



**Northern California**

785 Market Street, Suite 1400  
San Francisco, CA 94103

415 929-8876 • [www.turn.org](http://www.turn.org)

**Southern California**

1620 Fifth Avenue, Suite 810  
San Diego, CA 92101

619 398-3680 • [www.turn.org](http://www.turn.org)

November 22, 2021

Rachel Peterson, Executive Director  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Re: TURN and Cal Advocates Comments in Opposition to Draft Resolution SED-6 Adopting the Administrative Consent Order and Agreement Between SED and PG&E Relating to the Kincade Wildfire of 2019

Dear Executive Director Peterson:

On November 2, 2021, the California Public Utilities Commission (Commission) issued Draft Resolution SED-6 that would approve an “Administrative Consent Order” proposed by the Commission’s Safety and Enforcement Division (SED) and Pacific Gas and Electric Company (PG&E) regarding the Kincade Fire associated with PG&E’s operations. The Administrative Consent Order represents a proposed settlement between SED and PG&E that purports to resolve all issues related to SED’s investigation of the Kincade Fire ignited by PG&E equipment. Pursuant to Rule 14.5 of the Commission’s Rules of Practice and Procedure and the instructions that accompanied the draft resolution, The Utility Return Network (TURN) and the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submit these comments on Draft Resolution SED-5.

TURN and Cal Advocates urge the Commission to reject the proposed Administrative Consent Order. Instead, it should open an OII or other appropriate investigative proceeding that would enable meaningful opportunities for other interested parties to fully participate in the record development and decision-making process, and position the Commission to engage in a fuller consideration of the underlying events and the reasonableness of any proposed settlement regarding penalties or other sanctions associated with the Kincade Fire.

**I. The Determination of Fines and Penalties for a Catastrophic Wildfire Is Not Appropriate For The New Administrative Informal Consent Order Process.**

**A. Resolution M-4846 Recognized Some Circumstances Still Warrant an OII Rather Than Informal Resolution; The Utility-Ignited Catastrophic Wildfire At Issue Here Represents Such Circumstances.**

The proposed settlement purports to resolve violations related to the Kincade Fire using the new processes outlined in the Commission Enforcement and Penalty Policy (Enforcement Policy) adopted in Resolution M-4846 issued in November 2020.<sup>1</sup> The new resolution adopted a more streamlined approach to addressing utility violations for certain matters **not requiring** a more formal Order Instituting Investigation (OII) proceeding. An important element of Resolution M-4846 is its express recognition that there will still be incidents that warrant issuing an OII and, therefore, would be inappropriate for the less formal review processes of the new Enforcement Policy.<sup>2</sup>

In the Enforcement Policy itself (attached to Resolution M-4846), the Commission identified a number of factors that should be considered in determining whether to recommend an OII rather than one of the new, less formal alternatives. The factors for an OII include (but are not limited to) the alleged violations having “caused fatalities, substantial injuries, and/or involved significant property damage in a widespread area.”<sup>3</sup> Unfortunately, there can be no dispute that the Kincade Fire in PG&E’s service territory met those criteria.

The proposed Administrative Consent Order acknowledges that the fire burned over 75,000 acres of land, destroyed approximately 374 structures, damaged approximately 60 buildings, and injured four firefighters.<sup>4</sup> In addition, the Sonoma County District Attorney has charged PG&E with five felonies and 28 misdemeanors arising out of PG&E’s conduct in causing this fire, a point omitted from the proposed Order.<sup>5</sup> Still, rather than explain how the

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<sup>1</sup> See, <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M350/K405/350405017.PDF>

<sup>2</sup> Resolution M-4846, p. 3, and Attachment, pp 10-11 and 13-14.

<sup>3</sup> *Id.*, Attachment, p. 13.

<sup>4</sup> Proposed Administrative Consent Order, p. 1.

