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

Order Instituting Investigation on the Commission's Own Motion into the Maintenance, Operations and Practices of Pacific Gas and Electric Company (U39E) with Respect to its Electric Facilities; and Order to Show Cause Why the Commission Should not Impose Penalties and/or Other Remedies for the Role PG&E's Electrical Facilities had in Igniting Fires in its Service Territory in 2017.	I.19-06-015 (Filed June 27, 2019)

PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E) APPEAL OF PRESIDING OFFICER'S DECISION APPROVING SETTLEMENT AGREEMENT WITH MODIFICATIONS

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PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E) APPEAL OF PRESIDING OFFICER'S DECISION APPROVING SETTLEMENT AGREEMENT WITH MODIFICATIONS

Pursuant to Rule 14.4 of the California Public Utilities Commission's ("CPUC" or "Commission") Rules of Practice and Procedure, Pacific Gas and Electric Company ("PG&E") hereby appeals the Presiding Officer's Decision ("POD") of Administrative Law Judge Sophia Park issued February 27, 2020. To preserve the Commission's flexibility to correct the errors in the POD as expeditiously as possible, and to preserve its own rights, PG&E is simultaneously filing a Motion Requesting Other Relief.

I. INTRODUCTION

The Safety and Enforcement Division of the CPUC ("SED"), PG&E, Coalition of California Utility Employees ("CUE"), and the Office of the Safety Advocate ("OSA") (collectively, the "Settling Parties") submitted a $1.675 billion Settlement Agreement ("Settlement" or "Settlement Agreement")[1] that, if approved as submitted, would be the largest dollar amount ever imposed by the Commission in connection with wildfire-related violations. Despite decades of precedent in California and throughout the nation encouraging and approving

[1] The Settlement, along with its exhibits, is appended to this Appeal as Appendix A. The Settling Parties originally submitted the Settlement as an attachment to the Joint Motion for Approval of Settlement filed December 17, 2019 ("Joint Motion").

settlements, the POD modifies the Settlement Agreement to add nearly $1 billion to the dollar amount of the Settlement. PG&E believes the POD further erodes confidence in the regulatory environment in California. The changes to the Settlement that the POD would require are unworkable, unreasonable, and contrary to the public interest and governing legal standards. PG&E requests that the Commission expeditiously issue a decision that approves the Settlement proposed by the Settling Parties.

PG&E has filed a Plan of Reorganization ("PoR") as part of its Chapter 11 proceedings. PG&E's primary goals with its PoR are to fully and fairly compensate all eligible wildfire victims as quickly as possible and to meet the requirements for participation in the Wildfire Fund under Assembly Bill ("AB") 1054. The POD creates two serious risks to the PoR. First, the PoR depends on raising $9 billion in new equity. PG&E has obtained equity backstop commitments for this amount. The POD, however, would require a change to the PoR that would entitle each backstop party to terminate its commitments. Specifically, the POD's dual requirements that PG&E pay a $200 million fine to the General Fund, and that this amount be paid out of funds not otherwise available to satisfy the claims of victims, would result in PG&E paying $25.5 billion to wildfire victims plus $200 million to the General Fund. Under the backstop commitment agreements, if PG&E agrees to pay more than $25.5 billion in respect of Fire Claims (which expressly includes the fines and penalties that are the subject of this proceeding), each backstop party may elect to terminate. Given the current unprecedented stock market volatility and decline in PG&E's stock price since the POD was issued, backstop parties may choose to terminate their commitments and deploy their capital in other investments that may now appear more attractive. Hence, the POD's proposed modifications to the Settlement create a serious risk that the equity funding for the PoR may fall away, leaving PG&E unable to pay victims and unable to meet the June 30, 2020, deadline for resolving its Chapter 11 cases.

A second risk to the PoR arises from the perceptions of investors, lenders, and credit rating agencies regarding the California regulatory environment. These entities value predictability, timeliness, and reasonableness of regulatory outcomes. By declining to approve a reasonable settlement negotiated at arms' length, despite the Commission's long-stated policy of encouraging and approving settlements, the POD heightens concerns about the risks of investing in California utilities. These concerns could not come at a worse time, as PG&E is seeking to raise over $57 billion for its exit from Chapter 11 – the largest capital raise in the history of investor-owned utilities, and one of the largest in corporate history.

At this critical juncture, the Commission should remove these risks to the PoR expeditiously. Specifically, at or before its May 28, 2020, business meeting, the Commission should either adopt the proposed Settlement, as submitted, or modify the POD as follows:

1. Eliminate the Tax Modification, as it is contrary to Commission precedent and invites PG&E to violate the IRS normalization rules, and because it is unclear whether the POD considered the impact of a potential $518 million increase in penalties that may result from the Tax Modification.

2. Order that any fine payable to the General Fund, including the proposed $200 million fine, is a Fire Victim Claim under the PoR, will be paid out of the Fire Victim Trust, and will be subordinated to the Trust's payments to fire victims.

These actions would enable the Commission to issue decisions on May 28 in both the Bankruptcy OII and this proceeding, paving the way for PG&E to obtain a Bankruptcy Court order confirming the PoR by the June 30 deadline and enabling PG&E to exit Chapter 11 and to pay wildfire victims.

II. SUMMARY OF ARGUMENT

The $1.675 billion proposed Settlement is reasonable in light of the record, consistent with the law, and in the public interest. It was negotiated at arms' length by sophisticated parties who reached the informed judgment that the Settlement is reasonable in light of the risks of litigation and PG&E's financial constraints. Consistent with the Commission's decades of precedent encouraging and approving settlements, the Settlement Agreement should be approved, as-is.

There are numerous problems with the POD. As an initial matter, the POD is against the public interest and public policy because it unreasonably modifies an arms' length agreement, is contrary to the Commission's longstanding support of settlements, threatens to disrupt PG&E's plan to emerge from bankruptcy (putting payment of victims and entry into the Wildfire Fund at risk), and increases distrust of the California regulatory environment, undermining PG&E's ability to raise capital to fund infrastructure improvements.

The POD's unprecedented modifications, adding nearly $1 billion in new penalties – unreasonable on their own – are particularly so in light of PG&E's significant financial constraints as it attempts to emerge from bankruptcy, as well as market-wide declines since the issuance of the POD. In second-guessing the Settling Parties' judgment, the POD reaches its own conclusions about the likely litigated outcome of both this proceeding – in which the factual and legal issues regarding the alleged violations were strongly contested – and a future reasonableness review for future wildfire-related expenditures – as to which there is no record. The POD fails to consider the role of climate change in increasing wildfire risk, fails to give sufficient weight to the Settling Parties' evaluation of litigation risk, and fails to give sufficient weight to PG&E's financial condition. The POD's modifications are not reasonable in light of the whole record, particularly when considering PG&E's total financial obligations related to the 2017 and 2018 wildfires and the public interest in getting wildfire victims paid as quickly as possible.

The POD's proposed modifications to the Settlement appear to have been motivated, at least in part, by a comparison to the penalty levied in the wake of the 2010 San Bruno explosion. This comparison is not a valid basis on which to modify the Settlement. The Commission imposed a penalty in San Bruno following three fully litigated OII proceedings in which the Commission found thousands of violations. Here, no such findings have been made, and the facts and law regarding the alleged violations are strongly contested. In San Bruno, the third-party claims were approximately $565 million and were largely covered by insurance. In this case, PG&E is paying $25.5 billion to third parties (in addition to its insurance proceeds). The financial consequence to PG&E for the 2017 and 2018 wildfires is far, far greater than that which PG&E experienced in connection with San Bruno. PG&E's payment to wildfire victims both serves the deterrent purpose of a penalty and leaves PG&E in an extremely constrained financial condition.

Other specific proposed modifications are also flawed. The POD proposes a modification to the treatment of any tax savings that PG&E may realize from the more than $1.6 billion in wildfire-related expenditures for which it has agreed to forgo rate recovery. The proposal is contrary to Commission precedent and invites PG&E to violate Internal Revenue Service rules. Additionally, as discussed above, without the modifications requested herein, the POD's proposed $200 million fine payable to the General Fund would necessitate an amendment to the PoR, as payment of the fine would trigger the right of PG&E's equity backstop parties to terminate their commitments to help fund the PoR – a right they are likely to seize in the wake of the worst financial market decline since 2008.[2]

For all of these reasons and those discussed below, the Commission should issue a modified POD that approves the Settlement as originally proposed. Alternatively, if the Commission is convinced that the Settlement must be modified, it should at least revise the POD to eliminate the requirement to return the benefits of tax deductions to customers and to provide that any penalty will be paid out of the Fire Victim Trust after all victims are paid.

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[2] *See, e.g.*, The Wall Street Journal, *Stocks Suffer Biggest Weekly Losses Since 2008* (Feb. 28, 2020), https://www.wsj.com/articles/more-markets-head-toward-correction-territory-as-coronavirus-spooks-investors-11582864550 ("U.S. stocks extended a punishing selloff, dragged to their worst week since the financial crisis by mounting investor unease about the economic fallout from the coronavirus epidemic."); The New York Times, *Markets Plunge as a Global Recession Appears Almost Inevitable* (Mar. 16, 2020) https://www.nytimes.com/2020/03/16/business/stock-market-coronavirus-federal-reserve.html ("The disorder in financial markets has spread well beyond the market for stocks. . . . In the options market, the Chicago Board Options Exchange Volatility index, widely considered the stock market's 'fear gauge,' climbed more than 40 percent to its highest level since the worst of the financial crisis.").

III. BACKGROUND ON PROCEEDINGS, SETTLEMENT, AND THE POD

In October 2017 and November 2018, multiple wildfires occurred across PG&E's service territory in Northern California. The 2017 and 2018 wildfires were unprecedented in size, scope, and destruction. SED investigated the fires that involved PG&E's facilities and alleged violations of Commission rules and regulations and PU Code Section 451, though some of the alleged violations did not relate to ignition of the fires. Based on its investigations, SED issued its "Report on October 2017 Fire Siege" on June 13, 2019 (with attached incident investigation reports), as well as incident investigation reports on the Lobo and McCourtney Fires on October17, 2019, and the Camp Fire Report on November 26, 2019 (collectively, the "SED Fire Reports"). With regard to certain of the 2017 Northern California Wildfires, SED alleged that PG&E violated several Rules under General Order ("GO") 95, as well as Resolution E-4184.[3] Regarding the 2018 Camp Fire, SED alleged that PG&E violated several Rules under GO 95, GO 165, Resolution E-4184, and PU Code section 451.[4]

On June 27, 2019, based on allegations in SED Fire Reports[5] pertaining to the 2017 Northern California Wildfires, the Commission issued this OII, instituting a formal investigation

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[3] For a chart summary of violations, or lack of violations, that SED found for the 2017 Northern California Wildfires, by fire, please see OII 19-06-015 ("OII") at 12-13. *See also* Motion of the Safety and Enforcement Division to Amend Scope of Proceeding to Include Lobo Fire and McCourtney Fire, filed Oct. 17, 2019, at 3. *See also* Settlement Agreement Exhibit B at 10-11.
[4] For a chart summary of violations that SED found for the 2018 Camp Fire, please see Motion of the Safety and Enforcement Division to Expand the Proceeding Scope to Include the 2018 Camp Fire, filed Nov. 26, 2019, at 3-4,. *See also* Settlement Agreement Exhibit B at 12-13.
[5] OII 19-06-015, as filed on June 27, 2019, addressed the following fires: 37, Adobe, Atlas, Cascade, Cherokee, La Porte, Norrbom, Nuns, Oakmont/Pythian, Partrick, Pocket, Point, Potter/Redwood, Sulphur, Tubbs, and Youngs Fires. *See* OII at 1, 5-10. There are no alleged violations associated with the 37, Cherokee, La Porte, and Tubbs Fires. SED determined that the 37 Fire was not a reportable incident and thus did not issue an investigation report for that fire.

into 15 wildfires that took place during October 2017. The Lobo, McCourtney,[6] and Camp[7] Fires were later added to the proceeding. The OII ordered PG&E to show cause why the Commission should not find PG&E in violation of provisions of the Public Utilities Code, General Orders, and other rules or requirements identified in the OII; to show cause why the Commission should not impose a penalty; and to prepare a report as provided in Attachment B[8] of the OII by August 5, 2019 (along with other orders not relevant to this Appeal).[9]

On July 29, 2019, PG&E submitted its Initial Report in Response to OII and Order to Show Cause ("PG&E's Report"), including its corrective actions report. PG&E's Report acknowledged that, with regard to the operation and maintenance of its electric facilities, there were areas in which it could have performed better to mitigate risks, but it also noted that PG&E respectfully disagreed with many of SED's findings included in the OII. With regard to the legal contentions made in the OII, PG&E submitted that the Commission, via SED, erred in its interpretation and application of GO 95, Rules 31.1, 35, and 38, and that SED misapplied GO 95, Rule 19, and Resolution E-4184.[10] PG&E outlined SED's alleged violations with which it

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[6] On October 17, 2019, SED filed a motion to amend the scope of the 2017/2018 Wildfire OII to include the Lobo and McCourtney Fires. PG&E did not oppose that motion. The motion was granted on October 28, 2019.

[7] SED's motion to amend the scope of the proceeding to include the Camp Fire was filed November 26, 2019, and granted December 5, 2019, in the ALJ's Second Amended Scoping Memo and Ruling.

