

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

**Safety and Enforcement Division**

**Resolution SED-6  
December 2, 2021**

**RESOLUTION**

**RESOLUTION SED-6 APPROVING ADMINISTRATIVE CONSENT ORDER  
AND AGREEMENT OF THE SAFETY AND ENFORCEMENT DIVISION  
AND PACIFIC GAS AND ELECTRIC COMPANY REGARDING THE 2019  
KINCADE FIRE PURSUANT TO RESOLUTION M-4846**

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**SUMMARY**

In this Resolution, the California Public Utilities Commission (Commission) approves an Administrative Consent Order and Agreement between the Commission's Safety and Enforcement Division (SED) and Pacific Gas and Electric Company (PG&E) to resolve all issues involving the 2019 Kincade Fire. PG&E agrees to pay a \$40 million fine to the General Fund of the State of California and to not seek rate recovery of capital expenditures in the amount of \$85 million for the permanent removal of abandoned transmission facilities within its service territory, for a total of \$125 million.

**BACKGROUND AND DISCUSSION**

Resolution ESRB-4, issued in June 2014, directs all investor-owned electric utilities, including PG&E, to take remedial measures to reduce the likelihood of fires started by or threatening utility facilities.

In 2019, the Kincade Fire occurred in PG&E's service territory. SED conducted an investigation of the Kincade Fire and in its investigation report identified possible violations by PG&E of provisions of the California Public Utilities Code and the Commission's General Orders. SED's investigation report is attached as Appendix A.

Resolution M-4846, issued in November 2020, adopted the Commission Enforcement and Penalty Policy (Enforcement Policy) and authorized Commission staff to negotiate and propose an Administrative Consent Order to resolve an enforcement matter, subject to review and consideration by the Commission.<sup>1</sup>

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<sup>1</sup> Resolution M-4846, Findings and Conclusions #8; Enforcement Policy, p. 11.

SED and PG&E executed the attached Administrative Consent Order and Agreement, pursuant to and consistent with the Enforcement Policy, which resolves all issues related to SED's investigations of the 2019 Kincade Fire and any enforcement action SED might have brought related to or arising from the 2019 Kincade Fire. In accordance with the Enforcement Policy, the proposed settlement between SED and PG&E (collectively, Parties) is memorialized in the attached Administrative Consent Order and Agreement.

The Enforcement Policy provides that "the following general considerations should be evaluated as part of any proposed settlement to be submitted for Commission review: 1. Equitable Factors; 2. Mitigating circumstances; 3. Evidentiary issues; and 4. Other weaknesses in the enforcement action[.]"<sup>2</sup> The Parties explicitly considered these factors in their confidential settlement communications under Rule 12.6 of the Commission's Rules of Practice and Procedure. SED acknowledges PG&E's cooperation with SED on the negotiation of the Administrative Consent Order and Agreement, and SED explicitly considered a range of evidentiary and other matters that would bear upon its pursuit of enforcement actions seeking penalties or citations on disputed issues of fact and law. When taken as a whole, the Parties agree that the ACO amounts are within the range of reasonable outcomes had the matters proceeded to formal litigation.

### **COMMENTS ON DRAFT RESOLUTION**

The Draft Resolution was served on PG&E and other interested parties on November 2, 2021, in accordance with Cal. Pub. Util. Code § 311(g). Comments were received from the County of Sonoma (Sonoma), Calpine Corporation and its indirect, wholly-owned subsidiary Geysers Power Company, LLC (collectively Calpine), and jointly from The Utility Reform Network (TURN) and the Public Advocates Office at the California Public Utilities Commission (Cal Advocates).

Sonoma expressed concern about the risk of the remaining abandoned transmission facilities, and requested that more detail be made available about PG&E's workplan for those facilities, particularly any such facilities located in Sonoma County.<sup>3</sup> PG&E has communicated to SED that only two of the identified lines remain energized, and those are at distribution level voltages; all other facilities that it has identified as abandoned have been de-energized. The locations of the abandoned transmission facilities in PG&E's workplan will be made public, and PG&E is directed to communicate directly with Sonoma regarding any facilities in the workplan located in Sonoma County.

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<sup>2</sup> Enforcement Policy, p. 15.

<sup>3</sup> Sonoma Comments at 1-2.

Sonoma also expressed concern that the Commission's ACO process fails to provide an opportunity for input from impacted communities.<sup>4</sup>

Calpine's comments are limited to requesting clarification of certain details in the attachments to this resolution. Specifically, Calpine seeks to clarify that Geysers Power Company LLC (GPC) is the owner and operator of distribution lines 1144 and 1146, not PG&E, and that GPC is the owner and operator of the Geysers geothermal facilities, not Calpine Corporation.<sup>5</sup>

TURN and Cal Advocates argue that the use of the ACO process for a fire of the severity of the Kincade Fire is inappropriate, and that the Commission should have used an Order Instituting Investigation (OII) to open a formal proceeding. According to TURN and Cal Advocates, an OII would provide an opportunity for more parties to participate in the review of PG&E's actions, and to weigh in on the appropriate fines, penalties, disallowances or other measures that should be imposed on PG&E.<sup>6</sup>

TURN and Cal Advocates raise other issues as well, including that the settlement is essentially a "black box," making it difficult to determine the basis for and reasonableness of the proposed settlement, and whether PG&E may have already received rate recovery for the costs of removing the abandoned transmission facilities described in the settlement.<sup>7</sup> PG&E has communicated to SED that it will ensure that the \$85 million in removal costs are not recovered from ratepayers. The workplan to be submitted to SED will provide additional information about the Federal Energy Regulatory Commission (FERC) ratemaking on this issue.

Except as noted above, no changes to the Draft Resolution have been made in response to comments.

## **FINDINGS AND CONCLUSIONS**

1. Resolution M-4846 authorized Commission staff to negotiate and propose an Administrative Consent Order to resolve an enforcement matter, subject to review and consideration by the Commission.
2. SED and PG&E have engaged in settlement negotiations and, consistent with Resolution M-4846 and the Enforcement Policy, have memorialized their proposed settlement in the attached Administrative Consent Order and Agreement.

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<sup>4</sup> Id. at 2.

<sup>5</sup> Calpine Comments at 2.

<sup>6</sup> Joint Comments at 2-5.

<sup>7</sup> Joint Comments at 5-11.

3. SED and PG&E have agreed that the attached Administrative Consent Order and Agreement resolves all issues related to SED's investigations of and any enforcement action SED might have brought related to or arising from the 2019 Kincade Fire.
4. The agreed-upon fines and remedial actions appropriately resolve all issues related to SED's investigations and any enforcement action SED may have brought, are reasonable in light of the circumstances, consistent with the law, and in the public interest.

**THEREFORE, IT IS ORDERED** that:

1. The Administrative Consent Order and Agreement between SED and PG&E relating to the 2019 Kincade Fire is adopted.
2. This Resolution is effective today.

I certify that the foregoing Resolution was adopted by the California Public Utilities Commission at its regular meeting on December 2, 2021, and the following Commissioners approved favorably thereon:

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RACHEL PETERSON  
Executive Director