&E's service area, such as trimming or removing high-risk tree

species, increased clearing of overhanging branches directly above and around power lines, and removal of vegetation fuels under and adjacent to power lines on a targeted basis.

Similarly, PG&E has transitioned to a risk-based facilities inspection approach for high fire-risk areas, including modified inspection methods and inspection frequencies. The CWSP also includes the use of new situational awareness technologies on the electric system such as high-definition cameras and weather stations.

PG&E's System Hardening Program has been broadened to include a rebuild of overhead distribution circuits in HFTD areas, including replacement of bare wire with insulated conductor, increased strength requirements for poles, installation of new system automation and protection equipment, and potentially targeted undergrounding, all of which will lessen the likelihood of ignitions.

Finally, PG&E has also adopted the PSPS program, or proactive de-energization of lines, using protocols that were based on benchmarking with SDG&E and in accordance with CPUC Resolution ESRB-8. Accordingly, a PSPS event will be implemented for lines that cross Tier 2 and Tier 3 HFTD areas when forecasts predict extreme fire-threat conditions. PG&E has developed and is continuing to improve the processes to identify the applicable conditions for PSPS and when to execute PSPS events, as well as to identify the appropriate channels to communicate possible impacts, in order to maximize wildfire safety while minimizing the disruption to customers and critical services. PG&E is also developing and evaluating ways to alleviate the risks and impacts of PSPS, such as through Resilience Zones. Resilience Zones will allow for important emergency and community services such as first responders, grocery stores, and gas stations to remain energized while the surrounding areas may be de-energized for safety. In addition, PG&E is investigating innovative customer service solutions to alleviate the impact of de-energization on our most vulnerable customers and communities, such as partnering with local OES to provide a safe, energized location for the vulnerable population during PSPS events.

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The timeframe for all these strategies and programs can be found in Table 3 below.

**TABLE 3: STRATEGY AND PROGRAM TIMEFRAMES<sup>12</sup>**

| Section  | Title   | Timeframe   |
|--|---|---|
| <b>4.1 Operational Practices</b>                                     |   |   |
| 4.1.1  | Recloser Operations   | Before the upcoming wildfire season                             |
| 4.1.2  | Personnel Work Procedures in Conditions of Elevated Fire Risk | N/A – Ongoing   |
| 4.1.3  | Safety and Infrastructure Protection Teams                    | Before the upcoming wildfire season                             |
| 4.1.4  | Aviation Resources  | Before the upcoming wildfire season                             |
| <b>4.2 Wildfire Safety Inspection Programs</b>                       |   |   |
| 4.2.1  | WSIP, Distribution  | Before the upcoming wildfire season                             |
| 4.2.2  | WSIP, Transmission  | Before the upcoming wildfire season                             |
| 4.2.3  | WSIP, Substation  | Before the upcoming wildfire season                             |
| <b>4.3 System Hardening Overview</b>                                 |   |   |
| 4.3.1  | Pole Material   | Work is ongoing, HFTD completion Target is greater than 5 years |
| 4.3.2  | Pole Loading and Replacement                                  |   |
| 4.3.3  | Conductor   |   |
| 4.3.4  | System Protection   | Within next 5 years   |
| 4.3.5  | Equipment   | More than 5 years   |
| <b>4.4 Enhanced Vegetation Management</b>                            |   |   |
| 4.4.1  | Vegetation Trimming and Overhanging Tree Limbs                | More than 5 years   |
| 4.4.2  | HFTD Vegetation Management (VM) Inspection Strategy           | Before the next Plan filing                                     |
| 4.4.3  | Inspecting Trees with a Potential Strike Path to Power Lines  | Before the next Plan filing                                     |
| 4.4.4  | At-risk Species Management                                    | More than 5 years   |
| 4.4.5  | Challenges Associated with Enhanced Vegetation Management     | N/A Ongoing   |
| 4.4.6  | Community and Environmental Impacts                           | N/A Ongoing   |
| <b>4.5 Enhanced Situational Awareness and Known Local Conditions</b> |   |   |
| 4.5.1  | Meteorological Operations and Advanced Situational Awareness  | Before the next Plan filing                                     |
| 4.5.2  | Fire Spread Modelling – Phase 1                               | Before the upcoming wildfire season                             |
| 4.5.3  | Weather Stations  | Within the next 5 years   |
| 4.5.4  | Camera Deployment Strategy                                    | Within the next 5 years   |
| 4.5.5  | Satellite Fire Detection Systems                              | Before the upcoming wildfire season                             |

<sup>12</sup> Timeframe key: (1) before the upcoming wildfire season (estimated to be June 1, 2019 for purposes of this Plan); (2) before the next Plan filing (estimated to be February 2020); (3) within the next 5 years (2024); and (4) more than 5 years (beyond 2024).



**TABLE 3: STRATEGY AND PROGRAM TIMEFRAMES<sup>13</sup>**  
(CONTINUED)

| Section  | Title  | Timeframe  |
|--|--|--|
| 4.5.6  | Storm Outage Prediction Model  | Before the next Plan filing  |
| 4.5.7  | Wildfire Safety Operations Center  | In place, and will continue to implement new technologies before the next Plan filing                      |
| <b>4.6 Public Safety Power Shut-off Program</b>                            |  |  |
| 4.6.1  | PSPS Decision Factors  | In place, and will continue to evolve  |
| 4.6.2  | Strategies to Enhance PSPS Efficiency While Reducing Associated Impacts                                    | N/A  |
| 4.6.2.1  | Impact Mitigation Through System Sectionalizing  | In place, and will continue to identify methods to reduce PSPS impacts before the upcoming wildfire season |
| 4.6.2.2  | Resilience Zones   | Pilot location operational before the upcoming wildfire season, and will continue to evolve and expand     |
| 4.6.2.3  | Customer Services and Programs   | In place, and will continue to evolve  |
| 4.6.3  | PSPS Notification Strategies   | In place, and will continue to evolve  |
| 4.6.3.1  | Customer and Community Outreach  | In place; PSPS customer outreach is ongoing and will continue before the upcoming wildfire season          |
| 4.6.3.2  | Mitigating PSPS Impacts on First Responders, Healthcare Facilities, Telecommunication, and Water Utilities | In place, and will continue to identify methods to reduce PSPS impacts before the upcoming wildfire season |
| 4.6.4  | Re-energization Strategy   | In place, and will continue to evolve  |
| <b>4.7 Alternative Technologies</b>  |  |  |
| 4.7.1  | Rapid Earth Fault Current Limiter Pilot Project – Demonstration  | Within the next 5 years  |
| 4.7.2  | Enhanced Wires Down Detection Project – Phase 1  | Before the next Plan filing  |
| 4.7.3  | Other Alternative Technologies   | N/A  |
| <b>4.8 Post Incident Recovery, Restoration, and Remediation Activities</b> |  |  |
| 4.8.1  | Post-Incident Recovery   | N/A  |
| 4.8.2  | Restoration  | N/A  |
| 4.8.3  | Remediation  | N/A  |
| 4.8.3.1  | Environmental Remediation – Debris Flow Modeling   | Ongoing  |

<sup>13</sup> Timeframe key: (1) before the upcoming wildfire season (estimated to be June 1, 2019 for purposes of this Plan); (2) before the next Plan filing (estimated to be February 2020); (3) within the next 5 years (2024); and (4) more than 5 years (beyond 2024).

## 2.2. Climate Change Risks

As required by PUC Section 8386(c)(3) and the ALJ Ruling, this section of PG&E's Plan describes climate change risks in California generally, and PG&E's service area specifically.

California has experienced dramatic environmental changes in recent years, resulting in record drought, unprecedented tree mortality, record rainfall, record heat waves, and extremely strong wind events. In recent years, the number and scope of wildfires in California has also increased substantially. In 2017, California experienced five of the 20 most destructive fires in its history up to that point in time. In November 2018, California experienced two more devastating fires—the Camp Fire in Northern California and the Woolsey Fire in Southern California. The Camp Fire is now considered the most destructive wildfire in California history, with over 80 fatalities and extensive property destruction.

A number of climate-related factors have contributed to the increasing risk of wildfires. For example, bark beetles and drought have contributed to record numbers of dead trees that fuel and amplify wildfires.<sup>14</sup> Since 2010, according to the USFS, approximately 129 million trees have died in California. Moreover, as air temperatures rise, forests and land are drying out, increasing fire risks and creating weather conditions that readily facilitate the rapid expansion of fires.<sup>15</sup>

One of the key findings in the Climate Science Special Report, issued as a part of the Fourth National Climate Assessment in 2017, was that:

[T]he incidence of large forest fires in the western United States and Alaska has increased since the early 1980s [] and is projected to further increase in those regions as the climate warms, with profound changes to certain ecosystems.<sup>16</sup>

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<sup>14</sup> Assembly Floor Analyses, issued August 28, 2018, at p. 5, available at: [http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201720180SB901](http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB901) (accessed October 2, 2018) (“Assembly Floor Analysis”) at p. 5.

<sup>15</sup> The Atlantic, *Why the Wildfires of 2018 Have Been So Ferocious*, (August 10, 2018).

<sup>16</sup> United States (U.S.) Global Change Research Program, *Climate Science Special Report: Droughts, Floods, and Wildfire*, Chapter 8 (2017).

More recently, the Fourth National Climate Assessment, which was issued in November 2018 as mandated by the United States (U.S.) Congress in the Global Change Research Act of 1990, concluded:

[W]ildfire trends in the western United States are influenced by rising temperatures and changing precipitation patterns, pest populations, and land management practices. As humans have moved closer to forestlands, increased fire suppression practices have reduced natural fires and led to denser vegetation, resulting in fires that are larger and more damaging when they do occur (Figures 1.5 and 1.2k) (Ch. 6: Forests, KM 1). Warmer winters have led to increased pest outbreaks and significant tree kills, with varying feedbacks on wildfire. Increased wildfire driven by climate change is projected to increase costs associated with health effects, loss of homes and other property, wildfire response, and fuel management.<sup>17</sup>

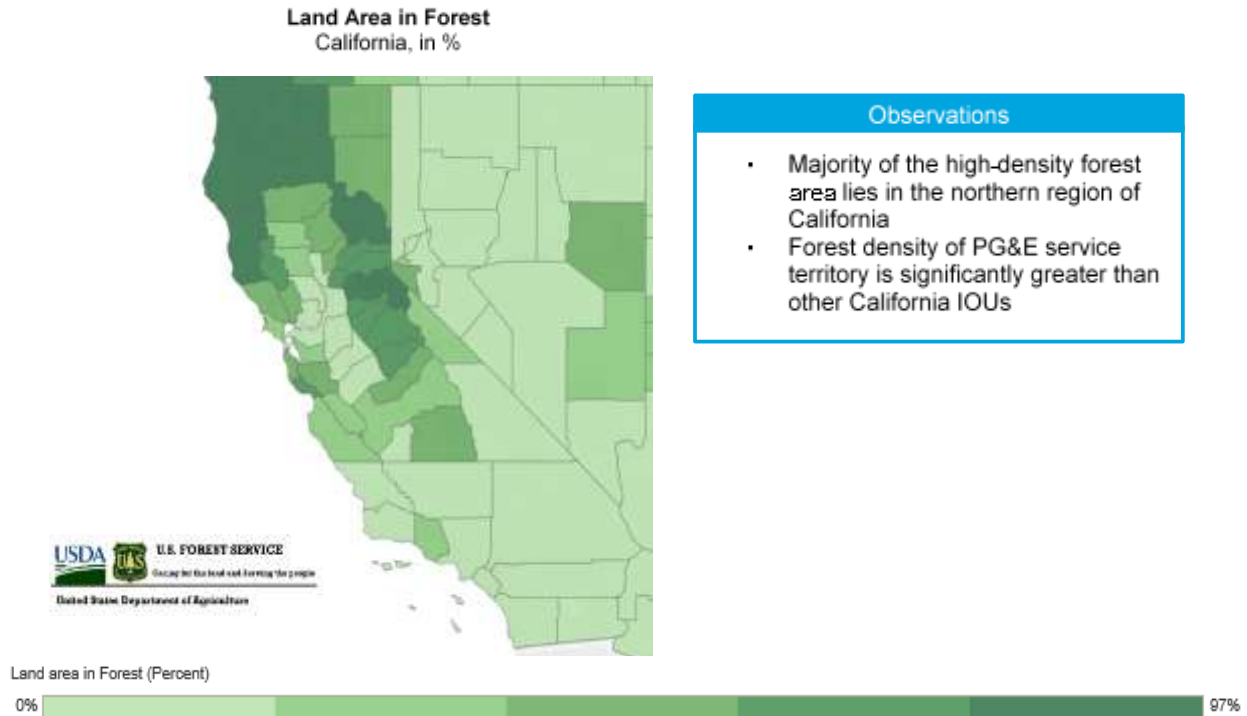
In short, California has not only entered a “new normal” with regard to the risk, magnitude, and devastating impact of wildfires, but as former Governor Jerry Brown explained, California has entered a “new abnormal” that will continue in the next 20 years.<sup>18</sup> As a result of the new abnormal, wildfire season, when the risk of wildfire is much greater, may span eight months or more of the year.

Wildfire risks are not uniform throughout California. PG&E faces especially significant wildfire challenges due to the size and geography of its service area. PG&E’s service area is approximately 70,000 square miles and contains substantially more HFTD areas than exist in the service territories of the two other California Investor-Owned Utilities (IOU) combined. As shown in Figure 1 below, according to the USFS, the majority of high-density forest area in California is in Northern California:

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<sup>17</sup> U.S. Global Change Research Program, Fourth National Climate Assessment, Volume 2.

<sup>18</sup> Los Angeles Times, *Gov. Brown: Mega-fires ‘the new abnormal’ for California*, (November 11, 2018).

**FIGURE 1: HIGH DENSITY FOREST AREA IN NORTHERN CALIFORNIA<sup>19</sup>**

Moreover, PG&E has more overhead distribution circuit miles in its service area that traverse HFTD areas than the other two IOUs combined. Approximately 65 percent of California IOUs' overhead distribution circuits located in Tier 2 and Tier 3 HFTD areas are in PG&E's service area. PG&E estimates there are more than 100 million trees adjacent to its overhead power lines with the potential to either grow into or fall into the lines. The strategies and programs described in detail above are specifically intended to address the unique wildfire risks associated with PG&E's service area.

### 3. Risk Analysis and Drivers

Pursuant to PUC Sections 8386(c)(10), (11), (14), and (15) and the ALJ Ruling, this section of PG&E's Plan addresses wildfire risks, and the drivers associated with these risks. Specifically, this section describes: (1) the methodology used by PG&E for identifying and evaluating wildfire risks; (2) a list of wildfire risks and drivers identified in the 2017 Risk Assessment and Mitigation Phase (RAMP) Report and more recently in PG&E's updated analysis; (3) how PG&E's Plan addresses wildfire risks; (4) an

<sup>19</sup> Source: USDA Forest Service, 2017 RPA data.  
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evaluation of the CPUC's HFTD Map as required by PUC Section 8386(c)(14); (5) electric circuit prioritization based on wildfire risk; (6) PG&E Wildfire Evacuation Study; and (7) use of Probabilistic Assessments.

### **3.1. Methodology for Identifying and Evaluating Risk**

In addition to presenting the risks and drivers analyzed in PG&E's 2017 RAMP Report, this section also discusses the risk identification and analysis that PG&E has performed since that 2017 filing.

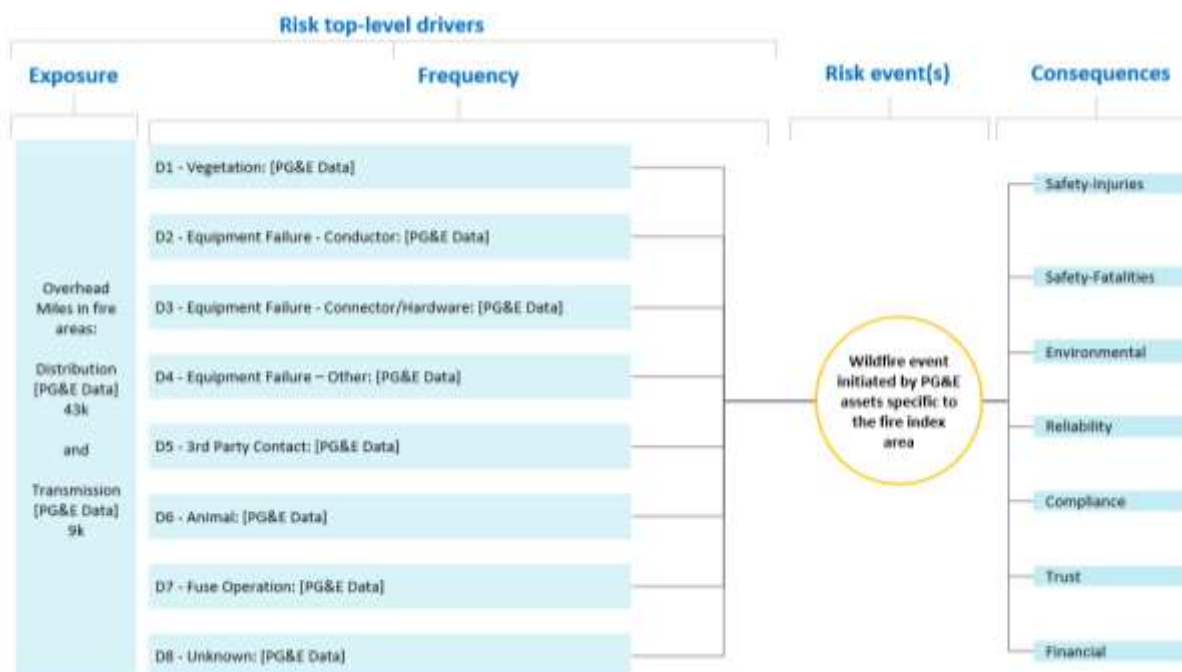
PG&E's 2017 RAMP Report assessed wildfire risk using a common bow-tie risk methodology, where the risk event at the center of the bow-tie is a wildfire event initiated by PG&E assets specific to Fire Index Areas (FIA).<sup>20</sup> PG&E focused its wildfire risk assessment and effectiveness analysis based on this risk event and the specific drivers on the left side of the risk bowtie. This was the approach used in PG&E's 2017 RAMP Report, as shown below in Figure 2 below.<sup>21</sup>

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<sup>20</sup> FIAs were originally developed by the USFS Pacific Southwest Forest and Range Experiment Station (now the Pacific Southwest Research Station) in 1959 and updated in the late 1960s and are still in use today by state (e.g., CAL FIRE) and federal agencies (e.g., USFS). These agencies refer to these areas as Fire Danger Ratings Areas (FDRA). For more information, see Attachment A: Fire Potential Index Methodology and Background.

<sup>21</sup> See PG&E's 2017 RAMP Report, Chapter 11 – Wildfire, Section II for detailed description of risk bow-tie methodology and risk drivers.  
<https://pgera.azurewebsites.net/Regulation/ValidateDocAccess?docID=431187#page=334>.

FIGURE 2: WILDFIRE BOW-TIE RISK



Since PG&E filed its 2017 RAMP Report, PG&E’s analysis of wildfire risk has continued to evolve. PG&E’s 2020 General Rate Case (GRC), filed with the CPUC in December 2018 in Application 18-12-009, describes the evolution and refinement of PG&E’s wildfire risk analysis. For this Plan, PG&E has aligned the risk analyses from the 2017 RAMP Report and the 2020 GRC and developed an updated set of wildfire risks and drivers. By analyzing this updated set, PG&E seeks to more effectively address wildfire risk across the service area.<sup>22</sup>

There are some significant refinements between the model used in the 2017 RAMP Report and the one used in the 2020 GRC. First, PG&E revised the number of overhead circuit miles considered to be exposed to wildfire risk based on new guidance from the Commission when it adopted the HFTD Map in January 2018. Second, PG&E updated its risk driver frequency assumptions based on this change in overhead circuit miles, as well as more recent fire incident data. Third, since filing the 2017 RAMP

<sup>22</sup> In future WSP annual filings, PG&E’s risk analysis may evolve to more specifically address the risk factors set forth in PUC Section 8386(c)(10)(A) (design, operations, construction and maintenance).

Report, PG&E has undertaken a more comprehensive evaluation of wildfire risk mitigation options, including a detailed assessment of the likelihood that specific mitigations could have reduced the potential risk of particular incidents identified in the fire incident database.

Following the 2017 and 2018 wildfires, PG&E used this updated analysis to help design and implement, via the CWSP, additional programs intended to address wildfire risks as well as improve situational awareness, mitigation, and response. CWSP wildfire programs target risk drivers associated with the highest incidence rates and potential fire spread.<sup>23</sup> Below, PG&E describes the evolution of wildfire risk and drivers analyses as identified in its 2017 RAMP Report and its most current analysis for identifying and evaluating wildfire-related risks through the CWSP.

### **3.2. List of Wildfire Risks and Drivers**

#### **3.2.1. Risks and Drivers Identified in RAMP**

PG&E operates and maintains approximately 81,000 circuit miles of overhead distribution line and approximately 18,000 circuit miles of overhead transmission line across its service area. For the 2017 RAMP Report, PG&E measured its exposure to wildfire risk based on FIAs. Approximately 43,000 circuit miles of PG&E's overhead distribution line and 9,000 circuit miles of PG&E's overhead transmission line were within these FIAs for the 2017 analysis.

For additional details relating to risks and drivers identified in RAMP see Attachment D, Risks and Drivers Identified in RAMP.

#### **3.2.2. Risks and Drivers Identified After RAMP**

In its 2017 RAMP Report, PG&E committed to update its wildfire risk analysis and modeling and noted that it might propose additional precautionary measures intended to further reduce wildfire risk as more information became available.<sup>24</sup> To

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<sup>23</sup> See 2017 RAMP Report, Chapter 11, Wildfire, Section III, Table 11-1.

<sup>24</sup> Comments of PG&E (U 39 M) on Safety and Enforcement Division's RAMP Report, May 10, 2018, Section III-A-2, p. 3. SER-358



perform a robust and inclusive wildfire risk assessment, and to consider additional practices to address wildfire risks and improve system resiliency, PG&E assembled an internal cross-functional team of experienced professionals, consulted with established risk assessment and management consultants, and benchmarked with other utilities in California, the United States, and Australia with experience in developing wildfire mitigation plans, as well as large-scale system rebuilds after disasters.

The team supplemented the 2017 RAMP Report risk analysis with consideration of two primary sets of additional data: First, the team analyzed ignition source data PG&E reported to the CPUC to determine mitigation program effectiveness at a more granular driver level than in the 2017 RAMP process. In accordance with D.14-02-015, PG&E reports annual fire incidents to the CPUC where: (1) ignition is associated with PG&E powerlines; (2) something other than PG&E facilities burned; and (3) the resulting fire traveled more than one meter from the ignition point. For the risk analysis discussed in this Plan, PG&E used the fire ignitions reported to the CPUC for years 2015 2017 (CPUC-Reportable Ignition Data). The team used this data to model the effects of different combinations and permutations of programs. In performing this analysis, the team assessed the potential reduction of historical ignition events that might have resulted had the proposed programs been in place at that time. In this evaluation, PG&E considered fire ignitions associated with distribution primary, distribution secondary, and transmission lines and equipment.

Second, the team updated the focus on the risk model based on the CPUC's HFTD Map. In January 2018, after submission of the 2017 RAMP Report, the CPUC adopted its HFTD Map.<sup>25</sup> The HFTD Map designates three areas where there is an increased risk from wildfires: Tier 3 (extreme fire risk); Tier 2 (elevated fire risk); and Zone 1 (USFS and CAL FIRE Tree Mortality High Hazard Zone Tier One not included in Tier 3 or Tier 2). The evolution of the HFTD Map is illustrated below in Figure 3.

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<sup>25</sup> D.17-12-024, p. 158, OP 12, and Appendix D. See also CPUC Fire Safety Rulemaking Background available at: <http://www.cpuc.ca.gov/firethreatmaps/> (Fire Safety Rulemaking Background) (Accessed October 22, 2018) (describing the HFTD Map).



**FIGURE 3: CPUC MAP EVOLUTION**

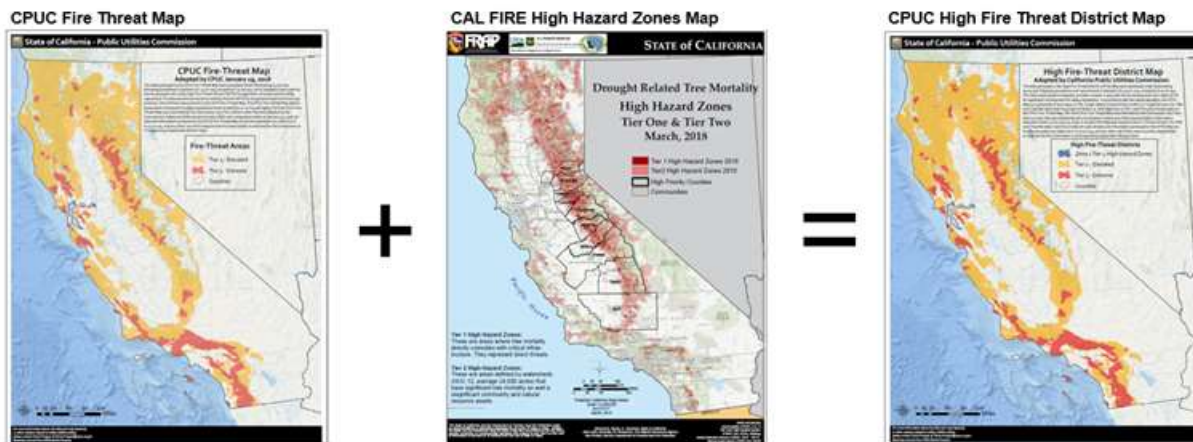


Table 4 below summarizes the Tier 2, Tier 3, and Zone 1 areas included in the January 2018 HFTD Map:

**TABLE 4: CPUC HFTD MAP TIER DEFINITIONS**

| Tier Level                      | Definition   | Distinctions   |
|---------------------------------|--|--|
| HFTD Tier 3 – Extreme Risk      | Extreme risk (including likelihood and potential impacts of occurrence) for utility associated wildfires.  | Tier 3 is distinguished from Tier 2 by having highest likelihood of fire initiation and growth that would impact people or property from utility-associated fires, and where the most restrictive utility regulations are necessary to reduce utility-fire risk.   |
| HFTD Tier 2 – Elevated Risk     | Elevated risk (including likelihood and potential impacts of occurrence) for utility associated wildfires.   | Tier 2 is distinguished from Zone 1 and other areas outside the HFTD by having greater likelihood of fire initiation and growth that would impact people or property, from utility-associated wildfires, and where enhanced utility regulation could be expected to reduce utility-fire risk.  |
| HFTD Zone 1 – High Hazard Zones | HHZ on the USFS-CAL FIRE joint map of Tree Mortality HHZs, excluding areas in Tier 3 or Tier 2. These are areas where tree mortality directly coincides with critical infrastructure. They represent direct threats. | Zone 1 is defined as a Tree Mortality HHZ (as determined by California’s Tree Mortality Task Force), a subset of Tier 1 of the CPUC HFTD Map. Zone 1 excludes areas in the Elevated Risk of Tier Level 2, and the Extreme Risk of Tier Level 3 risk areas but is included in the HFTD due to specific hazards to utilities.<br><br>Tree mortality areas are identified by the USFS, CAL FIRE, and other State and Regulatory Agencies as determined by published district maps and are subject to updates. |

Once the HFTD Map was approved by the CPUC, PG&E began using it to evaluate how to reduce wildfire risk, in place of the 2017 RAMP FIAs. The HFTD areas are different from, and smaller in size than, the combined FIAs used in the 2017 RAMP Report model. As shown in Tables 5 and 6 below, PG&E owns approximately 25,200 circuit miles of overhead distribution line and 5,563 circuit miles of overhead transmission line in the HFTD areas.<sup>26</sup> PG&E has updated the exposure data input to the wildfire risk model to the lower, more focused number of overhead circuit miles in the HFTD areas.

**TABLE 5: APPROXIMATE DISTRIBUTION ASSETS**

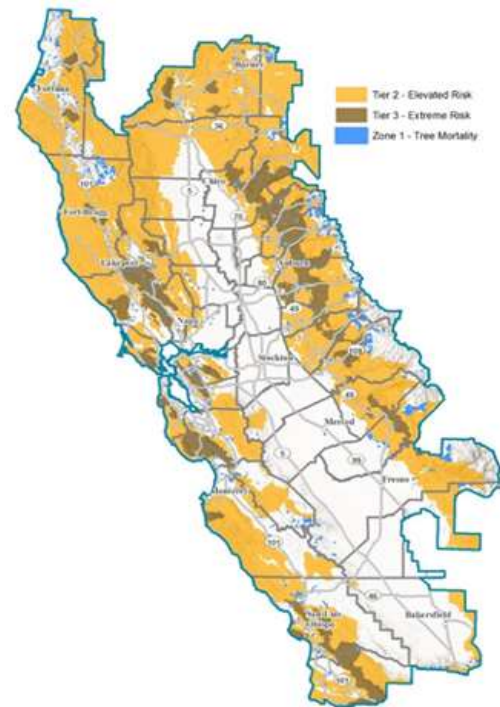
| Distribution Overhead Assets |               |
|------------------------------|---------------|
| HFTD Area                    | Line Miles*   |
| Zone 1                       | 100           |
| Tier 2                       | 18,000        |
| Tier 3                       | 7,100         |
| <b>Total</b>                 | <b>25,200</b> |

**TABLE 6: APPROXIMATE TRANSMISSION ASSETS**

| Transmission Overhead Assets |              |
|------------------------------|--------------|
| HFTD Area                    | Line Miles*  |
| Zone 1                       | 25           |
| Tier 2                       | 4,227        |
| Tier 3                       | 1,311        |
| <b>Total</b>                 | <b>5,563</b> |

\* PG&E operates and maintains approximately 81,000 circuit miles of overhead distribution line and approximately 18,000 circuit miles of overhead transmission line.

**Figure 4: PG&E Service Area Fire Threat Map**



In addition, PG&E began using wind-related outage data from northeast wind events and CPUC-Reportable Ignition Data to further expand risk insights into the HFTD areas of highest concern. Driver frequency model inputs have been revised to utilize CPUC-Reportable Ignition Data, not all of which were available for use in the 2017

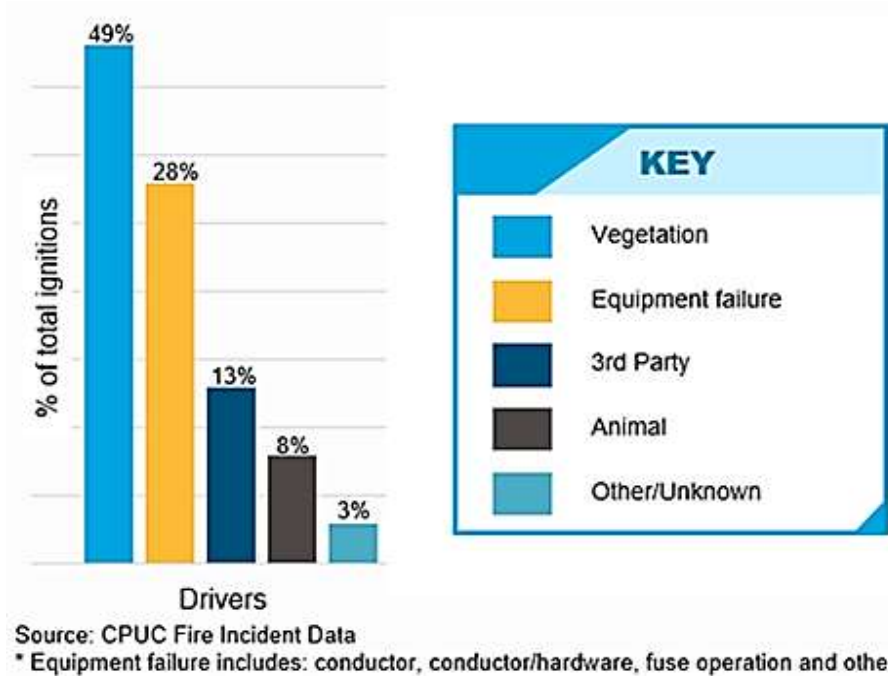
<sup>26</sup> The transmission line numbers exclude approximately 165 miles of transmission lines partially-owned, maintained, or operated by PG&E.

RAMP Report. The benefit of using this most recent dataset is to capture the “new abnormal” of wildfire risk that California is experiencing. The Risk Event Frequency for HFTD areas was determined to be 414 events over 2015-2017, with a driver frequency as follows (D = Driver):

- **D1 – Vegetation (49%, 201 ignitions):** Tree, tree limb, or other vegetation contact with conductors that result in fire ignition.
- **D2 – Equipment Failure – Conductor (11%, 47 ignitions):** Failure of conductor resulting in wire down and fire ignition. All three equipment failure categories may be influenced by weather and other environmental factors (e.g., corrosive environment).
- **D3 – Equipment Failure – Connector/Hardware (5%, 19 ignitions):** Failure of connectors, splices, or other connecting hardware resulting in wire down and fire ignition.
- **D4 – Equipment Failure – Other (11%, 44 ignitions):** Failure of other line equipment, such as: poles, insulators, transformers, and capacitors, that leads to fire ignition.
- **D5 – Third-Party Contact (13%, 54 ignitions):** Contact caused by a third party, leading to fire ignition, such as cars hitting poles and Mylar balloon contacts.
- **D6 – Animal (8%, 32 ignitions):** Animal contacts that result in fire ignition, such as birds contacting energized conductors then falling to the ground and causing an ignition.
- **D7 – Fuse Operation (1%, 5 ignitions):** Operation of a fuse for a faulted condition that results in fire ignition from the blown fuse.
- **D8 – Unknown (3%, 12 ignitions):** Situations where PG&E was unable to determine the cause of the ignition; however, it appeared that the ignition may have been attributable to PG&E facilities.

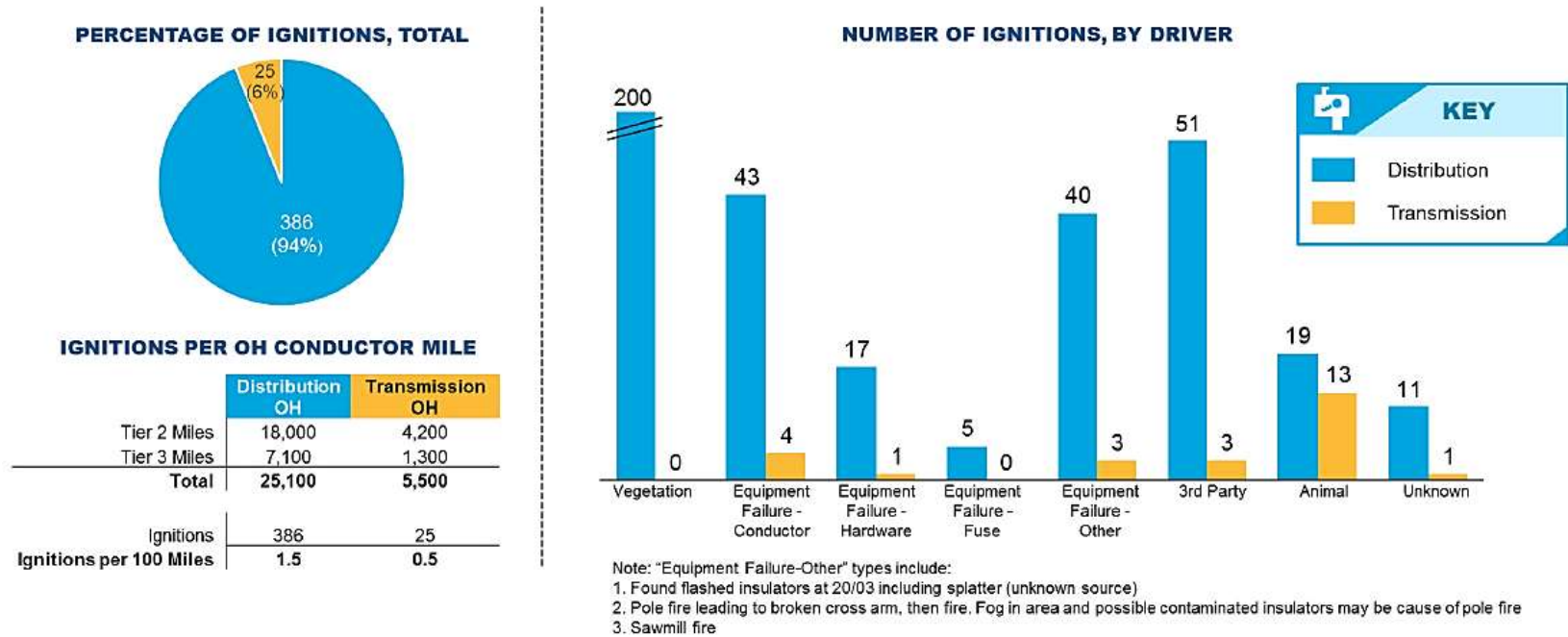
Figure 5 below shows the relative percentages of 2015-2017 ignition drivers for HFTD areas of PG&E’s system.

**FIGURE 5: 2015-2017 DRIVERS FOR FIRE INCIDENTS IN HFTD TIERS 2 AND 3, AND ZONE 1**



As shown in Figure 6 below, based on historical data, distribution lines present significantly more risk than transmission, with ignitions per 100 miles nearly three times for the distribution system as compared to the transmission system. Further, while vegetation is the primary driver of ignitions for distribution lines, the primary risk driver for transmission lines-related ignitions are animal actions, with no vegetation-caused ignitions recorded for transmission based on the CPUC-Reportable Ignition Data.

FIGURE 6: IGNITIONS FOR TRANSMISSION AND DISTRIBUTION BY DRIVER



**Key Takeaway: Ignitions per 100 miles are nearly 3x for the distribution system as compared to the transmission system**

Source: CPUC Fire Incident Data, 2015 – 2017 (<http://www.cpuc.ca.gov/CPUCNewsDetail.aspx?id=6442454974>)

### 3.2.3. Risks and Drivers Associated With Design, Construction, Operations and Maintenance

Consistent with PUC Section 8386(c)(10)(A) and the ALJ Ruling, PG&E has identified which of the risks and drivers identified above are associated with five specific categories: (1) design and construction; (2) inspection and maintenance; (3) operational practices; (4) situational/conditional awareness; and (5) response and recovery. In future WSPs, PG&E may include more detailed analysis with risks and drivers associated with design, construction, operations and maintenance, as outlined in SB 901. Table 7 below provides summaries of the risk drivers broken down by the categories identified in SB 901 and the categories in the ALJ Ruling:

**TABLE 7: RAMP RISK DRIVERS RELATED TO SB 901 AND ALJ RULING RISK CATEGORIES**

|    | Cause                                     | (1)<br>Design and<br>Construction | (2)<br>Inspection<br>and<br>Maintenance | (3)<br>Operational<br>Practices | (4)<br>Situational/<br>Conditional<br>Awareness | (5)<br>Response<br>and<br>Recovery |
|----|---|-----------------------------------|---|---------------------------------|---|------------------------------------|
| D1 | Vegetation                                | X                                 | X                                       | X                               | X   | N/A                                |
| D2 | Equipment Failure –<br>Conductor          | X                                 | X                                       | X                               | X   | N/A                                |
| D3 | Equipment Failure –<br>Connector/Hardware | X                                 | X                                       | X                               | X   | N/A                                |
| D4 | Equipment Failure –<br>Other              | X                                 | X                                       | X                               | X   | N/A                                |
| D5 | Third Party Contact                       | X                                 |   |                                 |   | N/A                                |
| D6 | Animal                                    | X                                 | X                                       | X                               |   | N/A                                |
| D7 | Fuse Operation                            | X                                 | X                                       | X                               | X   | N/A                                |
| D8 | Unknown                                   |                                   |   |                                 |   | N/A                                |

### 3.2.4. Topographic and Climatological Risks

PUC Section 8386(c)(10)(B) also requires consideration of topographic and climatological risk factors. Topography can be an important risk factor for fire danger in certain areas within PG&E's service area. For example, lee-side mountain slopes can be prone to strong downslope winds under certain weather conditions, which can cause increased risk of wires down and/or contact between uninsulated conductors in that area, leading to potential wildfire ignition. Winds can also be funneled through canyons



and mountain passes, resulting in similar effects. PG&E Meteorology's Fire Potential Index (FPI)<sup>27</sup> is applied to the 91 FIAs that cover the entire HFTD area. These areas are intended to capture sections of the service area with consistent fuel, topography, and exposure to meteorological conditions at a more granular level than the HFTD areas for more accurate weather forecasting.

In the 2017 and 2018 wildfire seasons, there was risk of wildfires occurring at almost any time. Historically, extreme fire danger has occurred in PG&E's service area from approximately June through November. Based on weather history, critically extreme fire danger is a rare occurrence—approximately one to two times per year in the most climatologically prone areas and less often in other areas. Based on historical weather patterns, these conditions have most frequently occurred in June and then again in September and October. However, a persistently dry fall and later start to the wet season may result in extreme fire risk extending later into the year. Generally, PG&E considers the following factors to determine when the wildfire season occurs: (1) when CAL FIRE initiates summer preparedness activities and winter preparedness activities; (2) when open burn policies are established at the county level; and (3) when there are more frequent occurrences of FPI days across PG&E's service territory.

The highest fire danger occurs under weather conditions with very low humidity and strong winds. However, temperatures, fuel loading, fuel type, and dead- and live-fuel moisture content are also important factors. PG&E's Meteorology team tracks and models fuel moisture content daily to determine the current state of the fuels as well as how the current season's values compare historically.

PG&E's service area is made up of a wide variety of different microclimates that have distinct seasonal weather characteristics, topography, and fuel types. Due to these differences, the PG&E Meteorology team studies historical fire occurrences by

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<sup>27</sup> See Attachment A for an explanation of how the FPI is derived.

dividing the service area into nine different PG&E Fire Danger Climate Zones<sup>28</sup> to determine the significant thresholds of specific fire-danger variables to distinguish between fire danger conditions on a scale from Low to Extreme-Plus.<sup>29</sup> PG&E will continue to collaborate with the San Jose State University (SJSU) Fire Weather Research Laboratory, Atmospheric Data Solutions, and the other IOUs to increase understanding of fuel moisture monitoring and modeling.

PG&E's Meteorology team also completed a 30-year numerical reanalysis across its service area that will help to identify key weather patterns and characteristics that have led to extreme fire danger in the past in order to determine new thresholds for future fire danger modeling.

### **3.3. How PG&E's Plan Accounts for Wildfire Risks**

PUC Section 8386(c)(11) directs utilities to provide a description of how their WSP accounts for risks identified in their RAMP filing. Because PG&E's wildfire risk analysis has continued to evolve since it filed its 2017 RAMP Report, the Plan addresses how PG&E accounts for wildfire risks identified in the RAMP filing as well as risks and drivers identified since that filing.

As discussed above in Section 3.2.2, PG&E utilized CPUC-Reportable Ignition Data to determine risk reduction effectiveness at a more granular driver level than previously performed in the 2017 RAMP process, by modeling different combinations and permutations of programs (in particular, different vegetation management practices and system hardening activities).

This methodology, in conjunction with benchmarking results,<sup>30</sup> informed the basis for the EVM and system hardening programs presented in the 2020 GRC and this

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<sup>28</sup> PG&E Fire Danger Climate Zones overlay FIAs.

<sup>29</sup> See Attachment A: Fire Potential Index Methodology and Background.

<sup>30</sup> Utilities benchmarked against include: Arizona Public Services, Duke Energy (Indiana), Florida Power and Light, PEPCO (Maryland), Portland General Electric, Public Services of New Mexico, Puget Sound Energy, SDG&E, Southern California Edison Company, and Xcel Energy (Colorado).



Plan. Revised driver counts and assessments of risk reduction were then incorporated into the GRC risk model to quantify risk reduction, mitigation effectiveness rankings, and ultimately to assist in calculating the Risk Spend Efficiency values for the mitigations.

### **3.4. Evaluation of Higher Risk Threat Areas**

PUC Section 8386(c)(14) directs utilities to identify any geographic areas in their respective service territories that are “a higher wildfire threat than is currently identified in the commission’s fire threat map, and where the commission should consider expanding the HFTD based on new information or changes in the environment.” Based upon its review of the HFTD Map and current information, PG&E believes the HFTD Map appropriately identifies areas within PG&E’s service territory requiring additional actions to reduce wildfire risk. PG&E will continue to evaluate the inclusion of additional areas requiring wildfire reduction activity in future plans based upon information obtained during the implementation and evaluation of PG&E’s Plan.

### **3.5. Circuit Prioritization Based on Asset Wildfire Risk**

To maximize the efficacy of the wildfire risk reduction measures, PG&E’s Plan prioritizes circuits targeted for wildfire risk reduction measures using an asset risk-based approach. Under this approach, PG&E evaluates asset wildfire risk for individual circuits and then prioritizes implementation of wildfire risk reduction measures for circuits by their asset wildfire risk.

To enhance the understanding of asset-based wildfire risk, an initial assessment was completed to understand asset failure modes. This was completed by analyzing historical outages and corrective maintenance notifications to inform what asset conditions could lead to failure and related wildfire risk.<sup>31</sup> Once these failure modes were established, PG&E assessed wildfire risk for individual circuits considering three components: (1) likelihood of asset failure; (2) risk of wildfire spread and consequence; and (3) egress risk.

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<sup>31</sup> Further details on PG&E’s Failure Modes and Effects Analysis (FMEA) process are provided in Section 4.2, below.

The likelihood of an asset failure was determined using a regression analysis to predict higher-than-average performance along a circuit. This analysis, completed at the structure level for transmission assets and at the circuit level for distribution assets, included an assessment of multiple variables including asset condition, asset location, asset characteristics (e.g., age, size, material, etc.), and historical work order data to assess the probability of higher than average expected failures.

To evaluate risk of wildfire spread and consequences, PG&E used the REAX Engineering, a third-party entity, wildfire spread and consequence model, similar to the methodology used to determine the HFTDs on the CPUC's HFTD Map. Wildfire spread considers fuel type, fuel density, topography, weather, wind, and distance from fire station or air suppression station. Wildfire consequence considers population density, structure density, and negative impacts to natural resources. This model developed a comparative risk score across PG&E's service area. Every PG&E structure lies within a certain percentile of spread and consequence based upon the model's analysis. Each percentile corresponds to a relative risk score within the model, correlating a comparative risk score to the electric transmission or distribution asset falling within that percentile.

Finally, an egress risk score was included in the model to understand the ease of entering and exiting a town or unincorporated community in the event of evacuation. This analysis was developed by looking at the number of road miles within a particular census-designated town or unincorporated community and comparing it to the population of that particular census-designated area. Since a road's ability to provide egress varies based upon the type of road, the number of road miles was weighted based upon the type of road (e.g., highways/interstates, country roads, residential roads).

For each circuit, these three scores (i.e., asset failure, wildfire spread and consequence, and egress) were multiplied together to develop an initial relative risk ranking. To prioritize circuits for implementation of specific wildfire risk reduction

measures, PG&E considers operational factors that could affect the implementation of those particular measures. For example, for measures involving circuit inspections, PG&E considered factors such as land and environmental, safety, already planned and scheduled projects, geographic access constraints, weather/wind, community, and customer considerations. These operational considerations were used to shift the timing of the enhanced and accelerated inspection, not to adjust the scope of the measures. Meetings were held with Subject Matter Experts (SMEs) in these program areas to consider relevant factors, and timing was adjusted accordingly.

This updated wildfire risk circuit prioritization presents a more robust approach to assessing potential wildfire risk across PG&E's assets, rather than focusing solely on the spread and consequence risk components. By including additional considerations, PG&E is better positioned to determine, understand, and further reduce wildfire risk using a risk-informed approach.

### **3.6. Wildfire Evacuation Study**

PG&E is partnering with several renowned traffic simulation and evacuation experts to collaborate with a high fire risk community to perform a detailed wildfire evacuation study to examine anticipated traffic conditions and evacuation times associated with various rates of evacuation responses and alternative management strategies that could be used in response to them. The intent of this work is to develop a procedure or methodology that can be applied to any community with a high fire risk to improve their wildfire emergency plans and to inform PG&E's egress risk methodology with additional granularity.

The evacuation study report will document the demand estimation methodology (how many people and vehicles need to be evacuated), the highway capacity estimation, mobilization (trip generation) time distributions and the computed evacuation time estimates (ETE) in tabular and graphical format. The report will also contain a description of the traffic simulation and trip distribution and assignment algorithms utilized in the modeling system, the technical details of the study and the supporting

data. In addition, the report will identify traffic bottlenecks during evacuation and include a detailed discussion of potential improvements to evacuation time.

### **3.7. Use of Probabilistic Risk Assessments**

PG&E is also partnering with the B. John Garrick Institute for the Risk Sciences, University of California Los Angeles (UCLA) to leverage the rigorous modeling used in the nuclear industry to perform thorough and complex wildfire risk assessments and management planning. PG&E has used a probabilistic risk assessment model for over 30 years at its Diablo Canyon Nuclear Power Plant. The model is constantly updated with current plant design and state of the art analysis methodologies. Data from 30 years of industry and plant specific experience is used to model component reliability and unavailability. The model is capable of performing quantitative assessment of risks from a multitude of complex factors, including internal plant failures, seismic events, fire and flooding. Each model element has been independently reviewed by industry peer review teams and the results have been audited on numerous occasions by the Nuclear Regulatory Commission. The model is capable of quantitatively risk ranking over 3,000 individual system components including the transmission lines that supply Diablo Canyon with offsite power. PG&E is planning to develop a similar model for wildfire risks for its electrical assets within HFTD areas.

