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Decision 26-08-034 August 13, 2026

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Recovery of Recorded Expenditures Related to Wildfire Mitigation, Catastrophic Events, and Other Recorded Costs. (U39M).	Application 23-12-001

ORDER MODIFYING DECISION 26-02-004 AND DENYING REHEARING OF THE DECISION, AS MODIFIED

I. INTRODUCTION

In Decision (D.) 26-02-004 (Decision)[1] we authorized Pacific Gas and Electric Company (PG&E) to recover $1.607 billion in revenue requirement of the approximately $2.1 billion PG&E requested for wildfire mitigation, vegetation management, catastrophic events, and other costs incurred in 2022. (Decision at 1-2.) We approved a partial settlement agreement regarding all costs requested for recovery, except the costs for vegetation management recorded in PG&E's Vegetation Management Balancing Account (VMBA). (*Id.* at 1.) Relevant here, PG&E had recorded $816.4 million for its enhanced vegetation management (EVM) program in this account, of which $353.4 million was subject to a reasonableness review because it exceeded the budget authorized in PG&E's General Rate Case (GRC). (*Id.* at 44.)

The EVM program was a mitigation initiation included as part of PG&E's 2022 wildfire mitigation plan (WMP) update approved in the Office of Energy Infrastructure Safety's (Energy Safety) Final Decision on PG&E's 2022 Wildfire

[1] Unless otherwise noted, citations to Commission decisions issued 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.

Mitigation Plan Update (Nov. 10, 2022) (2022 Update).[2] The program included work that met or exceeded the recommended General Order 95, Rule 35 time-of-trim clearances, as well as removing overhanging vegetation from distribution lines primarily in high risk areas. (Decision at 58.) PG&E's 2022 EVM program largely consisted of tree removal work and wood management. (*Id.* at 58-59.)

Based on the record evidence, the Decision determined that PG&E imprudently incurred $162.45 million in EVM costs from October 1 to December 31, 2022 and therefore disallowed this amount. The disallowance comprises 20 percent of PG&E's total spend of $816.410 million on the EVM program in 2022 and 10 percent of the total spend of $1.6 billion in vegetation management recorded to the VMBA. (Decision at 67.) The Decision reasons that PG&E imprudently continued to increase the program's spend even though it knew or should have known in October 2022 that the program had minimal risk reduction or cost efficiency. (*Id.* at 65-67; 86 (Findings of Fact 29-33), 88 (Conclusion of Law (COL) 10).) The Decision further reasons that "PG&E presented insufficient evidence that it seriously considered any scaling back or other changes to the EVM program for the remainder of 2022 even when PG&E knew by October of 2022 that it intended to end the EVM program in December 2022 in favor of more effective alternatives." (*Id.* at 65.) The Decision identifies that PG&E "does not assert that in view of this knowledge it came to the Commission to seek a change in its EVM program, despite what was in its WMP or the [Enhanced Oversight and Enforcement] Resolution." (*Ibid.*) The Decision also rejects PG&E's legal argument that its costs were reasonable because it was legally bound to complete the goals stated in its 2022 Update, concluding that the "assertion that WMP work should continue with no consideration of work effectiveness is not an adequate showing of reasonableness in this context." (*Id.* at 66.)

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[2] A copy of the 2022 Update is available as Appendix A to Resolution SPD-9 (Dec. 16, 2022).

In its rehearing application, PG&E alleges that the Decision's disallowance is in error because: (1) the Commission acted in excess of its powers or jurisdiction by using its cost review jurisdiction under Public Utilities Code section[3] 8386.4 to regulate the contents of PG&E's 2022 Update and second-guess Energy Safety; (2) the Commission abused its discretion in concluding that PG&E as a reasonable and prudent operator should have taken steps to narrow the EVM program beginning in October 2022; and (3) it violates the U.S. and California Constitutions as either an unlawful taking or a deprivation of due process of law.

The Utility Reform Network (TURN) filed a response to PG&E's rehearing application (TURN Response). In its response, TURN argues that the Commission should deny PG&E's application for rehearing in its entirety.

We have carefully considered the allegations presented by PG&E and conclude that rehearing of the Decision should be denied. We modify the Decision to correct an inadvertent omission.

II. BACKGROUND

The relevant legal and factual background are set forth below.

A. Wildfire mitigation plan statutory scheme applicable to PG&E's 2022 Update.

To address the growing threats of wildfire in California, the Legislature passed a series of bills to enhance the electric investor-owned utilities' (IOUs) wildfire safety measures, some of which are outlined here. In 2016, Senate Bill (SB) 1028 (Stats. 2016, ch. 598) directed the IOUs to develop WMPs according to certain criteria and to submit those plans to the Commission for review and approval. In 2018, SB 901 (Stats. 2018, ch. 626) amended the statutory scheme by updating the criteria governing WMP content and mandating that an independent evaluator review an IOU's compliance with its plan. In 2019, Assembly Bill (AB) 1054 (Stats. 2019, ch. 79) and AB 111 (Stats.

[3] Unless otherwise indicated, all subsequent section references are to the California Public Utilities Code.

2019, ch. 81) imposed new WMP content requirements and, starting July 1, 2021, authorized Energy Safety to oversee the WMP process while delegating the Commission authority to review the utilities' costs to implement their plans. The WMP process for the time period relevant to this matter is set forth below.[4]

Energy Safety's "primary objective is to ensure that regulated entities are reducing wildfire risk and complying with energy infrastructure safety measures as required by law." (Gov. Code, § 15475.1, subd. (b).) To this end, Energy Safety is tasked with reviewing and either approving or denying a utility's WMP. (§§ 8386, subd. (b), 8386.3, subd. (a).) This process begins with each electric IOU developing and submitting a draft plan or plan update to Energy Safety based on the statutory requirements for WMPs as well as Energy Safety guidelines. (See § 8386.3, subds. (b) & (c); Gov. Code, § 15475.6.) Energy Safety is required to post the draft plan on its website, accept and consider comments from "the public, other local and state agencies, and interested parties, and verify that the plan complies with all applicable rules, regulations, and standards, as appropriate." (§§ 8386, subd. (d), 8386.3, subd. (a).) Energy Safety is also required to consult with the Office of the State Fire Marshal on the draft WMP or update. (§ 8386.3, subd. (a).) Energy Safety may order the utility to modify its draft plan using its "revision notice" process, and the utility must update its draft accordingly. (*Ibid.*)