[8] On November 15, 2019, SED filed its Reply to PG&E's Report in Response to Attachment B. As noted in Appendix A of that Reply, SED was unable to conclude whether any of the potential systemic issues identified in Attachment B to the OII contributed to the ignition of the 2017 Northern California Wildfires.

[9] The OII also ordered PG&E to file an application within 30 days of the issuance of the OII to develop an open source, publicly available mobile app that allows a Geographic Information System-equipped phone to send pictures of utility infrastructure (e.g., pole) to an asset management system/database maintained by PG&E and to take several immediate corrective actions within 30 days of the issuance of the OII. PG&E timely filed its Report in Response to Attachment B of the OII ("Attachment B Report") and related documents on August 5, 2019, and August 23, 2019.

[10] PG&E's Report at 23-32.

disagreed and explained why it was contesting the various findings.[11] PG&E also chose not to contest nine of the violations alleged by SED but emphasized that it was not conceding that PG&E engaged in any wrongdoing or unlawful conduct by doing so.[12]

In August 2019, PG&E and SED began settlement discussions and requested a stay of discovery until September 30, 2019. Although the parties continued to engage in settlement discussions, the parties filed briefs regarding disputed legal issues, on October 14, 2019, and reply briefs, on October 28, 2019. PG&E served its reply testimony for all its fact and expert witnesses, with the exception of one expert witness, on November 18, 2019.

Overall, the parties continued to engage in hard-fought settlement negotiations from August until December 2019. Although not all parties were present at each discussion, the parties met bilaterally or multilaterally more than 30 times. On November 18, 2019, PG&E issued a notice of settlement conference, pursuant to Rule 12.1(b). Over the next month, the parties held 10 settlement conferences. On December 17, 2019, the Settling Parties reached an agreement and requested that the Commission approve the Settlement.

On December 30, 2019, the ALJ issued a ruling requesting additional information about the Settlement. PG&E responded to the questions raised in this ruling on January 10, 2020. On January 16, 2020, The Utility Reform Network ("TURN"), the Public Advocates Office at the CPUC ("Cal Advocates"), the City and County of San Francisco ("CCSF"), and Thomas Del Monte and Wild Tree Foundation (collectively, "Del Monte") filed comments on the Settlement. PG&E, CUE, SED, Cal Advocates, and TURN filed reply comments on January 31, 2020.

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[11] PG&E's Report at 33-42.
[12] PG&E's Report at 42-46.

On February 12, and February 25, 2020, Cal Advocates and Del Monte, respectively, filed motions requesting a hearing on the Settlement. The POD was issued February 27, 2020.

A. Summary of the Settlement Agreement

After complex and lengthy settlement negotiations, as noted above, the Settling Parties structured the Settlement to consist of three primary substantive components.

First, the Settling Parties stipulated to a series of facts and violations.[13] Regarding the alleged violations, PG&E agrees that it will not contest that some of the events and circumstances described in the stipulated facts violated GO 95, Rules 19 and 31.1, GO 165, Section IV, and Resolution E-4184. Specifically, PG&E agreed not to contest 14 violations related to failure to maintain records, late work, inadvertent evidence disposal, reporting or procedural failures, and failure to complete a patrol prior to reenergizing a circuit.[14] Agreeing not to contest is not the same as *admitting* to violations. PG&E continues to dispute the other 35 alleged violations of Commission rules and regulations, including all but one of the ignition-related violations.

Second, the Settlement requires PG&E to bear $1.675 billion in financial obligations, which, in part, PG&E has incurred, or will incur, to comply with its legal obligations to provide safe and reliable service. Per the Settlement, PG&E will not seek rate recovery of certain specified wildfire-related expenditures in future applications, which will total $1.625 billion.[15] In addition, PG&E will spend $50 million, funded by shareholders, on the System Enhancement Initiatives detailed immediately below.[16]

Third, PG&E agrees to undertake 20 System Enhancement Initiatives.[17] These System Enhancement Initiatives build on the system modifications that PG&E has already undertaken in response to the fire-related events that took place in 2017 and 2018. The System Enhancement

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[13] *See* Settlement Agreement Exhibits A and B.
[14] *See* Settlement Agreement Exhibit B.
[15] *See* Settlement Agreement Section III.A.
[16] *See* Settlement Agreement Section III.B and Exhibit C.
[17] *See id*.

Initiatives include vegetation management and electric operations-focused initiatives, system-wide analyses, community engagement-focused initiatives, and transparency and accountability-focused initiatives.

The Settlement also contains general settlement terms.[18] It states that the Settlement is a compromise of the Settling Parties' disputed claims and defenses and that the Settling Parties agree that the Settlement Agreement resolves and disposes of all disputed issues in this OII. In accordance with Commission Rule 12.5, the Settling Parties agree that the Settlement does not constitute precedent regarding any principle or issue in this proceeding or in any future proceeding. The Settlement may be amended or changed only by written agreement signed by the Settling Parties and approved by the Commission.

B. Summary of the POD

The POD increases the dollar amount of the Settlement by an estimated nearly $1 billion by imposing the following modifications: The POD increases the wildfire-related expenditures for which PG&E will not seek rate recovery by $198 million, increases the shareholder funds devoted to System Enhancement Initiatives by $64 million, imposes a $200 million fine payable to the General Fund (where there was none before), and orders that shareholders forfeit future tax savings that could be worth up to $518 million.[19] In total, the proposed modifications increase the dollar amount of the Settlement from $1.675 billion (already the largest wildfire-related settlement in Commission history) to $2.655 billion.[20] There is no precedent in Commission history for a POD to alter a Settlement – much less one reached during hard-fought, arms' length negotiations – to add nearly a billion dollars to the total. In fact, nothing comes close.

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[18] *See* Settlement Agreement Section IV.
[19] POD at 2, 73-74. Note that the estimate of tax savings is based on an internal PG&E analysis taking into account the $198 million increase in disallowances and $64 million increase in shareholder-funded System Enhancement Initiatives. It does not take into account many variables that are unknowable at this time, such as PG&E's taxable income, net operating loss position, future changes in the tax laws, and the timing of expenditures.
[20] Note this is greater than the dollar amount reported by the Commission (i.e., $2.137 billion) because this takes into account the value of the forgone tax savings.

C. Review on Appeal

Rule 14.4 allows any party to an adjudicatory proceeding to file an appeal of a presiding officer's decision within 30 days of the date the decision was served. "Appeals . . . shall set forth specifically the grounds on which the appellant . . . believes the presiding officer's decision to be unlawful or erroneous."[21] When "acting in an appeal function," the Commission is not required to accept the ALJ's factual findings as articulated in the POD; rather, the Commission "is free to consider the record de novo and to adopt an alternate decision that amends, alters or reverses the POD."[22] "It is the Commission, not the presiding officer, that is responsible for the final decision in this matter."[23]

IV. THE PROPOSED SETTLEMENT IS IN THE PUBLIC INTEREST, REASONABLE IN LIGHT OF THE WHOLE RECORD, AND COMPLIES WITH DECISION 98-12-075

As long as a settlement taken as a whole is reasonable in light of the record, consistent with the law, and in the public interest, it should be adopted.[24] In performing its review, the Commission looks to whether the proposed settlement represents a "reasonable compromise that is within the range of likely litigated outcomes for the alleged violations."[25] Moreover, under Decision 98-12-075, the Commission adopted the following criteria to use in setting the amount of penalties or fines: (1) severity of the offense; (2) conduct of the utility; (3) financial resources of the utility; (4) totality of the circumstances in furtherance of the public interest; and (5) the

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[21] Commission Rules of Practice and Procedure, Rule 14.4(c).
[22] *In Re Clear World Commc'ns Corp.*, D.05-06-033, 2005 WL 1537220 (Cal. P.U.C. June 16, 2005).
[23] *Id.*
[24] *See generally*, *Appl. of S. Cal. Edison Co. (U 339 E) for Auth. to, Among Other Things, Increase Its Authorized Revenues for Elec. Serv. in 2003, & to Reflect that Increase in Rates; Investigation on the Comm'n's Own Mot. Into the Rates, Operations, Practices, Serv. & Facilities of S. Cal. Edison Co.*, D.05-03-022, 2005 Cal. PUC LEXIS 126, at *8-15 (Cal. P.U.C. Mar. 17, 2005). Note that Rule 12.1(d) states that a settlement must be consistent with the law. This factor need not be discussed at length. In agreeing to the terms of the Settlement, the Settling Parties considered the relevant laws, rules, and Commission decisions necessary to ensure that the Agreement is consistent with the law. The POD does not raise any dispute regarding whether the proposed Settlement is consistent with law. The POD concluded only that the Settlement is not reasonable in light of the whole record and is not in the public interest. POD at 72.
[25] *In re S. Cal. Edison Co.*, D.12-09-019, 2012 WL 4761488 (Cal. P.U.C. Sept. 13, 2012).

role of precedent.[26] The POD wrongly concludes that the Settlement is not reasonable and not in the public interest. For the reasons herein, PG&E urges the Commission to reject the POD's modifications.

A. The Settlement Is in the Public Interest

The Commission, like the public, has an interest in the speedy and fair resolution of disputes, and the Commission has a history of supporting settlement of disputes if the settlements are fair and reasonable in light of the whole record.[27] The Commission believes its "staff must have reasonable discretion to negotiate settlements when circumstances warrant and indeed, that not every OII need be fully litigated."[28] There is no explanation in the POD for why the SED staff was denied such discretion in this proceeding. Commission policy in favor of settlement "supports worthwhile goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results."[29] When a settlement, like this one, "is dependent on the other provisions therein[;] modification of any one part would harm the balancing of interests and compromises achieved in the Settlement. The various provisions reflect specific compromises between litigation positions and differing interests."[30] Thus, the "appropriate standard of review is whether a contested settlement generally balances the various interests at stake, not whether it

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[26] *Rulemaking to Establish Rules for Enforcement of the Standards of Conduct Governing Relationships between Energy Utils. & Their Affiliates Adopted By the Comm'n in Decision 97-12-088*, D.98-12-075, 1998 Cal. PUC LEXIS 1016, at *9 (Cal. P.U.C. Dec. 17, 1998).
[27] *Appl. of S. Cal. Edison Co. (U 339 E) for Auth. to, Among Other Things, Increase Its Authorized Revenues for Elec. Serv. in 2003, & to Reflect that Increase in Rates; Investigation on the Comm'n's Own Mot. Into the Rates, Operations, Practices, Serv. & Facilities of S. Cal. Edison Co.*, D.05-03-022, 2005 Cal. PUC LEXIS 126, at *8 (Cal. P.U.C. Mar. 17, 2005) (citing D.88-12-083 (30 CPUC 2d. 189, 221-223) and D.91-05-029 (40 CPUC 2d. 301, 326)).
[28] *Order Instituting Investigation on the Comm'n's Own Mot. into the Operations & Practices of S. Cal. Edison Co. Regarding the Acacia Ave. Triple Electrocution Incident in San Bernardino Cnty. & the Windstorm of 2011*, D.14-08-009, 2014 WL 4104759, at *11 (Cal. P.U.C. Aug. 14, 2014).
[29] *Appl. of S. Cal. Gas Co. (U904g) & San Diego Gas & Elec. Co. (U902g) for Auth. to Revise Their Curtailment Procedure*, D.16-07-008, 2016 WL 4036012, at *6 (Cal. P.U.C. July 14, 2016).
[30] *Id.* at *7.

reflects a reasonable accommodation of the litigation positions of all parties. Such an outcome would defeat the purposes of a settlement and would hinder negotiations."[31]

Adoption of the Settlement will conserve Commission resources and help ensure that PG&E is able to conclude its Chapter 11 proceedings in time to participate in the newly created Wildfire Fund, which is intended to help the state's electric utilities pay for future wildfire damages. The practical import of AB 1054 is twofold: First, it is in the interests of PG&E customers and Northern California communities for PG&E's Chapter 11 case to be resolved by June 30, 2020, for PG&E to meet the AB 1054 deadline and participate in the Wildfire Fund. Second, it is also in those groups' interests for PG&E to be adequately capitalized to continue the important work set forth in PG&E's Wildfire Safety Plan. The Settlement reflects the urgency compelled by AB 1054.

In addition to the general policy favoring settlement, the Settlement is in the public interest because the $1.675 billion settlement amount falls within a range that fairly reflects the facts involved and the differing legal positions of the Settling Parties when evaluated against the possible litigated outcomes. The negotiated agreement falls within the range of possible litigated outcomes (which, by definition, could have been higher or lower than the settlement) based on precedents (discussed below) and the penalty calculation submitted by Cal Advocates.[32] The Settling Parties considered PG&E's financial condition, PG&E's continuing efforts to address wildfire risk in its service territory, and the System Enhancement Initiatives in agreeing to the structure of the $1.675 billion settlement amount. PG&E's admissions, its agreement to forego rate recovery of certain specified wildfire-related expenditures, and its shareholder funding of the System Enhancement Initiatives described in the Settlement represent a reasonable compromise

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[31] *Appl. of Pac. Gas & Elec. Co. (U 39-m) for Auth., Among Other Things, to Increase Rates & Charges for Elec. & Gas Serv. Effective on Jan. 1, 2007; Order Instituting Investigation on the Comm'n's Own Mot. into the Rates, Operations, Practices, Servs., & Facilities of Pac. Gas & Elec. Co. (U 39-m)*, D.07-11-018, 2007 WL 4934615, at *5 (Cal. P.U.C. Nov. 1, 2007).
[32] Cal Advocates Comments Contesting Proposed Settlement, filed Jan. 16, 2020, at 9-10, 16.

that is in the public interest. Moreover, the total $27.18 billion[33] in financial obligations to be borne by PG&E across the various venues will, in part, compensate individual victims and communities for the harm caused by the wildfires.

