



BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Application of Pacific Gas and Electric Company (U39M) for recovery of recorded expenditures related to wildfire mitigation and catastrophic events, as well as other recorded costs.

A.20-09-019
(Filed September 30, 2020)

**WILD TREE FOUNDATION COMMENTS IN
OPPOSITION TO PROPOSED SETTLEMENT**

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In accordance with the provisions of Rule 12.2 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Wild Tree Foundation (“Wild Tree”) respectfully files the following comments in opposition to the Proposed Settlement Agreement proposed by Applicants Pacific Gas And Electric Company (“PG&E”), Public Advocates Office (“CAL ADVOCATES”), and Federal Executive Agencies (“FEA”) (“Proposed Settling Parties”) in the *Application Of PG&E For Recovery Of Recorded Expenditures Related To Wildfire Mitigation And Catastrophic Events, As Well As Other Recorded Costs* (“Application”).

INTRODUCTION

The Proposed Settlement is not reasonable in light of the whole record, is not consistent with law, and would not be in the public interest. The Proposed Settlement should be thus be

denied Commission approval, intervenors should be provided the opportunity they have thus far been denied to file reply briefs, and the Commission should issue a Proposed Decision that takes into account the record and legal arguments made by parties in this case that clearly demonstrate that PG&E has requested significant costs that it is not legally entitled to recover.

Wild Tree objects to many of the costs sought by PG&E in this application but its analysis in its Opening Brief focused on the costs requested for Late 2019 Public Safety Power Shutoff Events (“PSPSs”); PSPS Program; January/February Storms; October Wind Event; and the Glen Cove, Bethel Island, and Camino Fires. Having no opportunity to file a reply brief, Wild Tree has not been able to state its full recommendations in this case. In addition to the reductions that Wild Tree recommended, Wild Tree supports the recommendations of other parties where they are additive to Wild Tree’s recommendations. Specifically, Wild Tree supports the recommendation of TURN for requested FHPMA and WMPMA costs (excepting the recommendation on PSPS costs which are for lower reductions than recommended by Wild Tree). Wild Tree also supports the reductions recommended by Thomas DelMonte for costs recorded in CEMA for the Tubbs Fire.

The Proposed Settlement is by no means a negotiated compromise for the disputed issues in this case. It is nothing more than an effort by like-minded parties to utilize the cover of a settlement to permit PG&E to evade reasonableness review of \$2 billion in costs. The Proposed Settlement would allow PG&E to collect a completely random amount for which the Proposed Settling Parties have provided no evidence or argument is justified and for which the other parties to this proceeding have demonstrated would just unjust and unreasonable.

PG&E elected to take a kitchen sink approach to this application - applying for rate increases for costs recorded in multiple, disparate accounts over the past decade under different laws and Commission decisions. PG&E's application includes costs from six different kinds of accounts for 22 discrete and distinct activities and events spanning the years 2011 to 2020. Each of the 22 activities and events have a unique fact pattern and require different types of analyses under the different applicable laws. This multi-faceted, complex application requires a review of significant depth and breadth to ensure the Commission abides by its duty to prevent imposition of unjust and unreasonable rates. Instead, the Proposed Settling Parties would have the Commission approve a "proposed settlement [that] is not specific to any particular account." This is wholly unacceptable and approval of such would be contrary to law and against the public interest.

ARGUMENT

I. STANDARD OF REVIEW

A. Settlements Must Be Reasonable In Light Of The Whole Record, Consistent With Law, And In The Public Interest

The Commission can only approve settlements that are "reasonable in light of the whole record, consistent with law, and in the public interest."¹ The Commission may reject a proposed settlement whenever it determines that the settlement is not in the public interest.² This is regardless of whether or not a settlement is contested.³

¹ Commission Rules of Practice and Procedure, Rule 12.1, subd. (d).

² Rule 12.4.

³ Rule 12.1, subd. (d).

A proposed settlement is put to the Commission through a motion. The settlement “[r]esolution shall be limited to the issues in that proceeding and shall not extend to substantive issues which may come before the Commission in other or future proceedings.”⁴ Furthermore, adoption of settlement “does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.”⁵

The Commission has long relied upon the factors used by the courts in approving class action settlements in reviewing settlements that affect a broad public interest such as all customers of a utility.⁶

The standard used by the courts in their review of proposed settlements is whether the class action settlement is fundamentally fair, adequate, and reasonable. The burden of proving that the settlement is fair is on the proponents of the settlement. In order to determine whether the settlement is fair, adequate, and reasonable, the court will balance various factors which may include . . . : the strength of applicant’s case; the risk, expense, complexity, and likely duration of further litigation; the amount offered in settlement; the extent to which discovery has been completed so that the opposing parties can gauge the strength and weakness of all parties; the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of class members to the proposed settlement.

In addition, other factors to consider are whether the settlement negotiations were at arm’s length and without collusion; whether the major issues are addressed in the settlement . . .⁷

⁴ Rule 12.1, subd. (a).

⁵ Rule 12.5.

⁶ D.88-12-083; D.09-12-045; D.16-12-065.

⁷ D.09-12-045 at 33-35, quoting D.88-12-083 [Citations Omitted].

B. A Contested Settlement is Subject to A More Detailed Review and Heightened Scrutiny

Parties to a proceeding may contest a proposed settlement by filing comments contesting all or part of the proposal.⁸ Wild Tree contests the Proposed Settlement through the filing of these comments in opposition. Where a settlement is contested, as here, the Commission engages in a “more detailed review” with “heightened scrutiny” of the settlement compared to an all-party settlement.⁹ “The Commission's policy is that contested settlements, or settlements presented by less than all the parties, should be subject to more scrutiny compared to an all-party settlement.”¹⁰

Under this heightened scrutiny, “a contested settlement is not entitled to any greater weight or deference merely by virtue of its label as a settlement; it is merely the joint position of the sponsoring parties, and its reasonableness must be demonstrated by the record.”¹¹ Critical to this review is consideration of opposing parties’ positions. “Central to our analysis here, where the proposed settlement is contested, is the relevant objections or concerns of opposing parties and the question of whether the settlement agreement provides a negotiated resolution of all the disputed issues.”¹²

⁸ Rule 12.2.

⁹ D.08-01-043 at p. 10fn2.

¹⁰ D.08-01-043 at p. 10 citing D.96-01-011 at pp. 39-40.

¹¹ D.02-01-041 at p. 13.

¹² D.16-12-065 at p. 7.

II. THE PROPOSED SETTLEMENT IS NOT CONSISTENT WITH LAW

A. THE COMMISSION HAS DETERMINED THAT PG&E VIOLATED ITS STATUTORY OBLIGATION PURSUANT TO SECTION 451 TO PROTECT PUBLIC SAFETY AND OTHER APPLICABLE LAWS, RULES, AND REGULATIONS WHEN IT UTILIZED POWER SHUT OFFS IN LATE 2019 AND RECOVERY OF COSTS INCURRED AS A RESULT OF THESE VIOLATIONS WOULD BE UNJUST AND UNREASONABLE

1. The Commission Found In I. 19-11-013 That PG&E's 2019 PSPS Events Violated PG&E's Statutory Obligation Pursuant To Section 451 To Protect Public Safety As Well As Many Of The Commission's Guidelines In D.19-05-042, Resolution Esrb-8, And Other Applicable Laws, Rules, And Regulations

In D.21-06-014 *Decision Addressing The Late 2019 Public Safety Power Shutoffs By Pacific Gas And Electric Company, Southern California Edison Company, And San Diego Gas & Electric Company To Mitigate The Risk Of Wildfire Caused By Utility Infrastructure*, the Commission found that “in 2019, when proactively shutting off electric power to mitigate the risk of catastrophic wildfire caused by their infrastructure . . . Pacific Gas and Electric Company (PG&E) . . . failed in certain respects to reasonably comply with the obligation to promote safety in Pub. Util. Code § 451 and with many of the Commission’s guidelines in Decision (D.) 19-05-042, Resolution ESRB-8 (July 12, 2018), and other applicable laws, rules, and regulations.”¹³ In regards to the Late 2019 PSPS events – which includes all October and November 2019 PSPS events, the Commission has found that PG&E “failed to comply with the obligation in Pub. Util. Code § 451 to promote safety of customers.”¹⁴ PG&E did not apply for rehearing of this decision and the deadline for such application has passed. One party has applied for rehearing but this application does not challenge the Commission’s determination that the investor owned

¹³ D.21-06-014 at p. 2.