<sup>5</sup> <https://sonomacounty.ca.gov/DA/Press-Releases/Criminal-Charges-Filed-Against-PGandE-Related-to-the-Kincade-Fire/>

new process is appropriate in light of the severity of the losses and damages caused by this wildfire, PG&E and SED completely ignore the question.

Finally, in Resolution M-4846 the Commission made clear it did not intend for the new process to restrict use of OIIs or other enforcement tools currently used for enforcement purposes, stating “[t]hese tools remain unaltered by this resolution.”<sup>6</sup> Instead, the Commission specifically identified the new process as applicable to “staff-level actions to correct behavior before more serious action is needed,” and described the new Enforcement Policy as seeking “to provide more structure around those tools by consolidating and identifying a uniform set of staff level enforcement actions.”<sup>7</sup> The Commission’s attempt to provide further structure to such staff level actions must be implemented in a manner consistent with the rules and limitations the Commission developed for the staff actions.<sup>8</sup>

In sum, the Commission must recognize that the new Enforcement Policy is only intended to provide mechanisms that might permit less formal resolution of enforcement actions “in situations not currently covered by an existing citation program or warranting an OII.”<sup>9</sup> The Kincade Fire warrants an OII. Therefore, the Commission must reject the proposed draft resolution and the associated SED-PG&E settlement, and instead initiate an OII in this matter.

**B. The Recent Experience With The OII Process In Reviewing PG&E’s 2017-2018 Wildfires Demonstrates The Value Of Providing Parties Other Than SED and PG&E With Meaningful Opportunities to Participate and Challenge the Settlement.**

The Commission’s process for considering and adopting penalties or sanctions associated with the Kincade Fire attributed to PG&E’s operations should, at a minimum, follow the general pattern of the review conducted of the 2017-2018 wildfires associated with PG&E. In I.19-06-015, the Commission considered PG&E’s role in 2017 and 2018 wildfires that occurred in its

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<sup>6</sup> Resolution M-4846, p. 2.

<sup>7</sup> *Id.*, pp. 2-3.

<sup>8</sup> The San Diego Gas & Electric Company was subject to I.08-11-007 after the 2007 Witch/Rice and Guejito Wildfires. PG&E was subject to I.19-06-015 for the 2017 and 2018 wildfires as well as three OIIs for the San Bruno natural gas disaster (I.12-01-007; I.11-02-016; and I. 11-11-009). The only recent catastrophic event, identified as caused by utility infrastructure, that TURN and Cal Advocates are aware of that has not been the subject of an OII is the Pacific Gas and Electric Company’s (PG&E) 2015 Butte Fire.

<sup>9</sup> Resolution M-4846, p. 3.

service territory. There, the OII was accompanied by SED’s reports on the 2017 wildfires;<sup>10</sup> the staff’s report on the 2018 Camp Fire was issued while the OII proceeding was underway, and the scope of the proceeding was expanded to include consideration of issues concerning that fire.<sup>11</sup>

The OII proceeding of I.19-06-015 provided an opportunity for all active parties to meaningfully participate in the review of PG&E’s actions, and to weigh in on the appropriate fines, penalties, disallowances or other measures that should be imposed on PG&E. Even with a procedural schedule truncated in order to accommodate PG&E’s simultaneous bankruptcy review, active parties had substantial opportunities to obtain information needed to fully consider and analyze the underlying events and any proposed outcome. As the decision describes, those opportunities were largely in the form of participating in the extensive settlement discussions among the active parties.<sup>12</sup> The settlement meetings were often half-day or all-day events and took place over the course of several months. TURN and Cal Advocates know through their experience that the process that took place, while somewhat abbreviated due to the bankruptcy overlay, was essential to the development of the Commission’s understanding of the underlying events and the elements of the proposed settlement. The deeper understanding provided by participating in settlement discussions enabled TURN and Cal Advocates to provide comments and other materials that the Commission found useful in its review of the proposed settlement, as evidenced by the modifications made to bring the proposed settlement in line with achieving a reasonable outcome that promoted the public interest.

