Decision 23-03-046 March 16, 2023

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine Electric Utility De-Energization of Power Lines in Dangerous Conditions.	Rulemaking 18-12-005

ORDER DENYING REHEARING OF DECISION 21-09-026

I. INTRODUCTION

On October 29, 2021, Pacific Gas and Electric Company (PG&E) filed an application for rehearing of Decision (D.) 21-09-026, *Decision on Alleged Violations of Pacific Gas and Electric Company with Respect to its Implementation of the Fall 2019 Public Safety Power Shutoff Events* (Decision).[1] The Decision found that PG&E violated Public Utilities Code section 451,[2] the Phase I Guidelines adopted in D.19-05-042 (Phase I Decision), and Resolution ESRB-8 based on its implementation of the Fall 2019 Public Safety Power Shutoff (PSPS) events. The violations included failure of PG&E's website, inaccuracy of its online outage maps, inaccessibility of its secure data transfer portals to its public safety partners, and PG&E's failure to provide advanced notification of de-energization events to approximately 50,000 customers and 1,100 Medical Baseline customers during the three PSPS events in Fall 2019.

In the Decision, we determined that a $106.003 million penalty was appropriate to deter future violations and for purposes of accountability. The penalty was offset by $86 million based on the bill credits PG&E had already provided to some electric customers in 2019, resulting in a net accessed penalty of $20.003 million. This

[1] All citations to Commission decisions after July 2000 are to the official pdf versions which are available on the Commission's website at: http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx.

[2] All statutory references are to the Public Utilities Code, unless otherwise noted.

includes a shareholder contribution of $1.1418 million to PG&E's Disability Disaster Access & Resources Program.[3] The penalty also includes a PG&E shareholder funded bill credit of $12.185 million extended to all electric customers in the geographic areas affected by the Fall 2019 PSPS events. Lastly, the penalty includes a PG&E shareholder funded bill credit of $6.4 million to the Medical Baseline customers in the geographic areas affected by the Fall 2019 PSPS events.

In its application for rehearing, PG&E argues that: (1) the Decision is not supported by substantial evidence; (2) the Decision's findings are not within the scope of the Order to Show Cause (OSC); (3) the Decision is not supported by the findings; (4) the Decision errs in adopting the Utility Reform Network's (TURN) recommendation regarding lost sales; (5) the penalties assessed were improper; and (6) the Decision does not apply the correct legal standard.

We have carefully considered PG&E's arguments and are of the opinion that the rehearing application should be denied.

II. DISCUSSION

A. The Decision is supported by substantial evidence.

PG&E argues that the Decision is not supported by substantial evidence. (*Pacific Gas and Electric Company's Application for Rehearing of Decision 21-09-026* (App. Rehg.), at pp. 2-12 and 14-18.) Its arguments focus on the PSPS notification process, and issues with its online maps and secure data transfer portals. (*Ibid*.) As explained below, PG&E's arguments are meritless.

In reviewing the Commission's factual findings, review is limited to whether those findings are "supported by substantial evidence in light of the whole record." (*Clean Energy Fuels Corp. v. Public Utilities Com*. (2014) 227 Cal.App.4th 641, 649.) Accordingly:

[3] The Disability Disaster Access & Resources Program provides qualifying customers access to backup portable batteries through grant, lease-to-own, or low-interest loan options.

> [i]t is for the agency to weigh the preponderance of conflicting evidence [citation]. Courts may reverse an agency's decision only if, based on the evidence before the agency, a reasonable person could not reach the conclusion reached by the agency. [Citations.] (*Id*.)

"'When conflicting evidence is presented from which conflicting inferences can be drawn, the [PUC's] findings are final.' [Citation.]" Therefore, "the Commission's findings are almost always treated as 'conclusive'" [citation]…." (*Pacific Gas & Electric v. Public Utilities Com*. (2015) 237 Cal.App.4th 812, 839.)

1. PG&E violated section 451, ESRB-8, and the Phase I Decision when it failed to notify customers.

PG&E presents numerous arguments for why it did not violate the California Public Utilities Commissions' (Commission) PSPS notification requirements. First, PG&E argues that it met the requirements of the Phase I Decision despite failing to notify customers who did not provide contact information. (App. Rehg. at pp. 6-9.) PG&E alleges that it was not required to notify those customers under the Phase I Decision because it acted reasonably in attempting to gather their contact information. (*Id*. at pp. 6-9.) This argument is not persuasive.