¹⁴ D.21-06-014 at p. 56.

utilities failed its public safety obligations but instead seeks penalties and fines for the IOU's behavior, stating "the reasons given by D.21-06-014 for not prosecuting the substantial statutory violations perpetrated by the utilities in 2019 via penalties and fines is both illogical and unsupported by the evidentiary record."¹⁵

a. Balancing of Harm is Required for Any Utility Electing to Utilize PSPSs

PG&E states in its testimony that the Commission has acted so as to deem PSPSs needed and necessary: "In 2018, the CPUC issued Resolution ESRB-8 which confirmed the *need* for all California utilities to use PSPS (Public Safety Power Shutoff) as a means to prevent catastrophic wildfires. . . Under extremely high-risk conditions, it is *necessary* to deenergize some distribution lines to reduce the risk of vegetation or other flammable items contacting live wires and starting wildfires."¹⁶

In fact, the Commission has made it abundantly clear that PSPS are used solely at the election of the utility¹⁷ and that ESRB-8 reaffirmed long-existing requirements that PSPSs be used only as a last resort and only following a balancing analysis of public harm:

The framework, however, remained largely unchanged as established by the Commission in D.09-09-030 in 2009, (D.09-09-030 . . . D.12-04-024 . . . and Resolution ESRB-8. . .) Similarly, in 2019, the utilities' obligation to protect the public safety under Pub. Util. Code § 451 and § 399.2(a) remained unchanged.

For example, the Commission in D.19-05-042 reiterated the need for utilities to identify the public harms and then to balance those harms against potential wildfire mitigation benefits. (D.19-05-042, Appendix A at A24.) The Commission also reiterated that

¹⁵ I.19-11-013, *Application For Rehearing Of Decision D.21-06-014 By The Acton Town Council* (June 7, 2021), available at:

<https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=390886226> .

¹⁶ PG&E Testimony at p. 2-49:12-21 (emphasis added).

¹⁷ D.21-06-014 at p. 2 ("[E]lectric utilities that elect to rely on power shutoffs to mitigate wildfire risks must do so in a manner that is consistent with their fundamental statutory obligation to protect the public safety set forth in Public Utilities Code (Pub. Util. Code) § 451.")

utilities must only use power shutoffs as a last resort for wildfire mitigation.(D.19-05-042, Appendix A at A1.)¹⁸

This balancing of public harms, which PG&E failed to do in 2019, is the subject of over a decade of Commission precedent:

In summarizing these harms in 2009, the Commission’s position was clear: the use of proactive power shutoffs to “protect the public safety” from wildfire, even though authorized under Pub. Util. Code § 451, would require utilities to identify, account for, and mitigate the potential for public harm, stating:

[A] safe electric system is one which is operated to prevent fires. However, operating a safe system also includes the reliable provision of electricity. Without power, numerous unsafe conditions can occur. Traffic signals do not work, life support systems do not work, water pumps do not work, and communication systems do not work. As the California Legislature recognized in § 330(g), “[r]eliable electric service is of utmost importance to the safety, health, and welfare of the state’s citizenry and economy.” (D.09-09-030 at 61.)

In concluding, the Commission gave additional guidance to utilities on these power shutoffs, emphasizing that, “there is a strong presumption that power should remain on for public safety reasons.” (D.09-09-030 at 61.)¹⁹

b. PG&E was Unprepared to Rely on PSPS as Wildfire Mitigation Measure in 2019

In D.21-06-014, the Commission detailed “areas of substantial concern and large gaps in the information provided by the utilities” as described in the Safety and Enforcement Division’s *The Public Report on the Late 2019 Public Safety Power Shutoff Events* (April 30, 2020).²⁰ The Commission concludes that these issues “demonstrate that the utilities were unprepared, in many respects, to rely on proactive power shutoffs as a wildfire mitigation measure in 2019” and that the utilities’ “delay in implementation” contributed to the following failures:²¹

¹⁸ D.21-06-014 at pp. 25-26.

¹⁹ D.21-06-014 at p. 14.

²⁰ D.21-06-014 at pp. 44-45 citing to SED Report at pp. 81-82.

²¹ D.21-06-014 at pp. 44-45 (citations to SED Report omitted.)

(1) failure to consider public safety risks, as none of the utilities' 10-day post-event reports and progress reports included a comprehensive list of the public safety risks considered; . . .

(3) failure to prepare, as PG&E appears to have failed to coordinated with first/emergency responders and local jurisdictions regarding backup power needs;

(4) failure to coordinate with public safety partners, as PG&E and SCE did not include water and communications infrastructure providers in their emergency operations centers and, as a result, critical facilities lost power and may not have had the backup power necessary to maintain emergency communications or provide water to the public;

(5) failure to communicate critical information to public safety partners, as PG&E and SCE failed to provide to public safety partners with accurate Geographic Information System (GIS) shapefiles, depicting the potential de-energization areas, which are vital for public safety partners to fully understand the impact on critical facilities and to mitigate negative impacts on the public; and

(6) failure to install sufficient equipment, as all the utilities lacked sufficient equipment to promote situational awareness which could have resulted in uninformed decisions to de-energize.²²

The Commission found that these failures led to numerous serious issues. Quoting from the SED report, D.21-06-014 explains:

The main focus of the utilities' decision to de-energize appeared to be reducing wildfire risks, which, while important, was not weighed against the impact on the public [of shutting off power]. The apparent delay in conducting the proper research in order to meet the requirement to consider all public safety risks, in addition to potential wildfires, appears to have led to numerous issues..., such as losing critical water facilities and all methods of communication, ineffective notifications for people/communities with access and functional needs, inadequate resources provided to mitigate PSPS impacts, etc. (SED Report at 81.)²³

²² D.21-06-014 at pp. 44-45 (citations to SED Report omitted.)

²³ D.21-06-014 at pp. 49-50.

c. The Commission Has Determined that PG&E Did Not Engage in Required Harm Balancing and the Late 2019 PSPS Events were Not Necessary

The Commission specifically found that PG&E did not engage in the required analysis to balance public harms to determine if PSPSs were really necessary in Late 2019:

“Based on the evidence presented, all three of the utilities largely (1) failed to identify the possible safety risks resulting from an electric power shutoff – including obvious risks to school children, those medically dependent on electricity, as well as businesses and (2) failed to evaluate these safety risks as part of the analysis of weighing the benefits and risks/harms before deciding whether to shut off electric power to mitigate the potential for wildfire caused by utility infrastructure.

TURN’s analysis was particularly persuasive. TURN focused its resources on the single question of how the utilities “determined that the benefit of de-energization outweighed potential public safety risks.” TURN states that, at the conclusion of its discovery on this issue, it was:

“exceedingly clear that the IOUs have not complied with this requirement. In fact, the IOUs have not even attempted to comply with this requirement. Rather, as shown below, the IOUs have arbitrarily declared that the benefits of de-energization outweighed potential public safety risks without conducting any analysis.”(TURN October 16, 2020 Opening Comments at 2.)

The importance of this threshold question cannot be overstated. Non-compliance with this requirement may have resulted in more PSPS events than necessary in 2019, which would have been harmful to the public. PG&E, SCE, and SDG&E made little or no effort to even contest these findings by parties and the SED Report.

Accordingly, consistent with the SED Report and the statements by parties, we find that in late 2019, the utilities focused on the risks and harms related to wildfire, which, while critical, was only part of the necessary analysis. To uphold the utility obligation to promote safety under § 451 of the Pub. Util. Code and comply with the PSPS Guidelines, the utilities needed to identify, evaluate, weigh, and report the potential for harm to their customers resulting from a proactive de-energization. As such, we find that in late 2019, PG&E, SCE, and SDG&E failed to reasonably comply with the requirement in the 2019 PSPS Guidelines to identify, evaluate, and weigh the potential for harm to their customers resulting from a proactive de-energization. In failing to reasonably comply with the requirement to identify, evaluate, and weigh the potential for harm to their customers resulting from a proactive de-energization, PG&E, SCE, and SDG&E failed to comply with the obligation in Pub. Util. Code § 451 to promote safety of customers. In addition, we find that, due to the absence of sufficient detail, PG&E, SCE, and SDG&E failed to comply with the related 10-day post-event reporting requirement in the PSPS Guidelines on this issue. (D.21-06-014 at pp. 55-56)

2. In D.21-09-026, the Commission found that PG&E’s Behavior Regarding the Late 2019 PSPS Events violated Public Utilities Code Section 451, the Phase 1 Guidelines adopted in D.19-05-042 and Resolution ESRB-8 and Assessed Penalties for the Violations

In R.18-12-005, Order Instituting Rulemaking to Examine Electric Utility De-energization of Power Lines in Dangerous Conditions, the *Presiding Officer’s Decision On Alleged Violations Of Pacific Gas And Electric Company With Respect To Its Implementation Of The Fall 2019 Public Safety Power Shutoff Events* (“POD”) assessed a \$106.003 million penalty, offset by \$86 million in bill credits already provided by PG&E, resulting in a net penalty of \$20.003 million.²⁴ PG&E appealed the POD claiming that although its actions “fell short” in its “implementation of the Fall 2019 Public Safety Power Shutoff (PSPS) events,” that no penalties should be imposed.²⁵ In D.21-09-026, the Commission rejected all of PG&E’s arguments against the POD and assessed the same \$106.003 million penalty for the same reasons in the POD.

