

CALIFORNIA PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of:

PacifiCorp’s Execution of 2020
Public Safety Power Shutoff Events

[PROPOSED] ADMINISTRATIVE
ENFORCEMENT ORDER

[PROPOSED] ADMINISTRATIVE ENFORCEMENT ORDER

YOU ARE GIVEN NOTICE THAT:

1. PacifiCorp is alleged to have violated Commission Resolution ESRB – 8, Decision D.19-05-042, D.20-05-051
2. The California Public Utilities Commission’s Safety and Enforcement Division (SED or Division) issues this proposed Administrative Enforcement Order (Proposed Order) to PacifiCorp (PacifiCorp or Respondent) pursuant to the authority in the Commission Enforcement Policy adopted by Resolution M-4846 (Policy). Pursuant to the Policy, SED is authorized to issue a proposed Administrative Enforcement Order (Proposed Order) to a regulated entity that has violated a Commission order, resolution, decision, general order, or rule. That Proposed Order may include a directive to pay a penalty

RIGHT TO HEARING

3. Respondent is required to respond to this Proposed Order by 5:00 p.m. on ***Friday, July 15, 2022***. By way of such response, Respondent, must either: 1) pay any penalty required by this Proposed Order or 2) request a hearing on the Proposed Order. To request a hearing, the Respondent must file a Request for Hearing (including a complete title page complying with Rule 1.6 of the Commission’s Rules of Practice and Procedure) along with copies of any materials the Respondent wants to provide in support of its request with the Commission’s Docket Office **and** must serve the Request for Hearing, at a minimum, on:
 - 1) The Chief Administrative Law Judge (with an electronic copy to Administrative_Enforcement_Appeals_Coordinator@cpuc.ca.gov).
 - 2) The Director of Safety and Enforcement Division
 - 3) The Executive Director
 - 4) General Counsel
 - 5) The Director of the Public Advocates Office at the California Public Utilities Commission

The right to a hearing is forfeited if a Request for Hearing is not timely filed. If a timely Request for Hearing is not filed, this Proposed Order will become final and effective upon adoption by the Commission (Final Order).

4. Respondent must comply with the corrective action requirements of this Proposed Order by the date specified in the Proposed Order in paragraph 8 below, regardless of whether a Request for Hearing is filed. Neither payment of the penalty assessed in this Proposed Order nor the filing of a timely Request for Hearing shall excuse Respondent from curing the violations identified in this Proposed Order.
5. A requested hearing shall be conducted by an Administrative Law Judge in accordance with the hearing provisions in the Citation Appellate Rules. After hearing, this Proposed Order or any Administrative Law Judge modifications to the Proposed Order shall become a Final Order, effective upon Commission approval of the draft resolution prepared by the Administrative Law Judge. The draft Administrative Law Judge resolution approved by the Commission is subject to rehearing pursuant to Public Utilities Code section 1731 and to judicial review pursuant to Public Utilities Code section 1756.
6. Unless otherwise specified, "days" means calendar days.

FINDINGS

7. ***Facts:*** Investor-owned utilities (IOUs) have the authority to shut off the electric power to protect public safety under California law. Utilities do this during severe wildfire threat conditions as a preventative measure of last resort through Public Safety Power Shutoff (PSPS). Such power cuts reduce the risk of the IOUs’ infrastructure to cause or contribute to a wildfire. However, a PSPS can leave communities and essential facilities without power, which brings its own risks and hardships, particularly for vulnerable communities and individuals. From 2018 through 2020, the Commission issued three sets of guidelines, namely, Resolution ESRB-8, Decision (D) 19-05-042 and (D) 20-05-051, directing the IOUs to follow these guidelines in PSPS execution. In 2020, PacifiCorp initiated a total of three PSPS events and submitted two post event reports to CPUC. Stakeholders provided comments on these post event reports. SED performed reviews on the submitted reports, including consideration of stakeholder comments, to evaluate PacifiCorp’s compliance with the reporting requirements under Resolution ESRB-8, D19-05-042 and D20-05-051.