PG&E focuses on language in the Phase I Decision referring to customer contacts, which provides:

> The electric investor-owned utilities must ensure that customer contacts are up-to-date. The Commission recognizes that electric investor-owned utility customer points of contact are necessarily limited, for example a landlord-controlled account will not provide a method of contact for tenants. The electric investor-owned utilities must work with local jurisdictions to leverage all means of identifying and communicating with all people within a de-energized area, including people who may be visiting the area or not directly listed on utility accounts. The Commission expects that this will be an iterative process developed over time.

(D.19-05-042 at p. A14.) PG&E emphasized that the Commission expected this to be an iterative process developed over time and recognized that customer points of contact were necessarily limited. (App. Rehg. at p. 6.)

The Decision focuses on PG&E's lack of preparation. The Decision notes TURN's argument that PG&E's missed advanced notifications were unreasonable because PG&E was aware in September 2019 that it was missing contact information for up to 5 percent of its customers. (D.21-09-026 at p. 31, citing *Opening Brief of the Utility Reform Network* (TURN Opening Brief), October 30, 2020, at p. 5; Exh. TURN-03, DR TURN-04, Question 1.) TURN states that despite this knowledge PG&E did not provide in-person notification unless those customers were medical baseline customers. (*Ibid*., citing Exh. TURN-03, DR TURN-04, Question 1; Exh. PG&E-04 at p. 2.) Further, TURN stated that missed advanced notifications were unreasonable because PG&E did not test its methodology to identify impacted customers prior to implementation and PG&E conceded to this fact. (*Ibid*., citing TURN Opening Brief at p. 5; Exh. TURN-03, DR TURN-04, Question 2.) Finally, TURN asserted that PG&E should have been better prepared to identify impacted customers due to the effect of de-energizing transmission lines on distribution substations because PG&E has previously de-energized transmission lines. (*Ibid*., citing TURN Opening Brief at p. 6; Exh. TURN-03, DR TURN-04, Question 3; Exh. PG&E-02 at pp. 3-5.)

Additionally, the California Large Energy Consumers Association (CLECA) stated that two of its members with industrial facilities in PG&E's territory were not properly notified by PG&E of the October 9-12, 2019, PSPS event.[4] (D.21-09-026 at p. 31, citing CLECA Opening Brief at p. 5; Exh. CLECA-01 at pp. 3-5.)

The Decision held that PG&E failed to meet the requirements of D.19-05-042 when it did not provide advanced notification to approximately 50,000

[4] PG&E claimed that one of these facilities was notified, but CLECA argued that PG&E's citation to a 12-second call was not credible because the length of the call was insufficient to provide the notification information required by the D.19-05-0421 Guidelines. (D.21-09-026 at p. 31, citing CLECA Opening Brief at p. 6, D.19-05-042, Appendix A at p. A-17.)

customers. (D.21-09-026 at p. 35.) Under D.19-05-042, PG&E is required to provide specific information regarding the event, including boundaries, start time and date and estimated duration. (*Ibid*., citing D.19-05-042, Appendix A, at A7-A17.)

And, under Pub. Util. Code section 451, PG&E is required 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." (Pub. Util. Code, § 451.) The Decision concluded that advanced notification was an important service to promote the safety, health, comfort, and convenience of potentially impacted customers that enables them to prepare for the de-energization events. (D.21-09-026 at p. 35.) Therefore, PG&E violated Pub. Util. Code section 451. (*Ibid*.)

Second, the OSC addressed allegations that PG&E failed to provide advanced notification of de-energization events to Medical Baseline Customers, including approximately 500 Medical Baseline customers affected by the October 9-12, 2019 PSPS event, approximately 15 Medical Baseline customers affected by the October 23-25, 2019 PSPS event, and approximately 700 Medical Baseline customers affected by the October 26-November 1, 2019 PSPS event. (D.21-09-026 at p. 36.)