In D.21-09-026 and the POD, the Commission concurs with the finding in D.21-06-014 that PG&E “violated Public Utilities Code Section 451, the Phase 1 Guidelines adopted in Decision (D.) 19-05-042 and Resolution ESRB-8 based on its implementation of the Fall 2019 Public Safety Power Shutoff (PSPS) events.”²⁶ D.21-09-026 and the POD explains how PG&E’s violations caused significant physical, economic and, regulatory harm.

We find that the severity of the violations by PG&E during the Fall 2019 PSPS events is high. The violations caused significant physical and economic harm, while also harming

²⁴ R.18-12-005, *Presiding Officer’s Decision On Alleged Violations Of Pacific Gas And Electric Company With Respect To Its Implementation Of The Fall 2019 Public Safety Power Shutoff Events* (May 26, 2021) at p. 73.

²⁵ R.18-12-005, *PG&E Appeal of Presiding Officer’s Decision* (June 25, 2021).

²⁶ R.18-12-005, *Presiding Officer’s Decision On Alleged Violations Of Pacific Gas And Electric Company With Respect To Its Implementation Of The Fall 2019 Public Safety Power Shutoff Events* (May 26, 2021) at p. 2.

the regulatory process. Furthermore, the high number of violations, as well as their broad scope and repeating nature add to the severity of the violations.

The proceeding record is replete with evidence of physical harm caused by PG&E's violations. PG&E's violations put the health of many customers at risk and made an already stressful and fraught situation significantly worse. Many customers struggled to prepare for and endure the de-energization events due to often inaccurate, unavailable and confusing information from PG&E. Numerous Medical Baseline as well as access and functional needs customers lost power necessary for essential medical devices, adaptive equipment and refrigeration of medications. For many of these customers, the loss of power occurred without advanced notification and the difficulties in accessing and understanding the information regarding the de-energization events due to issues with PG&E's website and online information imposed additional burdens. Furthermore, these customers had to suffer these harms several times over long periods.

There is also extensive evidence in the record as to the economic harm suffered due to PG&E's violations. . . These costs and employee hours could have been avoided if PG&E had adequately prepared for and implemented the PSPS events.

We also find that there was substantial harm to the regulatory process. The Commission and the California Legislature have established requirements and obligations for PG&E as to how it conducts de-energization events and its duty to ensure public health and safety. PG&E's failure to abide by these requirements and obligations in implementing the de-energization events undermined the regulatory process.

Lastly, we find that the number and scope of PG&E's violations were high. Hundreds of thousands of customers across broad swaths of California were harmed by PG&E's violations. Various groups of customers, including Medical Baseline, access and functional needs, business, and local governments, were harmed. Many public safety partners were hampered in their efforts to plan for and respond to the de-energization events. The violations occurred over a significant period of time, with many customers affected for multiple days. Additionally, the violations as to advanced notification continued to occur in the subsequent two Fall 2019 PSPS events.²⁷

D.21-09-026 and the POD details PG&E specific failings in regards to both PSPS program as follows.

²⁷ *Id.* at pp. 51-52.

a. Inaccuracy of online maps

“[T]he outage maps’ inaccuracy and non-specificity subjected customers to unnecessary fear, harm, and expense.”²⁸

“PG&E also has an affirmative duty under Pub. Util. Code Section 451 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 ... the public.” The accuracy and specificity of the outage maps provided by PG&E did not meet these requirements.”²⁹

b. Failure to provide advanced notification

“Furthermore, Pub. Util. Code Section 451 imposes a requirement that PG&E “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 ... the public.” Advanced notification is an important service to promote the safety, health, comfort and convenience for potentially impacted customers by providing them with an opportunity to prepare and plan in advance of a de-energization event. The lack of advanced notification had significant health and safety consequences because some customers were unable to prepare for the de-energization events in Fall 2019. PG&E’s failure to provide advanced notification to the approximately 50,000 customers was a violation of Pub. Util. Code Section 451.”³⁰

c. Failure to provide advanced notification to medical baseline customers

“PG&E’s failure to provide advanced notification of de-energization events to approximately 1,100 Medical Baseline customers also violates Pub. Util. Code Section 451. Pub. Util. Code Section 451 requires all public utilities to provide and maintain “adequate, efficient, just and reasonable” services and facilities as are necessary for the “safety, health, comfort, and convenience” of its customers and the public. Advanced notification is an important service to promote the safety, health, comfort and convenience for potentially impacted Medical Baseline customers by providing them with an opportunity to prepare and plan in advance of a de-energization event.”³¹

d. Failure to prevent, detect and rectify violations

“We find that PG&E’s conduct in preventing, detecting and rectifying the violations was severely flawed. While we recognize the scale of the PSPS events presented challenges, we find

²⁸ *Id.* at p. 23.

²⁹ *Id.* at p. 22.

³⁰ *Id.* at p. 35-36.

³¹ *Id.* at p. 41.

that many of the issues with the Fall 2019 PSPS events could have been prevented with better preparation, testing and coordination by PG&E. PG&E used the de-energization process and therefore, should have prepared for the de-energization events to the best of its ability. The record demonstrates that this was not the case with respect to the Fall 2019 PSPS events.”³²

3. PG&E Has Not And Cannot Overcome Commission Findings That It 2019 PSPS Program And Events Violated The Law And Thus Ratepayer Recovery For Costs Of 2019 PSPS Program And Events Would Be Unjust And Unreasonable

a. PG&E Claims About the PSPS Program and Events Are Contradicted by the Commission Finding of PG&E’s Failures and the Physical, Economic, and Regulatory Harm It Caused

PG&E’s description of the PSPS program and events in its application and testimony are very much at odds with the findings made in I.19-11-013 and R.18-12-005. PG&E has made no showing in this proceeding that ratepayer recovery of costs for its many and varied failures, as described in Commission precedent, would be just or reasonable. PG&E contends that “extremely hazardous weather conditions occurred with unusual frequency in 2019, necessitating nine PSPS events”³³ and that “the PSPS events were successful.”³⁴ As explained above, the Commission has determined that the Late 2019 PSPS events were a public safety failure and that PG&E failed to demonstrate that the PSPS events were necessary.

PG&E describes its 2019 PSPS costs as “costs associated with supporting our ability to effectively manage PSPS events and outreach to customers regarding them.”³⁵ As described in great detail above, PG&E did not effectively manage PSPS events or outreach to customers. Any costs that PG&E has requested that it claims are associated with effective PSPS management and outreach should be disallowed.

³² *Id.* at p. 59.

³³ PG&E Testimony at p. 1-17:30-31.

³⁴ PG&E Testimony at p. 2-48:24-25.

³⁵ PG&E Testimony at p. 1-17:32-33.

PG&E’s claims regarding its notifications, maps, outreach, engagement, and customer preparedness do not reflect the Commission’s findings or reality. PG&E claims they succeeded at preparing customers for the PSPSs:

During the 2019 PSPS events, we implemented enhanced notifications and event-specific maps to communicate with customers, first responders, public safety partners, and critical services. Proactive, pre-wildfire season outreach and engagement plans helped prepare customers and communities for PSPS events.³⁶

The Commission has described in great detail how PG&E failed to do any of the things it claims in this paragraph. In particular, the Commission has found that PG&E failed to coordinate with first/emergency responders, public safety partners, local jurisdictions, and critical service providers³⁷; “failed to provide to public safety partners with accurate Geographic Information System (GIS) shapefiles, depicting the potential de-energization areas”³⁸ and “‘outage maps’ inaccuracy and non-specificity subjected customers to unnecessary fear, harm, and expense”³⁹; and failed to provide advanced notification of de-energization events to approximately 50,000 customers and 1100 Medical Baseline customers.⁴⁰

PG&E’s failures not only served to not prepare customers and communities for PSPS events, it “led to numerous issues. . . such as losing critical water facilities and all methods of communication, ineffective notifications for people/communities with access and functional needs, inadequate resources provided to mitigate PSPS impacts, etc.”⁴¹ Ratepayers should not

³⁶ PG&E Testimony at p. 2-21:25-29.