Table 1

Report #	Report Title	Events Covered
1	September 13 – September 17, 2020	1. Sep. 11 – Sep. 13 2. Sep. 17
2	October 25, 2020	Oct. 25

PacifiCorp did not comply with provisions of Commission Resolution ESRB – 8, Decision (D.) 19-05-042 and D. 20-05-051. Please see attachment “2020 Public Safety Power Shutoff (PSPS) Post Event Report Review - PacifiCorp ” for more details.

- A. Resolution ESRB-8 states in part “IOUs shall submit a report to the Director of SED within 10 business days after each de-energization event, as well as after high-threat events where the IOU provided notifications to local government, agencies, and customers of possible de-energization though no de-energization occurred”. (ESRB – 8 at 5)
 - A.1 The PSPS post event report submitted on October 1, 2020 covered two events ending on September 13 and September 17 respectively. PacifiCorp met the 10 business day reporting deadline for the September 17 event. However, PacifiCorp did not meet the 10 day reporting deadline for the September 13 PSPS event. See details below:

Table 2

Dates	Event concluded	Report due dates	PacifiCorp’s filing dates	Days overdue
Sep. 11-13	Sep. 13	Sep. 25	Oct. 1	6
Sep. 17	Sep. 17	Oct. 1	Oct. 1	On time

- B. Resolution ESRB-8 states in part “A report to the Director of SED.....that includes..... (iv) the number of affected customers, broken down by residential, medical baseline, commercial/industrial, and other. (vi)a description of the notice to customers and any other mitigation provided...”. (ESRB-8 at 3.)
 - B.1. For the September 13 – September 17 events, PacifiCorp did not report the number of affected customers, broken down by residential, medical baseline, commercial/industrial, and other. Instead, PacifiCorp’s affected customer breakdown included an undefined category called “medically sensitive”. “Medically sensitive” is not a required category.
- C. D.19-05-042 Appendix A states in part “In addition to submitting a report to the Director of the Commission’s Safety and Enforcement Division within 10 business days of power restoration, electric investor-owned utilities must serve their de-energization report on the service lists of this proceeding and Rulemaking 18-10-007 or their successor proceedings. Service should include a link to the report on the utility’s website and

contact information to submit comments to the Director of the Safety and Enforcement Division.”” (Appendix A at A22.)

C.1. PacifiCorp did not timely and properly serve the report for the September 13 event. PacifiCorp served the report for two separate events, September 13 and September 17 , on October 1, 2020. As the report covered two events, PacifiCorp missed the deadline for September 13 event. See detailed above under B.1.1.

C.2. For both of the submitted reports covering the September 13 – 17 events and the October 25 event, the email to the service list did not include a link to the reports on PacifiCorp’s website nor the contact information to submit comments to the Director of SED.

D. D.19-05-042 Appendix A states in part “the electric investor-owned utilities must provide the decision criteria leading to de-energization, including an evaluation of alternatives to de-energization that were considered and mitigation measures used to decrease the risk of utility-caused wildfire in the de-energized area” (D.19-05-042 at A22- A23).

D.1 For the September 13 – September 17 events, PacifiCorp stated minimization of the footprint and limiting the PSPS time is the most reasonable alternative available. However, PacifiCorp did not provide the specific alternatives it considered nor the evaluation of the alternatives.

D.2 For the October 25 event, PacifiCorp reported the alternatives included patrols, modification of system protective settings (to non-reclosing) and reducing the footprint of the PSPS impacted area and the event’s duration. Patrols are not PSPS alternatives. PacifiCorp did not provide a robust evaluation of each alternative it considered before calling a PSPS.