## **4. Wildfire Reduction Strategy and Programs**

This Plan describes the proactive and aggressive programs that PG&E is undertaking to prevent wildfires in 2019 and beyond. In some cases, these programs significantly expand and accelerate existing work, such as vegetation management and inspections. In other cases, these programs are entirely new, such as system hardening.

PG&E already performs a number of activities that address wildfire risk, across all of its assets in its service area, not just in HFTD areas, in accordance with regulatory and industry standards such as GOs 95 and 165 for the design, procurement, construction, testing, operations, and maintenance of its electrical assets, in particular,

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overhead circuit conductors, structures, and equipment. The significant and aggressive expansion, enhancement, and acceleration of wildfire risk mitigation measures that are proposed in this Plan is in addition to PG&E's ongoing regulatory compliance workstreams.

PG&E created the CWSP, managed by PG&E's Wildfire Risk Management team, to support the implementation of large-scale and multi-year programs concerning wildfire risk. As discussed above in Section 3, the Wildfire Risk Management team has performed comprehensive risk assessments and geospatial modeling on both the volume and the location of CPUC-Reportable Fire Incidents from 2015-2017. This detailed analysis has led to the programs and strategies proposed in this Plan, which correlate to the ignition drivers as indicated in Table 8 below.

**TABLE 8: CORRELATION OF PROGRAMS TO IGNITION DRIVERS**

| Section | Program  | Vegetation (49%)                                  | Equipment Failure (28%) | Third Party (13%) | Animal (8%) | Other/Unknown (3%) |
|---------|--|---|-------------------------|-------------------|-------------|--------------------|
| 4.1     | Operational Practices  | X   | X                       | X                 | X           |                    |
| 4.2     | Wildfire Safety Inspection Programs                            |   | X                       | X                 | X           |                    |
| 4.3     | System Hardening   | X   | X                       | X                 | X           | X                  |
| 4.4     | Enhanced Vegetation Management                                 | X   |                         |                   |             |                    |
| 4.5     | Enhanced Situational Awareness and Known Local Conditions      | Enabler to Operational Practices and PSPS Program |                         |                   |             |                    |
| 4.6     | PSPS Program   | X   | X                       |                   |             |                    |
| 4.7     | Alternative Technologies                                       | Enabler for System Hardening                      |                         |                   |             |                    |
| 4.8     | Post Incident Recovery, Restoration and Remediation Activities | N/A   | N/A                     | N/A               | N/A         | N/A                |

Below, consistent with the outline adopted in the ALJ Ruling, PG&E provides a more detailed discussion of its:

- (1) Operational Practices (Section 4.1)
- (2) Wildfire Safety Inspection Programs (Section 4.2)
- (3) System Hardening (Section 4.3)
- (4) Vegetation Management Plan (Section 4.4)
- (5) Enhanced Situational Awareness and Known Local Conditions (Section 4.5)
- (6) PSPS Program (Section 4.6)
- (7) Alternative Technologies (Section 4.7)
- (8) Post Incident Recovery, Restoration and Remediation Activities (Section 4.8)

To provide a more thorough understanding of wildfire risks addressed by the Plan, PG&E has included descriptions of proposed Plan programs in these subsections, as well as routine operations and maintenance activities that also reduce wildfire risk. Under SB 901, proposed wildfire mitigation plans are intended to focus on actions minimizing the “risk of catastrophic wildfire posed by electrical lines and equipment.”<sup>32</sup> PG&E’s routine operations and maintenance activities may reduce wildfire risks while serving other purposes, such as reliability. Therefore, while routine operations and maintenance activities are not a part of PG&E’s Plan, some are described below to provide a more complete picture of all actions PG&E is undertaking that will further reduce wildfire risk.

Table 9 below highlights the work PG&E is planning to complete in 2019; risk reduction measures proposed in this Plan as well as routine operations and maintenance activities. Table 9 also includes targets for 2019 associated with the Plan, the execution risk for each item, and whether the programs are covered in detail in PG&E’s Fire Prevention Plan (FPP) submitted in 2018. The items identified in Table 9

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<sup>32</sup> PUC Section 8386(a).

are discussed in greater detail in the identified sections. Timeframes for the Plan efforts can be found in Table 3, in Section 2.1.

**TABLE 9: 2019 WILDFIRE SAFETY PLAN TARGETS<sup>33</sup>**

| Section                      | Title   | 2019 Target  | Execution Risk   | Included in FPP |
|------------------------------|---|--|--|-----------------|
| <b>Operational Practices</b> |   |  |  |                 |
| 4.1.1                        | Recloser Operations   | SCADA enable all remaining line reclosers (approximately 285) in Tier 2 and Tier 3 HFTD areas by June 1, 2019.<br><br>Disable any remaining manual reclosing devices in advance of exposure to elevated wildfire risk conditions.<br><br>Daily operations conformance with TD-1464B-001 and monitor program for effectiveness.   | Qualified personnel or material limitations.<br><br>Design, estimating or construction delays.   | No              |
| 4.1.2                        | Personnel Work Procedures in Conditions of Elevated Fire Risk | Update guidance in TD-1464S and verify annual refresher training is completed for all field employees in advance of exposure to elevated wildfire risk conditions. Incorporate wildfire risk situational awareness into daily briefings.   | Unforeseen emergencies can redirect field employees and delay necessary workforce training.  | No              |
| 4.1.3                        | Safety and Infrastructure Protection Teams (SIPT)             | Obtain and operate a minimum of 25 trucks + 3 trucks for extra coverage and the capability of type 6 wildland engines, staffed with 60 employees through an internal PG&E SIPT in partnership with International Brotherhood of Electrical Workers (IBEW). The SIPT will assist in WSOC <sup>34</sup> decision making by acting as observers on high-fire risk days to inform PSPS decision making, protect PG&E assets, and assist with emergency response as approved and directed by the Agency Having Jurisdiction (AHJ) (e.g., CAL FIRE). | Getting stakeholder buy-in from external firefighter organizations in a timely manner so as to not impact PG&E's ability to hire and onboard employees in time for 2019 fire season. | No              |
| 4.1.4                        | Aviation Resources  | Operate four heavy-lift helicopters to aid in fire suppression and restoration efforts by May 2019, available at CALFIRE's discretion.   | Delays securing CALFIRE carding by May 2019. <sup>35</sup>   | No              |

<sup>33</sup> Numbers in Table 9 are approximated for purposes of presentation in this table.

<sup>34</sup> More detailed information concerning the WSOC is provided in Section 4.5.7 below.

<sup>35</sup> Carding is the process of reviewing aircraft, support equipment and pilots each year to ensure they all meet the Cal Fire contract requirements. The Federal Government shut down delayed PG&E's request for a 133 Certificate that is required for the Cal Fire carding and contract.

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**TABLE 9: 2019 WILDFIRE SAFETY PLAN TARGETS  
(CONTINUED)**

| Section                                     | Title   | 2019 Target   | Execution Risk   | Included in FPP                    |
|---|---|---|--|------------------------------------|
| <b>Wildfire Safety Inspections Programs</b> |   |   |  |                                    |
| 4.2.1                                       | Wildfire Safety Inspection Program (WSIP), Distribution | <p>There are 685,000 poles located in the HFTD areas and adjacent areas with structures in close proximity and high risk of fire spread into the adjacent HFTD.</p> <p>1) Complete a WSIP enhanced inspection of all 685,000 poles in the HFTD areas by May 31, 2019.</p> <p>2) Complete high priority corrective actions created from deficiencies identified resulting from these enhanced inspections by June 30, 2019.</p>                                    | <p>1) qualified workforce availability; and</p> <p>2) materials availability for repairs.</p> <p>Access limitations:</p> <p>1) inclement weather (snow, rain, wind, washed out roads, etc.);</p> <p>2) property owner objections; and</p> <p>3) Access rights (environmental permits, government owned land access permits).</p>   | Current program scope not included |
| 4.2.2                                       | WSIP, Transmission                                      | <p>There are approximately 50,000 poles and towers (structures) in the HFTD areas and adjacent areas with structures in close proximity and high risk of fire spread into the adjacent HFTD.</p> <p>1) Complete a WSIP enhanced inspection of all 50,000 structures by May 1, 2019. (Approx. 9,377 inspections were completed in December 2018.)</p> <p>2) Complete all high priority corrective actions identified during these inspections by May 31, 2019.</p> | <p>1) qualified workforce availability; and</p> <p>2) materials availability for repairs.</p> <p>Access limitations:</p> <p>1) inclement weather (snow, rain, wind, washed out roads, etc.);</p> <p>2) property owner objections; and</p> <p>3) Access rights (environmental permits, government owned land access permits).</p> <p>Scheduling<br/>Transmission segments out of service (customer impact and clearance process) may limit timeliness of repairs.</p> | Current program scope not included |

**TABLE 9: 2019 WILDFIRE SAFETY PLAN TARGETS  
(CONTINUED)**

| <b>Section</b> | <b>Title</b>                                   | <b>2019 Target</b>   | <b>Execution Risk</b>  | <b>Included in FPP</b>             |
|----------------|--|--|--|------------------------------------|
| 4.2.3          | WSIP, Substation                               | There are approximately 200 sites located in HFTD areas. These sites include substations, switching stations, and hydro power houses.<br><br>1) Complete-WSIP enhanced inspections for all sites located in HFTD areas by May 1, 2019.<br><br>2) Complete all high priority corrective actions created from deficiencies identified resulting from these enhanced inspections by May 31, 2019. | 1) qualified workforce availability; and<br><br>2) materials availability for repairs.<br><br>Access limitations due to inclement weather (snow, rain, wind, washed out roads, etc.)<br><br>Scheduling equipment out of service (customer impact and clearance process) may limit timeliness of repairs. | Current program scope not included |
| <b>4.3</b>     | <b>System Hardening</b>                        |  |  |                                    |
| 4.3.1          | Pole Material                                  | Complete 45 miles by June 30, 2019, and 150 miles in total by December 31, 2019, of overhead circuit rebuild or replacement in HFTD areas.   | Securing necessary materials.  | Current program scope not included |
| 4.3.2          | Pole Loading and Replacement                   |  | Securing adequate number of available trained personnel.   |                                    |
| 4.3.3          | Conductor                                      |  |  |                                    |
| 4.3.4          | System Protection                              | Continue to automate the remaining approximately 285 non-SCADA enabled reclosers in Tier 2 and 3 HFTD areas  | Securing necessary materials.<br><br>Securing adequate number of available trained personnel.  | Current program scope not included |
| 4.3.5          | Equipment                                      | Replace approximately 625 non-exempt fuses/cutouts in HFTD areas.  | Securing necessary materials.<br><br>Securing adequate number of available trained personnel.  | Current program scope not included |
| <b>4.4</b>     | <b>Vegetation Management</b>                   |  |  |                                    |
| 4.4.1          | Vegetation Trimming and Overhanging Tree Limbs | Perform enhanced vegetation management work on approximately 1,000 circuit miles in HFTD areas by June 30, 2019, with approximately 2,450 circuit miles in total by December 31, 2019  | Securing adequate available trained tree worker personnel. Working with IBEW and Mutual Assistance, PG&E brought on the maximum available resources in 2018.<br><br>Variability of number of trees that need to be trimmed/removed per mile.   | Current program scope not included |

**TABLE 9: 2019 WILDFIRE SAFETY PLAN TARGETS  
(CONTINUED)**

| <b>Section</b> | <b>Title</b>   | <b>2019 Target</b>   | <b>Execution Risk</b>  | <b>Included in FPP</b>             |
|----------------|--|--|--|------------------------------------|
| 4.4.2          | HFTD VM Inspection Strategy                                  | 1) Complete 100% of CEMA Patrols by the end of 2019.<br><br>2) Removing or working all dead or dying trees ("CEMA trees") identified by October 1 of the current year, excluding trees affected have third party delays, including environmental permitting requirements, owner refusals, and agency approval or review. |  | Current program scope not included |
| 4.4.3          | Inspecting Trees with a Potential Strike Path to Power Lines | Assess more than 100 million trees with potential strike path on all CEMA Patrols.   |  | Current program scope not included |
| 4.4.4          | At-risk Species Management                                   | Perform enhanced vegetation management work on approximately 1,000 circuit miles in HFTD areas by June 30, 2019, with approximately 2,450 circuit miles in total by December 31, 2019.   | Securing adequate available trained tree trimming personnel.<br><br>Number of trees that need to be trimmed/removed per mile given variability in find rate related to high risk tree species. | Current program scope not included |
| 4.4.5          | Challenges Associated with EVM                               |  |  |                                    |
| 4.4.6          | Community and Environmental Impacts                          |  |  |                                    |
| <b>4.5</b>     | <b>Situational Awareness</b>                                 |  |  |                                    |
| 4.5.1          | Meteorological Operations and Advanced Situational Awareness | Deploy enhanced PG&E Operational Mesoscale Modeling System (POMMS) if accuracy can be improved.  |  | Yes                                |
| 4.5.2          | Fire Spread Model – Phase 1                                  | Deploy operational fire spread modeling, driven by POMMS weather model, to allow improved understanding of catastrophic fire risk.   |  | No                                 |
| 4.5.3          | Weather Stations   | Install 200 weather stations by June 30, 2019, and 400 weather stations in total by September 1, 2019 in HFTD areas.   | Material delivery.   | No                                 |
| 4.5.4          | Camera Deployment Strategy                                   | Operationalize and install 30 HD cameras by June 30, 2019, and 71 HD cameras in total by December 31, 2019, in HFTD Areas.   | Installation and delivery of all items depends on single source vendor.  | No                                 |

**TABLE 9: 2019 WILDFIRE SAFETY PLAN TARGETS  
(CONTINUED)**

| <b>Section</b> | <b>Title</b>  | <b>2019 Target</b>  | <b>Execution Risk</b>   | <b>Included in FPP</b>             |
|----------------|---|---|---|------------------------------------|
| 4.5.5          | Satellite Fire Detection Systems  | Develop, deploy and maintain an automated tool to detect and track new fires as they occur, issue alerts about new fires, as well as simulate the potential spread of new and existing fires.   | Operational viability of new Geostationary Operational Environmental Satellite (GOES) West satellite.                                       | Current program scope not included |
| 4.5.6          | Storm Outage Prediction Model (SOPP)                                    | Automate analog storm matching and prediction functions in the SOPP model.  |   | Current program scope not included |
| 4.5.7          | Wildfire Safety Operations Center (WSOC)                                | Increase situational awareness by integrating technology and processes intended to reduce wildfire risk into the WSOC to enable PG&E's collaboration with external and internal stakeholders and respond more effectively to wildfires.   |   | No                                 |
| <b>4.6</b>     | <b>Public Safety Power Shutoff Program</b>                              |   |   |                                    |
| 4.6.1          | PSPS Decision Factors   | N/A – in place  |   |                                    |
| 4.6.2          | Strategies to Enhance PSPS Efficiency While Reducing Associated Impacts | N/A – see 4.6.2.1 through 4.6.2.3   |   |                                    |
| 4.6.2.1        | Impact Mitigation throughout System Sectionalizing                      | Identify and prioritize mitigation of PSPS impacts to customers where de-energizing the line will not result in a realized wildfire risk reduction.   | Securing adequate number of available trained personnel.  | No                                 |
| 4.6.2.2        | Resilience Zones  | Operationalize one resilience zone by June 1, 2019. Evaluate performance and effectiveness through post-event review. Incorporate learnings into future Resilience Zone establishment.<br><br>Continue efforts to develop Resilience Zones in other towns in alignment with system hardening and targeted sectionalizing efforts. | Reliability of back-up generation equipment.<br><br>Delays or trained personnel limitations associated with construction crew availability. | No                                 |
| 4.6.2.3        | Customer Services and Programs  | Continuously refine and further develop strategies that minimize the extent of disruption of grid power.  |   | No                                 |

**TABLE 9: 2019 WILDFIRE SAFETY PLAN TARGETS  
(CONTINUED)**

| <b>Section</b> | <b>Title</b>   | <b>2019 Target</b>  | <b>Execution Risk</b>  | <b>Included in FPP</b> |
|----------------|--|---|--|------------------------|
| 4.6.3          | PSPS Notification Strategies   | Attempt to send notifications (Integrated Voice Recording (IVR)), text and email) to all potentially impacted customers, and attempt to notify First Responders, Healthcare Facilities, Telecommunication Providers and Water Utilities in advance of residential notifications prior to a PSPS event. Attempt to provide additional notifications to life support/medical baseline customers prior to a PSPS event if general notifications (IVR, text, email) are unsuccessful. | Weather patterns, and timing of weather. Amount of time available to send advance notifications to customers. Size of impacted population.   | No                     |
| 4.6.3.1        | Customer and Community Outreach  | Refine customer notification tools and educate customer and communities to prepare for PSPS execution. Complete customer and stakeholder communications prior to potential PSPS initiation.   | Changes in regulatory requirements or expectations as a result of R.18-12-005.   | No                     |
| 4.6.3.2        | Mitigating PSPS Impacts on First Responders, Healthcare Facilities, Telecommunication, and Water Utilities | Proactively identify PSPS impacts to critical customers and services that support emergency response and preparedness. Ensure sufficient mapping, planning and communication protocols are developed prior to potential PSPS initiation.  | Other related or non-related concurrent natural disasters in de-energized areas.   | No                     |
| 4.6.4          | Re-energization Strategy   | Re-energize only when confirmed safe to do so and only after protection zones are patrolled and clear of defects or damage. Prioritize as directed to maximize public safety and minimize outage impacts and duration.  | Large scale events.<br>Extensive facility damage during PSPS event.<br>Trained and qualified workforce limitations.<br>Access to difficult terrain. Aerial patrol limitations.<br>Concurrent natural disasters in de-energized areas impacting workforce availability. | No                     |

**TABLE 9: 2019 WILDFIRE SAFETY PLAN TARGETS  
(CONTINUED)**

| Section    | Title  | 2019 Target  | Execution Risk                                       | Included in FPP |
|------------|--|--|--|-----------------|
| <b>4.7</b> | <b>Alternative Technologies</b>  |  |  |                 |
| 4.7.1      | Rapid Earth Fault Current Limiter Pilot Project                        | Implement R&D Rapid Earth Fault Current Limiter pilot project. | Untried technology application within PG&E's system. | No              |
| 4.7.2      | Enhanced Wires Down Detection Project                                  | Complete Phase 1 of Enhanced Wires Down Detection Project      | Untried technology application within PG&E's system. | No              |
| <b>4.8</b> | <b>Post Incident Recovery, Restoration, and Remediation Activities</b> |  |  |                 |
| 4.8.1      | Post-Incident Recovery   | N/A  | Not Applicable                                       | Yes             |
| 4.8.2      | Restoration  | N/A  | Not Applicable                                       | Partially       |
| 4.8.3      | Remediation  | N/A  | Not Applicable                                       | Partially       |

These programs, targets, and PG&E's efforts to plan for and manage these execution risks are discussed in further detail within the individual sections for each program below. The preventative strategies and programs included in this Plan are delineated into the categories identified in the ALJ Ruling<sup>36</sup> in Table 10 below:

**TABLE 10: IDENTIFICATION OF ALJ RULING CATEGORIES**

| PG&E's 2019 Wildfire Safety Plan                                   | ALJ Ruling Categories             |
|--|-----------------------------------|
| 4.1 Operational Practices  | Operational Practices             |
| 4.2 Overview of Inspection Programs                                | Inspection and Maintenance        |
| 4.3 System Hardening Overview                                      | Design and Construction           |
| 4.4 Enhanced Vegetation Management                                 | Inspection and Maintenance        |
| 4.5 Enhanced Situational Awareness and Known Local Conditions      | Situational/Conditional Awareness |
| 4.6 Public Safety Power Shut-off Program                           | Operational Practices             |
| 4.7 Alternative Technologies                                       | Design and Construction           |
| 4.8 Post Incident Recovery, Restoration and Remediation Activities | Response and Recovery             |

<sup>36</sup> See ALJ Ruling, Attachment A at p. 3. **SER-381**

## 4.1. Operational Practices

**TABLE 11: OPERATIONAL PRACTICES KEY**

| <b>Section</b> | <b>Title</b>  | <b>Program Mapping</b>  | <b>New<sup>37</sup> or Existing, Including Cost Recovery Vehicle</b> | <b>Regulation Compliance</b>    | <b>Associated Drivers</b> |
|----------------|---|-------------------------|--|---------------------------------|---------------------------|
| 4.1.1          | Recloser Operations   | Reclose Blocking        | New - FRMMA <sup>38</sup> & WPMA <sup>39</sup>                       | Exceeds regulatory requirements | D1 – D6, D8 <sup>40</sup> |
| 4.1.2          | Personnel Work Procedures in Conditions of Elevated Fire Risk |                         | New – N/A  | Exceeds regulatory requirements | Other                     |
| 4.1.3          | Safety and Infrastructure Protection Teams (SIPT)             | Fire Fighting Resources | New – CEMA <sup>41</sup>   | Exceeds regulatory requirements | Not Applicable            |
| 4.1.4          | Aviation Resources  | Aviation Resources      | New – Expense: CEMA; Capital FRMMA / WPMA                            | Exceeds regulatory requirements | Not Applicable            |

PG&E has developed a number of enhanced operational practices that are designed to further reduce the risk of wildfires during elevated fire danger conditions.

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- 37** For each of these charts in this Plan, “New” indicates the program costs have not been subject to Commission review and is followed by the applicable memorandum account.
- 38** FRMMA represents the memorandum account required by SB 901, PUC Section 8386(j) to track costs of wildfire mitigation measures not otherwise included in revenue requirements, which PG&E submitted for CPUC approval on November 1, 2018. PG&E will track costs incurred before the Plan has been approved in the FRMMA.
- 39** WPMA represents the memorandum account required by SB 901, PUC Section 8386(e) to track costs incurred to implement the approved Plan. PG&E shall submit the Electric Preliminary Statement for approval by Tier 1 Advice Letter. PG&E will track activity costs incurred pursuant to the approved Plan, but not included in PG&E’s approved revenue requirements, in the WPMA.
- 40** D8 may vary depending on if the cause is known.
- 41** CEMA represents PG&E’s pending Application No. 18-03-015 for approval to increase rates related to the Catastrophic Event Memorandum Account, which includes forecast costs for drought-related work for 2019.

These enhancements relate to: (1) recloser operations; (2) work procedures in conditions of elevated fire risk; (3) PG&E's safety and infrastructure teams; and (4) aviation resources. Each of these Enhanced Operational Practices is explained in greater detail below.<sup>42</sup>

#### **4.1.1. Recloser Operations**

PG&E Standard TD-1464B-001 establishes precautions for wildfire risks associated with recloser protection functions. Reclosing devices such as circuit breakers and reclosers are used to quickly and safely de-energize lines when a problem is detected and re-energize lines when the problem is cleared. Using analyses provided by fire officials and PG&E's Meteorology team regarding each year's fire season timeline and exposure, PG&E makes an informed decision on when to disable reclosers during elevated fire conditions in Tier 2 and Tier 3 HFTD areas. In some instances, this practice may reduce potential ignitions from sustained faults.

Following the 2017 wildfires, for the 2018 wildfire season, PG&E implemented the Wildfire Reclosing Disable program to disable automated reclosing during elevated wildfire conditions in Tier 2 and Tier 3 HFTD areas for distribution and transmission lines 115 kV and below.

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<sup>42</sup> As explained in detail in Section 4.5, PG&E utilizes state-of-the-art weather forecast model data and information from the National Weather Service (NWS), European Center for Medium Range Forecasting, and from PG&E's proprietary in-house mesoscale forecast model, POMMS, to generate short and medium-term fire danger forecasts across the service area, which inform PG&E's operational procedures.



As part of the reclosing disable process, a fire danger rating per FIA is determined on a daily basis during fire season by PG&E's Meteorology team using PG&E's wildfire danger rating system.<sup>43</sup> If the protection zone<sup>44</sup> of a reclosing device feeds an area with a fire index rating that is very high or extreme for a given day, the automated functionality of the reclosing device, which tests back into the line and potentially re-energizes the line if tested safe, is disabled. When the fire index rating is below very high, a threshold is selected, based upon historical-risk analysis, automated reclosing is enabled. For devices with SCADA, the reclosing functionality is adjusted daily as necessary based on the fire index rating for specific areas.

The Wildfire Reclosing Disable program includes nearly 2,800 reclosing devices on PG&E's distribution lines in Tier 2 and Tier 3 of the HFTD areas. At the end of 2018, approximately 2,100 of the distribution devices in the program were SCADA-enabled and capable of being disabled remotely. If a protection zone does not have SCADA capability in Tier 2 or Tier 3 HFTD areas, PG&E manually disables automated reclosing on these devices based on fire risk conditions as analyzed by PG&E's Meteorology team. These locations are identified and scheduled for disablement prior to the projected beginning of elevated wildfire risk exposure. These manual devices will remain disabled for reclosing until wildfire risk is significantly lower during the year.

PG&E is working to SCADA-enable all line reclosers in Tier 2 and Tier 3 HFTD areas by June 1, 2019. In addition, devices located on nearly 400 transmission lines with voltages of 115 kV and below were included in the 2018 program. Over 95 percent of the transmission line devices are SCADA-enabled and can be disabled remotely, and similar to the distribution devices that are not SCADA-enabled, PG&E will manually disable the remaining devices for the duration of wildfire season.

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<sup>43</sup> See Section 4.5.1 below for additional information on how PG&E's Meteorology team derives fire danger ratings.

<sup>44</sup> A protection zone is the area or set of electric facilities for which a particular device can isolate electrical service.

Weather and field access challenges could impede the technical work required to SCADA-enable the line reclosers. Distribution line technicians cannot perform the testing and commissioning in the rain, and ground saturated with water impede the installation of new controllers and radio equipment. PG&E has tried to take these issues into consideration in developing the schedule, but unanticipated weather could delay PG&E's implementation timeline.

PG&E will continue to evaluate program effectiveness and build out of SCADA capabilities on the remaining distribution and transmission devices. These efforts will allow for effective and timely remote disabling and re-enabling of reclosing informed by fire danger.

#### **4.1.2. Personnel Work Procedures in Conditions of Elevated Fire Risk**

PG&E has established heightened procedures for field personnel to follow when working, traveling, or operating in hazardous fire areas. The procedures supplement instructions contained in fire regulation and use permits issued by the USFS, CAL FIRE, and other agencies that have jurisdictional authority. Procedures that apply during elevated fire risk conditions include:

- A requirement that each crew be equipped with well-maintained firefighting equipment;
- Additional restrictions on burning, welding, blasting, smoking and driving off cleared roads;
- A requirement to patrol lines prior to re-energization after a line trips due to a problem on the line; and
- A requirement to patrol lines prior to replacing blown fuses.

PG&E will train field employees annually on the heightened procedures and provide situational awareness in daily briefings.

### 4.1.3. Safety and Infrastructure Protection Teams

The Safety and Infrastructure Protection team or “SIPT” will be in place by June 1, 2019, to support PG&E’s work in high fire-risk areas. The SIPT will have experience and training in fire prevention and suppression, and emergency medical response. The purpose of the SIPT is to assist WSOC<sup>45</sup> decision making, protect PG&E assets, and assist with emergency response as approved and directed by the AHJ (e.g., CAL FIRE). During emergency situations, the SIPT will work in cooperation with the local fire AHJs and adhere to the Incident Command Structure (ICS).

If a fire starts at a PG&E work site, the SIPT’s first priority is to dial 911. Once first responders are on site, the SIPT will follow the ICS established by the responding agency. In 2018, PG&E contracted SIPT services. In 2019, PG&E will be establishing an internal SIPT organization consisting of a minimum of 25 trucks with the capability of type 6 wildland engines and crews, and 3 additional trucks for extra coverage and sick/vacation relief. The organization will be built in collaboration with the IBEW and external firefighter organizations. The primary execution risk in building the new internal SIPT organization is obtaining support from external stakeholders in a short time frame so as not to impact PG&E’s ability to hire and onboard employees for 2019 fire season.

During high fire-hazard conditions, the WSOC may request SIPT to:

- Stage resources in specific locations;
- Standby when PG&E field personnel engage in activities such as switching, hot work, or emergency repairs, as conditions dictate
- Deploy to confirm potential fire threats and provide data;
- Identify potential hazards in Extreme-Plus areas, as needed, during potential PSPS events; and

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<sup>45</sup> More detailed information concerning the WSOC is provided in Section 4.5.7 below.

- Provide emergency response to fires and medical emergencies, provide basic life support at PG&E work sites, and secure the scene for the protection of PG&E's assets and/or workforce until the AHJ arrives.

Emergency work includes, but is not limited to, the following:

- Asset protection at PG&E facilities and other critical infrastructures;
- Vegetation Management support during wildfire recovery to suppress vegetation-related ignitions;
- Mop up of fire-damaged PG&E assets as permitted by the AHJ; and
- Accompany and support PG&E crews in fire restoration efforts during and after wildfires.

#### **4.1.4. Aviation Resources**

PG&E acquired four heavy-lift helicopters in 2018 to enhance wildfire safety and support utility infrastructure projects. The helicopters guarantee heavy-lift resource availability for PG&E facility restoration and construction support during fire season. The helicopters will be fitted with fire suppression equipment and available to aid in suppression efforts under the direction of the agency leading the response (e.g., CAL FIRE), if needed and requested.

## 4.2. Wildfire Safety Inspection Programs

TABLE 12: WILDFIRE SAFETY INSPECTION PROGRAMS KEY

| Section | Title              | Program Mapping | New or Existing, Including Cost Recovery Vehicle | Regulation Compliance           | Associated Drivers               |
|---------|--------------------|-----------------|--|---------------------------------|----------------------------------|
| 4.2.1   | WSIP, Distribution | N/A             | New - FRMMA/ WPMA                                | Exceeds regulatory requirements | D1, D2, D3, D4, D8 <sup>46</sup> |
| 4.2.2   | WSIP, Transmission | N/A             | New - TO <sup>47</sup>                           | Exceeds regulatory requirements | D1, D2, D3, D4, D8               |
| 4.2.3   | WSIP, Substation   | N/A             | New - FRMMA/ WPMA & TO                           | Exceeds regulatory requirements | D1, D3, D4, D8                   |

PG&E routinely inspects its distribution, transmission, and substation assets using a variety of methods, including observations when performing work in the area, periodic patrols and inspections, and targeted condition-based and/or diagnostic testing and monitoring. These routine inspections of PG&E's overhead and underground electric systems, including its electric substation inspections, are designed in accordance with GOs 95, 165, and 174 requirements. Basic elements include travel to the asset, ground and air visual observation, detection and assessment of abnormal conditions, notification, prioritization and execution of repairs, and documentation needed for safe and reliable operation.

<sup>46</sup> D8 may vary depending on if the cause is known.

<sup>47</sup> TO represents PG&E's Federal Energy Regulatory Commission-jurisdictional Transmission Owner (TO) rate case.

In addition to these routine inspections, and as part of PG&E's risk-based wildfire safety efforts, PG&E is conducting accelerated inspections of overhead electric facilities in HFTD areas to facilitate a proactive approach to repairing or replacing components that are at-risk of initiating fires. These accelerated inspections and repairs constitute the Wildfire Safety Inspection Program or WSIP.<sup>48</sup>

To develop the WSIP, PG&E used a risk-based approach including conducting a Failure Modes and Effects Analysis or "FMEA." The focus of the FMEA was to identify single points of failure of electric system components that could lead to fire ignition and then aid in the development of inspection methods that can most appropriately identify the condition of these respective components.

Each line of business performed the FMEA using the following methodology:

1. Establishing a cross-functional team of external professionals and PG&E SMEs with experience in field operations, engineering, and asset management.
2. Reviewing a list of asset components to identify potential single point failure ignition risks for categorization in an asset group.
3. Where available, developing an independent list of failure modes and frequencies from multiple internal and external sources using published reports, internal reports and SME interviews.
4. Mapping components to the final list of failure modes and relevant inspection methods.
5. In some cases, the failure mode does not have a readily observable issue that can be identified via a visual inspection. In those cases, non-destructive and destructive examination methods may be considered.

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<sup>48</sup> The WSIP was developed and implemented after the 2020 GRC forecast was submitted to the CPUC.

The new and enhanced risk-based approach identifies WSIP work by assessing the risk associated with each asset and by explicitly considering equipment modes of failure. PG&E expects that these efforts will continue to evolve as information is gathered and more is learned. PG&E will use the results of the current inspections to continue to shape a risk informed re-inspection program and schedule for subsequent inspections.

After PG&E identifies areas for WSIP inspections, inspectors are sent out to perform inspections. When an inspector identifies a maintenance condition, the inspector either immediately corrects the condition and records the correction or records the uncorrected deficiency, which is reviewed by a centralized review team. The review team initiates a corrective notification or “tag” in SAP Work Management in order to initiate, assign, plan, execute, and close out repairs to facilities. These tags are assigned a priority based on the risk posed by the condition and urgency of repairs (i.e., Priority A, B, E, or F). The review team process is designed to result in consistent application of the priority classification.

Finally, Geographic Information System (GIS) data concerning the location of electrical facilities is important to many of PG&E’s wildfire risk reduction programs, including, but not limited to, inspection efforts and the WSIP, in order to understand the increased wildfire risk for each facility. Mapping and GIS data is also a critical component of PG&E’s PSPS program discussed in Section 4.6. PG&E and other IOUs are working collaboratively with state agencies including CAL FIRE, the California Office of Emergency Services (Cal OES), and the CPUC to align utility capabilities and agency data and mapping needs. Recognizing the importance of GIS, PG&E is working to improve its GIS data, including designating a single point of contact at PG&E for all wildfire-related GIS needs.

Significant barriers to WSIP implementation include the availability of a qualified workforce that will enable PG&E to perform the targeted volume of work in the desired timeframe as well as potential limitations on available materials necessary to perform corrective actions within necessary timeframes. PG&E faces market challenges in the implementation of the WSIP program with an intense demand for skilled labor and constraints on the availability of equipment and materials. PG&E recognizes these challenges and is aggressively leveraging its partnering and sourcing strategies to engage the qualified personnel, equipment, and materials necessary to enable the implementation of this plan.

In addition, implementation of the WSIP can be further delayed by weather conditions, delays caused by property owners and governmental agencies, and environmental permitting issues. PG&E's land management and customer care teams work closely with PG&E's inspection teams to overcome these challenges as quickly as possible. PG&E tries to reach out to landowners in advance to obtain consent, but it may still cause some delays. Access limitations due to property owners or permitting constraints are execution risks where the state or federal governments can play a role in supporting PG&E's wildfire prevention efforts.

In the subsections below, PG&E describes its WSIP inspections for different types of facilities (e.g., distribution lines, transmission lines, and substations). For comparison, PG&E also describes the routine inspections for these same facilities in Attachment C.

#### **4.2.1. WSIP Distribution**

As discussed above, in late 2018, PG&E conducted a FMEA to better understand any additional inspections and analysis that should be implemented to reduce wildfire risk in addition to the inspections required by GO 165. The FMEA identified failure mechanisms that could be inspected for and repaired as part of an accelerated inspection program focused on fire ignition risk.



In 2019, using this risk-based approach, PG&E is inspecting its distribution structures in HFTD areas, as well as nearby structures in close proximity and high risk of fire spread into the adjacent HFTD area (approximately 685,000 poles across approximately 25,200 miles). These inspections will focus on the failure mechanisms for transformers, conductors, connectors, insulators, fuses, switches, structures, third-party attachments, and splices that can initiate fires. To facilitate these inspections, PG&E will enhance its existing routine inspection program to include wildfire specific elements for 185,000 poles that are due for their five-year inspection cycle in 2019. Additionally, PG&E will conduct wildfire-specific inspections of the remaining 500,000 poles to identify and correct any components that pose a wildfire risk. Furthermore, PG&E will utilize drone inspections for difficult-to-access locations to identify abnormal asset conditions.

PG&E will complete all inspections of distribution poles in HFTD areas by May 31, 2019, and all high priority corrective actions identified by those inspections by June 30, 2019. The timing of any potential corrective actions will depend on the nature of the work; however, consistent with the corrective action prioritization process, PG&E will take immediate action to address any issues identified as an imminent risk to public or workforce safety.

This schedule could be impacted by availability of qualified linemen, access limitations, and outage scheduling limitations. PG&E recognizes these challenges and is aggressively leveraging its partnering and sourcing strategies to engage the qualified personnel necessary to enable the implementation of this plan. PG&E is also coordinating the work in advance to manage access and outage issues.

#### **4.2.2. WSIP Transmission**

In late 2018, PG&E conducted a FMEA of transmission assets to better understand any additional inspections and analysis that should be implemented to reduce wildfire risk in addition to the inspections required by GOs 95 and 165. The FMEA identified failure mechanisms that could be inspected as part of an accelerated

inspection program. Beginning in December 2018, and continuing into 2019, using this risk-based approach, PG&E is performing inspections of transmission structures (poles and towers) in HFTD areas, as well as nearby structures outside the HFTD in close proximity and with high risk of fire spread into adjacent HFTD areas (approximately 5,700 miles of transmission line with more than 50,000 structures). These enhanced inspections focus on the failure mechanisms identified from the FMEA based on PG&E and industry information that identified components with a fire ignition risk.

The visual inspections include ground inspection of transmission poles and climbing inspection of transmission towers. The scope of these inspections is beyond the routine detailed ground inspections of a population of the towers and poles.

Drone inspections will be conducted on every structure in the WSIP scope, subject to any FAA restrictions that cannot be resolved,<sup>49</sup> and will complement and further enhance the ground and climbing visual inspections. This new technology was fully developed and deployed in a one-month time frame and incorporated the results of the FMEA. Helicopters will be used for additional aerial inspections for collecting infrared data to determine hot spots on conductors, insulators, and connectors requiring repair.

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<sup>49</sup> Drone flight is governed by the Federal Aviation Administration (FAA), Part 107 of the Federal Aviation Regulations (14 CFR Part 107). Among other things, these regulations establish operational restrictions on drone flights which may affect PG&E's ability to conduct drone inspections on every transmission structure in the WSIP scope. PG&E will work with the FAA to resolve operational restrictions to the extent possible.

These infra-red inspections will be performed at strategic times of the year when respective lines are highly loaded. PG&E is also investigating the application of a new helicopter-based inspection technology being employed in Australia. This autonomous image capture employs the use of helicopters and asset-based high definition camera programming to capture images via helicopter mounted cameras at pre-programmed locations. This allows an accurate and rapid capture of images over detailed ground and climbing inspections and drone technology, with equivalent image results as drones. Other elements of the enhanced program include the following:

- The FMEA modes were incorporated into newly developed electronic inspection forms;
- New and enhanced job aids were developed to support the inspection forms;
- The condition prioritization matrix used to assess the priority and timing of corrective actions was adjusted to factor in the results of the FMEA and job aids; and
- Prioritization of the notifications was transferred from the field lineman and supervisor to a multi-discipline review team to establish a focused review process of the potential findings related to the asset condition.

The previously described inspection plan was implemented beginning in December 2018, with nearly 20 percent of the ground and climbing inspections completed by year end. As of the end of January 2019 approximately 56 percent of the ground and climbing inspections have been completed.

In a typical year, PG&E performs as many as 76,000 routine detailed inspections of transmission system poles and towers throughout its service territory.

PG&E will complete all inspections of transmission poles and towers in HFTD areas by May 1, 2019, and high priority corrective actions identified by those inspections by May 31, 2019. The timing of any potential corrective actions will depend on the nature of the work; however, consistent with the corrective action prioritization process,

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PG&E will take immediate action to address any issues identified as an imminent risk to public or employee safety.

This schedule could be affected by availability of qualified linemen, access limitations, and outage scheduling limitations. PG&E recognizes these challenges and is aggressively leveraging its partnering and sourcing strategies to engage the qualified personnel necessary to enable the implementation of this plan. PG&E is also coordinating the work in advance to manage access and outage issues.

#### **4.2.3. WSIP Substation**

In early 2019, PG&E began performing a FMEA of substation assets to better understand any additional inspections and analysis that should be implemented to reduce wildfire risk in addition to the inspections already performed in accordance with GO 174. The FMEA identified substation assets and their components and linked potential failure causes that could be inspected for as part of an accelerated inspection program. For 2019, using this risk-based approach, PG&E is inspecting approximately 200 sites located in HFTD areas, including substations, switching stations, and hydro power houses, with a specific focus on the failure mechanisms for transformers, conductors, connectors, insulators, switches, poles, and other equipment that can initiate fires. Additional risk focused work includes further evaluation of the risk of catastrophic equipment failure and fire initiation. Incremental efforts will focus on creating a defensible space around substation facilities consistent with CAL FIRE and CPUC recommended guidelines and evaluating and implementing animal abatement methods to prevent animal contact.

PG&E will complete all enhanced inspections of the approximately 200 sites in HFTD areas by May 1, 2019, and any high priority corrective actions identified by those inspections by May 31, 2019. The timing of any potential corrective actions will depend on the nature of the work; however, consistent with the corrective action prioritization process, PG&E will take immediate action to address any issues identified as an imminent risk to public or workforce safety.

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This schedule could be affected by availability of qualified linemen, access limitations, and outage scheduling limitations. PG&E recognizes these challenges and is aggressively leveraging its partnering and sourcing strategies to engage the qualified personnel necessary to enable the implementation of this plan. PG&E is also coordinating the work in advance to manage access and outage issues.

### 4.3. System Hardening Overview

**TABLE 13: SYSTEM HARDENING OVERVIEW KEY**

| <b>Section</b> | <b>Title</b>                 | <b>Program Mapping</b>                        | <b>New or Existing, Including Recovery Vehicle</b> | <b>Regulation Compliance</b>    | <b>Associated Drivers</b>  |
|----------------|------------------------------|---|--|---------------------------------|----------------------------|
| 4.3.2          | Pole Material                | Wildfire System Hardening                     | New - FRMMA/WPMA                                   | Exceeds regulatory requirements | All                        |
| 4.3.3          | Pole Loading and Replacement |   |  |                                 |                            |
| 4.3.4          | Conductor                    |   |  |                                 |                            |
| 4.3.5          | System Protection            | Automation and Protection (SCADA)             | New – FRMMA/WPMA                                   | Not Applicable                  |                            |
| 4.3.6          | Equipment                    | Non-exempt Surge Arrester Replacement Program | New - FRMMA / WPMA & TO (Light Duty Steel Poles)   | Exceeds regulatory requirements | D3, D4 - Equipment failure |

The System Hardening Program is an ongoing, long-term (more than five years) capital investment program to rebuild portions of PG&E's overhead electric distribution system. Under this program, PG&E is upgrading approximately 7,100 circuit miles in Tier 2 and Tier 3 HFTD areas. This program consists of ignition-risk-modeled and field-identified work that will result in a full rebuild of the overhead distribution system to increase its overall strength, replace aging assets, and reduce risk from external factors, such as vegetation contacting lines.

PG&E initiated the program in 2018, after the 2017 RAMP Report, in which PG&E proposed the targeted replacement of bare overhead conductor with covered conductor in high-risk wildfire areas.<sup>50</sup> As a result of supplemental risk assessment after the 2017 RAMP Report was submitted, the System Hardening Program has been broadened to include targeted pole replacement, replacement of non-exempt equipment, and potential targeted undergrounding. This work will occur based on PG&E's risk modelling of the distribution circuits.

The precise scope of hardening work will be site-specific and dependent on local conditions. Not every measure is effective or necessary at every location. As PG&E implements the system hardening program, we will continue to evaluate the design considering local conditions optimizing the appropriate solution for that location. For example, where appropriate, PG&E may perform some undergrounding of select overhead lines. In addition, bird/animal guards will also be installed where necessary to help prevent electrical contacts and outages. PG&E will continue to update the risk model with asset failure information, utility best practices, and new technology, which will result in a more refined asset investment plan.

PG&E is still in the process of refining its standards for the overhead hardening work, but currently expects that work will include the following components, depending on the specific locations (further details on some of the key components are provided in subsequent sections):

- Primary Conductor Replacement – replacement of bare overhead primary (high voltage) conductor and associated framing with conductor insulated with abrasion-resistant polyethylene coatings (sometimes referred to as covered conductor or tree wire). Installing covered conductor will help to further reduce the likelihood of faults due to line-to-tree contacts, tree-branch contacts, and faults caused by animals. Installing covered conductor will also prevent situations where bare wires

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<sup>50</sup> PG&E 2017 RAMP Report, pp. 11-21. SER-397

slap together in high winds which can generate sparks of molten metal capable of igniting vegetation.

- Secondary Conductor Replacement – replacement of lower voltage (480V and below) conductor with insulated conductor. Installing covered conductor on secondary lines will have similar benefits to installing it on primary lines.
- Replacement of Non-Exempt Equipment – replacement of existing primary line equipment such as fuses/cutouts, and switches with equipment that has been certified by CAL FIRE as low fire risk and therefore exempt from vegetation clearance. This replacement work will eliminate overhead line equipment and devices that may generate exposed electrical arcs, sparks or hot material during their operation.
- Replacement of Overhead Distribution Line Transformers – upgrading transformers to FR3 Fluid as part of PG&E’s current equipment standards (PG&E implemented the transition from mineral oil to FR3 in 2014). The newer transformers are filled with fire resistant FR3 insulating fluid, a natural ester derived from renewable vegetable oils— providing improved fire safety, transformer life, increased load capability, and environmental benefits. In addition, new transformers are manufactured to achieve higher Department of Energy electrical efficiency standards.
- Installation of Non-Wood Poles to Increase Pole Strength and Improve Fire Resistance – pole failures present safety hazards and may result in downed conductor faults, which may generate sparks. Furthermore, high-strength poles are needed to support the additional weight of insulated wire. PG&E is also evaluating various new non-wood poles that may provide increased fire resistance and pole strength.
- Upgrades to Electrical Protective Devices and Systems Through Equipment Replacements and Device Programming – this work also involves updating electric control equipment and wiring that may more

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effectively identify downed conductor type outages and rapidly operate protective relays.

In 2018, PG&E initiated construction pilots to evaluate various overhead conductor and equipment configurations, including potential undergrounding, as well as to develop best practices. PG&E completed initial tree wire projects on approximately 17 circuit miles of distribution line in 2018. In 2019, PG&E will begin the System Hardening Program with a target of completing 150 circuit miles by the end of the year. In 2020-2022, PG&E forecasts completing work on 600 circuit miles per year during this period, and PG&E intends to complete work on 7,100 circuit miles.

PG&E expects completing the 7,100 circuit miles to take approximately 10 years due to the constraints on available qualified personnel and materials. The most significant potential barriers to completing the planned system hardening are limitations on the supply of necessary materials needed for the volume of work, particularly covered conductor, and the supply of adequately-trained personnel necessary to perform the work in the field. With regard to materials, and covered conductor, PG&E's Supply Chain department is working to satisfy a planned demand of reconductoring 150 circuit miles this year. The supply plan is in place with no anticipated delays or shortages of conductor. We are in the process of identifying external crews to fill the resource needs to construct 150 miles of wildfire hardening work for 2019. The construction of these projects is the highest priority, and the crews will be engaged as the projects are ready for construction.

In this section of its Plan, PG&E describes its system hardening strategies including: (1) pole material; (2) pole loading and replacement requirements; (3) conductors; (4) system protection; and (5) equipment.



### **4.3.1. Pole Material**

The current PG&E distribution standard for overhead construction is open conductor and wood poles. This system is designed and constructed in accordance with GO 95, which suggests utilizing safety factors and clearances. The overhead system is engineered and built with electrical, structural, and mechanical considerations in mind. The poles are designed by PG&E experts utilizing an industry standard tool (O'Calc) to calculate structural integrity (vertical and transverse loading). The conductors are sized appropriately for the electrical loading as well as mechanical integrity in sag and tension. All variables utilized in PG&E's engineering analysis are consistent with or exceed those set by the CPUC.

In the recent years, California has experienced unprecedented wind and drought conditions that have led PG&E to consider installing structures for new construction or reconstruction in high wind areas that are more robust than required by design standards and parameters.

After the 2017 wildfires, PG&E further evaluated the type of materials used on its distribution system. Wood poles are natural products and inherently have some degree of variability. Poles are classified by their materials, which defines their minimum strength capability. However, as poles age, depending on their environment, they may not all react in the same manner. This lack of consistency in pole aging led PG&E to consider and start evaluating non-wood or engineered products to determine if they could have better performance consistency and/or increase fire resiliency.

PG&E initiated evaluation of various types of non-wood poles in 2018 and continues to work with other utilities and industry experts to determine the best product(s) for use in our overhead system. Materials that are being considered include composite, concrete, and steel. Factors being considered include strength capabilities, fire resiliency, ease of installation, and subsequent repairs/replacements as part of the asset lifecycle process. Initial findings indicate that for both strength and fire resiliency capabilities, a pole designed with a composite type material may have advantages over

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a pole designed with materials such as steel, wood, or concrete. With respect to concrete poles, there are significant installation challenges, particularly in rural areas, due to their weight. Further, regarding steel poles, benchmarking with other utilities showed challenges related to the accompanying work.