³⁷ D.21-06-014 at pp. 44-45.

³⁸ *Ibid.*

³⁹ R.18-12-005, *Presiding Officer’s Decision On Alleged Violations Of Pacific Gas And Electric Company With Respect To Its Implementation Of The Fall 2019 Public Safety Power Shutoff Events* (May 26, 2021) at p. 23.

⁴⁰ *Id.* at p. 41.

⁴¹ D.21-06-014 at pp. 49-50 quoting SED Report at p. 81.

have to pay any costs for PG&E's failed implementation of notifications, maps, outreach, engagement, or customer preparedness.

Similarly, ratepayers should not have to pay for PSPS program costs spent "on activities necessary to ensure readiness for PSPS events." PG&E's testimony states:

In 2019, we spent \$34 million on activities necessary to ensure readiness for PSPS events. These efforts include our vendor costs to prepare functionality and issue customer notifications during PSPS events, as well as all work conducted prior to PSPS events in order to help educate, prepare, and support our customers and communities, and prepare our personnel through field exercises and training.⁴²

This work supposedly included a "comprehensive community outreach strategy": "Prior to the 2019 peak wildfire season, PG&E designed and executed a comprehensive PSPS community outreach strategy to increase awareness of PSPS and readiness for extended power outages statewide."⁴³ PG&E did not ensure readiness but instead, was unprepared entirely to manage PSPS events as a result of its own implementation delays.

The Commission found that the SED Report "demonstrate[d] that the utilities were unprepared, in many respects, to rely on proactive power shutoffs as a wildfire mitigation measure in 2019."⁴⁴ "PG&E's violations put the health of many customers at risk and made an already stressful and fraught situation significantly worse. Many customers struggled to prepare for and endure the de-energization events due to often inaccurate, unavailable and confusing information from PG&E."⁴⁵

⁴² PG&E Testimony at p. 2-132:18-24.

⁴³ PG&E Testimony at p. 2-138:18-21.

⁴⁴ D.21-06-014 at pp. 44-45.

⁴⁵ R.18-12-005, *Presiding Officer's Decision On Alleged Violations Of Pacific Gas And Electric Company With Respect To Its Implementation Of The Fall 2019 Public Safety Power Shutoff Events* (May 26, 2021) at p. 51.

Had PG&E better prepared, the harm it caused could have been lessened or avoided altogether.

We find that many of the issues with the Fall 2019 PSPS events could have been prevented with better preparation, testing and coordination by PG&E. PG&E used the de-energization process and therefore, should have prepared for the de-energization events to the best of its ability. The record demonstrates that this was not the case with respect to the Fall 2019 PSPS events.⁴⁶

The Commission found no credence in any of PG&E's excuses for not being prepared, stating, "The utilities' arguments they were caught off guard in 2019, did not understand the extent of the possible public harm in 2019, or had inadequate time to better prepare for the events of 2019, are wholly unconvincing."⁴⁷

PG&E would have also ratepayers pay for its work that "improved" its notifications, specific maps, outreach, and engagement:

We improved communication with customers, first responders, Public Safety Partners, and critical services through notifications and event specific maps. Our pre-wildfire season outreach and engagement plans were also improved by notifications throughout the 2019 PSPS events.⁴⁸

It is unclear when exactly PG&E claims to have improved notifications, specific maps, outreach, and engagement but it was not in 2019 as these activities were all specifically called out as failures in both I.19-11-013 and R.18-12-005. For example, the POD states:

"It is also troubling that despite the notification issues with the October 9-12, 2019 PSPS event, PG&E again had notification issues during the October 23-25, 2019 and October 26-November 1, 2019 PSPS events, with approximately 520 Medical Baseline customers and 28,000 customers overall, not receiving advanced notification of the de-energization events. Given the serious impacts of the failure to provide advanced notification to

⁴⁶ R.18-12-005, *Presiding Officer's Decision On Alleged Violations Of Pacific Gas And Electric Company With Respect To Its Implementation Of The Fall 2019 Public Safety Power Shutoff Events* (May 26, 2021) at p. 59.)

⁴⁷ D.21-06-014 at p. 47.

⁴⁸ PG&E Testimony at p. 1-18:1-4.

approximately 600 Medical Baseline customers and 22,000 customers during the October 9-12, 2019 PSPS event, PG&E had notice of the notification issues and should have done more to prevent any such further issues.”⁴⁹

PG&E requests for the supposed improvements made in 2019 should be denied.

PG&E seems to think that ratepayer recovery for 2019 PSPS costs is somehow justified on the grounds that it will do better in the future:

“We understand that PSPS events cause significant and serious disruptions to the customers and communities we serve, and we aim to reduce the size and duration of these events. As described in various sections of this chapter, we will mitigate PSPS impacts to our customers in 2020 and beyond by using advanced meteorology models to forecast wildfire risk conditions more granularly, applying improved analyses to determine which parts of our system face high fire risk, and improving switching and sectionalization such that PSPS events affect smaller portions of the grid. We believe these measures can reduce by one-third the number of customers affected by future PSPS events. We have adopted a new goal of conducting inspections of the electric system and restoring service to 98 percent of PSPS-affected customers within 12 daylight hours of the “weather all-clear” declaration. We are also working to improve our coordination with state, local, and community agencies, and to provide extensive information and support to customers before, during, and after PSPS events.”⁵⁰

This is all fine and well and Wild Tree hopes that there is never a repeat of 2019 PSPS disaster but, PG&E’s hopes and dreams for the future are meaningless in so far as demonstrating that ratepayers should pay for 2019 costs. If anything, PG&E’s list of things that need to be fixed demonstrates that the 2019 PSPS were mismanaged. Costs of such gross mismanagement should not be born by ratepayers.

⁴⁹ *Id.* at p. 60.

⁵⁰ PG&E Testimony at p. 2-125:1-18.

b. PG&E’s Decision to Use PSPSs in 2019 was Arbitrary and Was not Based Upon Required Balancing of Harms

The Commission has established that PG&E failed to conduct required harm balancing to determine if 2019 PSPSs were really needed and instead, arbitrarily determined it should use PSPSs without considering the harm such action would cause.

While under appropriate circumstances, and consistent with the PSPS Guidelines, utilities may initiate PSPS events, the utilities in 2019 did not reasonably comply with the critical guideline to identify, evaluate, weigh, and report public risks. This requirement has existed since 2012 and is fundamental to the utilities’ legal obligation to protect the public safety under Pub. Util. Code § 451. Moreover, as we mentioned above, if utilities had engaged in this analysis, their implementation of the 2019 PSPS events may have been more targeted and the resulting harms to customers may have been reduced.⁵¹

Here, PG&E has made no showing to overcome the Commission’s precedential determination that it failed to conduct the required harm balancing analysis. It has not and cannot, therefore, prove that the PSPSs were necessary. Costs for unnecessary PSPSs should be born by shareholders, not ratepayers.

PG&E’s showing in this case has served only to demonstrate that PG&E actions in regards to 2019 PSPSs were truly arbitrary. For example, PG&E’s PSPS witness could not answer even the most basic question regarding PG&E’s own evidence in support of cost recovery for PSPS events. PG&E describes PSPS events as “the activities directly associated with proactively de-energizing our electric transmission or distribution lines following a determination of weather related imminent threats to power line assets and increased risk of catastrophic wildfire.”⁵² On the witness stand, PG&E’s witness that sponsored PG&E’s PSPS testimony was unable to answer basic questions about PG&E’s own Fire Risk Model stating that was supposedly used to

⁵¹ D.21-06-014 at p. 59.

