

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

In the matter of:

Pacific Gas and Electric Company – re
Dixie Fire

[PROPOSED] ADMINISTRATIVE
CONSENT ORDER AND AGREEMENT

Issued pursuant to Commission Resolution M-
4846 (adopting Commission Enforcement
Policy)

**[PROPOSED] ADMINISTRATIVE CONSENT ORDER AND
AGREEMENT**

Dated: September 27, 2023

TABLE OF CONTENTS

| | Page |
|---|------|
| I. PARTIES | 2 |
| II. ELEMENTS REQUIRED BY SECTION III.A.7 OF THE COMMISSION’S ENFORCEMENT POLICY FOR ADMINISTRATIVE CONSENT ORDERS | 2 |
| A. The law or Commission order, resolution, decision, or rule violated by the regulated entity..... | 3 |
| B. The facts that form the basis for each violation..... | 3 |
| C. The number of violations including the dates on which violations occurred | 3 |
| D. Information related to the potential for additional or ongoing violations..... | 3 |
| E. An agreement by the regulated entity to correct each violation | 3 |
| F. An agreement by the regulated entity to pay any penalty by a date specified | 4 |
| III. ADDITIONAL TERMS | 5 |
| A. Confidentiality and Public Disclosure Obligations..... | 5 |
| B. Future Proceedings..... | 6 |
| C. Regulatory Approval Process | 7 |
| D. Admissibility | 8 |
| E. Due Process..... | 9 |
| IV. GENERAL PROVISIONS | 9 |
| A. Full Resolution..... | 9 |
| B. Non-Precedent..... | 9 |
| C. General Considerations for Settlement | 10 |
| D. Incorporation of Complete ACO | 11 |
| E. Commission Approval | 11 |
| F. Governing Law | 11 |
| G. Other | 11 |
| V. DISCUSSION OF PENALTY ASSESSMENT METHODOLOGY FACTORS | 12 |
| APPENDIX..... | A-1 |

[PROPOSED] ADMINISTRATIVE CONSENT ORDER AND AGREEMENT

This Administrative Consent Order and Agreement (hereinafter “ACO” or Agreement”) is entered into and agreed to by and between the Safety and Enforcement Division (“SED”) of the California Public Utilities Commission (“CPUC” or “Commission”) and Pacific Gas and Electric Company (“PG&E”) (collectively, “Parties”) pursuant to Resolution M-4846, dated November 5, 2020, titled *Resolution Adopting Commission Enforcement Policy*.

WHEREAS:

- The Commission has authorized SED “to investigate, negotiate, and draft proposed Administrative Consent Orders, subject to review and consideration by the Commission” via resolution;¹
- The Commission’s Enforcement Policy requires that a “negotiated proposed settlement . . . be memorialized in a proposed Administrative Consent Order,” which requires certain items as set forth in Section 2, below;²
- Consistent with Resolution M-4846, this ACO is a product of direct negotiations between the Parties to resolve and dispose of all claims, allegations, liabilities and defenses related to the Dixie Fire, and within the scope of the investigation into the Dixie Fire, by SED and the Commission.
- This ACO is entered into as a compromise of disputed claims and defenses in order to minimize the time, expense, and uncertainty of an evidentiary hearing, any further enforcement proceedings, and/or any subsequent appeals, and with the Parties having taken into account the possibility that each of the Parties may or

¹ Resolution M-4846 at 15 (Findings and Conclusions No. 8).

² Resolution M-4846, Enforcement Policy at 10.

may not prevail on any given issue, and to expedite timely action on initiatives that benefit California consumers;

- The Parties agree to the following terms and conditions as a complete and final resolution of all claims which have been, or might have been, brought by SED related to or arising from the Dixie Fire, and all of PG&E’s defenses thereto, based on the information available to the Parties, and without trial and adjudication of any issue of law or fact.

NOW, THEREFORE it is agreed that this ACO is made and entered into as of this 27th day of September, 2023 (“Effective Date”) as follows:

I. PARTIES

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

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

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

II. ELEMENTS REQUIRED BY SECTION III.A.7 OF THE COMMISSION’S ENFORCEMENT POLICY FOR ADMINISTRATIVE CONSENT ORDERS

Except as explicitly stated herein, the Parties expressly agree and acknowledge that neither this ACO nor any act performed hereunder is, or may be deemed, an admission or evidence of the validity or invalidity of any allegations or claims of SED, nor is the Agreement or any act performed hereunder to be construed as an admission or evidence of any wrongdoing,

fault, omission, negligence, imprudence, or liability on the part of PG&E. This is a negotiated settlement of disputed matters, and PG&E specifically and expressly denies any fault, negligence, imprudence, or violation with respect to the Dixie Fire and, except as explicitly specified, any other matters that SED identified in its investigation into the Dixie Fire.

A. The law or Commission order, resolution, decision, or rule violated by the regulated entity

Part II of the Appendix to this ACO sets forth SED's alleged violations of Commission rules.

B. The facts that form the basis for each violation

Part I of the Appendix to this ACO contains relevant stipulated facts relating to the Dixie Fire. Part II of the Appendix contains the facts that form the basis for SED's alleged violations, and PG&E's responses thereto.

C. The number of violations including the dates on which violations occurred

Part II of the Appendix sets forth SED's alleged violations, with corresponding dates.

D. Information related to the potential for additional or ongoing violations

The Parties intend this Agreement to be a complete and final resolution of all claims which have been, or might have been, brought by SED related to the Dixie Fire, based on the information known, or that could have been known by the Parties.