Thus, PG&E is proposing to transition from wood to composite poles for distribution system hardening and fire reduction as the poles become available. These poles will be introduced for use to improve fire resistance and resiliency of poles in the high fire-threat areas. Although not fireproof, composite poles are fire resistant, flame-resistant and self-extinguishing once the heat source is removed. Testing by manufacturers indicates that composite poles retain both strength and integrity to temperatures of at least 1,200°F. Additional testing modeled after the CAL FIRE “fast moving brush fire test” produced limited surface charring and no structural damage. During this test, the poles withstood temperatures in excess of 2,000°F for 12 minutes without igniting. The added resiliency of non-wood poles should help to further reduce the possibility of downed conductor faults and the potential for fire ignition.

#### **4.3.2. Pole Loading and Replacement**

Under the Plan, PG&E is modifying pole loading model parameters and variables in light of historical data of various environmental factors (e.g., wind speed). Sizing for new and replacement distribution pole installations will consider historical peak wind speeds in areas where they exceed the GO 95-assumed wind speeds. In order to maximize the likelihood that poles are strong enough to withstand higher wind speeds, a pole loading calculation must be performed both at the loading conditions assumed by GO 95 conditions (load case) and at a summer peak wind load case (e.g., peak wind for location, 60-degree minimum temperature, no ice).

PG&E will adjust the required setting depth of a pole based on the current Allowable Overturn Moment table and comparing the values to the ultimate potential ground-line moment for a given pole design. This more stringent requirement supersedes previous PG&E requirements for minimum setting depth and will result in a greater amount of available pole strength (strength capacity divided by safety factor) at the equivalent soil overturn strength.

With regard to light duty transmission poles, as part of the System Hardening Program, PG&E will require the use of steel transmission poles in all new construction or refurbishment work except where it would cause an electrical hazard. Increased application of steel transmission poles will reduce the risk of pole failure during a wildfire event, resulting in shorter restoration delays. Installing steel for design purposes can also help increase the force the asset can withstand, which can help avoid wire downs from structure failures or external forces.

#### **4.3.3. Conductor**

The replacement of bare conductors with larger covered conductors (also known as tree wire) will further reduce the likelihood of faults due to trees, branches, animals, or birds contacting lines, and will further reduce situations where bare wires slap together in high winds, which can generate sparks or molten metal. The HFTD areas within PG&E's territory has a high volume of vegetation with large overhangs and ground fuels where the covered conductor is an effective risk mitigation. Thus, installation of covered conductors can be effective in providing fire reduction and reliability improvements from contact outages in heavily treed areas and further reduces the potential for failures related to smaller conductors. PG&E is replacing bare overhead distribution primary (high voltage) and secondary conductor with covered conductor in HFTD areas.

There is a limited risk that covered conductor may introduce higher impedance faults compared to bare conductor depending on how the conductor lands on the ground. However, an additional benefit of covered conductor is that it may be less likely to cause an ignition on the ground, as there is a lower potential for arc points along the line due to fewer contact points with the ground. Further, PG&E is currently piloting more sensitive protection for high impedance faults that may mitigate the additional high impedance risk.

The primary covered conductor coating PG&E is using is abrasion resistant crosslinked polyethylene. Crosslinked thermoset polyethylene covering is a new standard, which is an improvement over PG&E's prior standard, non-crosslinked thermoplastic polyethylene covering, because of its:

- Superior temperature resistance due to its higher softening point and cable used for a higher covering rating of 90°C versus 75°C;
- Increased chemical resistance at ambient and elevated temperatures; and
- Higher tensile strength, rigidity and hardness.

#### **4.3.4. System Protection**

There are approximately 2,800 reclosing devices on PG&E lines serving Tier 2 and Tier 3 HFTD areas. The devices that have reclosing functionality include substation circuit breakers, line reclosers, and TripSavers. PG&E's automation program will continue to automate these devices to enable selective reclosing functionality and support future protection schemes that may vary during high-risk fire periods. At the end of 2018, approximately 2,100 of the 2,800 reclosing devices serving Tier 2 and Tier 3 HFTD areas were SCADA-enabled. During 2019, PG&E will continue to automate the remaining non-SCADA line reclosers serving the Tier 2 and Tier 3 HFTD areas. In 2020, PG&E will automate the remaining non-SCADA TripSavers serving the Tier 2 and Tier 3 HFTD areas.

Existing distribution line reclosers that are operated for fire safety (e.g., as part of the PSPS or Recloser Disabling programs) were originally installed to optimize electric reliability and limit the number of customers exposed to outages, which can also present serious public safety concerns. These reclosers are often not optimally positioned to isolate the newly designated HFTD areas.

In an effort to further sectionalize distribution circuits and limit the duration as well as the number of customers impacted by PSPS events, PG&E is proposing to install additional line reclosers at Tier 2 and Tier 3 HFTD boundaries. In addition to the automation programs, PG&E is also evaluating different protection schemes and equipment that may further reduce the likelihood of a fire ignition when a system failure occurs. The program includes:

- Fusesavers™: Fusesavers™ enable localized isolation of all phases of a line when a problem is detected on only one or two phases. For example, if a single wire down on a three-phase line is detected, Fusesavers™ can automatically and locally de-energize all three phases. Installing these devices can also create additional points where lines can be segmented to support other wildfire risk reduction programs such as PSPS.
- High Impedance Fault Detection: PG&E is piloting and proposes to deploy newer protection capabilities of reclosers and circuit breakers that increase the ability to detect high impedance faults.
- Increased Protection Sensitivity: PG&E is evaluating the use of more sensitive protection settings and use of fast curves set on reclosers and circuit breakers. The proposed settings and use of fast curves would reduce the amount of energy experienced when a system failure occurs. This may lower the potential for a fire ignition to occur. The proposed protection schemes, however, could reduce the ability to coordinate with protective devices downstream and will lead to an increase in the size and duration of outages.

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#### **4.3.5. Equipment**

PG&E proposes to eliminate non-exempt overhead line equipment in HFTD areas. Non-exempt equipment is equipment that may generate electrical arcs, sparks, or hot material during its normal operation. Due to these characteristics, PRC Section 4292 requires all utilities to maintain at least a 10-foot clearance of vegetation from the outer circumference of any pole that has non-exempt equipment. However, CAL FIRE tests and certifies some equipment as exempt from the vegetation clearance requirements of PRC Section 4292 where it is determined to be safer to use.

With increasing wildfire risks caused by changing climate conditions, PG&E has created a program to replace non-exempt fuses and cutouts to further reduce fire risk. The replacement of non-exempt equipment with exempt equipment will further reduce fire risk since this equipment is considered “non-expulsion” and does not generate arcs/sparks during normal operation.

Starting in 2019, PG&E forecasts replacing approximately 625 fuses/cutouts, and other non-exempt equipment identified on the pole each year for seven years in Tier 2 and Tier 3 HFTD areas.

#### 4.4. Enhanced Vegetation Management

TABLE 14: ENHANCED VEGETATION MANAGEMENT KEY

| Section | Title  | Program Mapping                | New or Existing, Including Recovery Vehicle | Regulation Compliance   | Associated Drivers       |
|---------|--|--------------------------------|---|---|--------------------------|
| 4.4.1   | Vegetation Trimming and Overhanging Tree Limbs               | Enhanced Vegetation Management | New – FHPMA <sup>51</sup>                   | Exceeds Regulatory Requirements, but generally supports PRC 4293 and GO 95, Rule 35 | D1, D6, D8 <sup>52</sup> |
| 4.4.2   | HFTD VM Inspection Strategy                                  | Enhanced Vegetation Management | New –FHPMA                                  | Exceeds Regulatory Requirements, but generally supports PRC 4293 and GO 95, Rule 35 | D1, D6, D8               |
| 4.4.3   | Inspecting Trees with a Potential Strike Path to Power Lines |                                |   |   |                          |
| 4.4.4   | At-risk Species Management                                   |                                |   |   |                          |
| 4.4.5   | Challenges Associated with EVM                               | Enhanced Vegetation Management | New –FHPMA                                  | Exceeds Regulatory Requirements, but generally supports PRC 4293 and GO 95, Rule 35 | N/A                      |
| 4.4.6   | Community and Environmental Impacts                          |                                |   |   |                          |

After the 2017 wildfires, PG&E aggressively expanded vegetation management around its assets. In addition, in January 2018, the CPUC adopted the HFTD Map, which drastically increased the amount of PG&E’s service area classified as “high fire-threat area.” Previously, the fire threat maps published in 2012 had included only a

<sup>51</sup> FHPMA represents the Fire Hazard Prevention Memorandum Account established pursuant to decisions issued in R. 08-11-005, in which the CPUC authorized electric IOUs to record costs incurred to comply with D.17-12-024.

<sup>52</sup> D8 is dependent upon if the cause is known.

small portion of PG&E's service area (about 15%) around Santa Barbara as "high fire-threat area."<sup>53</sup>

Thus, after the 2018 wildfires, PG&E further expanded vegetation management around its assets. This work is critical because PG&E operates in a heavily forested<sup>54</sup> and vegetated area, particularly compared to the other large California IOUs. To address this risk, in 2018, PG&E began performing EVM work in HFTD areas. Much more aggressive than, and in addition to, ongoing VM programs, the EVM work includes the following activities:

- Overhang Clearing: removing overhanging branches and limbs directly above but outside the radial clearance zone around electric power lines required by regulatory requirements to further reduce the possibility of wildfire ignitions and/or downed wires due to vegetation-conductor contact.
- Targeted Tree Species Work: identifying and trimming or removing specific tree species within the fall or strike zone of power lines that have exhibited a higher pattern of failing; as well as addressing any dead or dying trees.
- Fuel Reduction: performing "ground to conductor" vegetative fuel reduction work to create fire defense zones under and adjacent to power lines in select locations to enhance defensible space for communities, properties, and buildings.

PG&E's baseline and long-standing VM programs are multi-pronged with various elements all designed to:

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<sup>53</sup> See D.12-01-032 (January 18, 2012), at 262–63, available at: [http://docs.cpuc.ca.gov/PublishedDocs/WORD\\_PDF/FINAL\\_DECISION/157605.PDF](http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/157605.PDF) (showing Reax Map for Northern California and FRAP Map for Santa Barbara County).

<sup>54</sup> For representations of the density of forests in PG&E's service territory within California. See pp. 3, 6, 7, 17 and more of [https://www.fs.fed.us/pnw/pubs/pnw\\_qtr913.pdf](https://www.fs.fed.us/pnw/pubs/pnw_qtr913.pdf).



- Proactively conduct tree work that reduces the likelihood of tree failure that could impact electric facilities and pose a public safety risk;
- Comply with State and Federal regulations regarding minimum vegetation clearance for the Electric Transmission & Distribution overhead systems;
- Perform annual inspections (and in HFTD areas, more-frequent-than-annual inspections) so that required vegetation clearances are maintained and hazardous trees are abated;
- Maintain vegetation-to-line clearances, and radial clearances around poles, pursuant to PRC Sections 4292 and 4293, GO 95 Rule 35 and FAC-003-4 (Federal Electric Transmission standard), this includes creating the recommended radial clearance of 12 feet or more at the time of trim for lines in HFTD areas for year-round compliance and risk reduction; and
- Validate that work was done as planned and intended through Quality Control (QC) and Quality Assurance (QA) reviews; including maintaining auditable records of all work done.

While these programs, generally focused on supporting compliance with minimum clearance requirements, are long-standing, they are not static or uninformed by the evolving wildfire risk. The 2019 distribution routine schedule (when each circuit will be inspected and subsequently worked) has been substantially re-aligned based on a relative risk ranking of all circuits to position the highest risk circuits to be worked before the peak of the traditional wildfire season.

In the remainder of this Section, PG&E describes: (1) vegetation trimming and overhang work in HFTD areas; (2) its HFTD area inspection strategy, including inspection qualifications and QA; (3) inspecting trees with a potential strike path to power lines; (4) at-risk tree species management; (5) challenges associated with EVM;

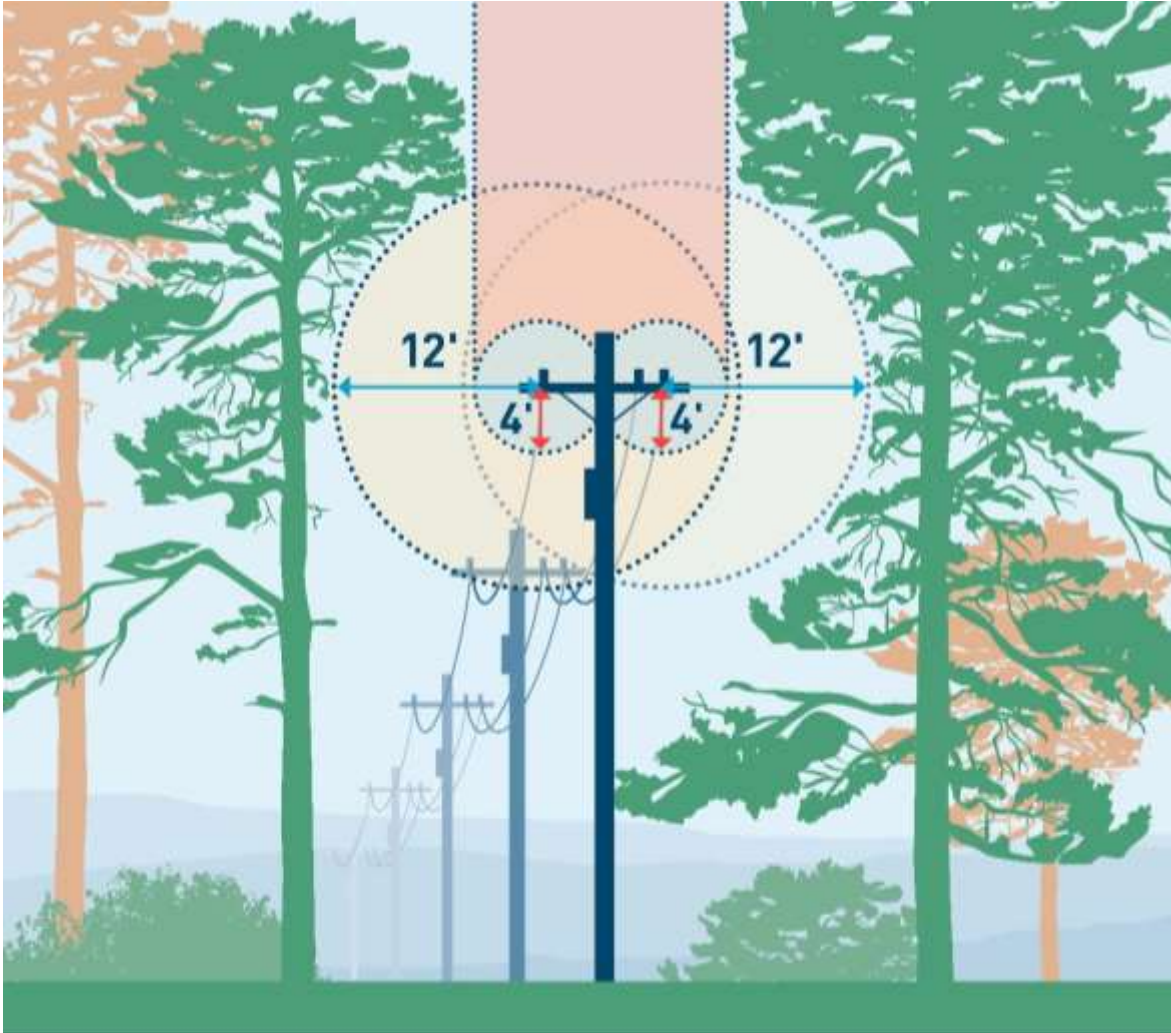
and (6) minimizing community and environmental impacts of vegetation management work.

#### **4.4.1. Vegetation Trimming and Overhanging Tree Limbs**

In 2018, PG&E began performing expanded vegetation management work in HFTDs that included the clearing of overhanging vegetation from directly above and around distribution lines. This work is focused on further limiting the possibility of wildfire ignitions and/or downed wires due to vegetation-conductor contact.

For 2019 and beyond, the planned scope of this program is to remove all branches that directly overhang the radial clearance zone around electric distribution lines required by CPUC regulations and California statutes. GO 95, Rule 35 and PRC Section 4293 generally require a four-foot radial clearance between vegetation and electric distribution wires in HTFD areas. By removing overhanging tree limbs, there are fewer tree limbs that could fall or grow into the mandated clearance zones. See Figure 7 below for an illustration of the routine and EVM work.

FIGURE 7: ENHANCED VEGETATION MANAGEMENT



PG&E plans to clear about 2,450 circuit miles of overhangs in HFTD areas in 2019, with an increasing pace in future years. The scale, scope and complexity of this work necessitate that, to address the approximately 25,200 distribution circuit miles in HFTD areas, this program is established as a multi-year effort. As a comparison, over the last five years the maximum number of trees removed by PG&E's drought and tree mortality CEMA program was approximately 225,000 trees. As shown in Table 15 below, in 2019, the EVM program is anticipating trimming or removing approximately 305,000 trees while the CEMA program will still be in effect and is forecast to work approximately 70,000 trees. All of the work reflected in Table 15 is in addition to the more than one million trees PG&E's routine Vegetation Management programs have historically worked or removed annually.

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**TABLE 15: ANNUAL “ADDITIONAL” TREES WORKED**

| <b>Trees Worked</b> | <b>2014</b> | <b>2015</b> | <b>2016</b> | <b>2017</b> | <b>2018 (est.)</b> | <b>2019 Forecast</b> |
|---------------------|-------------|-------------|-------------|-------------|--------------------|----------------------|
| CEMA                | 8,042       | 18,557      | 225,168     | 156,344     | 70,000             | 70,000               |
| EVM + AWRR          | –           | –           | –           | –           | 90,000             | 305,000              |
| Total               | 8,042       | 18,557      | 225,168     | 156,344     | 160,000            | 375,000              |

On the electric transmission system, all circuits are planned to be inspected and worked in 2019 to remove overhangs. This scope of overhang removal work will be incorporated into the annual inspection and tree work cycle for all transmission circuits. Due to the historically broader clearances maintained between transmission lines and vegetation and a practice of preventing direct overhangs of transmission lines, the number of trees anticipated to require work to align the electric transmission system with this scope will be significantly less than for the distribution system.

In addition to the initial overhang clearing work, discussed above, PG&E will need to perform annual, follow-up vegetation maintenance work on the sections of line cleared of overhangs, to keep all branches above powerline height from growing back into an overhanging position. As the number of miles initially cleared of overhangs increases, the annual maintenance and upkeep effort will also grow.

In 2018, PG&E also began a Fuel Reduction Program to reduce vegetative fuels under, and up to 15 feet on either side of, power lines located within HFTD areas. This work to create “fire defense zones” can:

- Create safe space between power lines and trees and brush that can act as fuel for wildfires;
- Help slow the spread of fires and improve access for first responders in the event of a wildfire; and
- Enhance defensible space around homes, businesses and properties, improving safety.

For 2019 and beyond, PG&E will work with property owners to perform this work in HFTD areas where property owners support the work and wildfire risk reduction

benefits can be created. The miles of line to be cleared through this effort will depend on various factors including vegetation density, topography, access and environmental considerations. In addition, until PG&E patrols lines, the number of trees that require trimming or removal is not known, impacting the rate at which lines can be cleared.

#### **4.4.2. High Fire-Threat District VM Inspection Strategy**

During PG&E's VM inspections, pre-inspectors identify vegetation that may grow too close to conductors or that may fail and contact conductors. PG&E's line clearance qualified tree work contractors then trim or remove trees as necessary to create adequate clearance and abate any hazard trees. More than 3,500 employees and contractors, including experts educated, trained, and certified in arboriculture and forestry, perform annual activities on behalf of PG&E's VM Department, involving approximately:

- 70,000 square miles of service area
- 81,000 miles of overhead distribution power lines
- 18,000 miles of overhead transmission power lines
- An estimated 100 million or more trees with the potential to grow or fall into overhead power lines
- Trimming or removing more than one million trees per year

In HFTD areas, inspections (e.g., drought and tree mortality inspections) are performed at least a second time each year and as often as four times per year in some locations (in Wildland Urban interface areas). From 2014-2017, over 400,000 dead and dying trees were abated by PG&E's drought and tree mortality program (i.e., CEMA), and PG&E removed approximately 70,000 more trees in 2018 and forecasts to remove an additional 70,000 trees in 2019.

Importantly, all trees identified for work by pre-inspectors are evaluated for the urgency of the required tree work. If tree failure is judged to be possibly imminent a

crew will be dispatched the same day. Trees can also be flagged for immediate follow-up work, while trees that require work but showing no near-term risk factors are scheduled following the standard process. The standard cycle time for trees exhibiting no near-term risk factors would be expected to be in the 60-90-day range after the completion of the pre-inspection activity. This means that some trees identified for work in one period (year, quarter, etc.) will not be worked until the next period. While these trees are sometimes referred to as “carryover” trees they do not represent a higher risk or a risk left un-addressed, they are simply trees where the normal work cycle resulted in them falling on the other side of a particular date. If any of these trees had been identified as immediate risk, they would have been addressed immediately.

Pre-inspection is the first step in the vegetation management process. Correctly assessing tree characteristics including species, health, growth rate, and likely failure patterns is critical to prescribing the appropriate vegetation management actions to reduce the wildfire risk from tree-line interactions. The pre-inspectors performing this work are qualified and trained, with many holding industry certifications. PG&E contracts with a limited number of well-established, large-scale vendors to perform this work. Throughout their training and once deployed pre-inspectors follow an established set of procedures for consistency in how the work is performed and findings/prescriptions recorded.

Beyond the training that the contractors provide to their pre-inspector staffs, PG&E also provides two full days per year of training to all pre-inspectors to align on safety practices, and relevant procedures. In addition, as explained below, PG&E’s VM QA effort is designed to validate that the entire process, starting with pre-inspectors, is creating the desired outcomes and identifies areas where expectations are not being met such that further action, including retraining or re-assigning staff, can be taken. PG&E’s vegetation management program incorporates changing environmental conditions, lessons learned, and new regulations. In the wake of the 2015 Butte Fire, PG&E adapted several practices to address risks identified in that incident. Among

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other measures, PG&E initiated additional validation of contractor training programs for pre-inspectors.

For pre-inspectors to move up in their career path, they are required to acquire professional certifications from outside authorities. Specifically, the International Society of Arboriculture grants Certified Arborist and Utility Specialist certifications that directly support and validate proficiency in this kind of work. Maintaining these certifications also requires completing continuing education requirements. In addition, arborists can get certified as a Registered Professional Forester from the California State Board of Forestry and Fire Prevention. A pre-inspector cannot attain the 3<sup>rd</sup> or 4<sup>th</sup> step of the career progression without validating their proficiency through acquiring one (or more) of these certifications.

The final step in the vegetation management process is the QA Program to assess the quality work performed in the field. This is accomplished through the physical inspection of a sample of the PG&E system. The objective of the sampling exercise is to estimate the work quality rate for all trees in the geographic area covered by an audit. PG&E uses the results of the QA Program to improve future performance. PG&E has reviewed its QA Program and procedures with third-party experts who have validated that the sampling design in use is appropriate for PG&E's objectives, stating "The use of a cluster sampling design is entirely appropriate for PG&E's objectives...."<sup>55</sup>

#### **4.4.3. Inspecting Trees With a Potential Strike Path to Power Lines**

Pursuant to PRC Section 4293 and GO 95, Rule 35, all PG&E vegetation management patrols inspect for hazard trees. A hazard tree is defined as a tree that has been assessed from the ground to pose a potential danger to fall or fail into electrical facilities due to all or a portion of the tree visibly exhibiting poor health or death, disease or decay, structural deficiency, or a compromised root structure. As part

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<sup>55</sup> Dr. Karl Snow of Bates White Economic Consulting, PG&E's QA statistical sampling methodology.



of VM inspections PG&E pre-inspectors review all trees that are tall enough and have a feasible path to strike overhead lines. If the pre-inspector identifies a hazard tree that shows indications that it is at risk to fall into the power line it will be marked for treatment, including trimming or removal, and can be prioritized to be worked immediately or in the near-term if conditions warrant.

These physical, ground inspections are being augmented by the capture of LiDAR and related, remote sensing, data that can be thoroughly and consistently analyzed to take measurements, reveal patterns and identify risks in ways that an inspector on the ground cannot do precisely.

In 2018, PG&E captured LiDAR for most of Tier 3, and in 2019 and beyond, plans to capture and analyze data for all Tier 2 and Tier 3 HFTD areas annually. In fact, these annual data captures will, in addition to LiDAR, gather “hyperspectral” and imagery data that can, in combination with machine learning and powerful software solutions, allow for the potential identification of tree species and flag indications of trees that may be dead or dying.<sup>56</sup> Over time, the planned annual collection of this LiDAR, hyperspectral and other data will allow PG&E to assess (a) tree growth patterns; (b) the effectiveness of PG&E’s trimming or removal activities; and (c) change detection including third-party activities (like new tree plantings) that may impact powerlines. Overall, the expanded deployment of remote sensing data will support increasing knowledge of the risks facing our powerlines and support the further maturation of our risk management models and approaches.

#### **4.4.4. At-Risk Species Management**

PG&E’s VM team conducts site visits of vegetation-caused wires-down events as part of its standard tree-caused service interruption investigation process. The data obtained from site visits supports efforts to reduce future vegetation-caused wires-down

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<sup>56</sup> To underscore the unprecedented scope of this work, PG&E’s 2019 data capture of approximately 25,200 distribution circuit miles is believed to be the world’s largest ever hyperspectral data survey.



events. The data collected from these investigations also helps identify failure patterns by tree species that are associated with wires-down events.

In reviewing five years of vegetation-related fire ignitions in Tier 2 and Tier 3 HFTD areas, including the wire-down data, PG&E identified that 10 species of trees<sup>57</sup> were responsible for nearly 75 percent of those incidents. Therefore, as part of the EVM Program, PG&E will focus on removing or trimming trees from these 10 species that are tall enough to strike distribution lines, have a clear path to strike, and exhibit other potential risk factors such as leaning toward a line or are weighting toward a line. This At-Risk Species Management work (also known as Targeted Tree Species Work) focuses on trees that are more than 4 feet from power lines (i.e., not within the scope of the overhang clearing program discussed in Section 4.4.1 above) and will include some taller trees located dozens of feet from power lines.<sup>58</sup> PG&E plans to begin this work in HFTD areas this year. PG&E's operational planning and forecast assume that this work will be performed in conjunction with the overhang clearing work outlined in Section 4.4.1, to maximize efficiencies and limit intrusion upon third-party property.

#### **4.4.5. Challenges Associated With Enhanced Vegetation Management**

Completing the expanded and accelerated EVM program faces substantial challenges that PG&E is proactively addressing in conjunction with several partners. The most significant challenge to the EVM program schedule is the limited availability of qualified work force. The most significant challenge to the EVM program schedule is the limited qualified tree workers, which limits the maximum pace of work. PG&E's experience casting a wide net and offering substantial financial incentives to hire additional tree personnel into its service territory in the fall of 2018 identified a maximum

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<sup>57</sup> Black Oak, Gray Pine, Tanoak, Coast Live Oak, Live Oak, Ponderosa Pine, Eucalyptus/Blue Gum, Douglas Fir, Valley Oak and Monterey Pine.

<sup>58</sup> Note that this program primarily encompasses living trees. PG&E removes the majority of dead and dying trees that have the potential to contact its lines as part of our Drought and Tree Mortality Response Program. SER-416

volume of approximately 3,000 qualified tree workers that could be acquired to perform vegetation management activities. Identifying personnel that were qualified to safely perform this hazardous work was challenging.

The challenge of securing increased numbers of qualified personnel is further illustrated by PG&E's recent experience seeking assistance under the utility Mutual Assistance Agreement (MAA) following the Camp Fire. The first step in the Mutual Assistance process is to seek support from within California. However, limited personnel were available due to concurrent emergency response needs in the state. PG&E subsequently expanded its Mutual Assistance request to the Western Regional Mutual Assistance Group, followed by the Mid-West and Texas Regional Mutual Assistance Groups, and eventually all seven regional Mutual Assistance groups in the country. At each expansion of PG&E's request for Mutual Assistance, PG&E was unable to secure the requested number of personnel. PG&E's efforts to locate sufficient VM contractors after the Camp Fire was escalated to the status of a National Response Event, a process established for utility CEOs nationwide following Superstorm Sandy. In the end, the request for VM Mutual Assistance request was made to more than 200 utilities in an effort to locate 700 tree workers and 150 VM pre-inspectors to aid in recovery efforts. From that request, PG&E was only able to secure 223 tree workers and 40 pre-inspectors from across the country. And these workers only stayed for a limited period of time under the Mutual Assistance Agreements.

The limited pool of qualified personnel, whether through hiring or mutual aid, is exacerbated by the particular challenges of performing vegetation management work in Northern California. Not only is logging and tree felling one of the most hazardous industries in the nation, but the Northern California forests pose a very different challenge than most parts of the country. Safely removing a 200+ foot tall tree in proximity of a high voltage distribution line cannot just be performed by anyone with a chain saw. As an illustration, see the below image for the scope of a tree adjacent to powerlines that was removed during the 2018 EVM Program:

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The pace of PG&E's multi-year EVM program is based on maintaining the maximum-available resource complement of approximately 3,000 qualified tree workers that could be acquired to perform vegetation management activities, as described

**FIGURE 8: PG&E VEGETATION MANAGEMENT**



above. Therefore, the pace of PG&E's multi-year EVM program is based on maintaining that maximum-available resource complement of approximately 3,000 tree workers. Leveraging that volume of workers, after accounting for the number needed to complete the annual routine vegetation management, results in an approximately 8-year EVM program from 2019 to approximately 2026. Any acceleration of that schedule would require identifying, with high confidence, a sustainable increase in the volume of trained, safe, qualified, line clearance certified tree workers. In order to address

this constraint, PG&E is exploring approaches to increase the population of qualified tree workers that could perform this work. For example, PG&E is partnering with our Tree Work Vendors and the IBEW to consider implementing a tree worker apprenticeship program that is intended to create a sustainable pipeline of new qualified personnel.

In exploring how to expand the available pool of qualified personnel to complete this critically important work, PG&E has also solicited help from various sources. On a nationwide level, the Bureau of Labor Statistics' most recent data on the entire "Tree

Trimmers and Pruners” occupation (from May 2017)<sup>59</sup> shows national employment of 41,140 (with 5,830 of those in California). However, only a small subset of these “Tree Trimmer and Pruners” possess the necessary skills and qualifications to work adjacent to powerlines (i.e., being “line clearance certified”).

To understand what level of workforce expansion might be possible to PG&E, in 2016 PG&E contracted with a vegetation management consultant to perform a market analysis of what might be possible in terms of bringing additional qualified personnel into California.<sup>60</sup> This consultant identified 46 total tree companies in the United States who were not already working for PG&E. Fifteen of those companies declined to participate in the analysis at all (most were small and regionally based) and 22 only participated in an initial survey stating that they had no interest in working in California due to (among other reasons): liability risk, regulatory/business environmental and insurance requirements, or lack of available qualified personnel to expand. The remaining nine vendors expressed, in aggregate, an ability to mobilize possibly a few hundred qualified personnel to California and generally expressed an interest in only emergency/short-term work, not a willingness to commit long-term to developing a workforce in California (or moving their existing workforce). In sum, while there are, of course, more tree trimmers and pruners throughout the United States, no successful solution has been identified for enticing utility-qualified workers to California for a long-term engagement, based on third-party and PG&E research and analysis.

Another potential challenge to timely completion of the planned vegetation management activities are the numerous legal challenges and requirements that must be navigated, including the need for land rights, local permit requirements, environmental requirements, and other state or federal requirements. These issues may involve concerned landowners and communities, local governments, state

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<sup>59</sup> See Bureau of Labor Statistics website, *available at*: <https://www.bls.gov/oes/2017/may/oes373013.htm>, *last accessed* February 3, 2019.

<sup>60</sup> Resource and Market Assessment Report, Utility Line Clearance Contractors.

agencies, or federal agencies, and can cause significant delays in performing vegetation management work. PG&E may even be compelled to seek to obtain assistance from law enforcement or court orders to overcome some of these hurdles. For example, landowners objecting to tree work may prevent tree crews from entering their property: Locking gates, blocking access with vehicles and farm equipment, and occasionally to the extent of threatening them with firearms. Landowners may also threaten legal action, arguing that the extent of the planned tree work exceeds PG&E's land rights. In these cases, local law enforcement agencies will not assist PG&E in enforcing our recorded land rights unless and until PG&E obtains a court order.

As the clearances between conductors and vegetation increase, the vegetation work may also extend to properties adjacent to where PG&E historically trimmed vegetation. This could require PG&E to obtain land rights to those adjacent properties, causing further delay.

PG&E also must coordinate with numerous cities, counties, and other local authorities to obtain local encroachment permits or to manage other local requirements, such as heritage tree ordinances. Some state permitting requirements could cause further delay by triggering review under the California Environmental Quality Act (CEQA). For example, PRC Section 30000 imposes requirements on tree removal in coastal zones. Not only is this requirement administered by many local governments through certified local coastal programs, requiring coordination for each area worked, if a permit is needed, the level of CEQA review is determined separately by each permitting authority. Likewise, CAL FIRE forest practice rules also require approvals for the removal and disposal of trees. Vegetation management activities must also comply with endangered species and fish and game restrictions, which may trigger permitting requirements, as well as restrict when, where, or how the work may be performed (e.g., not during nesting season). Work on federal lands also require permits for tree removal, VM work, or land rights that predate federal ownership of the land.

PG&E's land and environmental management and customer care teams work closely with PG&E's vegetation management team to overcome these challenges as quickly as possible. They coordinate and plan the work in order to reach out to landowners, communities, and local governments to address concerns in advance of the proposed vegetation management activities. They also coordinate with local, state, and federal agencies to obtain necessary permits and conditions. PG&E tries to reach mutually agreeable results with concerned parties, but doing so regularly causes delays and sometimes PG&E must seek court orders. It could be helpful if the CPUC or state legislature addressed these constraints. For example, if the legislature extended PRC Section 4295.5 to also authorize utility tree workers to trim or remove trees or clarified the definition of a "conversion" in the forest practice rules to clearly exclude maintenance of a utility right of way, it could significantly improve the ability to execute vegetation management work. Likewise, legislative action could restrict the discretionary terms attached to encroachment permits.

#### **4.4.6. Community and Environmental Impacts**

Vegetation management work in general, and the EVM work in particular, has an impact on the communities and properties where work is identified. PG&E proactively communicates to and partners with land owners, government agencies and community organizations on the work we are planning along powerline corridors. As discussed above in Section 4.4.5, communications may result in delays to address concerns or permit requirements. But through this communication, opportunities also arise for communities or agencies to leverage the work PG&E is doing to support or enhance community specific plans or efforts. In addition, for the past several years PG&E has provided grant funding to community organizations (generally Fire Safe Councils) to support them in performing community wildfire risk mitigation efforts, like fuel break creation or fuel cleanup efforts, that may not be adjacent to PG&E powerlines and therefore outside of the scope of PG&E's vegetation management programs.

The performance of vegetation management work could create environmental impacts, which PG&E is careful to monitor and manage. For example, PG&E VM contractors are trained on Best Management Practices and Avoidance and Minimization Measures to manage erosion, prevent impacts to sensitive environmental resources (e.g., bird nests, sensitive species and habitats) and protect waterways. Similarly, changing the ecosystem of a stand of trees can create new risks, like exposing a previously protected tree to increased sunlight or wind, that the utility arborists performing PG&E's vegetation management work are conscious of and on the lookout for. Trees that exhibit risk factors (like poor taper) that could be a risk after adjacent tree work is performed may be proactively identified for treatment (trimming or removal). Finally, as described above, all HFTD portions of PG&E's powerline corridors are re-inspected at least twice per year, allowing for the ongoing monitoring of any changes or growth patterns that may have been influenced by previous tree work.

#### **4.5. Enhanced Situational Awareness and Known Local Conditions**

**TABLE 16: ENHANCED SITUATIONAL AWARENESS AND KNOWN LOCAL CONDITIONS KEY**

| <b>Section</b> | <b>Section</b>   | <b>Program Mapping</b>              | <b>New or Existing, Including and Recovery Vehicle</b> | <b>Regulation Compliance</b>    | <b>Associated Drivers</b> |
|----------------|--|-------------------------------------|--|---------------------------------|---------------------------|
| 4.5.1          | Meteorological Operations and Advanced Situational Awareness | Advanced Weather Forecasting        | New – FRMMA/WPMA                                       | Exceeds regulatory requirements | All                       |
| 4.5.2          | Fire Spread Modeling   | Satellite Fire Detection System     | New – FRMMA/WPMA                                       | Exceeds regulatory requirements | All                       |
| 4.5.3          | Weather Stations   | Expanded Weather Station Deployment | New – FRMMA/WPMA                                       | Exceeds regulatory requirements | All                       |
| 4.5.4          | Camera Deployment Strategy                                   | Wildfire Cameras                    | New – FRMMA/WPMA                                       | Exceeds regulatory requirements | All                       |



**TABLE 16: ENHANCED SITUATIONAL AWARENESS AND KNOWN LOCAL CONDITIONS KEY (CONTINUED)**

| <b>Section</b> | <b>Section</b>                           | <b>Program Mapping</b>            | <b>New or Existing, Including and Recovery Vehicle</b> | <b>Regulation Compliance</b>    | <b>Associated Drivers</b> |
|----------------|--|-----------------------------------|--|---------------------------------|---------------------------|
| 4.5.5          | Satellite Fire Detection Systems         | Satellite Fire Detection System   | New – FRMMA/WPMA                                       | Exceeds regulatory requirements | All                       |
| 4.5.6          | Storm Outage Prediction Model (SOPP)     | SOPP Model Automation             | New – FRMMA/WPMA                                       | Exceeds regulatory requirements | All                       |
| 4.5.7          | Wildfire Safety Operations Center (WSOC) | Wildfire Safety Operations Center | New – FRMMA/WPMA                                       | Exceeds regulatory requirements | All                       |

PG&E's Enhanced Situational Awareness and Known Local Conditions program was created to actively monitor and/or model potential wildfire occurrences and improve timeliness and response efforts, should an ignition occur. This program plays a key role in PG&E's PSPS program, as well as informing the Wildfire Recloser Disable Program and emergency response efforts. This program includes:

- Installing new weather stations at a density of one station roughly every 20 circuit miles in HFTD areas within PG&E's service area to provide detailed information about temperature, wind speeds and humidity levels. Data from these new stations will provide improved awareness of current fire danger conditions.
- Installing of a network of high-definition cameras that, when complete, will allow PG&E and fire agencies to monitor over 90 percent of PG&E's HFTD areas.
- Working with fire detection algorithm developers at the University of Wisconsin - Madison Space Science and Engineering Center to develop a next generation wildfire detection and alert system that uses satellite imagery to detect wildfires.
- Enhancing PG&E's existing SOPP to incorporate data from new weather stations and new modeling criteria in order to build advanced fire modelling capabilities into PG&E's existing meteorological models.

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These new models will help provide advanced warning when weather changes indicate an increase in fire danger and will help PG&E make decisions about when to initiate operational risk reduction measures such as PSPS and the Wildfire Reclosing Disable Program.

In this section of the Plan, PG&E describes: (1) meteorological operations and advanced situational awareness; (2) fire spread modeling; (3) weather stations; (4) PG&E's camera deployment strategy; (5) PG&E's satellite fire detection system; (6) storm outage prediction modeling; and (7) the Wildfire Safety Operations Center or "WSOC."

#### **4.5.1. Meteorological Operations and Advanced Situational Awareness**

PG&E's Meteorology team continues to develop new techniques for forecasting fire danger as well as new tools to aid in providing real-time situational awareness during high fire danger conditions. PG&E utilizes state-of-the-art weather forecast model data and information from several public and propriety sources (e.g., the NWS, European Center for Medium Range Forecasting, Global Forecasting System) and from PG&E's proprietary in-house mesoscale forecast model, POMMS, to generate short and medium-term fire danger forecasts across the service area.

The POMMS is a high-resolution weather forecasting model that forecasts important fire weather parameters including wind speed, temperature, relative humidity, and precipitation down to 3-km resolution. Outputs from the POMMS model are then used in the National Fire Danger Rating System and the Nelson Dead Fuel Moisture (DFM) model to derive key fire danger indicators such as DFM, Burning Index, Energy Release Component and Ignition Component. These components are then scaled to produce fire danger ratings, the FPI, for operational use. The FPI is derived daily for 91 FIAs covering the HFTD areas within the PG&E service territory.

In late 2017, it became evident a more granular and real-time fire danger rating system would be needed for understanding and awareness of extreme events. PG&E's Meteorology team, with guidance from fire experts from SDG&E, and SJSU's Fire

Weather Research Lab, developed an enhanced version of the FPI to function as a real-time tool leveraging weather station observations. Several benchmarking sessions with SDG&E were conducted during FPI development. PG&E's Meteorology team plans to utilize a newly completed 30-year model reanalysis (climatology) across the entire PG&E territory along with historical fire occurrence to calibrate and scale this enhanced FPI as well as utilize it in forecast mode.

PG&E plans to further test and make any identified improvements to the POMMS modeling system in 2019 and beyond using High Performance Compute capabilities. Improvements including potentially altering the model configuration or increasing the resolution from 3-km to 2-km if model accuracy can be improved.

Each day, the FPI as well as Red Flag Warnings or Fire Weather Watches from the NWS determine fire danger ratings across the PG&E service area. Operational decisions to reduce the fire ignition risk go into effect each day there is a fire danger rating of "Very High," "Extreme," or "Extreme-Plus", a threshold selected, based upon historical-risk analysis. Daily emails are sent to impacted internal organizations including Electric Operations, Customer Care, Community Affairs, Government Relations, and others, which detail fire danger conditions; fire conditions are also discussed in a daily Electric Operations call.

Extended forecasts that cover a three- to seven-day forecast period are also provided daily to identify upcoming periods of heightened fire weather risk for advanced preparation. The updates provide information about offshore wind events, extreme hot and dry conditions, and dry lightning potential. This information, combined with weekly forecasts from the National Interagency Fire Center – Predictive Services for Northern California (ONCC) and Southern California (OSCC), give advanced warning about significant fire danger.

Lightning strikes cause thousands of fires each year across the United States. PG&E's operational Lightning Detection Network monitors cloud to ground lightning strikes in near real-time. Cloud to ground lightning strikes are recorded at ground

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stations across the PG&E service area and are available and displayed in PG&E's geographic information systems. The PG&E Lightning Detection Network also sends email alerts of new lightning strikes to assist with monitoring of real-time events.

#### **4.5.2. Fire Spread Modeling**

PG&E also plans to deploy advanced fire spread modeling technology that produces hourly fire spread risk scores for circuits in HFTD areas. The technology to be deployed was chosen after benchmarking sessions with SDG&E. The system will run hundreds of million fire spread simulations daily for all PG&E overhead lines in and adjacent to HFTD areas. The main purpose of the fire spread modeling is to understand the total risk profile in the PG&E territory as well as the highest risk circuits or zones hour by hour for asset related fires of high consequence. The key piece of data is the probability of there being a fire of high consequence generated from any ignition point along Transmission and Distribution (T&D) lines in HFTD areas. The weather inputs utilized in each fire simulation will come from PG&E's POMMS weather model. Asset-based fire spread risk scores for areas potentially impacted by PSPS and circuits will be used to maintain situational awareness and used as an additional factor in considering de-energization. A methodology will be established to combine the fire spread risk score with existing systems for tracking and scaling the overall fire danger and the potential for ignition, specific to FPI and the SOPP model. The system will also be available to be run in real-time for specific existing fires to understand the predicted spread, which will inform public and employee safety, along with emergency management and response efforts.

#### **4.5.3. Weather Stations**

Data from weather stations installed in PG&E's service area will be used to help forecast and monitor for high fire-risk weather conditions to help inform implementation of additional measures such as PSPS. Data from these weather stations will also be used to validate model forecasts as discussed above.

PG&E operates more than 200 weather stations within its service area to obtain local weather data in real-time and these data are publicly available through the NWS. This data is utilized to assess current fire danger conditions to facilitate operational decision making and support safe operation of facilities. PG&E plans to deploy an additional 400 weather stations by September 1, 2019, doubling the installation pace from 2018.<sup>61</sup> In the 2020 GRC PG&E forecasted installing approximately 1,300 weather stations in total within five years. Ultimately, PG&E may deploy more than or less than 1,300 stations as it continues to study and learn from these efforts, but 1,300 stations installed by 2022 is the best estimate at this time. It would take years to perform research and modeling to determine the optimum density of weather stations that would provide PG&E with clear knowledge of local conditions in its service territory. In the meantime, PG&E exercised judgment, considering knowledge of its service territory and other utility practices such as those of SDG&E, to decide the density of weather stations to install at this time, which will provide PG&E with sufficiently granular knowledge of local conditions to appropriately guide its wildfire risk reduction measures. The data collected from these stations are made publicly available in near-real time to benefit the public, federal, state, and local agencies.

#### **4.5.4. Camera Deployment Strategy**

Wildfire cameras are used by CAL FIRE, Cal OES, and PG&E to identify, confirm, and track wildfires. This allows firefighting agencies to be alerted quickly and to deploy resources directly to the areas where they can have the greatest impact. In 2018, PG&E piloted the installation of nine new cameras in HFTD areas to monitor for fires. In 2019, PG&E plans to install approximately 70 more high-definition cameras to increase PG&E and first responders' situational awareness in HFTD areas in PG&E's service territory. PG&E's goal is to establish roughly 90 percent coverage across these high fire-risk areas by 2022, which may require the installations of approximately

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<sup>61</sup> Since PG&E filed the 2020 GRC, PG&E has accelerated installation plans and doubled the number of weather stations it plans to install in 2019.

600 cameras. The high-definition, pan-tilt-zoom cameras will improve PG&E's overall situational awareness and be a valuable tool for assisting the WSOC, first responders, and fire agencies. The cameras currently planned for installation have near infrared capability and a web interface with time lapse functionality to assist with confirmation of fire reports, and monitoring fire progression and environmental conditions. First responders can control the cameras and use the live feeds to quickly confirm, locate, and respond to fires, and to provide that the right resources go to the right area.

#### **4.5.5. Satellite Fire Detection System**

PG&E's Meteorology team has deployed a beta version of a state-of-the-art satellite-based fire detection and alerting system and will make this system fully operational before the 2019 fire season. This system leverages fire detection data from the GOES-R series of satellites, as well as polar orbiting satellites MODIS and VIIRS. This system also has the capability to incorporate new fire detection data feeds as they become available. PG&E is working directly with fire detection algorithm developers with the Space Science and Engineering Center at the University of Wisconsin-Madison to procure a customized feed of satellite fire detection data with the lowest latency available. A PG&E-developed web application displays fire detections as they become available and a customized algorithm monitors incoming fire detections and produces alerts when a new fire is detected. Fire propagation can be monitored as the data refreshes (GOES-R series satellites provide data across the U.S. every 5 minutes and every 1 minute in local areas). This tool will help PG&E react to new and emerging events quickly and make faster operational decisions. Once the system detects a new fire, PG&E plans to initiate fire spread simulations to understand the potential spread of the fire over the next 6 to 24 hours. The fire spread model will be coupled with PG&E's in-house weather model and fuel moisture models, which are discussed above.

#### **4.5.6. Storm Outage Prediction Model**

Unplanned outages can pose a fire ignition risk when surface fuels are extremely dry. When strong winds and dry conditions are present, the risk of fast spreading and

catastrophic wildfire increases. The SOPP, a storm damage prediction system developed, maintained, and operated by the Meteorology team on behalf of Electric Emergency Management, is the primary tool PG&E uses to reduce operational risk from adverse weather events that create a high volume of unplanned outages.

Functionally, the SOPP model is a collection of tools and techniques that are employed to predict unplanned outage activity. In its current form, the SOPP model relies heavily on an experienced meteorologist forecaster. PG&E will upgrade and automate the SOPP model to allow for less reliance on the forecaster and greater ability to provide more granular and frequent outage forecasts to support wildfire risk reduction. The result will be an objective weather risk dashboard, which can be updated in near real-time.

#### **4.5.7. Wildfire Safety Operations Center**

PG&E's WSOC is a physical facility that serves as the central wildfire-related information hub for PG&E, and monitors, assesses, and directs specific wildfire prevention and response efforts throughout its service area. The WSOC interfaces and collaborates with all lines of business (LOB) and CWSP departments to assist in the deployment of technology, processes and procedures directly related to wildfire prevention, response, and recovery. The WSOC develops the procedures for the WSOC Analyst and Duty Officers to effectively implement or deploy those technologies and resources. The WSOC also coordinates with PG&E's Public Safety Specialist team, which interfaces with CAL FIRE incident commanders and other AHJ incident commanders to oversee the organizational response to wildfire threats and incidents. The WSOC was established in 2018, and its functionality will continue to grow and evolve as situational awareness capabilities expand.

The WSOC monitors for fire ignitions across PG&E's service area in real time, leveraging PG&E weather stations, wildfire camera data, and publicly available weather information, as well as first responder and local and state data. Information also comes into the WSOC from PG&E field personnel, including Public Safety Specialists and field

observers. The WSOC deploys Public Safety Specialists to investigate reported wildfires to gather more incident specific information and report back to the WSOC. Based on incident specific information, the WSOC may create an incident report, which includes wildfire information, PG&E assets threatened or involved, current red flag status, and fire weather information. The WSOC will send the report to a pre-determined distribution list including field staff, control center personnel, executive staff, supporting LOBs and other PG&E emergency responders.