E. D.19-05-042 states in part “The electric investor-owned utilities should, whenever possible, adhere to the following minimum notification timeline:”

- 48-72 hours in advance of anticipated de-energization: notification of public safety partners/priority notification entities
- 24-48 hours in advance of anticipated de-energization: notification of all other affected customers/populations
- 1-4 hours in advance of anticipated de-energization, if possible: notification of all affected customers/populations
- When de-energization is initiated: notification of all affected customers/populations

- Immediately before re-energization begins: notification of all affected customers/populations
- When re-energization is complete: notification of all affected customers/populations (D.19-05-042 at A8)

E.1. PacifiCorp did not meet the 48-72 hours advance public safety partner notification requirement for the following two events.

Table 3

Event	Initial notifications sent	Planned de-energization time	Approximate hours in advance	Number of affected public safety officials, critical customers
Sep. 11 – Sep. 13	1:30 p.m., Sep. 11	10am, Sep. 13	45 hours	26
Oct. 25	5:30 p.m., Oct. 23	7am, Oct. 25	38	28

Note: Oct. 25 event did not de-energize any customers.

- F. D.19-05-042 states in part “the electric investor-owned utilities must provide the following information: 2) a copy of all notifications, the timing of notifications,...; (Appendix A, at A22-A23).
- F.1 PacifiCorp did not provide copies of the notifications sent to public safety partners nor the notification scripts per the guideline requirement. Without this information, SED cannot determine whether the notifications to public safety partners include the estimated power shutoff time, event duration, estimated time of restoration or the number of medical based line customers in the impacted areas.
- G. D19-05-042 states in part “the electric investor-owned utilities must provide the following information: 3) if the utility fails to provide advanced notification or notification according to the minimum timelines set forth in these Guidelines, an explanation of the circumstances that resulted in such failure. (Appendix A, at A22-A23)
- G.1 As pointed out in E.1 above, PacifiCorp failed to provide 48-72 hours advance notification to its public safety partner for two

events. PacifiCorp did not provide an explanation of the circumstances that resulted in such failure.

- H. D.19-05-042 states in part “the electric investor-owned utilities must provide the following information: 4) A description and evaluation of engagement with local and state public safety partners in providing advanced education and outreach and notification during the de-energization event; (Appendix A, at A22-A23)
 - H.1 PacifiCorp only reported its engagement with public safety partners on notifications but did not report the advanced education and outreach engagement.
 - H.2 PacifiCorp did not provide an evaluation of its engagement with local and state public safety partners.

- I. D.19-05-042 states in part “the electric investor-owned utilities must provide the following information: 5) For those customers where positive or affirmative notification was attempted, an accounting of the customers (which tariff and/or access and functional needs population designation), the number of notification attempts made, the timing of attempts, who made the notification attempt (utility or public safety partner) and the number of customers for whom positive notification was achieved;” (Appendix A, at A22-A23)
 - I.1. For the September 13 – September 17 events, PacifiCorp only reported it notified medically sensitive customers, however, it did not disclose the number of notification attempts made and the number of successful positive notification was achieved. In addition, PacifiCorp did not clearly state under which tariff and/or access and functional needs population designation medically sensitive customers were included.
 - I.2. For the October 25 event, PacifiCorp provided statistics on the positive notification of non-critical customers. However, PacifiCorp did not clearly state under which the tariff and/or access and functional needs population designation non-critical customers were included.

- J. D.20-05-051, Appendix A (c) states in part “Each electric investor-owned utility shall enumerate and explain the cause of any false communications in its post event reports by citing the sources of changing data” (Appendix A, page 4)
 - J.1. For the September 13 – September 17 events, PacifiCorp did not enumerate nor explain the cause of false communications in the report. For the October 25 event, PacifiCorp reported the number

of positive notifications and number of unsuccessful notifications in satisfying this guideline requirement. Inaccurate communications are false communications. Unsuccessful notifications are not false communications.