Several parties presented allegations that PG&E failed to notify Medical Baseline customers of the de-energization events in violation of requirements in the Phase I Decision. The City of San Jose (San Jose) argued that PG&E failed to meet the guidelines for notice to Medical Baseline customers as well as coordination with local jurisdictions and emergency responders during the October 9-12 PSPS event. (D.21-09-026 at p. 37; citing *Opening Brief of City of San Jose in the Order to Show Cause Against Pacific Gas and Electric Company for Violations Related to Implementation of the Public Safety Power Shutoffs in October 2019* (San Jose Opening Brief), October 30, 2020, at p. 13; D.19-05-042, Appendix A, at pp. A2, A7, A13, and A16.) San Jose stated that despite the readiness of its employees to perform door knocks for Medical Baseline customers that PG&E was unable to contact, it did not learn the identities of the impacted Medical Baseline customers until 30 minutes prior to the PSPS

event because PG&E insisted on routing the information through the County of Santa Clara. (D.21-09-026 at p. 37, citing San Jose Opening Brief at p. 13; Exh. CSJ-01 at p. 5.) San Jose also stated that when it received the data through the County of Santa Clara, it was difficult to decipher. (*Ibid.*) San Jose contended that notification of Medical Baseline customers continued to be problematic in the October 26, 2019, and the November 1, 2019 PSPS events. (D.21-09-026 at pp. 37-38, citing San Jose Opening Brief at p. 15.)

Cal Advocates argued that PG&E violated requirements in ESRB-8[5] and the Phase I Decision for failure to provide notice to Medical Baseline customers during the October and November 2019 PSPS events. (D.21-09-026 at p. 38, citing *Opening Brief of the Public Advocates Office* (Cal Advocates Opening Brief), October 30, 2020, at pp. 9-10.) Cal Advocates stated that "over 1,500 Medical Baseline customers who rely on electricity for their life-sustaining machines" only received notification from PG&E "when their power was suddenly and unexpectedly shut off." (D.21-09-026 at p. 38, citing *Reply Brief of the Public Advocates Office* (Cal Advocates Reply Brief), November 17, 2020, at p. 6; Exh. Cal Advocates-26, Table 3.)

Finally, the Center for Accessible Technology (CforAT) noted the inadequacy of notice for customers with medical vulnerabilities, language minorities, and other access and functional needs (AFN) customers. (D.21-09-026 at p. 38, citing *Center for Accessible Technology's Opening Brief on Order to Show Cause* (CforAT Opening Brief), October 30, 2020, at p. 3.)

The Decision noted that there was no dispute amongst the parties, including PG&E, that a substantial number of Medical Baseline customers did not receive advanced notification. (D.21-09-026 at p. 40.) Further, as required by the Phase I Decision, access and functional needs populations, which include Medical Baseline

[5] ESRB-8 requires that "[i]n anticipation of a specific de-energization event, the IOU shall: Notify customers of planned de-energization as soon as practicable before the event." (*Resolution Extending De-energization Reasonableness, Notification, Mitigation and Reporting Requirements in Decision 12-04-024 to All Electric Investor Owned Utilities*, July 12, 2018, at p. 7.)

customers, may require additional notification streams. (*Ibid*.) Although the Phase I Decision states that notification must occur "whenever possible," the Decision found that PG&E had not provided sufficient evidence that advanced notification for the 1,100 Medical Baseline customers was not possible.[6] (*Ibid*.) Furthermore, many of the causes of the missed notifications were attributable to PG&E's lack of preparedness and coordination with public safety partners and local jurisdictions. (*Id*. at pp. 40-41, citing PG&E Opening Brief at p. 15; San Jose Opening Brief at pp. 13-14.)

Also, the Decision emphasized comments made by CforAT that Medical Baseline customers are severely impacted by de-energization events given their reliance on electricity for vital medical needs, including medical devices and refrigeration for medications. (D.21-09-026 at p. 41, citing CforAT Opening Brief at p. 1.) Therefore, the Decision found that PG&E violated the Phase I Decision and Pub. Util. Code section 451 when it failed to provide advance notification to the 1,100 Medical Baseline customers. (*Id*. at p. 41.)

Considering parties arguments, PG&E's admission that it did not notify approximately 50,000 customers and 1,100 Medical Baseline customers, and PG&E's lack of effective preparation and coordination, it was reasonable for us to conclude that PG&E violated section 451, ESRB-8, and D.19-05-042. PG&E has not shown legal error in that determination.