Energy Safety then releases a draft decision on the WMP and accepts public comments on that draft. (See, e.g., Resolution SPD-9 (Dec. 15, 2022) at 4-5.) Finally, Energy Safety issues a final decision either approving or denying a WMP or

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[4] Unless otherwise noted, citations to the WMP statutory scheme in the Public Utilities Code and Government Code reflect the statutes in effect in 2022, the relevant time period for PG&E's 2022 Update. The relevant Public Utilities Code provisions include the following: section 451.1(c) (Stats. 2018, ch. 626 (AB 1513); sections 8385, 8386.1, and 8389 (Stats. 2021, ch. 115 (AB 148)); section 8386 (Stats. 2021, ch. 244 (SB 533)); section 8386.3 (Stats. 2021, ch. 225 (AB 9), Stats. 2021, ch. 733 (SB 964)); and section 8386.4 (Stats. 2019, ch. 79 (AB 1054)). The relevant Government Code provisions include the following: section 15470 (Stats. 2019, ch. 396 (AB 1513)), sections 15473, 15475.1, 15475.2, 15475.4, and 15475.6 (Stats. 2021, ch. 115 (AB 148)).

WMP update. During the time period relevant to this matter, we were required to ratify a plan approved by Energy Safety. (§ 8386.3, subd. (a).)

After a WMP is final, Energy Safety is responsible for overseeing compliance with the WMP, including, for example, the authority to conduct audits, issue notices of defect, and direct corrective actions. (§§ 8385, 8386.6, subd. (c), 8389, subd. (g); Gov. Code, §§ 15475.2, 15475.4.) Energy Safety may also approve or deny a utility's proposed changes to a final WMP as set forth in Energy Safety's "change order" guidelines. (See Gov. Code, §§ 15473, subd. (c)(2), 15475.6; see, e.g., Energy Safety Revised 2022 Change Order Guidelines for Electrical Corporations (Nov. 2022) (November 2022 Change Order Guidelines).) A utility's failure to comply with its WMP is subject to Commission-imposed fines and may jeopardize its ability to secure a safety certificate and access the California Wildfire Fund, a fund to cover claims related to the costs of wildfires. (§§ 451.1, subd. (c), 8386.1, 8389, subd. (e)(7).)

Our primary purpose is to ensure just and reasonable rates, and we have the power to prevent a utility from passing on unreasonable costs to its customers by disallowing such costs. (See, e.g., *Pacific Telephone & Telegraph Co. v. Public Utilities Com*. (1965) 62 Cal.2d 634, 647 (*Pacific Telephone*); Senate Energy, Utilities and Communications Committee, 7/8/19 Analysis of AB 1054 (2019-2020 Reg. Sess.) at 9 ["Review of utility expenses to ensure they are just and reasonable is the primary purpose for the CPUC's existence and the main task of the agency as an economic regulator."].) Within the WMP statutory structure, regulation of WMP costs is the primary and exclusive function of the Commission. The Legislature charged us with determining the reasonableness of the utility's costs to implement its WMP. (§ 8386.4.) In delegating this duty, the Legislature explicitly indicated that "[n]othing in [section 8386.4] shall be interpreted as a restriction or limitation on Article 1 (commencing with Section 451) of Chapter 3 of Part 1 of Division 1." (§ 8386.4, subd. (b)(4); see also § 8385, subd. (b) ["Nothing in … [sections 8385 to 8389] affects the commission's authority or jurisdiction over an electrical corporation… ."].) We conduct this reasonableness review in a utility's GRC, a proceeding in which a utility forecasts its expected costs and seeks pre-approval of those costs, and/or in a separate proceeding to recover costs recorded in a balancing account or memorandum account. (See § 8386.4, subds. (a), (b)(1) & (b)(2).)

B. PG&E's 2022 Update and the Commission's Enhanced Oversight and Enforcement Process.

On December 13, 2018, PG&E filed Application (A.) 18-12-009 requesting authority to establish its gas, electric distribution, and electric generation base revenue requirement for test year 2020 general rates. In its application, PG&E requested an increase of $1.058 billion or a 12.4 percent increase over its authorized base revenue requirement in 2019 of $8.518 billion. (*Decision Addressing the Test Year 2020 General Rate Case of PG&E,* D.20-12-005 (2020) at 1 (2020 GRC Decision).) PG&E's request included funding for continuing safety and compliance programs to mitigate wildfire risks and new mitigation programs proposed by PG&E for the first time, including the EVM program. (*Id.* at 4, 78.)

On December 11, 2020, we issued the 2020 GRC Decision, adopting PG&E's revenue requirement for test year 2020. (2020 GRC Decision at 2.) A significant portion of the authorized funding addressed PG&E's requests for wildfire mitigation programs, including forecasted amounts for the 2020-2022 EVM program. (*Id.* at 4, 56-57.) Since the EVM program was new at that time, it was difficult to determine a proper forecast that balanced both affordability and necessary EVM work. (2020 GRC Decision at 78.) We therefore authorized a two-way balancing account,[5] the VMBA, to record EVM costs along with other vegetation management program costs. (*Ibid.*) We further permitted PG&E to recover these costs up to 120% of the amount authorized in the GRC proceeding ($759.71 million) through the advice letter process,

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[5] A two-way balancing account is where overcollections are refunded and undercollections are recoverable through rates. A two-way balancing account differs from a one-way balancing account, where a one-way balancing account matches the expenditures with a spending target. Overcollections are refunded and undercollections are not recoverable under a one-way balancing account. (*Application of Southwest Gas Corporation for Authority to Revise its Californian Gas Tariff to Establish its Move2Zero Program,* D.22-09-010 (2022) at 2, fn. 1.)

subjecting only costs exceeding this threshold to a reasonableness review via the application process. (*Id.* at 395 (COL 17); Decision at 16.)

