

# **ATTACHMENTS**

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

In the matter of:

**Pacific Gas and Electric Company – re Kincade Fire**

**ADMINISTRATIVE CONSENT ORDER**

**I. INTRODUCTION**

This proposed Administrative Consent Order (Consent Order) is agreed to by and between the California Public Utilities Commission’s Safety and Enforcement Division (SED) and Pacific Gas and Electric Company (PG&E) (collectively the Parties). As a result of negotiations between SED and PG&E, this Consent Order shall be presented to the Commission for adoption as a final Administrative Consent Order, pursuant to the authority in the Commission Enforcement Policy adopted by Resolution M-4846 (Policy). Under the Policy, SED may negotiate a proposed settlement with a regulated entity that has been alleged to have violated the law or Commission order, resolution, decision, or rule.

This Consent Order resolves the violations alleged against PG&E relating to the Kincade Fire, pursuant to the attached Settlement Agreement. What became known as the Kincade Fire ignited on October 23, 2019, at approximately 9:24 PM near the Geysers 9 & 10 power plant in Sonoma County. According to the California Department of Forestry and Fire Protection (CAL FIRE), the fire burned over 75,000 acres of land, destroyed approximately 374 structures, damaged approximately 60 buildings, and injured four firefighters before it was fully contained on November 6, 2019. In July 2020, CAL FIRE issued a press release stating that it had determined that the Kincade Fire was caused by PG&E’s electrical transmission lines.

The penalty amount in the Settlement Agreement was determined by factors including those set forth in the Policy’s Penalty Assessment Methodology (Policy, Appendix I). SED believes that a prompt, certain and effective settlement of this matter is in the best interests of the people of the State of California. This Consent Order shall become final and effective upon its approval by the Commission.

**II. RECITALS**

The relevant factual background, the violations alleged by SED and PG&E’s responses to the alleged violations are set forth in the attached Settlement Agreement.

### III. TERMS

The terms of this Consent Order are set forth in the attached Settlement Agreement.

Any penalty amounts to be paid pursuant to this Consent Order shall be paid in a manner consistent with the attached Settlement Agreement.

Payments to the General Fund shall be by check or money order and shall be made payable to the California Public Utilities Commission. PG&E shall write on the face of the check or money order: "For deposit to the State of California General Fund," and should identify that it relates to this Consent Order regarding the Kincade Fire. PG&E shall deliver payment to:

California Public Utilities Commission's  
Fiscal Office  
505 Van Ness Ave., Room 3000  
San Francisco, CA 94102

If PG&E becomes aware that it will be unable to perform any activity or submit any document within the time required under the attached Settlement Agreement, PG&E shall promptly inform SED. PG&E and SED may agree to an extension of time, to be memorialized in writing.

PG&E is responsible for compliance with this Consent Order and for ensuring that its subsidiaries, employees, contractors, consultants, subcontractors and agents comply with this Consent Order, notwithstanding the terms of any contract.

If PG&E fails to comply with the terms of this Consent Order and/or the Settlement Agreement, nothing in this Consent Order or the Settlement Agreement limits the authority of SED or the Commission to take any and all actions within their authority to ensure PG&E's compliance.


#### Public Notice

The parties understand that this Consent Order, including the attached Settlement Agreement, will be noticed for public review and comment prior to consideration by the Commission, consistent with the Public Utilities Code and the Commission's Rules of Practice and Procedure.


#### Regulatory Approval

The parties agree to seek prompt Commission approval of this Consent Order, including the attached Settlement Agreement, without modification.