#### 4.6. Public Safety Power Shutoff Program

**TABLE 17: PUBLIC SAFETY POWER SHUTOFF PROGRAM KEY**

| <b>Section</b> | <b>Title</b>  | <b>Mapping</b>              | <b>New or Existing, including cost recovery vehicle</b> | <b>Regulation Compliance</b>    | <b>Associated Drivers</b> |
|----------------|---|-----------------------------|---|---------------------------------|---------------------------|
| 4.6.1          | PSPS Decision Factors   | Public Safety Power Shutoff | New – FRMMA/WPMA  | Exceeds Regulatory Requirements | ALL                       |
| 4.6.2.         | Strategies to Enhance PSPS Efficiency While Reducing Associated Impacts | Public Safety Power Shutoff | New – FRMMA/WPMA  | Exceeds Regulatory Requirements | ALL                       |
| 4.6.2.1        | Impact Mitigation Through System Sectionalizing                         | Granular Sectionalizing     | New – FRMMA/WPMA  | Exceeds Regulatory Requirements | ALL                       |
| 4.6.2.2        | Resilience Zones  | Resilience Zones            | New – FRMMA/WPMA  | Exceeds Regulatory Requirements | ALL                       |
| 4.6.2.3        | Customer Services and Programs  | Public Safety Power Shutoff | New – FRMMA/WPMA  | Exceeds Regulatory Requirements | ALL                       |
| 4.6.3          | PSPS Notification Strategies  | Public Safety Power Shutoff | New – FRMMA/WPMA  | Exceeds Regulatory Requirements | ALL                       |

**TABLE 17: PUBLIC SAFETY POWER SHUTOFF PROGRAM KEY  
(CONTINUED)**

| <b>Section</b> | <b>Title</b>   | <b>Mapping</b>              | <b>New or Existing, including cost recovery vehicle</b> | <b>Regulation Compliance</b>    | <b>Associated Drivers</b> |
|----------------|--|-----------------------------|---|---------------------------------|---------------------------|
| 4.6.3.1        | Customer and Community Outreach  | Public Safety Power Shutoff | New – FRMMA/WPMA  | Exceeds Regulatory Requirements | ALL                       |
| 4.6.3.2        | Mitigating PSPS Impacts on First Responders, Healthcare Facilities, Telecommunication, and Water Utilities |                             |   |                                 |                           |
| 4.6.4          | Re-energization Strategy   |                             |   |                                 |                           |

A Public Safety Power Shutoff or “PSPS” is utilized by PG&E in accordance with Commission Resolution ESRB-8 “to protect public safety.”<sup>62</sup> PG&E has developed and is continuing to refine tools and processes to identify applicable conditions, communicate possible impacts, and execute PSPS events. In developing the PSPS program, PG&E performed extensive benchmarking with SDG&E (the domestic utility with the longest history in pro-actively shutting power off to avoid wildfire events) in a variety of areas, including meteorology, operational processes, emergency response, restoration, communications and customer support.

PG&E modeled its PSPS processes and technologies on SDG&E’s, as PG&E understands them, to learn from their eight years of experience in this area. Particularly, PG&E emulated SDG&E’s methodology for deciding whether to initiate a PSPS event, its PSPS execution decision factors, its early stakeholder communication strategy (including with customers), its method to determine readiness for post-event patrols, and its method to verify the safety of overhead facilities before re-energization. PG&E also leverages a FPI modeled similarly to that of SDG&E, to identify higher-risk lines in correlation with applicable conditions. To further follow with SDG&E’s decision

<sup>62</sup> See Resolution Extending De-Energization Reasonableness Notification, Mitigation and Reporting Requirements in D.12-04-024 to all Electric IOUs.



factors, PG&E is implementing several key enhancements in 2019, including increased density of weather stations, improved base meteorological modeling, and an enhanced FPI. PG&E is also engaging with the same company that developed an advanced fire ignition spread model for SDG&E to develop a fire ignition spread model tailored to PG&E's service area to help focus PSPS on the areas of highest risk.

While employing SDG&E's best practices, PG&E developed the PSPS program to fit the attributes of PG&E's service territory. Specifically, PG&E has adapted SDG&E's method to identify decision factors to apply to the unique conditions of PG&E's service area. For example, PG&E has a higher history of vegetation-caused outages than SDG&E due to the density of vegetation in Northern California and the higher circuit miles of overhead conductor. For this reason, PG&E may de-energize at lower wind speeds than SDG&E.

PG&E is focused on maturing this program to most effectively eliminate potential ignitions during extreme weather conditions. In 2019, lines considered for potential PSPS events will include all distribution and transmission lines at all voltages (500 kV and below) that traverse Tier 2 or Tier 3 HFTD areas. In comparison, lines considered for potential PSPS events in 2018 included all distribution lines and transmissions lines at 70 kV or below that crossed Tier 3 HFTD areas. This expansion of the PSPS Program increases the targeted distribution lines from approximately 7,000 circuit miles to approximately 25,200 circuit miles and the targeted transmission lines from approximately 370 circuit miles to approximately 5,500 circuit miles.

As PG&E expands PSPS to higher voltage lines within HFTD areas, it is developing a risk-based process, or Operability Assessments (OA), to assess the wildfire risk of individual transmission lines and structures. Through these OA, initially applied to transmission lines, PG&E will apply a risk-informed methodology to evaluate the potential risks of the line and impacts from de-energization. This risk-informed methodology will guide PSPS decisions, allowing PG&E to de-energize specific, targeted transmission lines to reduce wildfire risk and avoid indiscriminate

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de-energization of transmission lines. This will facilitate compliance with federal reliability and operational requirements (e.g., North American Electric Reliability Corporation Reliability Standards, California Independent System Operator Corporation Tariff requirements) and limit wide-area grid reliability risk, while still reducing wildfire risk.

On December 13, 2018, the CPUC opened a rulemaking to examine utility use of de-energization, R.18-12-005. The CPUC acknowledged the relationship between that proceeding and the proceeding overseeing the implementation of SB 901 Wildfire Mitigation Plans (R.18-10-007). The CPUC recognized that Resolution ESRB-8 will remain in effect during the pendency of R.18-12-005 and stated that a detailed examination of de-energization will take place outside of the Wildfire Mitigation Plan Proceeding. Should the outcome of the Commission's separate but related de-energization proceeding direct PG&E to make changes to its PSPS Program, future plans will be revised accordingly.

In the remainder of this section, PG&E describes its: (1) PSPS decision factors; (2) strategies to enhance PSPS efficiency while reducing associated impacts; (3) PSPS notification strategy; and (4) re-energization strategy.

#### **4.6.1. PPS Decision Factors**

No singular factor ultimately determines a PPS decision. PG&E carefully reviews a combination of several factors when determining if power must be turned off for safety. These include:

- A Red Flag Warning declared by the NWS;
- Low humidity levels, generally 20 percent and below;
- Forecasted sustained winds generally above 25 miles per hour (mph) and wind gusts in excess of approximately 45 mph, depending on location and site-specific conditions such as temperature, terrain and local climate;

- Computer simulated ignition spread and consequence modeling based on current conditions;<sup>63</sup>
- Condition of dry fuel on the ground and live vegetation (moisture content); and
- On-the-ground, real-time wildfire related information from PG&E's WSOC and field observations from PG&E field crews.

Generally, the first trigger for a potential PSPS event is a forecast of fire danger and high wind conditions by PG&E's Meteorology team. With the enhanced situational awareness from increased weather stations, and advanced modelling, PG&E's Meteorology team predicts conditions specific to local geographic areas. Once PG&E's Meteorology team has issued these forecasts, PG&E activates its Emergency Operations Center (EOC), with a designated Officer in Charge. Under the EOC structure, PG&E Planning and Intelligence, Operations, and other ICS teams continually monitor the latest weather forecasts as well as local conditions in areas forecasted for Extreme-Plus conditions. These teams continuously update the Officer in Charge of the real-time status of the factors listed above. While these conditions continue, the Officer in Charge will evaluate whether to call for a PSPS, based on these inputs. The foregoing describes PG&E's 2018 process, and we are continuing to evaluate our criteria to remove as much subjectivity from the decision-making as practical, but there is no singular algorithm that exists today that yields an objective result.

#### **4.6.2. Strategies to Enhance PSPS Efficiency While Reducing Associated Impacts**

##### **4.6.2.1. Impact Mitigation Through System Sectionalizing**

PG&E will continue upgrading devices with SCADA capability in targeted portions of the HFTD areas to help minimize the impact of PSPS events on customers in low-risk areas adjacent to the HFTD areas. These upgrades will include adding or replacing existing manually operated fuses and switches at strategic locations with new SCADA-enabled Fusesavers™, switches, or reclosers. By isolating the lines closer to

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<sup>63</sup> This decision factor is being developed for use in 2019. PG&E previously had only ignition spread modeling based on historic climatology.

the border of the HFTD, fewer customers will be impacted and fewer lines will be de-energized. These improvements will also expedite restoration by reducing the amount of lines requiring a patrol.

#### **4.6.2.2. Resilience Zones**

PG&E uses the term “Resilience Zones” to describe projects that will allow PG&E to safely provide electricity to central community resources when PSPS is activated during Extreme-Plus conditions. Customers near Resilience Zones will benefit from the ability to access services such as grocery stores and gas stations while the wider grid is de-energized for safety. Host sites for Resilience Zones are selected in full coordination with the System Hardening Program for safe operation. Resilience Zones are still in a pilot phase, which will inform and dictate how the program should evolve in the future to better serve the needs of our customers.

Resilience Zones are enabled by pre-configured segments of the distribution system that can be quickly isolated from the broader grid when a PSPS is initiated. Using pre-installed interconnection hubs (PIH), PG&E will be able to quickly and safely connect temporary mobile generation to energize the isolated Resilience Zone. Generally, PIHs will consist of a transformer and associated interconnection equipment, ground grid, and grid isolation and protection devices (reclosers and switches). Resilience Zone PIHs may evolve into Resilience Zone Microgrids over time, as preferred resource combinations begin to meet technical requirements, and as PG&E’s capability to operate these systems matures. See Section 4.7.3 for more information on microgrids.

PG&E’s pilot Resilience Zone will operate as needed during 2019’s wildfire season in Angwin, a town situated within the Tier 3 HFTD area in Napa County (Fire Index Area 175). PG&E is working with Pacific Union College to align the operation of the Resilience Zone with the college’s privately-owned cogeneration plant to collaboratively increase resilience for the town of Angwin. Should Extreme-Plus conditions occur, the presence of the Resilience Zone will allow PG&E to safely

energize facilities such as the fire station, gas station, Brookside Apartments, and portions of the Angwin Plaza not already served by the local college's on-campus generation.

PG&E plans on expanding the Resilience Zone workstream for other towns that may be impacted by PSPS. The geographic scope of a potential Resilience Zone will depend on a range of factors including the current grid configuration and safety to energize during Extreme-Plus conditions. Resilience Zones will only be built in areas that meet the following criteria:

- Targeted sectionalizing in the area is not feasible due to grid configuration or other reasons; and
- The area has a sufficiently large hardscape and/or has been sufficiently de-risked of ignition danger through system hardening measures that a temporary mobile generator can safely run during Extreme-Plus conditions.

#### **4.6.2.3. Customer Services and Programs**

PG&E's first and most critical objective is to maintain safe grid power to as many customers as possible during potential PSPS events. This objective is achieved through a variety of strategic initiatives and programs as described throughout this Plan. PG&E acknowledges, however, that some customers will lose power during these events, and that it has a role to play in supporting our customers by providing services and programs to help alleviate the safety, financial, and disruptive impacts losing power can cause our customers.

#### **Extending and Expanding 2018 Programs into 2019**

PG&E currently offers several services and programs to our customers that can assist before, during and after an emergency including a PSPS event. These programs were available during the 2018 Wildfire season and will continue in 2019. These programs apply broadly to all types of customers and include:

- Proactive Communications: Respecting our customer's right to choose how they want to receive communications from PG&E, we provide a number of communication options, including: orchestrated proactive

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notifications via text, email, interactive voice recording, and phone. However, during a PSPS event, PG&E leverages all communication channels to contact customers given the safety implications and potential disruption to their daily schedule. PG&E's electric customer base of 5.4 million premises could potentially be contacted if there is a valid phone number on file.

- 24/7 Information and Updates: PG&E's website provides customers with convenience and flexibility by allowing them to educate themselves on a variety of topics associated with wildfire preparedness. While customers can quickly identify areas impacted by weather or emergency events on the PG&E website, PG&E will also work closely with external media outlets to provide broader awareness, critical insight and capture crowdsourced feedback—all of which promotes more effective communication. In 2018, 2,380,153 customers visited pages related to outages and wildfire safety and preparedness.
- Experienced and Knowledgeable Business Teams: PG&E supports the unique needs of our largest industrial, commercial and agricultural customers with a dedicated team of over 60 account managers handling over 3,500 business customers. In addition to providing updates before, during and after an emergency, the account management team is available to work with critical customers to develop operational plans to prepare for an emergency. This team is assigned based on industry segments allowing for knowledge sharing of best practices and procedures.
- Live Customer Support: PG&E operates four contact centers in the state of California and provides 24/7 emergency live-agent service for customers to report emergencies. Our IBEW Contact Center agents are trained in how to handle customers dealing with natural gas and electric emergencies with specific procedures to escalate life-threatening situations. In 2018, our customer service agents handled

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over 448,000 customer calls related to emergencies with an average speed of answer of 8 seconds.

- Mobile Neighborhood Answer Centers: PG&E maintains a local presence in our communities with the deployment of mobile answer centers to support customers during emergencies providing information on service restoration. Mobile answer centers provide a local alternative to live customer support over the phone, in pop-up locations throughout areas where the highest level of impacted customers reside.
- Customer Financial Relief: PG&E acknowledges the financial burden that customers may bear when impacted by an emergency. Over the years PG&E has developed a portfolio of financial solutions for our customers to provide immediate relief from worrying about their utility bill. PG&E offers financial support based on several factors and includes bill adjustments, extended payment plans, suspension of fees and low-income support for customers impacted by emergencies. This is further discussed in Section 5.2 of this Plan. In 2018, PG&E provided over \$4.7 million in financial relief to customers impacted by wildfires in 2017/2018.
- Personalized Service for Impacted Customers: PG&E provides a single point of contact for severely impacted wildfire customers to help assist with post fire details. This includes billing, claims, service planning, permitting, etc. This knowledgeable team of experienced and dedicated representatives can support a wide variety of customers or quickly route the customer to those who can assist. This team is currently slated to provide support to over 14,000 residential electric service points and 970 commercial electric service points.

### **Proposed New Initiatives for 2019 and Beyond**

Given the anticipation that PSPS events will become more frequent due to extreme weather events, PG&E is actively exploring and developing additional services

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and programs to support our customers during PSPS events. The Company is investigating a wide variety of solutions including commercially available products, partnerships with key community organizations, and services aimed to help our most vulnerable customers/communities.

PG&E's primary focus in the short term will be for those customers who require a continuous electric supply for life support, as well as critical services (i.e., telecom, water agencies, hospitals, and first responders) who provide life support services to our communities. PG&E will work closely with County OES to share information related to our most vulnerable customers to support local first responders in providing important local services to these customers during a PSPS event. PG&E will also continue to provide live customer support for critical services to provide real time updates and information regarding PSPS event impacts, duration, and restoration status.

Below is a list of the types of new programs PG&E is exploring:

- OEM & Retail Partnerships: Utilizing the existing back-up generation marketplace, PG&E would partner with major retailers and equipment suppliers to support onsite back-up generation systems that can provide continuous power during a PSPS event. PG&E would neither own nor operate this equipment, instead helping to facilitate the awareness and benefits an onsite system would provide during an emergency event. With the primary objective to aid in the streamlining of implementing a system that best supports the customer's overall choice and control of managing their energy/emergency needs.
- Collaborative Community Support: In coordination and partnership with local OES and other critical members of the community, community-based solutions would include initiatives such as "Enhanced Cooling Centers" to provide additional services to medical baseline, life support, and our most vulnerable customers. This collaborative effort comprised of community-based organizations, local stakeholders, and first responders would be designed to provide a safe, energized location for those most in need. Included would be the ability to support the

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transportation of vulnerable residential customers to and from these centers.

- Grant Program: Partner and engage community-based organizations to develop a grant program to meet the needs of our most vulnerable customers.
- Continuous Power Programs: Continuing the education and support of commercially available options for Business customers (i.e., small business, mid-markets and large enterprise). Utilizing existing non-tariffed and account management channels to customize products and programs based on unique customer operating requirements.
- Partnership With Critical Services: PG&E will build on how it provides live customer support for critical services (i.e., telecom, water agencies, hospitals, and first responders); to provide timely updates and information regarding PSPS event impacts, duration, and restoration status.
- Coordination With Third-Party Commodity Suppliers: As more customers in PG&E territory purchase their gas or electric commodity from a supplier other than PG&E, we recognize the importance of providing Community Choice Aggregation (CCA) programs and Direct Access (DA) providers in our territory timely and relevant updates relating to PSPS events and Wildfire Relief efforts. Prior to PSPS events PG&E notifies CCA and DA providers of the potential PSPS event and the timing of prospective event. As the event gets closer, PG&E continues to provide updates to our CCA and DA partners that may impact our joint customers, including potential impacted customer lists, talking points and any timing changes that may occur. During the PSPS event PG&E CCA Account Managers provide daily updates to the CCA programs on timing, customer status and answer any questions or concerns the CCA brings up that come from our shared customers. As the metering and billing agent for many third-party suppliers, PG&E has worked closely with our partners to administer bill relief for severely impacted customers. PG&E

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coordinates regular calls and provides data to third-party suppliers during and after emergency situations. In 2018, PG&E worked with over 50 third-party suppliers representing over 2 million customers.

PG&E will continuously refine and further develop strategies that minimize the extent of disruption of grid power, while enabling increased customer choice and control over safely managing energy needs during an emergency.

#### **4.6.3. PSPS Notification Strategies**

Recognizing that de-energization for public safety can burden communities with unintended risks and hardships, PG&E is committed to providing notice to government agencies and providers of critical services when extreme fire danger is forecasted, as well as continuing to refine its PSPS program to reduce the scope and severity of impact on customers.

PG&E will notify its primary government and agency contacts that PG&E is monitoring conditions and that extreme fire danger conditions may cause power outages or require PG&E to shut off power for safety in the coming days. For cities, counties and local agencies, PG&E will use a platform which can send the same message to a list of contacts through multiple channels including phone, text and email. Upon request, PG&E will provide city, county and agency officials with the content of its customer alerts, so they can be shared on channels such as Nixle, Nextdoor, and Reverse 911.

If a PSPS event is forecasted, PG&E will also attempt to send notifications to all potentially impacted customers when and where possible, before, during and after a PSPS event. Notifications will be made through various channels including IVR, text and/or email. When and where possible, PG&E will attempt to notify critical facilities such as hospitals, emergency centers, fire departments, water plants, water utilities/agencies, schools, and telecommunications providers (critical facilities) in advance of residential customers before an event occurs to help inform their preparedness efforts. During an event, frequent communication via live call outs with detailed event information will be provided to critical facilities to support operational needs if possible.

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After an event, PG&E will prioritize critical facilities during restoration when and where technically possible. PG&E will do additional outreach to Medical Baseline and Medical Baseline-eligible customers so that PG&E has their contact information and they know how to prepare. If general notifications (IVR, text and email) are unsuccessful, PG&E will deploy personnel for an in-person notification.

#### **4.6.3.1. Customer and Community Outreach**

PG&E has performed significant community outreach to customers and first responders relating to PSPS events to enhance its ability to notify customers if a PSPS event is forecasted and help communities prepare for such events. In 2018, PG&E focused the first year of the program on making sure that the more than 570,000 homes and businesses served by lines in extreme fire-threat areas were aware of possible public safety outages and could take steps to prepare. In 2018, PG&E:

- Reached out to homes and businesses served by lines in extreme fire-threat areas through letters, postcards and emails to share information and help them prepare;
- Held over 450 meetings with community stakeholders (many of which were attended by a member of PG&E's senior leadership team) to talk about wildfire safety efforts and coordination;
- Hosted more than 20 regional informational workshops and open houses as well as additional public meetings and answer centers in key communities on CWSP and PSPS;
- Conducted direct outreach to customers who provide critical services such as hospitals, fire stations, water agencies and telecommunications providers that could be affected by a PSPS event;
- Reached out directly through mail, emails and automated calls to the 19,000 customers who are enrolled in our Medical Baseline Program, as well as direct outreach during the October PSPS event and potential PSPS event in November;

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- Conducted outreach to master meter customers about PSPS and provided flyers to share with tenants to raise awareness and help them prepare for possible outages;
- Launched a dedicated website ([pge.com/wildfiresafety](http://pge.com/wildfiresafety)) and created a search tool where customers can enter their address and learn if they are served by a line that may be turned off for safety during high wildfire threats;
- Continued earned, paid and digital media campaign to raise awareness about CWSP and PSPS and how customers can prepare;
- PG&E's VP of Electric Operations participated in the CPUC's December 2018 Public Safety Power Shutoffs Workshop;
- Communicated and coordinated closely with CPUC, Cal OES, CAL FIRE, and the Governor's office during the October 2018 PSPS event; and
- Provided ongoing support to local Fire Safe Councils through grants and other partnerships including co-sponsored events.

In 2019, PG&E is expanding and building upon these efforts to continue to help keep its customers and communities safe. PG&E intends to notify its 5.4 million electric customer premises of the potential for PSPS impacts and will continue to reach out to customers who live in or near high-fire threat areas. Information will include what customers can expect to experience in their community as a result of our ongoing and expanded wildfire safety efforts. We will continue to educate about steps customers can take to prepare for extreme weather and possible outages. These efforts include:

- Reaching out to customers served by lines in elevated or extreme fire-threat areas, through postcards, bill inserts and other mailers as well as email and social media;
- Supplementing direct communications with earned and paid media;

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- Partnering with organizations who support our most vulnerable customer to explore opportunities to provide additional information and services;
- Ongoing briefings with city and county leaders, community leaders, first responders, local offices of emergency services and other public safety authorities to discuss our wildfire safety efforts and how PG&E can coordinate;
- Continuing to hold answer centers and open houses (where needed and appropriate) to engage with local community members and answer questions about our work;
- Looking at how PG&E can improve our PSPS notification processes and providing emergency services agencies with more detailed information and maps to assist with coordination efforts;
- Working to provide more frequent updates around estimated restoration times to customers and communities during a PSPS event through both direct notifications as well as local news, radio, social media and the [pge.com](http://pge.com) website, when and where possible; and
- Doing additional outreach to Medical Baseline and Medical Baseline-eligible customers so that PG&E has their contact information and they know how to prepare.

#### **4.6.3.2. Mitigating PSPS Impacts on First Responders, Health Care Facilities, Telecommunications, and Water Utilities**

PG&E is performing direct outreach to customers who provide critical services, such as hospitals, fire stations, water agencies/water utilities and telecommunications providers to confirm PG&E has accurate contact information on file for notification purposes. Another important aspect of PG&E's direct outreach is the importance of having emergency operational plans in place in event of a PSPS. PG&E is committed to providing as much advance notice (as possible) so that our critical service providers

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customers can be prepared to implement their emergency operational plans should a power shut down be necessary. PG&E is also committed to developing additional programs in collaboration with first responders, health care facilities, telecommunications, and water utilities. Pursuant to the ALJ Ruling, PG&E is including as Attachment B to this Plan a list of the entities that PG&E considers critical services for purposes of communications related to a PSPS event.<sup>64</sup>

In addition, as mentioned above, PG&E will prioritize sectionalizing locations in a manner that evaluates the potential regional PSPS frequencies, with the goal to minimize the impact to critical customers in off-target areas.

#### **4.6.4. Re-Energization Strategy**

PG&E will only restore power following a PSPS event after confirming that it is safe to do so. Crews will patrol all facilities de-energized during a PSPS event to identify any damage that needs to be repaired before re-energizing. To reduce the outage impact to customers, PG&E will use helicopter patrols in areas where visibility is not limited by vegetation. PG&E assigns a task force consisting of supervisors, crews, troublemen, and inspectors to each circuit or portions of a circuit. This structure enables PG&E to patrol and perform step restoration in alignment with the impacted centralized control centers. Step restoration is when a substation is re-energized, and circuits are subsequently safely energized in segments as patrols continue. Any necessary repairs are conducted while patrols continue to allow for restoration to proceed as efficiently as possible.

#### **4.7. Alternative Technologies**

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<sup>64</sup> ALJ Ruling, Attachment A at p. 5.

**TABLE 18: ALTERNATIVE TECHNOLOGIES KEY**

| <b>Section</b> | <b>Title</b>                                    | <b>Program Mapping</b>                          | <b>New or Existing, Including Recovery Vehicle</b> | <b>Regulation Compliance</b>    | <b>Associated Drivers</b> |
|----------------|---|---|--|---------------------------------|---------------------------|
| 4.7.1          | Rapid Earth Fault Current Limiter Pilot Project | Rapid Earth Fault Current Limiter Pilot Project | Existing – EPIC <sup>65</sup>                      | Exceeds regulatory requirements | Not Applicable            |
| 4.7.2          | Enhanced Wires Down Detection Project           | Enhanced Wires Down Detection Project           | New – FRMMA/WPMA                                   | Exceeds regulatory requirements | D1 – D6, D8               |
| 4.7.3          | Other Advanced Technologies                     | N/A   | N/A  | Exceeds regulatory requirements | Not Applicable            |

PG&E is implementing pilot programs to evaluate alternative technologies that may harden and modernize the electrical system and improve operational capabilities. PG&E is implementing pilot programs to evaluate alternative technologies.

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<sup>65</sup> Electric Program Investment Charge (EPIC) represents initiatives funded through the CPUC's EPIC research, development, and deployment grants.

#### **4.7.1. Rapid Earth Fault Current Limiter Pilot Project**

The Rapid Earth Fault Current Limiter Technology has been shown by the Victoria State Government (Australia) to directly reduce the risk of wildfires for single line to ground faults. PG&E has a demonstration project planned in 2019 to test the capabilities of this technology within PG&E's system. The Rapid Earth Fault Current Limiter technology consists of an inductor installed between the substation transformer neutral and ground and tuned to the line to ground capacitance of the circuits fed off of a distribution substation bank. In effect, this technology moves the neutral to the faulted phase during a fault reducing the potential to ground on that line to effectively zero (less than 250V) which significantly reduces the energy available for the fault.

#### **4.7.2. Enhanced Wires Down Detection Project**

PG&E has enabled single-phase SmartMeters™ to send real-time alarms to the Distribution Management System under partial voltage conditions (25-75 percent of nominal voltage). Prior to implementation, SmartMeters™ could only provide real-time alarms for the outage state. For three-wire distribution systems, the partial voltage condition indicates one phase feeding the transformer has low voltage or no voltage. Energized or de-energized wires down will create a low voltage condition on transformers through the mechanism of transformer back feed from the inactive phase to the fault. This enhanced situational awareness can help detect and locate downed distribution lines more quickly to enable faster response. Faster response may not only reduce the amount of time the line is down but may also allow first responders to more quickly extinguish wire down-related ignitions if they occur. PG&E is continuing to develop this solution to extend the enhancement to 3-Phase meters and 4-wire distribution systems.

#### **4.7.3. Other Alternative Technologies**

In addition, to the pilot programs, PG&E is researching other possible alternative technologies to determine whether they would be feasible and effective in system hardening. PG&E is evaluating emerging sensor technologies that enable real-time



system monitoring and situational awareness and is advancing the use of primary line sensor fault measurements in combination with CYME Power Engineering software fault calculations to display possible primary fault locations for targeting field patrol and accelerating fault locating. PG&E is also developing analytic and dashboard strategies to produce prioritized and actionable information from the correlation of data from multiple sources (e.g., SCADA, SmartMeter™, primary line sensors, and emerging sensor technologies).

Microgrids also continue to be a point of interest and optionality for both our customers and our internal operations in multiple contexts. The ability to island (to disconnect completely from the centralized grid) at key times can allow for sustained backup generation to critical facilities in communities working to respond and recover from wildfires and other natural disasters. PG&E is continuing to explore various paths to meet customer needs (resilience and other), as well as opportunities to support quicker recovery after a PSPS event is called.

## 4.8. Post-Incident Recovery, Restoration and Remediation Activities

**TABLE 19: POST-INCIDENT RECOVERY, RESTORATION AND REMEDIATION ACTIVITIES KEY**

| Section | Title                  | Program Mapping | New or Existing, Including Recovery Vehicle | Regulation Compliance | Associated Drivers |
|---------|------------------------|-----------------|---|-----------------------|--------------------|
| 4.8.1   | Post-Incident Recovery | Not Applicable  | N/A – unknown (fact specific)               | Regulatory Compliance | Not Applicable     |
| 4.8.2   | Restoration            | Not Applicable  | N/A – unknown (fact specific)               | Regulatory Compliance | Not Applicable     |
| 4.8.3   | Remediation            | Not Applicable  | N/A – unknown (fact specific)               | Regulatory Compliance | Not Applicable     |

Each disaster has unique facts and circumstances. PG&E’s post-incident approach empowers teams to rebuild and recover from a disaster safely, efficiently, effectively, and consistently. PG&E is committed to timely, well-coordinated activities between its Service Planning & Design, Gas and Electric Construction, and External Engagement teams.

Regardless of cause, rebuilding and recovery is required for any fire, flood, or explosion that causes damage of a magnitude that warrants major disaster assistance in repairing damage, mitigating loss, lessening hardship, or to alleviate suffering. Typical impacts of a disaster result in destroyed structures, threatened or crippled critical infrastructure, power outages, and forced evacuations. The intensity of disasters can vary on a case-by-case basis and affect utility customers differently, and for varying amounts of time.

### 4.8.1. Post-Incident Recovery

In the case of a wildfire, before post-incident assessment can begin, PG&E must secure CAL FIRE clearance to access the impacted area. PG&E line workers, inspectors, and estimators will then conduct a damage assessment of PG&E’s electrical and gas infrastructure in the approved locations. The quantity of the personnel and timeline dedicated to this effort will depend on the extent of the damaged territory.

Minor asset corrections may be performed at this time where warranted to meet safety requirements.

The Customer Care team will, where appropriate, stand up mobile Answer Centers at appropriate locations. Information gathered during repopulation and via County OES, local fire, and other means can help inform and prioritize restoration and customers return home. Additional information on Public Outreach During and After Wildfires is provided in Section 5.1.3 of this Plan.

#### **4.8.2. Restoration**

PG&E will establish the appropriate level Incident Command Structure (ICS) and allocate resources to support the established restoration priorities following the procedures outlined in PG&E's Company Emergency Response Plan (CERP). PG&E will execute the restoration process, including all main line assets, after troublemen and assessment resources troublemen have identified which customers are safe to restore.

When and where possible, the Customer Care team communicate estimated times of restoration for extended outages. Once service is restored, normal billing and credit operations will resume.

#### **4.8.3. Remediation**

Community support and rebuild activities will be determined based on PG&E's analysis of the wildfire impact. PG&E will deploy its Remote Estimating Team to prepare designs, estimates, and job packages for critical infrastructure rebuild. Rebuild designs will be executed in accordance with PG&E's new fire-resilience infrastructure standards and design assumptions will be incorporated based on resilience and hardening plans considered. Critical infrastructure rebuild will be executed in parallel with estimating effort and also in accordance with fire resilience engineering standards. PG&E's line crews will rebuild transmission and distribution lines and supporting infrastructure so that it is operable and energized. The quantity of the crews required will be determined based on the extent of the damage. PG&E will assess longer term infrastructure rebuild requirements and determine recommended rebuild design. At this

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time in some cases, PG&E may abate fire affected trees that pose a threat to utility lines and conductors and insulators may be cleaned based on the possibility that fire retardant was dropped on the line and/or particulate matter from the smoke plume could have caused a buildup on the line due to incomplete combustion during the fire.

#### **4.8.3.1. Environmental Remediation – Debris Flow Modeling**

A part of PG&E's remediation work is concentrated in the planning and response to debris flow hazards specific to the norther regions recently impacted by wildfire. Debris flows are gravity-driven mixtures of soil and water that are intermediate between floods consisting of water and solid to semi-solid landslides consisting of soil and rock. PG&E recognizes that the recent fires in northern California can result in elevated debris hazard due to the abrupt removal of vegetation that can retard hillside erosion, slow downward accumulation of sediment, and limit surface runoff during large storms. Localized erosion associated with debris flows can expose buried pipelines and can exert high impact forces to above ground structures, including electrical transmission towers, shipyards, natural gas facilities, and access roads.

PG&E's debris flow hazard prediction model integrates PG&E infrastructure, past debris flow datasets, local jurisdictional precipitation data, U.S. Geological Survey model results, and other datasets. The model was created to calculate debris flow thresholds and integrate this within PG&E's precipitation forecasts to rapidly predict the location and severity of debris flows in fire areas prior to major storm events.

The Debris Flow Watch is issued when a heightened state of awareness and monitoring is recommended. Work in areas along the base of steep slopes and drainages within and below fire burn areas should be approached with caution and personnel should at all times be cognizant of the surrounding land conditions and weather changes. Periodic check-ins should be conducted with all field personnel. The Debris Flow Warning is issued when continued monitoring of rainfall throughout this storm event indicates the potential for short-duration, intense precipitation that poses a heightened likelihood for initiation of debris flows within vulnerable slopes. The greatest

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likelihood is in heavily burned areas at the base of steep slopes and downstream drainages but could also include areas of moderate slopes and along larger creeks.

PG&E's debris flow susceptibility maps show the relative probabilities for debris flow triggering within individual basins and along drainages with a focus on the orange and red zones of greatest concern. Work and personnel should be restricted at the base of slopes, drainages, and creek banks in the identified areas of concern until the Warning is terminated. Field crews should be specifically prepared to respond to debris flow occurrences in these areas and maintain a heightened state of alert with frequent EOC check-ins to obtain information updates and report observed debris flow activity.

To further improve PG&E's debris flow model estimates specific to the wildfire burn zones in northern California, Geosciences and Emergency Preparedness and Response (EP&R) are augmenting the collection and monitoring of rainfall intensity in the fire burn zones. The installation of rain gauges (using cellular or satellite technology) will improve our capability to monitor high concern areas in remote locations and augment NWS and PG&E Meteorology precipitation radar and local weather station data. This information, combined with systematic field reconnaissance (including visual and LiDAR-based mapping) is part of the program to improve debris flow assessment capabilities in northern California. The purpose of improved monitoring will help establish threshold rainfall intensities for debris flow initiation (currently  $\frac{1}{4}$  inch in 15 min). These types of instruments are ideally suited to record rainfall in environmentally sensitive areas as part of PG&E's wildfire monitoring program as well. Long-term monitoring provides situational awareness of potentially hazardous earth movements during the recovery period.

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## **5. Emergency Preparedness and Response**

Pursuant to PUC Section 8386(c)(16) and the ALJ Ruling, this section of the Plan describes PG&E's emergency preparedness and response plan, including plans to prepare for and restore service after a wildfire and community outreach and customer support during and after a wildfire.

### **5.1. PG&E Company Emergency Response Plan**

PG&E's overall emergency preparedness and response plan, filed pursuant to PUC Section 768.6 and GO 166, is referred to as the Company Emergency Response Plan or "CERP." PG&E's CERP and associated annexes, one of which is PG&E's FPP, are important tools to prepare PG&E for emergencies of all types.

PG&E's CERP assists personnel to respond in a safe, efficient, and coordinated manner to an emergency affecting gas or electric generation, distribution, storage, and/or transmission systems within the PG&E service area or the people who work in these systems. The CERP is an "all-hazards" plan that provides a broad outline of PG&E's organizational structure, describes actions undertaken in response to emergency situations, and presents a response structure that has clearly defined roles and responsibilities and identifies coordination efforts with external organizations (e.g., government, media, other gas and electric utilities, essential community services, vendors, public agencies, first responders, and contractors). The CERP consists of a base plan, appendices, and annexes. Annexes are detailed emergency response plans for specific operations, functions, or hazards.

PG&E utilizes common emergency response protocols and follows a recognized ICS. The CERP's all-hazards approach applies to any natural disaster or human-caused situation (e.g., fires, floods, storms, earthquakes, terrorist- or cyber-attacks) that threatens life and property or requires immediate action to protect or restore service or critical business functions to the public.

### **5.1.1. The Plan's Alignment With CERP**

The Plan references PG&E's CERP, including specifically the Fire Prevention Plan. The Fire Prevention Plan is a comprehensive set of plans, procedures, processes, and activities related to the prevention, detection, response to, and recovery from ignitions that, if not suppressed, pose a risk of growing into a wildfire. In addition to employing the CERP in responding to wildfires as discussed below, PG&E maximizes the effectiveness of its CERP by:

- Providing its CERP to appropriate representatives from cities and/or counties within PG&E's service area every two years;
- Conducting meetings with these public agencies to provide an overview of the plan and to receive input;
- Working collaboratively with other utilities, participating in trade association meetings, and conducting benchmarking to identify emergency preparedness best practices;
- Reviewing disasters and emergencies that have affected other utilities, examining remedial actions taken, and incorporating updates to its plan, as needed;
- Preparing an after-action report following an activation of its EOC that identifies whether appropriate corrective actions or modifications need to be made to the CERP and other plans; and,
- Conducting annual corporate-wide exercise relative to our PSPS program and wildfire restoration, followed by a robust "After Action Review" and PMO program.

### **5.1.2. Plans to Prepare for and Restore Service**

To support the development of an overall restoration and resource allocation strategy during a wildfire incident, PG&E uses a Restoration Work Plan tool to forecast the systemwide Estimated Time of Arrival and Estimated Time of Restoration (ETOR).

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PG&E created the Restoration Work Plan tool to identify geographic areas that may need more personnel to support restoration efforts. The tool utilizes current and forecasted outage and resource counts to estimate the total time of restoration on systemwide, regional, and divisional levels. Historical assessment and restoration times for the current type of incident and geography drive resource productivity assumptions. By comparing the ETOR across all PG&E divisions, incremental resources can be directed toward those areas that need them most, and the need for mutual assistance crews can also be forecasted.

There are many cases where PG&E crews respond to a fire area and perform asset protection, such as pole pre-treatment, and fuel reduction activities ahead of a fire on and near the power line Right-of-Way (ROW) (with approval of the fire suppression AHJ Incident Commander at the Incident Command Post). Activities include:

- Asset Protection – Conducted with an approved wildland fire chemical applied to the base of the wooden facilities, thus helping to prevent ignition of the power pole from direct flame impingement or radiant heat.
- Vegetation Clearing/Fuel Reduction – VM crews may work ahead of the fire to reduce the fuel in and around the facilities and utility ROW using a variety of vegetation clearing/fuel reduction methods.
- Field Readiness – Field personnel will be made available to work directly with the fire suppression Incident Command to identify potential hazards and to provide a safe area for the public and the personnel working onsite. If the power lines need to be de-energized, the crews will perform the task for the fire control personnel. De-energizing the lines removes the likelihood of contact with an energized (hot) conductor should it come down from a burned power pole or be brought down by a hazardous tree or other conditions.
- Operational Controls – Onsite personnel will also be made available to work with fire suppression Incident Command personnel should a

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change in tactics be necessary to protect critical generation, T&D system assets.

Once a wildfire is detected, one or more emergency centers may be activated, or other preparatory actions may be taken. These actions include, but are not limited to: conference calls, placing personnel on alert status, reviewing emergency plans, identifying key personnel available for restoration activities, pre-staging personnel, evaluating supplies and equipment, advising employees to pack overnight bags, and canceling or postponing non-critical meetings.

Each emergency center maintains call-out procedures for adequate staffing levels for any and every emergency. For escalating incidents, each LOB maintains appropriate notification processes, electronic mail and paging lists to notify personnel about the emergency and provide reporting and contact information. Personnel report to pre-designated emergency center locations or to another assigned location within the notified time period appropriate to the incident.

### **5.1.3. Emergency Communications**

Emergencies underscore the need for strong communication with customers and the communities PG&E serves. PG&E's ongoing efforts to connect with customers and keep them informed—especially in a time of crisis—cover a variety of communication channels including, among others, our website, customer contact center, account management team, paid advertising, social media, proactive news stories, customer letters/emails/texts, videos, community meetings, customer answer centers, public notices, factsheets, and handouts.

In local emergencies, it is essential for field personnel to coordinate their activities with local public safety and other first responders to provide for the safe restoration of service. As an emergency grows, the necessity for internal and external coordination also grows. When activated, the EOC becomes the single point of coordination for information dissemination. PG&E provides information in many different languages depending upon the targeted population, including English, Spanish, Chinese, Vietnamese, Korean, Hmong, Tagalog, and Russian. PG&E understands that

information will change rapidly during an emergency and our commitment is to share timely updates with our customers. Below, PG&E provides the specific plans for communications before, during, and after a wildfire.

#### **5.1.3.1. Public Outreach Before Potential Wildfires**

PG&E communicates to customers and other stakeholders about efforts to prevent, prepare for, and respond to wildfires, as well as safety measures customers can take to help further reduce the risk of wildfires that might impact their homes, businesses, families, employees, or communities. As part of this outreach, PG&E conducts annual electric safety training for first responders, including law enforcement, fire departments, and public works and transportation agencies. PG&E also participates in annual joint exercises with first responders and emergency management partners to enhance and coordinate prevention and preparedness efforts. PG&E meets annually with local, state, and federal agencies and jurisdictions to share FPPs and strategies.

PG&E shares information with customers about the CWSP and other advice to help them prepare for and stay safe during extreme weather events. As part of this program, PG&E communicates directly about our programs including, among others, Situational Awareness including WSOC, PSPS, EVM, System Hardening, and WSIP efforts through its website, customer contact center, account management team, paid advertising, social media, proactive news stories, customer letters/emails/texts, videos, public notices, fact sheets and handouts.

As part of preparedness efforts, PG&E asks customers to visit [pge.com/wildfiresafety](https://www.pge.com/wildfiresafety) to update their contact information. PG&E will use this information to alert customers in advance of turning off their electric service for safety, when and where possible, via automated calls, texts and emails. There is also information available on this website to help customers prepare a plan for their home or business.

### **5.1.3.2. Public Outreach During Wildfires**

During a wildfire, PG&E conducts public outreach in a variety of ways. PG&E communicates with customers about safety and response efforts through its website, customer contact center, account management team, paid advertising, social media, proactive news stories, customer letters/emails/texts, videos and by attending community meetings as an incident is occurring to provide the latest information. To coordinate resources, PG&E may activate its EOC (at our headquarters in San Francisco), Regional Emergency Centers, and Operational Emergency Centers.

To assist in restoration and recovery, as appropriate, PG&E will stand up a base camp in impacted areas to mobilize resources and safely assess and restore gas and electric services. A team of highly trained and skilled communications and customer representatives are deployed as part of these mobilized response efforts to respond to questions from customer in affected communities, media requests, and local government inquiries in coordination with the EOC.

### **5.1.3.3. Public Outreach After Wildfires**

Once first responders contain portions of a wildfire, PG&E begins work to safely assess for damage and restore gas and electric service to customers. This requires ongoing communication efforts with customers to provide the most up-to-date information about PG&E's response and recovery efforts.

PG&E communicates with customers about safety and response efforts through our website, customer contact center, account management team, paid advertising, social media, proactive news stories, customer letters/emails/texts, videos and by attending community meetings as an incident is occurring to provide updated information.

PG&E also provides detailed information about what services are available to customers who have been directly impacted by wildfires, ranging from bill relief to waiving certain fees to the rebuilding process and how to renew gas and electric service.

#### **5.1.4. Ensuring Adequate Workforce to Restore Service**

During any emergency event, PG&E personnel play a central role in restoring power to customers. Personnel must be organized, assigned, directed, tracked, and otherwise managed throughout the duration of an event, to effectively respond. Each emergency center maintains an emergency staffing plan and call-out procedure for adequate staffing for emergencies. For EOC personnel, the EP&R Director maintains an EOC On-call roster with appropriate contact information for key emergency response personnel and is responsible for issuing the call to activate the EOC.

PG&E's workforce undergoes regular trainings and exercises to provide an understanding of emergency preparedness and response plans and practices, in addition to providing an adequate number of qualified personnel to respond. PG&E also coordinates with other utilities and in trade association meetings on emergency preparedness and response issues and exchanges mutual support in large-scale emergencies.

Training is offered on multiple topics and formats, including on the job, in the form of tailboards, as web-based and instructor-led training courses, and through simulated emergency exercises. There is also annual field personnel training to prepare employees for fire season.

Restoring power after a wildfire is a complex task. A safe and expeditious restoration requires significant logistical expertise along with skilled line workers and specialized equipment. Electric or gas power utilities affected by significant outages will turn to the industry's mutual assistance network—a voluntary partnership of electric and gas companies from across the country—to help speed restoration. Mutual assistance is an essential part of the electric and gas power industry's service restoration process and contingency planning. The mutual assistance network is a cornerstone of electric utility operations during emergencies.<sup>66</sup>

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<sup>66</sup> Edison Electric Institute Mutual Assistance  
<http://www.eei.org/issuesandpolicy/electricreliability/mutualassistance/Pages/default.aspx>,  
accessed March 29, 2018.

Different types of mutual assistance include, but are not limited to, utilizing local (utility to utility), in-state (California Utilities Emergency Association), regional (Western Region Mutual Assistance Agreement (MAA)), national (Edison Electric Institute (EEI) and American Gas Association), and specific hazard agreements (EEI's Cyber Mutual Assistance Program) which are established through a MAAs, and/or EEI's Resource Allocation Management Program. PG&E has agreements with other utilities to provide assistance on request by furnishing personnel, equipment, and/or expertise in a specified manner. These mutual assistance agreements: (1) are established prior to any specific incident; (2) follow standardized procedures; and (3) require specific authorizations before crews are provided/or received.

Finally, in addition to mutual aid support, PG&E also relies on contractors to help promptly restore service after a major wildfire event. PG&E has contracts in place to use contract crew and/or equipment resources during incidents where company resources alone are not able to restore our electric distribution and transmission infrastructure in a timely manner. Prior to emergency situations, PG&E's Sourcing Department issues contract agreements on an annual basis regarding assistance in restoring electric service during an emergency response. Agreements are established with contractors to provide assistance upon request and include providing personnel, equipment, and/or expertise in a specified manner. In day-to-day operations, PG&E's Sourcing Department works with contractors directly. During an emergency incident, the Planning and Intelligence Contractor Resources Unit is responsible for determining the number of crews needed, managing the contracts, and issuing emergency purchase orders.

PG&E requires contractors to become pre-qualified for safe work practices through PG&E's third-party, ISNetworld, as a condition of any contract award for "medium" or "high" risk work. In addition, contractors are required to confirm that their sub-tier contractors meet PG&E's pre-qualification criteria and have achieved a pre-qualification status through ISNetworld prior to performing any PG&E work.

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Contractors are also required to confirm their employees and sub-tier contractors have completed all training required by law and any PG&E-specific required courses prior to conducting PG&E work.

## **5.2. Customer Support in Emergencies**

Support for impacted customers is an important element of PG&E's post-event emergency response. Following the October 2017 Northern California wildfires, PG&E established a series of billing and service modifications and disaster relief to support customers. These measures, included in PG&E's Emergency Consumer Protection Plans, were adopted with Advice 3914-G-A/5186-E-A, effective December 22, 2017, in compliance with Commission Resolution M-4833. On September 7, 2018, PG&E revised its Emergency Consumer Protection Plan, as approved by Advice 3914-G-A/5186-E-A, for residential and non-residential customers in areas covered by a state of emergency proclamation issued by the Governor due to a disaster that affects utility services. This revised plan details the protocols for customer support during emergencies, including wildfires, and are summarized below.

In the sections below, consistent with the requirements of PUC Section 8683(c)(18), PG&E describes specific protocols and procedures related to customer support during and after a wildfire.

### **5.2.1. Outage Reporting**

While PG&E's revised Emergency Consumer Protection Plan does not discuss outage reporting specifically, PG&E has implemented measures to notify customers of a potential electric outage caused by a PSPS event, or other planned or unplanned outages. Outside of customer notifications, PG&E includes emergency alerts and outage information on its website. Starting in 2019, separate colors are being used on the outage map to indicate which type of outage is or may be occurring.

### **5.2.2. Support for Low Income Customers**

In the revised Emergency Consumer Protection Plan, PG&E proposed the following actions to increase support to low-income customers affected by a disaster for

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counties covered by a state of emergency proclamation issued by the Governor of California concerning a disaster affecting utility services. With the exception of Relief for Energy Assistance through Community Help (REACH) support, PG&E proposed that the following actions apply to all low-income customers in the designated disaster area to align with California Alternate Rate for Energy (CARE) and Energy Savings Assistance's (ESA) use of county-based community organizations and to be able to apply low-income programs to persons displaced by a disaster:

1. PG&E suspends all CARE eligibility standards and high-usage Post Enrollment Verification (PEV) requests for all customers in impacted counties. PG&E will extend this measure to customers affected by a disaster for a period of one year from the date that the Governor's state of emergency proclamation is issued.
2. PG&E contacts its community outreach contractors and engages additional contractors to inform customers that PG&E will not select them for standard PEV or High Usage PEV for the CARE Program in the impacted disaster area.
3. PG&E communicates with the program administrator of REACH, a PG&E and customer-funded emergency assistance program, to request increasing the assistance cap amount for customers whose homes were red-tagged from \$300 to \$600. REACH funds will be made available for residential customers whose homes were red-tagged up to this new cap amount until funds are depleted.
4. Impacted and Red-Tagged<sup>67</sup> residential customers are eligible to qualify for ESA participation under PG&E's modified qualification requirements for a period of one year from the date that the Governor's state of emergency

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<sup>67</sup> "Red-Tag" or "Red-Tagged" is a designation given by CAL FIRE or by local city and county governmental agencies and/or PG&E personnel to customers whose homes or businesses were destroyed.

proclamation is issued, if the customer lives in the designated affected county and they meet one of the following:

- a. The customer states that they lost documentation necessary for income verification because of the disaster; and
- b. The customer states that individuals displaced by the disaster reside in the household.