In February 2020, PG&E submitted a WMP to the Commission covering a three-year term from 2020 through the end of 2022 and later submitted annual updates for 2021 and 2022 for Energy Safety review. (2022 Update at 15.) We approved the three-year plan in Resolution WSD-003 on June 11, 2020. PG&E's updates to the plan were reviewed by Energy Safety since the Legislature had transferred this duty from the Commission to Energy Safety effective July 1, 2021.

Around the time we approved PG&E's three-year plan, on June 1, 2020, we issued *Decision Approving Reorganization Plan,* D.20-05-053 (2020), which approved PG&E's bankruptcy plan of reorganization with conditions and modifications. This decision established an Enhanced Oversight and Enforcement Process (EOE Process) allowing us to take additional steps to ensure PG&E improved its safety performance if specific triggering events occur. (Resolution M-4852 (April 15, 2021) at 1.)

On April 16, 2021, in Resolution M-4852, we placed PG&E in Step 1 for failure to sufficiently prioritize the highest risk power lines for its 2020 EVM program, finding that less than five percent of the EVM work PG&E completed in 2020 was done to the 20 highest-risk power lines. (Resolution M-4852 at 1-2, 6.) We therefore directed PG&E to submit periodic reports explaining in detail how it would both perform risk modeling and use the results of this modeling to ensure the highest risk power lines were prioritized for its EVM program. (Resolution M-4864 (Dec. 2, 2022) at 2.) On December 2, 2022, we issued Resolution M-4864 removing PG&E from Step 1, finding that PG&E had demonstrated that it had appropriately prioritized high-risk distribution lines for EVM. (*Ibid.*)

Earlier in 2022, PG&E submitted its draft 2022 Update to Energy Safety on February 25, 2022, which included EVM program targets of 1,800 miles with 80 percent of the work to be completed in the top 20 percent high risk areas. (See 2022 Update at 15.) Energy Safety posted the draft on its website and solicited public comments, which were submitted in April 2022. (Energy Safety, *Documents and Docket Log for the 2022*

Wildfire Mitigation Plans, available at https://energysafety.ca.gov/what-we-do/electrical-infrastructure-safety/wildfire-mitigation-and-safety/wildfire-mitigation-plans/2022-wmp/.) Several public comments were received, including a submission by TURN. As part of its comments, TURN proposed that the EVM program be reduced by 99 percent (to 18 miles), asserting that the program was "no longer cost-effective." (Exh. PG&E-29 [Excerpts of TURN Comments on 2022 WMP (April 11, 2022)] at 18, 21.) In May 2022, Energy Safety issued revision notices to PG&E identifying items for revision, none of which ordered PG&E to make changes to the EVM program. (2022 Update at 20, Appendix B at A-9 to A-43.) On July 26, 2022, PG&E submitted its revised 2022 Update, addressing Energy Safety's revision notices. (*Id.* at 20.)

On October 6, 2022, Energy Safety issued its draft decision approving PG&E's 2022 update and solicited public comments on the draft. (2022 Update at Appendix D.) On November 10, 2022, Energy Safety issued its final decision, the 2022 Update, which included revisions to the draft based on public comments. Energy Safety's revisions did not incorporate TURN's comments on PG&E's EVM program. (See *ibid.*) On December 15, 2022, we ratified the 2022 Update as required by law in Resolution SPD-9.

III. DISCUSSION

A. The Decision's disallowance does not exceed our jurisdiction under the WMP statutory scheme.

PG&E claims we acted in excess of our jurisdiction because the Decision denied cost recovery on the basis that PG&E should not have performed some of the EVM work required by its 2022 Update, thereby in effect regulating the plan's contents and second-guessing Energy Safety's determinations. (App. Rehg. at 16-20.) PG&E argues that the Legislature's use of the word "implement" in section 8386.4 means that we may assess only how mandated WMP work was performed, not whether the work should have been conducted at all. (*Id.* at 16, 18.) PG&E appears to go as far as contending that the Legislature limited our cost review jurisdiction to reviewing the per unit costs related to the completion of work required by a WMP. (See *id.* at 11, 29.)

PG&E fails to identify legal error for two reasons. First, PG&E mischaracterizes the basis for the Decision's disallowance, which is premised on PG&E's decisionmaking in implementing both flexible and mandatory aspects of the EVM program. Second, PG&E is wrong that the WMP statutory scheme prohibits us from reviewing the prudency of PG&E's conduct in implementing EVM work mandated in its 2022 Update and the reasonableness of the related costs.

1. PG&E misunderstands the Decision as disallowing costs solely for work to meet EVM program targets.

The crux of PG&E's jurisdictional claim is that we lack authority to disallow 2022 EVM expenditures because those expenditures were made to complete the 1,800 miles of work required by its 2022 Update. (App. Rehg. at 10, 11-12.) PG&E also alludes to the EOE Process as support. (See *id.* at 10, 20.) PG&E's narrow read of the Decision ignores that PG&E had latitude in how it implemented certain aspects of the 2022 EVM program, areas in which the Decision finds PG&E failed to exercise prudent business judgment.

The Decision determines that PG&E acted imprudently when it continued to implement the EVM program with no consideration of work effectiveness and absent taking any action to make changes to the program. (Decision at 65-67.) The Decision's determination encompasses areas where PG&E had flexibility to alter the course of how it implemented the EVM program to control costs but failed to do so. In light of the information PG&E had about the ineffectiveness of the EVM program in October 2022, PG&E imprudently decided to incur the below additional expenses under the circumstances.

First, PG&E ignores that it *chose* to exceed the EVM program targets, undertaking 1,924 miles of EVM work with 98.7 percent of this work performed in the highest 20 percent risk-ranked miles. (Exh. PGE-01 [PG&E Updated Testimony] at 3-29:20-22.) As a result, PG&E elected to incur costs above and beyond those necessary to comply with its 2022 Update. (See, e.g., *id.* at 3-24 to 3-27; Exh. PGE-02 [PG&E Rebuttal Testimony] at 3-25:16-26, 3-27:7-11 [explaining that the highest risk miles include increased tree density, which resulted in more tree removals than forecasted in the 2022 GRC].)