Third, PG&E argues that it did not violate the Phase I Decision because its efforts to narrow the scope of the PSPS and changing grid conditions prevented it from providing advance notification to certain customers. (App. Rehg. at pp. 9-11.) However, as stated above, TURN argued that PG&E did not test its methodology to identify impacted customers prior to implementation and PG&E conceded to this fact.

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[6] The Decision notes that PG&E's efforts included: (1) additional and customized messaging and resources to its Medical Baseline customers, (2) a campaign to publicize and increase enrollment in the Medical Baseline program, (3) the provision of specific preparedness information designed for customers who rely on power for their medical devices, and (4) calls and mailers to request contact information. (D.21-09-026 at p. 39, citing PG&E Opening Brief at p. 13; Exh. PGE-01 at pp. 3-19 to 3-20.)

(D.21-09-026 at p. 31; citing TURN Opening Brief at p. 5; Exh. TURN-03, DR TURN-04, Question 2.) TURN also argued that PG&E should have been better prepared to identify impacted customers due to the effect of de-energizing transmission lines on distribution substations because PG&E has previously de-energized transmission lines. (*Ibid*., citing TURN Opening Brief at p. 6; Exh. TURN-03, DR TURN-04, Question 3; Exh. PG&E-02 at pp. 3-5.) Given PG&E's lack of preparation, PG&E has not shown that it was legal error to find that it violated the Commission's notification requirements.

Fourth, PG&E argues that "[t]he Phase One Decision expressly requires utilities to 'minimize the . . . size of de-energization events' when it is safe to do so." (App. Rehg. at p. 10, citing D.19-05-042 at p. 68.) PG&E states that it was not able to notify some customers when it de-energized portions of Fire Index Areas (FIA) rather than entire FIAs, in adherence with this requirement. (*Ibid*.) Therefore, it should not be penalized for not notifying those customers. (*Ibid*.)

The full text of the citation PG&E refers to appears in the context of the Commission requiring utilities, beginning in 2020, to submit reports with their annual Wildfire Mitigation Plans on lessons learned through the de-energization process. (D.19-05-042 at p. 68.) The Decision states the following:

> De-energization has far-reaching and significant impacts on affected communities. As such, although de-energization is a valuable tool to promote the public safety, it must be deployed by the utilities as a measure of last resort, and the utilities should continue to strengthen their infrastructure to minimize the need for and size of de-energization events. Under no circumstances may the utilities employ de-energization solely as a means of reducing their own liability risk from utility-infrastructure wildfire ignitions, and the utilities must be able to justify why de-energization was deployed over other possible measures or actions.

(D.19-05-042 at p. 68.)

PG&E's interpretation of the language above is incorrect. It does not absolve PG&E of its responsibility to notify its customers of de-energization events.

More importantly, it does not absolve PG&E of the responsibility to prepare ahead of time for potential challenges it may encounter during those events. Instead, it emphasizes the utilities' obligation to use PSPS only as a measure of last resort. Therefore, PG&E has not shown legal error.

Fifth, PG&E argues that seven percent of its missed customer notifications were due to situations where customers were temporarily assigned to a different circuit than their primary circuit. (App. Rehg. at p. 11.) For that reason, PG&E claims that it did not violate notification requirements when it failed to notify those customers and should not be penalized for them. (*Ibid*.) However, as stated above, TURN noted that PG&E did not test its methodology to identify impacted customers prior to implementation and PG&E conceded to this fact. (D.21-09-026 at p. 31; citing TURN Opening Brief at p. 5; Exh. TURN-03, DR TURN-04, Question 2.) TURN also argued that PG&E should have been better prepared to identify impacted customers due to the effect of de-energizing transmission lines on distribution substations because PG&E has previously de-energized transmission lines. (*Ibid*., citing TURN Opening Brief at p. 6; Exh. TURN-03, DR TURN-04, Question 3; Exh. PG&E-02 at pp. 3-5.) Therefore, PG&E has not shown that it was legal error to find that it violated the Commission's notification requirements.