E. An agreement by the regulated entity to correct each violation

PG&E asserts and agrees that it has remediated any alleged continuing violations that it has agreed, solely for purposes of this ACO, to not contest and is implementing systems to enhance vegetation management distribution record-keeping. With respect to the remaining alleged violations, PG&E disputes that any such violation occurred.

F. An agreement by the regulated entity to pay any penalty by a date specified

PG&E agrees to penalties, remediation payments, and an initiative totaling \$45,000,000 as follows (hereinafter collectively “ACO Amounts,” as described more fully in corresponding sections below):

- \$2,500,000: Penalty to the General Fund of the State of California
- \$2,500,000: Payments to Tribes Impacted by the Dixie Fire
- \$40,000,000: PG&E Initiative to Transition to Electronic Records for Distribution Patrols and Inspections

The terms of the ACO reflects the Parties’ integrated agreement inclusive of the anticipated tax treatment of the ACO Amounts. Having considered the potential tax treatment applicable to the ACO Amounts, the Parties expressly agree that the ACO Amounts are fair, just, and reasonable without any adjustment to account for any tax benefits or liabilities that may be realized by PG&E or its shareholders.

1. Penalty to the General Fund

PG&E shall pay a monetary penalty of \$2.5 million to the California State General Fund within thirty (30) days after the date of Commission Approval (as defined in Section IV.E. below).

2. Payments to Tribes Impacted by the Dixie Fire

PG&E shall pay \$2.5 million to tribes impacted by the Dixie Fire for remediation of the impacts of the fire on tribal lands. These payments are to be made within sixty (60) days after the date of Commission Approval (as defined in Section IV.E. below).

3. **PG&E Initiative to Transition to Electronic Records for Distribution Patrols and Inspections**

PG&E will spend \$40 million over five years on an initiative to transition from hard copy records to electronic records for patrols of PG&E's overhead distribution facilities and patrols and inspections of PG&E's underground distribution facilities to facilitate compliance with General Orders ("GO") 95 and 165 (referred to herein as the "Initiative"). PG&E will not seek cost recovery (*i.e.*, revenues) for the \$40 million to be spent on the Initiative.

PG&E shall submit reports to SED annually regarding progress and spending for the Initiative, until PG&E has incurred \$40 million in connection with this work. If PG&E becomes aware that it will not expend \$40 million in non-recoverable funds for the Initiative, it shall inform SED as part of its annual report, and PG&E and SED shall make a good faith effort to reach agreement on the method of expending any remaining funds. Nothing in this ACO obligates PG&E to spend in excess of \$40 million on the Initiative. If PG&E does expend in excess of \$40 million on the Initiative, nothing in this ACO precludes PG&E from seeking rate recovery for reasonable costs incurred in excess of \$40 million that have not previously been recovered in rates.

III. ADDITIONAL TERMS

A. Confidentiality and Public Disclosure Obligations

The Parties agree to continue to abide by the confidentiality provisions and protections of Rule 12.6 of the Commission's Rules of Practice and Procedure, which governs the discussions, admissions, concessions, and offers to settle that preceded execution of this ACO and Agreement and that were exchanged in all efforts to support its approval. Those prior negotiations and communications shall remain confidential indefinitely, and the Parties shall not disclose them outside the negotiations without the consent of both Parties. The Parties agree to coordinate as to

the timing and content of mutual and/or individual public communications. Notwithstanding the foregoing, PG&E may make any disclosures it deems appropriate, in its sole discretion, in order to satisfy its obligations under securities laws.

B. Future Proceedings

The Parties agree to avoid and abstain from making any collateral attacks on this ACO or taking positions in other venues that would undermine the effect or intent of the ACO.

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

The Parties agree that PG&E shall retain the right to seek payments from the Wildfire Fund and cost recovery pursuant to Public Utilities Code section 451.1 with respect to costs and expenses incurred in connection with the Dixie Fire. The Parties agree and intend that nothing in this ACO shall affect whether PG&E may obtain recovery of costs and expenses incurred in connection with the Dixie Fire, including for amounts drawn from the Wildfire Fund or otherwise sought through a cost recovery application to the Commission. As set forth in Section III.D. below, in entering into this ACO, the Parties intend that neither the fact of this settlement nor any of its specific contents will be admissible as evidence of fault, imprudence, or liability in any other proceeding before the Commission, any other administrative body, any court, or any alternative dispute resolution proceeding, such as a mediation or arbitration.

Nothing in this ACO constitutes a waiver by PG&E of its legal rights to defend the prudence of its conduct in connection with the Dixie Fire, including but not limited to with respect to the relevance and applicability of GO 95 and 165, in a future cost recovery proceeding before the Commission, a future enforcement matter, regardless of any factual or legal similarities to the alleged facts and violations resolved herein, and any other pending or future proceedings.

C. Regulatory Approval Process

Pursuant to Resolution M-4846, this ACO shall be submitted for public notice and comment. Upon approval or ratification of this ACO, the final resolution will “validate[] the order, which becomes an act of the Commission itself.”³

By signing this ACO, the Parties acknowledge that they pledge support for Commission Approval and subsequent implementation of all the provisions of this ACO. The Parties shall use their best efforts to obtain Commission Approval of this ACO without modification, and agree to use best efforts to actively oppose any modification thereto. Should any Alternate Draft Resolution seek a modification to this ACO, and should either of the Parties be unwilling to accept such modification, that Party shall so notify the other Party within five business days of issuance of the Alternate Draft Resolution. The Parties shall thereafter promptly discuss the modification and negotiate in good faith to achieve a resolution acceptable to the Parties and shall promptly seek approval of the resolution so achieved. Failure to resolve such modification to the satisfaction of either of the Parties, or to obtain approval of such resolution promptly thereafter, shall entitle any Party to terminate this Agreement through prompt notice to the other Party. (*See also* Section IV.D. below.)