Rather than devoting time and resources to litigate contested facts and law associated with the 2017 and 2018 wildfires, the Settling Parties worked together, cooperatively and productively, to understand the lessons learned from the electric facility-caused wildfires and to develop System Enhancement Initiatives that will improve the way PG&E operates, manages, and maintains its electric facilities. The Settlement ensures that PG&E can begin to work on the System Enhancement Initiatives without the delay of engaging in a lengthy litigated proceeding, the outcome of which is unpredictable.

B. The Settlement Appropriately Considers the Severity of the Offense and the Conduct of the Utility

The Commission initiated and scoped this OII to determine whether PG&E violated provisions of the Public Utilities Code, General Orders, Commission decisions, or any other applicable regulations with respect to its maintenance, operations, and/or reporting of its electric facilities in connection with the 2017 Northern California Wildfires and 2018 Camp Fire. The D.98-12-075 "severity of the offense" factor includes several considerations, including physical harm, economic harm, and harm to the regulatory process. There is no dispute that the 2017 and 2018 wildfires were unprecedented in size, scope, and destruction. That said, the Settling Parties disagree as to whether PG&E violated all of the Commission rules and regulations alleged by SED in the OII and whether PG&E's alleged violations directly contributed to the ignition of all of the 2017 and 2018 wildfires.

With respect to the 2017 Wildfires, PG&E disputed many of the factual findings set forth in the SED Fire Reports. In particular, with respect to vegetation management issues, PG&E

[33] This total represents $25.5 billion in wildfire liabilities and the $1.675 billion in financial obligations under the proposed Settlement. It does not include PG&E's expected $4.8 billion initial contribution to the Wildfire Fund.

disputed SED's conclusions regarding what would have constituted accepted good practices for vegetation inspection and patrol and whether PG&E should have identified and abated alleged diseased or decayed trees. PG&E also disputed SED's conclusions regarding numerous matters, such as whether PG&E properly prioritized certain maintenance work, failed to follow procedures for reinforcement of a certain pole, failed to retain evidence, or failed to timely report a reportable incident. With respect to the 2018 Camp Fire, PG&E has not admitted to the core alleged violations of Commission rules and regulations related to the wildfire, itself, though it has stopped short of defending all its conduct.

In describing the "conduct of the utility" aspect of the reasonableness analysis, the Commission has looked to the utility's conduct in: (1) preventing the violation; (2) detecting the violation, and (3) disclosing and rectifying the violation.[34] Regarding the 2017 Wildfires, PG&E disagrees that it violated Commission rules and regulations simply because PG&E's electrical facilities were involved in the fires.[35] PG&E disputes the legal application of GO 95, Rules 31.1, 35, and 38, to the alleged incidents and has raised concerns regarding whether SED's applications of the regulations at issue provided fair notice to PG&E consistent with the Due Process Clauses of the United States and California Constitutions. Some of these legal issues are equally applicable to violations arising out of the Camp Fire. The disputed legal issues were fully briefed but were not ruled upon by the assigned ALJ.[36] A ruling in PG&E's favor would offer a complete defense to certain violations and establish precedent for future SED investigations, whereas a ruling in SED's favor would foreclose certain PG&E defenses.

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[34] *Rulemaking to Establish Rules for Enforcement of the Standards of Conduct Governing Relationships Between Energy Utils. & Their Affiliates Adopted By the Comm'n In Decision 97-12-088*, D.98-12-075, 1998 Cal. PUC LEXIS 1016, at *56-57 (Cal. P.U.C. Dec. 17, 1998)
[35] *See, e.g.*, *Order Instituting Investigation on the Comm'n's Own Mot. into the Operations & Practices of S. Cal. Edison Co. Regarding the Acacia Ave. Triple Electrocution Incident in San Bernardino Cnty. & the Windstorm of 2011*, I.14-03-004, 2014 WL 1254108, at *17 (Cal. P.U.C. Mar. 13, 2014) (declining to conclude that Rule 35 was violated where CPSD could not "conclusively determine the exact configurations of the circuit/tree branch positions prior to the incident," even where "[d]uring the incident, a large number of trees and tree branches fell into and made contact with power lines").
[36] PG&E's Pre-Evidentiary Hearing Reply Brief Regarding Disputed Legal Issues, filed Oct. 28, 2019.

Given the complexity of the issues raised in the OII and the strengths and weaknesses of the parties' positions, continued litigation was inherently risky for both SED and PG&E. The Settling Parties, therefore, have "agreed to disagree" as to some alleged violations, and PG&E has agreed not to contest certain other violations.[37] Of the 14 violations that PG&E chose not to contest, only one is arguably related to a fire ignition; the other 35 disputed violations are nearly all ignition-related.[38] Notwithstanding the disputes regarding ignition-related violations, the terms of the Settlement, including the largest-ever financial dollar amount imposed for wildfire-related violations, reflect the physical and economic harm arising out of the wildfires.

Despite disagreements regarding the factual record and legal application of the Commission's rules and regulations and statutory requirements, the Settling Parties believe – as detailed in the Joint Motion – that the Settlement appropriately resolves all issues raised in the OII, SED Fire Reports, and Scoping Memos as they relate to PG&E's electric facilities. PG&E has undertaken significant improvements to its electric operations as precautionary measures to reduce future wildfire risk. Some of the non-monetary remedies in the Settlement Agreement provide further enhancements and improvements to PG&E's electric operations, while others implement root cause analyses and audit provisions to help ensure that PG&E has fully identified and incorporated lessons learned from the 2017 Wildfires and 2018 Camp Fire and to monitor the effectiveness of its current operations in mitigating wildfire risks. In addition, the System Enhancement Initiatives include remedies that focus on community and customer engagement. The System Enhancement Initiatives are described in detail in Exhibit C to the Settlement Agreement. As noted in the POD, "***no party opposed the substance of the initiatives***."[39]

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[37] A summary of these positions is set forth in Settlement Agreement Exhibit B. PG&E's decision not to contest these violations is not an admission of any wrongdoing, unlawful conduct, or liability. The fact that PG&E is not contesting these violations is not a concession that the violations occurred and should not be used as evidence in any other legal proceeding.
[38] *See* Settlement Agreement Exhibit B.
[39] POD at 64 (emphasis added).

Further, the Settling Parties took into consideration PG&E's efforts to proactively address the issues raised in the OII. PG&E embarked upon numerous improvements to its electric facility operations and maintenance. Examples of PG&E's efforts to respond to the increased risk of wildfire include, but are not limited to, the following: vegetation management process improvements; enhanced inspections of electric assets in High Fire-Threat District ("HFTD") areas; changes to reclosing device settings that improve electric facility safety; the creation and enhancement of PG&E's Public Safety Power Shut-off ("PSPS") program; system hardening improvements to reduce fire risk; enhanced situational awareness of weather conditions, fire occurrence, and spread; and the use of more advanced technologies. Many of these measures aim to exceed the requirements of GO 95 and GO 165.[40]

Finally, in considering the "harm to the regulatory process" – or rather, the lack thereof – in the course of this OII, there have been no allegations of Rule 1.1 violations, other ethical violations, or any deliberate misconduct associated with the wildfires covered by this OII.[41] In addition, PG&E has been supportive of, and an active participant in, the Commission's critical proceedings to address wildfire risk, including proceedings related to utility wildfire mitigation plans required by Senate Bill 901,[42] rulemaking proceedings regarding utilities' PSPS programs,[43] investigation into the October 2019 PSPS events,[44] and rulemaking proceedings regarding the adoption of emergency disaster relief programs.

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[40] PG&E's Corrective Actions Report (Attachment 2 to PG&E's Report) and the Attachment B Report describe in greater detail many of the improvements that PG&E has made to its electric facility maintenance and operations. In addition, PG&E's Wildfire Safety Plan ("WSP") thoroughly outlines these improvements in its description of PG&E's pre-existing and newly developed efforts to mitigate the risk of catastrophic wildfire. *See* PG&E, *Pacific Gas and Electric Company Amended 2019 Wildfire Safety Plan* (Feb. 6, 2019), https://www.pge.com/pge_global/common/pdfs/safety/emergency-preparedness/natural-disaster/wildfires/Wildfire-Safety-Plan.pdf.

[41] The POD makes reference to violations related to the disposal of evidence and the late reporting of incidents (POD at 8, 13-14), but there is no evidence that PG&E's actions in relation to those alleged violations were anything other than inadvertent and in good faith.

[42] R.18-10-007.

[43] R.18-03-011.

[44] I.19-11-013.

Therefore, in light of the whole record, including the unresolved factual and legal disputes, the contemplated System Enhancement Initiatives, the pre-settlement system enhancements that have already been enacted, the unprecedented financial obligations imposed on PG&E, the parallel venues in which PG&E faces liability, and the constrained resources of SED and PG&E, the Settling Parties submitted in the Joint Motion that the Settlement is reasonable. PG&E reiterates this conclusion here and asks the Commission to approve the Settlement without modification.

C. The Settlement Amount Is Substantial, Particularly In Light of PG&E's Financial Resources

The Settling Parties agree that PG&E should bear $1.675 billion in financial obligations to resolve this proceeding. PG&E has incurred, or will incur, this amount to comply with its legal obligations to provide safe and reliable service. With respect to financial resources, the Commission has described the criterion as follows:

> Effective deterrence also requires that the Commission recognize the financial resources of the public utility in setting a fine which balances the need for deterrence with the constitutional limitations on excessive fines. . . . The Commission intends to adjust fine levels to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources.[45]

If approved, the Settlement would be the largest dollar amount ever imposed by the Commission in a wildfire-related enforcement proceeding. As part of the Settlement, PG&E will not seek rate recovery of wildfire-related expenses and capital expenditures in the amount of $1.625 billion. These costs were, or will be,[46] incurred by PG&E, not at the direction of SED or the Commission in the OII. In addition, $50 million in shareholder funds[47] must be dedicated to the System Enhancement Initiatives detailed in Settlement Agreement Exhibit C.

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[45] *Rulemaking to Establish Rules for Enforcement of the Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates Adopted By the Comm'n In Decision 97-12-088*, D.98-12-075, 1998 Cal. PUC LEXIS 1016, at *75-76 (Cal. P.U.C. Dec. 17, 1998).
[46] Some of the costs are those that PG&E expects to incur in 2020.
[47] PG&E agrees not to seek ratepayer recovery in a General Rate Case, other proceeding, or via another mechanism for these shareholder expenses.

In the absence of this Settlement, PG&E would have been entitled to seek rate recovery for all of the wildfire-related expenditures identified in the Settlement and reserve all rights in that regard. Indeed, one of the reasons the Settlement is in the public interest is that the Agreement "preserves the Commission's resources by significantly offsetting the time and effort needed to conduct hearings on the issues resolved by the Settlement Agreement."[48]

In reaching an agreement, the Settling Parties also recognized that PG&E faces numerous other financial obligations arising from the 2017 and 2018 wildfires:

- PG&E entered into a settlement agreement pursuant to which, as part of its PoR, it would pay **$1 billion** in restitution to local governments affected by the 2017 and 2018 wildfires.[49]
- PG&E entered into another settlement agreement, which provides for PG&E, as part of its PoR, to pay **$11 billion** in restitution to entities representing insurance subrogation claims relating to the 2017 and 2018 wildfires.[50]
- PG&E entered into a settlement agreement with the Official Committee of Tort Claimants and with firms representing individual claimants who sustained losses from wildfires, including the 2017 Wildfires and 2018 Camp Fire, which provides for PG&E, as part of its proposed PoR, to pay **$13.5 billion** in restitution.[51]
- AB 1054 requires that PG&E's Chapter 11 case be resolved by June 30, 2020, in order for PG&E to participate in the newly created Wildfire Fund. The Wildfire Fund is intended to help the state's electric utilities pay for future wildfire

[48] *In the Matter of the Appl. of Golden State Water Co. (D 133 W) for an Order Pursuant to P.U.C. Sec. 851 Approving a Stipulation in a Water Rights Adjudication, & for an Order Pursuant to Sec. 454 Approving the Ratemaking Treatment of the Costs of the Adjudication & Settlement*, D.07-05-041, 2007 WL 1597954, at *1 (Cal. P.U.C. May 24, 2007).
[49] *See* Debtors' & Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated December 12, 2019, at 19-20, 38, *In Re PG&E Corp.*, No. 19-30088 (DM) (Bankr. N.D. Cal. Dec. 12, 2019), ECF No. 5101.
[50] *See id.* at 41.
[51] *See id.* at 2, 43, 52. The settlement includes payments to resolve claims arising out of the 2017 Northern California Wildfires and 2018 Camp Fire, as well as the 2015 Butte Fire.

damages. PG&E expects its initial contribution to the Wildfire Fund to be $4.8 billion.[52] With PG&E's 2020 annual contribution to the Wildfire Fund, this category of financial obligations comes to nearly **$5 billion**.