DATE: 11/1/2021

By:   
Robert Kenney, Senior Vice President,  
Regulatory and External Affairs  
Pacific Gas and Electric Company

DATE: 11/1/2021

By:   
Digitally signed by Leslie  
Palmer  
Date: 2021.11.01 09:13:12  
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Lee Palmer, Director  
Safety and Enforcement Division

***SETTLEMENT AGREEMENT BETWEEN PACIFIC GAS AND ELECTRIC  
COMPANY AND THE SAFETY AND ENFORCEMENT DIVISION OF THE  
CALIFORNIA PUBLIC UTILITIES COMMISSION RESOLVING THE  
INVESTIGATION INTO THE KINCADE FIRE PURSUANT TO A  
PROPOSED ADMINISTRATIVE CONSENT ORDER  
(RESOLUTION M-4846)***

**SETTLEMENT AGREEMENT BETWEEN PACIFIC GAS AND ELECTRIC COMPANY AND THE SAFETY AND ENFORCEMENT DIVISION OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION RESOLVING THE INVESTIGATION INTO THE KINCADE FIRE PURSUANT TO A PROPOSED ADMINISTRATIVE CONSENT ORDER (RESOLUTION M-4846)**

Pacific Gas and Electric Company (“PG&E”) and the Safety and Enforcement Division (“SED”) of the California Public Utilities Commission (“CPUC” or “Commission”) are hereinafter collectively referred to as the Settling Parties. On the following terms and conditions, the Settling Parties hereby agree to settle, resolve, and dispose of all claims, allegations, liabilities, and defenses within the scope of the investigation into the Kincade Fire by SED and the Commission.

This Settlement Agreement is entered into as a compromise of disputed claims and defenses in order to minimize the time, expense, and uncertainty of an Order Instituting Investigation and/or other litigation. The Settling Parties agree to the following terms and conditions as a complete and final resolution of all claims made by SED and all defenses raised by PG&E relating to the Kincade Fire. PG&E has not brought claims against SED or the Commission relating to the Kincade Fire. This Settlement Agreement constitutes the sole agreement between the Settling Parties concerning the subject matter of the Kincade Fire.

**I. PARTIES**

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

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

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

**II. RECITALS**

**A. Stipulated Facts**

The Settling Parties have stipulated to the facts set forth below for purposes of this Settlement Agreement.

**Background Information Relevant to the Kincade Fire**

1. Calpine Corporation (“Calpine”) is a generator of electricity from natural gas and geothermal resources with commercial, industrial, and residential retail operations. Calpine owns and operates geothermal power plants at The Geysers

geothermal field located along the Sonoma and Lake County border. PG&E supplies electrical power to The Geysers as well as a grid interconnection point for Calpine's electrical power generation.

2. On October 5, 2005, Calpine informed PG&E that its Geysers 9 & 10 power plant had been "mothballed" for several years, and PG&E's 230kV transmission line, known as Geysers #9, remained connected to a disconnect switch in the power plant's switchyard. Calpine asked PG&E to remove the connection between the Geysers #9 line, located on PG&E Tower 001/006, and the disconnect switch in the Geysers 9 & 10 switchyard.
3. In May 2006, PG&E removed the connection from the Geysers #9 line to the disconnect switch in the Geysers 9 & 10 switchyard and installed new insulators and dampers on Tower 001/006. PG&E left the Geysers #9 line leading to The Geysers 9 & 10 power plant energized, but the last three spans no longer served any customer load or facilitated Calpine's power generation to the electrical grid. The jumpers for the Geysers #9 line on Tower 001/006 were configured as "open"—i.e., electrically connected at one end, rather than both ends, of the jumper. The length of the jumpers was reduced when the connection to the Geysers 9 & 10 power plant was removed, such that the jumpers terminated shortly after the jumper insulator string. The shortened jumpers remained attached to the jumper insulator string.
4. After PG&E removed the connection from the Geysers #9 line on Tower 001/006 to the Geysers 9 & 10 power plant, PG&E continued to inspect and maintain Tower 001/006 and the Geysers #9 line.