2. PG&E violated section 451 and the Phase I Decision by providing inaccurate online outage maps.

PG&E argues that the Decision erred in finding that PG&E violated section 451 and the Phase I Decision due to providing inaccurate online maps. (App. Rehg. at pp. 14-16.) PG&E alleges that it took reasonable actions to provide accurate maps and provided the most detailed maps possible. (*Ibid*.) PG&E claims that because these maps where prepared in accordance with standards requested by the California Governor's Office of Emergency Services (Cal OES), with involvement of the Commission and the California Department of Forestry and Fire Protection (CALFIRE), they should be considered reasonable. (*Id*. at p. 16; D.31-09-026 at p. 21.) PG&E's argument is not persuasive.

Here, the Decision found that PG&E's online outage maps did not comply with the Phase I Decision or section 451. (D.21-09-026 at p. 22.) The Phase I Decision provides the following requirements as to the accuracy and specificity of information regarding the boundaries of an area subject to a de-energization event:

> For the 2019 wildfire season, the electric investor-owned utilities must, at the time of first notification preceding a de-energization event, make available a Geographic Information System shapefile via a secure data transfer process depicting the most accurate and specific information possible regarding the boundaries of the area subject to de-energization to all public safety partners whose jurisdictions or service areas will be impacted by the de-energization event.

(*Ibid*.)

Additionally, as explained above, section 451 requires PG&E 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." (Pub. Util. Code, § 451.) The Decision determined that the accuracy and specificity of the outage maps provided by PG&E did not meet these requirements. (D.21-09-026 at p. 23.)

The Decision outlines the frustration of both the Joint Local Governments and San Jose with the inaccuracy of the maps which made it difficult to determine where to focus their efforts resulting in wasted time and resources. (D.21-09-026 at pp. 18-21.) The Joint Local Governments argued that the online outage maps were inconsistent with the Commission's requirements because the maps were buffered and overstated the de-energization boundaries by as much as 20 percent. (*Id*. at p. 18, citing *Joint Local Government's Opening Brief* (Joint Local Government Opening Brief), November 2, 2020, at p. 13; Exh. JLG-01 at p. 4; Exh. CSJ-01 at p. 6.) San Jose expressed frustration when it detailed how the inaccuracy of the online outage maps negatively affected critical facilities and the community resource centers, when San Jose was forced to scramble to maintain the functionality of these facilities when the inaccuracy of the maps became apparent. (*Id*. at p. 20, citing San Jose Opening Brief at pp. 9-10; Exh. CSJ-01 at

pp. 6-7.) San Jose noted that PG&E only indicated that outage maps could overstate the outage area, but did not affirmatively state so and by how much. (D.21-09-026 at p. 20, citing San Jose Opening Brief at p. 9; Exh. JLG-01 at p. 4.)

The Joint Local Governments responded to PG&E's appeal of the presiding officer's decision (POD)[7] by stating that the conformance of outage maps to Cal OES specifications is "irrelevant to whether they were suitable to be used by public safety partners and the public for de-energization planning and response." (D.21-09-026 at p. 82, citing *Joint Local Governments' Response to Appeals of Presiding Officer's Decision* (Joint Local Governments Response to POD Appeals), July 12, 2021, at p. 3.) They also emphasized that PG&E had multiple options to produce maps with better information. (*Ibid*.)

The Decision determined that the outage maps did not meet the Phase I Decision requirement that outage maps depict the "most accurate and specific information possible." (D.21-09-026 at p. 82.) The fact that the outage maps may have complied with the preferences of Cal OES or other agencies is not determinative. (*Id*. at pp. 82-83.) Given the inaccuracy of PG&E's maps and the availability of options to produce more accurate maps, the Decision did not err in determining that PG&E violated section 451 and the Phase I Decision.

B. The findings are within the scope of the OSC.

PG&E argues that it was legal error to find that it violated section 451 and the Phase I Decision "because the secure data transfer portals were constructively inaccessible to its Public Safety Partners during portions of the October 9-12, 2019 PSPS event" because it falls outside of the scope of the OSC. (App. Rehg. at p. 16, citing D.21-09-026 at pp. 28, Finding of Fact (FOF) 8, 11, Conclusion of Law (COL) 8, 20, 29.) PG&E argues that the scope of the OSC asked whether the portal was "inaccessible" to Public Safety Partners, but instead the Decision incorrectly focuses on the fact that PG&E provided inaccurate or confusing information making the data transfer portal

[7] The POD was eventually voted out as D.21-09-026.

constructively inaccessible. (*Id*. at p. 17, citing D.21-09-026 at pp. 24-26.) PG&E claims that constructive inaccessibility is not within the scope of the OSC. (*Ibid*.) This argument is not persuasive.