Given the legal risks associated with litigating many of the alleged violations and PG&E's financial constraints, the Settling Parties agreed that no fine is warranted. In light of the large financial obligation resulting from the OII and the other financial obligations faced by PG&E, the Settling Parties agree that the monetary components of the Settlement are reasonable in light of the whole record.

The record in this OII details the financial constraints posed by other liabilities arising from the wildfires and PG&E's Chapter 11 filing.[53] As explained in the testimony of PG&E's Vice President and Treasurer, Nicholas Bijur, PG&E's ability to raise capital as part of its PoR is limited and depends in large part on the amount of capital PG&E will require to resolve other claims.[54] Prior to the issuance of the POD, Mr. Bijur explained that a harsh penalty would increase the borrowing costs for PG&E and/or render PG&E unable to raise capital, either of which would harm customers by threatening PG&E's ability to finance important capital investments in its system.[55] The Non-Settling Parties offered no response to Mr. Bijur's testimony. To put it plainly, the Settling Parties determined that PG&E should use its finite cash resources to prioritize the payment of wildfire victims rather than the General Fund.

D. The Settlement Is Consistent with Precedent

No other examples of approved settlements and enforcement decisions involving electric utilities and safety issues come close to the dollar amount of this Settlement, though almost all of

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[52] *See* Press Release, PG&E, *PG&E Supports and Elects to Help Fund New California Wildfire Fund* (July 25, 2019), https://www.pge.com/en/about/newsroom/newsdetails/index.page?title=20190725_pge_supports_and_elects_to_help_fund_new_california_wildfire_fund.

[53] PG&E Reply Testimony, served Nov. 18, 2019, at Ch. 2 (Witness Testimony of Nicholas Bijur) ("Bijur Testimony").

[54] *Id.* at 2-2.

[55] *Id.* at 2-2 to 2-3.

include a mix of fines, shareholder funding of programs, and/or remedial action plans.[56] This Settlement amount, in fact, far exceeds the combined total of the prior fire-related precedents discussed in the Joint Motion. The Commission has described the role of precedent as follows:

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[56] *See* Joint Motion at 41-45 for the Settling Parties' discussion of several Commission precedents that the Settling Parties believe illustrate a wide range of outcomes in enforcement decisions involving electric operations safety issues:
Long Beach Power Outages OII (D.17-09-024): Southern California Edison Company ("SCE") admitted to violations of Rule 17.1 of GO 128 and PU Code § 451, agreed to pay a penalty of $4 million to the General Fund, and agreed to perform $11 million worth of corrective actions at shareholder expense.
Huntington Beach Underground Vault OII (D.17-06-028): SCE admitted that it failed to identify unsafe practices and failed to prevent the accident, but did not "expressly admit" responsibility for "ensuring" contractor safety. SCE agreed to pay a fine of $2.01 million to the General Fund and to implement safety enhancements.
Kern Power Plant OII (D.15-07-014): PG&E admitted that, due to a lack of expertise in power plant demolition, it attempted to transfer primary responsibility for safety and safety oversight to a contractor to demolish the fuel oil tank at Kern Power Plant. PG&E also admitted that it had not verified the safety data from the hired contractor and that the onsite representative did not have formal training in safety management and risk assessment. PG&E also agreed to pay $5,569,313 in shareholder penalties, which consisted of $3,269,313 in ratemaking offsets that benefit customers and $2.3 million in fines paid to the General Fund. PG&E also agreed to implement a Corrective Action Plan to improve safety at PG&E on a company-wide basis.
Malibu Canyon Fire OII Decision – Settlement 1 (D.12-09-019): AT&T, Sprint, and Verizon Wireless ("Settling Respondents") agreed to pay $12 million (divided equally between the three Settling Respondents). Of the $12 million, $6.9 million was to be allocated to the General Fund and $5.1 million to a fund to be used to strengthen utility poles in Malibu Canyon and to conduct a statistically valid survey of joint-use poles in the service territory for compliance with GO 95. Any funds left over from that fund would revert to the General Fund.
Malibu Canyon Fire OII Decision – Settlement 2 (D.13-09-026): NextG Networks of California, Inc. ("NextG") admitted noncompliance with GO 95, PU Code § 451, and Rule 1.1 and agreed to pay $14.5 million in penalties, comprised of $8.5 million in fines to the General Fund and $6 million allocated for a safety audit of all NextG poles and pole attachments in California. The settlement required NextG to complete the audit and any remedial work required following the audit within three years from the start date of the audit. NextG agreed to pay any money left over from the $6 million to the General Fund.
Malibu Canyon Fire OII Decision – Settlement 3 (D.13-09-028): SCE admitted: (1) one of the poles was overloaded in violation of GO 95; (2) it failed to take prompt action to prevent the pole from overloading, in violation of PU Code § 451; and (3) it withheld relevant information from SED and CPUC in violation of Rule 1.1. Under the settlement, SCE admitted noncompliance with GO 95, PU Code § 451, and Rule 1.1, agreed to pay $20 million to the General Fund and provide $17 million to assess utility poles in the Malibu area for compliance with GO 95 safety factors and SCE's internal standards, and agreed to remediate all substandard utility poles.
The Witch/Rice and Guejito Fire Settlements (D.10-04-047): San Diego Gas & Electric Company ("SDG&E") paid $14.35 million to the General Fund; CoxCom Inc. and Cox California Telcom LLC paid $2,000,000 to the General Fund; SDG&E was also required to reimburse SED up to an additional $400,000 in order to implement a computer work module; and SDG&E was required to remit any unused balance of the $400,000 to the General Fund.

> The Commission adjudicates a wide range of cases which involve sanctions, many of which are cases of first impression. As such, the outcomes of cases are not usually directly comparable. In future decisions which impose sanctions the parties, and in turn, the Commission will be expected to explicitly address those previously issued decisions which involve the most reasonably comparable factual circumstances and explain any substantial differences in outcome.[57]

Under this standard, the Settlement is more than reasonable. The POD and Opposing Parties point to the enforcement proceedings following the San Bruno gas transmission incident (I.11-02-016; I.11-11-009; I.12-01-007). While there are some surface-level similarities between the two, the present OII proceedings are not comparable to San Bruno.[58] First, the $1.6 billion in San Bruno penalties and remedies imposed on PG&E followed three separate *fully litigated* investigations into the San Bruno gas transmission pipeline explosion, PG&E's recordkeeping practices, and PG&E's pipeline classification related to higher density populations.[59] In San Bruno, unlike here, the Commission based the penalties and remedies on its findings that PG&E committed 2,425 violations over a total of 18,447,803 days;[60] the total amount therefore did *not* include any discount for litigation risk. Here, as discussed above, the Settlement amount reflects a negotiated outcome that takes into account litigation risk, and is within the range of a fully litigated outcome. Second, PG&E's financial resources in the wake of the 2017 and 2018 wildfires are far more constrained today than they were at the time of the San Bruno explosion. This is most evident in the fact that PG&E is currently in Chapter 11 proceedings. But, PG&E also expected "a significant portion" of the third-party claims from the San Bruno explosion to

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[57] *Rulemaking to Establish Rules for Enforcement of the Standards of Conduct Governing Relationships Between Energy Utils. & Their Affiliates Adopted By the Comm'n in Decision 97-12-088*, D.98-12-075, 1998 Cal. PUC LEXIS 1016, at *76-77 (Cal. P.U.C. Dec. 17, 1998).
[58] Joint Motion at 45, n.60; PG&E and CUE Reply Comments Regarding Settlement Agreement, filed Jan. 31, 2020, at 15-17.
[59] *Decision on Fines & Remedies to be Imposed on PG&E for Specific Violations in Connection with the Operation & Practices of its Natural Gas Transmission Sys. Pipelines*, D.15-04-024, at 1 (Cal. P.U.C. Apr. 9, 2015).
[60] *Id.* at 77-78.

be recovered through its insurance.[61] In contrast, the "losses in connection with the 2017 and 2018 Northern California wildfires will *greatly* exceed [PG&E's] available insurance."[62]

However, even if the Commission accepts the premise that the San Bruno explosion is the most comparable incident to the 2017 and 2018 wildfires, the total financial obligations arising from the wildfires greatly exceed those of the San Bruno explosion, as reflected in the following chart:

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[61] PG&E Corporation and Pacific Gas and Electric Company, Current Report (Form 8-K) (July 31, 2013), at 27.

[62] PG&E Corporation and Pacific Gas and Electric Company, Current Report (Form 8-K) (Jan. 14, 2019), at 5 (emphasis added).

Type of Financial Obligation	2017 North Bay Fires and 2018 Camp Fire	San Bruno Explosion
CPUC Enforcement	$1.675 billion	$1.6 billion
Restitution to local governments	N/A	$70 million[63]
Local government claims	$1 billion	– [64]
Insurance subrogation claims	$11 billion	– [65]
Third-party claims	$13.5 billion	$565 million[66]
Criminal penalty	N/A	$3 million[67]
Total	**$27.175 billion**	**$2.238 billion**

PG&E's total financial obligations for the 2017 and 2018 wildfires are over ***$24 billion greater*** than its financial obligations related to the San Bruno explosion. The Commission must consider the *whole* record when comparing San Bruno to this proceeding. When the whole record is considered, it is clear that this Settlement is far more punitive.

V. THE POD IS ERRONEOUS AND SHOULD BE SET ASIDE

The POD against the public interest because it jeopardizes PG&E's PoR and, therefore, puts at risk PG&E's ability to pay wildfire victims quickly and meet the AB 1054 deadline. In addition, as discussed above, the Settling Parties understood that there were numerous unresolved legal and factual issues in the OII and, in the interest of compromise, reached an agreement that satisfied all elements of Rule 12.1. The POD modifies the Settlement based on

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[63] Press Release, Meyers Nave, *City of San Bruno and PG&E Reach Agreement on $70 Million Restitution for San Bruno Community to Support Recovery from Pipeline Accident* (Apr. 12, 2012), http://www.meyersnave.com/city-of-san-bruno-and-pge-reach-agreement-on-70-million-restitution-for-san-bruno-community-to-support-recovery-from-pipeline-accident/.
[64] Claims by local governments may be included in the $565 million associated with third-party claims referenced below. *See* PG&E Corporation and Pacific Gas and Electric Company, Current Report (Form 8-K) (Sept. 9, 2013), at 3.
[65] Insurance subrogation claims may be included in the $565 million associated with third-party claims referenced below. *See id.*
[66] *Id.*
[67] Judgment at 4, *U.S. v. Pac. Gas & Elec. Co.*, No. 14-CR-00175-TEH (N.D. Cal. Jan. 31, 2017).

its own views about how the contested issues might have been resolved had the case been litigated, and thereby reaches conclusions (or makes assumptions) about factual and legal issues without record support. The POD's implicit prejudgment of the merits deprives PG&E of the opportunity to present a defense. It amounts to a decision to impose a penalty without adequate notice, analogous to a situation the Commission has ruled "raises an issue of fairness" necessitating a rehearing.[68] As explained, the Settling Parties are not seeking a rehearing, because there is not sufficient time for this remedy. Rather, PG&E asks the Commission to reject the POD and issue a decision approving the Settlement Agreement, as originally submitted.

A. The POD Is Against the Public Interest and Contrary to Public Policy

The Commission routinely finds that settlement agreements are "in the *public interest* because [they] avoid[] the cost of further litigation, and conserve[] scarce resources of parties and the Commission."[69] The POD's rejection of a reasonable settlement negotiated by sophisticated parties sets a dangerous precedent. The POD is against the public interest and contrary to public policy for at least two additional reasons: (1) the POD threatens the confirmation of PG&E's PoR and PG&E's ability to meet the AB 1054 deadline, and (2) the POD's contribution to regulatory uncertainty in California could increase PG&E's cost of capital – increased costs that would be passed on to customers.

1. The POD Threatens PG&E's Plan to Emerge from Bankruptcy

PG&E's plan to emerge from Chapter 11 proceedings, documented in its PoR, includes fair and speedy compensation to wildfire victims, accelerated wildfire risk reduction while keeping customer rates affordable, and a corporate governance system that emphasizes safe and reliable service.[70] The PoR also ensures PG&E's long-term financial and operational health.

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[68] *In Re S. Pac. Transp. Co.*, 75 CPUC 2d 641, D.97-09-063 (Cal. P.U.C. Sept. 3, 1997).
[69] *Appl. of S. Cal. Edison Co. (U338e) for Approval of Its 2013 Rate Design Window Proposals*, D.14-12-048, 2014 WL 7437478, at *9 (Cal. P.U.C. Dec. 18, 2014) (emphasis added).
[70] PG&E Prepared Testimony, I.19-09-016 (PG&E Plan of Reorganization OII 2019), served Jan. 31, 2020, at Vol. 1, 1-1.

One of the conditions precedent to confirmation of the PoR by the Bankruptcy Court is that "Backstop Commitment Letters" are in effect and have not been terminated by the "Backstop Parties."[71] In simple terms, the Backstop Parties have agreed to purchase $9 billion in equity subject to the terms of a Backstop Commitment Letter.[72] Under the Backstop Commitment Letters, if PG&E agrees to pay more than $25.5 billion in respect of Fire Claims (a defined term in the PoR, which expressly includes the fines and penalties that are the subject of this proceeding, and which is referenced in the Backstop Commitment Letter), each Backstop Party may elect to terminate. This matters because the POD's requirement that PG&E pay a $200 million fine, and that this amount be paid out of funds not otherwise available to satisfy the claims of victims, would result in PG&E paying $25.5 billion to wildfire victims plus $200 million to the General Fund, and thereby triggering the Backstop Parties' termination rights.