#### The Kincade Fire

5. On October 23, 2019 at approximately 9:24 PM, a fire ignited near the Geysers 9 & 10 power plant. According to the California Department of Forestry and Fire Protection ("CAL FIRE"), the fire burned over 75,000 acres of land, destroyed approximately 374 structures, damaged approximately 60 buildings, and injured four firefighters before it was fully contained on November 6, 2019. This fire became known as the Kincade Fire.
6. CAL FIRE investigated the cause of the Kincade Fire. In July 2020, CAL FIRE issued a press release stating that it had determined that the Kincade Fire was caused by PG&E's electrical transmission lines. According to CAL FIRE, the Kincade Fire resulted from a mechanical failure of the jumper attached to Tower 001/006 on the Geysers #9 line. According to CAL FIRE, the failure was caused by low-cycle fatigue of the jumper when the cable swayed in the wind. According to CAL FIRE, the low-cycle sway of the jumper increased when PG&E disconnected one end of the jumper from its connection to the Geysers Units 9 & 10 plant in May 2006. According to CAL FIRE, the failure resulted in the energized conductor wire swinging down and contacting the grounded box

frame portion of Tower 001/006. According to CAL FIRE, this produced sparks that fell from the box frame portion of Tower 001/006 and ignited the sparse, but receptive, flammable fuel bed below.

7. For purposes of resolving this investigation, PG&E does not contest CAL FIRE's determination that the Kincade Fire was caused by PG&E's electrical transmission lines.
8. Following the Kincade Fire, the final three spans of the Geysers #9 line from Tower 001/009 to Tower 001/006 were de-energized before being removed in August 2020.

B. Violations Alleged by SED

SED alleges the following violations in this investigation. As noted below, PG&E disputes each violation.

1. General Order 95, Rule 31.1- Design, Construction, and Maintenance – Electrical supply and communication systems shall be designed, constructed, and maintained for their intended use, regard being given to the conditions under which they are to be operated, to enable the furnishing of safe, proper, and adequate service.

SED alleges that PG&E violated this General Order by disconnecting the Geysers #9 line from the Geysers 9 & 10 power plant and leaving the jumper cables on Tower 001/006 attached to the ends of suspension insulators that were hanging freely from the tower arm, and that this allowed for more than typical movement of the suspension insulator string. Accordingly, SED asserts the Geysers #9 line, as left by PG&E, was not constructed, or maintained, for its intended use.

PG&E disputes this alleged violation. Among other things, PG&E contends the following: Prior to the Kincade Fire, there were no engineering standards, design drawings, or guidance documents in the transmission industry that referenced the specific Tower 001/006 jumper configuration or that recommended or discouraged that specific configuration.

2. GO 95, Rule 31.6 - Abandoned Lines – Lines or portions of lines permanently abandoned shall be removed by their owners so that such lines shall not become a public nuisance or a hazard to life or property. For the purposes of this rule, lines that are permanently abandoned shall be defined as those lines that are determined by their owner to have no foreseeable future use.

SED alleges that PG&E violated this General Order by failing to remove the final three spans of the Geyser #9 line from Tower 001/009 to Tower 001/006 that served no customers after PG&E removed the generation tie between the Geysers #9 line and the Geysers 9 & 10 power plant in May 2006. SED alleges that these



spans had been permanently abandoned. SED also alleges that PG&E exacerbated hazards to life and property by leaving the abandoned three spans of the Geysers #9 line energized and in place after May 2006.

PG&E disputes this alleged violation. Among other things, PG&E contends the following: Calpine indicated that the Geysers 9 & 10 power plant had been “mothballed” and continues to indicate that the plant is in “cold standby,” which PG&E understands to mean preserved for future use according to standard industry usage. Calpine continued to pay a monthly service charge to PG&E for service to the Geysers 9 & 10 power plant until the time of the Kincade Fire. PG&E continued to inspect and maintain the Geysers #9 line after May 2006. The final three spans of the Geysers #9 line from Tower 001/009 to Tower 001/006 had foreseeable future use and had not been permanently abandoned prior to the Kincade Fire.

3. California Public Utilities Code Section 451 - Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

SED alleges that PG&E violated Public Utilities Code Section 451 because violations of General Order 95, Rules 31.1 and 31.6 are *per se* violations of this statute. In addition, SED asserts leaving the last three spans of the Geysers #9 line energized for over 13 years after it was disconnected from the Geysers 9 & 10 power plant is by itself a violation of this statute.