Second, as TURN points out, PG&E's 2022 Update includes no hard targets as to the mix of EVM program sub-activities, such as tree removal, overhang clearances, and radial clearances to be completed over the 1,800 miles. (TURN Response at 9.) The mix of sub-activities is significant considering that PG&E's cost overruns for the EVM program were driven by the higher number of tree removals than forecasted in PG&E's GRC, the costs of which could be nearly three times higher than the costs for tree trimming. (Decision at 59; see, e.g., Exh. PGE-01 [PG&E Updated Testimony] at 3-24:9-12 to 3-25:13.)

In conclusion, PG&E fails to acknowledge non-mandatory aspects of its EVM program where it imprudently exercised its business judgement based on what it knew or should have known in October 2022. The Decision's scrutiny of this decisionmaking falls squarely within our cost review jurisdiction. In any event, PG&E is wrong that the WMP statutory scheme limits our cost review jurisdiction. As discussed below, the Legislature authorized us to review all costs related to WMP implementation, including costs to implement mandatory aspects of the plans.

2. The Legislature preserved our full cost review jurisdiction.

PG&E does not dispute that we enforce section 451 in the wildfire context by applying the prudent manager standard. (App. Rehg. at 5; see also Decision at 10 ["No party disputes application of the prudent manager standard to these wildfire mitigation costs."].) Yet PG&E's read of the WMP statutory regime places limitations on both the utilities' obligations under section 451 to charge just and reasonable rates and our power to enforce that provision. PG&E misunderstands the prudent manager standard, wherein we have the authority to review *all* utility costs and the underlying utility conduct that led to those costs, including costs incurred to comply with legal requirements of other government entities.

Section 8386.4 authorizes us to determine whether a utility's costs to "implement" its WMP are "just and reasonable." The statute identifies that applying the just and reasonable standard in the context of WMPs does not affect a utility's obligations under section 451 nor our related duty to review all costs for reasonableness. (§ 8386.4, subd. (b)(4).) Section 451, in relevant part, provides:

> All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.

This statute sets a standard for utility conduct, and our authority to enforce the standard derives from our constitutional power to fix the rates. (*Monterey Peninsula Water Management District v. Public Utilities Com.* (2016) 62 Cal.4th 693, 699-700; Cal. Const. art. XII, § 6.) In enforcing section 451's just and reasonable standard, we have the power to examine the totality of the circumstances, on a case-by-case basis, to determine whether a utility may lawfully pass its costs to ratepayers in rates. (See, e.g., *Pacific Telephone, supra,* 62 Cal.2d at 647; Cal. Const. art. XII, § 6; § 701.) To help define the contours of this vast authority, we have developed the "prudent manager standard." (See, e.g., *Order Denying Rehearing of Decision 17-11-033,* D.18-07-025 (2018) at 5.)

The prudent manager standard "reaches not just the activities and associated costs for which [a utility] seeks recovery … but extends to the actions or inactions that resulted in those activities being necessary." (*Decision on a Test Year 2025/2026 General Rate Case for Great Oaks Water Company,* D.25-06-011 (2025), citing D.18-07-025 at 3, 5, 6.) We have summarized the prudent manager standard as follows:

> The standard for reviewing utility actions has been established as one of reasonableness and prudence…. The term "reasonable and prudent" means that at a particular time any of the practices, methods, and acts engaged in by a utility follows the exercise of reasonable judgment in light of facts known or which should have been known at the time the decision was made. The act or decision is expected by the utility to accomplish the desired result at the

> lowest reasonable cost consistent with good utility practices. Good utility practices are based upon cost-effectiveness, reliability, safety, and expedition.

(D.18-07-025 at 5, internal citation omitted.) We have further explained that a "reasonable and prudent act is not limited to the optimum practice, method, or act to the exclusion of all others, but rather encompasses a spectrum of possible practices, methods, or acts consistent with the utility system needs, the interest of the ratepayers and the requirements of governmental agencies of competent jurisdiction…." (*Id.* at 5-6, internal citation omitted.)

Consistent with the above, the Legislature's preservation of our full cost review jurisdiction under section 451 and the associated prudent manager standard is readily reconcilable with Energy Safety's jurisdiction. Particularly relevant here, and as identified above, a prudent act is not limited to "the exclusion of all others" and instead considers the "requirements of governmental agencies of competent jurisdiction… ." (D.18-07-025 at 5-6.) In other words, the standard requires us to consider Energy Safety's directives and processes and assess the reasonableness of PG&E's conduct in implementing its WMP within that regulatory context. Notably, Energy Safety has consistently reinforced and communicated to the utilities that we retain our full cost review jurisdiction, emphasizing that its WMP decisions and Commission ratification of a WMP do not relieve a utility "from any and all" ratemaking obligations, including that a utility must "seek cost recovery and prove *all* expenditures are just and reasonable" in a Commission proceeding. (See, e.g., Energy Safety Final Decision on PG&E's 2021 WMP Update (Sept. 22, 2021) at 7 & fn. 20, emphasis added.)

Finally, there is a lack of support for PG&E's proffered definition of "implement" in the context of section 8386.4 as meaning we are statutorily barred from "reviewing … whether the [EVM] work was to be conducted at all." (App. Rehg. at 16.) To start, PG&E's framing of the Decision is incorrect. Consistent with section 8386.4, the Decision reviewed whether PG&E acted prudently in incurring the costs to implement the EVM program under the circumstances, including review of the costs related to mandatory aspects of the program. In addition, the Legislature's use of this term is inclusive of our power to review any and all EVM program costs considering that the plain meaning of "implement," is broadly defined as "put[ting] a plan or system into operation … [or] action." (Cambridge Dictionary, "implement" definition, available at IMPLEMENT | English meaning - Cambridge Dictionary.) This is particularly true where a narrower read of "implement" would not only conflict with section 8386.4(b)(4), it would fail to harmonize Energy Safety's jurisdiction with our jurisdiction to give both their full effect, including our vast constitutional and statutory ratemaking powers. (*Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 197; see *Presbyterian Camp & Conference Centers, Inc. v. Superior Court* (2021) 12 Cal.5th 493, 502 [rejecting argument that minor amendments to a statute effectuated a dramatic change in the law].) Moreover, a narrower interpretation would lead to absurd results because it would authorize a utility unlimited use of ratepayer funds to spend on initiatives approved by Energy Safety that are not cost-effective and/or ineffective at reducing wildfire risks, simultaneously upending the utility's ongoing duty under section 451 and our mandate to enforce that provision. (See *Decision Addressing SDG&E's Track 2 Request for Recovery of Wildfire Mitigation Plan Memorandum Account Costs,* D.26-01-021 (2021) at 172-173.)