Ultimately, the Commission determined in the PG&E OII that the “penalties set forth in the proposed settlement agreement [were] inadequate [in part because] PG&E may not otherwise have received ratepayer recovery for a substantial amount of the costs...and...can be expected to receive significant tax savings associated with the financial obligations.”<sup>13</sup> The Commission “increase[d] the financial obligations to be imposed on PG&E by another \$462 million” and required that any tax savings “be returned for the benefit of ratepayers.”<sup>14</sup> As is more fully

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<sup>10</sup> D.20-05-019, p. 4.

<sup>11</sup> *Id.*, pp. 6-7.

<sup>12</sup> D.20-05-019, p. 7 [“Since the PHC, the parties have met bilaterally or multilaterally over thirty times ... regarding settlement efforts.”]

<sup>13</sup> D.20-05-019, p. 32; *see also* Findings of Fact 15-27.

<sup>14</sup> *Id.*, pp. 33-34; *see also* Ordering Paragraph 1.

discussed in a following section, the PG&E-SED proposed settlement here includes elements similar to those the Commission modified in the earlier PG&E OII, such as relying on “disallowances” that represent the utility giving up the ability to recover removal costs that may not be eligible for further rate recovery (given the treatment of costs of removal in setting past depreciation rates). One material difference is that PG&E and SED have chosen a course that eliminates any meaningful opportunity for interested parties to review the proposed outcome in any detail, or to develop alternatives for the Commission’s consideration. In the case of the PG&E 2017 and 2018 wildfires, the Commission’s decision-making process clearly benefited from the OII process, as evidenced by its determination that modifications were required in order to approve the PG&E-SED proposed settlement. The Commission should again rely on the OII process for purposes of resolving issues regarding PG&E’s role in the 2019 Kincade Fire.

## **II. The Limited Information in the Proposed Administrative Consent Order Identifies a Number of Deficiencies Requiring Modifications.**

In addition to the procedural and due process issues implicated by PG&E’s and SED’s reliance on the new informal process rather than an OII, there are several substantive issues that appear on the face of the proposed Administrative Consent Order. TURN and Cal Advocates submit that each of these issues is a further reason for the Commission to reject the proposed draft Resolution and instead initiate an OII for the review of the circumstances associated with the Kincade Fire.

### **A. The Black Box Nature Of The Agreement Is Insufficient To Allow Commission Approval.**

In Resolution M-4846, the Commission identified four general considerations that should be evaluated as part of any proposed settlement: “1. Equitable factors; 2. Mitigating circumstances; 3. Evidentiary issues; and 4. Other weakness in the enforcement action that the division reasonably believes may adversely affect the ability to obtain the calculated penalty.”<sup>15</sup> But PG&E and SED failed to provide information that might enable the Commission or interested parties to evaluate how the identified general considerations influenced the development of the proposed settlement and resulted in terms the Commission might find reasonable. Instead, PG&E and SED merely contend, “[t]he penalty amount in the Settlement

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<sup>15</sup> Resolution M-4846, Attachment, p. 15, Section III.B. of the new Enforcement Policy.

Agreement was determined by factors including those set forth in the [Enforcement Policy’s] Penalty Assessment Methodology (Policy, Appendix I).”<sup>16</sup>

There are at least two problems with the approach taken by PG&E and SED in this regard. First, the Commission cannot determine the reasonableness of the proposed settlement based on the mere statement that such factors were used, without any discussion of how they were used. Whether or not the proposed settlement represents a reasonable outcome in light of the identified factors is a determination for the Commission to make, not the parties.<sup>17</sup> Adopting the proposed settlement based even in part on the mere assertion that certain factors were considered would be an improper delegation of the Commission’s ultimate decision-making authority to SED. TURN and Cal Advocates do not dispute that the Commission may delegate certain matters to staff for purposes of making an initial determination.<sup>18</sup> However, under the circumstances here SED must provide the Commission with sufficient information to enable the Commission to reach its own conclusion regarding the reasonableness of the proposed outcome.<sup>19</sup> The approach that produced the proposed Administrative Consent Order leaves interested entities, such as TURN and Cal Advocates, who were not privy to the settlement discussions or any informal or formal discovery process, without sufficient ability to offer informed views as the reasonableness of the settlement. Mere assertions that the settling parties considered certain factors is inadequate – there needs to be a meaningful and well-supported demonstration of the basis for and reasonableness of the proposed outcome.<sup>20</sup> And a failure to

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<sup>16</sup> Proposed Administrative Consent Order, p. 1.