⁵² PG&E Testimony at p. 2-120:1-4.

justify such determinations. She stated, “I admit to not being familiar with the exact value of the [Fire Potential Index] scale.”⁵³ When asked “What are the range of outage producing wind values – again, I’m looking for a number – that would be considered a low-outage probability?”⁵⁴ the witness responded, “And, similarly, I was never informed of any specific numerical values tied to those different categories.”⁵⁵

Furthermore, even if PG&E could answer basic questions about its own evidence, TURN has demonstrated that such evidence still does not demonstrate that the Late 2019 PSPSs were necessary:

PG&E’s testimony provides no justification for the scope and scale of each of the PSPS events it implemented in 2019. The only data presented by PG&E is max wind speeds for the entire day, which tells one nothing about whether the scope and scale of a given PSPS event was warranted, just that over a multi-day period there were high winds. PG&E references its “post de-energization reports” and its proprietary statistical model as justification for the scope and scale of its events, with essentially no objective criteria provided by which an outside party could determine whether the utility’s decision to shut down power was warranted. PG&E admits “[t]here are no specific wind speed thresholds used to determine de-energization for a distribution circuit.”⁵⁶

As discussed above, the Commission has found PG&E’s myopic focus on wildfire risks as a failure to promote safety as required by section 451. PG&E’s reliance on the sole justification of decreasing wildfire risk for the 2019 PSPS events is flawed for three additional reasons: 1.) PG&E’s 2019 PSPS events failed to prevent a catastrophic fire and 2.) “[A] safe electric system is one which is operated to prevent fires . . . [and] also includes the reliable provision of electricity.” (D.21-06-014 at p. 14 quoting D.09-09-030 at 61.); 3.) PG&E did not really act to

⁵³ Reporter’s Transcript, 167:12-14 (Vol.2) (PG&E – Maratukulam).

⁵⁴ *Id.* at 167:28 – 168:3.

⁵⁵ *Id.* at 168:6-7.

⁵⁶ TURN Testimony at p. 25:8 – 26:4 (citations omitted).

decrease fire risk, it acted to decrease its potential liability for wildfire while shifting costs and risk onto local governments, businesses, and individuals.

c. PG&E’s Use of PSPSs Was Not Effective for the Sole Stated Purpose of Preventing Wildfire Ignition; PG&E Ignited a Catastrophic Fire During a Late 2019 PSPS Event in a PSPS Designated Area

PG&E admits to its equipment having ignited 7 fires of greater than 10 acres during 2019 PSPS events⁵⁷ but omit any reference to the Camino and Glen Cove Fires which both were ignited October 27, 2019 during a PSPS event. As discussed further below, PG&E’s reports to the Commission indicate that its equipment is suspected to be involved in the ignition of those additional fire. Most notable of the fires ignited by PG&E equipment during a PSPS event is the Kincadee fire that burned 77,758 acres, destroyed 374 structures, injured 4 people⁵⁸, and for which felony criminal charges have been filed against PG&E (Sonoma County Superior Court, Case No. SCR-7452284, *Felony Complaint* (April 6, 2021). PG&E seems to think because it didn’t kill anyone in 2019, that the PSPS events were “successful,” stating in its testimony, “PSPS events were successful in that utility equipment caused fewer overall ignitions within HFTD areas and no fatal wildfires occurred in 2019.”⁵⁹ In answering questions about fires it ignited during 2019 PSPS events, PG&E attempts to downplay the gravity of the situation, stating, “Please note that only the Kincadee fire occurred in the area of the PSPS event.”⁶⁰

⁵⁷ WTF-01.

⁵⁸ CalFire, *Kincadee Fire Incident Page*, <https://www.fire.ca.gov/incidents/2019/10/23/kincadee-fire/> [as of July 19, 2021].

⁵⁹ Testimony at p. 2-48:24-25

⁶⁰ WTF-01.

Those who lost their homes and businesses in the Kincade Fire, the 100,000s forced to evacuate, and millions that breathed weeks of toxic air pollution from the fire's smoke would surely not describe PG&E's use of PSPS for the sole purpose of preventing wildfires to have been a success.

d. If There Was Any Necessity For The 2019 PSPS Events, It Was To Protect The Public From PG&E's Ongoing Vegetation Management Failures And Infrastructure That Was Poorly Designed And Constructed, Has Been Negligently Maintained, And Has Not Been Timely Replaced

PG&E's prolific use of PSPS in 2019 demonstrates that its electric system was not safe as PG&E was incapable of operating its electric system to prevent fires and reliably provide electricity.

[A] safe electric system is one which is operated to prevent fires. However, operating a safe system also includes the reliable provision of electricity. Without power, numerous unsafe conditions can occur. Traffic signals do not work, life support systems do not work, water pumps do not work, and communication systems do not work. As the California Legislature recognized in § 330(g), '[r]eliable electric service is of utmost importance to the safety, health, and welfare of the state's citizenry and economy.'⁶¹

Even if PG&E could somehow overcome the Commission precedent that declares that its Late 2019 use of PSPSs was not necessary, PG&E's PSPSs could only be shown to be necessary because the system was (and is) unsafe as a result of PG&E's acts and omissions in neglecting its infrastructure and failing to adequately manage vegetation.

The evidence of PG&E electric infrastructure failings is well known. It includes PG&E's reign of death and destruction from the 2015 Butte Fire, 2017 Wine Country Fires, 2018 Camp Fire, 2019 Kincade Fire, to the 2020 Zogg Fire, and possibly the 2021 Dixie Fire that burns as

⁶¹ D.09-09-030 at 61.

this is written. PG&E was found by the Commission to have committed a laundry list of violations for causing dozens of fires in 2017 and 2018 and is currently subject to enhanced oversight and enforcement process by the Commission for vegetation management failures. In February 2020, the U.S. District Court Judge overseeing PG&E's 2010 San Bruno explosion criminal probation found that PG&E had violated its probation by falling behind on efforts to trim trees near power lines. PG&E had not taken care of its electrical system and ratepayers should not be expected to foot the bill for the inevitable result of its mismanagement – an unsafe electrical system which, before, after, and during 2019, has caused fires and not reliably provided electricity.

e. Ratepayers Have Suffered Significant Economic Harm as a Result of PG&E Electing to Shift Risk from itself to Local Governments, Businesses and Non-profits, and Individuals by Shutting Down Power Throughout Late 2019 and Imposing Further Costs on Ratepayers for PG&E's Illegal Actions would Be Against the Public Interest

PG&E seeks \$270 million in PSPS-related costs in this application. Ratepayers have already paid the price for PG&E's unilateral decisions to shut off power in a haphazard and unsuccessful manner and should, by no means, be on the hook for PG&E's costs in cleaning up the mess it made. In particular, small businesses and our most vulnerable communities and individuals suffered from loss and insecurity of electricity needed for critical medical care, business losses from destroyed supplies, and inability to work and operate businesses.

The Governor declared a state of emergency in October 2019 due in large part to PG&E unilaterally deciding to shut off power. PG&E should not be able to recover costs for an emergency that was caused by its actions. It should most certainly not be able to recover costs to restore service that it shut down of its own accord thereby causing an emergency and causing significant economic harm. The emergency declaration states:

WHEREAS damage to electrical power lines during high wind events, including tree branches falling on lines, downed power lines, line slapping and other equipment failures, have ignited the state's deadliest and most destructive wildfires; and

WHEREAS electrical utilities, including Pacific Gas and Electric, Southern California Edison, and San Diego Gas and Electric, have independently decided to engage in de-energization of their power lines, known as a Public Safety Power Shutoff or PSPS; and

WHEREAS these Public Safety Power Shutoffs have resulted or will likely result in more than one million customers without electricity, including, but not limited to, households, businesses, public facilities, medical care facilities, schools, and critical infrastructure; and

WHEREAS the utilities' independent decision to engage in a widespread preemptive de-energization of power lines in response to this extreme weather event has resulted in significant and complex challenges for state and local governments to maintain public safety and essential services, and to mitigate impacts on vulnerable populations and critical infrastructure; and

WHEREAS continuity in education plays an integral role in the health and safety of students, and disruptions to educational services can leave students without access to food and physical safety in addition to associated effects on families and communities; and

WHEREAS there are numerous other impacts of the Public Safety Power Shutoffs to individuals, including those dependent upon electricity for medical equipment and refrigeration for medication; and

WHEREAS as a result of the extreme fire weather conditions causing, and combined with, utilities' Public Safety Power Shutoffs, the state as well as local governments have activated their respective emergency operations centers; and

WHEREAS in anticipation of the utilities' unprecedented use of Public Safety Power Shutoffs in an attempt to prevent utility-caused wildfires, the Legislature and I have provided one-time assistance to local governments to mitigate the impact on Californians by supporting continuity of operations and efforts to protect public health, safety, and commerce in affected communities . . .⁶²

The R.18-12-005 POD describes the economic harm PG&E caused:

⁶² PGE-05 at pp. 29-30. Executive Department State of California, *Proclamation of a State of Emergency* (October 27, 2019).