In conclusion, PG&E fails to demonstrate that we exceeded our jurisdiction. Section 8386.4 maintains our full cost review jurisdiction under the prudent manager standard, including the authority to review and disallow costs to implement mandatory elements of a WMP, where the circumstances support such a disallowance.

B. The Decision's disallowance is not arbitrary and capricious because it appropriately regulates PG&E's conduct consistent with Energy Safety's jurisdiction and the 2022 Update.

PG&E alleges that the Decision's reliance on PG&E's failure to take steps to narrow the EVM program starting in October 2022 is arbitrary and capricious for three reasons. (App. Rehg. at 20-23.) PG&E contends: (1) the Commission disregards its prior conduct regarding Energy Safety's approval of the 2022 Update; (2) the Commission fails to take into account that Energy Safety could have wanted PG&E to perform the EVM work without consideration of cost-effectiveness; and (3) the Commission ignores that Energy Safety would have rejected PG&E's request to modify its 2022 Update to reduce its EVM obligations. (*Ibid.*) PG&E's claims are discussed in more detail and addressed below.

An abuse of discretion occurs when an agency acts arbitrarily or capriciously. (*City of Stockton v. Marina Towers LLC* (2009) 171 Cal.App.4th 93, 114; § 1757, subd. (a)(5).) The scope of review under this standard is narrow, and agency action will be upheld if the agency adequately considered all relevant facts and demonstrated a rational connection between those facts and the choice made. (*Order Denying Rehearing of D.18-06-014,* D.18-11-017 (2018) at 12, *California Hotel and Motel Assn. v. Industrial Welfare Com.* (1979) 25 Cal.3d 200, 212.) When we establish rates, we exercise our broad and comprehensive legislative ratemaking powers. (*People v. Western Air Lines* (1954) 42 Cal.2d 621, 630, *Wood v. Public Utilities Com.* (1971) 4 Cal.3d 288, 292.) The standard for setting rates is that of reasonableness, and we have broad discretion to choose what factors and criteria are relevant under this standard. (See, e.g., *Pacific Telephone, supra,* 62 Cal.2d at 647; *Pacific Bell Wireless, LLC v. Public Utilities Com.* (2006) 140 Cal.App.4th 718, 741-742; see also *SFPP, L.P. v. Public Utilities Com.* (2013) 217 Cal.App.4th 784, 797-798 [the court's "only concern is whether the PUC's decision violated the law in some way which requires this court to step in," which does not include the Commission's policy choices about ratemaking].)

1. PG&E fails to show that it reasonably relied on the Commission's alleged changed position.

PG&E first alleges that the Decision "changes course" from our prior acceptance of the 2022 Update and fails to acknowledge PG&E's reliance on this acceptance. (App. Rehg. at 20-21.) PG&E argues that the Decision now faults PG&E for continuing the EVM program even though we did not raise concerns in 2022 about the cost-effectiveness of the program nor the 1,800-mile target despite the opportunity to do so, either as part of Energy Safety's public comment process or elsewhere, especially in light of the EOE Process. (*Id.* at 20-21.) PG&E opines that our alleged "silence" in these regards gave it reason to believe that it could rely on the 2022 EVM program target. (*Id.* at 20-21.) PG&E also notes that we ultimately ratified the 2022 Update, as required by law. (*Id.* at 21.) PG&E assertions are unavailing.

No Commission action or inaction in 2022 gave PG&E a legitimate reason to believe that we would not conduct a full reasonableness review of its 2022 EVM costs. We have always maintained the position that ratification of Energy Safety's decisions is not approval of the costs to implement the WMP, a position echoed by Energy Safety. (See, e.g., *Decision on Test Year 2021 General Rate Case for Southern California Edison Company,* D.21-08-036 (2021) at 251; *Decision on Test Year 2023 General Rate Case for Pacific Gas and Electric Company,* D.23-11-069 (2023) at 862 (COL 86); Energy Safety Final Decision on PG&E's 2021 WMP Update (Sept. 22, 2021) at 7 & fn. 20; 2022 Update at 16 & fn. 8.) We reiterated this point when ratifying Energy Safety's decision on PG&E's 2022 Update, explicitly identifying that "[n]othing in this Resolution should be construed as approval of the costs associated with the implementation of Pacific Gas & Electric Company's 2022 Wildfire Mitigation Plan." (Resolution SPD-9 at 7 (Order 2).) Similarly, our identification of PG&E's 1,800-mile target in Resolution M-4864 (April 16, 2021), placing PG&E in Step 1 of the EOE Process, and Resolution M-2-2022, removing PG&E from Step 1, did not authorize any costs to implement this target. (See *Guidance Decision on 2019 Wildfire Mitigation Plans Submitted Pursuant to Senate Bill 901,* D.19-05-036 (2019) at 4 ["We also do not find that substantial compliance with an element of a Plan, or all elements of a Plan, establishes that the electrical corporation acted prudently when it later seeks to recover its costs."].) Indeed, PG&E understood that this proceeding was the appropriate forum for us to evaluate and determine the reasonableness of its EVM program costs at issue. (See 2020 GRC Decision at 395 (COL 17) ["Modification of the VMBA into a two-way balancing account that tracks routine and enhanced VM costs is reasonable and review of undercollections exceeding 120 percent of the authorized amount should be filed as an application to allow enhanced review."].)

We also note that the prudent manager standard examines a *utility's* decisionmaking based on what it knew or should have known at the time. The Decision's disallowance was based on PG&E's inaction despite its knowledge in October 2022 about the ineffectiveness of the EVM program. (Decision at 67.) PG&E can no more fault the Commission for information unknown to us at the time of public comments than it can turn the prudent manager standard on its head by placing the burden on the Commission. Additionally, while we did not submit comments in support of TURN's position on PG&E's EVM program, a prudent manager should have on its own, and particularly in light of criticism of a ratepayer advocacy group like TURN that participates in Commission cost review proceedings, seriously considered the program's cost-effectiveness for *Commission* purposes, which PG&E did not.