<sup>17</sup> It is worth noting that nothing in the Proposed Administrative Consent Order or the settlement attached thereto explicitly asserts that the Commission can or should find the proposed terms reasonable or in the public interest.

<sup>18</sup> Many investigations occur initially at the staff level, and then are put before the Commission if further action such as an OII is warranted. For example, I.19-06-015, the investigation into the PG&E 2017 and 2018 wildfires. The introduction at page 1 states that the OII will “address 15 of the 17 fire incidents investigated by the Commission’s Safety and Enforcement Division.” The OII also included a review of the “systemic concerns, including those identified by SED in the course of its investigations...” (pp. 1-2).  
<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M303/K773/303773212.PDF>

<sup>19</sup> CPUC Rules of Practice and Procedure Rule 12.1 (d). “The Commission will not approve settlements ... unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.”  
<https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/administrative-law-judge-division/documents/rules-of-practice-and-procedure-may-2021.pdf>

<sup>20</sup> For example, the settlement agreement for PG&E’s 2017 and 2018 wildfires included 141 stipulated facts spanning 28 pages, and a further 55 pages of exhibits, to allow parties and the Commission to assess the reasonableness of the proposed settlement. *Joint Motion of Pacific Gas and Electric Company (U 39 E), the Safety and Enforcement Division of the California Public Utilities Commission, Coalition of California Utility Employees,*

require more detailed information would lead to the conclusion that the Commission’s delegation of authority here went beyond the degree that is permissible.

Second, the approach taken in the proposed Administrative Consent Order is the equivalent of a “black box” settlement. There is insufficient basis in the proposed resolution to establish what the range of reasonable outcomes might be, much less whether the agreed-upon outcomes fall within that range. As a result, it leaves the Commission without sufficient information to evaluate the merits of the agreed-upon figures. There may be circumstances in utility regulation where reliance on a “black box” approach might be acceptable or appropriate. But here, the underlying issue is another catastrophic wildfire that burned over 75,000 acres of land, destroyed approximately 374 structures, damaged approximately 60 buildings, injured four firefighters, and spawned criminal charges.

Moreover, PG&E is a convicted felon and repeat offender. As shown in Table 1 below, PG&E has repeatedly violated Commission and federal safety guidelines and rules for nearly a decade. Just counting its most catastrophic failures from 2010 through 2019, PG&E has caused the destruction of over 461,000 acres of California, 114 fatalities, 68 injuries, and the destruction of over 23,000 homes, businesses, and other buildings. Given PG&E’s litany of failures, the proposed Administrative Consent Order’s “black box” approach is woefully inadequate and unreasonable on its face.

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*and the Office of the Safety Advocate for Approval of Settlement Agreement, Exhibit A; and Attachments 1 through 13.*

**Table 1: Major Events from PG&E electric and gas operations, 2010 to 2019<sup>21</sup>**

Major Event	Gas/Electric	Year	Acres	Fatalities	Injuries	Structures Damaged
San Bruno	Gas	2010	N/A	8	58	108
Kern Power Plant Fall	Electric	2012	<1	1	0	0
Kern Power Plant Implosion	Electric	2013	<1	0	5	1
Butte Fire			70,868	2	1	965
Atlas Fire			51,624	6		795
Nuns Fire			54,382	3		1,527
Pocket Fire			17,357	0		8
Potter/Redwood Fire			36,523	9		587
Camp Fire			153,336	85		18,804
Kincade Fire			77,758	0	4	374
<b>Total</b>			<b>461,848</b>	<b>114</b>	<b>68</b>	<b>23,169</b>