K. D.20-05-051, Appendix A (h) states in part “These reports shall include a thorough and detailed description of the quantitative and qualitative factors it considered in calling, sustaining, or curtailing each de-energization event (including information regarding why the de-energization event was a last resort option) and a specification of the factors that led to the conclusion of the de-energization event. (Appendix A, page 9)

K.1. For the October 25 event, PacifiCorp provided a table, comparing the predetermined threshold with forecast value and with the actual value for the quantitative attributes in the PSPS decision-making process. PacifiCorp failed to provide a similar comparison table for the September 13 – September 17 events.

PENALTIES

8. The Commission has broad authority to impose penalties on any public utility that “fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission.” (PU Code § 2106). We outlined several instances in this Order where PacifiCorp did not meet the provisions of Resolution ESRB-8, D.19-05-042, and D.20-05-051 as directed by the Commission. In part, these orders give guidance to IOUs of the type and timing of notifications to customers and public safety partners.

However, we are mindful that the Commission also gave IOUs discretion in several areas given the dynamic nature of these events. This is especially true of advance notifications prior to a de-energization event. While the Commission highlights the importance of advance notification prior to a PSPS, it also recognized situations where advance notice is impossible due to changing circumstances. Resolution ESRB-8 requires IOU to notify customers “to the extent feasible and appropriate” (p. 4), recognizing that “it is not practicable to have an absolute requirement that electric IOUs provide advance notification to customer prior to a de-energization event.” (p. 5). D.19-05-042 expanded somewhat on advance notifications to customers but again acknowledged “there may be times when de-energization must occur with little to no notification in order to respond to an emergency situation, to avoid the risk of a utility-caused wildfire, or because de-energization occurs due to an unforeseen circumstance outside of the control of the utility.” (pp. 85-86).

D.19-05-042 requires IOUs to provide advance notifications 48-72 hours in advance of an anticipated de-energization, 24-48 hours in advance, and 1-4 hours in advance “whenever possible”. (p. 86-87). It further recognizes that advanced notification

1-4 hours before an anticipate de-energization event “may not be possible at this juncture.” (p. 87, fn. 93).

This Order and the accompanying report lay out instances where PacifiCorp did not adhere to the notification timeline to certain public safety partners as required by the Commission. They are required to explain why the minimum notification timeline was not made to these public safety partners. They should use this information to better inform decisions for future PSPS events.

With that, the Commission does not extend deference to utilities in three instances of required notification to affected customers; when de-energization was initiated, when re-energization begins, and once re-energization is completed. These notifications are unambiguous in that they are triggered by an event completely in the control of the utility, the de-energization. During the PSPS events in 2020, PacifiCorp has sent out these notifications to affected customers when de-energization was initiated. Therefore, SED does not impose a fine on PacifiCorp.

CORRECTIVE ACTION

9. Respondent shall conduct the following actions in the manner specified herein, and in accordance with a schedule specified by the Division as follows:
 - 1) PacifiCorp must file and submit the PSPS post event report in compliance with the requirements under Resolution ESRB-8 and D19-05-042, including timely and properly submission and service of each post event report that covers each individual PSPS event.
 - 2) PacifiCorp must report the breakdown of affected customers by the required categories.
 - 3) PacifiCorp must provide more specific alternatives and evaluation of each alternative it considers before calling a PSPS.
 - 4) PacifiCorp must follow the requirements under D19-05-042 including timeline and notification content when sending notifications to public safety partners. For any deviation from the minimum timeline sets forth in the guidelines, PacifiCorp must provide an explanation of the circumstances that resulted in such failure.
 - 5) PacifiCorp must report the engagement with local and state public safety partners not only on notifications, but also on the advanced education and outreach engagement. In addition, PacifiCorp must provide the evaluation of such engagement for each event.
 - 6) For those customers where positive or affirmative notification was attempted, PacifiCorp must consistently disclose the number of notification attempts made and the number of successful positive notification achieved as well as which tariff designation of the positive notification customers were.
 - 7) PacifiCorp must enumerate and explain the cause of situations at-issue, which involves some level of perceived defect in notice, including but not limited to, when customers were de-energized without any advance notifications and when customers are notified for de-energization, but end up with no power shut off.