Based on the above, we neither changed our position nor were silent on the issue of whether PG&E's 2022 EVM program costs would be deemed reasonable in this proceeding. Accordingly, PG&E's alleged reliance on our conduct to support a different conclusion is unfounded and, therefore, its actions were taken at its own risk.

2. The Decision does not ignore Energy Safety's role in modifying WMPs, but we modify the Decision to make this point clear.

Next, PG&E asserts that the Decision's statement that PG&E should have "[come] to the Commission to seek a change in its EVM program" is arbitrary and capricious because changes to its 2022 Update would have required Energy Safety, not Commission, approval. (App. Rehg. at 22, quoting Decision at 65.) PG&E further asserts that the Decision's misunderstanding that the Commission, rather than Energy Safety, could change PG&E's legal requirements is prejudicial error. (*Ibid.*) PG&E misunderstands the Decision and merely identifies an inadvertent omission.

The Decision's full statement provides: "PG&E also does not assert that in view of this knowledge it came to the Commission to seek a change in its EVM program, *despite* what was in its WMP or the EOE Resolution." (Decision at 65, emphasis added.) In other words, the Decision highlights PG&E's failure to contact the Commission, whether formally or informally, to determine whether and how it should or could change its EVM program, even if that meant utilizing Energy Safety's processes to this end. As the Decision concludes, this failure was imprudent considering PG&E's decision to increase the EVM program spending well above the amount authorized in its GRC even though it knew in October 2022 that the program achieved minimal risk reduction or cost efficiency. (*Ibid.*)

PG&E does, however, identify an inadvertent omission in the Decision excluding Energy Safety from the above statement. We modify the Decision as set forth in the proposed ordering paragraphs below to correct this oversight.

3. PG&E fails to show that Energy Safety's change order process makes the Decision arbitrary and capricious.

Lastly, PG&E contends the Decision disregards "clear evidence" that it would have been procedurally impracticable and substantively impossible for PG&E to make mid-year or post-approval changes to its 2022 Update with Energy Safety. (App. Rehg. at 22-23.) PG&E asserts that it would have been "unlikely" that Energy Safety would have allowed PG&E to make a change to its proposed update in October 2022 since review of the plan was already being formally evaluated for Energy Safety approval. (*Id.* at 22.) PG&E further asserts that post-approval changes would have been even more unlikely considering Energy Safety's late year approval of its 2022 Update and the 10-day deadline to submit any change order request thereafter. (*Id.* at 22-23.) PG&E also questions whether halting the EVM program at that point would have been subject to a change order, which is not appropriate for a "fundamental change in strategy." (*Id.* at 23.)

In the alternative, PG&E claims that even if these procedures were manageable, the record shows "beyond any doubt" that Energy Safety would have denied any proposed changes. (App. Rehg. at 23.) As support, PG&E notes TURN's April 2022 comments submitted to Energy Safety raising concerns that the EVM program was not cost-effective, which Energy Safety implicitly rejected. (*Ibid.*) PG&E concludes that

Energy Safety's failure to incorporate TURN's comments means Energy Safety would have denied any request to change its EVM program. (*Ibid.*)

PG&E's positions are flawed for several reasons. Initially, PG&E's focus on Energy Safety's procedures and possible determinations fails to recognize PG&E's imprudent conduct within this regulatory context. PG&E did not present evidence that it had *any* communications with Energy Safety, whether formal or informal, about a potential change to the scope to its 2022 EVM program—even as PG&E gained data on the program's ineffectiveness. (See Decision at 65-66; TURN Response at 14.) Moreover, PG&E's opinion that Energy Safety would have been unlikely to permit mid-cycle changes to its 2022 Update does not excuse PG&E's failure to inquire as to this possibility or to make such an attempt. Similarly, PG&E presents no evidence that it inquired about the appropriateness of Energy Safety's change order process even though the Change Order Guidelines provide that "[i]f an electrical corporation is unsure whether a proposed change meets these criteria [for a change order], it is encouraged to submit an advance inquiry to Energy Safety on the matter via email at safetypolicy@energysafety.ca.gov." (November 2022 Change Order Guidelines; see Decision at 65-66.)

In addition, the criteria for a change order are not as narrow as PG&E contends. PG&E is correct that the guidelines state that "[e]lectrical corporations should also not request approval for a fundamental change in strategy, as such a change may be too substantive for the change order process." (November 2022 Change Order Guidelines at 3.) But PG&E ignores that the guidelines also provide that a change order is appropriate for a "significant changes related to" to a mitigation measure or changes that "substantially alter the course" of a mitigation plan. (*Id.* at 1, 2.) Importantly, a change in an initiative's target, such as the 1,800 miles for the EVM program, appears to fall squarely within the change order process. (See *id.* at 4-5 [listing requirements for change orders that meet the mandated criteria].) Even assuming that appropriateness of a change order request was unclear, PG&E should have at least considered the viability of this option, for example contacting Energy Safety informally to this end, in light of what PG&E knew in October 2022.

Finally, PG&E's argument rests on speculation as to what Energy Safety might have decided had PG&E submitted a change order request. A utility may seek a change order "as it gains experience and measures its mitigation measure outcomes" and "based on an updated understanding of risk." (November Change Order Guidelines at 2.) Thus, requests are based on information that a utility has over time, not the information Energy Safety had at the time it reviewed and approved a proposed WMP. And the record shows that PG&E's understanding of its EVM program evolved, including its August 2022 "EVM Effectiveness Analysis" showing that EVM failed to reduce ignitions, outages, and tree failures in a statistically significant way and its decision to end the EVM program, as announced in October 2022. (Exh. TURN-01-Atch01-E at 14-24 [PG&E Presentation, "Vegetation Management – 2023 Proposed Plan: OEIS and CPUC Update, October 2022"].) In addition, as TURN showcases, Energy Safety did not order PG&E to implement the EVM program absent further examination or reflection. (TURN Response at 9-11; see D.26-01-021 at 172 ["In evaluating a utility's WMP, OEIS considers the areas where the electrical corporation must improve, as well as the progress it plans to achieve in its areas of strength."].) Under these circumstances, a prudent manager would not have speculated as to Energy Safety's decision-making and instead would have inquired with the agency.