<sup>21</sup> San Bruno: <https://www.nts.gov/investigations/AccidentReports/Reports/PAR1101.pdf>

Kern Power Plant Fall: [ftp://ftp.cpuc.ca.gov/ElectricGenerationPerf/I1408022%20\(PUBLIC-F\)%20Investigation%20Rept%20of%20KERN%20Power%20Plant%20by%20PGE%20\(Redacted\).pdf](ftp://ftp.cpuc.ca.gov/ElectricGenerationPerf/I1408022%20(PUBLIC-F)%20Investigation%20Rept%20of%20KERN%20Power%20Plant%20by%20PGE%20(Redacted).pdf)

Kern Power Plant Implosion:  
[https://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Public\\_Website/Content/Safety/Electric\\_Safety\\_and\\_Reliability/Filings/Kern%20%20Report%20FINAL\\_REDACTED.pdf#\\_top](https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Safety/Electric_Safety_and_Reliability/Filings/Kern%20%20Report%20FINAL_REDACTED.pdf#_top)

Butte Fire: [https://www.fire.ca.gov/media/5443/butte-15-ca-aeu-024918\\_redacted.pdf](https://www.fire.ca.gov/media/5443/butte-15-ca-aeu-024918_redacted.pdf)

Atlas Fire: <ftp://ftp.cpuc.ca.gov/I19-06-015/I.19-06-015%20October%202017%20NorCal%20Fires/E20171023-01%20Atlas%20Report%20and%20Attachments%20Redacted.pdf>

Nuns Fire: <ftp://ftp.cpuc.ca.gov/I19-06-015/I.19-06-015%20October%202017%20NorCal%20Fires/E20171016-01%20Nuns%20Report%20and%20Attachments.Redacted.pdf>

Pocket Fire: <ftp://ftp.cpuc.ca.gov/I19-06-015/I.19-06-015%20October%202017%20NorCal%20Fires/E20171021-01%20Pocket%20Report%20and%20Attachments.Redacted.pdf>

Potter/Redwood Fire: <ftp://ftp.cpuc.ca.gov/I19-06-015/I.19-06-015%20October%202017%20NorCal%20Fires/E20171009-02%20Potter%20Redwood%20Report%20and%20Attachments.Redacted.pdf>

Camp Fire: [https://www.fire.ca.gov/media/5512/top20\\_deadliest.pdf](https://www.fire.ca.gov/media/5512/top20_deadliest.pdf)

Kincade Fire: <https://www.fire.ca.gov/incidents/2019/10/23/kincade-fire/>



**B. The Disallowance of Rate Recovery For A Fraction of the Costs of Removing 70 Transmission Lines That Have Been Permanently Abandoned Could Well Have A Ratepayer Value of Substantially Less Than \$85 Million, and Perhaps \$0.**

The proposed Administrative Consent Order states that PG&E will not seek rate recovery of capital expenditures in the amount of \$85 million to remove permanently abandoned transmission facilities within its service territory.<sup>22</sup> The Settlement Agreement describes a new ten-year program PG&E plans to initiate to remove approximately 70 “permanently abandoned transmission lines or portions of lines in its service territory.” PG&E would not seek rate recovery of \$85 million of the associated costs, so long as the costs are incurred by the end of 2024. But the Settlement Agreement specifically provides PG&E the opportunity to seek costs in excess of that amount, without providing a forecast of the associated costs such that the Commission and interested parties might have a sense of the relative magnitude of the disallowance as compared to total costs.<sup>23</sup>

In considering this portion of the proposed remedy, the Commission needs to keep in mind the conditions and circumstances that led to the Kincade Fire. In 2005, Calpine, as the owner of generation plants at The Geysers, notified PG&E that certain facilities had been “mothballed” for several years already, and requested PG&E remove transmission-related equipment that had served those facilities.<sup>24</sup> In May 2006, PG&E took action that left the line, three spans of which “no longer served any customer load or facilitated Calpine’s power generation to the electrical grid,” not only in place but also energized. More than a dozen years later, on October 23, 2019, the still-energized transmission line spans contributed to the ignition of the Kincade Fire.<sup>25</sup>

The proposed settlement includes PG&E’s assertions that during the period in question there was no applicable standard under which the utility was required to remove the transmission facilities in question.<sup>26</sup> But the Commission has to determine whether it was reasonable for a

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<sup>22</sup> Proposed Administrative Consent Order, Settlement Agreement, pp. 4-5.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*, p. 2.