³ Resolution M-4846 at 8.

If Commission Approval is not obtained, the Parties reserve all rights to take any position whatsoever regarding any fact or matter of law at issue in any future enforcement action or proceeding related to the Dixie Fire.

D. Admissibility

If this ACO is not adopted by the Commission, its terms are inadmissible for any evidentiary purpose unless their admission is agreed to by the Parties.

Nothing in this ACO shall be deemed to constitute an admission by either PG&E or SED that its position on any issue lacks merit or that its position has greater or lesser merit than the position taken by the other Party.

In entering into this ACO, the Parties intend that neither the fact of this settlement nor any of its specific contents will be admissible as evidence of fault, imprudence, or liability in any other proceeding before the Commission, any other administrative body, any court, or any alternative dispute resolution proceeding, such as a mediation or arbitration. In this regard, the Settling Parties are relying on Evidence Code Section 1152(a) and Public Utilities Code Section 315. Furthermore, such use of this ACO or any of its contents in any other proceeding before the Commission, any other administrative body, or any court would frustrate and interfere with the Commission's stated policy preference for settlements rather than litigated outcomes.⁴The Parties agree that by entering into this ACO, PG&E does not admit to any violations of the General Order provisions or related statutory requirements identified in Part II of the Appendix to this ACO and SED does not concede that any of PG&E's defenses have merit.

⁴ See Pub. Util. Code § 1759(a).

E. Due Process

PG&E's waiver of its due process rights for the Commission to hear and adjudicate the alleged violations set forth in Part II of the Appendix to this ACO is conditioned on a final Commission resolution or order approving this ACO without modification, or with modifications agreeable to each of the Parties.

IV. GENERAL PROVISIONS

A. Full Resolution

Upon Commission Approval, this ACO fully and finally resolves any and all claims and disputes between SED and PG&E related to SED's investigation into the Dixie Fire, and provides for consideration in full settlement and discharge of all disputes, rights, enforcement actions, notices of violations, citations, claims, and causes of action which have, or might have been, brought by SED related to the Dixie Fire based on the information: (a) known, or that could have been known, to SED at the time that SED executes this ACO, or (b) substantially similar to the alleged PG&E violations set forth in Part I of the Appendix to this ACO. SED expressly and specifically waives any rights or benefits available to it under California Civil Code Section 1542.

B. Non-Precedent

This ACO is not intended by the Parties to be precedent for any other proceeding, whether pending or instituted in the future. The Parties have assented to the terms of this ACO only for the purpose of arriving at the settlement embodied in this ACO. Each of the Parties expressly reserves its right to advocate, in other current and future proceedings, or in the event that the ACO is not adopted by the Commission, positions, principles, assumptions, arguments and methodologies which may be different than those underlying this ACO. The Parties agree and intend that, consistent with Rule 12.5 of the Commission's Rules of Practice and Procedure,

a final Commission resolution approving this ACO should not be construed as a precedent or statement of policy of any kind for or against either Party in any current or future proceeding with respect to any issue addressed in this ACO, including but not limited to PG&E's agreement to not contest certain alleged violations unrelated to the cause of the Dixie Fire, as set forth in Part II of the Appendix.

C. General Considerations for Settlement

Section III.B of the Commission's Enforcement Policy states that "the following general considerations should be evaluated as part of any proposed settlement to be submitted for Commission review: 1. Equitable Factors; 2. Mitigating circumstances; 3. Evidentiary issues; and 4. Other weaknesses in the enforcement action[.]"⁵ The Parties explicitly considered these factors in their confidential settlement communications. Without waiving the protections of Rule 12.6 of the Commission's Rules of Practice and Procedure, the Parties represent that they took these factors into account, and each Party considered the risks and weaknesses of their positions. The Parties also considered the substantial commitment of shareholder funds for wildfire-related issues as a result of Assembly Bill 1054. SED recognizes PG&E's cooperation and willingness to constructively engage with SED on the negotiation of this ACO, and SED and PG&E considered a range of evidentiary and other matters that would bear upon pursuit of an enforcement action seeking penalties on disputed issues of fact and law. When taken as a whole, the Parties agree that the ACO Amounts set forth in Section II are within the range of reasonable outcomes had this matter proceeded to formal litigation.

⁵ Resolution M-4846, Enforcement Policy at 15 (Section III.B.).

D. Incorporation of Complete ACO

The Parties have bargained in good faith to reach the ACO terms set forth herein, including in the Appendix. The Parties intend the ACO to be interpreted as a unified, integrated order and agreement, so that, consistent with Section III.C. above, if the Commission rejects or modifies any portion of this ACO or modifies the obligations placed upon PG&E or SED from those that the ACO would impose, each of the Parties shall have a right to withdraw. This ACO is to be treated as a complete package and not as a collection of separate agreements on discrete issues. To accommodate the interests related to diverse issues, the Parties acknowledge that changes, concessions, or compromises by a Party in one section of this ACO resulted in changes, concessions, or compromises by the other Party in other sections. Consequently, consistent with Section III.C. above, the Parties agree to actively oppose any modification of this ACO, whether proposed by any Party or non-Party to the ACO or proposed by an Alternate Draft Resolution, unless both Parties jointly agree to support such modification.