There is also extensive evidence in the record as to the economic harm suffered due to PG&E's violations. (Joint Local Governments Opening Brief, at 25; CLECA Opening Brief, at 8; SBUA Opening Brief, at 6-7.) Customers were burdened with costs due to spoiled food and medications, as well as costs for generators to mitigate the loss of power. Many customers had to bear the costs of travel and lodging to avoid the impacts of the loss of power. Businesses and their employees also suffered extensive economic harm. Approximately 160,000 small and medium businesses were impacted by lost revenue, spoiled supplies and increased response costs for items such as generators. Some large businesses had to shut down to avoid the serious safety risks posed by power interruptions. Local governments absorbed millions of dollars in response costs. Additionally, local government employees devoted extensive hours to responding to the Fall 2019 PSPS events. These costs and employee hours could have been avoided if PG&E had adequately prepared for and implemented the PSPS events.⁶³

The R.18-12-005 POD assesses a \$106 million penalty, offset by \$86 million in bill credits already provided by PG&E, resulting in a net penalty of \$20 million.⁶⁴ This penalty is assessed for failures of both PG&E's PSPS program and Late 2019 PSPS events:

- Unavailability of and non-functionality of PG&E's website during the October 9–12, 2019 PSPS event, for a total of \$400,000. An additional \$518,000 penalty is included for website violations for website, online maps, and secure data transfer portals.
- Inaccuracy of online maps, for a total of \$400,000.
- Inaccessibility of secure data transfer portals, for a total of \$100,000.⁶
- Failure to provide advanced notification of de-energization events to approximately 50,000 customers, for a total of \$98.185 million.
- Failure to provide advanced notification to Medical Baseline customers, for a total of \$6.4 million.⁶⁵

The penalty amount is less than half of the \$270 million PG&E is requesting from ratepayers in this application. The difference between the \$86 million bill credit and \$270 million or \$184 million is many orders of magnitude smaller than the economic cost that

⁶³ R.18-12-005, *Presiding Officer's Decision On Alleged Violations Of Pacific Gas And Electric Company With Respect To Its Implementation Of The Fall 2019 Public Safety Power Shutoff Events* (May 26, 2021) at pp. 51-52.

⁶⁴ *Id.* at p. 73.

⁶⁵ *Id.* at pp. 73-76.

ratepayers suffered as a result of PG&E's unilateral, imprudent decision to shut off power to millions throughout 2019.

Michael Wara Director of the Stanford University Woods Institute for the Environment Climate and Energy Policy Program and California's Commission on Catastrophic Wildfire Cost and Recovery Commissioner testified to the United States Senate Energy and Natural Resources Committee that he estimated the 2019 PSPS events cost ratepayers more than \$10 billion:

PSPS events, though they do dramatically improve safety, are likely very costly to the health of the economy, especially in smaller communities. My best estimate, using the Interruption Cost Estimator (ICE) tool developed by Lawrence Berkeley Laboratory (LBL) indicates that Pacific Gas & Electric (PG&E) PSPS events in 2019 cost customers more than \$10 billion – that's 0.3% of gross state product or 10% of overall economic growth this year in California. These impacts were highly focused on communities located in high wildfire risk areas of the state.⁶⁶

By using power shut-offs to decrease its own potential liability, PG&E engaged in a massive risk and cost shift onto local governments, businesses and non-profits, and individuals for which they will never be fully repaid. Should ratepayers be forced to pay the \$270 million requested in this application, they will be paying a net \$184 million for PG&E's bungled PSPS program and events. With economic harm in the billions, ratepayers will never truly be made whole. But, at the very least, they should not have to continue to pay PG&E for PG&E's mismanagement of not only its PSPS program and Late 2019 PSPS events, but for PG&E's long standing and ongoing mismanagement of its grid as a whole.

As described above, PSPSs should not be necessary and could only potentially be shown to be necessary as a result of PG&E's mismanagement of its grid. The 2019 PSPS events also imposed an unreasonable economic burden on ratepayers. Therefore, all PSPS-related costs should be denied as unjust and unreasonable. Therefore, Wild Tree believes that PG&E has not

⁶⁶ WTF-02 at p. 1.

demonstrated that it would be just and reasonable for ratepayers to pay costs for the \$12 million requested for the June and September PSPS events. That said, Commission precedent that PG&E failed to protect public safety when it utilized PSPS events is limited to the October and November PSPS events and so Wild Tree takes a neutral position on whether these costs should be granted in this proceeding.

For these same reason, Wild Tree objects to PG&E's request for Granular Sectionalizing and Automation and Protection costs as "costs relate[d] to our efforts to minimize the impact of PSPS events."⁶⁷ But, the installation and use of these technologies provides ratepayers independent value such as use in deployment of microgrids and improved fire safety so Wild Tree takes a neutral position on whether these costs should be granted in this proceeding.

B. COST RECOVERY FOR MANY OF THE CEMA COSTS WOULD BE UNREASONABLE

1. PG&E Has Not And Cannot Demonstrate Compliance With Requirement For CEMA Recovery For The January/February Storms, The October Wind Events, Or The Glen Cove, Bethel Island, Or Camino Fires

Recovery of any costs through a CEMA account requires compliance with the Code, Commission policies, and CEMA tariffs:

Catastrophic event costs are recoverable only after the Commission makes a finding of their reasonableness and approves them following an expedited proceeding in response to the utility's filed application (§ 454.9(b)). All of the approved CEMA applications have two common features: (1) a disaster declaration by a competent state or federal authority; and (2) citations to both Resolution E-3238 and § 454.9 for authority to recover reasonable costs on an expedited basis.⁶⁸

⁶⁷ PG&E Testimony at p. 2-49.

⁶⁸ D.07-07-041 at p. 17; *See also* D. 19-06-007

Section 454.9 states, “The costs, including capital costs, recorded in the accounts set forth in subdivision (a) shall be recoverable in rates following a request by the affected utility, a commission finding of their reasonableness, and approval by the commission. The commission shall hold expedited proceedings in response to utility applications to recover costs associated with catastrophic events.”⁶⁹

Under the Code⁷⁰, Resolution E-3238, and Commission precedent, CEMA review is complicated and is not analogous to review for other types of costs. As the Commission has explained, CEMA costs are subject to a multi-part review:

In this case, in addition to confirming that the funds for which [a utility] seeks recovery were spent on the stated repairs, a proper review requires us to determine whether, at a minimum: (1) the [event] qualify as a disaster for CEMA purposes, and, if so, the scope of the disaster; (2) the damage for which cost recovery is sought was related to that disaster; (3) the costs could have been avoided or reduced. . . and (4) the costs for which recovery is sought are reasonable and incremental to normal . . . facility repair activity, including whether the costs were or should have been included among the risks contemplated to be borne by the utility in current rates. It is only after making these determinations that we can properly evaluate the reasonableness. . .⁷¹

a. January February Storms

PG&E seeks costs for “a series of storm systems” over the course of two months in 2019 “bringing widespread rainfall, mountain snow, occasional gusty winds, and infrequent isolated thunderstorms.”⁷² This is precisely the type of event for which CEMA recovery is not permitted.

⁶⁹ Pub. Util. Code, § 454.9.

⁷⁰ Pub. Util. Code, § 454.9

⁷¹ D.01-02-075 at pp.19-20; see also D.19-06-007.

⁷² PG&E Testimony at p. 3-12:14-17.

In denying CEMA recovery to SCE for 1998 El Nino-driven storms, the Commission opined at length that CEMA treatment is likely not appropriate for “heavy rainfall occurring over a period of time”:

However, we are concerned that the application of this standard, while easily applied in most cases, is facile and subject to abuse in cases such as this, where the disaster is not easily quantified like an earthquake or a tornado or even a flood, and where it occurs regularly and with prior warning. El Nino-caused storms basically consist of heavy rainfall occurring over a period of time. Rain and heavy rain are regularly occurring events during California winters. Similarly, El Nino-caused storms routinely occur in California and regularly produce heavy winter rains. Unlike other disasters, there also is substantial advance notice of El Nino-caused storms, including a predicted intensity.