### **5.2.3. Billing Adjustments**

PG&E will temporarily suspend bill estimation for customers identified within or near a disaster area. Once a premise is confirmed Red-Tagged by the County or PG&E personnel, PG&E will discontinue billing and issue a final bill. The final bill will contain charges for usage up to the last valid meter read prior to the start of the disaster. PG&E will also prorate any applicable monthly access charges or minimum charges when discontinuing billing for premises that have been Red-Tagged. For all other customers, post-evacuation, billing will commence after a valid read (based on actual usage) is received via the SmartMeter™ network or by field personnel. If an actual meter reading is unavailable after the evacuation order is lifted, PG&E will bill zero usage during the evacuation period and resume estimating of bills using PG&E estimating protocols.

There may be instances in which PG&E is unable to cease estimated billing attributed to the time period when a home or business was unoccupied, as there is no accurate way to immediately determine exactly which residences were evacuated and when. Evacuation areas are normally described in general terms, and historically customer lists for evacuation areas have not been readily available. PG&E works with CAL FIRE and/or Cal OES to obtain the most accurate information. In the event a customer received a bill with estimated usage during the time they were evacuated, they can contact PG&E, and an account review will be conducted to determine if a billing adjustment is necessary.



#### **5.2.4. Extended Payment Plans**

PG&E extends payment arrangements to impacted and red-tagged customers for any outstanding balances on their accounts for the length of time in which the Emergency Consumer Protection Plan is in place for a period of one year from the date that the Governor's state of emergency proclamation is issued. PG&E extends its most lenient payment arrangement term, which requires 10 percent down payment and a repayment period of 12 months, to customers within the designated affected area. Customers are eligible to pay off their outstanding balance sooner if they prefer. PG&E will adjust its technology protocols to enable this group of customers to use self-service technology (Web/IVR) to obtain these arrangements, in addition to calling our Contact Center to speak with a Customer Service Representative to complete this transaction.

#### **5.2.5. Suspension of Disconnection and Nonpayment Fees and Deposit Waivers**

PG&E provides the following protections for customers whose homes or businesses were Red-Tagged as a result of a disaster. PG&E will: (1) not disconnect service due to non-payment; (2) waive reconnection fees and return check fees; and (3) waive all security deposit requirements for customers seeking to re-establish service. These protections will remain in place for customers whose premises are Red-Tagged because of the disaster for a period of one year from the date that the Governor's state of emergency proclamation is issued. In addition, PG&E will not charge customers a late fee or report inactive residential customers whose properties were red-tagged because of a disaster to credit bureaus.

#### **5.2.6. Repair Processing and Timing**

Although PG&E's revised Emergency Consumer Protection Plan does not discuss repair processing and timing specifically, PG&E will use its best efforts to communicate the ETOR to customers during a PSPS event. Following a wildfire, PG&E will work with the impacted community to communicate priorities and timelines for repairs and restoration.

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Repair timing is largely dictated by access to the fire area, total damage to PG&E assets, length of the affected lines, ability to secure materials and repair resources, and the priority of the customer. For example, hospitals, schools, water treatment plants, and other facilities deemed critical by the local community will receive a higher priority for restoration. In the event the fire's damage exceeds the restoration capacity of the local division, a base camp may be established to support the restoration crews, equipment, materials, housing, and incident command staff.

SMEs within operations provide the ETOR for individual outages using several different modeling tools depending on the type of emergency. Restoration timing for the entire affected area is estimated by calculating the projected restoration work hours and dividing by the available restoration crews.

#### **5.2.7. Access to Utility Representatives**

Although PG&E's revised Emergency Consumer Protection Plan does not discuss access to utility representatives specifically, multiple channels of communication are available to our communities before, during and after a wildfire, and include, but are not limited, to: PG&E's call center, customer service offices, public affairs representatives, and field teams.

## 6. Performance Indicators and Monitoring

### 6.1. Plan Accountability

#### 6.1.1. Executive Level Responsibility

PG&E's Wildfire Risk Management VP is responsible for managing the execution of this Wildfire Safety Plan, annual compliance with PUC Section 8386, and overseeing the CWSP.

**TABLE 20: RESPONSIBLE EXECUTIVE**

| Role                                     | Title   | Responsibilities   |
|--|---|--|
| Head of Wildfire Risk Management efforts | Vice President, Community Wildfire Safety Program | Responsible for oversight and direction of wildfire risk management efforts. |

#### 6.1.2. Program Owners

The programs outlined in this Plan are assigned to the following roles as of January 27, 2019. PG&E is currently undergoing leadership re-alignment, and as a result the individuals and roles below are subject to change.

**TABLE 21: RESPONSIBLE PROGRAM OWNERS**

| Program   | Role  |
|---|---|
| Operational Practices                                     | Vice President, Electric Operations <sup>68</sup>   |
| Enhanced Inspections – Transmission                       | Electric Operations Sr. Director, T-Line Enhanced & Accelerated Inspections & Repair  |
| Enhanced Inspections – Distribution                       | Electric Operations Sr. Director, Wildfire Work Execution   |
| Enhanced Inspections – Substation                         | Electric Operations Sr. Director, Transmission and Substation Risk Analytics  |
| System Hardening  | Electric Operations Sr. Director, Distribution Risk Analytics and Electric Operations Sr. Director, Wildfire Work Execution |
| Enhanced Vegetation Management                            | Electric Operations Director, Enhanced Vegetation Management  |
| Enhanced Situational Awareness and Known Local Conditions | Vice President, Electric Operations <sup>69</sup>   |
| Public Safety Power Shutoff                               | Vice President, Electric Operations <sup>70</sup>   |

<sup>68</sup> Position currently filled by Vice President, Customer Energy Solution.

<sup>69</sup> Position currently filled by Vice President, Customer Energy Solution.

<sup>70</sup> Position currently filled by Vice President, Customer Energy Solution.

**TABLE 21: RESPONSIBLE PROGRAM OWNERS  
(CONTINUED)**

| <b>Program</b>   | <b>Role</b>   |
|--|---|
| Alternative Technologies                                       | Electric Operations Sr. Director, Distribution Risk Analytics   |
| Post-Incident Recovery, Restoration and Remediation Activities | Incident specific – assigned as necessary post-incident; for example, the Vice President of Customer Energy Solutions is currently overseeing Camp Fire restoration |
| Emergency Response   | Electric Operations, Director, Emergency Preparedness and Response  |
| Customer Communications and Support                            | Customer Service, Director of Local Customer Experience   |

## **6.2. Plan Performance and Evaluation**

The programs described in this Plan will be continuously reviewed, evaluated and modified as needed. In addition, ignition drivers are assessed regularly to allow for the continuous re-evaluation and re-design of wildfire risk reduction programs to continually improve the Plan’s efficacy at reducing ignition. PG&E will monitor and evaluate both performance of the new strategies and programs described in this Plan and the Plan’s efficacy in addressing wildfire risk through assessment of the following areas: (1) System Hardening; (2) Vegetation Management; (3) Operational Practices (e.g., PSPS); (4) Enhanced Inspections; and (5) Situational Awareness. Specifically, PG&E will use targets and indicators to evaluate Plan performance, as described below.

First, each year, PG&E will assess performance of the Plan by evaluating the degree to which it has met the targets set forth in Table 9. A **target** is defined as a specific goal that addresses either the work executed to reduce risk and/or the quality of the work executed. These targets will be refined each year to evaluate PG&E’s performance against the goals outlined in the previous year’s Plan and to continue to set goals constituting substantial risk reduction. PG&E will assess the extent to which it either (i) exceeds targets and consider potential increases for subsequent periods; or (ii) underperforms targets and identify and address challenges to improve future performance.

Second, as PG&E implements the Plan, it will analyze appropriate metrics –also called indicators – to assess the Plan’s performance in reducing wildfire ignitions. An

**indicator** is used to identify and track a trend resulting from performance of the Plan programs. The indicators will be monitored and analyzed on an ongoing basis. Monitoring trends will help PG&E understand and evaluate the efficacy of the programs. PG&E can use this understanding to guide adjustments and reprioritization of the focus of the programs for continuing improvement.

To undertake the ongoing trend analysis of the indicators, PG&E will collect and analyze data (e.g., number of vegetation-caused outages in HFTD areas). In some cases, historical data is not available because of changes in systems or definitions (e.g., pre-2018 fire risk areas compared to HFTD areas, which were defined by the CPUC in 2018). As a result, PG&E will use available data and, on a going-forward basis, will collect the data required to complete the trend analysis.

PG&E recognizes that when dealing with natural systems it is impossible to predict with certainty year-over-year improvements in indicators, but anticipates that over time, with the investments in the programs and projects described above, the indicators will show improved trends (i.e., reduction in risk). To the extent that indicators do not show improve trends—or trends are not improving as quickly as expected, PG&E may reassess the programs or adjust targets.

Each of these work-performance and work-quality targets, as well as indicators, will be used to evaluate the efficacy of each of the major components of the Plan. Actual work performance targets for 2019 for each program in the Plan are set forth in Table 9 in Section 4 of the Plan. Select work performance targets are discussed in greater detail, as well as work quality targets and indicators, below.

Finally, PG&E has included targets that are intended to enable the CPUC to evaluate compliance with this Plan, as required under PUC Section 8386(h). Substantial compliance with the targets set forth in the Plan, once approved by the CPUC, should demonstrate that PG&E acted prudently and met the CPUC's "reasonable manager" standard, in regard to wildfire risk mitigation. However, as explained throughout this Plan, events outside of PG&E's control, such as qualified

personnel constraints, supply chain disruptions, or permitting and construction delays, could restrict PG&E's ability to meet all of the targets, and should be viewed by the CPUC in context when completing its subsequent compliance evaluation.

### **6.2.1. Operational Targets**

#### Target #1 Number of Reclosers SCADA Enabled

- The number of reclosers that are converted to be SCADA enabled within the Tier 2 and Tier 3 HFTD areas each year to reduce wildfire risk and increase system resilience.
- The 2019 target is to SCADA enable approximately 285 reclosers in the Tier 2 and Tier 3 HFTD areas. The annual target will be assessed against the actual result achieved.

### **6.2.2. Inspection Targets**

#### Target #1: Transmission and Distribution Structures and Substations Inspected

- Tracks the distribution and transmission structures and substations inspected under the enhanced inspection programs within HFTD areas and assesses the actual number of structures and substations inspected against the target in this Plan.
- The 2019 target is to inspect approximately 685,000 distribution poles, 50,000<sup>71</sup> transmission structures, and 200 substations within the HFTD areas.

#### Target #2: Quality of Transmission and Distribution Inspections

- Tracks the quality of T&D Inspections.
- The target is met by achieving a 98 percent "meets expectations" performance during the internal audits.

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<sup>71</sup> Inclusive of 9,400 inspections completed in December 2018.

### **6.2.3. System Hardening Targets and Indicators**

#### Target #1: Miles of System Hardened

- Retired miles of circuits with potential fire risk components within HFTD areas (as identified and prioritized by the distribution wildfire risk model generated in 2018) to reduce wildfire risk through either (1) rebuild of overhead circuitry to current design standards; (2) targeted undergrounding; or (3) elimination of overhead circuitry.
- The 2019 target is approximately 150 circuit miles of system hardening work completed. The annual target will be assessed against the actual result achieved.

#### Target #2: Quality of the Miles of System Hardening HFTD Areas

- The quality of the system hardening work completed annually in HFTD areas.
- The target is met by achieving a 100 percent “meets expectations” performance during the internal audits.

#### Indicator #1: Wires Down Events Within HFTD Areas

- The number of wires down events within HFTD areas, when the FPI is rated as very-high or higher, will be trended year-over-year.

#### Indicator #2: Equipment Caused Ignitions in HFTD Areas

- The number of equipment caused ignitions within HFTD areas will be trended year-over-year.

### **6.2.4. Vegetation Management Targets and Indicators**

#### Target #1: Miles of Enhanced Vegetation Management Work Completed

- Completed distribution circuit miles of vegetation cleared under the EVM Program scope within high-fire risk areas to reduce

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wildfire risk through (1) overhang clearing 4 feet vertical from conductor and (2) high-risk species mitigation.

- A circuit mile is recorded as complete when it is either inspected and determined clear, or when work identified by inspection is recorded as complete. Both overhang clearing and at-risk species mitigation must be recorded as clear/complete for the mile to be recorded as clear.
- The 2019 target is approximately 2,450 circuit miles of EVM work completed in HFTD areas. The annual target will be assessed against the actual result achieved.

Target #2: Completion of Drought and Tree Mortality (CEMA) Patrols

- Complete 100 percent of Drought and Tree Mortality CEMA Patrols by the end of 2019.

Target #3: Completion of Drought and Tree Mortality (CEMA) Work

- Removing or working all dead or dying trees (“CEMA trees”) identified by October 1 of the current year, excluding trees affected by third-party delays, including environmental permitting requirements, owner refusals, and agency approval or review.<sup>72</sup>

Target #4: Quality Assurance Results in HFTD Areas

- Measures the results of QA review of EVM and Drought Response Program work performed on electric distribution power line segments within the HFTD area;
- Calculated as a percentage: the number of trees correctly worked to the EVM or Drought and Tree Mortality scope identified during audits divided by all in-scope trees reviewed through audits;

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<sup>72</sup> Due to physical and timing constraints, CEMA trees identified late in a calendar year likely cannot be removed in that same calendar year.



- The target is met by achieving a 92 percent “meets expectations” performance in the QA audits. Given that 2019 will be the first full year of the EVM program, QA review will be performed on 100 percent of EVM work.
- Any trees found to have been missed or incorrectly worked through the QA reviews will be reworked to meet the relevant program scope

Indicator #1: Vegetation Caused Outages in HFTD Areas

- The number of vegetation caused outages within HFTD areas, when the FPI is rated as very-high or higher, will be trended year over year.

Indicator #2: Vegetation Caused Ignitions in HFTD Areas

- The number of vegetation caused ignitions within HFTD areas will be trended year over year.

## **6.2.5. Situational Awareness Targets**

Target #1: Weather Stations Installed

- Tracks the number of weather stations installed annually against the annual target.
- The 2019 target is to install approximately 400 additional weather stations. The annual target will be assessed against the actual result achieved.

Target #2: High-definition Cameras Installed

- Tracks the number of high-definition cameras installed annually against the annual target.
- The 2019 target is to install approximately 70 additional high-definition cameras. The annual target will be assessed against the actual result achieved.

### **6.3. Monitoring and Auditing**

PG&E's Wildfire Risk Management organization is responsible for monitoring and auditing the targets specified in the Plan to confirm that PG&E safely and efficiently reduces wildfire risk and consequences within its service area. The Wildfire Risk Organization will evaluate actual performance compared to the targets on an ongoing basis – including at a minimum, annually, as well as rely upon the internal audits described below. The Wildfire Risk Organization will also examine indicators on a regular basis, including at least annually, to assess the efficacy of the Plan performance in reducing ignition risk. In addition, a third party selected from a list developed by the CPUC will audit PG&E's execution of the Plan annually.

This section of the Plan describes: (1) the correction of plan deficiencies; (2) monitoring and auditing the effectiveness of equipment and line inspections; (3) internal electric assessment management QA and QC process; (4) internal auditing; and (5) external auditing.

#### **6.3.1. Corrections to Plan Deficiencies**

Upon finding any deficiencies in performance against the Plan or need for improvement in the Plan itself, the PG&E's Wildfire Risk Management organization will be responsible for correcting the deficiencies.

#### **6.3.2. Monitoring and Auditing Effectiveness of Equipment and Line Inspections**

The CPUC performs between four and seven audits of PG&E's GO 165 Program on an annual basis. These audits review all parts of the program, including reviews of documentation, field validation of completed patrols and inspections, as well as a review of both pending and completed maintenance work identified on electric corrective action notifications.

In addition, Compliance Supervisors perform desk and field verification of a select number of Overhead and Underground facilities that were inspected in the

previous month. Facilities inspected by both PG&E and contractor Compliance Inspectors are verified including:

1. A minimum of four overhead and four underground facilities must be verified.
2. At least one location must be verified for each inspector that completed a GO 165 Inspection in the previous month.
3. If less than four Compliance Inspectors completed inspections in the previous month, the number of verifications must be split between the inspectors so that the minimum four verifications are performed (for example, three inspectors that performed overhead inspections must have a verification performed for each of the three inspectors and an additional verification performed for one inspector). The additional verification will be rotated between the inspectors in subsequent months.
4. If more than four Compliance Inspectors completed inspections in the previous month, the number of verifications must be equal to the number of inspectors. For example, six verifications are required if six inspectors performed overhead inspection.

### **6.3.3. Internal Electric Asset Management Quality Assurance and Quality Control Process**

The Quality Management (QM) Department within the Electric Asset Management (EAM) organization, executes the Electric Operations QA and QC Program. This program performs independent quality audits and control tests of the electric LOBs. This includes Electric Transmission (Substation and Transmission Lines), Distribution, and Transportation Services. Quality Management has three separate groups: (1) QC Transmission Line and Substation; (2) QC Distribution; and (3) QA.

The QM auditing program procedures and methodologies must satisfy the following principles:

### **1. Consistency With the Following Standards:**

- ASQ/ANSI/ISO 19011:2011: Guidelines for auditing management systems
- American Society of Quality (ASQ) Code of Ethics

### **2. Transparency**

- QM has the obligation to report truthfully ensuring that assessment findings, audit reports, and conclusions reflect the assessment activities and observations.

### **3. Independence**

- Assessments are performed by personnel who do not have direct responsibility for performing the activities being assessed. They must be free from bias and conflict of interest to maintain an objective state of mind throughout the assessment process so that findings and conclusions are based only on the objective evidence.

QM uses an integrated approach to plan and coordinate audits. Specifically, QM uses an Audit Plan Committee and applies a risk-based methodology to prioritize audits and control tests to be performed. The Audit Plan Committee consists of leadership from Quality Compliance, T&D Compliance, Risk, and LOBs tasked with identifying, refining, and prioritizing quality audits, assessments, and control tests. The Audit Plan Committee meets twice a year to publish a rolling 12-month audit plan. The QM department is designed to focus on the relevant LOB standards and compliance requirements.

In addition, on an as needed basis, both QC groups (T&D) perform focused audits on the restoration efforts during emergency response events.

#### **6.3.4. Internal Auditing**

Internal Auditing (IA) provides PG&E with independent, objective assurance of the adequacy of processes and controls to manage business risk. IA's scope of work is to determine whether PG&E's processes, as designed and implemented, are adequate

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for (a) identifying and managing key risks; (b) producing accurate, reliable, and timely operating, managerial, and financial information; (c) protecting PG&E resources; (d) complying with applicable laws and regulations, policies, standards, and procedures; and (e) providing an appropriate level of internal governance.

IA does not have mandatory annual audits focused on these processes. Rather, as part of PG&E's process to develop the annual audit plan, IA assesses all risks, including electric Distribution, Transmission and Substation risks. As a result, each year IA typically performs audits over a variety of processes across electric Distribution, Transmission, and Substation.

### **6.3.5. External Auditing**

PG&E is currently conducting a solicitation seeking a third party to review various aspects of the risk reduction measures as part of its CWSP including WSIP. Depending on the quality of performance and value received from the third-party entity, the process may be expanded further to additional potential risk reduction measures.

## 7. Cost Estimates for 2019 Plan Programs

As required by the ALJ Ruling, in Attachment E, PG&E provides initial cost estimates for each program within this Plan, so that the CPUC and parties may weigh the potential cost implications of measures proposed.<sup>73</sup> The costs reflect PG&E's best estimate of the costs for the proposed programs as of January 31, 2019. Actual costs may vary substantially depending on actual conditions and requirements; costs of labor (impacted by both rate per hour and actual time required to complete work), materials, permit acquisitions, or other necessary resources; weather or other environmental or climatological factors; challenges regarding access rights to perform the work; the projected scope of the program; as well as additional execution risks listed in Table 9.

For three of the larger programs, in addition to the general potential variables noted above, the following are incremental key drivers of our cost estimates for these specific initiatives:

### System Hardening:

- Percent of system hardening performed above ground versus underground;
- Ability to secure adequate trained personnel to complete the work;
- Ability to secure necessary equipment and materials to complete the work (e.g., limitations on available conductor);
- Actual number of miles completed;
- Technological improvements/advancements;
- Economies of scale captured in estimates;
- Mix and number of crew required to complete the work per line mile;
- Mix of materials required to complete the work per line mile;

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<sup>73</sup> ALJ Ruling at p. 2.

- Our ability to get appropriate clearances due to customer impacts; and
- Ability to bundle work with other efforts.

WSIP Inspections & Repair (transmission, distribution and substation):

- Ability to secure adequate trained personnel to complete the work;
- Ability to obtain appropriate clearances due to system, customer or landowner impacts;
- Actual number of miles completed;
- Extent and type of damages found during the inspections; and
- Ability to bundle work with other efforts.

Vegetation management activities:

- Ability to secure adequate trained personnel to complete the work;
- Actual number of miles completed;
- Volume and type of vegetation identified as requiring work (trim or removal) to meet program scope during inspections;
- Mix of tree trimming required (overhang vs ground to conductor fuel reduction); and
- Mix of trees types (species, heights, diameter, adjacency to other structures or facilities), which impacts level of tree workers and time required to remove a tree.

To most reasonably compare current program costs, PG&E has included the 2019 forecasted spend for those programs in columns labeled “*Costs Currently Reflected in Revenue Requirement? (Provide Decision Reference) If for Only Part of Budget, Identify the \$ for that Part and Explain Part Not Previously Authorized (§ 8386(j)).*” For the costs that are partially recovered in the revenue requirement, several of the program costs have yet to be listed in Attachment E, Cost Estimates for

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2019 Plan Programs, and will be submitted to the CPUC subsequently following submission of this Plan. The costs forecasted in Attachment E generally align with those forecasted for 2019 in the 2020 GRC filing. Program cost forecasts that deviate from 2020 GRC (or other previously filed documents e.g., CEMA, EPIC & FHPMA) by approximately 15 percent or more from PG&E's latest forecast have been updated with PG&E's latest forecasted costs. The reasons that the program costs have changed are discussed below.

There are program costs in this Plan that deviate from previously forecast costs. These include the following programs (identified by the section in which they are discussed in the Plan):

- 4.1.3 Safety and Infrastructure Protection Teams: The 2019 cost represented in the CEMA forecast has increased due to the size of the workforce supporting this effort.
- 4.1.4 Aviation Resources: The cost forecasted for 2019 in the 2020 GRC has decreased as PG&E brought the purchase of the helicopters forward into 2018.
- 4.2.4 – 4.2.7 WSIP, Distribution, Transmission and Substation Inspections: The WSIP inspection programs were developed after submission of the 2020 GRC filing and are an incremental wildfire safety cost.
- 4.4 Vegetation Management CEMA Related Costs: The 2019 CEMA forecasted costs have decreased because it was determined that *Fuels Reduction* would be recorded in *the Enhanced Vegetation Management program* for 2019 and thus that portion of the previous CEMA forecast will now be recorded in the 2019 FHPMA. The forecasted number of dead and dying requiring removal has also dropped due to recent trends, including PG&E's significant efforts in recent years to remove these trees, which has reduced the 2019 CEMA forecast as well. In addition,



firefighting crews were included into the original 2019 CEMA forecast, but have since been removed.

- 4.5.2 Weather Stations: The number of weather stations targeted for installation in 2019 has increased from 200, listed in the 2020 GRC filing, to 400 after the submission of the 2020 GRC.
- 4.5.6 WSOC: The WSOC labor component has increased from the 2019 test year forecast as submitted in the 2020 GRC due to additional Public Safety Specialist and WSOC Full Time Employees.
- 4.6.2 PSPS: The forecasted number of PSPS events has increased from the 2020 GRC in response to expansion of the scope.

The ALJ Ruling also requires each utility to explain how it will avoid double counting of costs. PG&E will track the costs incurred for each program by date and planning order, ensuring that costs are not double-counted. Each program's costs will be allocated to the appropriate memorandum account, balancing account, or budget, based on whether the costs are incremental or were included in existing revenue requirements. Where a portion of a program's costs were included in the 2017 GRC, and therefore in the current revenue requirement, PG&E will deduct the proportionate amount from the memorandum account.

## **8. Additional Information the CPUC May Require**

PG&E has developed this risk-informed Plan to reduce the highest wildfire risks within its service area. By prioritizing the highest risk circuits in HFTD areas, PG&E will focus available resources to address the greatest risks. As indicated in the summary chart in Section 4, there are challenges that PG&E is already preparing to address to effectively and expeditiously implement the Plan and achieve PG&E's identified 2019 targets.

There are additional circumstances that could also impact PG&E's ability to successfully implement this Plan. On January 29, 2019, PG&E filed for Chapter 11 under the U.S. Bankruptcy Code in the United States Bankruptcy Court for the Northern District of California. While PG&E expects that this process will assure the Company has access to the capital and resources necessary to support ongoing operations and enable PG&E to continue investing in its systems, infrastructure and critical safety, it is possible that financial issues could hinder PG&E's ability to retain the resources or otherwise fund activities required by the Plan. In addition, during this process, PG&E's activities and expenditures will be subject to review by the Bankruptcy Court.

Finally, this Plan supplements, but does not supersede, PG&E's wildfire related documents, including but not limited to:

- 2020 GRC
- PG&E's Fire Prevention Plan
- PG&E's Wildfire Annex to the CERP
- TD-1464S

**PACIFIC GAS AND ELECTRIC COMPANY**  
**ATTACHMENT A**  
**FIRE POTENTIAL INDEX METHODOLOGY AND BACKGROUND**

## **ATTACHMENT A**

### **Fire Potential Index Methodology and Background**

#### **Summary**

In 2018, Pacific Gas and Electric Company (PG&E) Meteorology, with guidance from fire experts from San Diego Gas & Electric Company (SDG&E), the United States Forest Service (USFS), and San Jose State University's Fire Weather Research Lab, developed the Fire Potential Index (FPI). The central purpose in the development of the new FPI was to create a system that could be optimized to forecast and track fire danger in real-time, a capability that has historically been unavailable when utilizing the National Fire Danger Rating System (NFDRS).

The FPI combines fire weather data (temperature, humidity and wind), live and dead fuel moisture values, and satellite data to rank fire danger on a floating-point scale from 1 (lowest) to 6 (highest), allowing for a more detailed determination of fire danger at the extreme end of the fire danger scale. Threshold values for each rating classification are determined through an evaluation of conditions during historical fire incidents combined with typical seasonal values. The FPI was applied to 91 static geographic areas that are called Fire Index Areas (FIAs);<sup>1</sup> these geographic areas include all Tier 2 and Tier 3 areas as designated by the California Public Utilities Commission (CPUC) High Fire-Threat District (HFTD) Map where PG&E has electric transmission and/or distribution equipment.

The FPI is also combined with PG&E's damage prediction model to better distinguish between typical Extreme fire danger observed during hot and dry conditions, and Extreme-Plus fire danger, which occurs when a confluence of strong, dry, outage producing winds and extremely dry fuels may lead to devastating wildfires.

#### **Background**

Prior to 2015, PG&E received fire danger ratings directly from California Department of Forestry and Fire Protection (CAL FIRE) for FIAs in PG&E's service territory. When CAL FIRE discontinued this service in December 2014, PG&E decided to develop a fire danger rating methodology utilizing public and internal data sources to

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<sup>1</sup> FIAs were originally developed by the USFS Pacific Southwest Forest and Range Experiment Station (now the Pacific Southwest Research Station) in 1959 and updated in the late 1960s and are still in use today by state (e.g., CAL FIRE) and federal agencies (e.g., USFS). These agencies refer to these areas as Fire Danger Ratings Areas.

implement actions that could reduce fire ignition risk. PG&E developed and demonstrated a Fire Danger Rating System specific to PG&E's service territory under the Electric Program Investment Change (EPIC) 1.05<sup>2</sup> Program.

The EPIC 1.05 Project Team conducted a review of existing and publicly available fire danger ratings systems and consulted with multiple partners to further refine PG&E's fire danger rating methodology, given the need to evaluate fire danger ratings at a more granular timescale and spatial resolution. A more granular fire danger rating methodology was developed, tested, and deployed, specifically to provide daily fire danger ratings for PG&E's service territory. Key project partners provided valuable guidance and consulting and participated in at least one of two external sharing and coordination meetings. They included:

- CAL FIRE
- USFS
- National Weather Service
- SDG&E
- San Jose State University (SJSU) Fire Weather Research Lab
- Bureau of Land Management
- California Governor's Office of Emergency Services (Cal OES)
- PG&E's Wildfire Risk Council

The result was a system utilizing outputs from the PG&E Operational Mesoscale Modeling System (POMMS), NFDRS<sup>3</sup> and the Nelson Dead Fuel moisture model.<sup>4</sup> This system allows PG&E to forecast the fire danger rating from low to extreme on an hourly basis for each FIA, and is consistent with how CAL FIRE, the USFS, Bureau of Land Management, and Bureau of Indian Affairs evaluate fire danger.

### **FPI Components**

Following the devastating wildfires in October 2017, it became evident that an even more granular fire danger rating system would be needed for understanding and

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<sup>2</sup> Voss, M.G EPIC. 2016. New Forecast Methods for Improved Storm Damage Modeling.

<sup>3</sup> Deeming, J. E., J. W. Lancaster, M. A. Fosberg, R. W. Furman, and M.J. Schroeder. 1972. The National Fire-Danger Rating System. U.S. Department of Agriculture Forest Service, Rocky Mountain Forest and Range Experiment Station, Research Paper RM-84, Ft. Collins, Colorado. 165 pp. Revised 1974.

<sup>4</sup> Nelson, Ralph M. Jr. 2000. Prediction of diurnal change in 10-h fuel stick moisture content. Can. J. For. Res. 30: 1071-1087.

awareness of extreme events. Not only did the FPI provide the fire danger ratings for more precise geographic areas (the 91 FIAs), but the FPI could provide hourly fire danger ratings that could be modeled/forecasted and then tracked in real-time.

The FPI is calculated based on weather conditions and the state of the fuels. A sample is included below, with additional detail on specific conditions and components that factor into the FPI calculation.

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| Index | Rating    | Fosberg Fire Weather Index (FFWI) |
|-------|-----------|-----------------------------------|
| 1 - 2 | Low       | <15                               |
| 2 - 3 | Moderate  | ≥15 - 25                          |
| 3 - 4 | High      | ≥25 - 40                          |
| 4 - 5 | Very High | ≥40 - 60                          |
| 5 - 6 | Extreme   | ≥60 - 100                         |

Varies minutes to hours

**FPI = Fire Potential Index = Weather Conditions (FFWI) + Fuel Conditions**

- FFWI (Fosberg Fire Weather Index) combines wind, humidity, and temperature
- Fuel Conditions: Dead Fuel Moisture, Live Fuel Moisture, and Enhanced Vegetation Index (i.e., Green-up)
- FPI calculated for each Fire Index Area; all variables scaled 1 to 6

$$FPI = \left( \frac{Weather + Fuels}{2} \right)$$

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**DFM**

| Index | Rating   | 10 hr. Dead Fuel Moisture (DFM) |
|-------|----------|---------------------------------|
| 1 - 2 | Very Wet | > 25%                           |
| 2 - 3 | Moist    | ≤ 25 - 12%                      |
| 3 - 4 | Dry      | ≤12 - 8%                        |
| 4 - 5 | Very Dry | ≤8 - 5%                         |
| 5 - 6 | Extreme  | ≤5 - 1%                         |

Varies over hours to days

**LFM**

| Index | Rating   | Live Fuel Moisture (LFM) |
|-------|----------|--------------------------|
| 1 - 2 | Very Wet | >100%                    |
| 2 - 3 | Moist    | ≤100 - 81%               |
| 3 - 4 | Dry      | ≤80 - 71%                |
| 4 - 5 | Very Dry | ≤70 - 63%                |
| 5 - 6 | Extreme  | ≤62 - 45%                |

Varies over days

**EVI**

| Index | Rating       | Enhanced Vegetation Index (EVI) |
|-------|--------------|---------------------------------|
| 1 - 2 | Very Green   | 0 - 20%                         |
| 2 - 3 | Green        | ≥20 - 40%                       |
| 3 - 4 | Transition   | ≥40 - 60%                       |
| 4 - 5 | Curing       | ≥60 - 80%                       |
| 5 - 6 | Mostly Cured | ≥80 - 100%                      |

Varies over several days to weeks

### Weather Conditions

The FPI weather component is calculated using the Fosberg Fire Weather Index (FFWI), an established tool widely used by land managers to evaluate the impacts of short-term weather variations as they relate to fire potential. The FFWI processes meteorological variables (relative humidity, temperature, and sustained wind speed) through a non-linear filter that results in a linear relationship between combined meteorological variables and wildfire behavior. The FFWI is based solely on weather data and can assess potential wildfire behavior over shorter timeframes and in localized areas where high-resolution model data or surface weather observations are available. FFWI values are sourced from POMMS and are calculated at each weather station in a given FIA. Multiple weather stations are mapped to individual FIAs. Web tools can also be utilized in real-time during high fire danger events to ascertain how models compare to actual conditions, thereby providing situational awareness of real-time fire danger conditions.

## **Fuel Conditions**

Fuel conditions are measured through a combination of dead fuel moisture (DFM), live fuel moisture (LFM), and a satellite-derived greenness factor, or Enhanced Vegetation Index (EVI).

### **Dead Fuel Moisture (DFM)**

Most Dead Fuel Moisture can be found on the forest floor and consists of moisture content from organic dead fuel. DFM levels are calculated by gathering data on variables like temperature, humidity, length of day and accumulated rain; as such, DFM data is constantly evolving. DFM values are calculated for each FIA and assigned a 1-to-6 value based on historical thresholds.<sup>5</sup>

### **Live Fuel Moisture (LFM)**

Live Fuel Moisture is the moisture that occurs naturally in living vegetation; more specifically, it is the ratio of water weight to dry weight in any particular sample. Data for LFM is expressed as a percentage; a metric of 100% signifies a sample of vegetation consisting of 50% water. In California, LFM values have been found in excess of 200%.<sup>6</sup> Unfortunately, LFM measurements have also been sparse and lacking in agency coordination. Inconsistencies with sampling equipment and methods have also contributed to uncertainty in these analyses; PG&E is working with the SJSU Fire Weather Science Lab to better understand and improve LFM measurement and modeling. As with DFM, LFM is scaled from 1-to-6, with 1 signifying significant wetness and 6 as the driest possible.

### **Enhanced Vegetation Index (EVI)**

The Enhanced Vegetation Index is an index that is derived from satellite data that detects and tracks the condition (green to cured) of vegetation. EVI is particularly useful when tracking the life cycle of annual grass crops but can also be leveraged to determine areas of intense bark-beetle damage or drought impacts. The life cycle of plants from 'Green-up' to transition to completely cured can be both modeled and observed. As annual grasses and perennials flourish, fires are much less likely to start and spread; as annual grasses begin to transition, usually in late spring into summer,

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<sup>5</sup> Ref Nelson, R.M., Jr., 2000. Prediction of diurnal change in 10-h fuel stick moisture content. Canadian Journal of Forest Research, 30:1071-1087. <https://pdfs.semanticscholar.org/3022/2d17ecc4c3ff15b029602329436c13594e22.pdf>).

<sup>6</sup> National Wildfire Coordinating Group S-290 Intermediate Wildland Fire Behavior Course Unit 10.

and then cure in the summer and into fall, the probability of fire ignitions increase. Plant cycles are dependent on atmospheric conditions such as the timing and amount of rain (soil moisture) temperature, wind (ventilation) relative humidity and solar radiation. The PG&E FPI utilizes a 'Green-up' component that is scaled from 1-to-6 and is based on EVI percentile calculations; this data is generally updated every 8 days.

### **Extreme-Plus Fire Danger**

In 2018, PG&E created a new Extreme-Plus fire danger category to better distinguish between the more typical extreme fire danger observed in California during hot and dry conditions and the rare concurrence of extreme fire weather conditions (strong, dry, outage producing winds) with extremely dry fuels. The Extreme-Plus fire danger category seeks to capture conditions that may lead to ignitions of rapidly spreading catastrophic wildfires. Extreme-Plus conditions are gauged on a scale that combines PG&E's storm damage model with its fire danger model (FPI); the storm damage model's underlying logic seeks to predict the likelihood of outages, caused by either equipment or vegetation, that could become an ignition source. An Extreme-Plus fire danger forecast is a principal factor in consideration of a Public Safety Power Shutoff (PSPS) event, which is a program that PG&E implemented following the 2017 wildfires as an additional precautionary measure to further reduce the risk of wildfire ignitions. An Extreme-Plus rating is not considered final or published internally until it is vetted by the supervising meteorologist and reviewed in conjunction with leadership from the Community Wildfire Safety Program and the Wildfire Safety Operations Center.

### **Storm Damage Modeling (SOPP)**

PG&E's Meteorology department supplies Electric Operations with daily weather guidance; this guidance includes Storm Damage Modeling (SOPP), which highlights potential adverse weather across the PG&E service territory over a 10-day timeframe. SOPP details any expected outage activity in each of PG&E's 19 geographic Divisions over a 4-day period, along with an estimate of the number of troublemen and crew resources required for assessment and repair. SOPP is also able to project the expected timing of meteorological risk during weather events and assign a scale of 1-to-5 to each division depending on forecasted outage activity. Because outage-producing wind speeds can vary based on exposure, topography, directionality, vegetation, seasonality, and other factors, no single criteria exists for what can constitute an outage-producing wind. However, certain general relationships have been

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established in SOPP that allow PG&E to project ranges of wind speeds that produce outage activity.

**Conclusion**

The ultimate goal of PG&E's fire danger rating system is to further reduce the risk of fire ignitions caused by utility operations. PG&E has followed a path based on SDG&E's in its development and testing of a more streamlined fire danger index. When fire danger ratings are very high or above in any fire danger rating area, a number of mitigating measures can go into effect. These may include, but are not limited to, disabling automatic reclosing, limiting any type of hot work, prohibiting off-road travel, and the evaluation of real-time and forecast conditions for a PSPS.

**PACIFIC GAS AND ELECTRIC COMPANY**  
**ATTACHMENT B**  
**CRITICAL SERVICES**

## **ATTACHMENT B**

### **Critical Services**

The California Public Utilities Commission currently defines “essential customers” as those that are exempt from rotating outages and has established a process for customers to apply for essential customer status. For purposes of Public Safety Power Shut-Off (PSPS) events, Pacific Gas and Electric Company (PG&E) has a separate process for identifying customers that provide “critical services” such as first responders, health care facilities, operators of telecommunications infrastructure, and water agencies/utilities. PG&E prioritizes customers providing critical services for restoration and communication during PSPS events.

Because the Administrative Law Judge Ruling<sup>1</sup> requiring a list of entities considered essential services is addressing PSPS events, PG&E is using the definition of “critical” services in this Attachment. For the sake of customer privacy, PG&E provides a list of categories for the entities that would qualify as providing critical services, instead of specific customer names. Entities are listed in order of priority for restoration and communication during a PSPS event.

#### Critical First Responders:

- Immediate Response Needs – Police Stations
- Immediate Response Needs – Fire Stations
- 911 Dispatch Centers

#### Healthcare facilities:

- Immediate Response Needs – Hospitals and Surgical Centers
- Kidney Dialysis / Blood Organ Banks
- General Hospitals and Skilled Nursing Facilities

#### Telecommunications Infrastructure:

- Immediate Response Needs – Critical Telecom Infrastructure

#### Water Agencies/Utilities:

- Water Treatment Facilities
- Sewage Plants

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<sup>1</sup> Administrative Law Judge’s Ruling on Wildfire Mitigation Plan Template, and Adding Additional Parties as Respondents, issued January 17, 2019 in R.18-10-007.

Others:

- Emergency Operation Centers (Federal, State, County)
- Schools
- Prisons and Jails
- Government agencies essential to national defense
- Major evacuation centers/Shelters
- Major local public transportation centers (Bay Area Rapid Transport, ferries)
- Major national public transportation centers (airports)
- Local/state/national government staging sites

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**PACIFIC GAS AND ELECTRIC COMPANY**  
**ATTACHMENT C**  
**DESCRIPTION OF ROUTINE FACILITIES INSPECTIONS**

## ATTACHMENT C

### Description of Routine Facilities Inspections

#### 1. Routine Distribution Line Inspection

The Overhead Patrols and Inspections Program, focused on safety and reliability, is designed to comply with General Orders (GO) 95 and 165, resulting in inspections of Pacific Gas and Electric Company (PG&E) electric facilities to identify conditions that may pose a hazard or the risk of an ignition. The Overhead Patrols and Inspections Program is primarily focused on the identification, assessment, prioritization, and documentation of abnormal conditions (e.g., conditions that could impact safety or reliability such as damaged or missing critical components), regulatory conditions (e.g., specific field conditions PG&E has determined must be identified regardless of impact to safety or reliability, such as missing high voltage signs), and third-party caused conditions that negatively impact safety or reliability (e.g., unauthorized attachments, structures built too close to facilities). These conditions may occur due to operational use, degradation, deterioration, environmental changes, or third-party actions.

In addition, there are several preventive and corrective maintenance programs that are focused on maintaining assets, replacing assets or targeted service reliability improvements, such as the Pole Test and Treat Program and line equipment inspections and testing. Consistent with GO 165, there are three defined levels of these routine distribution line inspections as follows:

- A patrol inspection is a simple visual inspection, of applicable utility equipment and structures, that is designed to identify obvious structural problems and hazards. Patrol inspections may be carried out in the course of other company business. Overhead patrols of equipment and conductors are required to be completed every year in High Fire Threat District (HFTD) areas.
- A detailed inspection is where individual pieces of equipment and structures are carefully examined, visually and through use of routine diagnostic tests, as appropriate, and (if practical and if useful information can be so gathered) opened, and the condition of each rated and

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recorded. Overhead detailed inspections of equipment and conductors are required to be completed every five years in HFTD areas.

- An intrusive inspection is defined as one involving movement of soil, taking samples for analysis, and/or using more sophisticated diagnostic tools beyond visual inspections or instrument reading. For wood poles that are over 15 years old and have not been previously subjected to intrusive inspections, an intrusive inspection must be performed. For wood poles that have previously passed an intrusive inspection, the follow-on intrusive inspection interval is 20 years.

PG&E's programs are designed to meet or exceed the GO 165 minimum requirements in HFTD areas. For example, PG&E performs intrusive inspections on wood poles that have previously passed an intrusive inspection approximately every 10 years or if conditions call for testing.

In addition to identifying and resolving immediate safety or reliability hazard conditions, a Compliance Inspector is required to identify and document the field scenarios that impact safety and reliability. All overhead assessments must be performed using visual observations and may also include diagnostic testing (e.g., hammer sound test, bore tests) to verify pole integrity. The work resulting from the GO 165 inspection program is prioritized based on several factors when evaluating an abnormal condition, including both the probability and impact of a failure or exposure to the public or workers. PG&E's Distribution organization is directed to identify deficient conditions, create corrective notifications, and assign priority as described in Section 4.2 of the Wildfire Safety Plan.

## **2. Routine Transmission Line Inspection**

Similar to the role of inspections and patrols for electric distribution, inspection and patrol procedures are a key element of the preventive maintenance program for PG&E's electric transmission lines. These actions reduce the potential for component failures and facility damage and facilitate a proactive approach to repairing or replacing identified, degraded or damaged components. PG&E's transmission procedures include the following regular transmission inspection activities:

- A patrol inspection is a visual observation to identify abnormalities (e.g., obvious structural problems or hazards) or circumstances that will

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negatively impact safety. All overhead transmission line facilities are patrolled annually. An overhead patrol may be performed by walking, driving, or flying (helicopter only), and are conducted in a manner that will identify deficient conditions.

- A detailed inspection is a visual observation of individual components, structures and equipment; operational readings; and component testing (e.g., hammer test) to identify abnormalities or circumstances that will negatively impact safety, reliability, or asset life. Detailed inspection frequencies vary depending on voltage, structure type (wood or steel), and foundation location relative to bodies of water. A detailed ground, aerial, or climbing inspection of the asset looks for deficiencies or circumstances that will negatively impact safety, reliability, or asset life. Individual elements and components are examined carefully through visual and/or routine diagnostic tests, and each abnormal condition is graded and/or recorded.
- An infrared inspection uses infrared cameras, affixed to helicopters, to capture heat data of individual components to identify deficiencies requiring further attention. Infrared inspections may be performed in conjunction with overhead inspections, but must not be considered as, or substituted for, an overhead inspection. Infrared inspections are performed annually in Tier 3 HFTD areas and every three years in Tier 2 HFTD areas. Infrared inspections are performed in late spring or early summer when line loading and favorable weather facilitates effective infrared readings.
- A non-routine patrol or inspection may be conducted on an ad-hoc basis given conditions including, but not limited to, storm restoration.

PG&E's Transmission organization identifies deficient conditions, creates corrective notifications, and assigns priority as described in Section 4.2 of the Wildfire Safety Plan.



### 3. Routine Substation Inspection

PG&E's Substation Inspection Program uses a time-based inspection interval. Routine substation inspections are scheduled to be performed based on the substation type.<sup>1</sup> For example, Type 1 is monthly, and Type 2 is every other month. The type and frequency are based on the substation criticality matrix that PG&E developed utilizing industry best practices. PG&E evaluates the risk of each substation based upon public and employee safety, system criticality, security, and environmental risk.

The Substation Inspection Program activities include:

- Inspecting the substation and equipment for damage or abnormal conditions.
- Inspecting all other items appropriate to the substation and its equipment.
- Documenting and reporting any abnormal conditions found in the substation and documenting any repairs, services or other work performed.

At a minimum, qualified personnel perform a visual and/or auditory (if applicable) inspection of substation equipment and facilities, whether in service or not, in compliance with GO 174 requirements. PG&E's Substation organization identifies notable conditions, creates corrective notifications, and assigns priority as described in Section 4.2 of the Wildfire Safety Plan.

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<sup>1</sup> The Substation Inspection Program does not include maintenance work such as unplanned or corrective maintenance, on-line condition monitoring, infrared and corona inspections or testing.

**PACIFIC GAS AND ELECTRIC COMPANY  
ATTACHMENT D  
RISKS AND DRIVERS IDENTIFIED IN RAMP**

## ATTACHMENT D

### Risks and Drivers Identified in RAMP

As discussed in its 2017 Risk Assessment Mitigation Phase (RAMP) Report, Pacific Gas and Electric Company's (PG&E) total expenditure in 2016 for all wildfire risk-related activities was approximately \$750 million.<sup>1</sup> Most of this expenditure, about \$435 million, was directed to vegetation management (routine and drought and tree mortality work) around PG&E's overhead transmission and distribution lines, the biggest driver of wildfire risk for distribution lines, primarily in areas that are now designated as High Fire Threat District (HFTD) areas.<sup>2</sup> Other expenditures and infrastructure replacement programs to control wildfire risk included patrols and inspections of PG&E's overhead electric facilities; preventive maintenance of equipment and poles; replacement of overhead conductor, overhead distribution equipment, and poles that are at risk of failing; installation of protective equipment (e.g., fuses and reclosers) that isolates circuit segments when abnormal conditions are detected; funding of local Fire Safe Councils<sup>3</sup> for fire detection and fuel reduction projects in local communities; and the development and enhancement of engineering design standards, training, and operational procedures to minimize wildfire risk. PG&E refers to these existing programs as "controls."<sup>4</sup> The table below provides a list of these controls identified in the 2017 RAMP Report, followed by a description of each control.

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- <sup>1</sup> See 2017 RAMP Report, Chapter 11, Wildfire, Section III, Table 11-1.
  - <sup>2</sup> As described below, the California Public Utilities Commission (Commission) has recently changed its classification system for high fire-threat areas. Some areas previously classified as high fire-threat areas were not included in the Commission's HFTD Map.
  - <sup>3</sup> Fire Safe Councils are community-based, self-governed groups that focus on fire safety. They distribute fire safety materials, teach fire-safe home construction techniques, conduct fuel reduction projects, fund defensible space projects around homes and escape routes, sponsor lookout towers, and form community safety networks.
  - <sup>4</sup> For definition purposes in this Wildfire Safety Plan (Plan or WSP), PG&E considers "controls" to be safety or compliance programs already in place, though not necessarily included in prior GRC-approved budgets, and "mitigations" to be specific additional or enhancement programs with primary goals beyond compliance, with specific start and end dates and a project budget, or an additional proposed activity not previously identified.