<sup>25</sup> *Id.*, pp. 2-3.

<sup>26</sup> *Id.*, p. 3.

utility operating facilities in what was long known to be a high fire risk area,<sup>27</sup> to leave its facilities energized even though those facilities served no customer or any purpose for connecting generation resources to the electrical grid. It is hard to fathom how PG&E's actions and inactions could be reasonable under any circumstances; it is especially hard here where the responsible utility had ignited catastrophic wildfires in 2015, 2017, and 2018, including several in the same general area as The Geysers facility in the Mayacama Mountains.<sup>28</sup>

There are several reasons for the Commission to question whether PG&E would be entitled to rate recovery of any amount for costs of removing its abandoned transmission lines. First, these costs would appear to have much in common with the Catastrophic Event Memorandum Account (CEMA) costs that PG&E had agreed to forgo as part of its proposed settlement in the 2017-2018 wildfire OII. As the Commission stated there:

the Commission agrees with the Opposing Parties that argue that PG&E's ability to recover all of the CEMA costs identified in the settlement is questionable. TURN observes that PG&E has not yet sought recovery of these costs. Moreover, in the past, the Commission has disallowed ratepayer recovery for costs related to fires caused by utility equipment where the Commission found that the utility did not reasonably manage and operate its facilities prior to the fire. [footnote reference omitted] On the other hand, ... PG&E contests many of the violations related to the 2017 and 2018 fires. [¶] Given the substantial uncertainty regarding the recoverability of the settled CEMA costs, the effective value of these disallowances is likely much lower than the stated [amount]. It is unclear whether the Settling Parties took into account the likelihood of recoverability of these costs. [footnote reference omitted] However, the Commission finds that this uncertainty must be taken into account when assessing whether the penalty is adequate.<sup>29</sup>

Second, the Commission should verify whether PG&E has effectively already recovered the costs of removal for the transmission facilities that appear on its list of 70 permanently

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<sup>27</sup> D.12-01-032 directed northern California electric IOUs to identify overhead powerline facilities in the interim fire-threat map adopted in the Decision. The interim map is provided in Appendix C of D.12-01-032. PG&E's interim fire map identifies as "High CIP Fire Threat 3" an area near The Geysers where the Kincade Fire originated. This location is east of Hawkeye and south of Konocti on the map PG&E provided on page 3 of attachment B to PG&E Advice Letter ELEC 4167-E on June 10, 2013. [https://www.pge.com/nots/rates/tariffs/tm2/pdf/ELEC\\_4167-E.pdf](https://www.pge.com/nots/rates/tariffs/tm2/pdf/ELEC_4167-E.pdf)

<sup>28</sup> The larger of these fires include the Atlas and Nuns Fires.

<sup>29</sup> D.20-05-019, pp. 38-39.

abandoned transmission lines. The depreciation rates the Commission authorized for these facilities during their service lives would have included a “cost of removal” component that is based on the expected future costs of removing such facilities. If PG&E has already effectively recovered some or all of the costs of removal, it has no claim to further rate recovery of such costs. The proposed Administrative Consent Order and the associated PG&E-SED settlement does not include any mention of the removal costs already recovered in rates, or how that prior rate recovery factored into the determination of the \$85 million figure for which PG&E agreed to not seek recovery. It could well be that PG&E has agreed to forgo future recovery of amounts it has already collected.