Given the recent precipitous declines in the stock market, and the market's overall volatility, Backstop Parties may choose to terminate their equity commitments and deploy their capital in other investments that may now appear more attractive. Hence, the POD's proposed modifications to the Settlement create a serious risk that the equity funding for the PoR may fall away, leaving PG&E unable to pay victims and unable to meet the June 30, 2020, deadline for resolving its Chapter 11 cases. The timely confirmation of PG&E's PoR is crucial to its ability to resolve its Chapter 11 proceedings and to continue its work to improve how the company mitigates the risk of catastrophic wildfire. The potential impact of the POD on the PoR is reason alone for the Commission to reject its modifications to the Settlement.

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[71] *See* Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated March 9, 2020, at 78, *In re PG&E Corp.*, No. 19-30088 (DM) (Bankr. N.D. Cal. Mar. 9, 2020), ECF No. 6217.
[72] *See* Form of Equity Backstop Commitment Letter, *In re PG&E Corp.*, No. 19-30088 (DM) (Bankr. N.D. Cal. Jan. 3, 2020), ECF No. 5267-3.

2. The POD Increases Distrust of California's Regulatory Environment, Which Could Increase PG&E's Cost of Capital

The regulatory framework should be predictable, expeditious, and yield reasonable outcomes. The POD upends those expectations. PG&E's financial condition and ongoing need to access the financial capital markets, its continuing efforts to address wildfire risk in its service territory, and the System Enhancement Initiatives were taken into account in agreeing to the financial structure of the $1.675 billion Settlement. PG&E's admissions, its agreement to not seek rate recovery of certain specified wildfire-related expenditures, and its shareholder funding of the System Enhancement Initiatives described in the Settlement Agreement represent a reasonable compromise that is in the public interest. Moreover, the more than $25 billion in financial obligations to be paid by PG&E across other proceedings will compensate individual victims and communities for the harm caused by the wildfires.

Modifying arms' length negotiated settlements without sufficient basis in the record, as the POD does here, introduces needless uncertainty into the regulatory process. The Commission has spoken of "the great deference which we accord the settlement process" – even in circumstances when the settlement is contested.[73] Such deference is all the more necessary now, as credit markets are closely monitoring PG&E's emergence from bankruptcy and its ability to raise capital and achieve a reasonable rate of return.

Investors' reactions to the POD highlight these concerns. Wolfe Research, a market research firm, commented:

> The ALJ's PD would be negative on three counts if approved: 1) it would raise the penalty by $462M, including a $200M fine which would likely need to be funded by incremental equity and would not be tax deductible; 2) it would establish a precedent at the CPUC for returning shareholder tax benefits to customers; and 3) it would send a signal to stakeholders, including utilities, consumer advocates, investors and others, that a settlement between key parties in a proceeding could be materially revised, effectively jeopardizing the

[73] Re San Diego Gas & Elec. Co., D.96-09-097, 68 CPUC 2d 333 (Sept. 20, 1996).

settlement and dis-incentivizing future collaboration toward a settlement.[74]

Commission acceptance of the POD's modifications to the Settlement will further encourage distrust of the strength of the regulatory compact in California. The POD heightens these concerns because, normally, markets expect that settlements negotiated among sophisticated parties will be approved expeditiously. The POD sends the message that settlements are less likely to be approved, which in turn makes settlements less likely to be reached and protracted litigation more likely. Moreover, in the context of this particular issue, the substantial increase in financial obligations proposed by the POD could make investors even more skittish about investing in PG&E and in California utilities, generally. This could not come at a more inopportune time, given both PG&E's need to complete the largest capital raise in the history of the utility industry and the present market instability.[75]

The relevant regulatory environment is a key factor in utilities' attractiveness to investors and, consequently, utilities' abilities to access lower-cost capital. Indeed, in a 2015 Moody's presentation on credit ratings of California utilities, Moody's characterized "[r]egulation" as *the* "[m]ost [i]mportant" factor in credit rating methodology for regulated utilities in California: "Regulation accounts for half the rating, [and] influences the other factors." "Consistency and Predictability of Regulation" specifically was "weighted" 12.5% in this methodology.[76] If the Commission were to accept the POD's modifications, it would send a dire signal to financial markets that settlements are not to be trusted and that the regulatory environment in California is too uncertain, raising the cost of capital for all California investor-owned utilities. That

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[74] Email from S. Fleishman, Managing Dir., Senior Utilities Analyst, Wolfe Research, LLC, to C. Foster, Vice President of Investor Relations, PG&E, "The Fleishman Daily 2/28/20" (Feb. 28, 2020, 6:04 am PST) (on file with PG&E).
[75] PG&E Prepared Testimony, I.19-09-016 (PG&E Plan of Reorganization OII 2019), served Jan. 31, 2020, at Vol. 1, Ch. 2 (Witness Testimony of Jason P. Wells).
[76] Moody's Investors Service, *Credit Ratings: What They Are, Why They Matter, California Public Utilities Commission Thought Leaders Series*, at 7 (May 21, 2015), https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/About_Us/Organization/Divisions/Policy_and_Planning/Thought_Leaders_Events/150521_SlidesMoodysCPUC515v3_2Manage.pdf.

perception would harm all Californians and underscores why the POD is contrary to the public interest and sound public policy.[77]

B. The POD Penalizes PG&E for Violations That Are Neither Proven Nor Admitted

The POD correctly notes that the Commission should examine “the utility’s conduct in: (1) preventing the violation, (2) detecting the violation, and (3) disclosing and rectifying the violation.”[78] However, Decision 98-12-075, from which the POD quotes, does not state that the Commission should judge the conduct of the utility by the nature of *alleged* (never proven) violations, as the POD appears to do here. The Settlement Agreement identifies the 14 violations that PG&E has chosen not to contest, only one of which, as the POD notes, relates to fire ignition.[79] SED chose not to pursue the remaining violations to a hearing but rather accepted that the parties could not resolve the legal and factual disputes between them. The POD, however, looks past these 14 violations and seemingly bases the modifications to the Settlement in large part on unsupported views about the many alleged violations that remain in dispute.[80] In effect, the POD deems the settlement unreasonable because it finds that the Commission was likely to find additional violations. This reasoning is unlawful. The POD should not resolve the serious legal and factual disputes (***without*** even a hearing) that would have been litigated and that were resolved through the Settlement.

As discussed above in Section IV(B), with respect to disputed legal issues in this proceeding, this OII raises novel and complicated issues of interpretation regarding the application of GO 95, Rules 31.1, 35, and 38, to the alleged facts in the 2017 Wildfires and 2018

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[77] *See, e.g.*, *In re Pac. Gas & Elec Co.*, D.02-08-070, 2002 WL 31005593 (Cal. P.U.C. Aug. 22, 2002) (approving settlement, in part, to provide “commercial certainty” to participants in the gas market and to “provide certainty as to the gas market structure for PG&E while the Bankruptcy Court decides which plan of reorganization is to be adopted”).

[78] POD at 21.

[79] POD at 13; Settlement Agreement Exhibit B.

[80] *See, e.g.*, POD at 21 (noting the “detailed nature of SED’s violations”), 23 (stating “there are serious questions regarding PG&E’s efforts to prevent, detect, and rectify the violations that are at issue in this proceeding”), 24 (declaring that “PG&E failed to take any meaningful steps to prevent or detect this significant number of violations”).

Camp Fire. PG&E strongly disagreed with SED's interpretations of the Rules; in PG&E's view, SED's interpretations do not comport with California law and rules of statutory and regulatory interpretation.[81] The parties filed extensive briefing on these issues, but they were not decided before the Settling Parties reached an agreement that took into account the litigation risk on both sides of these issues. Even while the legal issues remained in dispute, PG&E filed testimony that called into question whether SED would be able to prove the alleged violations. The testimony of expert witness John Goodfellow, a consultant with 41 years of experience in the electric and gas utility industry, concluded that PG&E's vegetation management policies and procedures met or exceeded accepted good practices of the electric utility industry in California.[82] There is nothing in the record rebutting Mr. Goodfellow's opinions. Due to the Settlement, PG&E did not have the opportunity to cross-examine SED's witnesses, and, thus, the record does not include PG&E's challenges to SED's evidence. For example, PG&E would have explored (1) SED's failure to provide any meaningful support for its assertions that electric utilities applying accepted good practices would have been able to identify internal decay during visual inspections; (2) how PG&E or any electric utility could conceivably conduct individualized, physical inspections of trees in a service territory home to millions of trees; and (3) whether laboratory testing of tree samples is required as part of accepted good practice in the industry.

The point of this argument is not to suggest that the Commission should now decide these disputed issues on the merits. Doing so would simply compound the POD's errors by forming

[81] Specifically, PG&E made the following arguments: Rule 31.1 is a separate and distinct violation that should be applied only when the charged conduct is not covered by other specific provisions of GO 95. As applied by SED, Rule 31.1 should not be used to penalize vegetation management practices that are governed by Rule 35. Rule 35 is not violated whenever a tree falls into a line or has theoretical potential to make contact with a line. A violation of Rule 35 requires a showing that PG&E failed to meet clearance requirements under normal conditions prior to the alleged line strike(s) in question. Rule 35 should not be used to retroactively question maintenance prioritization decisions that are properly made under Rule 18. Rule 38's conductor-to-conductor clearance requirements are not violated merely because wires make contact in high-wind events. Compliance under Rule 38 should be measured under conditions "based on a temperature of 60 ºF. and no wind" and with reference to whether "extra measures were needed to maintain all required separations." *See* PG&E's Pre-Evidentiary Hearing Reply Brief Regarding Disputed Legal Issues, filed Oct. 28, 2019.

[82] PG&E Reply Testimony, served Nov. 18, 2019, at Ch. 8 (Witness Testimony of John Goodfellow).

conclusions based on an incomplete record. Rather, the POD's error was to modify the Settlement in a way that effectively lends credence to alleged violations that SED itself elected to leave unresolved.

1. In Effectively Deciding the Disputed Violations, the POD Violates Due Process and Is Fundamentally Unfair

The POD has dramatically increased the financial obligations on PG&E based on factual and legal grounds that PG&E strongly disputes and that were *never* actually decided. This is a violation of due process. "A fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"[83] The Commission has elaborated, "[t]he requirements of due process depend on the circumstances of each case. It varies with the subject matter and the necessities of the situation."[84] Moreover, "when penalties are involved, due process requires prior notice, opportunity to respond, and a hearing when appropriate to resolve issues of fact."[85] The Settling Parties carefully considered PG&E's (disputed) conduct and balanced the breadth of the disaster with their disagreements over the merits of the alleged violations and the fact that no utility in the history of California has faced a financial crisis like the one presently facing PG&E – all the while negotiating in the shadow of PG&E's Chapter 11 proceedings. As with any settlement, the parties compromised despite firmly held views as to the correctness of their respective positions. The Joint Motion to approve the Settlement requested an expedited decision so that the Bankruptcy Court and the Commission (in the PoR OII) would have sufficient time to evaluate and approve PG&E's PoR, and so that the Chapter 11 case could be resolved prior to the June 30, 2020, deadline. Under these circumstances, PG&E does not have a *meaningful* opportunity to dispute the legal and factual conclusions underpinning the POD, as there is no practical opportunity to respond to the POD modifications with testimony (if that were needed), participate in an evidentiary hearing to

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[83] *Appl. for Rehearing of Resolution ALJ-195*, D.08-04-062, 2008 WL 1994422 (Cal. P.U.C. Apr. 24, 2008) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)).
[84] *In Re S. Pac. Transp. Co.*, 75 CPUC 2d. 641, D.97-09-063 (Cal. P.U.C. Sept. 3, 1997).
[85] *Id.*

resolve the disputed issues (if necessary), and pursue collateral review of any ALJ decision, all in time to meet the AB 1054 deadline. This process violates fundamental notions of fairness and due process. The Commission should not allow the POD's modifications to stand.

