STATE OF CALIFORNIA GAVIN NEWSOM, Governor

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

FILED
01/17/20
01:04 PM

January 17, 2020

TO PARTIES OF RECORD IN INVESTIGATION 18-12-007:

This proceeding was filed on December 13, 2018 and is assigned to Commissioner Rechtschaffen and Administrative Law Judge (ALJ) Allen. This is the decision of the Presiding Officer, ALJ Allen.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (i.e., the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (*See,* generally, Rule 14.4 of the Commission's Rules of Practice and Procedure at www.cpuc.ca.gov.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ ANNE E. SIMON
Anne E. Simon
Chief Administrative Law Judge

AES:mph
Attachment

Decision **PRESIDING OFFICER'S DECISION OF ALJ ALLEN**
(Mailed 1/17/2020

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation and Order to Show Cause on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company with Respect to Locate and Mark Practices and Related Matters.	Investigation 18-12-007

PRESIDING OFFICER'S DECISION

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Appendix A

PRESIDING OFFICER'S DECISION

Summary

This decision approves with modifications a proposed settlement between Pacific Gas & Electric Company (PG&E), the Commission's Safety and Enforcement Division (SED), and the Coalition of California Utility Employees (CUE) relating to problems with PG&E's "Locate and Mark" program for identifying the location of underground gas and electric facilities.[1] Under the settlement as modified, PG&E shall be liable for a total penalty of $110 million, including the obligation to undertake specified initiatives at shareholder expense to address the problems with the Locate and Mark program. Upon approval by the Bankruptcy Court[2] of the Settlement Agreement as modified, this proceeding is closed.

1. Background

Owners of underground facilities such as PG&E are notified through the Underground Service Alert (USA) 811 system when an excavator reports that it plans to dig. Under state law, PG&E has two working days to locate and mark the location of its underground facilities, unless the excavator specifies or agrees to a later deadline. Each notification results in a "ticket," and PG&E keeps records for each ticket, including whether or not PG&E performed the required locate and mark work on time.

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[1] The proposed settlement, titled: *Settlement Agreement Between Pacific Gas and Electric Company, the Coalition of California Utility Employees, and the Safety and Enforcement Division of the California Public Utilities Commission Resolving Order Instituting Investigation I. 18-12-007* (Settlement Agreement) is attached as Appendix A.

[2] United States Bankruptcy Court for the Northern District of California, Case No. 19-30088DM (Bankruptcy Court).

1.1. Inaccurate Tickets

In 2010, a Pacific Gas & Electric Company (PG&E) Quality Assurance Audit identified a "glitch" in the software used for the recordkeeping of PG&E's Locate and Mark program. The result of this glitch was that:

> [T]he time-clock feature of the software would be halted just by opening the record without performing the work or documenting an agreement with the excavator to postpone the work. As a result, the reports for on-time performance generated using this software showed a 99 percent on-time response for 2010 that cannot be relied upon. (PG&E 90-Day Report at 32.)[3]

A 2012 PG&E Internal Audit stated that: "Interviews with employees in the damage prevention program confirmed that this deficiency has not yet been corrected." (*Id*. at 32-33.) PG&E does not explain why the problem was not addressed prior to 2012. In response to the 2012 Internal Audit, PG&E then began to work to resolve this problem, and by the end of 2012, PG&E concluded that the glitch had been fixed and that the late-ticket issues identified in the 2010 and 2012 audits had been resolved. (*Id*. at 33 and 43.) Unfortunately, only part of the problem had been resolved.

In April 2016, the Commission's Safety and Enforcement Division (SED) was notified by the federal Pipeline and Hazardous Material Safety Administration (PHMSA) that PG&E may have falsified many of its Locate and Mark records. (SED Investigative Report at 161, PG&E 90-Day Report at 45.) SED submitted its first data request to PG&E on June 8, 2016, asking for information about late tickets between 2013 to 2016.

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[3] The full title is: *Pacific Gas and Electric Company's 90-Day Report and Response to Locate and Mark OII Directives 1 to 9, Volume 1 of 2*.

In May 2016, PG&E Quality Management informed PG&E senior leadership (above the Locate and Mark organization) that they had identified late tickets that had not been reported. (PG&E 90-Day Report at 80.) In response, Jesus Soto, Vice President of Gas Operations, directed John Higgins, PG&E's Vice President, Gas Transmission & Distribution Operations, to look into the problem. (*Id.* at 81.) Higgins took steps to investigate, but did not report back to Soto, and no action was taken in response. PG&E acknowledges that at this time there was: "a failure of follow through [that] allowed the issue to persist." (*Id*. at 82.)

On March 23, 2017, through a peer review conducted through the American Gas Association (AGA): "PG&E senior leadership became aware that problems with L&M's [Locate and Mark's] late ticket data had persisted through efforts over the years to fix them." (*Id*. at 82.) At a debriefing session toward the end of the peer review, the reviewers told Mr. Soto that according to PG&E employees they had talked to, "PG&E's actual performance on late tickets was being shielded, and employees knew it." (PG&E 90-Day Report at 48; Settlement Agreement at 9.) Subsequently, PG&E convened a "Special Attention Review" and hired outside consultants Guidepost and Bates White to help it understand and address the problem.

According to Bates White, PG&E could have had as many as 170,135 late tickets over the 2012 to February 2017 period, while PG&E's records (and reports to the Commission) only showed 34,998. This is a difference of up to 135,137 tickets. (Settlement Agreement at 4.) Bates White described its PG&E-approved methodology as conservative, and more likely to overcount rather than undercount the number of late tickets, but they could not quantify the scope of that potential overcounting and did not attempt to do so. (Settlement Agreement at 4; Transcript, Vol. 3 at 256-257.)

Of the 135,137 potentially inaccurate tickets, it is not clear from the record which of those tickets were intentionally falsified, which were accurate but intended to take advantage of the software glitch, and which were accurate and good-faith entries with no intention of making a late ticket appear timely. (PG&E 90-Day Report at 105.) PG&E concedes that some tickets were intentionally falsified to avoid having a ticket show up as late. (*Id* at 105, 115.) Regardless of the motivation of the individual employee, up to 135,137 tickets that PG&E recorded and reported as on time were actually late.