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### Wildfire Risk Controls

| Line No. | Control # | Control  |
|----------|-----------|--|
| 1        | C1        | Overhead Patrols and Inspections                   |
| 2        | C2        | Vegetation Management                              |
| 3        | C3        | CEMA Vegetation Management                         |
| 4        | C4        | Non-Exempt Equipment Replacement                   |
| 5        | C5        | Overhead Conductor Replacement                     |
| 6        | C6        | Animal Abatement                                   |
| 7        | C7        | Protective Equipment                               |
| 8        | C8        | Overhead Equipment Replacement                     |
| 9        | C9        | Deteriorated Pole Replacement                      |
| 10       | C10       | Wood Pole Bridging                                 |
| 11       | C11       | Design Standards                                   |
| 12       | C12       | Restoration, Operational, Procedures, and Training |

- C1 – Overhead Patrol and Inspections: PG&E patrols and inspects its overhead electric facilities to identify damaged facilities and other conditions that may pose a risk of wildfire ignition. Patrols and inspections are performed annually in urban and high-risk wildfire areas, and biannually in rural areas.
- C2 – Vegetation Management: PG&E’s Vegetation Management (VM) Program was developed in accordance with General Order (GO) 95, Rule 35, and Public Resources Code (PRC) Sections 4292 and 4293. The program includes inspection and identification of vegetation that poses a potential safety hazard, as well as clearing and removal of vegetation, and quality assurance. The main components of this work are the routine VM Program, vegetation control, and quality assurance.
- C3 – CEMA Vegetation Management: This control includes five initiatives intended to address the vegetation impacts associated with prolonged drought conditions. The five initiatives are as follows:
  - 1) Enhanced Vegetation Inspection and Mitigation – Additional ground and air inspection on selected circuits in high fire threat areas to further reduce the potential for changing forest conditions to result in vegetation and power line conflicts.

- 2) Wild Land Urban Interface Protection – Additional VM inspections in Local Reliability Areas (LRA)<sup>5</sup> and greater clearance of poles in high fire danger LRAs.
  - 3) Fuel Reduction and Emergency Response Access – Funding Fire Safe Councils to support fuel reduction in high fire danger areas around PG&E’s electric distribution facilities.
  - 4) Early Detection of Forest Disease/Infection – Forming cooperative information sharing with universities, California Department of Forestry and Fire Protection (CAL FIRE) and the USFS on forest health.
  - 5) Early Detection and Response to Wildfires – Funding fire lookouts, aerial patrols, and fire detection cameras located near PG&E’s electric distribution facilities.
- C4 – Non-Exempt Equipment Replacement: The planned replacement of equipment non-exempt from PRC 4292 requirements with exempt equipment. Exempt equipment is identified by CAL FIRE as having lower fire risk.
  - C5 – Overhead Conductor Replacement: Programs under which overhead conductor is either proactively replaced through a targeted program or replaced after a failure occurs. Conductor replacement work in high-risk wildfire areas and conductor with higher likelihood of failure is prioritized.
  - C6 – Animal Abatement: The installation of new equipment or retrofitting existing equipment with protection measures intended to reduce animal contacts. This includes avian protection on distribution and transmission poles, such as jumper covers, bushing covers, perch guards, or perching platforms.
  - C7 – Protective Equipment: The installation of new equipment (e.g., fuses, reclosers, and SCADA installations) that isolates equipment when abnormal system conditions are detected.
  - C8 – Overhead Equipment Replacement: Proactive identification and replacement of critical, deteriorating overhead distribution equipment, such as cross-arms, transformers, capacitors, reclosers, and switches. Equipment is identified through the Patrol and Inspections control (C1) or through *ad hoc* inspection.

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<sup>5</sup> LRAs are areas where primary responsibility to respond to fires rests with local authorities, e.g., fire departments.

- C9 – Deteriorated Pole Replacement: The identification and replacement of deteriorated wood distribution and transmission poles, including intrusive inspection work (pole test and treat) and replacement or remediation. GO 165 mandates testing on a 20-year cycle depending on the installation date. PG&E’s program tests poles approximately every 10 years—exceeding the inspection cycle compliance requirements—and incorporates wood preservation practices that also go beyond compliance. These factors allow PG&E to identify and mitigate the decay of wood which reduces failures.
- C10 – Wood Pole Bridging: The installation of a wire which connects the through-bolt of all phases of a distribution wood pole in order to reduce the probability of a pole fire occurring due to current traveling through the wooden cross arms. These pole fires tend to occur after a light rain due to possibility of increased leakage currents through the insulators.
- C11 – Design Standards: The general standards for proper application of equipment for safe and reliable operation.
- C12 – Restoration, Operational Procedures and Training: The procedures contained in Utility Standard TD-1464S<sup>6</sup> and Utility Bulletin TD-1464B-001<sup>7</sup> for increased Wildfire controls when a FIA has a rating of Very High, Extreme, or Extreme Plus.

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<sup>6</sup> Utility Standard TD-1464S “Fire Danger Precautions in Hazardous Fire Areas” establishes precautions when working, travelling, or operating in hazardous fire areas.

<sup>7</sup> Utility Bulletin TD-1464B-001 “Fire Index Patrol and Non-Reclose Process” contains PG&E’s reclosing device operating practices in effect in 2018.

**PACIFIC GAS AND ELECTRIC COMPANY**  
**ATTACHMENT E**  
**COST ESTIMATES FOR 2019 PLAN PROGRAMS**

## Errata to Attachment E: Cost Estimates for 2019 Plan Programs

| Plan Section | Program/Strategy (§8386(c)(3))                                | Mapped Programs                             | Asset Addressed: Pole, Line, Equipment | Estimated Annual Cost: 2019 Capital (1,000s) | Estimated Annual Cost: 2019 Expense (1,000s) | Costs Currently Reflected in Revenue Requirement? (Provide Decision Reference) If for Only Part of Budget, Identify the \$ for that Part and Explain Part Not Previously Authorized (§ 8386(j)) |                                 | Identify any Aspects of Plan/Strategy and Associated Funding That Is or Will Be Addressed in Another Case (Identify the Case) (§ 8386(j)) | Identify Any Memorandum Accounts Where Costs of Program/Strategy Are Being Tracked and Explain How Double Tracking Is Prevented (§ 8386(j)) | Previously Included in RAMP? (Provide Reference) (§ 8386 (c) (11)) | Evaluation Metric(s) (§ 8386 (c)(4))                      | Assumptions Underlying Metric (§ 8386 (c)(4))             |
|--------------|---|---|--|--|--|---|---------------------------------|---|---|--|---|---|
|              |   |   |  |  |  | Capital   | Expense                         |   |   |  |   |   |
| <b>4</b>     | <b>Wildfire Safety Strategy and Programs</b>                  |   |  |  |  |   |                                 |   |   |  |   |   |
| 4.0          | PMO   | PMO   | N/A - Operations                       | \$500  | \$8,000                                      | N   | N                               | 2020 GRC <sup>1</sup>   | FRMMA / WPMA <sup>2</sup>   | Not included   | N/A   | N/A   |
| <b>4.1</b>   | <b>Operational Practices</b>                                  |   |  |  |  |   |                                 |   |   |  |   |   |
| 4.1.1        | Recloser Operations   | Reclose Blocking (Manual)                   | All                                    | -  | -  | N/A   | N/A                             | None  | N/A   | Yes, See Mitigation #M1  | See Section 4, Table 9: 2019 Wildfire Safety Plan Targets | See Section 4, Table 9: 2019 Wildfire Safety Plan Targets |
| 4.1.2        | Personnel Work Procedures in Conditions of Elevated Fire Risk | N/A   | N/A - Operations                       | -  | -  | N/A   | N/A                             | None  | N/A   | Not included   |   |   |
| 4.1.3        | Safety and Infrastructure Protection Teams                    | Safety and Infrastructure Protection Team   | N/A - Operations                       | \$6,200                                      | \$12,300                                     | N   | N                               | None  | CEMA  | Not included   |   |   |
| 4.1.4        | Aviation Resources  | Aviation Resources                          | N/A - Operations                       | \$2,100                                      | \$2,400                                      | N   | N                               | 2020 GRC <sup>1</sup>   | Cap: FRMMA / WPMA <sup>2</sup><br>Exp: CEMA   | Not included   |   |   |
| <b>4.2</b>   | <b>Wildfire Safety Inspection Programs</b>                    |   |  |  |  |   |                                 |   |   |  |   |   |
| 4.2.1        | WSIP, Distribution  | Distribution Inspection / Repair            | All                                    | \$220,000-\$620,000                          | \$130,000-\$200,000                          | Partial, GRC 2017-2019 (\$14M)  | Partial, GRC 2017-2019 (\$6M)   | 2020 GRC <sup>1</sup>   | FRMMA / WPMA <sup>2</sup>   | Not included   | See Section 4, Table 9: 2019 Wildfire Safety Plan Targets | See Section 4, Table 9: 2019 Wildfire Safety Plan Targets |
| 4.2.2        | WSIP, Transmission  | Transmission Inspection / Repair            | All                                    | \$282,000-\$402,000                          | \$162,000-\$167,000                          | N   | N                               | TO  | N/A   | Not included   |   |   |
| 4.2.3        | WSIP, Substation  | Distribution Substation Inspection / Repair | All                                    | \$2,000-\$3,000                              | \$1,000-\$2,000                              | N   | Partial, GRC 2017-2019 (\$0.5M) | 2020 GRC <sup>1</sup>   | FRMMA / WPMA <sup>2</sup>   | Not included   |   |   |
|              |   | Transmission Substation Inspection/Repair   | All                                    | -  | \$1,000-\$2,000                              | N/A   | N                               | TO  | N/A   | Not included   |   |   |
| <b>4.3</b>   | <b>System Hardening</b>                                       |   |  |  |  |   |                                 |   |   |  |   |   |
| 4.3.1        | Pole Material   | Wildfire System Hardening                   | Pole                                   | \$236,900 <sup>3</sup>                       | -  | Partial, GRC 2017-2019 (\$7M) <sup>4</sup>  | N/A                             | 2020 GRC <sup>1</sup>   | FRMMA / WPMA <sup>2</sup>   | Partially, See Mitigation M9                                       | See Section 4, Table 9: 2019 Wildfire Safety Plan Targets | See Section 4, Table 9: 2019 Wildfire Safety Plan Targets |
| 4.3.2        | Pole Loading and Replacement (Transmission)                   | Light Duty Steel Poles for Transmission     | Pole                                   | \$500  | -  | N   | N/A                             | TO  | N/A   | Not included   |   |   |
| 4.3.2        | Pole Loading and Replacement (Distribution)                   | Wildfire System Hardening                   | Pole                                   | <sup>2</sup>                                 | -  | <sup>3</sup>  | N/A                             | 2020 GRC <sup>1</sup>   | FRMMA / WPMA <sup>2</sup>   | Partially, See Mitigation M9                                       |   |   |
| 4.3.3        | Conductor   | Wildfire System Hardening                   | Line                                   | <sup>2</sup>                                 | -  | <sup>3</sup>  | N/A                             | 2020 GRC <sup>1</sup>   | FRMMA / WPMA <sup>2</sup>   | Partially, See   |   |   |

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| Plan Section | Program/Strategy (§8386(c)(3))                               | Mapped Programs                               | Asset Addressed: Pole, Line, Equipment | Estimated Annual Cost: 2019 Capital (1,000s) | Estimated Annual Cost: 2019 Expense (1,000s) | Costs Currently Reflected in Revenue Requirement? (Provide Decision Reference) If for Only Part of Budget, Identify the \$ for that Part and Explain Part Not Previously Authorized (§ 8386(j)) |                                 | Identify any Aspects of Plan/Strategy and Associated Funding That Is or Will Be Addressed in Another Case (Identify the Case) (§ 8386(j)) | Identify Any Memorandum Accounts Where Costs of Program/Strategy Are Being Tracked and Explain How Double Tracking Is Prevented (§ 8386(j)) | Previously Included in RAMP? (Provide Reference) (§ 8386 (c) (11)) | Evaluation Metric(s) (§ 8386 (c)(4))                      | Assumptions Underlying Metric (§ 8386 (c)(4))             |
|--------------|--|---|--|--|--|---|---------------------------------|---|---|--|---|---|
|              |  |   |  |  |  |   |                                 |   |   | Mitigation M7  |   |   |
| 4.3.4        | System Protection  | Automation and Protection (SCADA)             | Equipment                              | \$15,600                                     | \$300  | Partial, GRC 2017-2019 (\$1M)   | Partial, GRC 2017-2019          | 2020 GRC <sup>1</sup>   | FRMMA / WPMA <sup>2</sup>   | Not included   |   |   |
| 4.3.5        | Equipment  | Non-exempt Surge Arrester Replacement Program | Equipment                              | \$71,600                                     | –  | * Program shift to replace therefore cost recorded in Cap   | Partial, GRC 2017-2019 (\$6M)   | 2020 GRC <sup>1</sup>   | FRMMA / WPMA <sup>2</sup>   | Yes, See Mitigation M5   |   |   |
| <b>4.4</b>   | <b>Enhanced Vegetation Management</b>                        |   |  |  |  |   |                                 |   |   |  |   |   |
| 4.4.1        | Vegetation Trimming and Overhanging Tree Limbs               | Enhanced Vegetation Management                | N/A Operations                         | –  | \$338,300                                    | N/A   | N                               | None  | FHPMA   | Partially, See Mitigation # M3 & M4                                | See Section 4, Table 9: 2019 Wildfire Safety Plan Targets | See Section 4, Table 9: 2019 Wildfire Safety Plan Targets |
| 4.4.2        | High Fire-Threat District VM Inspection Strategy             |   |  |  |  |   |                                 |   |   |  |   |   |
| 4.4.3        | Inspecting Trees with a Potential Strike Path to Power Lines |   |  |  |  |   |                                 |   |   |  |   |   |
| 4.4.4        | At-risk Species Management                                   |   |  |  |  |   |                                 |   |   |  |   |   |
| 4.4.5        | Challenges Associated With Enhanced Vegetation Management    |   |  |  |  |   |                                 |   |   |  |   |   |
| 4.4.6        | Community and Environmental Impacts                          |   |  |  |  |   |                                 |   |   |  |   |   |
| Other        | CEMA Costs   | CEMA – Drought Tree Mortality                 | N/A Operations                         | –  | \$85,900                                     | N/A   | N                               | None  | CEMA  | Yes, See C1  |   |   |
| Other        | Substation Vegetation Management                             | Sub Veg Mgt (T)-identified in WSIP            | N/A Operations                         | –  | \$2,000 - \$4,000                            | N/A   | N                               | TO  | N/A   | Not included   |   |   |
|              |  | Sub Veg Mgt (D)-identified in WSIP            | N/A Operations                         | –  | \$4,000 - \$5,000                            | N/A   | Partial, GRC 2017-2019 (\$0.2M) | None  | FRMMA / WPMA <sup>2</sup>   | Not included   |   |   |
| <b>4.5</b>   | <b>Enhanced Situational Awareness</b>                        |   |  |  |  |   |                                 |   |   |  |   |   |
| 4.5.1        | Meteorological Operations and Advanced Situational Awareness | See Programs Below                            | N/A Operations                         | –  | –  | N/A   | N                               | None  | N/A   | Not included   | See Section 4, Table 9: 2019 Wildfire Safety Plan Targets | See Section 4, Table 9: 2019 Wildfire Safety Plan Targets |
| 4.5.2        | Fire Spread Modeling   | See 4.5.5                                     | N/A Operations                         | –  | –  | N/A   | N                               | None  | N/A   | Not included   |   |   |
| 4.5.3        | Weather Stations   | Expanded Weather Station Deployment           | N/A Operations                         | \$8,200                                      | \$300  | N   | N                               | 2020 GRC <sup>1</sup>   | FRMMA / WPMA <sup>2</sup>   | Not included   |   |   |
| 4.5.4        | Camera Deployment Strategy                                   | Wildfire Cameras                              | N/A Operations                         | –  | \$4,600                                      | N/A   | N                               | None  | FRMMA / WPMA <sup>2</sup>   | Not included   |   |   |
| 4.5.5        | Satellite Fire Detection Systems                             | Satellite Fire Detection System               | N/A Operations                         | –  | \$400  | N/A   | N                               | None  | FRMMA / WPMA <sup>2</sup>   | Not included   |   |   |
| 4.5.6        | Storm Outage Prediction Model (SOPP)                         | SOPP Model Automation                         | N/A Operations                         | –  | \$200  | N/A   | N                               | None  | FRMMA / WPMA <sup>2</sup>   | Not included   |   |   |

| Plan Section | Program/Strategy (§8386(c)(3))  | Mapped Programs   | Asset Addressed: Pole, Line, Equipment | Estimated Annual Cost: 2019 Capital (1,000s) | Estimated Annual Cost: 2019 Expense (1,000s) | Costs Currently Reflected in Revenue Requirement? (Provide Decision Reference) If for Only Part of Budget, Identify the \$ for that Part and Explain Part Not Previously Authorized (§ 8386(j)) |                        | Identify any Aspects of Plan/Strategy and Associated Funding That Is or Will Be Addressed in Another Case (Identify the Case) (§ 8386(j)) | Identify Any Memorandum Accounts Where Costs of Program/Strategy Are Being Tracked and Explain How Double Tracking Is Prevented (§ 8386(j)) | Previously Included in RAMP? (Provide Reference) (§ 8386 (c) (11)) | Evaluation Metric(s) (§ 8386 (c)(4))                      | Assumptions Underlying Metric (§ 8386 (c)(4))             |
|--------------|---|---|--|--|--|---|------------------------|---|---|--|---|---|
|              |   |   |  |  |  |   |                        |   |   |  |   |   |
| 4.5.7        | Wildfire Safety Operations Center                                       | Wildfire Safety Operations Center                       | N/A Operations                         | \$700  | \$15,900                                     | N   | N                      | 2020 GRC <sup>1</sup>   | FRMMA / WPMA <sup>2</sup>   | Not included   |   |   |
| Other        | Advanced Fire Modeling  | Advanced Fire Modeling                                  | N/A Operations                         | –  | \$1,600                                      | N/A   | N                      | None  | FRMMA / WPMA <sup>2</sup>   | Not included   |   |   |
| <b>4.6</b>   | <b>Public Safety Power Safety Shutoff</b>                               |   |  |  |  |   |                        |   |   |  |   |   |
| 4.6.1        | PSPS Decision Factors   | Public Safety Power Shutoff                             | N/A Operations                         | –  | \$16,500                                     | N/A   | N                      | None  | FRMMA / WPMA <sup>2</sup>   | Not included   | See Section 4, Table 9: 2019 Wildfire Safety Plan Targets | See Section 4, Table 9: 2019 Wildfire Safety Plan Targets |
| 4.6.2        | Strategies to Enhance PSPS Efficiency While Reducing Associated Impacts |   |  |  |  |   |                        |   |   |  |   |   |
| 4.6.3        | PSPS Notification Strategies  |   |  |  |  |   |                        |   |   |  |   |   |
| 4.6.4        | Re-energization strategy  |   |  |  |  |   |                        |   |   |  |   |   |
| 4.6.2.1      | Impact Mitigation through System Sectionalizing                         | Granular Sectionalizing                                 | All                                    | \$5,200                                      | –  | N   | N/A                    | 2020 GRC <sup>1</sup>   | FRMMA / WPMA <sup>2</sup>   | Not included   |   |   |
| 4.6.2.2      | Resilience Zones  | Resilience Zones  | All                                    | \$10,600                                     | –  | N   | N/A                    | 2020 GRC <sup>1</sup>   | FRMMA / WPMA <sup>2</sup>   | Not included   |   |   |
| 4.6.2.3      | Customer Services and Programs  | N/A - Costs and program scope are still being finalized | N/A                                    | –  | –  | N/A   | N/A                    | None  | FRMMA / WPMA <sup>2</sup>   | Not included   |   |   |
| <b>4.7</b>   | <b>Alternative Technologies</b>   |   |  |  |  |   |                        |   |   |  |   |   |
| 4.7.1        | Rapid Earth Fault Current Limiter Pilot Project                         | Rapid Earth Current Fault Limiter                       | All                                    | –  | \$7,000                                      | N/A   | Yes, Recovered in EPIC | EPIC  | N/A   | Not included   | See Section 4, Table 9: 2019 Wildfire Safety Plan Targets | See Section 4, Table 9: 2019 Wildfire Safety Plan Targets |
| 4.7.2        | Enhanced Wires Down Detection Project                                   | Enhanced Wire Down Detection                            | Equipment                              | \$2,100                                      | \$200  | N   | N                      | 2020 GRC <sup>1</sup>   | FRMMA / WPMA <sup>2</sup>   | Not included   |   |   |
| 4.7.3        | Other Alternative Technologies  | N/A   | N/A                                    | –  | –  | N/A   | N/A                    | None  | N/A   | Not included   |   |   |
| <b>4.8</b>   | <b>Post Incident Recovery, Restoration and Remediation</b>              |   |  |  |  |   |                        |   |   |  |   |   |
| 4.8.1        | Post-Incident Recovery  | N/A   | N/A                                    | –  | –  | N/A   | N/A                    | None  | N/A   | Not included   | N/A   | N/A   |
| 4.8.2        | Restoration   | N/A   | N/A                                    | –  | –  | N/A   | N/A                    | None  | N/A   | Not included   | N/A   | N/A   |
| 4.8.3        | Remediation   | N/A   | N/A                                    | –  | –  | N/A   | N/A                    | None  | N/A   | Not included   | N/A   | N/A   |
| <b>Other</b> | <b>Support</b>  |   |  |  |  |   |                        |   |   |  |   |   |
| Other        | IT Costs  | N/A   | N/A - Operations                       | \$16,000 - \$33,000                          | \$13,000 - \$18,000                          | N   | Partial                | TO (trans.) and 2020 GRC <sup>1</sup> (distri.)   | FRMMA / WPMA <sup>2</sup>   | Not included   | N/A   | N/A   |

<sup>1</sup> Capital expenditures (only) included in 2020 GRC application and/or in potential update testimony.

<sup>2</sup> Costs will be tracked in FRMMA and/or WPMA once these memorandum accounts are approved by the CPUC.

<sup>3</sup> \$236,900 represents the total estimated costs for all three programs for the “Wildfire System Hardening” mapped program.

<sup>4</sup> \$7M represents the total estimated costs included in the 2017 GRC for the “Wildfire System Hardening” mapped program.

No. 21-15571

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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ANTHONY GANTNER, individually and on behalf of all those  
similarly situated,

*Plaintiff-Appellant,*

v.

PG&E CORPORATION, a California Corporation, and PACIFIC  
GAS & ELECTRIC COMPANY, a California Corporation

*Defendants-Appellees.*

On Appeal from the United States District Court  
for the Northern District of California

No. 4:20-CV-02584-HSG

Hon. Haywood S. Gilliam, Jr.,

[an appeal from an Order in the Bankruptcy Case In re: PG&E  
CORPORATION and PACIFIC GAS AND ELECTRIC COMPANY,  
Debtors, Bankruptcy Case No. 19-30088 (DM), Adv. Pro. No. 19-  
03061 (DM), Hon. Donald Montali, U.S. Bankruptcy Judge]

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## INTRODUCTION

In finding that PG&E is immune from liability for the negligent maintenance of its power grid, both the bankruptcy court and the district court misconstrued Plaintiff's allegations and the limited scope of California Public Utilities Code section 1759(a) preemption—and rob Plaintiff and the class he seeks to represent of the ability to bring a private right of action under section 2106. PG&E does nothing to address the lower courts' core errors in its Answering Brief. Instead, it ignores critical components of Plaintiff's argument and mischaracterizes Plaintiff's allegations. While PG&E insists that the Complaint focuses on PG&E's actions with respect to Public Safety Power Shutoffs ("PSPSs"), the pertinent allegations target PG&E's negligent maintenance of its power grid rather than the way the PSPSs were implemented. That negligence preceded the PSPSs.

PG&E has no alternative but to misconstrue the allegations because the negligence actually alleged here is not preempted under section 1759. Any liability PG&E faces for the negligent maintenance of its power grid will not hinder or interfere with the CPUC's regulatory authority. That authority is (or was) limited to how PG&E implemented PSPSs and the factors it considered when deciding whether to implement them. Equally mistaken is PG&E's insistence that Plaintiff seeks to impose liability for all PSPSs. Not so. He seeks only to impose liability for

those PSPSs caused by PG&E's negligent maintenance of its power grid. *See* Appellant's Opening Brief ("AOB") at 6, 19.

In any event, as of July 1, 2021, the California legislature granted authority over PSPSs to a separate and distinct agency—the Office of Infrastructure Safety. While PG&E argues that Plaintiff should have raised this change in regulatory authority earlier—along with other post-Complaint factors demonstrating the CPUC's limited regulatory authority—there is no reason this Court should proceed without this information, as it limits the very authority upon which the lower courts based their dismissal of Plaintiff's Complaint.

The grab-bag of other arguments PG&E makes in defense of the lower court decisions also fail. The bankruptcy court should not have considered PG&E's belated causation argument (which is misguided because the Complaint links PG&E's negligence with Plaintiff's injury) and neither lower court was correct when it denied Plaintiff leave to amend his Complaint. Even PG&E concedes that any causation issues can be repaired through amendment and the CPUC agrees that it is not futile to amend the Complaint to avoid preemption. And PG&E provides no good reason to refuse to certify and refer to the California Supreme Court the 1759 preemption question should this Court have any doubt about the correct outcome. Nor is there any reason to address PG&E's claim that Tariff Rule 14 somehow also excuses PG&E's negligence. Tariff Rule 14 does not immunize



PG&E from liability for its negligence. *Tesoro Refin. & Mktg. Co. LLC v. PG&E*, 146 F. Supp. 3d 1170, 1184 (N.D. Cal. 2015).

## ARGUMENT

### I. PG&E IGNORES CRITICAL ARGUMENTS

PG&E simply fails to respond to Plaintiff's key arguments, all of which are fatal to PG&E's position.

PG&E fails to respond to the argument, or even to acknowledge the plain fact, that this case does not seek to impose liability for *all* PSPSs. *See* AOB at 6-7 (describing the specific PSPSs at issue in the litigation). In fact, the Complaint only seeks recovery for damages caused by PSPSs necessitated by PG&E's negligence, not those necessitated by other factors such as natural conditions. *See id.*

PG&E likewise fails to respond to Plaintiff's fundamental argument that PG&E is liable for *negligence* leading to the *need to implement* the PSPSs rather than for the *implementation* of the PSPSs themselves. That the CPUC has (or, more accurately, *had*) authority over how and when PG&E may shut off power to its customers to avoid potential wildfires is not at issue. This is so no matter how much PG&E tries to make it the central feature of the case. What is at issue is the *cause* of the need for the PSPSs that led to the harm Plaintiff and others suffered. *See* AOB at 7.

The CPUC's policy concerning the manner in which PG&E should conduct

PSPSs, and PG&E's compliance with the CPUC's guidelines, have nothing to do with whether PG&E's negligence led to the need to implement the PSPSs in the first instance. PG&E repeats *ad nauseum* that the relevant question is whether the PSPSs were authorized and regulated by the CPUC. *See, e.g.*, Appellee's Answering Brief ("AAB") at 4. It is not.

PG&E also fails to address the issue that it stated to be the core question presented in this appeal, namely, whether holding PG&E liable for its negligence would interfere with the CPUC's regulatory authority over PSPSs. *See id.* at 2. Plaintiff stressed in his Opening Brief that finding PG&E negligent, and entitling its customers to compensation for the harm they suffered because of that negligence, does not interfere with the CPUC's regulation of PSPS implementation. *See* AOB at 19. PG&E does not address the effect of its negligence on the CPUC's regulation and oversight of PSPSs. Instead, it chooses to focus, yet again, on the "fact" that its PSPSs complied with CPUC's implementation guidelines and regulations. *See* AAB at 24-26.

Nor does PG&E rebut Plaintiff's contention that the CPUC's conclusory assertion that this action would interfere with its regulatory authority carries no weight. The lower courts' conclusion that this lawsuit would interfere with the CPUC's regulatory authority was based largely on an *amicus* brief the CPUC filed in the bankruptcy proceeding. But, as Alice Stebbins—herself the former head of

the CPUC during the very period at issue in this case —pointed out in her *amicus* brief in this Court, the CPUC provided no specific evidence, reasoning, or explanation to support its assertion that this lawsuit interfered with its regulatory authority; absent that, that bare assertion should not be accorded any weight on the subject of preemption. *See* Stebbins Amicus Curiae Br. (“Stebbins Br.”) at 2, 14-15; *Wilson v. S. California Edison Co.*, 234 Cal. App. 4th 123 (2015) (rejecting CPUC position in *amicus* that section 1759 preempted tort claims, including negligence, because the CPUC provided no evidence that the lawsuit would “interfere with or hinder any supervisory or regulatory policy of the [C]PUC”). The CPUC brief is not a sworn statement. And, in contrast to the Stebbins *amicus* brief, it is not attributed to any current or former CPUC executive or commissioner.

Ultimately, PG&E altogether avoids dealing with the issue of how Plaintiff’s negligence claim for PG&E’s maintenance of its power grid would interfere with the CPUC’s regulation and policy concerning the implementation of PSPSs. It does not.

## **II. PG&E’S PREEMPTION ARGUMENT MISCONSTRUES PLAINTIFF’S CLAIM**

In its preemption argument, PG&E relies on misdirection. PG&E argues that Plaintiff’s claim is preempted by section 1759 because it interferes with the

CPUC's regulatory authority. According to PG&E, "Plaintiff seeks to hold PG&E liable regardless of whether it complied with the CPUC's policies." AAB at 26.

The problem with PG&E's argument is that it takes aim at a non-existent complaint. PG&E concedes that Plaintiff does not challenge PG&E's decisions whether to shut off power to customers during the 2019 windstorms (*see, e.g.*, AAB at 3 ("Plaintiff's complaint does *not* allege that PG&E's PSPS events were imprudent, carried out unreasonably or performed in violation of any of the CPUC's guidelines governing power shutoffs."); nor does Plaintiff challenge the way in which PG&E implemented those PSPSs. Rather, Plaintiff seeks compensation for harms caused by PG&E's negligence in maintaining its power grid.

That negligence, as Plaintiff alleged in his Complaint, was decidedly *not* authorized by the CPUC. *See* 4-ER-490 (Compl. ¶ 18); AOB at 69 (section 451 of the California Public Utilities Code requires PG&E to "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."); AOB at 72 (section 8386 of the California Public Utilities Code requires PG&E to "construct, maintain, and operate its electrical lines and equipment in a manner that will minimize the risk of catastrophic wildfire posed by those electrical lines and equipment); CPUC

General Orders 95 and 165 (requiring PG&E to comply with design standards for its electrical equipment, to ensure that its power lines can withstand high winds, and to inspect its distribution facilities); AOB at 60 (California Public Resources Code (Cal. Pub. Res. Code) section 4292 requires PG&E to “maintain around and adjacent to any pole or tower which supports a switch, fuse, transformer, lightning arrester, line junction, or dead end or corner pole, a firebreak”); AOB at 61 (Cal. Pub. Res. Code section 4293 requires PG&E to maintain “clearances of four to ten feet for all of its power lines”). Plaintiff alleges that PG&E failed in its duty to comply with these regulations. *See* 4-ER-487-91 (Compl. ¶¶ 5-16, 20-22).

PG&E recasts Plaintiff’s claim because that is the only way it can argue that section 1759 preempts Plaintiffs’ Complaint. As this Court and the California Supreme Court have held, in deciding whether a damages claim authorized under section 2106 is preempted, the court must determine “whether judicial action would hinder or interfere with the [C]PUC’s exercise of regulatory authority.” *Kairy v. SuperShuttle Int’l*, 660 F.3d 1146, 1153 (9th Cir. 2011). And to make that determination, the court must look at the elements of Plaintiff’s claim and the findings that would be required for Plaintiff to win. *San Diego Gas & Electric v. Superior Court (Covalt)*, 13 Cal. 4th 893, 939 (1996) (findings required for Plaintiff to prevail in nuisance claim regarding electrical currents would be

inconsistent with the CPUC’s conclusion that particular level of currents did not present substantial risk of physical harm).

In *Kairy*, 660 F.3d at 1153, this Court concluded that section 1759 did not preempt the plaintiff’s claim after examining the elements: “The central question of the final *Covalt* inquiry, then, is whether application of the multi-factor California de facto employee test to Plaintiffs in this case would hinder, frustrate, or interfere” with PUC policies and regulations.

Here, PG&E studiously avoids examining Plaintiff’s actual claim, the elements of that claim, and the findings required for Plaintiff to win. Instead, it has targeted a straw man—falsely claiming that Plaintiff is challenging PG&E’s decisions to implement PSPSs. *See* AAB at 25 (“Plaintiff seeks to impose liability for harms allegedly sustained by all persons impacted by all PSPS events that occurred in 2019 and beyond, regardless of whether the PSPS events were carried out consistently with CPUC guidelines.”); *id.* (“Plaintiff’s Action Seeks to Impose Liability on PG&E for CPUC-Authorized Conduct”). As Plaintiff has explained repeatedly, he is challenging PG&E’s negligence, not its decisions to de-energize, which Plaintiff assumes were carried out in strict compliance with CPUC guidelines. There is thus no conflict between a conclusion or policy of the CPUC and any findings Plaintiff would need to win his negligence case. AOB at 30.

PG&E's mischaracterization of Plaintiff's claim enables it not only to argue that the third *Covalt* prong is satisfied but also to avoid the holdings of those cases that make clear that section 1759 only preempts those lawsuits that would have the effect of "undermining a general supervisory or regulatory policy of the commission, *i.e.*, when it would 'hinder' or 'frustrate' or 'interfere with' or 'obstruct' that policy." *Covalt*, 13 Cal. 4th at 918. That the CPUC generally regulates in the same area as the lawsuit is not enough. *Hartwell Corp. v. Superior Court*, 27 Cal. 4th 256 (2002) (even though the CPUC had regulated and continues to regulate drinking water quality, plaintiffs' damages claims for utilities' past violations of water quality standards was not preempted).

In *Cundiff v. GTE California Inc.*, 101 Cal. App. 4th 1395 (2002), for example, the Court of Appeal held that plaintiffs' lawsuit, which challenged defendant's practice of billing customers for obsolete or unused telephone rentals, was not preempted by section 1759, even though the CPUC had general oversight over the method and content of billing for rental telephone service and permitted telephone companies to bill customers for telephone rentals so long as the charges were separately identified:

[We do not] perceive this as a suit challenging the commission's decision to allow defendants to rent telephones to their customers. Rather, plaintiffs are challenging the *manner* in which defendants billed them for rental of telephones, specifically, the alleged lack of information given to plaintiffs about the rental charge made each month by defendants.

*Id.* at 1406; *see also Cellular Plus, Inc. v. Superior Court*, 14 Cal. App. 4th 1224, 1245 (1993) (plaintiffs’ price-fixing claim was not preempted even though the CPUC approved the prices charged by the defendants); *PegaStaff v. PG&E*, 239 Cal. App. 4th 1303, 1318 (2015) (“*Hartwell* demonstrates that application of the third prong of *Covalt* does not turn solely or primarily on whether there is overlap between conduct regulated by the PUC and the conduct targeted by the suit. . . . Instead, the third prong requires a careful assessment of the scope of the PUC’s regulatory authority and evaluation of whether the suit would thwart or advance enforcement of the PUC regulation.”).

Given its recasting of Plaintiff’s claim, PG&E ignores as it must the California Supreme Court’s instruction that lawsuits that are “in aid of, rather than in derogation of,” the CPUC’s jurisdiction are not preempted. *Hartwell Corp.*, 27 Cal. 4th at 275. Plaintiff challenges PG&E’s failure to comply with its obligations to maintain the safety of the power grid—including obligations the CPUC imposes—not PG&E’s decision to implement PSPSs. *See supra* Section I. This lawsuit therefore is “in aid of” CPUC policies and orders—not in conflict with them.

This is particularly evident in light of the CPUC’s conceded inability to award damages to victims of PG&E’s past criminal negligence. *PegaStaff*, 239



Cal. App. 4th at 1318 (“if the nature of the relief sought . . . fall[s] outside the [C]PUC’s constitutional and statutory powers, the claim will not be barred by section 1759.”); *see* 2-ER-201 (the CPUC does not have authority to award damages); AMJN, Ex. 3 at 60 (the CPUC cannot adjudicate damages based on past negligence).

The CPUC, the district court, and the bankruptcy court all similarly failed to address “the central question of the final *Covalt* inquiry,” *Kairy*, 660 F.3d at 1153, namely, whether the findings of fact required for Plaintiff to prevail on his negligence claim would interfere with CPUC policy or conclusions. Like PG&E, the CPUC gives short shrift to Plaintiff’s actual claim, incorrectly suggesting instead that Plaintiff seeks damages “for PG&E’s decisions to call [for] PSPS events.” *See* Brief of *Amicus Curiae* the California Public Utilities Commission (“CPUC Br.”) at 14.

Despite recognizing that Plaintiff is not suing PG&E “for improperly deciding to implement the PSPS events, or even for negligence in how [PG&E] implemented the PSPS events,” ER-8, the district court also failed to administer the *Covalt* test. That court instead speculated that this action, if allowed to proceed, would “force [PG&E] to choose between incurring potentially limitless negligence liability and protecting public safety [and] would create a powerful incentive for [PG&E] to avoid PSPS events. . . .” ER-9. As Plaintiff explained in his Opening

Brief, and as former Executive Director of the CPUC stated in her *amicus curiae* brief, not only is PG&E not permitted to consider its own costs in making PSPS decisions, allowing PG&E to avoid liability for its negligence only incentivizes PG&E to continue passing the costs of that negligence on to California consumers.

Pl Br. At 20-21. As Director Stebbins put it:

It would violate CPUC regulations for PG&E to allow potential liability here to sway it from instituting a PSPS as a measure of last resort. If the dismissals are upheld, PG&E is incentivized to continue passing the societal costs of its own criminal negligence onto its customers, reducing its incentive to correct the maintenance problems on the grid that lead to catastrophic fires in the absence of PSPSs. That outcome—not this lawsuit—would contravene the CPUC’s regulatory scheme.

Stebbins Br. at 13.

Moreover, PG&E’s liability would not be “limitless.” As in any negligence case, its liability would be limited by the amount of damages Plaintiff proves were actually caused by its negligence. This sum would necessarily be a tiny fraction of PG&E’s liability for the consequences of the first that could result if it failed to de-energize the grid.

PG&E fails to even mention Director Stebbins’s *amicus* brief, despite the fact that she served as Executive Director of the CPUC during the time the events of this case occurred and was deeply involved in the CPUC’s role in assisting

utilities in preventing wildfires.<sup>1</sup> Wildfire prevention was one of Director Stebbins's two principal focuses during her tenure at the CPUC. Stebbins Br. at vii-viii.

PG&E fails to respond to Director Stebbins's argument that this Court should reverse the decisions below because Plaintiff's lawsuit "poses no challenge whatsoever to the manner in which PG&E implemented the PSPSs, or to the propriety of the decision to implement them." Stebbins Br. at 8-9 (noting that the lawsuit seeks to hold PG&E responsible for the negligence that necessitated the PSPSs rather than the PSPSs themselves). "As such, this lawsuit creates no hindrance or interference, but rather complements the CPUC's regulatory scheme." *Id.* at 9. PG&E also fails to respond to the argument that the *amicus* brief submitted by the CPUC in the bankruptcy action was entitled to "no special deference" because it "lacked any explanation, evidence, or rationale to support its bare assertion that the Plaintiff's lawsuit interfered with its regulatory authority." Stebbins Br. at 15

The CPUC's *amicus* filing in this proceeding is just as bereft of any "explanation, evidence, or rationale" as the one it filed below. It merely echoes the

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<sup>1</sup> The CPUC also fails to engage with Director Stebbins's arguments, instead dismissing her brief as one by a "former employee." CPUC Br. at 12, n.8.

district court’s (irrelevant and improper) speculation that permitting Plaintiff’s negligence action to proceed could impose “potentially billions” of dollars of liability on PG&E “for PG&E’s decisions to call PSPS events.” CPUC Br. at 14. Like PG&E, the CPUC makes no attempt to grapple with Plaintiff’s actual claim. Unlike PG&E, however, the CPUC does not attempt to walk back its earlier concession that a narrower claim by Plaintiff could avoid preemption under section 1759. *See infra* Section V. Because the CPUC has utterly failed to conduct the fact-based analysis required by the third *Covalt* prong, this Court should give its *amicus* filing no weight.

### **III. PG&E’S CONTENTION THAT PLAINTIFF WAIVED THE RIGHT TO ARGUE FACTS THAT WERE NOT IN EXISTENCE AT THE TIME OF FILING IS NONSENSICAL**

In a desperate attempt to ward off liability for its negligence, PG&E argues that certain arguments should be ignored because Plaintiff failed to raise them earlier—even though the underlying facts required to make those arguments did not exist when Plaintiff filed his Complaint or his briefing in the lower courts and those arguments are all critical to the way the CPUC will (or will not) exercise its authority going forward. *See Huffman v. C.I.R.*, 978 F.2d 1139, 1150 (9th Cir. 1992), *as amended* (Dec. 4, 1992) (exercising discretion to hear new issue on appeal where it has “important future application . . .”). Thus, PG&E argues that questions about the CPUC’s current lack of authority over PSPSs should not even

be “entertained,” despite that changeover not occurring until July 2021,<sup>2</sup> and characterizes Appellant’s argument detailing how a June 2021 CPUC decision failed to address either PG&E’s negligence or liability for PSPSs as somehow “belated” even though the decision came down years after the Complaint was filed and long after all of the lower court briefing and rulings. AAB at 34-36. Indeed, PG&E provides no explanation whatsoever for how, absent access to a time machine, an April 2021 CPUC filing that includes specific triggers for PSPSs as a condition of PG&E’s parole could have been included in Plaintiff’s earlier papers.

PG&E’s substantive criticisms of each of the three arguments are as misguided as its procedural objections. In response to the reality that the Office of Energy Infrastructure and Safety took over responsibility for certain CPUC functions as of July 1, 2021, Cal. Pub. Util. Code § 326; A.B. No. 111, Cal. Leg. (2019), PG&E cites a CPUC press release claiming that the CPUC maintains certain (unspecified) regulatory authority over PSPSs. But press releases do not supplant or abrogate legislation. The legislation makes clear that the Office of

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<sup>2</sup> PG&E’s claim that Plaintiff should have raised the issue earlier because the legislation dictating the change in control was passed in 2019 is of no moment. *See* AAB at 34. The CPUC did have jurisdiction over the PSPSs when the earlier papers were filed and it was unclear whether further legislation would delay or scrap altogether the change. The issue only became ripe when the CPUC actually lost authority effective July 1, 2021.

Energy Infrastructure Safety will have regulatory authority over wildfire safety matters. *See* Cal. Gov't Code § 15475 (all duties of Wildfire Safety Division transferred to the Office of Energy Infrastructure Safety). Tellingly, neither PG&E nor the CPUC cites § 15475 at all.

Equally misguided is PG&E's attempt to dismiss as a "non-sequitur" the fact that the June 2021 CPUC decision failed to address whether PG&E's negligence was a factor leading to PSPSs. In that decision, the CPUC noted that it lacked jurisdiction to address whether PG&E's negligence caused PSPSs, the very issue over which both the CPUC and PG&E claim the CPUC now has preemption authority. Moreover, while PG&E concedes that decision set out new "go-forward" requirements (*see* AAB at 35), PG&E ignores that "a lawsuit for *past* damages would not interfere with the CPUC's ongoing, *prospective* regulation of the relevant industry." *See* AOB at 29 (quoting *United Energy Trading, LLC v. PG&E*, 146 F. Supp. 3d 1122, 1137-38 (N.D. Cal. 2015)).

In another attempt to wave away the limitation on the CPUC authority, PG&E also claims that a CPUC statement in PG&E's criminal proceedings reflects the CPUC's ability to preempt this lawsuit. This argument has it backwards. PG&E's claim that the CPUC has an "ongoing role in the oversight and regulation of PSPSs," *see* AAB at 36, ignores the CPUC's own assertion that it is PG&E's "responsibility" to "operate their electric systems safely and reliably." *See* AOB at

36 (citing AMJN, Ex. 2 at 4). That is, the CPUC does not regulate what this suit is actually about—whether PG&E negligently maintained its power grid.

#### **IV. PLAINTIFF ADEQUATELY PLEADED CAUSATION**

PG&E’s contention that the Complaint only links PG&E’s negligent maintenance of its power grid to the damage that negligence caused “in a conclusory fashion” (AAB at 45) is belied by the Complaint itself. As Plaintiff pointed out in his Opening Brief, the Complaint alleges, *inter alia*, that PG&E had a duty to ensure that power lines could withstand winds up to 92 miles per hour, but despite winds never coming close to that threshold, PG&E’s negligent maintenance of its power grid required the PSPSs that led to Plaintiff’s damages. *See* 4-ER-489, 499, 501 (Compl. ¶¶ 15, 66, 78). This is more than the “necessary link” PG&E claims the Complaint fails to include. And Judge Alsup has repeatedly found and stated in connection with his oversight of PG&E’s criminal probation that PG&E’s negligent maintenance led directly to the PSPSs.<sup>3</sup>

In response, PG&E focuses on vegetation, claiming that the wind speed regulation does not “speak at all to the risk of wind causing vegetation to strike the

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<sup>3</sup> PG&E has just been charged with additional counts of manslaughter and other felonies by the Shasta County district attorney in connection with the Zogg fire. <https://www.nytimes.com/2021/09/24/business/pge-wildfire-criminal-charges.html>

line.” *See* AAB at 46. But this argument has a glaring flaw. The Complaint noted throughout that PG&E had a duty to properly maintain vegetation such that it does not pose a risk to power lines—a duty that PG&E failed to uphold. *See, e.g.*, 4-ER-489, 90, 91 (Compl. ¶¶ 12, 16, 19, 26). PG&E cites no authority for its claim that more specifics are needed to link PG&E’s negligence to specific PSPSs on a circuit-by-circuit basis. They are not. “Direct proof of every link in the chain of causation . . . is not required.” *City of Modesto v. Dow Chem. Co.*, 19 Cal. App. 5th 130, 156 (Cal. Ct. App. 2018), *as modified on denial of reh’g* (Feb. 6, 2018), *review denied* (Apr. 25, 2018), *as modified on denial of reh’g*, (Feb. 6, 2018) *and review filed*, (Feb. 20, 2018) *and review denied*, (Apr. 25, 2018).<sup>4</sup> In any event, PG&E’s argument about vegetation vs. windspeed simply raises a question of fact—not something that can support a 12(b) motion to dismiss.

PG&E is also mistaken when it argues that it was proper to wait until its reply brief in the Bankruptcy Court to raise the issue of causation. The lone case on which PG&E relies for its argument supports no such thing. In *El Pollo Loco, Inc.*

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<sup>4</sup> PG&E does not even respond to Plaintiff’s argument that the alleged damages were foreseeable, because there is no doubt that they were. There is no reason PG&E should not have anticipated that a failure to maintain its power grid—including through the regular and proper maintenance of vegetation—could cause fires or force PG&E to shut off power to customers such that those customers were harmed. *See* AOB at 47.



*v. Hashim*, 316 F.3d 1032, 1040 (9th Cir. 2003), the court considered an argument raised for the first time in reply only because there would have otherwise been no ability to argue against the newly raised argument. Here, by contrast, PG&E could have raised the issue in its initial papers and chose not to. That choice has consequences; namely, the argument is waived. *U.S. ex rel. Giles v. Sardie*, 191 F. Supp. 2d 1117, 1127 (C.D. Cal. 2000) (“It is improper for a moving party to introduce new facts or different legal arguments in the reply brief than those presented in the moving papers.”).

**V. IF THE COURT FINDS PLAINTIFFS’ COMPLAINT LACKS SUFFICIENT ALLEGATIONS OF CAUSATION OR IS PREEMPTED, PLAINTIFF SHOULD BE PERMITTED TO AMEND**

Should this Court uphold the lower courts’ dismissal of the Complaint, Plaintiff should be granted leave to amend. Amendment would not be futile. Indeed, PG&E concedes that any issue with causation could be cured in an amended complaint. *See* AAB at 40 (“[I]f the Court were to affirm the dismissal of the Complaint *solely* on the basis of failure to allege causation, PG&E agrees that such a dismissal should be without prejudice.”). For example, when arguing against this Court considering Judge Alsup’s statements detailing PG&E’s criminal conduct, which Plaintiff cites to demonstrate that additional allegations could be included to enhance the already-sufficient causation allegations, PG&E has little to say other than that these statements were not included in the Complaint—a reality

easily rectified through amendment. *See id.* at 47.

And even with respect to the erroneously construed section 1759 preemption argument, an amendment is not futile because facts can be included that more specifically tie PG&E’s negligence to specific PSPSs. Amendment is also not futile because Plaintiff can amend his Complaint under a different legal theory. *See* AOB at 50-51 (plaintiff can “amend his claims in the Complaint . . . to present any viable claim”) (quoting, *inter alia*, *Harris v. Amgen, Inc.*, 573 F. 3d 728, 737 (9th Cir. 2009)). PG&E makes no attempt to distinguish any of the authority Plaintiff cites to support this point.

PG&E’s bid to walk back the CPUC’s concession that it was possible to plead “a negligence claim that could work” fails for this very reason. PG&E’s argument—premised on the flawed assumption that Plaintiff is seeking to impose liability “on PG&E for all PSPS events” (*see supra* Sections I and II)—is that while the CPUC said that there could be liability related to PSPSs “depend[ing] on the allegations,” it could not attach to Plaintiffs’ Complaint. *See* AAB at 43. But the point of amendment would be to draft a complaint that complies with the guidance from this Court, should it find that section 1759 preempts the current Complaint. And the CPUC acknowledges that such a complaint can be drafted. *See id.* at 43.