**C. The Proposed Administrative Consent Order Would Unreasonably and Inappropriately Prevent SED from Having Any Role In a Future Review of PG&E’s Proposed Program for Removal of Abandoned Transmission Facilities.**

The proposed settlement between PG&E and SED would silence SED going forward regarding any violations or enforcement proceedings against PG&E with regard to the utility’s failure to previously remove these abandoned transmission facilities.<sup>30</sup> The settlement describes, in the most summary fashion and perhaps for the first time, a new ten-year program that could entail at least \$85 million of expenditures in the first three years alone. The notion that PG&E has, until this point, chosen to leave in place approximately 70 transmission lines that it has determined are “permanently abandoned” is troubling on its face, particularly if more of those lines prove to have been left in place while still energized, as was the case with the Kincade Fire. The transmission facilities removal program and the conditions that led to the need for the program are ripe for SED’s particular knowledge and expertise as part of the Commission’s assessment of the reasonableness of PG&E’s actions, including whether the condition of these lines while “abandoned” and the failure to engage in such removal activities earlier reflect reasonable or prudent management decisions on the utility’s part. But under the terms of the settlement, SED must refrain from “instituting, directing, or maintaining any violations or enforcement proceedings against PG&E related to PG&E’s failure to previously remove the

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<sup>30</sup> Proposed Administrative Consent Order, Settlement Agreement, p. 6.

approximately 70 transmission lines that PG&E has determined have been permanently abandoned... .”<sup>31</sup>

The Commission must find this term of the proposed agreement unreasonable. SED has special expertise in the investigation of such matters, and could provide key information relevant to the Commission’s reasonableness determination for PG&E’s actions leading up to the program, as well as the effective implementation of the program itself. Absent the proposed agreement, there would be nothing to prevent SED from “instituting, directing, or maintaining any violations or enforcement proceedings” regarding PG&E’s handling of abandoned transmission lines. Under the terms of the proposed agreement, however, SED would be prohibited from participating in such a proceeding. The Commission must recognize this lopsided element of the settlement as unreasonable and particularly inappropriate. Expressly preventing a division of the agency from using its knowledge and expertise for the benefit of the public interest is unlikely to ever be reasonable, and certainly is unreasonable under the circumstances here. The Commission should not allow its enforcement division to be subject to the equivalent of a gag order. Doing so would be an abdication of the Commission’s responsibility under Public Utilities Code Section 451 to protect PG&E’s customers from unjust and unreasonable charges, and to ensure the utility has operated its system in a prudent manner.

### **III. Conclusion**

For the for reasons set forth and supported in these comments, TURN and Cal Advocates urge the Commission to reject the draft resolution and instead issue an Order Instituting Investigation into the penalties and other remedies that should be imposed on PG&E for the role its electrical facilities played in igniting the Kincade Fire in 2019.

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<sup>31</sup> *Id.*

Respectfully submitted,

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Robert Finkelstein, General Counsel  
Katy Morsony, Staff Attorney

The Utility Reform Network

785 Market St., #1400  
San Francisco, CA 94103  
415-929-8876, x. 307 (phone)  
[bfinkelstein@turn.org](mailto:bfinkelstein@turn.org)

\_\_\_\_\_/s/\_\_\_\_\_  
Linda Serizawa, Deputy Director

Public Advocates Office  
at the California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
415-703-5259 (phone)  
[Linda.Serizawa@cpuc.ca.gov](mailto:Linda.Serizawa@cpuc.ca.gov)

cc: President Marybel Batjer, CPUC  
Commissioner Cliff Rechtschaffen, CPUC  
Commissioner Martha Guzman Aceves, CPUC  
Commissioner Genevieve Shiroma, CPUC  
Commission Darcie Houck, CPUC  
Peter Allen, Assistant General Counsel (Interim)  
[ResolutionCommentsPG&E@cpuc.ca.gov](mailto:ResolutionCommentsPG&E@cpuc.ca.gov)  
Service List for R.18-10-007  
Service List for I.15-08-019