Late tickets have potential safety consequences, including an increased risk of dig-ins. PG&E late responses to USA notifications were a contributing factor to 67 dig-ins by excavators on PG&E gas lines. (Settlement Agreement at 6.)

1.2. Qualified Electrical Workers

Under PG&E procedure for certain situations involving electrical facilities, completion of the locate-and-mark process required the assistance of a Qualified Electrical Worker (QEW). (Settlement Agreement at 9.) During the period at issue, PG&E failed to maintain sufficient QEW support for its locate and mark activities. (*Id*.) In some cases PG&E did not provide a QEW on a timely basis. This resulted in late tickets (some of which may have been inaccurately recorded as on time), tickets requiring a QEW that were marked complete without the assistance of a QEW, and non-QEW locators performing tasks that required a QEW. (*Id*. at 9-10.)

The consequences of inadequate QEW support could be serious:

> PG&E has identified five dig-ins during the OII Period in which the failure to use a QEW that was required by PG&E procedure to complete the locate and mark may have contributed to the dig-in. (*Id*. at 10.)

In November 2014, the lack of QEW assistance was a factor in a dig-in in San Jose that resulted in injuries to a City of San Jose employee. (Settlement Agreement at 10.) PG&E hired Exponent to conduct an independent root cause analysis of this dig-in. Around the end of March 2015, Exponent provided a copy of its final report to Joel Dickson, PG&E's Locate and Mark Director, who immediately sent an e-mail summarizing the report and its recommended corrective actions to Jesus Soto, Vice President of Gas Operations. (Ex. SED-10, Testimony of Charles Mee at 7.) SED also provided PG&E a notice of violation for this incident on March 30, 2015. (Settlement Agreement at 10.)

SED testimony states that PG&E management, in general, was aware of the QEW issues as early as 2013, and that Mr. Soto was informed of the Exponent Report on March 31, 2015. In 2019, PG&E is now taking steps to remedy the inadequate QEW support, including the hiring of additional QEWs and other measures. (*Id*. at 17-18.)

1.3. Procedural Background

SED issued its investigative report and the Commission opened this proceeding in December 2018. A number of motions, responses to motions and rulings have been filed in this proceeding on issues including confidentiality of information, scope of the proceeding, discovery, and scheduling; a law-and-motion hearing, two pre-hearing conferences and a status conference

were held.[4] A Scoping Memo and Ruling was issued on May 7, 2019. Testimony was served by SED, PG&E, The Utility Reform Network (TURN), the Commission's Public Advocate's Office (Cal Advocates) and the Commission's Office of Safety Advocates (OSA).[5]

On October 3, 2019, PG&E, the Coalition of California Utility Employees (CUE) and SED (Settling Parties) filed a joint motion for approval of a proposed settlement (Joint Motion). Attached to the Joint Motion is the Settlement Agreement. A hearing on the proposed settlement was held on October 21, 2019. Comments on the proposed settlement were filed on November 4, 2019 by TURN, Cal Advocates and OSA, all of which criticized aspects of the settlement and opposed its adoption as proposed. Reply comments expressing support for the comments of TURN, Cal Advocates and OSA were filed by the City and County of San Francisco (CCSF). Reply comments reiterating support for the proposed settlement were filed jointly by SED, PG&E and CUE (Settling Parties).

2. Proposed Settlement – Summary and Party Positions

In order for the Commission to approve a proposed settlement, the Commission must find that it is reasonable in light of the whole record, consistent with law, and in the public interest. (Commission Rules of Practice and Procedure Rule 12.1(d).)

The proposed settlement sets forth a set of stipulated facts and violations, calls for PG&E to undertake 28 "System Enhancement Initiatives," make $60 million in payments toward certain System Enhancement Initiatives and pay

[4] A full listing of (and links to) the filings in this proceeding are available on the Docket Card for this proceeding on the Commission's website, at: https://apps.cpuc.ca.gov/apex/f?p=401:56:0::NO:RP,57,RIR:P5_PROCEEDING_SELECT:I1812007

[5] As of January 1, 2020, OSA was absorbed back into SED.

$5 million to the state's General Fund. (Joint Motion at 6-8.) After summarizing the stipulated facts and violations, the Joint Motion summarizes the proposed settlement as follows:

> ***Second***, the Settlement requires PG&E to undertake 28 System Enhancement Initiatives. Nine are focused on late ticket and late ticket data issues. Five are focused on issues identified in the locating and marking of PG&E's electrical facilities, and in particular PG&E's failures to provide sufficient numbers of QEWs. Seven more are aimed at addressing cultural issues both within PG&E's L&M division and enterprise-wide, focusing on training and the creation of environments in which employees are comfortable and empowered to speak up and identify, among other things, possible safety concerns and possible misconduct—including an independent review of PG&E's existing programs for raising and responding to issues. The last seven provide for increased transparency into PG&E's L&M [Locate & Mark] operations, including Annual L&M Report requirements and a provision regarding root cause analyses and causal evaluations. Several of these System Enhancement Initiatives are discussed in greater detail in Part II of this Motion, discussing how the Settlement addresses the "main issues" in this proceeding.
>
> ***Third***, the Settlement requires PG&E to make payments and incur a penalty totaling $65 million. These amounts shall be funded by PG&E shareholders and PG&E shall not seek to recover any of these costs in rates. Of that $65 million, $5 million is to be paid as a fine to the General Fund. The remaining $60 million is intended to be allocated among various System Enhancement Initiatives, as identified in Table 1, immediately below.

Table 1

Duration and Funding Estimates for
PG&E Shareholder-Funded System Enhancement Initiatives

Paragraph		Duration (years)	Funding ($ million)
III.B.1 and III.B.14	Ticket compliance audit	2	$2.0
III.B.2	Compliance audit using field reviews	2	$6.0
III.B.4 and III.B.10	Additional L&M staff	Through 2022	$41.3
III.B.6 and III.B.13	Digital ticket management system to replace IrthNet, and update electric facilities information in GIS	Through 2022	$7.0
III.B.21	Review of Corrective Action Program ("CAP") and Compliance and Ethics Helpline program	1	$1.0
III.B	Add'l L&M staffing, extensions of audits, and remaining items in Part III.B	as required or specified	$2.7
TOTAL			$60.020

The full Settlement Agreement is attached as Appendix A to this decision.