C. The POD's Discussion of the Severity of the Offense Is Incomplete and Ignores the Role of Climate Change in California's Wildfire Risk

There is no dispute that the "physical and economic harm resulting from the 2017 and 2018 wildfires is unprecedented."[86] PG&E regrets any role that its electrical equipment played in the ignition of the wildfires. That is just one aspect of the story, however. There is broad consensus that the 2017 and 2018 wildfires were unprecedented and marked a substantial shift in the fire threat facing Northern California and Northern California utilities. The POD does not once discuss climate change. Yet, the wildfires were widely recognized as resulting from a confluence of abnormal weather events caused by climate change. As the California Office of Emergency Services ("CalOES") stated, "[w]hile California has long been recognized as one of the most fire-prone natural landscapes in the world, the 2017 and 2018 wildfire years saw unprecedented wildfires, which eclipsed fire events from previous years. . . . All other 2017 wildfire events were overshadowed by two fire events of catastrophic size and destruction; the Northern California Wildfire Complex in October 2017 and the Thomas Fire in December 2017; both of which were driven by extreme weather conditions coupled with large volumes of dry vegetation, affected by drought, in wildland-urban interface areas (WUI)."[87] A study authored by scientists from the National Oceanic Atmospheric Agency and the National Weather Service Storm Prediction Center agreed, finding that the October 2017 fires "featured key fire-weather metrics that were unprecedented in the observational record that followed a sequence of climatic conditions that enhanced fine fuel abundance and fuel availability."[88] According to the study,

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[86] POD at 20.
[87] *See* California Governor's Office of Emergency Services, *State of California Hazard Mitigation Plan*, at 508 (Sept. 2018), https://www.caloes.ca.gov/HazardMitigationSite/Documents/002-2018%20SHMP_FINAL_ENTIRE%20PLAN.pdf.
[88] *See* Nicholas J. Nauslar, John T. Abatzoglou, and Patrick T. Marsh, *The 2017 North Bay and Southern California Fires: A Case Study*, Fire, June 9, 2018, at 1, https://www.mdpi.com/2571-6255/1/1/18.

this confluence of abnormal weather events, including an exceptionally wet winter, preceded by a severe four-year drought and the delayed onset of autumn precipitation, meant that the conditions in October 2017, for example, were uniquely preconditioned for intense and quick-moving wildfires.

A number of climate-related factors contribute to the increasing risk of wildfires. For example, bark beetles and drought have contributed to record numbers of dead trees in California, which fuel and amplify wildfires.[89] Since 2010, according to the United States Forest Service ("USFS"), approximately 129 million trees have died in California. Indeed, on October 30, 2015, Governor Jerry Brown declared a state of emergency to protect California from an unprecedented tree die-off. Moreover, as temperatures rise, forests and land are drying out, increasing fuel and creating weather conditions that readily facilitate the rapid expansion of fires.[90] In response to this growing risk factor, in 2014, PG&E implemented its Drought and Tree Mortality Response program funded through the Catastrophic Event Memorandum Account ("CEMA") to identify and remove dead and dying trees, as further discussed below. The Governor's Office report on wildfires and climate change begins as follows:

> Climate change has created a new wildfire reality for California. The state's fire season is now almost year round. More than 25 million acres of California wildlands are classified under very high or extreme fire threat. Approximately 25 percent of the state's population – 11 million people – lives in that high-risk area. Wildfires are not only more frequent but far more devastating. Fifteen of the 20 most destructive wildfires in the state's history have occurred since 2000; ten of the most destructive fires have occurred since 2015. The results are visible to all: lives lost, grave fire damage to homes and communities, rising gas and electricity

[89] *See* Proposed S. Conf. Comm. Rep. No. 1, S.B. 901, at 5 (Aug. 28, 2018), http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB901.
[90] *See* The Atlantic, *Why the Wildfires of 2018 Have Been So Ferocious* (Aug. 10, 2018), https://www.theatlantic.com/science/archive/2018/08/why-this-years-wildfires-have-been-so-ferocious/567215/.

> rates, pressure on the home insurance market, and the threat of insolvency for California's utilities.[91]

The POD's failure to discuss the role of climate change in California's "new reality"[92] is an omission demonstrating that the POD's nearly $1 billion proposed increase in the dollar amount of the Settlement is all the more unreasonable. Just as the Governor decided that California's old system of allocating costs of catastrophic wildfires to the utility whose facilities happened to be involved in the fire is unsustainable in this era of accelerating climate change (leading to the creation of the Wildfire Fund), the POD's approach to penalty calculation is unreasonable. The Governor's Office acknowledges that, even when electrical equipment ignites a fire, the resulting wildfire is "exacerbated by drought, climate change, land-use policies, and a lack of forest management"[93] – all factors out of PG&E's control. The Commission cannot "penalize" its way out of the accelerating wildfire risk that has been created by a changing climate and residential patterns in the most fire-prone parts of California. The Settlement appropriately took into consideration the severity of the 2017 and 2018 wildfires, including PG&E's role in igniting fires, whether PG&E, in fact, violated any Commission rules or regulations when its equipment caused a fire, and the contribution of climate change to catastrophic wildfire. The POD ignores the critical factor of climate change, and, therefore, the proposed modifications are not adequately supported by the record and are not reasonable in light of the whole record.

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[91] *Wildfires and Climate Change: California's Energy Future, A Report from Governor Newsom's Strike Force* ("Governor's Report"), at 1 (Apr. 12, 2019), https://www.gov.ca.gov/wp-content/uploads/2019/04/Wildfires-and-Climate-Change-California%E2%80%99s-Energy-Future.pdf.

[92] *See* Press Release, Office of Governor Gavin Newsom, *Governor Newsom Releases Status Report on Catastrophic Wildfires, Climate Change and our Energy Future* (June 21, 2019), https://www.gov.ca.gov/2019/06/21/governor-newsom-releases-status-report-on-catastrophic-wildfires-climate-change-and-our-energy-future/.

[93] Governor's Report at 2.

D. The POD Is Unreasonable Because It Does Not Reflect Litigation Risk

The POD's modifications add up to a revised total dollar amount of $2.666 billion. But, Cal Advocates' estimate of the potential penalties from the 2017 and 2018 wildfires – assuming that ***all*** of the alleged violations were sustained – amounted to $2.425 billion.[94] Thus, the POD's proposed settlement value *exceeds* the intervenor's estimate of the potential penalties following a fully litigated proceeding by more than $200 million.[95]

The POD's treatment of how litigation risk factors into evaluation of the Settlement is incomplete.[96] The POD states that "litigation risk to PG&E is very high" with no recognition of SED's corresponding litigation risk.[97] In its discussion of the severity of the offense, the POD appears to treat PG&E's alleged violations of Commission rules and regulations as if they have been proven through litigation or admitted under the Settlement. For example, the POD appears to excessively credit the "detailed nature of SED's violations" and "allegations regarding harm to the regulatory process, which are also accorded a high level of severity,"[98] without tethering these alleged, unproven violations to the undisputed facts to which the Settling Parties stipulated or other evidence in the record. This is error.[99] Even among the 14 alleged violations that

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[94] *See* Cal Advocates Comments Contesting Proposed Settlement, filed Jan. 16, 2020, at 9 (stating that 2017 Wildfires potential penalties are $944 million), 16 (stating that 2018 Camp Fire potential penalties are $1.481 billion).

[95] Even if one subtracts the imposition of an additional $198 in disallowances, which the ALJ added to take "into account the likelihood of recoverability of these costs," the POD's modifications are roughly equal to a fully litigated outcome. POD at 38. That outcome would still fail to adequately account for litigation risk.

[96] *See, e.g.*, POD at 21, 32, 65.

[97] POD at 21, 32.

[98] *Id.* at 21.

[99] Note that the POD credits a position advanced by Cal Advocates that alleged violations of rules regarding the preservation of evidence and the reporting of incidents "directly relate to harm to the regulatory process." POD at 21. Cal Advocates argued that these alleged violations "harmed the regulatory process by interfering with SED's ability to investigate the incidents." Cal Advocates Reply Comments Contesting Proposed Settlement, filed Jan. 31, 2020, at 5. Neither Cal Advocates nor the Commission point to any allegation or evidence that the alleged violations of GO 95, Rule 19 or Resolution E-4184 interfered with SED's investigations in any way. The POD therefore further errs in finding these allegations relevant to the severity of the offense criteria.

PG&E does not contest – but did not admit to as part of the Settlement – only one alleged violation is ignition-related.

The POD does not recognize any discount for the inherent risk of adjudicating the violations through a hearing. Counterintuitively, the POD notes that the "Opposing Parties argue that the potential penalties, were the case fully litigated, may be greater than the settled amount by as much as $750 million or more"[100] – then elects to increase the penalties by up to $980 million. Without any discount for litigation risk, PG&E has no incentive to sign the modified settlement absent the timing pressure of AB 1054.

Instead of properly acknowledging litigation risk, the cornerstone of the POD is the assertion that the Settling Parties assumed the financial consequence would be $1.675 billion but did not realize (1) that PG&E faced disallowance risk on certain wildfire-related expenditures, and (2) that the financial consequence would actually be lower due to the benefits of future tax deductions.[101] However, there is no basis in the record to assume that the Settling Parties were unaware of these points. The assertion that they were impugns the competence of SED.

Indeed, the POD second-guesses the Settling Parties' evaluation of the risk of litigated outcomes both (1) in this OII, and (2) in the Commission's future reasonable reviews of the CEMA expenditures. The POD has no basis to conclude that it is in a better position than the Settling Parties to evaluate those risks; on the contrary, the Settling Parties are more familiar with the record and the lengthy settlement discussions than the ALJ. The settlement reflects the Settling Parties' considered judgment that the agreed outcome fairly reflects those risks. The POD does not and cannot find that the Settlement falls outside the range of reasonable litigation outcomes.

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[100] POD at 33.
[101] *Id.* at 37-44.

E. The POD's Analysis of PG&E's Financial Resources Does Not Justify the Proposed Nearly $1 Billion Increase in Penalties

In assessing the Settlement in light of the financial resources of the utility, the POD errs because it disregards the potential impact any modifications to the Settlement could have on PG&E's overall financial condition. In concluding that the record was lacking on this issue, the POD appears to write off the financial limitations raised in the Settling Parties' Joint Motion,[102] PG&E's and CUE's reply comments regarding the Settlement,[103] and the evidentiary record for this OII.[104] Rather, the POD concludes summarily that "the extent of PG&E's ability to pay a larger penalty or pay a fine to the General Fund is not clear from the record" and evidently determines that the POD's modifications are not excessive in light of PG&E's financial resources.[105]

The POD points to no evidence of PG&E's ability to pay a larger penalty or pay a fine to the General Fund as part of this analysis; indeed, the only references in the 76-page decision to such purported evidence are: (1) a statement about PG&E's relative size as a company; (2) a citation to the company's "last authorized revenue requirement for 2019"; and (3) the assertion that "the $25.5 billion in wildfire claims that PG&E states it has agreed to pay gives a sense of the scale of capital that a company of PG&E's size is able to raise, even while in bankruptcy proceedings."[106] None of this answers the question at hand.[107] Neither PG&E's status as "one of the largest combined natural gas and electric energy companies in the United States"[108] nor its annual revenue signals that the Company has access to unlimited cash reserves. This is particularly true in light of PG&E's Chapter 11 proceedings and its need to raise more than $25 billion to resolve other claims connected with the 2017 and 2018 wildfires. The POD does

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[102] Joint Motion at 38-39.
[103] PG&E and CUE Reply Comments Regarding Settlement Agreement, filed Jan. 31, 2020, at 8-10.
[104] *See*, *e.g.*, Bijur Testimony.
[105] POD at 25-26.
[106] POD at 46-47.
[107] The Non-Settling Parties similarly come up short. For example, Cal Advocates points to PG&E "spending approximately more than half a million dollars per day to pay for its voluntary bankruptcy." Cal Advocates Comments Contesting Proposed Settlement, filed Jan. 16, 2020, at 16-17.
[108] POD at 25.

not explain how these other financial obligations demonstrate PG&E's ability to undertake significantly *greater* financial obligations than those set forth in the Settlement.[109]

If the ALJ believed that the information in the record on this issue was lacking, PG&E would have been willing to respond to requests for more information, as it did with respect to the several issues in the ALJ's December 30, 2019, ruling requesting additional information about the Settlement. The ALJ instead opted to draw her own conclusions – contrary to the information that the Settling Parties presented and unsupported by the record. Both with respect to this criterion under Commission Decision 98-12-075 and overall, the POD does not properly account for PG&E's financial situation, including its other financial obligations stemming from the 2017 and 2018 wildfires and its Chapter 11 proceedings.

The Commission has made clear that the "financial resources of the utility" constitute a key factor in evaluating the reasonableness of a settlement.[110] Despite those instructions, the POD dismisses the testimony of PG&E's Vice President and Treasurer, Nicholas Bijur, who stated that PG&E's ability to raise capital as part of its PoR is limited and depends in large part on the amount of capital PG&E will require to resolve other claims.[111] As discussed above, Mr. Bijur explained that a harsh penalty would increase the borrowing costs for PG&E and/or render PG&E unable to raise capital, either of which would harm customers by threatening PG&E's ability to finance important capital investments in its system.[112] The POD notes a lack of specificity in Mr. Bijur's testimony, but it was not practicable to put a mathematical limit on PG&E's ability to pay a penalty. The point is that, as penalties increase, PG&E's cost of capital increases. In addition, as circumstances outside of PG&E's control evolve (such as the current

[109] Notably, this $25.5 billion in other financial obligations does not mean that PG&E was able to raise $25.5 billion in cash to meet these obligations. Rather, a significant portion of this amount will be funded through PG&E stock. This fact further discounts the weight that should be given to the $25.5 billion as evidence of PG&E's ability to pay more under the Settlement.
[110] *Rulemaking to Establish Rules for Enforcement of the Standards of Conduct Governing Relationships Between Energy Utils. & Their Affiliates Adopted by the Comm'n in D.97-12-088*, D.98-12-075, 1998 Cal. PUC LEXIS 1016 (Cal. P.U.C. Dec. 17, 1998).
[111] Bijur Testimony at 2-2.
[112] *Id.* at 2-2 to 2-3.

market environment), the Commission has to consider anew PG&E's ability to absorb a large penalty. The Governor's Office recognizes this potential downward spiral and negative impact on customers: "As utilities' credit ratings deteriorate, their borrowing costs increase and those costs for capital necessary to make essential safety improvements are passed directly to customers. These downgrades, and the prospect of additional utility bankruptcy filings, directly impact Californians' access to safe, reliable and affordable electricity."[113] The POD's approach to PG&E's financial reality and the potential impact on future customers is simplistic in the extreme. That PG&E is a big company[114] does not make it immune to a nearly $1 billion increase in penalties. The POD's modifications to the Settlement are unreasonable and should not be accepted.