PG&E disputes this alleged violation. Among other things, PG&E contends the following: PG&E continued to inspect and maintain the Geysers #9 line after May 2006, and the final three spans of the Geysers #9 line had foreseeable future use and had not been permanently abandoned prior to the Kincade Fire.

### III. AGREEMENT

To settle this investigation, PG&E shall (1) pay a monetary penalty of \$40,000,000.00 to the California State General Fund and (2) not seek rate recovery of capital expenditures in the amount of \$85,000,000.00 to remove permanently abandoned transmission facilities within its service territory, as explained in further detail below.

#### A. Monetary Penalty

PG&E shall pay a monetary penalty of \$40,000,000.00 to the California State General Fund. The amount will be paid on the following time frame: \$20,000,000.00 will be paid within sixty (60) days of the Effective Date of this Settlement Agreement, and \$20,000,000.00 will be paid within one hundred eighty (180) days of the Effective Date of this Settlement Agreement.

B. PG&E's Plan to Remove Identified Permanently Abandoned Transmission Lines

PG&E is planning to remove the conductor and structures (where applicable) associated with approximately 70 permanently abandoned transmission lines or portions of lines in its service territory, as required by General Order 95, Rule 31.6, over a ten-year period. As part of the settlement with SED, PG&E agrees not to seek rate recovery for costs of \$85,000,000.00 incurred by December 31, 2024, to remove permanently abandoned transmission conductor and structures (where applicable). Nothing in this Settlement Agreement precludes PG&E from seeking rate recovery for the costs incurred that exceed the initial \$85,000,000.00 to remove permanently abandoned transmission conductor and structures (where applicable) as part of PG&E's ten-year plan.

By April 1, 2022, PG&E will provide SED with a copy of its plan for removing the conductor and structures (where applicable) associated with the permanently abandoned transmission lines for which PG&E will not seek rate recovery and provide a list of the approximately 70 permanently abandoned transmission lines that will be removed over the ten-year period. Thereafter, PG&E will report to SED on its progress completing the work and the amounts incurred up to the \$85,000,000.00 approximately every six months or as modified by SED. After PG&E has reported to SED that it has incurred \$85,000,000.00 in connection with this work, PG&E will continue to report to SED annually on its progress removing the remainder of conductor and structures (where applicable) of the approximately 70 permanently abandoned transmission lines until December 31, 2031 or until the work is completed, whichever occurs first.

C. Effective Date

This Settlement Agreement shall become effective ("Effective Date") when Commission approval of a proposed Administrative Consent Order, filed by SED submitting this Settlement Agreement for approval as described in Resolution M-4846, becomes final.

IV. OTHER MATTERS

A. The Settling Parties agree to seek expeditious approval of this Settlement Agreement and the terms of the settlement, and to use their reasonable efforts to secure Commission approval of it without change, including by SED submitting a proposed Resolution and Administrative Consent Order containing this Settlement Agreement as well as any other written filings, appearances, and other means as may be necessary to secure Commission approval.

B. The Settling Parties agree to actively and mutually defend this Settlement Agreement if its adoption is opposed by any other party in proceedings before the Commission. In accordance with Rule 12.6 of the Commission's Rules of Practice and Procedure, if this Settlement Agreement is not adopted by the Commission, its terms are inadmissible in any evidentiary hearing unless their admission is agreed to by the Settling Parties. In the event the Commission rejects or proposes alternative terms to the Settlement Agreement, Settling Parties reserve all rights set forth in Rule 12.4 of the Rules of Practice and Procedure. The provisions of

Paragraph IV. A and B shall impose obligations on the Settling Parties immediately upon the execution of this Settlement Agreement.

C. SED shall not assert that any violations or conduct underlying the violations alleged or identified by SED herein are the basis for future disallowances, violations, or penalties, except to the extent PG&E seeks to recover in rates third-party claims costs arising from the Kincade Fire.

D. SED agrees to release and refrain from instituting, directing, or maintaining any violations or enforcement proceedings against PG&E related to the Kincade Fire based on the information: (a) known, or that could have been known, to SED at the time that SED executes this Settlement Agreement, or (b) substantially similar to the alleged PG&E violations related to the Kincade Fire referenced in this Settlement Agreement. This information will include any reports or findings made by CAL FIRE relating to the Kincade Fire.