2.1. Non-Settling Parties

TURN strongly criticizes the proposed settlement, arguing that it is neither reasonable in light of the whole record nor in the public interest. TURN argues

that the settlement does not require PG&E "…to accept the true nature and full extent of the failures here as *failures in management*." (TURN Comments at 2, emphasis in original.) TURN calls for "…a clear acknowledgement of the responsibility of PG&E management for the conduct at issue and increasing the proposed penalty to account for mismanagement." (*Id*.)

In addition, TURN argues that the proposed settlement needs to be modified to ensure that it operates as intended and for ratepayer benefit. According to TURN, the proposed settlement lacks an adequate mechanism for tracking the costs of the shareholder funded enhancement initiatives and ensuring that they are actually funded by the shareholders. (*Id*. at 2-3)

TURN summarizes its arguments as follows:

> The Proposed Settlement suffers from serious shortcomings. First, it lacks necessary accounting and ratemaking mechanisms to ensure that shareholders will in fact pay for the 28 System Enhancement Initiates required by the Settlement. Second, it fails to explicitly require PG&E to fund those enhancements in full, even if the costs exceed the $60 million specified in the Settlement. Third, it fails to hold PG&E sufficiently accountable for its 2017 data request response that PG&E knew or should have known was inaccurate. Last but not least, it fails to acknowledge and account for the nature and full extent of the managerial failures at PG&E. Unless these problems are remedied, the Commission cannot conclude that the proposed Settlement is consistent with the record and in the public interest. (*Id*. at 4.)

Cal Advocates also criticizes the proposed settlement, arguing that the proposed settlement is not reasonable in light of the entire record, consistent with the law, or in the public interest, because the proposed settlement:

- Does not include fines and financial remedies in an amount commensurate with Pacific Gas and Electric Company's

> (PG&E) failure to promptly rectify deficiencies in it locate and mark program that were identified as early as 2010;
>
> • Does not include fines and financial remedies in an amount commensurate with the harm to the regulatory process caused by PG&E's failure to accurately report late ticket information to the Commission's Safety and Enforcement Division (SED);
>
> • Does not include fines and financial remedies in an amount commensurate with the harm to the regulatory process caused by PG&E's failure to disclose a root cause analysis of a November 7, 2014 dig-in for more than four years after the completion of the root cause analysis and report, despite SED's request for all reports related to the November 2014 dig-in;
>
> • Does not include compliance audits of an adequate duration to evaluate whether PG&E's management is ensuring adherence to locate and mark procedures; and
>
> • Does not ensure that the shareholder funds identified to maintain 63 locate and mark staff are not duplicative of funds that PG&E has requested in Application (A).18-12-009, its 2020 General Rate Case (GRC). (Cal Advocates Comments at 1-2, footnotes omitted.)

OSA similarly argues that the proposed settlement is not reasonable in light of the entire record and not in the public interest. According to OSA, the proposed settlement does not adequately address the enterprise-wide causes and failures in management oversight the led to the problems with the locate and mark program, and the remedies in the proposed settlement are insufficient to address deficiencies in PG&E's safety culture. (OSA Comments at 5-9.)

While TURN, Public Advocates and OSA offered criticisms of the ratemaking, penalty size, and scope of remedies of the proposed settlement, there was no significant party criticism of the specific System Enhancement Initiatives identified in the proposed settlement.

2.2. Settling Parties

In response, the Settling Parties clarify that PG&E's obligation to undertake the identified System Enhancement Initiatives (Initiatives) is separate from PG&E's obligation to spend $60 million of shareholder money on Initiatives, including the ones identified in the Settlement Agreement. (Settling Parties Reply Comments at 3-6.) In other words, PG&E must implement the identified Initiatives, which may cost more or less than $60 million, and it must spend $60 million of shareholder money on Initiatives (either the identified ones or other ones).

This partially addresses the criticisms of TURN and Cal Advocates. It clarifies that there cannot be "double dipping" – if PG&E gets ratepayer funding for certain Initiatives, such as hiring additional locate and mark staff, it cannot count the associated expenses towards the $60 million. It also clarifies that the obligation of PG&E to implement the Initiatives does not end when PG&E's spending hits the $60 million level – even if PG&E has spent $60 million, the Initiatives would continue.

The Settling Parties also clarify that while the Settlement Agreement contains estimates of the costs of the various Initiatives that add up to $60 million, those are only non-binding estimates, however, and they could be wrong. (Settling Parties Reply Comments at 5, citing Settlement Agreement at 13-14.) If the cost of the identified Initiatives is less than $60 million in shareholder funds, then PG&E and SED would work to reach agreement on how to expend the remaining funds. (*Id*. at 5.) But at this time neither the parties nor this Commission know what those funds would be spent on.

Since the Initiatives would not end upon the expenditure of $60 million, if the cost of the identified Initiatives is more than $60 million, it appears that ratepayers would be asked to pay the difference:

> Nothing in this Settlement Agreement shall be read as requiring the expenditure by PG&E of additional shareholder-provided funding after the funding provided by this Settlement Agreement has been exhausted. (Settlement Agreement at 13.)

TURN and Cal Advocates argued that the dollar amount of the proposed settlement is too low; the Settling Parties respond to these arguments with four counter-arguments: 1) The benchmark precedents cited by the Settling Parties are appropriate, and TURN and Cal Advocates did not propose the use of other precedents; 2) TURN and Cal Advocates did not take into account the financial resources of PG&E as SED has done; 3) the Settling Parties had to account for their litigation risks; and 4) Cal Advocates' alternative methodology of calculating the proper penalty level is inapplicable and based on inaccurate information. (Settling Parties Reply Comments at 7-9.)

Finally, the Settling Parties address the arguments that the proposed settlement does not adequately acknowledge or address PG&E management's role and responsibility, but do so by focusing on the remedies that would be implemented under the proposed settlement. (Settling Parties Reply at 20.)

3. Proposed Settlement – Discussion and Analysis

In general, there is no significant disagreement about the underlying facts. PG&E has largely admitted to the various violations identified by SED, including the existence of inaccurate tickets, inaccurate reporting to this Commission, lack or delay of management response, and inadequate QEW support for locate and mark duties. The Settling Parties have stipulated to these facts in the proposed settlement, and the non-Settling Parties do not dispute them.