E. Commission Approval

“Commission Approval” means a resolution or decision of the Commission that is (a) final and no longer subject to appeal, which approves this ACO in full; and (b) does not contain conditions or modifications unacceptable to either of the Parties.

F. Governing Law

This ACO shall be interpreted, governed, and construed under the laws of the State of California, including Commission decisions, orders and rulings, as if executed and to be performed wholly within the State of California.

G. Other

1. The representatives of the Parties signing this ACO are fully authorized to enter into this Agreement.

2. The Parties agree that no provision of this ACO shall be construed against either of the Parties because a particular party or its counsel drafted the provision.
3. This ACO constitutes the entire agreement between the Parties and, supersedes all prior or contemporaneous agreements, negotiations, representations, warranties, and understandings of the Parties with respect to the subject matter set forth herein.
4. The rights conferred and obligations imposed on either of the Parties by this ACO shall inure to the benefit of or be binding on that Party's successors in interest or assignees as if such successor or assignee was itself a party to this ACO.
5. Should any dispute arise between the Parties regarding the manner in which this ACO or any term shall be implemented, the Parties agree, prior to initiation of any other remedy, to work in good faith to resolve such differences in a manner consistent with both the express language and the intent of the Parties in entering into this ACO.
6. The Parties are prohibited from unilaterally filing a petition for modification or application for rehearing of the Commission resolution or decision approving this ACO with modification.
7. This ACO may be executed in counterparts.
8. Nothing in this ACO relieves PG&E from any safety responsibilities imposed on it by law or Commission rules, orders, or decisions.
9. The provisions of Paragraph III.C. shall impose obligations on the Parties immediately upon the execution of this ACO.

V. DISCUSSION OF PENALTY ASSESSMENT METHODOLOGY FACTORS

The Penalty Assessment Methodology appended to the Commission's Enforcement Policy sets forth five factors that staff and the Commission must consider in determining the amount of a penalty for each violation: (1) severity or gravity of the offense; (2) conduct of the regulated entity; (3) financial resources of the regulated entity; (4) totality of the circumstances in furtherance of the public interest; and (5) the role of precedent.⁶ This ACO and Agreement

⁶ Resolution M-4846 (Nov. 5, 2020), Enforcement Policy, Appendix I; *see* D.22-04-058 at 3–4 (affirming that consideration of the Penalty Assessment Methodology provides a basis for the

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

Severity or Gravity of the Offense. The Commission has stated that the severity or gravity of the offense includes several considerations, including economic harm, physical harm, and harm to the regulatory process. Violations that caused actual physical harm to people or property are considered particularly severe.⁷

The Dixie Fire, which burned more than 960,000 acres, resulted in the destruction of approximately 1,300 structures and damaged 94 others.⁸ As set forth in Part II of the Appendix, SED asserts three alleged violations related to the cause of the Dixie Fire, and four alleged violations unrelated to the cause of the Dixie Fire. Except as explicitly stated herein, PG&E disputes SED's alleged violations and does not admit that SED's alleged facts are true, accurate, or complete, that inferences or conclusions SED draws from those alleged facts are correct, or that SED's alleged facts form the basis for an alleged violation. Nonetheless, the ACO and Agreement acknowledges and reflects the economic harm arising from the Dixie Fire.

Commission to determine that a negotiated settlement under the Commission's Enforcement Policy is reasonable and in the public interest).

⁷ D.20-05-019 at 20; Enforcement Policy at 16.

⁸ See Appendix, Part I.

The Conduct of the Utility. In evaluating the conduct of the utility, the Commission considers the utility's conduct in preventing the violation, detecting the violation, and disclosing and rectifying the violation.⁹

This factor is the primary area of disagreement between the Parties. SED alleges that PG&E violated GO 95, Rules 18.B and 31.1, and Public Utilities Code section 451, as set forth in Part II of the Appendix. PG&E's responses to the alleged violations are set forth in Part II of the Appendix to this ACO. Although, solely for the purposes of this ACO, PG&E agrees to not contest three alleged violations unrelated to the cause of the Dixie Fire, PG&E does not admit that the facts alleged by SED are sufficient to show violations. Moreover, PG&E disputes the remaining four alleged violations and contends that it followed the requirements of GO 95 and Public Utilities Code section 451 when inspecting, maintaining, and operating its system.

The details of this factor, such as the Parties' evaluations of their respective litigation risk, were the focus of negotiations subject to the confidentiality provisions of Rule 12.6 of the Commission's Rules of Practice and Procedure, and are not described here.¹⁰ Nevertheless, without waiving the protections of Rule 12.6, the Parties represent that they considered, among other things, PG&E's conduct in preventing the alleged violations, detecting the alleged violations, and disclosing and rectifying the alleged violations. Pursuant to the ACO, PG&E agrees to implement an initiative that will further enhance the safety of PG&E's electric system.

⁹ Enforcement Policy at 17.

¹⁰ This is consistent with the Enforcement Policy, which states that a "range of considerations" may be relevant in negotiating a proposed settlement, including "[e]quitable factors," "[m]itigating circumstances," "[e]videntiary issues," and [o]ther weaknesses in the enforcement action that the division reasonably believes may adversely affect the ability to obtain the calculated penalty." Enforcement Policy at 15.