Section 1701.1 (b)(1) requires the Assigned Commissioner to issue a scoping memo that describes the issues to be considered in the proceeding. (Pub. Util. Code, § 1701.1 (b)(1).) Here, the scoping memo for the OSC orders PG&E to explain why it should not be sanctioned because "PG&E's secure data transfer portal was inaccessible" to its Public Safety Partners during portions of the October 9-12, 2019 PSPS. (R.18-12-005, *Assigned Commissioner and Assigned Administrative Law Judge's Ruling Setting the Scope and Schedule of the Order to Show Cause Against Pacific Gas and Electric Company for Violations Related to the Implementation of the Public Safety Power Shutoffs in October 2019* (OSC Scoping Memo), December 23, 2019, at p. 3.)

As the Decision notes, the Joint Local Governments and San Jose state that they were able to login to the secure data transfer portals, but "the portals were constructively inaccessible because the information in the portals was missing, inaccurate and untimely." (D.21-09-026 at p. 24, citing Joint Local Governments Opening Brief at p. 21, Exh. JLG-01 at pp. 8-10; San Jose Opening Brief at p. 12.)

PG&E also includes its arguments against constructive accessibility in its appeal of the POD. (D.21-09-026 at p. 84, citing *Pacific Gas and Electric Company's Appeal of Presiding Officer's Decision on alleged Violations by Pacific Gas and Electric Company with Respect to its Implementation of the Fall 2019 Public Safety Power Shutoff Events* (PG&E Appeal of POD), June 25, 2021, at p. 18.) The Decision responded to that appeal stating that PG&E's definition of accessibility was unreasonably narrow and the "question of accessibility goes beyond whether the public safety partners could merely access the portals." (D.21-09-026 at p. 84.) The Decision states that the D.19-05-042 Guidelines require that specific information regarding a de-energization event must be provided to public safety partners and that did not occur. (*Ibid*., citing D.19-05-042, Appendix A, at pp. A16-A17.) This inaccessibility also did not meet the requirements under section 451 to "furnish and maintain adequate, efficient, just, and

reasonable service, instrumentalities, equipment, and facilities, … as are necessary to promote the safety, health, comfort, and convenience of … the public."

Given the information and arguments presented, the Decision correctly held that the scope of the OSC does not exclude constructive inaccessibility and the constructive inaccessibility of the secure data transfer portals violated section 451 and the Phase I Decision.

PG&E also claims that the finding in the Decision that it was in violation of section 451, ESRB-8, and the Phase I Decision because its website was unavailable for "significant portions" of the event was not within the scope of the OSC. (App. Rehg. at p. 18.) PG&E argues that because the scope of the OSC requires it to explain why it should not be sanctioned for its website being unavailable or nonfunctional during the "majority of the duration" of the October 9-12, 2019, PSPS event, the use of the term "significant portions" falls outside of the scope of the OSC. (*Ibid*., citing D.21-09-026 at p. 6, FOF 5; OSC Scoping Memo at p. 3.) This finding is not in error.

PG&E also included this argument in its appeal of the POD. The Decision responded by stating that "[t]he record reflects that PG&E's website was unavailable to and non-functional for many customers during significant portions of the October 9-12, 2019 PSPS event." (D.21-09-026 at p. 86.) And the Decision concluded that "[t]his unavailability and non-functionality severely impacted PG&E's customers and constitutes violations of Pub. Util. Code section 451, the D.19-05-042 Guidelines and Resolution ESRB-8." (*Ibid*.)

PG&E's focus on the term "majority" versus "significant portions" does not change the fact that it violated section 451, the D.19-05-042 Guidelines and Resolution ESRB-8. For scoping purposes, the term majority is appropriately broad as to allow for a finding that PG&E committed violations due to its website being unavailable and non-functional during significant portions of the October 9-12, 2019 PSPS event. Therefore, it was not legal error to make this finding.

C. The Decision is supported by the findings.

PG&E argues that the Decision is not supported by the findings because the findings did not reference PG&E's testimony about its efforts to obtain customer contact information and to notify customers.[8] (App. Rehg. at p. 8.)