C. The Decision does not constitute an unconstitutional taking of PG&E's property.

PG&E claims that the Decision's denial of a portion of its EVM program costs constitutes an unconstitutional taking of its property. (App. Rehg. at 24-29.) PG&E further argues that the takings analysis from *Penn Central Transportation Co v. New York City* (1978) 438 U.S. 104 (*Penn Central*), which in part assesses the economic impact of a regulation, should apply instead of cases like *Duquesne Light Co. v. Barasch* (1989) 488 U.S. 299 (*Duquesne*), which examine whether the total effect of a rate order is just and reasonable. (*Id.* at 26-29.) Finally, PG&E contends that each *Penn Central* factor weighs in favor of finding a taking occurred. (*Id.* at 28-29.) Each claim is discussed in more detail and dismissed below.

1. PG&E fails to show that *Duquesne* should not apply.

PG&E claims that *Duquesne* should not apply here because: (1) PG&E's costs were incurred to fulfill EVM work mandated by Energy Safety; and (2) the Decision's disallowance occurred piecemeal in a discrete ratemaking proceeding whereas *Duquesne* applies to general ratemaking. (App. Rehg. at 24-28.) According to PG&E, under these circumstances *Penn Central* provides the appropriate takings framework. (*Id.* at 28-29.) Relatedly, PG&E does not analyze whether the facts of this case amount to a taking under the well-established framework set forth in *Duquesne*.

Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia (1923) 262 U.S. 679, *Federal Power Com. v. Hope Natural Gas* (1944) 320 U.S. 591 (*Hope*), and *Duquesne* are seminal cases that outline the key considerations for determining whether utility rates effect an unconstitutional taking under the Fifth Amendment of the U.S. Constitution. Under these cases, a taking does not occur unless a rate is unjust and unreasonable, and whether a rate is just and reasonable depends on balancing the interests of the regulated entity and the public. (*Duquesne*, *supra,* 488 U.S. at 307-308, 316.) In balancing those interests, the "Constitution within broad limits leaves the States free to decide what ratesetting methodology best meets their needs." (*Id.* at 316.) "If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry . . . is at an end." (*Hope*, *supra,* 320 U.S. at 602.) "Rates which enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed certainly cannot be condemned as invalid, even though they might produce only a meager return." (*Id.* at 605.)

PG&E fails to provide a compelling reason to invalidate deeply rooted takings jurisprudence. Initially, and regardless of its theory, PG&E lacks the necessary property interest to state a valid takings claim. The Decision disallowed unreasonable costs, and PG&E does not have a recognizable property interest in these costs to support a takings claim. (§ 451; *Bronco Wine Co. v. Jolly* (2005) 129 Cal.App.4th 988, 1030 [property interests are not created by the Constitution and instead stem from independent sources such as state laws].) Without a valid property interest, PG&E fails to state a cognizable takings claim. (*Ibid.*) Relatedly, PG&E's argument is based on the faulty premise that its 2022 Update forced it to implement the EVM work exactly as it did, failing to recognize where it had flexibility to make changes and regulatory processes to pursue changes. In addition, although this proceeding is not a general rate case, the core principle from *Duquesne* that courts should avoid reviewing ratemaking decisions, such as the Decision's determination on PG&E's EVM costs, in a piecemeal fashion is equally applicable. (*Duquesne*, *supra,* 488 U.S. at 300, 313.)

In conclusion, *Duquesne* provides the appropriate analysis for takings claims in the utility context. PG&E also fails to show that a taking under this precedent has occurred, making only generalized statements as to an alleged taking. (See *Ponderosa v. Public Utilities Com.* (2019) 36 Cal.App.5th 999, 1016 [the party challenging a rate order as confiscatory has the burden to show that the that the rate as finally fixed is unreasonable]; see also *Public Service Com. of Montana v. Great Northern Utility Co.* (1933) 289 U.S. 130, 136-137 ["[M]erely asserting in general language that rates are confiscatory is not sufficient … to invoke constitutional protection, the facts relied on must be specifically set forth and from them it must clearly appear that the rates would necessarily deny to plaintiff just compensation and deprive it of its property… ."].) Moreover, as discussed below, PG&E's *Penn Central* takings claim not only fails on all accounts, it showcases additional reasons why this theory is inapt for utility ratemaking.

2. Even under the inapt *Penn Central* analysis, PG&E's claim lacks merit.

The process for evaluating the constitutionality of a governmental action involves an examination of its "justice and fairness," for which there is no set formula, and the inquiry is "essentially ad hoc and fact intensive." (*Eastern Enterprises v. Apfel*

(1998) 524 U.S. 498, 523; *Penn Central, supra,* 438 U.S. at 124.) Nevertheless, the United States Supreme Court in *Penn Central* set forth several factors which have been held to be particularly significant: (1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with reasonable investment backed expectations; and (3) the character of the governmental action. (*Penn Central, supra,* 438 U.S. at p. 124; see also *Bottini v. City of San Diego* (2018) 27 Cal.App.5th 281, 312 ["the *Penn Central* test…applies to regulatory takings causes of action arising under the California Constitution"].)

PG&E argues that all three *Penn Central* factors are met for the following reasons. (App. Rehg. at 26-28.) First, PG&E asserts that the disallowance is significant since it constitutes nearly 10 percent of the $2 billion PG&E sought to recover in A.23-12-001. (*Id.* at 28.) Second, PG&E claims that it and its investors had a reasonable, investment-backed expectation of recovery due to Energy Safety mandates and because on a per-unit basis PG&E exceeded its prior estimated performance. (*Id.* at 29.) Third, PG&E contends that the Decision's action is akin to a physical expropriation because the "Decision has forced the company to expend money to perform a wildfire mitigation service that inured to the public benefit and has forced PG&E's investors—and PG&E's investors alone—to bear those costs." (*Ibid.*) While the *Penn Central* analysis does not apply in the utility context, we note that PG&E's takings claim under this theory fails.