E. SED agrees to refrain from instituting, directing, or maintaining any violations or enforcement proceedings against PG&E related to PG&E's failure to previously remove the approximately 70 transmission lines that PG&E has determined have been permanently abandoned, based on the information known, or that could have been known, to SED at the time that SED executes this Settlement Agreement, provided, however, that SED retains the right to investigate and enforce any failure to comply with this Settlement Agreement.

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

G. The Settling Parties have bargained in good faith to reach this Settlement Agreement. The Settling Parties intend the Settlement Agreement to be interpreted as a unified, interrelated agreement. The Settling Parties agree that no provision of this Settlement Agreement shall be construed against any of them because a particular party or its counsel drafted the provision. The representatives of the Settling Parties signing this Settlement Agreement are fully authorized to enter into this Settlement Agreement.

H. The rights conferred and obligations imposed on any of the Settling Parties by this Settlement Agreement shall inure to the benefit of or be binding on that Settling Party's successors in interest or assignees as if such successor or assignee was itself a party to this Settlement Agreement.

I. Should any dispute arise between the Settling Parties regarding the manner in which this Settlement Agreement or any term shall be implemented, the Settling Parties agree,

prior to initiation of any other remedy, to work in good faith to resolve such differences in a manner consistent with both the express language and the intent of the Settling Parties in entering into this Settlement Agreement.

J. This Settlement Agreement is not intended by the Settling Parties to be precedent for any other proceeding, whether pending or instituted in the future. The Settling Parties have assented to the terms of this Settlement Agreement only for the purpose of arriving at the settlement embodied in this Settlement Agreement. Each Settling Party expressly reserves its right to advocate, in other current and future proceedings, or in the event that the Settlement Agreement is rejected by the Commission, positions, principles, assumptions, arguments and methodologies which may be different than those underlying this Settlement Agreement, and the Settling Parties expressly declare that, as provided in Rule 12.5 of the Commission's Rules of Practice and Procedure, this Settlement Agreement should not be considered as a precedent for or against them.

K. The Settling Parties are prohibited from filing a petition for modification of a Commission decision approving this Settlement Agreement regarding any issue resolved in this Settlement Agreement.

L. This Settlement Agreement may be executed in counterparts.

M. The Settling Parties hereby agree that this Settlement Agreement is entered into as a compromise of disputed violations and defenses in order to minimize the time, expense, and uncertainty of an Order Instituting Investigation and/or other litigation.

N. Nothing in this Settlement Agreement relieves PG&E from any safety responsibilities imposed on it by law or Commission rules, orders, or decisions.

O. In reaching this Settlement Agreement, the Settling Parties expect and intend that neither the fact of this settlement nor any of its specific contents will be admissible as evidence of fault or liability in any other proceeding before the Commission, any other administrative body, or any court. In this regard, the Settling Parties are relying on Evidence Code Section 1152(a) and Public Utilities Code Section 315. Furthermore, such use of this Settlement Agreement or any of its contents in any other proceeding before the Commission, any other administrative body, or any court would frustrate and interfere with the Commission's stated policy preference for settlements rather than litigated outcomes. See Pub. Util. Code § 1759(a).

P. The Settling Parties agree that by entering into this settlement PG&E does not admit to any violations of the General Order provisions or related statutory requirements.

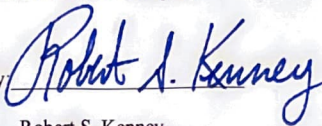
IN WITNESS WHEREOF, the Settling Parties hereto have duly executed this Settlement Agreement.

[Signatures immediately follow this page]

Dated: November 1, 2021

Pacific Gas and Electric Company

By



Robert S. Kenney  
Senior Vice President,  
Regulatory and External Affairs  
Pacific Gas and Electric  
Company

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Dated: November 1, 2021

Safety and Enforcement Division  
California Public Utilities Commission

By:  \_\_\_\_\_

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

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