Financial Resources of the Utility. The Commission has described this criterion as

follows:

Effective deterrence also requires that staff recognize the financial resources of the regulated entity in setting a penalty that balances the need for deterrence with the constitutional limitations on excessive penalties If appropriate, penalty levels will be adjusted to achieve the objective of deterrence, without becoming excessive, based on each regulated entity's financial resources.¹¹

PG&E is the largest electric utility in the state of California in terms of customers and revenue. According to PG&E, its financial condition limits its capacity to pay additional penalties. PG&E's current financial situation is characterized by the parent company's sub investment grade credit ratings by both S&P and Moody's and a heavily discounted common stock valuation (around 20% below the regulated utility peer group), and an agreement by the parent company to not pay common dividends until it has recognized \$6.2 billion in non-GAAP core earnings, as defined by the Plan of Reorganization. In determining the reasonableness of the settlement, SED took PG&E's financial resources into consideration. The ACO Amounts described above, totaling \$45 million, are reasonable and appropriate in light of PG&E's financial condition.

Totality of Circumstances in Furtherance of Public Interest. The Commission has

described this criterion as follows:

Setting a penalty at a level that effectively deters further unlawful conduct by the regulated entity and others requires that staff specifically tailor the package of sanctions, including any penalty, to the unique facts of the case. Staff will review facts that tend to mitigate the degree of wrongdoing as well as any facts that exacerbate the wrongdoing. In all cases, the harm will be evaluated from the perspective of the public interest.¹²

¹¹ Enforcement Policy at 17.

¹² Enforcement Policy at 19.

The Commission must evaluate penalties in the totality of the circumstances, with an emphasis on protecting the public interest. The ACO Amounts described above were tailored to the unique facts of the case and are reasonable. While PG&E disputes most of SED's alleged violations, and all of the alleged violations related to the cause of the Dixie Fire, PG&E acknowledges that there are areas in which it can work with the Commission to further enhance the safety and reliability of its electric facilities and mitigate the risks of wildfire in its service area. The Parties have negotiated in good faith and submit that the totality of the circumstances in furtherance of the public interest supports approval of this ACO.

First, the ACO resolves the issues identified here. Pursuant to the ACO, PG&E agrees to pay the ACO Amounts totaling \$45 million, which include a \$2.5 million penalty to the General Fund, a \$2.5 million remediation payment to affected Tribes, and to not seek cost recovery of \$40 million in funds (*i.e.*, revenues) for PG&E to transition to electronic records for distribution overhead patrols to facilitate compliance with GOs 95 and 165. By reaching a settlement, SED and PG&E have implicitly agreed that the total cost of \$45 million is not constitutionally excessive. The allocation of the total amount between penalty and disallowance is discretionary, and is appropriate here: the PG&E Initiatives specified in the ACO are targeted to PG&E's overhead distribution patrol systems to help mitigate the risk of similar incidents or harm to the public in the future. SED will monitor PG&E's implementation of the Initiatives to ensure that their benefits are realized.

Moreover, without waiving the protections of Rule 12.6 of the Commission's Rules of Practice and Procedure, the Parties represent that they took into account, among other things, the efforts PG&E has undertaken in recent years to reduce the risk of ignitions associated with its infrastructure.

Second, the PG&E initiative set forth in this ACO will directly further the public interest by facilitating the Commission's ongoing oversight of PG&E's activities related to electric safety and supporting continued improvement of PG&E's inspection programs.

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

The Role of Precedent. The Commission has described this criterion as follows:

Penalties are assessed in a wide range of cases. The penalties assessed in cases are not usually directly comparable. Nevertheless, when a case involves reasonably comparable factual circumstances to another case where penalties were assessed, the similarities and differences between the two cases should be considered in setting the penalty amount.¹³

While not binding precedent, prior settlements are useful for comparison, with the acknowledgement that settlements involve compromise positions. SED considered the following settlements in evaluating this incident and the ACO:

- The Zogg Fire ignited on September 27, 2020, when a tree fell on energized conductors owned and operated by PG&E in Shasta County. The fire burned more than 56,000 acres, caused four fatalities and one injury, destroyed 204 structures, and damaged 27 structures. SED issued an Administrative Enforcement Order alleging that PG&E had violated Public Utilities Code section 451, GO 95, and GO 165. PG&E disputed each violation and/or proposed penalty. SED and PG&E agreed to a settlement of \$150 million for the Zogg Fire, including a \$10 million penalty payable to the General Fund and \$140 million in shareholder funds for new wildfire initiatives designed to mitigate the risk of similar events occurring in the future. The Commission approved the settlement in Resolution ALJ-439.

¹³ Enforcement Policy at 21.

