

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

Order Instituting Investigation on the
Commission's Own Motion on the Late
2019 Public Safety Power Shutoff Events

I.19-11-013
(Filed November 13, 2019)

**APPLICATION FOR REHEARING OF
DECISION D.21-06-014 BY THE ACTON TOWN COUNCIL**

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July 7, 2021

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Pursuant to Rule 16.1 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the Acton Town Council (ATC) respectfully submits this Application for Rehearing ("Application") of Decision D.21-06-014 issued June 7, 2021 ("Decision") in Proceeding I.19-11-013 investigating the proactive de-energization events initiated in the Fall of 2019 by Investor Owned Utilities (IOUs); specifically, Southern California Edison (SCE), Pacific Gas and Electric (PGE) and San Diego Gas and Electric (SDGE). Consistent with Rule 16.1, this Application for Rehearing has been filed within 30 days after the date the Commission issued D.21-06-014; thus, it is timely filed. The Acton Town Council also requests oral argument on this Application for Rehearing. As set forth below, the Decision contains legal errors that will not withstand judicial review and in adopting it, the Commission has impermissibly sidestepped its statutory obligation to enforce critical public safety and electrical reliability provisions of the California Public Utilities Code (among other things).

INTRODUCTION

Investigation proceeding I.19.11.013 was initiated to "serve as the forum for the Commission to consider instances when an electric corporation's actions related to a PSPS event resulted in violations of any statutes or Commission rules or regulations"¹. The Commission launched proceeding I.19.11.013 to assess the proactive de-energization events (also referred to as "public safety power shutoffs or "PSPS" events) that were commenced in the Fall of 2019 by PGE, SDGE, and SCE for the purpose of reducing wildfire ignition risks posed by their electrical equipment. The evidentiary record shows that these events resulted in the cumulative de-energization of more than 1,300 circuits across California, they affected more than two million customers, and often extended for days. Investigation I.19-11-013 was initiated because the 2019 PSPS events were of such an excessive scope, extent, and length and posed so many public safety hazards that the Commission deemed it necessary to "determine whether California's IOUs prioritized safety and complied with the Commission's regulations and requirements with respect to their pro-active de-energization of power lines"². Phase 1 of this Investigation culminated in a report issued by the Commission's Safety and Enforcement Division ("SED")³ the purpose of which was to evaluate "the utilities' actions prior to, during and after the PSPS events in late 2019, and utility compliance with the

¹ Order Instituting Investigation issued November 13, 2019 in Proceeding I.19-11-013 (at 2).

² Phase 2 Scoping Memo issued in I.19-11-013 on August 3, 2020 (at 1).

³ Id at 10.

Commission's existing de-energization regulations and requirements"⁴. Issues that were to be addressed in Phase 2 were set forth in a Scoping Memo released August 3, 2020 and included evaluating the utilities' implementation of PSPS events in the Fall of 2019 to determine whether it "complied with the criteria set forth in D.19-05-042 and other applicable laws and regulations" and establishing "what corrective actions should the Commission require of PG&E, SCE, and SDG&E for any failure in late 2019 to comply with the then-existing PSPS Guidelines"⁵. Notably, the Scoping Memo only identifies the criteria set forth in D.19-05-042 as being relevant to Phase 2 issues; however, D.19-05-042 includes Resolution ESR-B (as Appendix D), thus the full scope of criteria applicable to Phase 2 issues includes all the elements of D.19-05-042 and ESRB-8. In addition, Phase 2 was categorized as ratesetting under §1701.1(a), but the Scoping Memo instructs that this categorization "will be reassessed to determine if, in the event that fines, penalties, or sanctions may be appropriate, the proceeding should be re-categorized as adjudicatory"⁶.

BACKGROUND

Through operation of Public Utilities Code §702, electrical utilities were required in 2019 to comply with all PSPS directives established by adopted Commission Decisions and Resolutions in effect at the time, including D.19-05-042 and ESRB-8. Accordingly, the utilities had a statutory obligation to comply with ESRB-8 and D.19-05-042 when they initiated PSP events in the Fall of 2019; any failure by a utility to comply with these PSPS directives is deemed a statutory violation of §702. Given that this Investigation is the "forum" for evaluating such statutory violations of PSPS directives, it requires a fundamental understanding of what these PSPS directives are. Specifically, the Commission's PSPS directives embrace the following notification, mitigation, reporting, and reasonableness requirements:

Notification: Utilities contemplating a proactive de-energization event must follow specific protocols to notify customers, critical infrastructure providers, first responders, emergency service agencies and others of their de-energization and re-energization activities, and maintain communication with these stakeholders throughout the event⁷.

⁴ Commission Order Instituting Investigation issued November 13, 2019 at 1.

⁵ Phase 2 Scoping Memo issued in I.19-11-013 at 8.

⁶ Id at 1.

⁷ ESRB-8 at 4-8; D.19-05-042 at A1-A2, A4, A7-A10, A12, A14, A16, A18-A20, A23, A26-A27.