F. The POD Errs by Failing to Credit the Settling Parties' Consideration of PG&E's Overall Financial Condition

First, the POD errs by failing to credit the Settling Parties' consideration of PG&E's overall financial condition – which includes potential tax deductibility for wildfire-related expenditures for which PG&E agreed not to seek rate recovery under the Settlement – in reaching agreement on the Settlement. The POD states, "the Settling Parties have not provided any information regarding how the deductibility of these expenditures impacts PG&E's overall financial condition."[115] This statement constitutes error because PG&E *did* provide information on this topic in its Response to the ALJ's December 30, 2019, Ruling Requesting Additional Information Regarding the Settlement, filed January 10, 2020. In relevant part, PG&E stated:

> It is important to note that in reaching agreement on the financial obligations imposed on PG&E pursuant to the Settlement Agreement, the parties took into consideration the overall financial condition of PG&E. As mentioned above, PG&E has already reported some of the costs incurred as current deductions or capital asset depreciation deductions in its tax return and financial statements prior to the negotiation of the Settlement Agreement and

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[113] Governor's Report at 3.
[114] POD at 46-47.
[115] *Id.* at 43.

> it expects to report future costs in the same manner when they are incurred. Thus, the tax deductibility of the wildfire-related expenditures for which PG&E agreed not to seek rate recovery under the Settlement Agreement is part of PG&E's overall financial condition. As PG&E emerges from Chapter 11, it will need to strengthen its financial condition so that it can attract the capital needed to provide safe, reliable and clean energy. This was the financial context for the Settling Parties' conclusion that the monetary components of the Settlement Agreement are reasonable in light of the record. The tax deductibility of these expenditures is part of this context. If the Commission were to modify or otherwise impair PG&E's ability to take lawful deductions for these expenditures, the economic cost of the Settlement would be materially higher, thereby materially altering terms of the Settlement Agreement. PG&E would also be in a relatively weaker financial position. In such a circumstance, PG&E would be required to reassess whether the Settlement is reasonable in light of the whole record.[116]

PG&E volunteered this explanation despite the fact that the ALJ did not specifically ask about the impact of the deductibility of these expenditures on PG&E's overall financial condition. The POD points to no independent obligation the Settling Parties were under to explain their rationale on this particular issue in the Settlement or Joint Motion,[117] and the ALJ never requested that PG&E provide additional information about the impact a sea change in the tax treatment of wildfire-related expenditures would have on PG&E's finances or access to capital. The POD also suggests that PG&E's explanations about the inherent uncertainty in tax savings calculations regarding the Settlement make it "unclear that any tax savings were factored into assessing PG&E's overall financial condition."[118] This statement ignores the fact that uncertainty is a common and often unavoidable aspect of settlement agreements – uncertainty around the potential outcomes of an issue is no indicator of whether the issue itself has been taken into consideration.

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[116] PG&E Response to Dec. 30, 2019, Ruling Requesting Additional Information Regarding Settlement, filed Jan. 10, 2020, at 14-15.
[117] *See* POD at 43 ("There is no mention in the Joint Motion or the settlement agreement regarding these anticipated tax savings.").
[118] POD at 43.

In any event, PG&E can confirm that the possibility that it would lose the tax benefits associated with disallowed costs was not factored into its PoR financial projections, and the loss of these benefits would be both qualitatively and quantitatively negative to PG&E's credit ratings. The ramifications of the POD modifications are not just limited to higher borrowing costs associated with the debt PG&E will issue as part of its PoR, but they create another reason for investors to be skeptical about the regulatory environment in California.[119] For these reasons, the POD's failure to credit the Settling Parties' consideration of PG&E's overall financial condition, and the addition of a novel monetary component to the Settlement, constitutes error.

G. The POD'S Evaluation of Deterrence Is Too Narrow

Finally, the POD announces that the "financial obligations adopted in this decision are intended as penalties for the purpose of punishment and deterrence."[120] The POD returns repeatedly to the theme of deterrence.[121] The POD's analysis of deterrence is incomplete and misses the broad sweep of ramifications from the 2017 and 2018 wildfires. Since October 2017, PG&E has:

- filed for Chapter 11 bankruptcy proceedings;
- been found in violation of its federal criminal probation;
- agreed to pay $1 billion in restitution to local governments affected by the 2017 and 2018 wildfires;[122]
- agreed to pay $11 billion in restitution to entities representing insurance subrogation claims relating to the 2017 and 2018 wildfires;[123]

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[119] See *supra* at Section V(A)(2).
[120] POD at 42.
[121] POD at 3, 24-25, 34, 42-43, 46, 70.
[122] *See* Press Release, PG&E, *In Final Major Settlement, PG&E Reaches Agreement to Resolve Individual Claims Relating to the 2017 and 2018 Wildfires and the 2015 Butte Fire; PG&E Has Now Reached Settlements with All Major Groups of Wildfire Claimants* (Dec. 9, 2019), https://www.pge.com/en/about/newsroom/newsdetails/index.page?title=20191209_in_final_major_settlement_pge_reaches_agreement_to_resolve_individual_claims_relating_to_the_2017_and_2018_wildfires_and_the_2015_butte_fire.
[123] *Id.*

- agreed to pay $13.5 billion in restitution to firms representing individual claimants who sustained losses from wildfires;[124]
- agreed to a proposed Settlement in this OII that imposed $1.675 billion in financial obligations;
- replaced its Chief Executive Officer, Vice President of Electric Asset Management, and Vice President of Electric Transmission, among other personnel;[125] and
- sustained substantial losses in its stock price.[126]

With this list of consequences in mind, PG&E disagrees with the POD's conclusion that nearly $1 billion in additional penalties are necessary to deter PG&E from any future violations of Commission rules or regulations. PG&E's management is highly motivated to minimize the risk of wildfire going forward. PG&E supports the Commission's thoughtful and thorough review of PG&E's maintenance and operations of its electric facilities. PG&E takes seriously its role to provide safe, reliable, and affordable electricity to the communities it serves – communities in which PG&E's employees and contractors are members – and will continue to take all efforts necessary to maximize the safety of its electric facilities, which present an inherent wildfire risk.[127] PG&E also recognizes its fundamental obligations to the State of California and its residents and businesses to operate its electric and gas system safely.

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[124] *Id.* The settlement includes payments to resolve claims arising out of the 2017 Northern California Wildfires and 2018 Camp Fire, as well as the 2015 Butte Fire and 2016 Ghost Ship Fire in Oakland.
[125] *See* Press Release, PG&E, *PG&E Announces New Chief Executive Officer and Appointment of a Refreshed Board of Directors; New Leadership Focused on Enhancing Safety Culture and Operational Excellence* (Apr. 3, 2019), https://www.pge.com/en/about/newsroom/newsdetails/index.page?title=20190403_pge_announces_new_chief_executive_officer_and_appointment_of_a_refreshed_board_of_directors_new_leadership_focused_on_enhancing_safety_culture_and_operational_excellence; PG&E Corporation and Pacific Gas and Electric Company, Current Report (Form 8-K) (Jan. 8, 2019), at 2.
[126] On October 1, 2017, PG&E Corporation's opening price on the New York Stock Exchange was $68.29. On March 18, 2020, its opening price was $8.88.
[127] In order to aid in the recovery and rebuilding of these communities, PG&E has taken steps to support victims of the recent wildfires, through efforts such as its funding of a $105 million Wildfire Assistance Fund to aid victims with living and other expenses and its $1 billion settlement with local public entities

The POD also reasons that a fine is necessary from a deterrence perspective, but a fine will accomplish nothing further with respect to deterrence. While a fine does require an immediate outlay – differing from the Settlement's ratemaking adjustments taken over time – it is not likely to have a greater or different deterrent effect. PG&E surely is doing – and will continue to do – all it can to avoid finding itself in this situation again in the future. A $200 million fine will not change this calculus; it merely decreases the funds PG&E has available to pay wildfire victims and invest in infrastructure improvements and threatens the viability of the PoR, as discussed above.

The Commission has recognized that even though it has the power to levy penalties for conduct subject to civil remedies, that power is discretionary.[128] In at least one other example, the Commission has exercised its discretion not to impose a fine for conduct "that is subject to adequate redress in the state and federal court systems."[129] Imposing nearly $1 billion in additional penalties on a company that is already in Chapter 11 bankruptcy proceedings in the name of "deterrence" strains reason.

H. The POD's Other Specific Changes Are Erroneous

The Settling Parties negotiated the Settlement over five months, meeting multiple times a week and resolving a number of complex issues. The ALJ has substituted her judgment and imposed draconian modifications without support in the record. Among these changes are unwarranted modifications to the System Enhancement Initiatives, a change in the tax treatment of the disallowances, and the imposition of a $200 million fine. As discussed below, these modifications should be rejected.

affected by recent wildfires that will aid in recovery and rebuilding. In addition, PG&E regularly holds community meetings to discuss its PSPS program.

[128] *Brown v. S. Cal. Gas. Co.*, D.96-07-022, 66 CPUC 2d 764 (Cal. P.U.C. Feb. 3, 1996).

[129] *Id.*

1. The POD's Tax Modification Is Untenable

The POD departs from the negotiated structure of the Settlement in adding an entirely novel component to it requiring that "[a]ny tax savings (i.e., financial benefits) associated with the financial obligations in the settlement agreement, as modified by [the POD], shall be returned for the benefit of ratepayers once PG&E has realized the savings."[130] This aspect of the POD is referred to throughout this Appeal as the "Tax Modification." Based on the POD's increases in the dollar amounts of disallowances and shareholder spending on System Enhancement Initiatives, the theoretical "tax savings" to PG&E that the ALJ has ordered the shareholders to forfeit could range as high as \$518 million.[131] Standing alone, the Tax Modification is contrary to the Commission's general rule "that when deductions were not part of utility cost of service, but were generated with shareholder funds, the deductions are the property of shareholders and not ratepayers. This include[s] deductions derived from disallowed costs incurred in excess of those included in rates."[132] Put another way, "[e]xpenses that are not allowed for ratemaking" – i.e., shareholder-funded and disallowed expenditures – "should not be used as ratemaking tax deductions."[133] Apart from this fundamental problem, the Commission should also not accept the Tax Modification because it does not take into account PG&E's overall financial health and it invites PG&E to violate Internal Revenue Service rules.

a. The Tax Modification Presents a Violation of the Normalization Rules

Under the Settlement, PG&E will capitalize and depreciate at least \$403 million of PG&E's wildfire-related expenditures for which it will not seek rate recovery. The Settlement

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[130] POD at 73; *see also* POD at 40-44.

[131] Note that the estimate of tax savings is based on an internal PG&E analysis taking into account the \$198 million increase in disallowances and \$64 million increase in shareholder-funded System Enhancement Initiatives. It does not take into account many variables that are unknowable at this time, such as PG&E's taxable income, net operating loss position, future changes in the tax laws, and the timing of expenditures.

[132] *Appl. of Pac. Gas & Elec. Co. for Auth., Among Other Things, to Increase Rates & Charges for Elec. & Gas Serv., Effective on Jan. 1, 2014 (U39M)*, D.14-08-032, at 584 (Aug. 14, 2014).

[133] *Re Income Tax Expense for Ratemaking Purposes*, D.84-05-036, 15 CPUC 2d 42 (Cal. P.U.C. May 2, 1984).

thus precludes PG&E from including these capitalized amounts in rate base, and PG&E will not recover the cost of these capital items through a depreciation charge. Nonetheless, this property will constitute "public utility property" as defined in section 168(i)(10) of the Internal Revenue Code of 1986, as amended (the "Code"), subject to the normalization rules of section 168(i)(9) of the Code. Section 168 of the Code allows PG&E depreciation deductions in excess of the depreciation it takes into account for ratemaking purposes. Section 168(f)(2) of the Code conditions PG&E's use of accelerated tax depreciation on the use of a "normalization method of accounting." "Under normalization, a utility receives the tax benefit of accelerated depreciation in the early years of an asset's regulatory useful life and passes that benefit through to ratepayers ratably over the regulatory useful life of the asset in the form of reduced rates."[134] The Tax Modification would cause PG&E to violate the normalization consistency rule and preclude PG&E from taking the benefits of accelerated tax depreciation under section 168 of the Code on *all* of its property, not just the property subject to the rate disallowance.