- The Kincade Fire ignited on October 23, 2019, in Sonoma County. According to CAL FIRE, the fire burned more than 77,000 acres, destroyed nearly 374 structures, and caused four non-fatal injuries with zero fatalities. CAL FIRE determined that the fire was caused by PG&E's electrical transmission lines. SED alleged that PG&E had violated Public Utilities Code section 451 and GO 95. SED and PG&E entered into an ACO and agreed to a settlement of \$125 million for the Kincade Fire, including a \$40 million penalty payable to the General Fund and an \$85 million permanent disallowance for cost recovery for removal of abandoned transmission lines within PG&E's service area. The Commission approved the settlement in Resolution SED-6, as modified by Resolution SED-6A.
- In October 2017 and November 2018, multiple wildfires occurred across PG&E's service territory in Northern California. The 2017 and 2018 wildfires were unprecedented in size, scope, and destruction. The Commission's decision in this proceeding states that at the peak of the 2017 wildfires, there were 21 major wildfires that, in total, burned 245,000 acres and causing 44 fatalities, 22 of which are attributed to fires started by PG&E facilities. PG&E's equipment failure started the 2018 Camp Fire, which burned approximately 153,336 acres, destroyed 18,804 structures, and resulted in 85 fatalities. The Commission issued an Order Instituting Investigation into these wildfires. SED, the Office of the Safety Advocate, the Coalition of California Utility Employees, and PG&E agreed to a settlement of \$1.675 billion. The settlement included disallowances and system enhancement initiatives and corrective actions. The Commission approved a modified version of this settlement in D.20-05-019, which increased the total settlement to \$1.937 billion, including disallowances and corrective actions. The decision also imposed a \$200 million penalty payable to the General Fund, with the obligation to pay permanently suspended given the unique circumstances of PG&E's bankruptcy.
- In 2015, multiple power outages occurred on Southern California Edison Company's ("SCE") secondary network system in the City of Long Beach. These outages and electric facility failures caused fires in several underground structures and resulted in explosions. There were no reported injuries or fatalities. SED alleged, among other things, that: (1) SCE violated GO 128 and Public Utilities Code sections 451 and 768.6 for failing to properly maintain, inspect, and manage the electrical system in Long Beach; (2) SCE violated a commitment to an earlier settlement by failing to provide accurate estimates of service restoration times during outages; and (3) the violations that caused or contributed to the power outages that resulted in fires, explosions, and property damage endangered the safety of the public. SCE admitted to violations of GO 128 and Public Utilities Code sections 451 and 768.6. SED and SCE agreed to a settlement of \$15 million, including a \$4 million penalty payable to the General Fund and \$11 million worth of Safety Enhancement Projects at shareholder expense. The Commission approved the settlement in D.17-09-024.

- The Malibu Canyon Fire ignited on October 21, 2007, when three utility poles fell to the ground during a Santa Ana windstorm. The fire burned more than 3,800 acres, destroyed 14 structures and 36 vehicles, and damaged 19 other structures. There were no reported injuries or fatalities. In D.12-09-019, the Commission approved a settlement between AT&T, Sprint, Verizon Wireless (“Settling Respondents”), and SED related to the three utility poles that ignited the fire.¹⁴ SED alleged, among other things, that: (1) one of the fallen poles was overloaded in violation of GO 95 and Public Utilities Code section 451; (2) the safety factor of replacement poles did not meet the requirements of GO 95 for new construction; and (3) the Settling Respondents violated Rule 1.1 by submitting accident reports, data responses, and written testimony that contained incorrect information. The Settling Respondents denied SED’s allegations. SED and the Settling Respondents agreed to a settlement of \$12 million (divided equally between the Settling Respondents), including a \$6.9 million penalty payable to the General Fund and \$5.1 million to the Enhanced Infrastructure and Inspection Fund (“EIIIF”) used to strengthen utility poles in Malibu Canyon and to conduct a statistically valid survey of joint-use poles in the service territory for compliance with GO 95. Any funds leftover from the EIIIF would revert to the General Fund.
- In D.13-09-028, another decision involving the above-referenced Malibu Canyon Fire, the Commission approved a separate settlement between SED and SCE. SED alleged the same violations of GO 95, Public Utilities Code section 451, and Rule 1.1. SCE admitted that: (1) one of the poles was overloaded in violation of GO 95; (2) SCE failed to take prompt action to prevent the pole from overloading, in violation of Public Utilities Code section 451; and (3) SCE withheld relevant information from SED and the Commission in violation of Rule 1.1. SED and SCE agreed to a settlement of \$37 million, including a \$20 million penalty payable to the General Fund and \$17 million in shareholder funds to assess utility poles in the Malibu area for compliance with GO 95 safety factors and SCE’s internal standards. SCE also agreed to remediate all substandard utility poles.
- In late October 2007, several severe fires occurred in the San Diego area: the Rice Fire, the Witch Fire, and the Guejito Fire. According to CAL FIRE, these fires burned more than 197,000 acres, caused two fatalities and 40 injuries, destroyed over 1,700 structures, and damaged 25 structures. SED alleged, among other things, that San Diego Gas & Electric Company (“SDG&E”), CoxCom Inc., and Cox California Telecom LLC (collectively, “Cox”) violated GO 95 and Public Utilities Code section 451 by failing to adequately design, construct, and maintain the affected lines and line clearances. SDG&E and Cox denied these allegations. Under the settlement, which the Commission approved in D.10-04-047, SDG&E paid \$14.35 million to the General Fund and Cox paid \$2 million to the General Fund. SDG&E was also required to reimburse SED up to an additional \$400,000

¹⁴ The poles were jointly owned by SCE, AT&T, Sprint, Verizon Wireless, and NextG. The power lines on the poles were owned and operated by SCE.

to implement a computer work module, with any unused balance of the \$400,000 remitted to the General Fund.

The precedents reflect outcomes that included a mix of penalties, shareholder funding of programs, and/or remedial action plans. The Parties believe that the ACO results in a reasonable outcome considering these precedents and the criteria discussed in this section.

The Parties mutually believe that, based on the terms and conditions stated above, this ACO is reasonable, consistent with the law, and in the public interest.

IT IS HEREBY AGREED.

[Signatures immediately follow this page]

DATED: September 27, 2023

Pacific Gas and Electric Company

By: 

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

[This space intentionally left blank]

DATED: _____, 2023

Safety and Enforcement Division
California Public Utilities Commission

By: **Leslie L Palmer** Digitally signed by Leslie L
Palmer
Date: 2023.09.27 11:39:28 -07'00'

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

[This space intentionally left blank]

APPENDIX

I. STIPULATED FACTS RELATED TO THE DIXIE FIRE

For purposes of this ACO, the Parties have stipulated to the facts set forth below.