The dispute between the Settling Parties and the Non-Settling Parties focuses primarily on the level of penalties, the scope of remedial actions, and the allocation of costs between ratepayers and shareholders. In the proposed settlement there is some overlap between the penalties and remedial actions. Typically, penalties are intended to punish wrongful acts, and by doing so they seek to deter future wrongful acts. In theory, the entity that is punished will try to avoid being punished again in the future. Remedial actions, on the other hand, are intended to fix problems (and ideally fix the underlying causes of the problems), and are generally not intended to be punitive.

Here, the penalty and the remedial actions overlap, as the proposed settlement would have remedial actions undertaken by PG&E at shareholder expense, without PG&E being able to recover those costs from ratepayers. In essence, the idea is that the cost of the remedial actions would come out of PG&E's pocket, not recovered from ratepayers, similar to how a penalty paid to the state's General Fund would be paid. Nevertheless, because the underlying basis for penalties and remedial actions differs, and because the proposed settlement does establish some separation between the two, it is appropriate to look at them separately.

3.1. Level of Penalties

Based on the record before the Commission, there appear to be several problems with the penalty provision of the proposed settlement: 1) it is not clear how much PG&E would actually pay out-of-pocket; 2) the parties and the Commission cannot clearly determine what a substantial part of the money paid would be used for; and 3) the amount of the penalty appears to be too low for the number, duration and severity of the violations, including PG&E management's failure to correct the violations.

First, based on the record of the proceeding, it is not clear that PG&E shareholders will actually pay $65 million. While it is not certain, PG&E may be able to take a federal tax deduction for the $60 million that it would spend on its various Initiatives, which would result in a potential tax savings of approximately $16 million. (Transcript, Vol. 3 at 123-126.)[6] If so, then PG&E's total penalty would not be $65 million, but approximately $49 million. The proposed settlement does not address tax issues, and there is no indication that it took into consideration the possible deductibility of $60 million of its total $65 million in penalties. While the $5 million fine paid to the General Fund is clear and not deductible, that is not true of the other $60 million. Accordingly, the Commission cannot determine if the actual total amount to be paid by PG&E is $65 million or approximately $49 million.

Second, TURN and Cal Advocates raise valid questions about the actual value or benefit to ratepayers of a key provision of the proposed settlement, as it appears to be duplicative of a request for ratepayer funding in PG&E's 2020 General Rate Case (GRC) application. Cal Advocates observes that the proposed settlement calls for PG&E to maintain an additional 63 locate and mark personnel, for a total of 319; but on October 1, 2019, PG&E had 324 locate and mark personnel, all funded by ratepayers. (Cal Advocates Comments at 8-9.) Cal Advocates argues that since PG&E already has more locate and mark staff than called for in the settlement, the proposed settlement does not result in the hiring of additional locate and mark staff, but would allow PG&E to take credit for activities that they have already done. (*Id*. at 9.)

TURN makes essentially the same argument:

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[6] Based on the record in this proceeding, the current state of the tax law is unclear regarding the deductibility of those expenses. (*Id*.)

> If staffing levels are already beyond the level required by the Settlement, and PG&E has requested ratepayer funding for the staffing it needs starting in 2020 in the GRC, it is unclear how ratepayers will benefit from shareholders funding additional employees. […] If the division is already adequately staffed, ratepayers are currently paying for the implementation of one of the "enhancement initiatives" identified under the settlement. (TURN Comments at 6.)

TURN points out that the proposed settlement does not identify a mechanism for tracking the spending of any of the $60 million of shareholder funding, with $41.3 million of that earmarked for the additional 63 locate and mark personnel. (TURN Comments at 5.) Cal Advocates likewise notes that the proposed settlement does not analyze the overlap between the proposed settlement and PG&E's GRC, and PG&E's witness admitted that the parties had not done that yet. (Cal Advocates Comments at 10.)

The Settling Parties only partially address these criticisms, by clarifying that PG&E could not "take credit" for spending on Initiatives that have been funded by ratepayers. (Settling Parties Reply Comments at 4-6.) In other words, if the cost of the additional 63 locate and mark personnel is already being recovered in rates, that cost would not count towards the $60 million of shareholder funds that PG&E is obligated to spend. The hiring of the additional personnel apparently would, however, still count as achieving one of the identified Initiatives.

TURN and Cal Advocates raise valid concerns that the proposed settlement is unclear whether one of its main purported benefits is actually incremental to what PG&E is already doing, and accordingly it is unclear what benefit ratepayers would receive. An estimated $41.3 million of the $60 million to be spent on Initiatives is attributed to the hiring of additional locate and mark

personnel. (Settlement Agreement at 13.) If PG&E is already spending ratepayer money on the additional locate and mark staff, then by the terms of the proposed settlement, PG&E must increase its spending on other Initiatives to reach the $60 million level. If the estimate in the proposed settlement is accurate, that means that PG&E must spend $41.3 million on other Initiatives. It is not clear if the $41.3 million would be added to amounts estimated to be spent on the other Initiatives identified in the proposed settlement, or if it would be spent on new, not-yet-identified Initiatives. The only clarity is that PG&E and SED would seek to "reach agreement on the method of expending any remaining funds." (Settling Parties Reply Comments at 5, quoting Settlement Agreement at 14.) As a result, neither the parties nor this Commission have a clear understanding of what roughly two-thirds of the $60 million would actually be spent on.

Third, the total amount of the penalty is low relative to the scale of PG&E's wrongdoing. While the penalty amount is a negotiated "black box" settlement, the Settling Parties appear to rely heavily on two factors in their justification of the penalty level: prior Commission decisions that they describe as "benchmark precedents," and PG&E's financial condition. (Joint Motion at 28-33, Settling Parties Reply Comments at 7-8.) While prior Commission decisions can be relevant in determining an appropriate penalty, they do not provide a particularly useful benchmark in a unique case like this one.[7] Based on the information provided by the Settling Parties, the proposed settlement appears to be completely unmoored from the number of violations and the potential penalties that could be imposed for those violations.

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[7] In contexts where there are numerous cases with similar violations, there can be more standardization or "benchmarking" of penalty levels.

Cal Advocates uses a different methodology, based on the number and severity of the violations and an associated penalty amount, to calculate a significantly higher penalty amount. (Cal Advocates Comments at 5-7.) The Settling Parties argue that this methodology is inapplicable because the Settling Parties did not use that methodology (Settling Parties Reply Comments at 9), which is a rather circular argument.