The Tax Modification is comparable to the attempt by the Commission to retain the tax benefits related to the disallowance of $850 million in safety-related improvements to its gas system in the 2015 Gas Transmission and Storage ("GT&S") rate case.[135] In that case, PG&E received a private letter ruling ("PLR") from the Internal Revenue Service ("IRS") that ruled excluding recovery of public utility property from rate recovery is inconsistent with taking the tax benefits from the public utility property into account for rate recovery.[136] Accordingly, the Commission authorized PG&E to adjust its rates to reverse the effects of the normalization violation.[137] Over the years, the IRS has issued other PLRs and other authorities finding a

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[134] I.R.S., Request for Comments on Necessary Clarifications to Normalization Requirements for Excess Tax Reserves Resulting from the Corporate Tax Rate Decrease, Notice 2019-33, https://www.irs.gov/pub/irs-drop/n-19-33.pdf.
[135] *Appl. of Pac. Gas & Elec. Co. Proposing Cost of Serv. & Rates for Gas Transmission & Storage Servs. For the Period 2015 – 2017 (U39G)*, D.16-12-010 (Cal. P.U.C. Dec. 1, 2016).
[136] I.R.S. Priv. Ltr. Rul. 201752002 (Oct. 2, 2017).
[137] Cal. P.U.C. Advice Letter No. 3903-G (Dec. 15, 2017), https://www.pge.com/tariffs/assets/pdf/adviceletter/GAS_3903-G.pdf.

normalization violation for the inclusion of tax benefits for the benefit of ratepayers when the related property was excluded from rate recovery.[138]

While the POD appears to recognize that the Tax Modification may implicate the normalization rule,[139] it is not clear what the POD expects PG&E to do to resolve the conflict. The POD states in a footnote that "[t]he tax savings shall be applied in accordance with any applicable Internal Revenue Service normalization rules."[140] But following the normalization rules necessarily conflicts with the Tax Modification, as explained above. The Commission should eliminate the Tax Modification entirely from the Settlement, along with the other modifications proposed in the POD.

2. The POD's Proposed $200 Million Fine Conflicts with Obligations to Wildfire Victims

The POD states that, of the increased penalties, "$200 million shall be in the form of a fine payable to the General Fund out of funds that would not otherwise be available to satisfy the claims of wildfire victims."[141] As an initial matter, the Settling Parties' decision to forgo a fine was based on (1) the Settlement's unprecedented ratemaking adjustments and shareholder-funded System Enhancement Initiatives; (2) PG&E's unique financial situation given its Chapter 11 proceedings; and (3) PG&E's other wildfire-related financial obligations. Viewed in this light, no fine is necessary no matter whether other Commission OIIs have resulted in fines. However, there are other significant reasons why a fine is inappropriate.

PG&E's PoR provides for the creation of a trust to "administer, process, settle, resolve, liquidate, satisfy, and pay all" wildfire victim claims (the "Fire Victim Trust").[142] The Fire Victim Trust will be funded by $6.75 billion in cash and $6.75 billion in common stock.[143]

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[138] *See, e.g.,* I.R.S. Priv. Ltr. Rul. 9312007 (Dec. 21, 1992).
[139] POD at 44, n.94.
[140] *Id.*
[141] *Id.* at 73.
[142] *See* Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated March 9, 2020 at 66, *In re PG&E Corp.*, No. 19-30088 (DM) (Bankr. N.D. Cal. Mar. 9, 2020), ECF No. 6217.
[143] *Id.* at 8.

Under the PoR, any claim for penalties for pre-petition conduct, which includes this proceeding, is a Fire Claim, and is channeled to the Fire Victim Trust. The POD would require the Settling Parties to agree that the $200 million fine would come out of funds not otherwise available to satisfy victim claims. Thus, the POD would require an amendment to the PoR. Any amendment to the POR would require the consent of the shareholder proponents and would also implicate the backstop. Specifically, to the extent that the payment of penalties results in an aggregate financial obligation in respect of Fire Claims that exceeds $25.5 billion, each Backstop Party has the right to terminate. Particularly given the market instability, creating a condition that entitles Backstop Parties to terminate creates a risk that the PoR will not be funded.

While PG&E opposes any fine, if there were to be a fine, it should be paid out of the Victim Trust to avoid creating an obligation that would trigger the right to terminate backstops. This could be achieved by providing that any fine would be paid out of the funds in the trust available *after* payment to victims. This is similar to the recent agreement with FEMA[144] and is consistent with the POD's language, because the residue of the Victim Trust consists of funds "not otherwise available to satisfy the claims of wildfire victims" – who will have been paid. Under the PoR, the proposed $200 million fine will be deemed to be of the type of claim paid out of the Fire Victim Trust, along with the claims of the wildfire victims.[145]

3. The POD's Modifications to the System Enhancement Initiatives Are Arbitrary and Have No Support in the Record

The proposed Settlement Agreement requires PG&E to undertake 20 System Enhancement Initiatives.[146] The POD does not criticize the substance of the System Enhancement Initiatives, nor do the Opposing Parties. However, at least two aspects of the

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[144] *See* Wall Street Journal, *PG&E Settles with FEMA, First Responders Over $4 Billion in Bankruptcy Claims* (Mar. 10, 2020), https://www.wsj.com/articles/pg-e-settles-with-fema-first-responders-over-4-billion-in-bankruptcy-claims-11583870234.
[145] The PoR defines these claims as "Fire Victim Claims." *See id.* at 18.
[146] *See* Settlement Agreement Section III.B and Exhibit C.

POD's modifications to the Settlement's System Enhancement Initiatives constitute error.[147] First, the POD errs in more than doubling the total amount of shareholder funding that PG&E is required to allocate toward System Enhancement Initiatives and related efforts under the Settlement, from $50 million to $114 million. The POD also errs in modifying the deadline for commencing an audit of PG&E's overhead distribution and transmission preventive maintenance program without sufficient justification for doing so. Both errors are addressed below.

a. The POD Does Not Justify Quintupling the Budget for Conducting Root Cause Analyses

The Settlement requires PG&E shareholders to pay for an independent root cause analysis company to conduct a Root Cause Analysis ("RCA") for each of the wildfires included in this OII that were reportable incidents to the CPUC and for which CAL FIRE determined that the ignition involved PG&E facilities. The primary purpose of the RCAs is to analyze the factors that contributed to the ignition of the applicable fires and make recommendations as appropriate so that the learnings can be implemented on a go-forward basis to mitigate the risk of similarly-caused fires in the future. Analyzing all of these fires will maximize lessons learned not only for PG&E, but also for the Commission. The information revealed may show that areas of GO 95 should be modified. The RCA will consider all potential root causes and will not be restricted to violations of GO 95. The RCA may identify systemic, programmatic, management, and structural matters that may need to be addressed to reduce such incidents in the future.

The POD increases the budget for conducting the RCAs from $3 million to $17 million. As justification for more than *quintupling* the budget for conducting RCAs, the ALJ states only that "a budget of $3 million for all 17 RCAs *may be inadequate* to conduct RCAs of sufficient

[147] PG&E is not opposed to the substance of many of the other proposed modifications to System Enhancement Initiatives not discussed in this section (for example, the involvement of the Commission's newly formed Safety Policy Division in certain System Enhancement Initiatives). However, PG&E notes that it is opposed to any modification of the Settlement *per se* given the need for expedited review and approval of the Settlement and the fact that the Settlement reflects a delicate bargain resulting from hard-fought negotiations. PG&E is willing – outside the context of the Settlement – to agree to meet with the other parties named in the proposed modifications and further discuss the substance of the proposed modifications.

depth and breadth."[148] The POD does not cite to any evidence in the record that the $3 million budget under the Settlement will not be adequate to conduct all of the RCAs, and nowhere does it purport to justify the proposed $17 million budget. On its face, this modification is unreasonable. The POD also requires PG&E to spend an additional "$50 million of shareholder funds, plus any amount remaining from the budget for conducting the RCAs, to implement corrective actions stemming from the RCAs that would otherwise have been funded by ratepayers but for this decision."[149] This apparently arbitrary figure equals the cost of *all* the System Enhancement Initiatives in the Settlement – 20 individual projects or efforts – *combined*. PG&E expects that many of the root causes identified through the RCAs will have been already addressed, or being addressed, through the System Enhancement Initiatives and other ongoing wildfire prevention and safety enhancement efforts at PG&E. The POD does not explain this $50 million figure, nor does it offer an explanation as to why the Settlement is inadequate without this modification. The mandated $64 million increase in spending on Shareholder Enhancement Initiatives is unreasonable and unnecessary, and it constitutes error.

b. The POD Arbitrarily Modifies the Deadline for Commencing a System Enhancement Initiative

PG&E has agreed under the Settlement to retain Safety Evaluator(s) to perform Independent Safety Evaluations, which will include an evaluation of PG&E's overhead distribution and transmission preventive maintenance program. The Safety Evaluator will: (i) field audit samples of work orders generated in connection with patrols and inspections of PG&E overhead distribution and transmission facilities; (ii) review samples of work orders for adherence to PG&E policies and procedures; and (iii) recommend improvements to PG&E's distribution and transmission inspection and maintenance procedures based on the Safety Evaluator's review of PG&E's overhead distribution and transmission preventive maintenance program. The primary goal of this System Enhancement Initiative is to ensure that PG&E

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[148] POD at 51 (emphasis added).
[149] *Id.*

maintains effective distribution and transmission inspection and maintenance practices and procedures. The Settlement provides that the Safety Evaluator's review of PG&E's overhead distribution will begin within one year of the effective date of the Settlement.[150]

The POD modifies the deadline for commencing an audit of PG&E's overhead distribution and transmission preventive maintenance program to within six months of the Settlement's effective date instead of one year as agreed to under the Settlement. This is unreasonable and evinces a misunderstanding of what is required to launch this work. It is not reasonable to require the audit to begin within six months, when several procedural steps that are outside of PG&E's control must take place before the audit can commence. The POD draws this recommendation from Cal Advocates' comments contesting the Settlement.[151] To justify its recommendation, Cal Advocates states only that "[t]here is no reason to delay the audit for a year, given SED's findings regarding the Camp Fire."[152] The POD defers to this reasoning in shortening the deadline for the audit to commence.

The POD acknowledges that "there is a process for PG&E to select and enter into a contract with a qualified Safety Evaluator, which may take more than one month to complete," and sets a deadline of six months instead of one month for the audit to begin. But even a six-month period may be insufficient for reasons outside of PG&E's control. The Settlement's provision providing that this particular audit shall begin within one year of the effective date of the Settlement is reasonable in light of the threshold steps that must take place (with extensive input from SED) prior to commencement of the first audit.[153]

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[150] The Settlement defines its effective date as the date upon which each of the following events have taken place: (1) approval by the Commission in a written decision; (2) following such approval by the Commission, approval of the United States Bankruptcy Court, Northern District of California, San Francisco Division ("Bankruptcy Court") in PG&E's bankruptcy proceeding, *In re PG&E Corp.*, No. 19-30088 (DM); and (3) the effectiveness of a PoR that approves the implementation of the Settlement. Settlement Agreement at 5-6.
[151] Cal Advocates Comments Contesting Proposed Settlement, filed Jan. 16, 2020, at 4.
[152] *Id.*
[153] Settlement Agreement Exhibit C, at 8-10. For example, the following steps would be required: PG&E must provide SED with a list of reasonably qualified Safety Evaluators with relevant experience; SED must select a qualified Safety Evaluator(s) from the list provided by PG&E; PG&E must enter into a

Considering the number of parties involved in this process, the various levels of input required, and the amount of time required to draft and finalize a contract before the audit can begin, the POD's six-month deadline is unreasonable. Moreover, the ALJ articulates no reason why the one-year deadline proposed in the Settlement is itself problematic. Finally, because a single Safety Evaluator may be retained to conduct multiple aspects of the Independent Wildfire Safety Audits, moving one audit to a shorter timeframe may impact all of the audits or increase the cost of this initiative by requiring that an additional Safety Evaluator be retained on an accelerated timeline separate from the rest of the audits. The existing deadline of *within one year* of the Settlement's effective date allows the flexibility necessary to ensure that PG&E and SED properly implement this audit.

VI. THE COMMISSION SHOULD REVERT TO THE PROPOSED SETTLEMENT OR CONSIDER OTHER RELIEF REQUESTED BY PG&E

For all of the reasons expressed in this Appeal, PG&E respectfully requests that the Commission not accept the POD's modifications to the Settlement and instead approve the Settlement, as originally submitted.

If the Commission nevertheless were to determine that modifications to the proposed settlement were required, PG&E recommends, in the alternative, the following modifications to the POD that address the POD's most problematic elements:

1. Eliminate the Tax Modification, as it is contrary to Commission precedent and invites PG&E to violate the IRS normalization rules, and because it is unclear whether the POD considered the impact of a potential $518 million increase in penalties that may result from the Tax Modification.

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contract with the Safety Evaluator(s) selected by SED; SED must review and approve the terms and scope of work prior to PG&E entering into the contract(s) with the Safety Evaluator(s); the Safety Evaluator must present SED with the methodology and a description of the anticipated final product of the audit based upon the goals and objectives identified in the Settlement Agreement; and SED may consult with the Safety Evaluator about the methodology and plans to achieve the goals identified in the Settlement Agreement.

2. Order that any fine payable to the General Fund, including the proposed $200 million fine, is a Fire Victim Claim under the PoR, will be paid out of the Fire Victim Trust, and will be subordinated to the Trust's payments to fire victims.

VII. CONCLUSION

For the reasons stated above, the Commission should decline to accept the POD's modifications and approve the Settlement, as originally submitted. In the alternative, the Commission should modify the POD as requested by PG&E.

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Dated: March 18, 2020

Respectfully Submitted,

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