The CEMA was established after the 1989 Loma Prieta earthquake, specifically for the purpose of promoting quick repairs for unexpected events. Heavy winter rains in general and El Nino-caused rains in particular cannot be reasonably viewed as unexpected events. At the most, El Nino-caused rains can be considered unusual or infrequent, damage from which is generally not appropriate for recovery under the CEMA. In D.93-11-071 some utilities asked to expand the scope of disasters covered by Resolution E-3238 to include ‘unusual’ and ‘infrequent’ events. We declined, reiterating our intent to include recovery only for costs associated with ‘truly unusual, catastrophic events such as Loma Prieta.’ We further explained that we did so ‘because a utility’s authorized revenue requirement includes some provision for unanticipated costs which might include emergencies (*e.g.* storm damage allowance, etc.).’ (52 CPUC 2d 223, 227.) For similar reasons, we also rejected Edison’s proposal to extend Resolution E-3238 to costs incurred prior to and in anticipation of a catastrophic event. . .

The nature of a disaster caused by rainfall also raises other issues, such as the appropriate scope of the disaster, *e.g.*, the starting and ending dates, and the cause of the damage, *e.g.*, the contribution of prior rainfall outside the declared disaster, on the incidents that occur during and are attributed to the declared disaster.⁷³

This entire line of reasoning applies to the two month-long, high rainfall event that PG&E claims should be eligible for CEMA treatment – the event was recurring, known and predicted prior to the occurrence. The scope of event will be difficult to measure and impacts of the high rainfall event was likely worsened by land that had been burned the previous fall as a result of PG&E’s

⁷³ D.01-02-075.

criminal negligence. The January February storms are not appropriate for CEMA treatment and ratepayer recovery based upon recorded CEMA costs would be unjust and unreasonable.

b. October Wind Event

PG&E seeks costs for an alleged “declared emergency in CEMA eligible counties”⁷⁴ for what it calls the October Wind Event. CEMA recovery is only permitted for a declared disaster. In this case, a state of emergency was called due in large part, if not entirely, as a result of PG&E unilaterally deciding to shut off power. The emergency declaration states:

WHEREAS electrical utilities, including Pacific Gas and Electric, Southern California Edison, and San Diego Gas and Electric, have independently decided to engage in de-energization of their power lines, known as a Public Safety Power Shutoff or PSPS; and

WHEREAS these Public Safety Power Shutoffs have resulted or will likely result in more than one million customers without electricity, including, but not limited to, households, businesses, public facilities, medical care facilities, schools, and critical infrastructure; and

WHEREAS the utilities' independent decision to engage in a widespread preemptive de-energization of power lines in response to this extreme weather event has resulted in significant and complex challenges for state and local governments to maintain public safety and essential services, and to mitigate impacts on vulnerable populations and critical infrastructure . . .⁷⁵

PG&E should not be eligible for CEMA recovery for costs for an emergency that was caused by its own actions. It should most certainly not be able to recover costs to restore service that it shut down of its own accord thereby causing an emergency. As described in detail above, the Commission has already determined that PG&E “failed to comply with the obligation in Pub.

⁷⁴ PG&E Testimony at p. 3-14:19.

⁷⁵ PGE-05 at pp. 29-30. Executive Department State of California, *Proclamation of a State of Emergency* (October 27, 2019).

Util. Code § 451 to promote safety of customers”⁷⁶ when it used PSPSs during the October Wind Event. Yet, PG&E seeks to recover rates that include restoration of service to customers that it unreasonably shut off causing a state of emergency. It would be unjust and unreasonable for ratepayers to pay for PG&E’s costs after they already paid with billions in losses as a result of PG&E’s unilateral decision to shut off power.

c. Glen Cove, Bethel Island, and Camino Fires

PG&E provides scant information on the Glen Cove, Bethel Island, and Camino Fires for which it seeks ratepayer recovery but sufficient information is on the record to establish that these requests must be denied because they do not meet the requirements for CEMA recovery. If PG&E is permitted to recover based upon this application, the Commission would set dangerous and wrong precedents of permitting recovery of costs based upon a disaster declaration for a different emergency that was ordered in substantial part due to harmful action of the utility itself, and permitting recovery for costs from an event for which the Commission has not completed an investigation into fault and potential utility violations.

For all three fires, PG&E claims CEMA eligibility based upon October 27, 2019 emergency declaration “related to the declared emergency in CEMA-eligible counties.”⁷⁷ There was no disaster declared for these fires, instead a disaster was declared because PG&E unilaterally decided to shut down power and because of potential fire risk from high winds.

PG&E should not be permitted to rely upon a disaster declaration that was proclaimed in significant part because of the unilateral, harmful actions of PG&E. PG&E should also not be

⁷⁶ D.21-06-014 at p. 56.

⁷⁷ PG&E Testimony at p. 3-17:27; 3-19:10; 3-21:6.

permitted to rely upon a disaster declaration that clearly does not cover the events for which it seeks CEMA recovery.

PG&E's November 22, 2019 letter to the Commission providing notice that it would record costs for these fires inaccurately and misleading claims that the emergency was declared "due to fires." The letter states, "PG&E hereby provides notice that PG&E is recording costs associated with the repair of facilities and restoration of service associated with the 2019 Statewide Emergency issued, due to fires and extreme weather conditions, in the Catastrophic Event Memorandum Account (CEMA)."⁷⁸ The October 27, 2019 emergency declaration was not declared because of the Glen Cove, Bethel Island, and Camino Fires or because of any fires. PG&E's inaccurate and misleading notice is thus non-compliant with statutory and regulatory requirements. Ratepayer recovery under these circumstances would be unreasonable and unjust.

Additionally, the requirements of CEMA review cannot be met prior to completion of investigation into to cause, fault, and violations that a utility might have committed resulting in an event claimed under CEMA. PG&E has not put any information in the record regarding the status of Commission investigations into these fires although its stated in a data request response to Wild Tree that the Bethel Island Fire was caused by PG&E facilities based upon "CPUC Investigation" and the Glen Cove and Camino Fires causes were unknown and "still under investigation."⁷⁹ What is known is that PG&E equipment caused the Bethel Island Fire and may have caused the Glen Cove and Camino Fires.⁸⁰ The CPUC's *Staff Investigations on Certain*

⁷⁸ PGE-005 at p. 34.

⁷⁹ WTF-01 at p. 3.

⁸⁰ WTF-01 at p. 3; CPUC, *Staff Investigations on Certain Wildfires, Wildfire Incident Reports*, <https://www.cpuc.ca.gov/industries-and-topics/wildfires/wildfires-staff-investigations> [as of July 23, 2021.]

Wildfires webpage, which was updated July 13, 2021, lists the Bethel Island and Camino fires as “wildfires under staff investigation.”⁸¹

A required component of CEMA review is a determination on whether the costs could have been avoided or reduced.⁸² If a utility is at fault for causing a fire as a result of violations it committed, costs could clearly have been avoided if the utility had not committed the violations. But, this review cannot be conducted prior to the completion of a Commission investigation into a claimed CEMA event. Approval of CEMA costs prior to completion of CPUC investigation would thus be in violation of the Code⁸³, Resolution E-3238, and Commission precedent and these costs should, thus, not be approved.

III. THE PROPOSED SETTLEMENT IS NOT IN THE PUBLIC INTEREST

Review pursuant to the class action standards relied upon by the Commission to review proposed settlements makes it clear that the Proposed Settlement would not be in the public interest and must be denied.

A. Strength of Applicant’s Case

The Applicant has failed its burden of proof that it should recover the full amount, or 19% less than the full amount requested in its Application. Wild Tree, TURN, and Thomas Del Monte have each identified legal and factual grounds for which PG&E should be denied

⁸¹ CPUC, *Staff Investigations on Certain Wildfires, Wildfire Incident Reports*, <https://www.cpuc.ca.gov/industries-and-topics/wildfires/wildfires-staff-investigations> [as of July 23, 2021.]

⁸² D.01-02-075 at pp.19-20; see also D.19-06-007.

⁸³ Pub. Util. Code, § 454.9.

recovery, in part or full, for a variety of costs that far exceeds the 19% reduction. TURN, for example, recommends more than 50% of reductions, based upon analyses of individual activities and events recorded as FHPMA and WMPHA costs. Wild Tree and Thomas Del Monte identify additional reductions based upon requirements for CEMA recovery that together account for a reduction of more than 90% of requested CEMA costs.

PG&E has failed to overcome the demonstrations made by Wild Tree, TURN, and Thomas Del Monte that the law and the facts require that PG&E not be permitted to recover from ratepayers a significant – much more than across the board 19% - portion of the costs for which they have applied. These parties' arguments are based upon the specifics of the accounts and activities/events upon which the Application is based unlike the Proposed Settlement that entirely ignores the individual facts and applicable law of each account and each individual activity/event.