For the first factor, a taking does not occur for every diminution in property value caused by a government regulation. (*Colony Cove Props., LLC v. City of Carson* (9th Cir. 2018) 888 F.3d 445, 451.) Courts have found that no taking occurs where the diminution in value was less than 50 percent. (*Ibid.*) Importantly, "it is well settled that taking jurisprudence does not divide a single parcel into discrete segments" and instead "focus[es] both on the character of the action and on the nature and extent of the interference with the rights in the parcel as a whole." (*MacLeod v. Santa Clara County* (9th Cir. 1984) 749 F.2d 541, 547.) "Traditionally, three requirements must be met to establish that the land remaining to the owner after condemnation is part of a 'larger parcel': (1) unity of title; (2) contiguity of the parcels; and (3) unity of use." (*City of San Diego v. Neumann* (1993) 6 Cal.4th 738, 745.)

PG&E does not explain why looking at the amount it requested in this proceeding is the appropriate metric for assessing a takings claim.

> It has long been recognized that public utility property cannot be regarded as merely land, buildings, and other assets. Rather, its value depends on the interrelation and operation of the entire utility as a unit. Many of the separate assets would be practically valueless without the rest of the system. Ten miles of telephone wire or one specially designed turbine would have a questionable value, other than as scrap, without the benefit of the rest of the system as a whole.

(*County of Santa Clara v. Superior Court* (2023) 87 Cal.App.5th 347, 360, internal quotations and citation omitted.) Indeed, for ratemaking purposes, a utility is valued based on its rate base, which represents the value of its property devoted to public use. (*Ponderosa Telephone Co. v. Public Utilities Com.* (2019) 36 Cal.App.5th 999, 1005.) The above provides additional support for application of *Duquesne* and rejection of PG&E's *Penn Central* analysis. Nevertheless, the 10 percent diminution in property value identified by PG&E pales in comparison to the substantially more severe economic impacts that courts have determined did not amount to takings.

For the second factor, the U.S. Supreme Court has held that a reasonable investment-backed expectation must be more than a "unilateral expectation or an abstract need." (See, e.g., *Ruckelshaus v. Monsanto Co.* (1984) 476 U.S. 986, 1005, *Webb's Fabulous Pharmacies v. Beckwith* (1980) 449 U.S. 155, 161 (*Webb*).) Property interests "are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law … [Citation]," not the Constitution. (*Id*. at 161.)

As discussed, the Legislature preserved our full cost review jurisdiction, which encompasses far more than an assessment of a utility's per-unit costs. In addition, PG&E was aware that its EVM costs above the 120 percent threshold approved in its 2020 GRC were subject to a reasonableness review under the prudent manager standard.

(Decision at 16.) Accordingly, PG&E does not show that it had a reasonable, investment-backed expectation of cost recovery.

For the final factor, the U.S. Supreme Court has held that "a 'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government . . . than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." (*Penn Central, supra,* 438 U.S. at 124, citation omitted.)

PG&E does not allege a physical invasion of its property. And to the extent that the disallowance touches upon PG&E's property interest, the disallowance is part of a statutory scheme adjusting the benefits and burdens of economic life between utilities and their ratepayers. (See *Small Prop. Owners of San Francisco v. City & County of San Francisco* (2006) 141 Cal.App.4th 1388, 1408-1409.) The Decision reflects the consequence of a public program for wildfire safety that concurrently mandates that the related costs are prudently incurred. Justice and fairness hardly support PG&E's ratepayers shouldering $162.45 million incurred as a result of PG&E's imprudence.

D. The Decision does not violate the Due Process Clause.

PG&E claims that the Decision violates the Due Process Clause of the U.S. Constitution's Fourteenth Amendment. (App. Rehg. at 30-31.) Rate regulation may implicate the Due Process Clause when a rate is "arbitrary, discriminatory, or demonstrably irrelevant to the policy the Legislature is free to adopt." (*Kavanau v. Santa Monica Rent Control Bd.* (1997) 16 Cal.4th 761, 786 (J. Mosk, conc.), internal citation and quotations omitted.) PG&E argues that the combination of Energy Safety's mandate that PG&E perform the EVM work and the Commission's disallowance for PG&E's completion of that work "bears no relationship to legitimate government purposes" and "is so arbitrary as to constitute a violation of due process." (*Id.* at 31.)

PG&E mischaracterizes the Decision's basis for the disallowance and overstates Energy Safety's decision approving its 2022 Update. The Decision was based on PG&E's imprudent conduct that resulted in unreasonable EVM program costs. As already addressed, this basis is neither arbitrary nor capricious nor unrelated to our legitimate cost review jurisdiction. As also addressed above, Energy Safety did not order PG&E to blindly implement its 2022 Update and instead directed further examination and continued improvement in the EVM program. (See also TURN Response at 19.) Thus, PG&E's due process claim lacks merit.

E. The Decision is not a tax on PG&E's shareholders.

In a footnote, PG&E asserts that the "Decision might also be construed as a tax or regulatory fee paid by PG&E's shareholders," which "would be an unlawful assessment, as it was not voted on by the Legislature." (App. Rehg. at 29, fn. 109.) We decline to develop PG&E's vague and conclusory claim. (See § 1732; cf. *Volcano Telephone Co. v. Public Utilities Com.* (2025) 109 Cal.App.5th 701, 718 [courts do not need to research and develop petitioner's claims].) PG&E's claim not only lacks the necessary development, it lacks any basis in the law or facts. (See *Southern California Edison Co. v. Public Utilities Com.* (2014) 227 Cal.App.4th 172, 197-201.)

IV. CONCLUSION

For the reasons discussed above, we have determined that good cause has not been demonstrated to grant rehearing of the Decision, as no legal error has been shown. We therefore affirm the Decision, with one clarifying modification.

THEREFORE, IT IS ORDERED that:

1. The last sentence in the first full paragraph on page 65 of Decision 26-02-004 is modified to read:

> "PG&E also does not assert that in view of this knowledge it came to the Commission or OEIS to seek a change in its EVM program, despite what was in its WMP or the EOE Resolution."

2. Rehearing of Decision 26-02-004, as modified, is denied.

3. This proceeding, Application 23-12-001, is closed.

This order is effective today.

Dated August 13, 2026, San Francisco, California.

JOHN REYNOLDS
President
DARCIE L. HOUCK
KAREN DOUGLAS
CHRISTINE HARADA
Commissioners

Commissioner Matthew Baker recused himself and did not participate in the vote of this item.