1. The wildland fire known as the Dixie Fire started on July 13, 2021. The origin of the fire was in the Feather River Canyon, west of Cresta Dam, in Plumas County, California.
2. The Dixie Fire ignited after a Douglas fir tree fell and struck energized conductors which were owned and operated by PG&E. The conductors were part of a distribution circuit known as the Bucks Creek 1101 12kV distribution circuit (“Bucks Creek 1101 Circuit”).
3. According to the California Department of Forestry and Fire Protection (“CAL FIRE”), the Dixie Fire burned more than 960,000 acres, destroyed approximately 1,300 structures, and damaged 94 others.
4. CAL FIRE investigated the cause of the Dixie Fire. In January 2022, CAL FIRE issued a press release stating that it had determined that the Dixie Fire was caused by a tree contacting PG&E’s electrical distribution lines. CAL FIRE later issued a report affirming this determination and setting forth other findings and conclusions related to the Dixie Fire.
5. For purposes of resolving SED’s investigation into the Dixie Fire, PG&E does not contest CAL FIRE’s determination that the Dixie Fire ignited after a Douglas fir tree fell onto PG&E’s electrical distribution lines. However, PG&E disputes other findings and conclusions set forth in CAL FIRE’s report, including that PG&E was negligent in any way.
6. SED has investigated the Dixie Fire to identify whether there were any violations of the Commission’s General Orders, Public Utilities Code, and related requirements under the Commission’s jurisdiction. CAL FIRE has investigated the Dixie Fire to determine the cause of the fire, as well as whether the fire was the result of violations of the Public Resources Code, and Title 14 of the California Code of Regulations.

II. SED’S ALLEGED VIOLATIONS AND ALLEGED SUPPORTING FACTS AND PG&E’S RESPONSES TO SAME

SED alleges the following seven violations pursuant to its investigation into the Dixie Fire. PG&E’s responses to each violation are set forth below. PG&E does not admit that SED’s alleged violations are valid given the underlying facts. PG&E also does not admit that SED’s

alleged facts are true, accurate, or complete, that inferences or conclusions SED draws from those alleged facts are correct, or that SED's alleged facts form the basis for an alleged violation.

SED does not admit or agree that PG&E's responses to SED's alleged violations and supporting facts are valid. SED also does not admit or agree that PG&E's responses are true, accurate, or complete; that the inferences or conclusions from those responses are correct; or that PG&E's responses form the basis for a valid defense.

1. General Order (GO) 95, Rule 18.B., Maintenance Programs (Date: October 30, 2015)

SED alleges a violation of GO 95, Rule 18.B., because PG&E did not complete the work associated with Electric Corrective ("EC") Tag 109671451 before its identified one-year due date. Rule 18.B. requires a utility to take "corrective action" within specified time periods "following the identification of a potential violation of GO 95 or a Safety Hazard on the company's facilities." For potential violations that create a fire risk in Tier 2 of the High Fire-Threat District ("HFTD"), corrective action must be completed in 12 months or less. Because the pole identified for work in EC Tag 109671451 was in Tier 2 of the HFTD, the due date for the required work was 12 months from identification of the issue. PG&E did not provide SED with a justification which SED believes would allow an extension to the corrective action due date for Tag 109671451 beyond 12 months. SED believes this alleged violation was unrelated to the cause of the Dixie Fire.

PG&E disputes this alleged violation. Among other things, PG&E contends that the work associated with the EC Tag required a permit, and Rule 18.B. provides that "[c]orrection times may be extended under reasonable circumstances," including when permits are required.¹⁵ Although the work was completed more than a year past the due date for the work order, it was completed years before the Dixie Fire ignited.

2. GO 95, Rule 18.B., Maintenance Programs (Date: December 4, 2020)

SED alleges a violation of GO 95, Rule 18.B., based on the fact that the Index Map for the 2020 routine vegetation management ("VM") patrol of the Bucks Creek 1101 Circuit does not reflect the correct date on which the entire line was inspected. Rule 18.B. requires a utility to "implement an auditable maintenance program for its facilities and lines," including "records that show the date of the

¹⁵ See GO 95, Rule 18.B.(1)(b).

inspection.” PG&E’s Index Map for the 2020 routine patrol identifies November 11, 2020, as the date that the inspection was completed, but PG&E has affirmed, based on discussion with inspectors employed by the VM contractor responsible for inspecting this line, that the final section of the line (which includes the origin area) was inspected in December 2020. SED believes this alleged recordkeeping violation is unrelated to the cause of the Dixie Fire.

Solely for purposes of this ACO, PG&E does not contest this alleged violation, which is unrelated to the cause of the Dixie Fire. PG&E notes that the evidence shows the inspection at issue was completed, and that other VM records confirm the inspection of the Bucks Creek 1101 Circuit was completed on December 4, 2020.

3. GO 95, Rule 18.B., Maintenance Programs (Date: November 12, 2019)

SED alleges a violation of GO 95, Rule 18.B., based on the fact that PG&E’s Index Map from the 2019 VM routine patrol of the Bucks Creek 1101 Circuit is missing the page with the section of the line that includes the origin area (known as map “AT112-C”). SED’s position is that PG&E failed to maintain a complete set of records from this inspection. SED believes this alleged recordkeeping violation is unrelated to the cause of the Dixie Fire.