As Wild Tree will discuss further in its Reply Brief, Cal Advocates has also not demonstrated that its recommendations would result in just and reasonable rates. For example, Cal Advocates does not oppose PG&E's request for PSPS Program Costs; Cal Advocates does not oppose cost recovery for the five PSPS events occurring June 8-9, September 23-24, September 25-26, October 5-6, and November 20-21; and Cal Advocates' recommends reducing PG&E's recovery request by just 50% for 4 the four PSPS events that took place between October 9- November 1, 2019.

Cal Advocates states that its recommendation regarding the PSPS events is “based on PG&E's 2019 PSPS Reports.”⁸⁴ Cal Advocates' recommendations are apparently based entirely

⁸⁴ PAO-04 at p. 7.

upon PG&E's reports, which have been found by SED and the Commission to be incomplete and inadequate and evidence that PG&E failed to consider public safety risks:

“The SED Report is clear: the utilities failed to account for the safety risks to the public when deciding whether to shut off electric power in late 2019. (SED Report at 56-61.) The SED Report states that no evidence exists that the utilities identified the risks to the public, stating that “Nowhere in the three electric IOUs’ post-event reports and Progress Reports was there a discussion of a comprehensive list of public safety risks considered.”(SED Report at 81.) On this basis, the SED Report concludes that, in the absence of any effort to identify the risks to the public resulting from shutting off power, the utilities failed to comply with the Commission directive to weigh the risks against the benefits of a PSPS event.⁸⁵

The Commission adopted SED's findings, holding: “In addition, we find that, due to the absence of sufficient detail, PG&E, SCE, and SDG&E failed to comply with the related 10-day post-event reporting requirement in the PSPS Guidelines on this issue.”⁸⁶

Cal Advocate's recommendation that PG&E be awarded 50% for PSPS events that POA concludes were “poorly planned and executed and caused considerable inconveniences and safety risks to its customers”⁸⁷ is completely arbitrary. Why should PG&E be awarded 50% of their costs for doing a 100% job of failing to protect public safety? PG&E's actions put households, businesses, public facilities, medical care facilities, schools, and critical infrastructure at such risk that the Governor declared a state of emergency. Moreover, PG&E caused fires at the same time that the PSPS events resulted in “losing critical water facilities and all methods of communication, ineffective notifications for people/communities with access and functional needs” creating absurdly dangerous conditions for millions of people.

⁸⁵ D.21-06-014 at pp. 49-50.

⁸⁶ D.21-06-014 at p. 56.

⁸⁷ PAO-04 at p. 8:11-12.

Cal Advocate's recommendation that PG&E should fully recover from ratepayers the cost of some of the October and November PSPS events is also misplaced. The Commission's finding in two separate decision that PG&E failed to protect public safety when it decided to use PSPS in "late 2019" covers PSPS events between October 2, 2019 and November 26, 2019.⁸⁸ Of course, where Cal Advocates has failed to justify only a 50% reduction for these costs, it surely has also failed to justify an even lower reduction of 19%.

B. The Risk, Expense, Complexity, And Likely Duration Of Further Litigation And Stage Of The Proceeding

The parties to the Proposed Settlement, FEA and Cal Advocates, pose no risk of litigation which has been decreased, shortened, or affected in any way by the Proposed Settlement. The Proposed Settling Parties state, "The proposed settlement also resolves disputed issues in this matter without further litigation, which conserves the Commission's and Settling Parties' time and resources, which in turn benefits customers."⁸⁹ In fact, the Proposed Settlement settles none of the disputes in this proceeding and would serve to conserve no time or resources but would in fact increase the burden on the Commission and parties.

This proceeding is in its final stage, awaiting a Proposed Decision. Parties have filed Protests, prepared written testimony and rebuttal testimony, filed Opening Briefs and responded to various motions. Three days of evidentiary hearing were held and a record completed with submission of testimonies and other written evidence. At this stage in the proceeding - whereby

⁸⁸ D.21-06-014; D.21-09-026.

⁸⁹ Joint Motion Of The Public Advocates Office, Federal Executive Agencies, And Pacific Gas And Electric Company For Approval Of Settlement Agreement at p. 12.

the parties and the Commission have already committed the majority of the resources to this case - the Proposed Settlement would not decrease the burden on parties or the Commission.

The Proposed Settlement will make no difference whatsoever in regards to the Proposed Settling Parties and further litigation. FEA has played no role in this case other than to act as a cheerleader for PG&E. FEA never opposed PG&E's application so the Proposed Settlement does not decrease the risk that FEA would engage in litigation. Cal Advocates can't pursue litigation in the courts so the Proposed Settlement does not decrease the risk that Cal Advocates would pursue litigation.

The parties that pose of risk of litigation in this case oppose the settlement. Wild Tree and TURN, representing ratepayers interests, and PG&E ratepayer Thomas Del Monte oppose the Proposed Settlement as well as the Application and thus would be as likely, if not more likely, to litigate against the Proposed Settlement than a decision on the application. Where the Proposed Settlement approved, it would be appealed, thus making more work for parties and the Commission in appealing a presiding officer's decision rather than just addressing a decision on the merits.

C. Whether The Settlement Negotiations Were At Arm's Length And Without Collusion

The Proposed Settlement is, by no means, a negotiated resolution of all the disputed issues. Settlement negotiations were not at arm's length because the settlement represents a consensus among like-minded parties and will not produce a genuine resolution of the issues.

Settlements are not intended to represent such consensus; the Commission denied a contested settlement finding :

While we encourage parties to pursue settlement as a potential alternative to protracted disputes, we find that the outcome of this settlement process did not produce a genuine

resolution of the issues. Rather than being the product of an arms-length process, the Settlement Agreement appears to represent a consensus among like-minded thinkers.⁶¹

FEA's only role in this proceeding was to agree with PG&E and thus FEA is clearly a like-minded thinker that played no role in resolving any issues by signing onto the Proposed Settlement. FEA's Direct Testimony "support[s] the allocation of costs to the various customer classes using the methodology proposed by Pacific Gas and Electric Company ("PG&E")."⁹⁰ FEA's two-paged opening brief states that "FEA's primary position is that the Commission should adopt the allocation of costs among rate schedules as set forth by PG&E in its direct testimony."⁹¹

Although it recommended modest reductions, Cal Advocates has recommended that PG&E be granted recovery for all memorandum accounts and for the majority of all 22 activities/events for which costs were requested. Cal Advocates recommendations do not represent the negotiated resolution of all the disputed issues. Nothing is resolved by an across the board percentage reduction that addresses no factual issues whatsoever.

D. Major Issues Are Not Addressed In The Settlement

The Proposed Settlement doesn't address any issues, much less the major contested issues. The Proposed Settling Parties have simply applied an arbitrary percentage discount to all amounts requested in PG&E's application. The settlement does not distinguish between the six different kinds of accounts (FHPMA, FRMMA/WMPMA,CEMA, LCPIA, RRRMA) under which it seeks to recover \$2 billion assigned in widely varying amounts to 22 different activities

⁹⁰ FEA Opening Brief at p. 1.

⁹¹ FEA Opening Brief at p. 2.

and events spanning the years 2011 to 2020. The settlement is not based upon any stipulated facts and is contrary to the record. The Proposed Settling Parties would have the Commission ignore the record and the legal arguments against recovery and approve significant rate increases without even a nod to resolving any of the major disputed issues in the case. A contested settlement cannot be legally approved under these circumstances.

IV. THE PROPOSED SETTLEMENT IS NOT REASONABLE IN LIGHT OF THE WHOLE RECORD

The Proposed Settlement is entirely unmoored from the record. As described in the Proposed Settlement, “the proposed settlement is not specific to any particular account in A.20-09-019.”⁹² The parties to the Proposed Settlement were granted months longer than permitted under the Commission Rules to craft a proposed agreement. In that time, they could have surely come up with a proposal that touched, even so briefly, on the major disputed issues in this proceeding. Instead, the Proposed Settlement contains no citation to or discussion of the record other than PG&E’s direct testimony.

CONCLUSION

For the reasons stated herein, Wild Tree Foundation urges the Commission to deny approval of the contested Proposed Settlement and deny the Application. The Proposed Settlement does not meet the legal standard for a contested settlement and recovery of many of the requested costs would be unjust and unreasonable and contrary to law.

(signature page follows)

⁹² Joint Motion for Settlement at p. 11.

Respectfully submitted,

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