The Settling Parties also argue that the calculations of Cal Advocates should not be used because they are based on the Bates White count of underreported late tickets, which the Settling Parties characterize as having "uncertainties," and accordingly cannot be considered the "correct" number, and Cal Advocates did not provide any evidence that 135,137[8] was the "definitive number" of unreported late tickets. (*Id*. at 9.) Given that the "uncertainty" around the number of tickets was the fault of PG&E, and that neither PG&E nor SED can testify to a "definitive number" of unreported late tickets, this criticism is misdirected.

In fact, the general approach used by Cal Advocates is reasonable for evaluating the amount of the penalty, as it provides some correlation between the number and scope of violations and the penalty amount. Starting with just the number of inaccurate tickets – 135,137 - each one of which is a violation, a penalty of $500 per ticket (the minimum penalty under section 2107) would support a penalty of $67.5 million.[9]

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[8] The Settlement Agreement contained the number 135,145, which was later corrected to 135,137.

[9] A penalty of $500 per ticket is appropriate for inadvertently or unintentionally inaccurate tickets; tickets that were intentionally falsified would deserve a higher penalty. Because the number of intentionally falsified tickets is unknown (but more than zero), a $500 per ticket penalty is on the low side.

Even more serious, however, is that PG&E senior management was apparently unaware of the inaccurate ticket problem for years, and took no action to remedy it from the end of 2012 until March of 2017, when it was pointed out to them via an AGA peer review. This means that there were at least four full years (2013, 2014, 2015 and 2016) and two months in which the problem was ongoing and unaddressed.[10] That minimum duration adds up to about 1,520 days. Under section 2108, for a continuing violation, each day's continuance is a separate and distinct offense. Accordingly, it would be appropriate to multiply a penalty amount by 1,520. The question remains what the appropriate daily penalty level for this should be.

According to the Joint Motion: "SED believes that the threat of physical and economic harm associated with each of the violations makes them severe." (Joint Motion at 20, 22.) While PG&E downplays the severity of the violations, PG&E management's inability to even realize the existence of a problem that its own employees were aware of is deeply troubling. It took PG&E senior management years to figure out that there was a problem, and when it learned of the problem in 2016 it failed to correct it and had to be reminded of it by an outside peer review in 2017. This is clearly more than a minimum-level $500 per day violation. While PG&E management's failure act may not deserve the maximum statutory penalty of $100,000 per day, even a penalty of $5,000 to $20,000 per day would result in a penalty of $7.6 million to $30.4 million.

PG&E management also failed to take action in response to the ongoing lack of availability of QEWs for locate and mark activities. According to SED, PG&E management was aware of QEW issues in 2013. (Ex. SED-10 at 7.) In

[10] This does not include the two years – from 2010 to 2012 – it took for PG&E to address and (partially) resolve the prior issue.

response to a 2014 dig-in, PG&E hired Exponent to perform a root cause evaluation. The report issued to PG&E by Exponent in 2015 identified a number of problems with PG&E's locate and mark program, including ineffective communication between electric and gas lines of business, among other deficiencies, and recommended corrective actions. (*Id*. at 6.) PG&E's Vice President of Gas Operations Jesus Soto was made aware of the Exponent Report around March 31, 2015. (*Id*. at 7.)

The Settlement Agreement, dated October 3, 2019 sets forth QEW-focused proposals, but does not indicate what actions, if any, PG&E took prior to that date to address the QEW issues. SED's testimony identifies steps that PG&E says it took to implement recommendations from the Exponent Report, but also found PG&E's efforts to be deficient. (*Id*. at 9-11.)

Again, PG&E had a safety-related problem with its locate and mark program that was ongoing and unaddressed, with the difference that PG&E senior management was aware of the QEW problem since at least early 2015. Like the under-counted or inaccurate ticket problem, this is an ongoing violation of section 451 subject to a daily penalty under section 2108. Based on the record before the Commission, PG&E was in violation for a minimum of five years (2013 through 2017), and potentially as many as eight years (2012 through 2019). Using the five-year minimum of 1,825 days, a penalty of $5,000 to $20,000 per day would result in a total penalty of $9.1 million to $36.5 million for the failure to provide adequate QEWs.

Even without the violations related to the San Jose dig-in and Exponent analysis that PG&E has stipulated to, a back-of-the-envelope estimation of the low end of the potential penalty faced by PG&E is significantly higher than the $65 million maximum penalty that PG&E would pay under the proposed

settlement.[11] Considering only the potential penalties for the inaccurate tickets, the missing QEWs, and PG&E's ongoing failure to address these problems, the sheer number of violations, the long-term failure of management to realize or understand that there were serious problems, and the safety risks directly presented by the problems would reasonably support imposition of a penalty of $84.2 million to $134.4 million or more.[12] A $65 million penalty is oddly low under the circumstances.

The Settling Parties argue that it is important to consider that the Settling Parties had to account for their varying litigation risks in order to reach an agreement. (Settling Parties Reply Comments at 8.) As a general matter, this is a correct statement, and if SED faced significant litigation risk this would support a reduced penalty level from what would be sought in litigation. Here, however, it is hard for this Commission to discern what significant litigation risks were faced by SED, as PG&E had already largely admitted to the alleged violations.[13] The Settling Parties do not identify any specific litigation risks faced by the individual parties, but from the record before the Commission, virtually all of the litigation risk was on PG&E. Accordingly, litigation risk does not provide a good basis for agreeing to a relatively low penalty.

The Settling Parties also identify the conduct of the utility as a relevant factor in determining the appropriate penalty level, and note that the

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[11] As described above, because of the potential tax implications, it is difficult to tell if PG&E would pay $65 million, or if it would actually pay $49 million.

[12] This amount is reached by adding together the potential penalties described above of $67.5 million for the number of inaccurate tickets, $7.6 million to $30.4 million for the failure of PG&E management to fix the late ticket problem, and $9.1 million to $36.5 million for the failure to provide adequate QEWs.

[13] There appears to be even less litigation risk to CUE, but there is potential benefit in the settlement through PG&E's hiring of additional employees.