> The PUC's findings and conclusions are sufficient if they provide 'a statement which will allow us a meaningful opportunity to ascertain the principles and facts relied upon by the [PUC] in reaching its decision.' (*Toward Utility Rate Normalization v. Public Utilities Com.* (1978) 22 Cal.3d 529, 540.) In other words, 'a complete summary of all proceedings and evidence leading to the decision' is not required. (*Ibid*.)

(*Clean Energy Fuels Corp. v. Public Utilities Com*., 227 Cal.App.4th 641, 659, citing *Toward Utility Rate Normalization, supra,* 22 Cal.3d 529, 540.)

The Decision's Findings of Fact 14 through 16 state that PG&E failed to provide advance notification of de-energization events to approximately 50,000 customers during the three Fall 2019 PSPS events, including 1,100 Medical Baseline Customers, and that PG&E acknowledged its failure to provide advance notification to these customers. (D.21-09-026 at p. 91.) Although the findings of fact do not specifically mention PG&E's testimony about its efforts to obtain customer contact information and to notify customers, that is not required. If an issue is discussed in the text of the Decision, it is not legal error if the Commission chooses to not repeat that discussion in separate Findings of Fact. (*Clean Energy Fuels Corp., supra,* 227 Cal.App.4th 641, 653.) Here, the Decision discusses PG&E's efforts to notify customers in the text of the Decision, but finds that they were insufficient. (D.21-09-026 at pp. 30-41.) The findings above allow for a meaningful opportunity to ascertain the

[8] PG&E also claims that the Decision is silent on what additional things PG&E could have done to notify customers. (App. Rehg. at p. 8.) However, this is not accurate. The Decision is saturated with information from participating parties describing additional actions PG&E could have taken prior to and during the PSPS events.

principles and facts we relied upon to reach our decision. Therefore, there is no legal error.

D. The Decision correctly adopted TURN's recommendation.

PG&E argues that the shareholder penalty for lost sales of $985,000[9] recommended by TURN was unwarranted and duplicative of penalties covered by Investigation (I.)19-11-013. (App. Rehg. at p. 12-13.) We correctly rejected this argument when it was raised in PG&E's appeal of the POD. (D.21-09-026 at pp. 80-81.)

TURN's Opening Brief explained the need for the penalty as follows:

> Despite repeated attempts from TURN, PG&E has declined to provide an estimate of the lost sales associated with the PSPS events. (Exh. TURN-02 at p. 11, citing DR TURN-01, Q03, Q03Supp.) As a matter of policy, TURN recommends that PG&E should not be able to recover the lost sales during the PSPS events for customers who did not receive proper notice. If PG&E were allowed to seek recovery (or true-up) of lost sales for these customers, the end result would be that these customers not only did not receive proper notification, they were shut off, and now they have to pay extra for service they did not receive. PG&E's sales, on the other hand, would be made whole through a true-up.

(TURN Opening Brief at p. 13.) We agreed with TURN that PG&E should not be able to recover lost sales during the PSPS events for customers who did not receive proper notice. (D.21-09-026 at p. 81.) Our decision on this issue is reasonable, supported by the record, and PG&E has not shown legal error in that determination.

Additionally, PG&E argued that since similar monetary penalties adopted in the I.19-11-013 are forward looking only, the Commission is precluded from adopting this monetary remedy in the OSC. (App. Rehg. at p. 13.) However, as TURN noted in

[9] TURN's recommended $985,000 credit for lost sales was based on an average October daily cost of $3.23 applied to the 14 PSPS days (10/9-12/2019, 10/23-25/2019, 10/26-11/1/2019) and multiplied by the number of customers who did not receive proper notice. (D.21-09-026 at p. 76, fn. 281, citing TURN Opening Brief at p. 14; Ex. TURN-02 at p. 12.) The Decision noted that TURN's calculation erred and based on its rationale for the calculation, the total would be $1,188,640. (*Ibid.*) However, the Decision decided to maintain the penalty for lost sales at $985,000. (*Ibid.*)

response to PG&E's appeal of the POD, other matters regarding PG&E's late 2019 PSPS events not covered under the specific scope of the OSC would be considered within I.19-11-013. (D.21-09-026 at p. 80, citing *Response of the Utility Reform Network to Appeals of 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*, July 12, 2021, at p. 2.) And the scope of the OSC did not preclude us from adopting a monetary remedy in this OSC that applies only to PG&E. (*Id*. at p. 81.) Therefore, PG&E did not show legal error.