The CPUC agreed with the judge that “its mission isn’t to hand out free

negligence passes.” *See* 2-ER-147 (Bankr. Hr’g Tr. at 17-18). Yet PG&E takes the position that any complaint that sounds in negligence must be preempted. This is precisely the “license to be negligent” that the CPUC agreed should not exist. *See id.* So PG&E attempts to limit the CPUC’s concession to negligent conduct “in carrying out the PSPS.” *See* AAB at 43. But this is nonsensical. It would make no sense to assert that negligence in the manner of performing a PSPS (i.e., indisputably regulated conduct) is not preempted, but that negligence prior to the PSPS is, as PG&E’s argument implies.

PG&E even seeks to deny Plaintiff the right to amend his Complaint because Plaintiff in his Opening Brief responded to a misguided theory from the district court. The district court improperly held that Plaintiff’s claims were preempted because to find otherwise would incentivize PG&E *not* to engage in PSPSs. Plaintiff rightly pointed out in his Opening Brief that PSPSs are only a last resort and that it would violate the CPUC regulations for PG&E to allow a calculation of potential liability to determine whether to employ PSPSs. *See* AOB at 20-21. In other words, the district court’s theory of preemption cannot be correct because it conflicts with the CPUC-mandated protocol.

In response, PG&E argues not only that this argument is waived—an illogical position given that Plaintiff was simply responding to an argument articulated for the first time in the district court decision Plaintiff now appeals—

but that Plaintiff's argument is somehow internally inconsistent. That is wrong. It is entirely consistent to argue that PG&E's negligence in maintaining its power grid was so great that it required PG&E to implement PSPSs.

And PG&E does nothing to address the district court's flawed understanding of *Sprewell v. Golden State Warriors*, instead merely quoting the district court's analysis that any amendment would "contradict [Plaintiff's] initial complaint." *See* AAB at 41 (citing *Sprewell*, 266 F. 3d 979, 988 (9th Cir. 2001)). As Plaintiff explained in his Opening Brief, *Sprewell* does not apply because, unlike in that case, Plaintiff has not already had a chance to amend the Complaint and the district court identified no "unnecessary details" that would preclude Plaintiff from asserting a negligence claim in an amended complaint. *See* AOB at 50. And because the only instance of contradiction PG&E articulates involves its flawed understanding of the requirements under which PG&E must implement PSPSs, there would be no contradiction in a complaint containing facts about those requirements in any event.

**VI. IF THE COURT HAS ANY DOUBT, THE CALIFORNIA SUPREME COURT SHOULD DETERMINE THE SCOPE OF PREEMPTION UNDER CALIFORNIA LAW**

Given the importance of section 1759 preemption to both this case and public policy, Plaintiff requested certification to the California Supreme Court should the Court have any doubt about the degree to which this action would

hinder CPUC regulatory authority. *See* AOB at 42-44 (citing Cal. R. Ct. 8.548(a)). Under California Rule of Court 8.548(a), it is appropriate for a federal court to certify a question to the California Supreme Court where (1) the decision could determine the outcome of the matter pending in the requesting court, (2) there is no controlling precedent, and (3) the case presents significant issues with important public policy ramifications. *Kremen v. Cohen*, 325 F.3d 1035, 1037 (9th Cir. 2003).

While it does not dispute the import of the question, PG&E argues that certification is not appropriate because *Covalt* and *Hartwell* provide sufficient binding precedent for this Court to determine the scope of preemption. As discussed *supra*, however, PG&E's misapplication of the test the California Supreme Court lays out in *Covalt* demonstrates that California Supreme Court intervention would help clarify when section 1759 preemption applies—and when it does not.<sup>5</sup>

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<sup>5</sup> The lone case PG&E cites in support of its argument that certification is not appropriate—*Herrera v. Zumiez, Inc.*—refused to certify for the California Supreme Court because the California Supreme Court had recently rejected an attempt to hear the very question at issue in the case, which is not true of section 1759 preemption. 953 F.3d 1063, 1070 (9th Cir. 2020).

In arguing that certification to the California Supreme Court is not warranted, PG&E repeats the canard that PG&E should not face liability “on utilities for conduct that CPUC authorized.” *See* AAB at 38. But that is simply begging the question of whether preemption applies under *Covalt*. Plaintiff does not seek to impose liability for authorized conduct—the PSPSs—but rather for PG&E’s negligence that predates the PSPSs. *See supra* Sections I and II. And while it may not be relevant to the certification issue that the parties take opposite views of the scope of preemption, it is relevant that the CPUC itself seems to be of two minds. *Compare* Stebbins Br. at 11 (CPUC Director from 2018 to 2020 stating that the instant “lawsuit cannot possibly interfere with CPUC’s regulation of PG&E—either generally, or of PSPSs specifically”) *with* CPUC Br at 11-12 (arguing that section 1759 bars Plaintiff’s claim). Should this Court have any doubt on whether preemption applies, then, it should allow the California Supreme Court to settle the issue.

**VII. THE NINTH CIRCUIT SHOULD NOT REVIVE PG&E’S MORIBUND, AND PREVIOUSLY IGNORED, TARIFF RULE 14 ARGUMENT**

Perhaps recognizing that its section 1759 preemption contention cannot withstand scrutiny, PG&E—as it did in the bankruptcy court and again in the district court—once again argues that Tariff Rule 14 precludes liability here. PG&E’s argument, however, is anything but the “plain reading” of the Tariff it

claims it to be. Instead, the argument relies on the inappropriate segregation of a few sentences of the Tariff, divorced from the Tariff as a whole, to claim preemption where none exists. The lower courts thought so little of this tortured reading of the Tariff that they ignored PG&E's argument altogether. So, too, should this court.

Tariff Rule 14 only provides PG&E immunity for power outages when it exercises "reasonable diligence and care"—something it did not do here. *See Tesoro Refin.*, 146 F. Supp. 3d at 1184. In *Tesoro*, the plaintiff, a refinery, sued PG&E for damages resulting from a power outage PG&E's negligence caused. 146 F. Supp. 3d 1170. PG&E argued that certain liability limitation language in the Tariff Rule immunized it from liability. The court held that it did not, finding that the purpose of Tariff Rule 14's liability limitation was related to deregulation/access, not to PG&E's own negligence. *Id.* at 1185. As the CPUC stated after Tariff Rule 14 became effective: "In the energy services industry, PG&E is only protected from damages that are beyond its control; however, it is responsible for reasonable damages resulting from its negligence." 1-SER-69 (Appellant's Dist. Ct. Reply Br. at 12). There is no doubt, then, that Tariff Rule 14 does not immunize PG&E for its own negligence.

As it did below, PG&E argues that a part of Tariff Rule 14 gives it "sole" authority to engage in power shutoffs for public safety. *See* AAB at 49-50. That is,

PG&E argues that a portion of the Tariff conveys immunity for negligence even where the rest of the Tariff does not. But that portion of Tariff Rule 14 is not a separate provision. The so-called “fourth paragraph” is a subset of the “outage, planned or unplanned” language in the third paragraph. As *Tesoro* holds, Tariff Rule 14 does not absolve PG&E of liability for its own negligence in connection with an “outage, planned or unplanned.” 146 F. Supp. 3d at 1176 (citation omitted). By attempting to cabin *Tesoro* as only applying to “a different provision of Rule 14,” PG&E implicitly concedes *Tesoro*’s application to the case at bar. There is no “different provision” of the Tariff to which *Tesoro* could be applying, meaning that its teaching—no immunity for PG&E’s negligence under the Tariff—must apply here.

PG&E’s attempt to distinguish the CPUC’s conclusion that Tariff Rule 14 did not shield SDG&E for liability for its negligence related to PSPSs holds no weight. In that proceeding (D.09-09-030), SDG&E requested authority to amend its rule to include the statement that SDG&E may shut off power “without liability to its customers.” 1-SER-71 (Appellant’s Dist. Ct. Reply Br. at 14). In support, SDG&E argued that the language in PG&E’s Tariff Rule 14 should be adopted in connection with SDG&E’s proposed PSPSs. The CPUC declined, noting that PG&E’s language “was approved in 1997 as part of the Commission’s direct access program” and that different context “concerned the interruption of energy



supplied by energy marketers to direct access customers,” not PSPSs, which are “wholly unrelated.” 1-SER-71, (Appellant’s Dist. Ct. Reply Br. at 14). Saying Tariff Rule 14 “squarely does” apply to PSPSs, as PG&E does in its Answering Brief without any citation, does not change the import of the CPUC’s statements in connection with SDG&E—or the fact that Tariff Rule 14 does nothing to extinguish PG&E’s liability for its own negligence.

### CONCLUSION

For the foregoing reasons, the Court should reverse the bankruptcy court’s Decision and Order and remand for further proceedings.

Dated: October 15, 2021 PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

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Seth R. Gassman

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**FORM 17. STATEMENT OF RELATED CASES PURSUANT TO  
CIRCUIT RULE 28-2.6**

The undersigned attorney or self-represented party states the following:

[ X ] I am unaware of any related cases currently pending in this court.

**Signature** /s Bonny E. Sweeney

**Date** October 15, 2021

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**FORM 8. CERTIFICATE OF COMPLIANCE FOR BRIEFS**

I am the attorney or self-represented party.

**This brief contains 6438 words**, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief complies with the word limit of Cir. R. 32-1.

**Signature** s/ Bonny E. Sweeney

**Date** October 15, 2021

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**CERTIFICATE OF SERVICE**

**9th Cir. Case Number(s) No. 21-15571**

I hereby certify that I electronically filed the foregoing/attached document(s) on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing System.

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APPELLANT'S REPLY BRIEF

**Signature** s/ Bonny E. Sweeney  
**Date** October 15, 2021

No. 21-15571

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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ANTHONY GANTNER, individually and on behalf of all those  
similarly situated,

*Plaintiff-Appellant,*

v.

PG&E CORPORATION, a California Corporation, and PACIFIC GAS  
& ELECTRIC COMPANY, a California Corporation

*Defendants-Appellees.*

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On Appeal from the United States District Court  
for the Northern District of California  
No. 4:20-CV-02584-HSG  
Hon. Haywood S. Gilliam, Jr.,  
[an appeal from Bankruptcy Case No. 19-30088 (DM), Hon Donald Montali]

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**BRIEF OF AMICUS CURIAE ALICE STEBBINS,  
EXECUTIVE DIRECTOR EMERITUS OF  
THE CALIFORNIA PUBLIC UTILITIES COMMISSION  
IN SUPPORT OF APPELLANTS**

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## **CORPORATE DISCLOSURE STATEMENT**

Amicus Curiae Alice Stebbins is an individual with no corporate affiliation and no financial interest, direct or indirect, in the outcome of this case.

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**CERTIFICATIONS UNDER FRAP 29(a) and 29(e)(4)(E)**

Amicus Alice Stebbins, by and through her counsel of record, and pursuant to Rules of Appellate Procedure 29(a) and 29(e)(4)(E), hereby certifies as follows:

1. All parties have consented to the filing of this amicus brief
2. No party or party's counsel authored this brief in whole or in part;
3. No party or party's counsel contributed money that was intended to fund the preparation or submission of this brief;
4. No person or entity other than Amicus Alice Stebbins and her counsel contributed money that was intended to fund the preparation or submission of this brief.

Dated: July 8, 2021

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## **IDENTITY AND INTEREST OF AMICUS CURIAE ALICE STEBBINS**

Alice Stebbins is an individual, a California resident, and the Executive Director Emeritus of the California Public Utilities Commission (“CPUC”). Ms. Stebbins is a California native with a 34-year-long career in public service, including managerial positions with the California Department of Justice, and Department of Transportation. For the last 19 years, Ms. Stebbins has worked in state agencies that regulate the environment and resource management, including the State Water Resources Control Board and the Air Resources Board. From February 2018, on the heels of the deadly 2017 wildfire season, through September 2020, Ms. Stebbins held the title of Executive Director of the California Public Utilities Commission (CPUC). In that role, Ms. Stebbins managed the operations of the CPUC and its regulated industries, including electricity, natural gas, telecommunications, water, transportation, rail, and enforcement and safety policy, while working with CPUC’s Commissioners, setting policy, and directing the operations of the CPUC’s 1,400 staff members. Ms. Stebbins has a deep personal historical understanding of the landscape of utility regulation and resource management in the state of California.

When serving as Executive Director, in March 2019, Ms. Stebbins organized and convened the first ever multidisciplinary conference of experts (fire personnel, utilities, technology experts, academics, and engineers), denominated the Wildfire Technology Conference, to identify every possible way that the CPUC and the State of California could assist utilities in preventing wildfires. The commission’s fiscal

integrity, and wildfire prevention, were the principal two focuses of Ms. Stebbins tenure at the CPUC.

## INTRODUCTION AND SUMMARY OF ARGUMENT

This appeal asks whether PG&E should be liable to its consumers for injuries caused by PG&E's own criminally negligent conduct. It is well-known that PG&E failed to maintain its power grid, resulting in catastrophic wildfires, deaths, and untold costs and suffering. Subsequently, PG&E engaged in Public Safety Power Shutoffs ("PSPSs"), colloquially referred to as "rolling blackouts," or "de-energization," in order to guard against further fires that might otherwise be sparked by PG&E's shoddily maintained grid. While orders of magnitude smaller than the injuries caused by actual fires, the PSPSs also inflicted significant injuries on PG&E's consumers, including the Appellant.

Erroneously, the Bankruptcy Court and the District Court both concluded that this lawsuit would interfere with the regulatory authority of the California Public Utilities Commission ("CPUC"), and therefore was barred by section 1759 of the California Public Utilities Code ("section 1759"). That conclusion was based largely on an amicus brief filed by the CPUC in the bankruptcy proceeding (Bankruptcy Dkt. 19; attached hereto as Appendix A), which asserted that Appellant's Complaint "would interfere with the Commission's regulatory authority." (*Id.* at pp. 2-3).

But the CPUC amicus provided no specifics, no evidence, no reasoning, no explanation, and indeed no basis whatsoever to support its bare conclusion. Counsel for the CPUC appeared at the appeal hearing before the District Court below, and

similarly failed to offer substantiate the position taken in its amicus brief. (*See* 2 ER 145-149).

Indeed, at the prodding of the district court, counsel for the CPUC conceded that CPUC regulation does not give utilities a free pass to act negligently. 2 ER 147:1-6. And counsel for the CPUC further conceded that Appellant could potentially amend his Complaint to state a cause of action that would not implicate the CPUC's regulatory authority or offend section 1759: "I would think there could be a set of circumstances with specific shutdowns and specific power lines, in which you might have a negligence claim that could work." (2 ER 148-149). The bare assertions in the CPUC's amicus are not conclusive or even persuasive without actual proof that the case would actually interfere with its regulatory authority, and in light of CPUC counsel's concessions, the amicus should have been given little weight indeed.

Notably, while the CPUC does regulate the implementation of the PSPSs themselves, the Complaint does not challenge any aspect of that implementation, and the District Court so recognized: "it is significant that Appellant is not suing [PG&E] for improperly deciding to implement the PSPS events, or even for negligence in how Debtors implemented the PSPS events.... "The Complaint does not allege that the PSPSs were not necessary and appropriate, or that CPUC's approval of its Wildfire Safety Plan was improper, only that the PSPSs would not have been necessary in the first place had PG&E not been negligent.'" (1 ER 8:16-24 (cleaned up)).

Moreover, the CPUC has no jurisdiction or authority over the subject of the instant lawsuit: PG&E's liability to its customers for PG&E's negligence (related to PSPSs or otherwise). The CPUC itself has stated that it is "not the venue" in which to raise PG&E's liability to its customers arising from PSPSs. (2 ER 213; AMJN, Ex. 3 at 60 (CPUC "does not have jurisdiction to award damages to utility customers for losses of, for example, personal property, damage to real estate, lost wages, business losses, emotional distress, or personal injury.")). So if CPUC cannot regulate damage payments owed to customers, and the lawsuit does not challenge any aspect of the PSPSs (other than the injuries they cause), then the lawsuit cannot possibly interfere with CPUC's regulation of PG&E generally, or of PSPSs specifically.

Three issues are undisputed: (1) the instant lawsuit does not challenge the necessity, propriety, or manner in which PG&E implements PSPSs, (2) the CPUC concedes that it has no jurisdiction even to consider injuries that PSPSs impose upon PG&E's customers, (3) the CPUC concedes that courts might consider a properly alleged negligence claim arising out of PSPSs. In light of these irrefutable truths, the District Court's conclusion that Appellant's lawsuit impinges upon the CPUC's regulatory authority, and is thus barred by section 1759, is clearly erroneous.

For all the reasons set forth herein, Amicus Curiae Alice Stebbins asks the Court to reverse the decisions of the District Court and the Bankruptcy Court below, and remand the matter for further proceedings.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. PG&E's Criminal Negligence Necessitated Power Outages

Judge Alsup, who presides over PG&E's probation in the criminal proceedings against it, provided the compelling context for the instant suit. PG&E, Judge Alsup wrote,

though the single largest privately-owned utility in America, cannot safely deliver power to California. This failure is upon us because for years, in order to enlarge dividends, bonuses, and political contributions, PG&E cheated on maintenance of its grid – to the point that the grid became unsafe to operate during [California's] annual high winds....

(2 ER 117). PG&E's criminal negligence is well documented. In 2016, a federal jury convicted PG&E on five felony counts of willful violation of maintenance standards and one felony count of obstructing the government's investigation, with respect to a gas-line explosion in San Bruno, California. (2 ER 118). One year later, PG&E's poorly maintained grid was the culprit in seventeen of twenty-one fires in the Northern California wine country, which killed twenty-two people and destroyed 3,256 structures. (*Id.*).

In November 2019, PG&E's shoddy maintenance of the electrical grid caused the Camp Fire in Butte County, which leveled the town of Paradise, killed eighty-five people, and burned 18,793 structures, representing the deadliest wildfire in California history. (2 ER 119). As a result, in 2020, PG&E admitted that it started the Butte County fire and plead guilty to eighty-four



counts of manslaughter. (*Id.*). As a consequence, PG&E was expected to contribute \$13.5 billion to a victim’s compensation fund and to pay approximately \$4,000,000 in fines and investigative costs. (*Id.*; *see also* Appendix B, Judge Alsup’s April 29, 2021 Order cataloging ongoing fires and death caused by PG&E’s negligence).

Judge Alsup acknowledged that PG&E’s criminal negligence caused – indeed required – PG&E to implement PSPSs in order to prevent further fires in 2019. (2 ER 120). Hundreds of trees fell onto power lines in the 2019 windstorms, 291 of which, PG&E represented, would likely have sparked fires but for the PSPSs. While praising PG&E for preventing more fires, Judge Alsup recognized that the PSPSs were necessitated by PG&E’s shoddy and negligent maintenance:

Shutting off the power in those lines in advance of the windstorms was essential to public safety, and PG&E did so. For this PG&E deserves credit. But at the same time, *those hundreds of fallen limbs and trees also remain proof positive of how unsafe PG&E had allowed its maintenance backlog to become.*

(2 ER 122 (emphasis added)). Judge Alsup clearly understood that the PSPSs were necessitated by PG&E’s negligence, writing that Californians would have to tolerate the power outages “until PG&E has come into compliance with state law and the grid is safe to operate in high winds.” (2 ER 129). Judge Alsup recognized that the PSPSs were “the lesser of two evils” when compared to deadly wildfires. (*Id.*).

**B. The Instant Lawsuit Seeks Compensation for Injuries Flowing From PG&E’s Negligence; but Despite it Challenging No Aspect of the PSPSs Themselves, the Courts Below Found Preemption.**

Appellant filed the instant lawsuit as a putative class action to recover injuries (such as loss of habitability of deenergized homes, loss of food, loss of productivity) suffered by PG&E’s customers because of specific PSPSs that were necessitated by PG&E’s negligence. (1 ER 3). The District Court below explicitly recognized that the lawsuit challenged no aspect of the PSPSs themselves – least of all their propriety or necessity. (1 ER 8).

Nonetheless, the District Court gave controlling weight to an amicus brief that the California Public Utilities Commission (“CPUC”) filed in the bankruptcy action that made a bare and unsupported assertion of regulatory interference. Thus, both courts below found that the lawsuit was preempted by California Public Utilities Code section 1759, because it somehow interferes with the California Public Utilities Commission’s regulation of the time, place, and manner of PSPSs. (1 ER 8, 10).

## ARGUMENT

### A. Section 1759 Poses No Bar to Suits That, Like the Instant Suit, Create No Interference with CPUC Regulation of Utilities.

Section 1759 does not immunize PG&E from liability for its negligence in maintaining the power grid. Section 1759 provides as follows:

No court of this state ... shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commissioner or to suspend or delay the execution or operation therefore, or to enjoin, restrain, or interfere with the commission in the performance of its official duties....

Cal. Pub. Util. Code § 1759. Meanwhile, section 2106 of the California Public Utilities Code specifically allows individuals to sue California utilities such as PG&E for injuries caused by their unlawful conduct and/or negligence.

A defendant asserting preemption shoulders the burden of establishing that preemption applies. *See Chamber of Commerce v. City of Seattle*, 890 F.3d 769, 795 (9th Cir. 2018) (burden to show preemption is on party asserting it). And it requires more than a mere tangential relationship to regulation for preemption to arise: “[i]t has never been the rule in California that the [CPUC] has *exclusive* jurisdiction over any and all matters having any reference to the regulation and supervision of public utilities.” *Vila v. Tahoe Southside Water Util.*, 233 Cal. App. 2d 469, 477 (1965) (emphasis in original).

Rather, in order to determine whether such a lawsuit runs afoul of section 1759, courts apply a three-party test: in order to be preempted, (1) the CPUC must have had the authority to adopt a regulatory policy on the subject matter of the

litigation; (2) the CPUC must have exercised that authority, and (3) the lawsuit must somehow hinder or interfere with the CPUC's exercise of its regulatory authority.

*Kairy v. SuperShuttle Int'l*, 660 F.3d 1146, 1150 (9th Cir. 2016). Unfortunately, below, both the Bankruptcy Court and the District Court effectively found that (1) and (2) lead to a presumption of (3) – but that is clearly not the appropriate application of the test.

The CPUC's regulation of PG&E encompasses the manner in which the utility implements PSPSs and the factors it should take into account in deciding whether to implement them. (1 ER 6-7). Because the CPUC has authority to regulate PSPSs, the Bankruptcy Court and the District Court both concluded that the first and second prongs of the *Kairy* test were satisfied. (2 ER 7). Because the CPUC has no regulations covering compensation to customers adversely impacted by PSPSs, it is dubious whether the second prong of the test does, indeed, apply.<sup>1</sup> Nonetheless, the parties and the courts focused on the third prong: hinderance or interference.

**B. The Instant Lawsuit Compliments the CPUC's Regulation of PG&E.**

Respecting the third prong of the *Kairy* test, this instant lawsuit poses no challenge whatsoever to the manner in which PG&E implemented the PSPSs, or to the propriety of the decision to implement them. Nor does it take any issue with the

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<sup>1</sup> The District Court found that Appellant conceded that the second prong of the *Kairy* test applied. (1 ER 7 n.5).

factors that PG&E was supposed to consider in deciding to implement them. Rather, it seeks to hold PG&E responsible for the negligence that led to the need to implement the PSPSs in the first place. The District Court so recognized. (1 ER 8). As such, this lawsuit creates no hindrance or interference, but rather complements the CPUC's regulatory scheme. *See, e.g., Hartwell Corp. v. Superior Court (Santamaria)*, 27 Cal. 4th 256, 275 (2002) (recognizing that section 1759 permits lawsuits that are "in aid of, rather than in derogation of," the CPUC's jurisdiction). At no time have PG&E or the CPUC explained how the instant suit functions in derogation of CPUC jurisdiction or regulations.<sup>2</sup>

Indeed, courts generally permit civil lawsuits against regulated utilities unless the lawsuit directly and unequivocally challenge or impinge upon regulatory authority. For example, in *Cundiff v. GET California*, 101 Cal. App. 4th 1395 (2002), plaintiffs sued telecom providers for rental fees charged on obsolete equipment. The court of appeal reversed the trial court's section 1759 dismissal, holding that the plaintiffs' challenge to the manner in which the telecoms billed them for rental equipment did not challenge the CPUC's regulations that authorized the defendants to rent the

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<sup>2</sup> Contrast Appendix B, Judge Alsup's 2021 order in the PG&E criminal case, in which he specifically adds to the regulatory considerations that PG&E must consider when weighing PSPSs. Yet, neither PG&E nor the CPUC asserted that such direct involvement in the implementation of PSPS regulations produced any interference with the CPUC's regulation of PG&E.

equipment in the first place. *Id.* at 1406. Similarly, in *Cellular Plus v. Superior Court*, 14 Cal. App. 4th 1223, 1245 (1993), the court of appeal allowed plaintiffs to pursue their price-fixing lawsuit under antitrust laws even though the CPUC had regulated the underlying pricing, because the lawsuit didn't challenge the CPUC's right to set the rates, or to alter the rates. *See also, e.g., PegaStaff v. PG&E*, 239 Cal. App. 4th 1303, 1327-28 (2015) (reinstating a suit for damages alleging that minority preferences for vendors disadvantaged non-minority vendors, despite the fact that PG&E there had set up a preference system in order to comply with CPUC orders favoring minority enterprises).

Those cases – both allowed to proceed – strayed far closer to interference with CPUC regulation than does the instant suit. Here, Plaintiffs seek to impose liability for damages that PG&E inflicts on its customers as a direct consequence of its criminally negligent maintenance of its electrical grid. The CPUC concedes that that is an area beyond its regulatory reach. The CPUC has stated that it is “not the venue” in which to raise PG&E's liability to its customers arising from PSPSs. (2 ER 213; AMJN, Ex. 3 at 60 (CPUC “does not have jurisdiction to award damages to utility customers for losses of, for example, personal property, damage to real estate, lost wages, business losses, emotional distress, or personal injury.”)).<sup>3</sup>

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<sup>3</sup> Various CPUC General Orders (for example, Nos. 95 & 165) require PG&E to comply with design standards for its electrical equipment, to ensure that its power lines can withstand high winds, and to inspect its distribution facilities. Cal. Pub. Res.

The CPUC asserts that it does not and cannot regulate damage payments owed to customers. (“[T]his Commission does not have authority to award damages, as requested by Complainant, but only reparations.... Accordingly, Complainant's request in this regard for an award of damages is outside of Commission jurisdiction.”); AMJN, Ex. 3 at 60; *see also Mangiaracina v. BNSF Railway*, No. 16-cv-05270-JST, 2019 WL 1975461, \*14 (N.D. Cal. March 7, 2019) (CPUC lacks power to adjudicate damages based on past negligence). Likewise, the lawsuit does not challenge any aspect of the PSPSs (other than the injuries they cause). As such, the lawsuit cannot possibly interfere with CPUC’s regulation of PG&E – either generally, or of PSPSs specifically. *See, e.g., Nwabueze v. AT&T*, No. C 09-1529-SI, 2011 WL 332473, \*16 (N.D. Cal. Jan 29, 2011) (“A lawsuit for damages ... would not interfere with any prospective regulatory program” because imposing “liability would not be contrary to any policy adopted by the CPUC or otherwise interfere with the CPUC’s regulation.”)

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Code section 4292 provides that PG&E must “maintain around and adjacent to any pole or tower which supports a switch, fuse, transformer, lightning arrester, line junction, or dead end or corner pole, a firebreak,” and Cal. Pub. Res. Code section 4293 requires PG&E to maintain “clearances of four to ten feet for all of its power lines.” Plaintiff alleged that PG&E failed to comply with these duties (4-ER-490-501, 505-507). Judge Alsup found likewise. (AMJN Exh 1 at 13, 16.). Neither PG&E nor the CPUC raised section 1759 preemption with regard to these requirements.

Indeed, neither PG&E nor the CPUC presented any evidence below of any purported interference. Both asserted the noncontroversial point – that Appellant concedes – that the CPUC generally regulates PSPSs. But that is not the question posed by the third prong of *Kairy*. While the CPUC filed an amicus brief in support of PG&E’s position in the bankruptcy court, it proffered no specifics or evidence—indeed, gave no reason whatsoever— *why* the case interferes with its duties. The CPUC’s bare assertions are unpersuasive.

And, notably, the CPUC lacks the power or jurisdiction to order a utility to pay damages to customers for harm caused by PSPSs. As the CPUC itself has stated, it is “not the venue,” to consider any “financial liability” to PG&E’s customers because of its use of PSPSs. That “venue,” and the only venue, is Appellant’s lawsuit. This suggests that neither the second nor the third prong of the *Kairy* test applies here.

**C. The District Court’s Focus on Disincentivizing PSPSs Was Misplaced.**

The District Court seemed to rest its finding of regulatory interference on the speculative supposition that potential civil liability following PSPSs could disincentivize PSPSs, which may be necessary to prevent fires and save lives: “[i]mposing liability on [PG&E] for implementing CPUC-approved PSPS events would force Debtors to choose between incurring potentially limitless negligence liability and protecting public safety in the manner dictated by the appropriate regulatory authority: CPUC.” (1 ER 9). There are several problems with the District Court’s analysis.



First, PSPSs are already discouraged – they are only warranted under CPUC regulations “as a last resort for wildfire mitigation.” (AMJN, Ex. 3 at 27 (the document adjudicating the 2019 PSPSs, uses the phrase “last resort” 67 times); *see also* Appendix B at p. 9 (Judge Alsup writing “The Court agrees that PSPS events should be a last resort.”)). The District Court incorrectly inferred that CPUC policy favors PSPSs. But neither the bankruptcy court nor the district court explained how Appellant’s lawsuit could interfere with that policy.

Second, the potential cost to PG&E of a PSPS is not an authorized consideration. Rather, PG&E must conduct a “cost-benefit analysis that demonstrates (1) the program will result in a net reduction in wildfire ignitions, and (2) the benefits of the program outweigh any costs, burdens, or risks the program imposes on customers and communities.” (AMJN, Ex. 3 at 15 (quoting CPUC Decision D.09-09-030 at 2 and 63)). It would violate CPUC regulations for PG&E to allow potential liability here to sway it from instituting a PSPS as a measure of last resort. If the dismissals are upheld, PG&E is incentivized to continue passing the societal costs of its own criminal negligence onto its customers, reducing its incentive to correct the maintenance problems on the grid that lead to catastrophic fires in the absence of PSPSs. That outcome – not this lawsuit – would contravene the CPUC’s regulatory scheme.

Third, the District Court’s concern about limitless negligence liability flowing from PSPSs is nonsensical. Judge Alsup has recognized that some PSPSs are

necessitated by PG&E's negligence, while others are not. (*See generally*, Appendix B). Appellant's lawsuit seeks only to impose liability for injuries caused by the former. But fundamentally, the notion that PG&E would choose eschew a PSPS in order to avoid a multi-million dollar class claim for lost groceries (among other things), and choose instead to let wind events cause more deadly fires of the type that have imposed tens of *billions* of dollars of liability upon PG&E, borders on farcical. Ultimately, and hopefully, PG&E will over time bring its grid maintenance into compliance with legal requirements, at which point PSPSs, if any, would no longer flow from PG&E's negligence, and any injuries arising from those PSPSs would fall outside the scope of Appellant's lawsuit.

The courts below found section 1759 preemption based on analytical frameworks that find no support in the case law, that contradict the evidence and allegations, and that failed to properly analyze the ways in which Appellant's lawsuit compliments (rather than contravenes) the CPUC's regulatory authority. As such, this Court should reverse those decisions and give the Appellant his day in court.

**D. The CPUC's Amicus to the Bankruptcy Court (Appendix A) Carries No Weight.**

The District Court below gave the CPUC bankruptcy court amicus brief (Appendix A) great deference, akin to that accorded to federal administrative branch agencies under *Auer* or *Chevron*. (1 ER 10); *see also generally*, *Auer v. Robbins*, 519 U.S. 452 (1997); *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837

(1984). But California courts have been free to reject the CPUC's views of section 1759 preemption when they are unsupported. For example, in *Wilson v. S. California Edison Co.*, 234 Cal. App. 4th 123 (2015), a jury found an electrical utility liable for allowing uncontrolled current from a next-door substation to flow into a customer's home. The utility appealed and the CPUC submitted an amicus brief asserting, much as it did in the instant case, that it had an ongoing regulatory policy and a jury verdict prior to any CPUC finding of misfeasance "would interfere with the Commission's authority to interpret and apply its own orders, decisions, rules and regulations . . ." *Id.* at 148 (quoting the CPUC's brief).

The court of appeal rejected the CPUC's argument, holding that a general regulation on the subject matter of the underlying litigation was not sufficient to implicate section 1759 preemption. In the absence of actual evidence that that the lawsuit would impinge upon specific CPUC actions, "the lawsuit would not interfere with or hinder any supervisory or regulatory policy of the [C]PUC." *Id.* at 151.

The amicus (Appendix A) that formed the basis of the dismissal in the bankruptcy court and the adverse decision in the District Court was entitled to no special deference. The brief lacked any explanation, evidence, or rationale to support its bare assertion that the Appellant's lawsuit interfered with its regulatory authority. Like the court in *Wilson*, the courts below should have rejected it.

Amicus curiae, as Executive Director Emeritus of the CPUC, who was intensely involved in the CPUC's wild-fire mitigation efforts, does not find the

CPUC's assertions to be credible. She urges this Court to reject the CPUC amicus filed below and hold that section 1759 preemption does not apply.

### **CONCLUSION**

For the foregoing reasons, the Court should reverse the decisions below and remand the case for further proceedings.

Dated: July 2, 2021

*/s/ Joseph A. Creitz* \_\_\_\_\_

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

Form 8. Certificate of Compliance for Briefs

9th Cir. Case Number 21-15571

I am the attorney or self-represented party.

**This brief contains 3,976 words**, excluding the items exempted by Fed. R. App.

P. 32(f). The brief's type size and typeface [14pt. Garamond] comply with Fed. R. App.

P. 32(a)(5) and (6).

I certify that this brief (*select only one*):

~~complies with the word limit of Cir. R. 32-1.~~

~~is a cross-appeal brief and complies with the word limit of Cir. R. 28.1-1.~~

**is an amicus brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).**

~~is for a death penalty case and complies with the word limit of Cir. R. 32-4.~~

~~complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):~~

~~it is a joint brief submitted by separately represented parties;~~

~~a party or parties are filing a single brief in response to multiple briefs; or~~

~~a party or parties are filing a single brief in response to a longer joint brief.~~

~~complies with the length limit designated by court order dated \_\_\_\_\_.~~

~~is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).~~

Signature /s/ Joseph A. Creitz

Date July 2, 2021

APPENDIX A  
to the Brief Amicus Curiae of Alice Stebbins:

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**In re:**

**PG&E CORPORATION**

**-and-**

**PACIFIC GAS AND ELECTRIC COMPANY,**

**Debtors.**

**ANTHONY GANTNER, individually and on  
behalf of all those similarly situated**

**Plaintiff,**

**vs.**

**PG&E CORPORATION, a California  
Corporation, and PACIFIC GAS &  
ELECTRIC COMPANY, a California  
Corporation,**

**Defendants.**

Adversary Proceeding No. 19-03061-DM  
Chapter 11 Case No. 19-30088 (DM)  
(Lead Case)  
(Jointly Administered)

**BRIEF OF THE CALIFORNIA  
PUBLIC UTILITIES COMMISSION  
AS AMICUS CURIAE RESPECTING  
DEFENDANTS' MOTION TO  
DISMISS**

1 The California Public Utilities Commission (the “*Commission*”) respectfully submits this  
2 brief as amicus curiae as of right<sup>1</sup> respecting the motion to dismiss this adversary proceeding (the  
3 “*Action*”) filed by Defendants (collectively, “*PG&E*”), to the extent that PG&E’s motion is  
4 based on Section 1759 of the California Public Utilities Code.<sup>2</sup>

### 5 Preliminary Statement

6 Plaintiff’s Complaint seeks to bring a putative class action against Pacific Gas and  
7 Electric Company (the “*Utility*”) and PG&E Corporation. The putative class consists of  
8 California residents and business owners whose power was shut off by the Utility during October  
9 and November 2019 or whose power is shut off by the Utility during voluntary outages over the  
10 course of the litigation. Plaintiff alleges that the Utility’s negligence was responsible for the  
11 power shutoffs in October and November 2019. Plaintiff asserts a single claim for negligence.

12 Section 1759 of the California Public Utilities Code bars the assertion of claims under  
13 California law that would interfere with the Commission’s regulatory authority. In the  
14 Commission’s view, litigation and adjudication of Plaintiff’s claim, as framed by the Complaint,  
15

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16 <sup>1</sup> Federal Rule of Bankruptcy Procedure 8017(a)(2) authorizes “a state” to file a brief as  
17 amicus curiae “without the consent of the parties or leave of court.” Section 307 of the  
18 California Public Utilities Code authorizes the General Counsel of the Commission to  
19 represent and appear for the people of the State of California and the Commission in all  
20 actions and proceedings involving any question under the Public Utilities Code or any act or  
21 order of the Commission. As this brief addresses a question under section 1759 of the Public  
22 Utilities Code and various actions and proceedings of the Commission, this brief is the brief  
of a state for purposes of Rule 8017(a)(2) and section 307. *See Kairy v. Supershuttle Int’l*,  
No. 10-16150 (9th Cir. Aug. 12, 2011), ECF No. 48 (order holding that the Commission was  
entitled to file an amicus brief as of right under Fed. R. App. P. 29(a), which contains a  
provision that is materially identical to Fed. R. Bankr. P. 8017(a)(2), and Cal. Pub. Util. Code  
§ 307). The Commission respectfully submits that it is independently entitled to file this  
brief as of right under 11 U.S.C. § 1109(b).

23 As a courtesy, counsel for the Commission sought the consent of the parties to the Action for  
24 the filing of this brief, although counsel stated to the parties that in the Commission’s view,  
the Commission is entitled to file this brief as of right. Counsel for PG&E consented to the  
25 filing of the brief. Counsel for Plaintiff declined to consent to the filing of the brief unless  
counsel for Plaintiff was provided with a copy of the brief in advance of filing.

26 <sup>2</sup> The filing and contents of this amicus brief are not intended as, and should not be construed  
27 as, a waiver of any objections or defenses that the State of California, the Commission, or  
any other agency, unit, or entity of the State of California may have to this Court’s  
28 jurisdiction over the State of California, the Commission, or such other agency, unit, or entity  
based upon the Eleventh Amendment to the United States Constitution or related principles  
of sovereign immunity or otherwise, all of which objections and defenses are hereby  
reserved.



1 would interfere with the Commission’s regulatory authority. The claim should therefore be  
2 dismissed. The Commission expresses no view concerning any other issue raised by the  
3 Complaint or the briefing on PG&E’s motion.

#### 4 **Background**

5 The Commission is a constitutional agency of the State of California that regulates  
6 privately owned electrical corporations and gas corporations. *See* Cal. Const. art. XII; Cal. Pub.  
7 Util. Code § 216(a), (b). The Commission regulates the Utility, which is an investor-owned  
8 public utility that supplies electricity and natural gas to consumers in northern and central  
9 California. *See PegaStaff v. Pac. Gas & Elec. Co.*, 239 Cal. App. 4th 1303, 1311 (Ct. App. 1st  
10 Dist. 2015).

#### 11 **A. The Commission’s De-Energization Guidelines**

12 Electric utilities that are regulated by the Commission may shut off power in  
13 circumstances defined by the California Public Utilities Code and the Commission’s decisions.  
14 *See* Cal. Pub. Util. Code §§ 399.2(a), 451.

15 In April 2012, the Commission promulgated de-energization guidelines that permitted  
16 San Diego Gas & Electric Company to shut off power when strong winds, heat events, and other  
17 conditions made a power shutoff “necessary to protect public safety.” Decision Granting  
18 Petition to Modify Decision 09-09-030 and Adopting Fire Safety Requirements for San Diego  
19 Gas & Electric Company, Decision 12-04-024, at 25 (Cal. P.U.C. Apr. 19, 2012), *available at*  
20 *Adv. Pro. ECF No. 8-3*. In July 2018, the Commission adopted Resolution ESRB-8, which,  
21 among other things, extended those guidelines to all investor-owned utilities, including the  
22 Utility. *See* Resolution Extending De-Energization Reasonableness, Notification, Mitigation,  
23 and Reporting Requirements in Decision 12-04-024 to All Electric Investor Owned Utilities  
24 (“Resolution ESRB-8”), 2018 WL 3584003, at \*1 (Cal. P.U.C. July 12, 2018), *available at Adv.*  
25 *Pro. ECF No. 8-5*, at 1. The Commission may review any decision by a utility to shut off power  
26 for reasonableness.

27 In December 2018, the Commission opened a rulemaking to further examine the de-  
28 energization policies and guidelines adopted in Decision 12-04-024 and Resolution ESRB-8.

1 That rulemaking is focused on establishing guidelines and protocols concerning when a utility  
2 should conduct a public safety power shutoff. *See* Order Instituting Rulemaking to Examine  
3 Electric Utility De-Energization of Power Lines in Dangerous Conditions, 2018 WL 6830158  
4 (Cal. P.U.C. Dec. 13, 2018), *available at* Adv. Pro. ECF No. 8-6.

5 **B. The Commission’s Approval of the Utility’s 2019 Wildfire Safety Plan**

6 On September 21, 2018, the Governor of California signed SB-901 into law. Act of  
7 Sept. 21, 2018, ch. 626, 2018 Cal. Legis. Serv. 1 (West). Among other things, SB-901 added  
8 several new provisions to section 8386 of the California Public Utilities Code. *Id.* § 38, 2018  
9 Cal. Legis. Serv. at 30. Those new provisions require California utilities to prepare and submit  
10 “Wildfire Mitigation Plans” to the Commission. Cal. Pub. Util. Code § 8386(b). Wildfire  
11 Mitigation Plans must contain, among other things, “[p]rotocols for . . . deenergizing portions of  
12 the electrical distribution system that consider the associated impacts on public safety.” *Id.*  
13 § 8386(c)(6).

14 On February 6, 2019, the Utility filed its 2019 Wildfire Safety Plan with the  
15 Commission.<sup>3</sup> The Utility’s 2019 Wildfire Safety Plan specified factors that the Utility considers  
16 in deciding whether to conduct a public safety power shutoff.<sup>4</sup> The Commission approved the  
17 Utility’s 2019 Wildfire Safety Plan on June 4, 2019. *See* Decision on Pacific Gas and Electric  
18 Company’s 2019 Wildfire Mitigation Plan, Decision 19-05-037, 2019 WL 2474177 (Cal. P.U.C.  
19 June 4, 2019), *available at* Adv. Pro. ECF No. 8-9.

20 **C. The Commission’s Investigations into the Compliance of California’s Utilities  
21 with the Commission’s Regulations and Requirements with Respect to  
22 Public Safety Power Shutoffs**

23 On November 12, 2019, the Commission ordered the Utility to show cause why the  
24 Commission should not sanction the Utility for its failure to communicate with its customers  
25 properly during public safety power shutoffs in October and November 2019. *See* Assigned  
26 Commissioner and Assigned Administrative Law Judge’s Ruling Directing Pacific Gas and

27 <sup>3</sup> *See* Pacific Gas and Electric Company Amended 2019 Wildfire Safety Plan, *available at*  
[https://www.pge.com/pge\\_global/common/pdfs/safety/emergency-preparedness/natural-  
disaster/wildfires/Wildfire-Safety-Plan.pdf](https://www.pge.com/pge_global/common/pdfs/safety/emergency-preparedness/natural-disaster/wildfires/Wildfire-Safety-Plan.pdf).

28 <sup>4</sup> *Id.* § 4.6.1.

1 Electric Company to Show Cause, Rulemaking 18-12-005 (Cal. P.U.C. Nov. 12, 2019), *available*  
2 *at* Adv. Pro. ECF No. 8-17. That investigation remains ongoing.

3 The next day, the Commission instituted a new investigation to determine whether  
4 California’s utilities prioritized safety and complied with the Commission’s regulations and  
5 requirements with respect to their public safety power shutoffs in late 2019. *See* Order  
6 Instituting Investigation on the Commission’s Own Motion on the Late 2019 Public Safety  
7 Power Shutoff Events, 2019 WL 6179011 (Cal. P.U.C. Nov. 13, 2019), *available at* Adv. Pro.  
8 ECF No. 8-16. That investigation remains ongoing. The Commission may consider taking  
9 action if it finds that violations of statutes, its decisions, or its general orders have been  
10 committed and if it finds that action is necessary to enforce compliance. *Id.* at \*4.

11 **D. This Action**

12 Plaintiff in this Action seeks to impose liability on the Utility based on five public safety  
13 power shutoffs that, according to the Complaint, the Utility initiated on or about October 9, 23,  
14 26, and 29, 2019, and November 20, 2019. Compl. ¶¶ 63, 69-78. Plaintiff alleges that these  
15 power shutoffs affected customers in “over 35 counties” in California. *Id.* ¶ 64.

16 The Complaint defines the proposed class to include “[a]ll California residents and  
17 business owners who had their power shutoff by PG&E during the October 9, October 23  
18 October 26, October 28 [*sic*], or November 20, 2019 Outages and any subsequent voluntary  
19 Outages PG&E imposes on its customers during the course of litigation,” except for certain  
20 persons with ties to the Utility or the Court. *Id.* ¶ 85. The Complaint asserts a single claim for  
21 negligence. *Id.* ¶¶ 95-106.

22 The Complaint does not allege that the Utility, in deciding to conduct the public safety  
23 power shutoffs at issue, failed to comply with the Commission’s guidelines in this area or with  
24 the Utility’s 2019 Wildfire Safety Plan. The Complaint instead generally alleges that the  
25 Utility’s negligent design and maintenance of its facilities for many years resulted in the need for  
26 the public safety power shutoffs “in the first place.” Plaintiff’s Opposition to Debtors’ Motion to  
27 Dismiss and Motion to Strike 2, Adv. Pro. ECF No. 16; *see* Compl. ¶¶ 27-48. The Complaint  
28 cites provisions of California statutory law and an order by the Commission that impose certain

1 mandates on the Utility. Compl. ¶¶ 14-18 (citing Cal. Pub. Util. Code § 451, Cal. Pub. Res.  
2 Code §§ 492, 493, and Cal. P.U.C. General Order 165). The Complaint, however, does not  
3 allege that any particular failure to comply with any particular mandate resulted in any particular  
4 public safety power shutoff. See Compl. ¶ 98. Instead, the Complaint broadly alleges the  
5 following theory of liability:

6 In brief, instead of addressing its crumbling infrastructure to  
7 protect against wildfires, PG&E has decided to mitigate that risk  
8 by shifting its duty to provide safe power onto its customers to live  
9 without power for days or weeks at a time so it can avoid another  
10 catastrophic wildfire and the attendant liabilities which come with  
11 it. Years of corporate greed and criminal negligence have caught  
12 up to PG&E but that does not entitle it to pass the cost of its  
13 negligence onto its consumers who did nothing but pay their bills  
14 and expect to be able to turn their lights on so they can live their  
15 lives to conduct their businesses.

16 *Id.* ¶ 79.

### 17 **Argument**

#### 18 **Section 1759 of the California Public Utilities Code Bars Plaintiff’s Claim**

19 Section 1759 of the California Public Utilities Code provides: “No court of this state,  
20 except the Supreme Court and the court of appeal . . . shall have jurisdiction to review, reverse,  
21 correct, or annul any order or decision of the commission or to suspend or delay the execution or  
22 operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of  
23 its official duties, as provided by law and the rules of court.” Cal. Pub. Util. Code § 1759(a).

24 Under the decision of the Supreme Court of California in *San Diego Gas & Electric Co.*  
25 *v. Superior Court (Covalt)*, 13 Cal. 4th 893, 923, 926, 935 (1986), section 1759 bars the  
26 assertion of a claim under California law if (1) the Commission has the authority to adopt a  
27 regulatory policy concerning the subject matter of the claim; (2) the Commission has exercised  
28 that authority; and (3) litigation and adjudication of the claim would hinder or interfere with the  
relevant policy or policies adopted by the Commission. In the Commission’s view, Plaintiff’s  
claim, as framed in the Complaint, is barred by the three-part test announced in *Covalt*.

First, the parties to this Action agree that the Commission has authority under California  
law to regulate public safety power shutoffs. See Debtors’ Motion to Dismiss and Motion to

1 Strike 13, Adv. Pro. ECF No. 7; Plaintiff's Opposition to Debtors' Motion to Dismiss and  
2 Motion to Strike 7, Adv. Pro. ECF No. 16.

3 Second, at the time of the wildfires in October and November 2019, the Commission had  
4 exercised that authority by adopting guidelines governing, among other subjects, the  
5 circumstances in which an investor-owned utility may conduct a public safety power shutoff.  
6 *See* Decision Granting Petition to Modify Decision 09-09-030 and Adopting Fire Safety  
7 Requirements for San Diego Gas & Electric Company, Decision 12-04-024 (Cal. P.U.C. Apr. 19,  
8 2012), *available at* Adv. Pro. ECF No. 8-3; Resolution ESRB-8, 2018 WL 3584003 (Cal. P.U.C.  
9 July 12, 2018), *available at* Adv. Pro. ECF No. 8-5. The Commission had also exercised that  
10 authority by approving the Utility's 2019 Wildfire Safety Plan. *See supra*, p. 4. The  
11 Commission continues to exercise that authority through the ongoing rulemakings and  
12 investigations described above. *See supra*, p. 4-5.