- 8) PacifiCorp must consistently provide the through and detailed quantitative information about the decision criteria, compare the forecasted weather parameters and the actual value in the PSPS decision-making process for all the events.
10. Within 120 days following adoption of this Order by the Commission (Final Order), Respondent shall submit to the Division written certification that it has corrected all violations. The certification shall include confirmation of its compliance (accompanied by all supporting documentation) or noncompliance with all requirements set forth in Paragraph 8. Any notice of noncompliance required under this paragraph shall state the reasons for noncompliance and when compliance is expected and shall include a detailed plan for bringing the Respondent into compliance. Notice of noncompliance shall in no way excuse the noncompliance.
11. Respondent shall be subject to a penalty amount for each failure to comply with the actions required by Paragraph 8. The penalty amount shall be within the range allowed by statute and calculated in accordance with the Commission's Penalty Assessment Methodology, attached as Appendix I to the Policy.
12. All written submittals from Respondent pursuant to this Order shall be sent to:

Division Director Lee Palmer
Safety Enforcement Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

All other communications from Respondent pursuant to this Order shall be to:

Anthony Noll, Program Manager, Anthony.Noll@cpuc.ca.gov, (916) 247-9372.

13. All approvals and decisions of the Division will be communicated to Respondent in writing by the Division Director or a designee. No informal advice, guidance, suggestions, or comments by the Division regarding reports, plans, specifications, schedules or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required or to bind the Commission.
14. If the Division determines that any report, plan, schedule, or other document submitted for approval pursuant to the Proposed or Final Order (Order) fails to comply with the Order, the Division may:
 - (a) Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Division a revised document incorporating the recommended changes.

15. Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.
16. If Respondent is unable to perform any activity or submit any document within the time required under this Order, Respondent may, prior to expiration of time, request an extension of time in writing. The extension request shall include a justification for the delay and a detailed plan for meeting any new proposed compliance schedule. All such requests shall be in advance of the date on which the activity or document is due.
17. If the Division determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule. Respondent shall comply with the new schedule.
18. All plans, schedules, and reports that require the Division approval and are submitted by Respondent pursuant to this Order are incorporated into this Order upon approval by the Division.
19. Neither the State of California, nor its employees, agents, agencies (including the Commission), representatives, or contractors, shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties in carrying out activities pursuant to this Order, nor shall the Commission be held as a party to a contract entered into by Respondent or its agents in carrying out activities pursuant to this Order.
20. A Final Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations. Respondent shall provide a copy of this Final Order to all contractors, subcontractors, laboratories, and consultants that are retained to conduct any work or activities performed under this Final Order, within 15 days after the effective date of this Final Order or the date of retaining their services, whichever is later. Respondent shall condition any such contracts upon satisfactory compliance with this Final Order. Notwithstanding the terms of any contract, Respondent is responsible for compliance with this Order and for ensuring that its subsidiaries, employees, contractors, consultants, subcontractors, agents, and attorneys comply with this Order.
21. Nothing in this Order shall relieve Respondent from complying with all other applicable laws and regulations. Respondent shall conform all actions required by this Order with all applicable federal, state, and local laws and regulations.
22. This is an action to enforce the laws and regulations administered by the Commission. The method of compliance with this enforcement action consists of payment of an administrative penalty and compliance actions to enforce a permit or

order issued by the Commission. The Commission finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code § 2100 et seq.) pursuant to section 15321(a)(2); chapter 3, title 14 of the California Code of Regulations exempting actions to enforce or a permit prescribed by a regulatory agency.

23. The Respondent shall not have any ex parte communications with Commission decisionmakers and will only communicate with the Commission through Request for Hearings or other appropriate procedural avenues.

IT IS ORDERED.

DATE: _____ BY: _____
Leslie Palmer
Director, Safety and Enforcement Division
California Public Utilities Commission