Commission has previously considered the utility's conduct in: (1) preventing the violation; (2) detecting the violation, and (3) disclosing and rectifying the violation. (Joint Motion at 24, citing D.98-12-075.) Here, PG&E did not prevent multiple violations,[14] did not detect the violations,[15] and was at best questionable in disclosing and rectifying the violations. PG&E's conduct would support the imposition of a relatively high penalty.

It appears that for SED, PG&E's financial condition was more significant than the "benchmark" precedents cited by the Settling Parties. After citing to a number of cases, the Settling Parties go on to state:

> SED recognizes that past precedent is not completely instructive in determining the amount shareholders should pay in this case. Rather a combination of unique circumstances, such as those discussed in the "Financial Resources of the Utility" Section above provide a different calculus for determining the penalty that should be imposed.
>
> SED also carefully considered PG&E's ability to pay in this instance as best it could in agreeing to the sum total in the settlement. PG&E's pending bankruptcy is a factor to consider in assessing PG&E's ability to pay. SED respectfully requests that the factors identified here be considered when analyzing the consistency of this settlement with past precedent. (Joint Motion at 33.)

Language elsewhere in the Joint Motion confirms that PG&E's financial condition and resources was a major factor in determining the amount of the penalty:

> A unique combination of circumstances appear to affect the financial resources of PG&E at this point in time, including PG&E's filing for reorganization under Chapter 11 of the

[14] PG&E's protestations that the violations were inconsistent with company policy do not show that actual prevention occurred.

[15] When PG&E did detect violations, it failed to effectively address them.

> Bankruptcy Code. SED contends that Assembly Bill 1054 adds to the unique combination of circumstances. SED has carefully considered PG&E's ability to pay in this instance. In light of this, SED made concessions with regards to shareholder penalties that it might not otherwise have made, and instead focused efforts to apply shareholder funding toward safety-related corrective actions.
>
> The Settling Parties believe that the $65 million combination of penalty and funding of system enhancement initiatives here is sufficient in light of PG&E's financial condition. (Joint Motion at 29.)

This is the most clearly-stated basis provided by the Settling Parties in support of imposing a lower penalty than might otherwise be appropriate.[16] At the same time, it provides no detail as to how the penalty level in this proceeding relates to the bankruptcy, nor does it explain the effect of Assembly Bill 1054. It is not clear how the bankruptcy was factored in to the calculation of the penalty, or how the penalty level in this proceeding is affected by the scale or process of the bankruptcy, and there is little or no detail about PG&E's bankruptcy in the record of this proceeding. While the Settling Parties are correct about the limited usefulness of precedent in determining the penalty in this proceeding, their heavy reliance upon the financial resources of PG&E as a basis for the settlement is misplaced.

The Commission understands that settlement negotiations are confidential, and that the penalty amount was the result of those confidential negotiations, but the Settling Parties have provided only the most general and superficial

[16] PG&E has a clear interest in a low penalty; this language indicates that PG&E's financial condition, including its current Chapter 11 bankruptcy, influenced SED to agree to a lower penalty than it otherwise may have sought.

explanation of the result that was reached, and do not explain how that result is reasonable in light of the whole record and in the public interest.

3.2. Other Remedies

The Non-Settling Parties do not criticize the substance of the remedial actions set forth in the Settlement Agreement,[17] and OSA expressly supports them (OSA Comments at 9), but all of the Non-Settling Parties criticize their scope, with OSA making the most comprehensive argument that they do not go far enough. (OSA Comments at 8-14.)

OSA argues that: "PG&E has a collection of safety programs working independently of each other with no interconnection occurring or thoughtful analysis of potential issues." (*Id*. at 9.) Accordingly, while OSA supports the remedies and system enhancement initiatives in the proposed settlement, OSA goes on to state:

> However, the seven enterprise-wide remedies are narrow in focus and do not sufficiently address the foundational root issues that have sustained a poor safety culture at PG&E that in part led to the locate and mark program failures. Most importantly, these proposed remedies do not provide for the type of structural change that will address the deficient safety culture at PG&E. Specifically, the Proposed Settlement Agreement does not provide for an executive-level safety office, a comprehensive, company-wide safety management system, an accountability officer within PG&E, nor a safety advisory board to advise PG&E and help prevent future safety lapses such as occurred in the locate and mark program. Without a structural change to the organization, the public will remain at risk. (*Id*.)

OSA and TURN criticize the proposed settlement as inadequately acknowledging and addressing the failures of PG&E management. OSA argues

[17] Attached as Appendix A.

that: "The record demonstrates serious failures in management oversight of the locate and mark program and a deficient safety culture at PG&E." (OSA Comments at 6.) TURN concurs, and argues that the proposed settlement is inadequate in part because: "PG&E has not accepted the gravity of its managerial failures." (TURN Comments at 15.) According to TURN, "The Settlement does not assign any violations to the failures of upper level management and fails to implement meaningful management remedies." (*Id*.)

The Settling Parties respond that the proposed settlement specifically describes management's role, and that "PG&E management's knowledge of and role in the issues are acknowledged throughout the Settlement's stipulated facts." (Settling Parties Reply Comments at 11.) As proof, the Settling Parties excerpt a paragraph from the Settlement Agreement and highlight in bold text each mention of PG&E management, of which there are ten. Nine of the ten mentions, however, refer specifically to PG&E's Locate and Mark management; only one refers to PG&E's higher-level Gas Operations management. If anything, this tends to prove the point of OSA and TURN. As TURN points out:

> A company that truly prioritizes its statutory obligation to provide safe service would admit that its behavior was decidedly unacceptable, and that responsibility for allowing such behavior rests at the <u>top</u> leadership levels. (TURN Comments at 15, emphasis added.)

From the apparent willingness of the Settling Parties – PG&E, SED and CUE – to place the blame on PG&E middle management, it is not clear that there is a true commitment to implementation of company-wide measures "[D]esigned to foster safe environments where employees feel comfortable speaking up." (Settling Parties Reply Comments at 20.)

3.3. Modifications

Given the uncertainty as to the amount of the effective penalty to be paid by PG&E, the uncertainty about what the $60 million remedial portion of the settlement would actually pay for, the uncertainty about what ratepayers will be asked to fund, the relatively low penalty amount, and the lack of acceptance of responsibility by PG&E's top management, this Commission cannot find that the proposed settlement is reasonable in light of the whole record and in the public interest.