13 Third, the Commission believes that litigation and adjudication of Plaintiff's claim, as  
14 framed by the Complaint, would hinder and interfere with enforcement of the Commission's  
15 guidelines concerning public safety power shutoffs and the Commission's approval of the  
16 Utility's 2019 Wildfire Safety Plan. The policies reflected in those guidelines and that approval  
17 expressly authorize the Utility to decide that a public safety power shutoff is warranted under  
18 certain circumstances. The Complaint, however, seeks to impose liability on the Utility for  
19 exactly such decisions, without alleging that any particular decision by the Utility to conduct a  
20 public safety power shutoff violated the Commission's policies concerning such shutoffs, and  
21 without alleging that any particular decision by the Utility to conduct a public safety power  
22 shutoff resulted from the Utility's underlying failure to comply with any particular mandate. The  
23 Complaint appears to rest on the theory that in light of the Utility's alleged generalized failure to  
24 maintain its infrastructure, any decision by the Utility to conduct a public safety power shutoff—  
25 in the recent past or future—necessarily gives rise to a claim against the Utility for negligence.  
26 Judicial adoption of such a theory would hinder and interfere with the Commission's considered  
27  
28

1 policy to allow utilities to conduct public safety power shutoffs in the interests of public safety  
2 pursuant to guidelines established by the Commission.<sup>5</sup>

3 **Conclusion**

4 PG&E's motion to dismiss, to the extent that motion is based on section 1759 of the  
5 California Public Utilities Code, should be granted.

6 Dated: March 4, 2020

7 Respectfully submitted,

8 **CALIFORNIA PUBLIC UTILITIES COMMISSION**

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5 The Commission's position with respect to section 1759 is based on, and limited to, the allegations in the Complaint before the Court.

Appendix B  
to the Brief Amicus Curiae of Alice Stebbins

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

No. CR 14-0175 WHA

v.

PACIFIC GAS AND ELECTRIC  
COMPANY,

Defendant.

**ORDER RESOLVING PROPOSED  
CONDITIONS OF PROBATION  
RE PSPS CRITERIA**

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In this criminal probation of California’s largest utility, this filing recommends that in deciding which power circuits to leave on and which to turn off during windstorms in the wildfire season, the convicted utility should take into account, among other factors it already considers, the extent to which trees and limbs bordering specific circuits remain in violation of California law and/or its own wildfire mitigation plan. For the reasons stated below, however, the Court will not impose the proposed conditions of probation numbers 11 and 12 and will leave to the utility the decision on the extent to which it will adopt the recommendation.

\* \* \*

In our most recent wildfire season, a windstorm blew a tall gray pine onto a PG&E distribution line in Shasta County, pushing the power conductors together, thereby unleashing a bolt of electricity, and thus igniting what became known as the Zogg Fire. A mother and her daughter burned to death in their car, trying to escape the wildfire. Another woman died alone,



1 also trying to escape, and a man succumbed to burns he suffered while defending his home  
2 from the blaze.

3 Two years earlier, PG&E, through its contractor, had marked the gray pine as a hazard  
4 and slated it for removal. Standing more than 100 feet tall, the gray pine leaned at more than  
5 twenty degrees from vertical, looming downhill over PG&E's Girvan Circuit, the distribution  
6 line in question. It remained obvious that if it fell in the direction of the lean, it would fall on  
7 the power line. Gray pines, it was further known, have shallow root systems and topple more  
8 easily than trees with tap roots. And, this particular tree, although it had a healthy canopy,  
9 had a severe, tall scar at its base. The contractor was correct to mark the tree for removal.  
10 PG&E, however, did not remove it. Two years went by. In a windstorm in September 2020,  
11 as stated, the gray pine blew onto the circuit, ignited the Zogg Fire, and four people died.  
12 Two hundred four structures were lost.

13 To prevent such wildfires, Section 4293 of the California Public Resources Code has  
14 long required utilities to remove such trees and to keep clearance around its lines. When  
15 power lines are pushed together by the trees or limbs, the resulting bolt of electricity sends  
16 molten metal to the dry grass below. Especially during a windstorm but at any time in our dry  
17 season, this will very likely result in a wildfire. We have seen this exact scenario dozens of  
18 times in PG&E's territory.

19 The Zogg Fire was the most recent in a long line of disastrous wildfires started by  
20 PG&E's violations of Section 4293, all as laid out in the Order to Show Cause Re Conditions  
21 of Probation dated December 29, 2020, the order initiating this chapter in our probation  
22 proceedings, all arising out of PG&E's felony convictions due to the San Bruno gas explosion.  
23 Some of the Wine Country Fires in 2017 and the Camp Fire in 2018 became tragic examples.  
24 In those, 107 victims were burned to death and 22,060 structures were destroyed.

25 Also, as laid out in the December 29 order, the root cause is that over many years PG&E  
26 robbed its tree clearance budget — why is not now pertinent but it's obvious it was to enhance  
27 the bottom line. As a result, we now find ourselves with a power grid overgrown with hazard  
28 trees ready to strike onto PG&E's lines during windstorms, spelling wildfire disaster in our dry

1 season. During this federal criminal probation, PG&E has begun to set this right by investing  
2 larger sums in “vegetation management.” But it will take close to a decade for PG&E to clear  
3 the backlog and to reach compliance. Meanwhile, as a last resort and interim stop-gap, the  
4 Court recommended in the wake of the Camp Fire, and PG&E has since adopted, a protocol to  
5 de-energize selected circuits during severe windstorms. In this way, when trees and limbs  
6 crash onto the de-energized lines, there will be no power to spark a wildfire. This protocol  
7 became PG&E’s Public Safety Power Shutoff program or PSPS.

8 PG&E rolled out its PSPS program during the 2019 wildfire season during which PG&E  
9 conducted eight PSPS events. *Significantly, that year saw no wildfires caused by PG&E*  
10 *distribution lines, a vast improvement over both 2017 and 2018.* We know for sure that the  
11 PSPS events saved us from many wildfires because of the hundreds of trees that were blown  
12 down onto the (thankfully) de-energized lines. But, due to criticism in 2019 over the  
13 inconvenience and hardship of PSPS events, PG&E revised its criteria in the 2020 wildfire  
14 season in order “to be more targeted.” This led to fewer PSPS events, six to be exact, but it  
15 also led to the Zogg Fire.

16 In the days leading up to the windstorm, PG&E went through its PSPS decision-making  
17 process to determine which distribution lines, *i.e.*, circuits, in Shasta County (and elsewhere) to  
18 de-energize. Significantly, in making those circuit-by-circuit decisions, we now know PG&E  
19 did *not* consider in any way the extent to which any particular circuit remained threatened (or  
20 not) by hazard trees and limbs, the number one cause of fires ignited by PG&E distribution  
21 lines. For example, it did not consider its own wildfire risk assessment priority ranking for any  
22 circuit. And, it did not consider in any way the gray pine looming at a steep angle over the  
23 Girvan Circuit. So, PG&E left it on — with fatal consequences.

24 These details emerged from inquiries made by the Court in the wake of the Zogg Fire,  
25 whereupon an order on December 29 ordered PG&E to show cause why its PSPS criteria  
26 should not be adjusted to take into account the extent to which hazard trees remained along  
27 various rights of way in the high-risk fire zones. Specifically, that order proposed the  
28 following new condition of probation and asked all parties to respond (Dkt. No. 1277 at 16):

United States District Court  
Northern District of California

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Proposed Condition 11: In determining which distribution lines in Tier 2 or Tier 3 to de-energize during a PSPS, PG&E must take into account all information in its possession and in the possession of its contractors and subcontractors concerning the extent to which trees and/or limbs bordering those lines remain in violation of Public Resources Code Section 4293, GO 95, FERC FAC-003-4, and/or its own wildfire mitigation plan.

Proposed Condition 12: To the extent that such information shows that such trees and limbs present a safety hazard in the event of a windstorm, PG&E must make a specific determination with respect to that distribution line and it must de-energize it unless PG&E finds in writing that there are specific reasons to believe that no safety issue exists.

Tiers 2 and 3 are the highest wildfire risk areas, typically in foothill counties covered with chaparral. PG&E purportedly accepted these new conditions but on the condition that it would, in effect, get full credit for considering *all* information yet it would only have to consider a *sliver* of the information available to it, as indicated by the bolded additions (Dkt. No. 1279 at 4, 6):

Proposed Condition 11: In determining which distribution lines in Tier 2 or Tier 3 to de-energize during a PSPS, PG&E must take into account all information in its possession and in the possession of its contractors and subcontractors concerning the extent to which trees and/or limbs bordering those lines remain in violation of Public Resources Code Section 4293, GO 95, FERC FAC-003-4, and/or its own wildfire mitigation plan. **In determining which distribution lines to de-energize during a PSPS event, PG&E will implement this condition by July 1, 2021, by considering the existence of all outstanding vegetation management work tagged “Priority 1” or “Priority 2” within PG&E’s service territory that is subject to potential de-energizations.**

Proposed Condition 12: To the extent that such information shows that such trees and limbs present a safety hazard in the event of a windstorm, PG&E must make a specific determination with respect to that distribution line and it must de-energize it unless PG&E finds in writing that there are specific reasons to believe that no safety issue exists. **PG&E will implement this condition by July 1, 2021, by developing a methodology to de-energize line segments in areas subject to potential de-energizations that have outstanding Priority 1 or Priority 2 vegetation management work when forecast conditions are above specified fire-risk thresholds, absent a documented determination that de-energization is not warranted.**

1           While these counter-proposals seemed to step in the right direction, they would *not*,  
2 as we eventually learned, have prevented the Zogg Fire. They would not have required  
3 de-energization of the Girvan Circuit because the gray pine in question was not a Priority 1 or  
4 Priority 2 work order under PG&E’s system. Nor was any other tree along the Girvan Circuit.  
5 So, PG&E’s counter-proposal would have made no difference. Those four victims would have  
6 been burned to death anyway.

7           Trying to find a compromise, the Court offered on February 4 to accept PG&E’s  
8 counter-proposal, provided that PG&E would further consider the density of trees tall enough  
9 to fall on each circuit (Dkt. No. 1294) (additions in bold):

10           Proposed Condition 11: In determining which distribution  
11 lines in Tier 2 or Tier 3 to de-energize during a PSPS,  
12 PG&E must take into account all information in its  
13 possession and in the possession of its contractors and  
14 subcontractors concerning the extent to which trees and/or  
15 limbs are at risk of falling on those lines in a windstorm. In  
16 determining which distribution lines to de-energize during a  
17 PSPS event, PG&E will implement this condition by July 1,  
18 2021, by considering the existence of all outstanding  
19 vegetation management work tagged “Priority 1” or  
20 “Priority 2” within PG&E’s service territory that is subject  
21 to potential de-energizations. **PG&E shall also consider  
the approximate number of trees tall enough to fall on  
the line irrespective of the health of the tree and  
irrespective of whether the tree stands outside or inside  
prescribed clearances. The latter may be done by simply  
rating the total approximate number of such tall trees  
along a line as “None,” “Few,” “Average” or “Many,”  
and by treating the “Many” category as posing a greater  
risk than the “Average” category and the “Average”  
category as posing a greater risk than the “Few”  
category and so on.**

22           Proposed Condition 12: To the extent that such information  
23 shows that such trees and limbs present a safety hazard in  
24 the event of a windstorm, PG&E must make a specific  
25 determination with respect to that distribution line and it  
must de-energize it unless PG&E finds in writing that there  
are specific reasons to believe that no safety issue exists.  
PG&E will implement this condition by July 1, 2021.

26           In response, PG&E stated that it had developed a model using LiDAR data measuring  
27 actual tree height along all PG&E lines based on helicopter flyovers during the last two years.  
28 These data and model allowed PG&E to see and measure the actual height of any and all trees

1 to calculate whether they could strike a power line if they fell. The number of such “strike  
2 trees” along a circuit could be counted and, in turn, all circuits could be rated by risk based on  
3 the number of such strike trees. Strike trees in this model counted both healthy and unhealthy  
4 trees, both hazard and non-hazard, on the theory that even healthy non-hazard trees, in PG&E’s  
5 experience, could blow over in a windstorm and strike lines. By this method, the Girvan  
6 Circuit would have been ranked in the top 24 percent of risk, so PG&E proposed to use the top  
7 thirty percent as a cutoff. This approach would have prevented the Zogg Fire because it would  
8 have de-energized the Girvan Circuit.

9 At our recent hearing, PG&E stated that it wanted to adopt this modification to its  
10 PSPS decision-making approach. PG&E Attorney Kevin Orsini stated, “The company  
11 believes that this is the right approach . . . . We share the Court’s goal and [*sic*] expanding  
12 the program . . . and not waiting until 2022 to do that” (Tr. 31:10–14).

13 By contrast, however, letters from commissioners of the California Public Utilities  
14 Commission (CPUC) and from the California Governor’s Office of Emergency Management  
15 vigorously opposed PG&E’s safety consideration of strike trees, saying it was an unvetted  
16 approach and likely to lead to many more PSPS events and thus more public inconvenience  
17 and hardship. They insisted that PSPS events should be a “last resort.” They asked the Court  
18 not to impose it.

19 How did these agencies acquire this fear of marked increase in PSPS events? Earlier in  
20 March, we now know, PG&E handed these agencies an internal “study” that seemed to  
21 indicate a large number of additional PSPS events would flow from the strike-tree proposal.  
22 That provoked the CPUC commissioners to express alarm about “doubling” the number of  
23 PSPS events (Dkt. No. 1349). The Court then asked for the study.

24 In its filing dated March 23, PG&E produced its LiDAR “Sensitivity Study,” the estimate  
25 given to the CPUC. In it, PG&E described the impact of the new PSPS criteria over a ten-year  
26 hypothetical retrospective (Dkt. No. 1358-1). PG&E used its LiDAR strike-tree data in  
27 combination with now-current PSPS criteria (examining extreme wind, heat, and fuel moisture  
28 factors) to estimate how many PSPS events *would have occurred* between 2010 and 2020

1 using PG&E now-current criteria plus the strike-tree criteria. The study also estimated how  
2 many PSPS events would have occurred in that ten-year period under PG&E's now-current  
3 PSPS criteria (without the strike-tree criteria). The comparison showed that hypothetical PSPS  
4 events would have increased by 55 percent with the strike-tree criteria (Dkt. No. 1358-1).

5 We held a hearing on March 23 and explored these concerns and heard the CPUC's  
6 specifics. In response, the Court requested that PG&E perform a real-life comparison: how  
7 would the *actual* PSPS events in 2019 and 2020 have changed had the proposed conditions of  
8 probation been in effect? PG&E produced a 2019 comparison on March 29 (Dkt. No. 1369-1).  
9 *The estimate showed that PSPS events in 2019 would have decreased, not increased, from*  
10 *eight to five.* The average customer impact (in both hours and numbers) would also have  
11 *decreased.*

12 With respect to 2020, PG&E stalled and said it would produce the 2020 numbers only if  
13 requested again. The Court then repeated its request for the 2020 figures. PG&E filed that  
14 estimate on April 16 (Dkt. No. 1377). *The analysis showed that the number of actual PSPS*  
15 *events in 2020 would not have changed at all had the proposed conditions been in effect.*  
16 Only twelve percent more customers would have been affected, meaning the PSPS events  
17 would have caused twelve percent more customers, including those served by the Girvan  
18 Circuit, to lose power.

19 It now seems obvious that PG&E used some sleight-of-hand to promote the incorrect  
20 impression that the additional criteria — Priority 1 and 2 tags plus strike tree rankings —  
21 would make a substantial difference in public safety whereas, in truth, they would have  
22 *reduced* the number of PSPS events in 2019 and would have left the 2020 number unchanged  
23 (though they would have de-energized the Girvan Circuit). Remembering that 2019 was the  
24 only year in which the PSPS program succeeded in stopping wildfires caused by PG&E  
25 distribution lines, it would be *a step backward* to bless PG&E's criteria.

26 Another reason the Court is reluctant to adopt these conditions is that the Priority 1 and  
27 Priority 2 criteria have turned out to be the sleeves out of PG&E's vest. PG&E has now  
28 admitted that the number of Priority 1 and Priority 2 tags would be very few because PG&E

1 expects to clear them all in the run-ups to future PSPS events. Such tags, therefore, would  
2 rarely lead to any further circuits being de-energized. (Priority 1 and Priority 2 tags constitute  
3 only a small fraction of all hazards. The gray pine looming over the Girvan Line, for example,  
4 was *not* a Priority 1 or Priority 2 tag.)

5 To finalize the criteria proposed by PG&E in the form of a federal court order would give  
6 PG&E a “Get-Out-of-Jail-Free” card, a card it could and would play in every civil lawsuit and  
7 criminal prosecution arising out of future wildfires based on PG&E’s failure to de-energize  
8 at-risk circuits. It would smile and say, “We did what the judge and the CPUC said to do  
9 and they said that considering the sliver of information would count as considering all  
10 information.”

11 A final reason is that the CPUC and the Governor’s Office have opposed the proposed  
12 changes, curiously out of fear that they will lead to more PSPS events. Out of deference to  
13 these authorities, the Court will simply state its recommendation but not impose any version of  
14 the conditions. A related complication is that PG&E’s most recent counter-proposal involving  
15 strike-tree count was expressly contingent on obtaining eventual CPUC approval, but in  
16 response, the CPUC stated that it does not and will not bless such specific criteria and, instead,  
17 as a matter of practice, leaves the selection of criteria to the utility. So, PG&E’s latest version  
18 would be impossible to implement.

19 Accordingly, the Court will *not* impose Proposed Conditions 11 and 12. Instead, the  
20 Court will and hereby does recommend that PG&E do the following:

21 In determining which distribution lines in Tier 2 or Tier 3 to  
22 de-energize during a PSPS, PG&E should take into account all  
23 information in its possession and in the possession of its  
24 contractors or subcontractors concerning the extent to which trees  
and/or limbs bordering those lines remain in violation of Public  
Resources Code Section 4293, GO95, FERC PAC-003-4 and/or its  
own wildfire mitigation plan.

25 To the extent that such information shows that such trees and/or  
26 limbs present a safety hazard in the event of a windstorm, PG&E  
27 should make a specific determination with respect to that  
distribution line and it should de-energize it unless PG&E finds in  
28 writing that there are specific overriding public safety needs to  
leave the lines energized.

1 For example, that a circuit is in compliance with all vegetation clearance laws militates in favor  
2 of leaving the power on in that circuit. Conversely, that a circuit has not been cleared in years  
3 and is out of compliance militates in favor of turning the power off in that circuit. Of course,  
4 all the other factors should be considered as well but in some cases this difference would be  
5 and should be decisive. These are recommendations, not orders, but are recommendations  
6 informed by years of studying the problem while trying to rehabilitate the offender and to  
7 protect California from further crimes and wildfires by the offender.

8 To the extent that PG&E chooses to honor the Court’s recommendation, it should not  
9 pretend that using its “Priority 1” and “Priority 2” plus its “Strike Tree” criterion, although  
10 steps in the right direction, would satisfy the recommendation or constitute taking into account  
11 “all” information available to it. PG&E has much more information available to it pertaining  
12 to wildfire risks specific to each circuit. PG&E, for example, has ranked each circuit in terms  
13 of priority for “vegetation management.” And, it knows or should know the extent to which  
14 its circuits have been cleared. PG&E should know the true safety status of every one of its  
15 circuits.

16 The Court agrees that PSPS events should be a last resort. Due to PG&E’s neglect over  
17 many years, however, our power grid remains overgrown with hazard trees poised to strike  
18 during windstorms and unleash catastrophic wildfires. So our backs remain against the wall  
19 and last resorts are necessary. In deciding which circuits to leave on and which to turn off  
20 during windstorms in the wildfire season, it would be reckless not to take into account, in  
21 addition to factors otherwise considered, the extent to which a circuit has been cleared of  
22 hazard trees versus not cleared, keeping in mind that hazard trees falling on the lines in  
23 windstorms has been the number one cause of wildfires started by PG&E distribution lines.  
24 And, when deciding whether to leave a borderline circuit on versus off, public safety should  
25 always take priority over inconvenience and hardship, it being preferable to lose power than to  
26 lose lives. Again, the above are recommendations, not orders.

27 By **JULY 1, 2021**, PG&E shall file herein a statement setting forth its 2021 PSPS criteria  
28 and stating the extent to which it has and has not adopted the above recommendations.



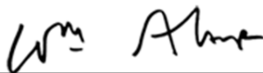
United States District Court  
Northern District of California

1 Within TWENTY-EIGHT DAYS after each PSPS event in the 2021 Wildfire Season, PG&E shall  
2 also file a public report herein stating:

- 3 (i) How many circuits were turned off in the PSPS;
- 4 (ii) How many of such circuits had limbs and/or trees blown or fallen onto  
5 the lines (as determined in the post-storm inspection);
- 6 (iii) How many of such strikes would, in the judgment of PG&E, have  
7 started a fire (regardless of size) had the circuit been energized at the  
8 time of the strike;
- 9 (iv) How many circuits left energized had limbs and/or trees blown or fallen  
10 onto the lines by the storm without causing a fire; and
- 11 (v) How many circuits left energized with strikes that in fact resulted in fires  
12 (regardless of size).

13 The above five categories should each be further broken down by those circuits that were in  
14 substantial compliance with Section 4293 as well as PG&E's Wildfire Mitigation Plan versus  
15 those circuits that were not at the time of the PSPS event. The purpose of this information is to  
16 assist in post-mortem analysis of how to improve the PSPS process by better selecting which  
17 circuits to leave on and which to leave off. The order to show cause dated December 29, 2020,  
18 is otherwise **DISCHARGED**. This paragraph is the only court order in this document, everything  
19 else being a recommendation or explanation.

20  
21  
22 Dated: April 29, 2021.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

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**No. 21-15571**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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ANTHONY GANTNER, individually and on behalf of all those similarly situated,  
*Plaintiff-Appellant,*

v.

PG&E CORPORATION, a California Corporation, and PACIFIC GAS &  
ELECTRIC COMPANY, a California Corporation  
*Defendants-Appellees.*

On Appeal from the United States District Court  
for the Northern District of California  
No. 4:20-cv-02584-HSG  
Hon. Haywood S. Gilliam, Jr.,  
[an appeal from an Order in the Bankruptcy Case In re: PG&E CORPORATION  
and PACIFIC GAS AND ELECTRIC COMPANY, Debtors,  
Bankruptcy Case No. 19-30088 (DM), Adv. Pro. No. 19-03061 (DM),  
Hon. Dennis Montali, U.S. Bankruptcy Judge]

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**BRIEF OF AMICUS CURIAE THE CALIFORNIA  
PUBLIC UTILITIES COMMISSION**

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### **Interest of Amicus Curiae<sup>1</sup>**

The California Public Utilities Commission (the “Commission” or the “CPUC”) was established by the California Constitution and is responsible for regulating public utilities in the state of California. Cal. Const. art. XII. The Commission has broad jurisdiction to regulate public utilities, including jurisdiction to set rates, establish rules and procedures, hold hearings, and award reparations. *Id.* art. XII, §§ 2, 4, 6. The Commission has the authority and duty 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.” Cal. Pub. Util. Code § 2101.

The scope of the Commission’s authority encompasses all things “necessary and convenient” in the exercise of its power to supervise and regulate utilities. *Id.* § 701. The Commission regulates, among other matters, rates charged for electric service, actions by utilities bearing on the reliability of electric service, and actions by utilities relating to public safety, including actions intended to mitigate the risk of wildfires. *Id.* §§ 451, 454, 761, 8385–8389. The Commission “has

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<sup>1</sup> All parties have consented to the filing of this brief. In any event, the Commission is entitled to file this brief as of right because this brief is the brief of the State of California for purposes of Federal Rule of Appellate Procedure 29(a)(2). *See Kairy v. SuperShuttle Int’l*, No. 10-16150 (9th Cir. Aug. 12, 2011), ECF No. 48 (order holding that the Commission was entitled to file an amicus brief as of right under Fed. R. App. P. 29(a) and Cal. Pub. Util. Code § 307).

comprehensive jurisdiction over questions of public health and safety arising from utility operations.” *San Diego Gas & Elec. Co. v. Super. Ct. (Covalt)*, 13 Cal. 4th 893, 924 (1996).

Defendant-Appellee Pacific Gas & Electric Company is an investor-owned public utility that supplies electricity and natural gas to consumers in northern and central California. The Commission regulates PG&E.

### **Summary of Argument**

The State of California has experienced “increased, intense, and record-breaking wildfires over the past decade” arising from “years of drought, changing weather patterns, extreme high heat, ferocious winds, and low humidity, among other factors.”<sup>2</sup> These conditions have significantly increased the risk that a spark from an electric line can cause a catastrophic fire. In many recent years, wildfires caused by natural events and electric infrastructure have inflicted record-breaking levels of destruction in California.<sup>3</sup>

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<sup>2</sup> Order Instituting Rulemaking to Examine Electric Utility De-Energization of Power Lines in Dangerous Conditions, D. 19-05-042, 2019 Cal. P.U.C. LEXIS 270, at \*2 (May 30, 2019).

<sup>3</sup> *See, e.g., id.*; *see also* Order Instituting Investigation on the Commission’s Own Motion on the Late 2019 Public Safety Power Shutoff Events, D. 21-06-014, 2021 Cal. P.U.C. LEXIS 278, at \*21 (June 3, 2021) (“The 2017 California wildfire season was the most destructive wildfire season on record.”) (quoting Resolution Extending De-Energization Reasonableness, Notification, Mitigation, and Reporting Requirements in Decision 12-04-024 to All Electric Investor Owned Utilities (“Resolution ESRB-8”), 2018 Cal. P.U.C. LEXIS 330,

This appeal concerns Public Safety Power Shutoff (“PSPS”) events. PSPS events occur when a utility proactively de-energizes electric lines—in other words, shuts off electric power—as a preventative measure to protect public safety by mitigating the risk of wildfires. PG&E’s decisions to declare the PSPS events at issue on this appeal, and the manner in which PG&E implemented those decisions, are governed by a comprehensive regulatory program that the Commission continues to refine and oversee. The purpose of that program is to protect public safety in light of the increasing risk of catastrophic wildfires.

The district court correctly found that section 1759 of the California Public Utilities Code bars adjudication of the claim asserted by Plaintiff-Appellant Anthony Gantner. As the Commission explained in an amicus brief it filed in the bankruptcy court:

The Complaint appears to rest on the theory that in light of the Utility’s alleged generalized failure to maintain its infrastructure, any decision by the Utility to conduct a public safety power shutoff—in the recent past or future—necessarily gives rise to a claim against the Utility for negligence. Judicial adoption of such a theory would hinder and interfere with the Commission’s considered policy to allow utilities to conduct public safety power shutoffs in the interests of public safety pursuant to guidelines established by the Commission.

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at \*1 (July 12, 2018)); *id.* at \*27 (noting 2018 brought the largest wildfire in California’s history).



1-ER-10 (Dist. Ct. Order 9) (quoting the Commission’s amicus brief).

The district court correctly determined that under Plaintiff’s theory, PG&E would be liable for taking precautionary measures authorized by the Commission to prevent wildfires. As the district court stated, “imposing liability on [PG&E] for implementing CPUC-approved PSPS events would force [PG&E] to choose between incurring potentially limitless negligence liability and protecting public safety in the manner dictated by the appropriate regulatory authority: CPUC.”

1-ER-9 (Dist. Ct. Order 8).

**The Commission’s Exercise of Regulatory Authority over  
PSPS Events and De-Energizations**

In the *amicus* brief filed by the Commission in the bankruptcy court, the Commission explained several ways it had administered a “broad and continuing supervisory [and] regulatory program” over PSPS events. 1-ER-10 (Dist. Ct. Order 9). For example, the Commission had promulgated guidelines governing the circumstances in which a Commission-regulated electric utility may decide to shut off power as “necessary to protect public safety” and establishing requirements for the implementation of such a decision. *See* 1-SER-97 (Commission’s Amicus Curiae Br. 3 (Bankr. Dkt. No. 19)). In June 2019, the Commission approved PG&E’s 2019 Wildfire Safety Plan, which addressed factors PG&E considers in deciding whether to declare and implement PSPS events. *See id.* at 4. And the Commission was conducting ongoing formal proceedings to refine PSPS

guidelines and to consider the need for enforcement actions arising from concerns over PSPS events conducted in 2019 by PG&E, San Diego Gas & Electric Company, and Southern California Edison Company. *See id.*

Since March 2020, when the Commission filed its amicus brief in the bankruptcy court, the Commission has continued its active regulation and oversight of PSPS events. For example, the Commission continues to refine its PSPS guidelines; as explained below, the Commission announced the latest changes to those guidelines in June 2021. In June 2021, the Commission issued a decision arising from its investigation into whether California's investor-owned utilities, in conducting PSPS events in late 2019, had complied with the Commission's regulations and requirements. And the Commission fully retains jurisdiction to regulate PSPS events and to enforce compliance with PSPS requirements after July 1, 2021, notwithstanding the establishment of the Office of Energy Infrastructure Safety.

**A. The Commission's 2021 Revisions to PSPS Rules and Guidelines**

On June 24, 2021, the Commission adopted and revised guidelines and rules for utilities regarding PSPS events. *See* Order Instituting Rulemaking to Examine Electric Utility De-Energization of Power Lines in Dangerous Conditions, D. 21-06-034, 2021 Cal. P.U.C. LEXIS 305 (June 24, 2021). The Commission acknowledged that while sections 451 and 399.2(a) of the California Public

Utilities Code provide investor-owned utilities with authority to de-energize power lines to protect public safety, de-energization brings its own “risks and hardships.” *Id.* at \*22. The Commission’s decision reviewed the history of the Commission’s regulation of PSPS events in Commission decisions and resolutions dating back to 2009 and in numerous staff proposals. *Id.* at \*2–3. The Commission noted that “the Commission continues to undertake a thorough examination of the [investor-owned utilities’] actions before, during, and after their decision to de-energize power lines as a last resort measure to mitigate the risk of potential catastrophic wildfire caused by [investor-owned utilities’] infrastructure.” *Id.* at \*5.

The Commission also discussed review by the Commission of the reasonableness of a utility’s decision to shut off power, as distinct from the reasonableness of a utility’s implementation of a PSPS event. *Id.* at \*23. The Commission confirmed its discretion to review, “at any time,” the reasonableness of a utility’s decision to call a PSPS event under a set of articulated factors.<sup>4</sup> The

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<sup>4</sup> 2021 Cal. P.U.C. LEXIS 305, at \*25. The Commission may consider the following factors in assessing the reasonableness of the utility’s decision to initiate and conduct PSPS events: necessity to protect public safety; the utility’s reliance on other available alternatives; whether the utility reasonably believed there was an imminent and significant risk of strong winds causing major vegetation-related impacts on its facilities during periods of extreme fire hazard; the utility’s efforts to mitigate the adverse impacts to its customers and communities in areas where the utility shut off power; and other factors as appropriate. *Id.* at \*23.

Commission emphasized that utilities must weigh the “benefit” of de-energization (i.e., the reduced risk of harm from wildfires) against the potential risks to public safety from shutting off power. *Id.* at \*23–25. Because decisions to call PSPS events are fact-specific, the Commission acknowledged that review of the reasonableness of such a decision by a utility would be conducted after the fact; such a review would not involve setting “‘rigid triggers or criteria’ to determine whether to shut off power.” *Id.* at \*24.

This rulemaking remains open for the Commission to develop a compendium consolidating the Commission’s rules and guidelines governing PSPS programs into a single document. *See id.* at \*27, \*196–97.

**B. The Commission’s Decision Arising from Its Investigation into PSPS Events in Late 2019 Called by the Three Large Utilities**

On June 3, 2021, the Commission approved a long and detailed decision addressing the findings from its investigation into whether California’s utilities prioritized safety and complied with the Commission’s regulations and requirements with respect to PSPS events in late 2019. Order Instituting Investigation on the Commission’s Own Motion on the Late 2019 Public Safety Power Shutoff Events, D. 21-06-014, 2021 Cal. P.U.C. LEXIS 278, at \*21 (June 3, 2021). The decision found that PG&E, Southern California Edison Company, and San Diego Gas & Electric Company “failed in certain respects to reasonably comply with the obligation to promote safety in Pub. Util. Code § 451 and with

many of the Commission’s guidelines in Decision (D.) 19-05-042, Resolution ESRB-8 (July 12, 2018), and other applicable laws, rules, and regulations.” *Id.* at \*1–2. The Commission imposed several directives on the utilities intended to address the failures identified, including corrective actions and measures to improve the data and transparency of after-the-fact review by the Commission’s staff of a utility’s decision to de-energize during a PSPS event. *Id.* at \*2–4.

The decision includes an extensive discussion of how the utilities should identify risks to public safety and weigh harms and benefits when deciding whether to declare and how to implement a PSPS event. As the Commission noted, “[t]he directive to weigh these harms and benefits has been part of the Commission’s framework for proactive de-energizations since 2012.” *Id.* at \*54. The Commission found that the utilities failed to sufficiently identify and evaluate risks and adopted a monetary ratemaking remedy to deter future noncompliance. *Id.* at \*67. The Commission did not impose financial penalties on the utilities in addition to the ratemaking remedy, however, because the Commission recognized “the need in 2019 for utilities to initiate PSPS events in response to evolving, dangerous conditions.” *Id.* at \*69. The Commission accordingly opted for an ongoing rate adjustment “to create ongoing incentives for utilities to improve their conduct related to their decision-making process leading up to initiating future PSPS events.” *Id.*

**C. The Office of Energy Infrastructure Safety’s Role Overseeing Wildfire Mitigation Plans**

The statute known as California Senate Bill 901 created the initial framework requiring utilities to prepare and submit Wildfire Mitigation Plans to the Commission, beginning with plans submitted and approved in 2019.<sup>5</sup> The statutes known as California Assembly Bills 111 and 1054 further refined the Commission’s regulation of wildfire safety by providing for the creation of the Office of Energy Infrastructure Safety (“OEIS”) within the California Natural Resources Agency as of July 1, 2021.<sup>6</sup> While all functions of the Wildfire Safety Division were transferred to OEIS, *see* Cal. Pub. Util. Code § 326(b), the Commission retains independent regulatory duties and authorities over Wildfire Mitigation Plans. In all other respects, the Commission retains its jurisdiction over electrical corporations. *See id.* § 8385(b) (“Beginning July 1, 2021, the office shall supervise an electrical corporation’s compliance with the requirements of this chapter pursuant to the Public Utilities Act (Part 1 (commencing with Section 201) of Division 1). Nothing in this chapter affects the commission’s authority or

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<sup>5</sup> Act of Sept. 21, 2018, Ch. 626, 2018 Cal. Legis. Serv. 1 (West).

<sup>6</sup> Energy Infrastructure Safety Act, 2019 Cal. Legis. Serv. Ch. 81 (A.B. 111) (West); Act of July 12, 2019, 2019 Cal. Legis. Serv. Ch. 79 (A.B. 1054) (West).

jurisdiction over an electrical corporation, electrical cooperative, or local publicly owned electric utility.”).

While OEIS now reviews and approves (or rejects) each utility’s Wildfire Mitigation Plan, the Commission then ratifies OEIS’s action through Commission resolutions. Cal. Pub. Util. Code § 8386.3 (“After approval by the division, the commission shall ratify the action of the division.”). Thus, the ultimate approval (or rejection) of a utility’s Wildfire Mitigation Plan is an act of the Commission, and is enforceable as an order of the Commission. *See, e.g.*, Resolution Ratifying Action of the Office of Energy Infrastructure Safety on Southern California Edison Company’s 2021 Wildfire Mitigation Plan Update Pursuant to Public Utilities Code Section 8386, Cal. P.U.C. Res. WSD-020, 2021 Cal. P.U.C. LEXIS 395 (Aug. 19, 2021).

A Wildfire Mitigation Plan must include a description of the electrical corporation’s protocols and procedures relating to specified aspects of PSPS events. *See* Cal. Pub. Util. Code §§ 8386(c)(6), (7), and (10). Those procedures and protocols, however, must comply with orders of the Commission concerning PSPS events. *See, e.g., id.* § 8386(c)(10). A Wildfire Mitigation Plan must describe how the utility’s mitigation plans will reduce PSPS events over time. *See* Resolution Implementing the Requirements of Public Utilities Code Sections 8389(d)(1), (2) and (4), Related to Catastrophic Wildfire Caused by Electrical

Corporations Subject to the Commission’s Regulatory Authority, Cal. P.U.C. Res. WSD-011, 2020 Cal. P.U.C. LEXIS 1021, at \*6 (Nov. 19, 2020).

Finally, only the Commission can assess financial penalties if a utility fails to substantially comply with its Wildfire Mitigation Plan. *See* Cal. Pub. Util. Code § 8386.1. OEIS “may recommend that the commission pursue an enforcement action” for a utility’s noncompliance with its plan, *see* Cal. Pub. Util. Code § 8389(g), but it does not have independent statutory authority to assess financial penalties. Without statutory authority, OEIS cannot assess fines.

### **Argument**

The district court correctly held that section 1759 bars Plaintiff’s claim for damages that were allegedly caused by PSPS events. That is so because allowing the claim to go forward would interfere with the Commission’s PSPS-related policies and its “broad and continuing supervisory [and] regulatory program.” 1-ER-10 (Dist. Ct. Order 9). That ruling should be affirmed.

#### **I. The District Court Correctly Held That Section 1759 Precludes Adjudication of Plaintiff’s Claim**

In determining that section 1759 precludes adjudication of Plaintiff’s claim, the district court correctly applied the three-part *Covalt* test. In *Covalt*, the California Supreme Court held that a court does not have jurisdiction over a civil action where: (i) the Commission has the authority to regulate the conduct at issue; (ii) the Commission has exercised that authority; and (iii) the action would hinder



or interfere with Commission policies. 13 Cal. 4th at 923, 926, 935. Plaintiff conceded that the first two prongs of the *Covalt* test are met.<sup>7</sup> The only *Covalt* prong in dispute is whether adjudication of Plaintiff's claim would hinder or interfere with the Commission's policies. As discussed further in point II, the district court correctly applied that prong.

Moreover, the district court correctly afforded great weight to the Commission's amicus brief. As this Court has recognized, "California courts have made reference to the [C]PUC's *amicus* briefs filed in § 1759 cases for aid in assessing the third question in the *Covalt* analysis." *Kairy v. SuperShuttle Int'l*, 660 F.3d 1146, 1154 (9th Cir. 2011). This Court also noted that the California Supreme Court has encouraged courts where appropriate "to solicit the views of the [C]PUC regarding whether the action is likely to interfere with the [C]PUC's performance of its duties." *Id.* (quoting *Orloff v. Pac. Bell*, 31 Cal. 4th 1132, 215 n.2 (2003)).<sup>8</sup>

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<sup>7</sup> 1-SER-111 (Plaintiff Opp. to Debtors' Mot. to Dismiss and Mot. to Strike 7 (Bankr. Dkt. 16)) ("Plaintiff does not dispute that the CPUC has authority to regulate and supervise the safety of public utility and operations, including PSPSs. Nor does Plaintiff dispute that the CPUC has exercised that authority in the realm of PSPSs through adopting resolutions and beginning investigations.").

<sup>8</sup> Alice Stebbins has filed an amicus brief on this appeal in support of Plaintiff. Ms. Stebbins, a former employee who does not work for the Commission and does not speak on behalf of the Commission, submitted a brief that is largely a recapitulation of the arguments raised by Plaintiff's brief in this Court.

## **II. Adjudication of Plaintiff’s Claim Would Hinder and Interfere with the Commission’s Supervisory and Regulatory Policies**

The district court correctly held that the third prong of the *Covalt* test is met. The district court based that holding on its conclusions that allowing Plaintiff to seek damages for PG&E’s 2019 PSPS events would interfere with the Commission’s PSPS policies and that “[u]nder California law, it is the job of CPUC to balance the costs and benefits of PSPS events and regulate them accordingly.” 1-ER-10 (Dist. Ct. Order 9). The Commission has conducted such balancing of interests from the inception of PSPS programs. Indeed, the Commission and its staff continuously evaluate the use by utilities of PSPS events. The Commission and its staff also continuously take actions to ensure the correct balance is struck between the public harms caused by PSPS events, and the threats to public safety of *not* prospectively de-energizing power lines under conditions when fire risk is extremely high.

In regulating PSPS events, the Commission continuously evaluates whether utilities are adequately balancing factors (the competing harms to the public) in every decision that is made to de-energize. The Commission has crafted remedies where utilities have failed to adequately explain how they are balancing the harms. Moreover, the Commission—using its ratemaking authority—has crafted a specific monetary remedy to create the right incentives for utilities when they are balancing harms. Rather than punish utilities for past conduct, the Commission determined

the better approach was to look prospectively and create the right balance of incentives going forward. The Commission also retains the discretion to review the reasonableness of a utility's decision to de-energize power lines under a number of factors that go *directly* to why the utility called the PSPS event.

The district court was entirely correct to conclude that allowing a class action to proceed for the purpose of imposing potentially billions of dollars of additional liability on PG&E and its parent corporation for PG&E's decisions to call PSPS events "would interfere with CPUC's" carefully calibrated policy decisions in this area. 1-ER-10 (Dist. Ct. Order 9) (citing *Covalt*, 13 Cal. 4th at 919). Allowing damages would frustrate the Commission's efforts to ensure, through its rules and decisions, that utilities are appropriately balancing competing interests.

In short, the Commission is constantly overseeing regulated utilities to ensure they are appropriately balancing the competing harms to public safety inherent in their decisions to de-energize power lines—or not. As detailed above, the Commission has adopted further PSPS guidelines and refined post-event reporting requirements to aid staff and parties' *ex post* review of PSPS events. As also detailed above, the Commission has adopted a major decision to enforce compliance with the PSPS guidelines stemming from its investigation into the utilities' PSPS events in late 2019. Introducing potential financial liability, even

where a plaintiff does not base its claims on allegations that the utility violated the Commission's comprehensive set of PSPS rules and guidelines, or on any particular violations of any particular Commission mandates, would interfere with the balance of considerations reflected in the Commission's regulatory decisions.

It is neither Plaintiff's role nor—as the district court correctly observed—the proper role of the courts, to disrupt this careful balancing of public policy interests. *Id.* But adjudication of Plaintiff's claim would lead to such a disruption. Plaintiff, on behalf of a purported class, could pursue potentially massive damages every time PG&E decided to call a PSPS event. And Plaintiff or other purported class representatives could do so even though PG&E (like other electric utilities) in some circumstances may have an obligation to de-energize power lines by declaring and implementing a PSPS event, as a wildfire mitigation measure of last resort, when needed to protect public safety.<sup>9</sup> Imposing unchecked financial

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<sup>9</sup> Plaintiff claims that the Commission's regulations do not require a utility to declare a PSPS event because “[p]ermission to engage in PSPS, if certain conditions are followed is not an obligation to institute PSPS.” Appellant's Br. 29. To the contrary, the Commission has explained that a utility may indeed be required to shut off power to protect public safety when, for example, wind speeds exceed system design limits. *See* Decision Granting Petition to Modify Decision 09-09-030 and Adopting Fire Safety Requirements for San Diego Gas & Electric Company, D. 12-04-024, 2012 Cal. P.U.C. LEXIS 165, at \*33 (Apr. 19, 2012) (noting that “SDG&E's statutory obligation to operate its system safely requires SDG&E to shut off its system if doing so is necessary to protect public safety”).

liability on a utility for calling a PSPS, untied to any allegations of violations of particular mandates imposed by the Commission, cannot be squared with the Commission's comprehensive program.

In *Kairy*, this Court concluded that section 1759 did not preclude a trial court from adjudicating whether drivers who operated vehicles for an airport shuttle service were employees or independent contractors under general principles of California law. 660 F.3d at 1148. The Commission regulated the shuttle service, which qualified as a common carrier for purposes of the Commission's jurisdiction. *Id.* at 1148–49. The Commission, however, argued that its regulations were not intended to address whether the drivers should be classified as employees or independent contractors. *Id.* at 1154. Consequently, the trial court, in addressing whether the drivers were employees or independent contractors, “would be making a distinct inquiry from the one that would be made by the PUC in a regulatory proceeding.” *Id.* at 1156. This Court held that such an inquiry by the trial court would not hinder or interfere with the Commission's policies or decisions. *Id.*

In many respects, the case presents the flip side of *Kairy*. Here, the Commission contends that section 1759 does preclude the plaintiff's claim. Here, the bankruptcy court, in order to adjudicate and decide Plaintiff's claim, would be required to inquire into subjects that are *not* distinct from those falling within the

Commission’s jurisdiction. And here, the relief sought by Plaintiff would hinder and interfere with the Commission’s supervisory and regulatory policies.

### **III. The Commission Has and Will Continue to Maintain Regulatory Authority over Public Safety Power Shutoff Events**

Plaintiff claims that “as of July 1, 2021, the CPUC “will not even have regulatory authority over PSPSs.” Appellant’s Br. 3. According to Plaintiff, that authority has passed to the newly created OEIS. *See id.*; *see also id.* at 19. The Commission takes no position on whether, as Defendants maintain, Plaintiff has forfeited this argument by failing to raise it in a timely manner. *See Appellees’ Br.* 33–34.

In any event, Plaintiff’s argument that the creation of OEIS divested the Commission of authority to regulate PSPS events is indisputably incorrect under California law. The Commission undoubtedly retains and continues to exercise regulatory authority over PSPSs—past *and* future—notwithstanding the transfer of the Commission’s former Wildfire Safety Division to the California Natural Resources Agency as OEIS. As discussed below, numerous provisions of law demonstrate that the Commission retains regulatory jurisdiction over efforts by regulated utilities to mitigate the risk of wildfires, including the use of PSPS events. For that reason, the imposition of tort liability on utilities arising from the declaration and implementation of PSPS events remains subject to scrutiny under section 1759.

The Commission's oversight of wildfire safety includes ratifying, through resolutions voted by the Commission as a regulatory body, OEIS decisions to approve, modify, or reject a utility's Wildfire Mitigation Plan. Cal. Pub. Util. Code § 8386.3(a); *see also* Cal. P.U.C. Res. WSD-020, 2021 Cal. P.U.C. LEXIS 395 (Aug. 19, 2021). OEIS's review of the plans includes confirming the utility has met the statutory requirements to describe aspects of its PSPS protocols, as a condition for OEIS's approval. *Id.* § 8386.3(c). OEIS's review also includes an evaluation of the utility's efforts to reduce the need for PSPS events in the future through the various fire mitigation initiatives presented in each of their plans. Cal. P.U.C. Res. WSD-011, 2020 Cal. P.U.C. LEXIS 1021, at \*6 (Nov. 19, 2020). In addition, the Commission has authority to impose financial penalties for utility violations or where a utility has failed to substantially comply with its Wildfire Mitigation Plan. Cal. Pub. Util. Code § 8386.1.

The Commission regulates all other aspects of utility safety, including use and implementation by utilities of PSPS events. *See* Cal. Pub. Util. Code § 8385(b). As the Commission's recent decision adopting and refining the PSPS rules and guidelines clarified, the Commission's Safety and Enforcement Division staff monitor utility compliance with the PSPS guidelines through *ex post* reviews of *each* PSPS post-event report. Order Instituting Rulemaking to Examine Electric Utility De-Energization of Power Lines in Dangerous Conditions, D. 21-06-034,

2021 Cal. P.U.C. LEXIS 305, at \*25–26 (June 24, 2021). Staff’s review will factor into the Commission’s consideration of whether the utilities’ PSPS efforts were reasonable, *id.*, and the Commission may initiate enforcement proceedings, such as the investigations it has conducted into the utilities’ and PG&E’s 2019 uses of PSPS, *see, e.g.*, Order Instituting Investigation on the Commission’s Own Motion on the Late 2019 Public Safety Power Shutoff Events, D. 21-06-014, 2021 Cal. P.U.C. LEXIS 278.

Accordingly, Plaintiff’s incorrect casting of the Commission’s post-July 1 authority creates no basis for this Court to second-guess the district court’s correct conclusion, and the Commission’s opinion offered as *amicus curiae*, that allowing Plaintiff’s claim to proceed would interfere with the Commission’s exercise of regulatory authority over PSPSs. Unless the California legislature modifies the CPUC’s and OEIS’s statutory authority *in the future*, the Commission will continue to regulate PSPSs directly through PSPS rules and guidelines, Commission staff’s *ex post* review of PSPS event reports, and enforcement proceedings when appropriate. The Court should therefore reject Plaintiff’s assertion that section 1759 does not bar claims seeking damages for PSPS events occurring after July 1, 2021.



### Conclusion

The district court correctly ruled that Plaintiff's claim, if allowed to proceed, would impermissibly hinder and interfere with the supervisory and regulatory policies of the Commission, and that section 1759 of the California Public Utilities Code therefore precludes adjudication of the claim. That ruling should be affirmed.

Dated: September 1, 2021

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### **Certificate of Compliance**

I certify that, pursuant to Rule 29(a)(5) of the Federal Rules of Appellate Procedure and Ninth Circuit Rules 29(4) and 32, the attached **BRIEF OF AMICUS CURIAE THE CALIFORNIA PUBLIC UTILITIES COMMISSION** is proportionately spaced, has a typeface of 14 points, and contains 4,505 words.

Dated: September 1, 2021

*/s/ David W. Fermino*  
David W. Fermino

### **Certificate of Service**

I hereby certify that I electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on September 1, 2021, the following documents:

- **AMICUS CURIAE BRIEF OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION IN SUPPORT OF APPELLEES**

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: September 1, 2021

/s/ David W. Fermino  
David W. Fermino