Solely for purposes of this ACO, PG&E does not contest this alleged violation, which is unrelated to the cause of the Dixie Fire. PG&E notes that the front page of the Index Map indicates that all routes were completed, including the route reflected in the missing map.

4. GO 95, Rule 31.1, Design, Construction, and Maintenance (Date: August 26, 2020)

SED alleges a violation of GO 95, Rule 31.1 based on the fact that PG&E did not formally update Appendix A to its Distribution Vegetation Management Standard (“DVMS”) and Distribution Routine Patrol Procedure (“DRPP”) to reflect the increased Minimum Distance Requirements (“MDRs”) for vegetation clearance adopted by the Commission in D.17-12-024. Rule 31.1 requires that “[e]lectrical supply [] systems shall be designed, constructed, and maintained for their intended use, regard being given to the conditions under which they are to be operated, to enable the furnishing of safe, proper, and adequate service.” PG&E issued a “High Fire Threat District Bulletin” to include an updated version of Appendix A, but subsequently designated the bulletin as obsolete before the DVMS and DRPP were formally updated to incorporate the updated version of Appendix A. SED alleges that the DVMS and DRPP should have been formally updated prior to retiring the bulletin to incorporate the applicable MDRs. However, SED is not alleging that failure to formally update the DVMS and DRPP prior to retiring the bulletin led to the Dixie Fire.

Solely for purposes of this ACO, PG&E does not contest this alleged violation, which is unrelated to the cause of the Dixie Fire. PG&E notes that the increased MDRs in the updated Appendix A of the bulletin were implemented when the bulletin was issued, and there is no evidence that designating the bulletin as obsolete caused confusion regarding the applicable MDRs or led to MDRs not being observed.

5. GO 95, Rule 31.1, Design, Construction, and Maintenance (Date: July 13, 2021)

SED alleges that PG&E violated General Order 95, Rule 31.1, because its failure to identify a reasonably visible tree hazard on the line from Cresta Dam on July 13, 2021, and failure to inspect the line properly, is not accepted good practice. Rule 31.1 requires that “[e]lectrical supply [] systems shall be designed, constructed, and maintained for their intended use, regard being given to the conditions under which they are to be operated, to enable the furnishing of safe, proper, and adequate service.” SED’s conclusion that the tree was reasonably visible is based on a statement in CAL FIRE’s report that the CAL FIRE investigator could see the tree on the line when he inspected the line from Cresta Dam after the fire.

PG&E disputes this alleged violation. Among other things, PG&E disputes that the fact that the CAL FIRE investigator may have been able to see the tree from Cresta Dam *after* he had been to the origin area and knew exactly what he was looking for, and *after* the fire had burned through the area, establishes that the tree was “reasonably visible” when the troubleman inspected the line from the area around Cresta Dam on July 13, 2021. PG&E further contends that the troubleman’s inspection was reasonable and appropriate. Upon arrival at Cresta Dam that day, the troubleman used his binoculars to attempt to identify the reason for the outage from a cutout in a tunnel near the dam. The troubleman did not see a tree on the line.

6. GO 95, Rule 31.1, Design, Construction, and Maintenance (Date: December 4, 2020)

SED alleges that PG&E violated GO 95, Rule 31.1, because it did not identify the subject tree as a hazard tree prior to ignition of the Dixie Fire and did not take action to prevent the tree from striking its conductors. SED’s conclusion that the tree should have been identified as a hazard tree is based on the findings of CAL FIRE’s retained arborist regarding the condition of the tree.

PG&E disputes this alleged violation. Among other things, PG&E states there is no evidence PG&E was on notice of any potential hazard presented by the subject tree prior to its failure. Based on PG&E records, the tree was not identified in VM patrols of the Bucks Creek 1101 Circuit as requiring work prior to the Dixie Fire. PG&E performed VM patrols of the Bucks Creek 1101 Circuit numerous times in the years before the fire. As to the tree itself, PG&E contends that the

tree did not have obvious “red flags” and disputes the findings of CAL FIRE’s retained arborist that a wound at the base of the tree would have been visible prior to the tree’s failure. CAL FIRE’s report affirms the view of CAL FIRE’s retained arborist that the tree was “growing vertically without a lean” and “alive and vital at the time of failure.” Photographs from before the fire show that the tree had a green canopy and appeared healthy.

7. California Public Utilities Code Section 451 (Date: July 13, 2021)

SED alleges that PG&E violated Public Utilities Code section 451 because it failed to adequately consider the hazard of the Bucks Creek 1101 Circuit in its response to the outage at Cresta Dam on July 13, 2021. Section 451 requires utilities 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 [their] patrons, employees, and the public.” SED’s conclusion that PG&E’s outage response did not adequately consider the hazard of the Bucks Creek 1101 Circuit is based on the finding set forth in CAL FIRE’s report that the response was excessively delayed.

PG&E disputes this alleged violation. Among other things, PG&E contends that the Distribution Operators (“DOs”) who attended to the outage at Cresta Dam on July 13, 2021, properly followed PG&E’s procedures, and neither SED nor CAL FIRE has identified any PG&E procedure or industry practice that PG&E did not follow in its response to the outage. DOs analyze outages and make decisions to dispatch personnel or de-energize lines based on known facts and circumstances. The journeyman DOs on shift on July 13, 2021, arranged to dispatch a troubleman, continually monitored the outage and the data available to them, and gathered additional information through field personnel. Prior to the troubleman’s arrival at the site late in the afternoon of July 13, 2021, no safety hazard was reported.