At the same time, however, there is record support (and no opposition) to the implementation of the specific System Enhancement Initiatives set forth in the Settlement Agreement, and this Commission has no desire to delay or otherwise hinder their implementation. The System Enhancement Initiatives identified in the Settlement Agreement are approved.

Cal Advocates argues that one of the System Enhancement Initiatives should be expanded:

> The Proposed Settlement Agreement establishes a two-year duration for compliance audits using field reviews to ensure adherence to locate and mark procedures, with the possibility of extensions that would be funded by ratepayers and subject to Commission approval. In light of PG&E managements failure to rectify problems with its locate and mark program for over five years, two years is insufficient to evaluate whether PG&E management is exercising adequate oversight to ensure adherence to locate and mark procedures. The Commission should not approve the Proposed Settlement unless it is revised to require four years of compliance audits using field reviews at shareholder expense. The anticipated cost for each year of the compliance audits using field reviews is $3 million, so an additional $6 million of shareholder funding should be identified to fund the cost of two

> additional years of the compliance audits. (Cal Advocates Comments at 8, footnote omitted)

Cal Advocates raises a valid point – given PG&E management's failure to recognize and address serious ongoing problems, it would be appropriate to extend the duration of the audits. Accordingly, we modify the proposed settlement to require four years of compliance audits rather than two years. The additional $6 million cost of these audits is added to the amount to be paid by shareholders, increasing the total shareholder funding to $66 million.

Other aspects of the proposed settlement, however, do not have the same level of consensus and support as the System Enhancement Initiatives, particularly the allocation and amount of the financial penalty. TURN and Cal Advocates provide alternative proposals on this issue.

On the cost of adding additional locate and mark staff, TURN argues:

> Given that the utility has met its staffing requirements under the Settlement, it is not clear how the Settling Parties intend for the utility to account for the proposed $41.3 million for additional L&M staff. Rather than develop a complicated accounting mechanism, the simplest solution would be to provide ratepayers a credit of $41.3 million against GRC revenues authorized by the Commission for Gas Distribution O&M in 2020-2022. (TURN Comments at 15-16.)

Assuming that TURN is correct that PG&E has already hired the additional staff, then under TURN's proposal the $41.3 million of the proposed settlement designated for that purpose would be returned to ratepayers, instead of PG&E and SED coming up with new initiatives on which to spend the money.

TURN also criticizes the proposed settlement for requiring ratepayers to fund the cost of the initiatives to the extent they exceed $60 million:

> The language of the settlement suggests, however, that PG&E will only fund the shareholder initiatives up to a cap of

> $60 million. To the extent that the costs of these initiatives exceed $60 million, PG&E acknowledges that it will seek ratepayer funding for the remaining costs. If SED's intent is that PG&E complete the identified initiatives as a remedy for the failures identified in its investigation, then the work should be completed solely at shareholder expense.
>
> The language of the Settlement Agreement § III.A.3 should be changed to reflect that PG&E is required to finish the system enhancement initiatives using shareholder funding. (TURN Comments at 17, footnote omitted.)

TURN also argues that the total amount of the financial penalty in the proposed settlement is significantly too low, and should be increased:

> TURN recommends that the Commission increase the fine PG&E will pay to the General Fund from $5 million to at least $70 million, for a total package of fines and shareholder-funded remedies of at least $130 million, which is twice the amount in the proposed Settlement. A total financial remedy of $130 million equates to approximately $962 for each of the 135,137 late tickets that PG&E failed to report to the Commission over 2012-2017. (TURN Comments at 21.)

Cal Advocates has somewhat similar recommendations as TURN, but with some differences:

> Rather than the $65 million in the Proposed Settlement Agreement, the Public Advocates Office recommends that the Commission require that the Settling Parties revise the Proposed Settlement Agreement to include fines and equitable financial remedies totaling $109.895 million. This number is calculated by assessing $500 for each late ticket that PG&E failed to report to SED (Violation 1); $50,000 for each dig-in associated with a late ticket (Violation 2); $20,000 per day for PG&E management's failure to remedy the inaccurate calculation of late tickets (Violation 3); and $500 per day for PG&E management's failure to provide the Exponent Report (Violation 4). This recommended financial remedy is conservative, because it uses the lowest amount permitted under Public Utilities Code Section 2107 for each late ticket

> not timely reported to the Commission, and each day the Exponent report was not provided; a midrange number for each day that PG&E management failed to remedy the inaccurate calculation of the number of late tickets; and the highest number for dig-ins associated with a late ticket.
>
> The Public Advocate[s] Office recommends that the Commission require the Settling Parties to allocate $5 million of total amount to the General Fund and to allocate the money identified for shareholder-funded system enhancement initiatives as provided in the Proposed Settlement Agreement with two exceptions. As discussed in Sections IV B and C below, the Proposed Settlement Agreement should include an additional $6 million in shareholder funding for compliance audits and should exclude the $41.3 million identified to maintain 63 locators until 2022. Given the Settling Parties' failure to demonstrate that the $41.3 million to maintain 63 locators is incremental to PG&E's locate and mark GRC request, the Commission should require the Settling Parties to revise the Proposed Settlement Agreement to credit ratepayers with the remaining $80.195 million as a credit to the Annual Gas True Up (AGT) over the next three years. (Cal Advocates Comments at 6-7, footnote omitted.)

Given the valid criticisms of the proposed settlement from the Non-Settling Parties combined with the lack of opposition to the actual initiatives proposed by the settlement, the best choice for the Commission is to modify the proposed settlement. Approving the proposed settlement as-is would not be consistent with the requirements that settlements are reasonable in light of the whole record and in the public interest. Rejecting the proposed settlement and requiring the parties to litigate would fail to take advantage of the unopposed Initiatives that they have agreed upon, and at this stage of the proceeding would not be an efficient use of time.

Accordingly, the proposed settlement is approved with the following modifications:

1) The identified System Enhancement Initiatives are approved, but with a longer compliance audit period of four years, as discussed above.