E. The penalties were appropriate.

PG&E argues that the penalties applied in the Decision are improper for two reasons. First, PG&E claims legal error alleging that implementing penalties based on the number of customers who weren't notified is improper given that section 451 and the Phase I Decision do not state that a penalty should be applied for each unnotified customer. (App. Rehg. at p. 3.) However, as the Decision explained, the Commission's authority to calculate penalties is found elsewhere.

The Decision outlined the Commission's statutory authority to impose fines under Pub. Util. Code sections 2107 and 2108. (D.21-09-026 at p. 42.) Section 2107 states:

> Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars ($500), nor more than one hundred thousand dollars ($100,000) for each offense.

(Pub. Util. Code, § 2107.) Section 2108 states:

> Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.

(Pub. Util. Code, § 2108.)

We have authority under section 2107 to impose penalties for violations of its decisions, rules, or requirements of not less than $500 nor more than $100,000 per offence. (Pub. Util. Code, § 2107.) Under section 2108, every violation is a separate and distinct offence, with continuing violations calculated as a separate and distinct offence for each additional day the violation continues. (Pub. Util. Code, § 2108.) These authorities give ample support for us to implement penalties based on the number of customers who weren't notified. Therefore, PG&E's argument is not persuasive.

Second, PG&E contends that the Decision erred by applying higher per-customer penalties in the second and third October de-energization events. (App. Rehg. at pp. 11-12.) PG&E argues that the penalty structure would potentially be reasonable if PG&E could have resolved the notification issues in the 11 days between the first and second events, but chose not to do so. (*Id*. at p. 12.)

The Decision stated that "the penalty amount is higher for the latter two PSPS events because PG&E was on notice concerning its effectiveness in providing the advanced notification to customers, yet continued to have issues notifying a significant number of these customers." (D.21-09-026 at pp. 75-76.) The penalty amount was $600 per customer for the first event and $3000 per customer for the second and third events. (*Id*. at p. 76.) The penalty for failure to provide advance notification of de-energization to approximately 1,120 Medical Baseline customers was $2,000 for the first instance and $10,000 for the second and third instances. (*Id*. at p. 77.)

Section 2107 allows for penalties of not less than $500 nor more than $100,000 per offence and these penalties fall within that range. Additionally, applying increased penalties for PG&E's continued notification issues is reasonable to deter such a lack of preparation in the future given the additional damage caused. Therefore, the penalty structure in the Decision does not constitute legal error.

F. The Decision applied the appropriate legal standard.

PG&E argues that we incorrectly applied a strict liability standard, instead of a "whenever possible" or "reasonableness" standard, when we counted each failure to

provide advance notification as a separate violation subject to penalty. (App. Rehg. at pp. 4-6, citing D.19-05-042 at p. A7; Pub. Util. Code, § 451; D.21-09-026 at p. 80.)

As the Decision stated, we did not apply a strict liability standard. (D.21-09-026 at pp. 80-81.) Instead, we found that "PG&E's implementation of the Fall 2019 PSPS events violated Commission requirements for de-energization events, specifically Pub. Util. Code Section 451, Resolution ESRB-8, and the Phase 1 Guidelines adopted in D.19-05-042." (*Ibid*.) We fashioned a remedy that counted each failure to provide advanced notification as a separate violation subject to penalty in accordance with section 2108. (*Id*. at p. 81.) These determinations were reasonable and PG&E has not demonstrated that we applied an incorrect legal standard.

III. CONCLUSION

For these reasons, we deny rehearing of D.21-09-026. We also deny the request for a stay, since no good cause has been shown to grant this request. Rehearing of D.21-09-026 is denied.

THEREFORE, IT IS ORDERED that:

1. Rehearing of D.21-09-026 is denied.
2. The request for a stay of D.21-09-026 is denied.
3. This proceeding, R.18-12-005, remains open.

This order is effective today.

Dated March 16, 2023, at San Francisco, California.

ALICE REYNOLDS
President
GENEVIEVE SHIROMA
DARCIE L. HOUCK
JOHN REYNOLDS
KAREN DOUGLAS
Commissioners