2) The total penalty amount is increased to $110 million. This is approximately the penalty level calculated by Cal Advocates, and lower than the penalty level recommended by TURN, both of whom used a more appropriate methodology for calculating the penalty level than the methodology used by the settling parties. As discussed in more detail above, this penalty level also falls in the lower mid-range of potential penalties that could reasonably have been imposed on PG&E.

    a. The amount of PG&E shareholder-paid initiatives that PG&E shall be liable for is increased from $60 million to $66 million to cover the cost of the longer compliance audit period.

    b. The penalty payment to the General Fund that PG&E shall be liable for is increased from $5 million to $44 million to cover the incremental difference between $66 million and $110 million.

3) In order to increase the specificity and certainty of the initiatives to be undertaken, only those initiatives specifically identified in the Settlement Agreement are approved.[18] PG&E and SED are not authorized to agree to the use of other initiatives for the purpose of expending any remaining shareholder funds. The amount of shareholder funding for each initiative that is counted towards the $66 million is capped at no more than 20% above the estimated funding level set forth in the

[18] While the identified initiatives may assist PG&E in its efforts to comply with applicable laws and regulations, they do not by themselves result in compliance with the law, such as would occur with activities like installing a piece of safety equipment or repairing substandard facilities.

Settlement Agreement or as modified by this decision. If at the end of four years PG&E has not spent $66 million in shareholder funds on the specified initiatives, the remaining balance shall be paid to the General Fund. If the costs of implementing the specified initiatives exceed the level of shareholder funding ordered in this decision, any additional ratepayer funding must be requested and found to be reasonable and appropriate in a general rate case.

4) Given the duties of the California Underground Facilities Safe Excavation Board (Dig Safe Board), established pursuant to Government Code section 4612.12, the reviews prepared under Sections III(B)(2) and III(B)(17) of the Settlement Agreement shall be provided to the Dig Safe Board. PG&E and SED are to consult with the Dig Safe Board regarding additional methods to improve communications between PG&E and excavators.

5) All PG&E board members and executives at or above the level of Senior Vice President are required to go on locate and mark program site visits to both the field and to PG&E locate and mark facilities at least once every three years.

As modified, the proposed settlement will be referred to as the "Amended Settlement."

The larger-scale recommendations of OSA are more appropriately addressed in the PG&E Safety Culture Investigation (I.15-08-019) and may be considered in that proceeding and are not adopted here. All non-confidential material admitted to the record in this proceeding is incorporated by reference into the record of I.15-08-019 (including the recommendations of OSA), and parties may cite to it in that proceeding, as the detailed factual evidence presented here could provide a potentially informative case study for use in that proceeding.

4. Election to Accept Modifications

Pursuant to Rule 12.4(c), the Commission may propose alternative terms to the parties to a settlement and allow the parties reasonable time to elect to accept such terms or request other relief. The modifications to the proposed settlement set forth in this decision constitute such "alternative terms," and result in an Amended Settlement. The Settling Parties have 20 days from the service of the Presiding Officer's Decision to file and serve a motion accepting the modifications to the proposed settlement or requesting other relief.

5. Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner and Peter V. Allen is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. PG&E undercounted numerous late Locate and Mark tickets over a period of years.
2. PG&E reported inaccurate counts of its late Locate and Mark tickets to the Commission.
3. PG&E failed to provide adequate Qualified Electrical Worker support for Locate and Mark activities over a period of years.
4. PG&E's top management was often unaware of problems with PG&E's Locate and Mark program, even though PG&E staff was aware of the problems.
5. Even when it became aware of problems with its Locate and Mark program, PG&E's top management failed to resolve the problems.
6. PG&E, SED and CUE have agreed to a proposed settlement with penalties totaling $65 million, with $5 million going to the General Fund and $60 million in shareholder-funded System Enhancement Initiatives.

7. TURN, Cal Advocates and OSA oppose the proposed settlement, arguing for more significant penalties.

8. The penalty level in the proposed settlement is too low for the number, nature and duration of PG&E's violations.

9. The Amended Settlement modifies the proposed settlement.

10. Evidence and proposals in this proceeding are relevant to the PG&E Safety Culture proceeding (Investigation 15-08-019).

Conclusions of Law

1. PG&E has violated Public Utilities Code section 451.
2. PG&E has violated Commission Rule 1.1.
3. The proposed settlement is not reasonable in light of the whole record.
4. The proposed settlement is not in the public interest.
5. The proposed settlement should be modified.
6. The proposed settlement as modified in the Amended Settlement is reasonable in light of the whole record.
7. The proposed settlement as modified in the Amended Settlement is in the public interest.
8. Non-confidential material admitted to the record in this proceeding should be available to Investigation 15-08-019.

O R D E R

IT IS ORDERED that:

1. The proposed settlement in this proceeding is approved with the following modifications (Amended Settlement):

    1) The identified System Enhancement Initiatives are approved, but with a longer compliance audit period of four years;

    2) The total penalty amount is increased to $110 million;

a. The amount of PG&E shareholder-paid initiatives that PG&E shall be liable for is increased from $60 million to $66 million;

b. The penalty payment to the General Fund that PG&E shall be liable for is increased from $5 million to $44 million;

3) Only those initiatives specifically identified in the Settlement Agreement are approved. The amount of shareholder funding for each initiative that is counted is capped at no more than 20% above the estimated funding level set forth in the Settlement Agreement or as modified by this decision.

4) If at the end of four years PG&E has not spent $66 million in shareholder funds on the specified initiatives, the remaining balance shall be paid to the General Fund. If the costs of implementing the specified initiatives exceed the level of shareholder funding ordered in this decision, any additional ratepayer funding must be requested and found to be reasonable and appropriate in a general rate case.

5) The reviews prepared under Sections III(B)(2) and III(B)(17) of the Settlement Agreement shall be provided to the California Underground Facilities Safe Excavation Board (Dig Safe Board). PG&E and SED are to consult with the Dig Safe Board regarding additional methods to improve communications between PG&E and excavators.

6) All PG&E board members and executives at or above the level of Senior Vice President are required to go on locate and mark program site visits to both the field and to PG&E locate and mark facilities at least once every three years.

2. All non-confidential material admitted to the record in this proceeding is incorporated by reference into the record of Investigation 15-08-019.

3. The Settling Parties have 20 days from the service of the Presiding Officer's Decision to file and serve a motion accepting the modifications to the proposed settlement or requesting other relief.

4. Upon Bankruptcy Court approval of the Amended Settlement in full, this proceeding is closed.

This order is effective today.

Dated ____________________________, at San Francisco, California.