Mitigation: Because proactive de-energization events pose extensive and substantial public safety risks⁸, utilities must actively work to reduce the scope, extent, and length of all de-energization events. In particular, and before de-energizing any customers, the utilities must determine that the PSPS event they are contemplating will quantitatively provide clear public safety benefits (such as reducing wildfire risks) that outweigh the substantial public safety risks that the PSPS event will create⁹; this is a critical element of the PSPS decisionmaking process because it provides the means whereby the Commission can confirm that utilities deploy PSPS solely as a "last resort" measure.

Reporting: Utilities that initiate a PSPS event must submit a "Post Event" report within 10 days of concluding PSPS activities. The report must detail the specific decisional criteria that were relied upon to initiate de-energization and re-energization on each circuit, the time and location of the event, the number of customers affected, the length of time they were without power, the notification and communication activities that were implemented, and other pertinent information¹⁰. In addition, the reports are supposed to describe the mitigation measures that were considered and implemented, and also provide the quantitative analysis conducted by the utility prior to de-energizing each circuit which proves that the public safety risk posed by de-energizing the circuit was outweighed by a quantified public safety benefit to conclusively prove that PSPS was initiated solely as a "last resort"¹¹.

Reasonableness: For each circuit that was de-energized, a utility must show that de-energization was "reasonable"; this is accomplished by demonstrating in the post event report that circuit de-energization was necessary to protect public safety, that other measures were implemented to avoid PSPS to the extent available, and that utilities implemented measures such as warning and protecting customers to mitigate adverse impacts of PSPS events¹². Additionally, and consistent with ESRB-8, utilities must show that, for each circuit de-energized, there was an imminent and significant risk that the circuit would either topple over or experience "major vegetation-related impacts" from windblown debris¹³.

In addition to imposing notification, mitigation, reporting, and reasonableness requirements on utilities, the Commission's PSPS Directives impose requirements on the Commission itself; the most important of these is the imperative that the Commission "assess the reasonableness of all electric IOU de-energization events in order to ensure that the power shut off is executed only as a last resort and for a good reason"¹⁴. The Commission is directed to undertake post-event

⁸ D.09-09-030 at 41-48.

⁹ D.19-05-042 at A24.

¹⁰ ESRB-8 at 3 and 5.

¹¹ D.19-05-042 at A1, A22-A24.

¹² ESRB-8 at 4, D.19-05-042 at A7, A12, A22-23.

¹³ ESRB-8 at 4.

¹⁴ Ibid.

"Reasonableness Reviews" within 15 days of receiving any post event report from a utility¹⁵ to ensure that utilities justify "why de-energization was deployed over other possible measures or actions" and that they did not "employ de-energization solely as a means of reducing their own liability risk from utility-infrastructure wildfire ignitions"¹⁶.

Because every PSPS event involves the deliberate and lengthy curtailment of reliable electric service to customers by a utility, every PSPS event necessarily has Public Utility Code compliance implications. For instance, the Commission is mandated through operation of Public Utilities Code §2101 to enforce §451 provisions requiring utilities to furnish and maintain adequate electrical service necessary to promote public safety; the Commission is also statutorily mandated to enforce §399.2 which requires utilities to operate their distribution equipment in a safe and reliable manner. The Commission typically effectuates these mandates by conducting "Reasonableness Reviews" and applying its longstanding "Prudent Manager Standard"¹⁷ which asserts that a utility has the burden to affirmatively prove that it reasonably and prudently operated and managed its system¹⁸.

Violations of §451 and §399.2 are supposedly met with robust enforcement through operation of §2101 to secure meaningful deterrence in accordance with newly-adopted Commission Enforcement Policies¹⁹. Moreover, the Commission's duty to undertake "Reasonableness Reviews" pursuant to ESRB-8 and D.19-05-042 is amplified when the Commission is provided with substantial evidence demonstrating that a utility's de-energization decision violated §399.2 and was therefore intrinsically not "reasonable".

SUMMARY AND BRIEF ANALYSIS OF D.21-06-014.

Regarding the PSPS events initiated by SCE, SDGE and PGE in the Fall of 2019, the Decision establishes the following:

¹⁵ D.19-05-042 at 106, 107.

¹⁶ Id at 68.

¹⁷ CPUC document titled "Answer of Respondent to Petition for Writ Of Review" filed by the Commission September 7, 2018 in the Court of Appeal of the State of California (Fourth Appellate District, Division One) in Case No. D074417 at 42 [as of June 30, 2021, the "Answer" document was available here: <https://www.edison.com/content/dam/eix/documents/investors/wildfires-document-library/20180907-cpuc-answer-to-sdgc-petition-for-writ-of-review.pdf>].

¹⁸ D.18-07-025 at 3.

¹⁹ M-4846 issued November 6, 2020.

- SCE and PGE failed to comply with most of the Commission-adopted PSPS criteria pertaining to notification and SDGE failed to comply with some notification criteria²⁰.
- SCE, SDGE, and PGE failed to comply with the requirements imposed by Public Utilities Code §451 to promote safety of customers²¹.
- SCE, SDGE and PGE failed to comply with PSPS reporting requirements²².

Notably, D.21-06-021 does not address whether the utility decisions to de-energize customers in 2019 were "Reasonable" despite the Commission's statutory obligation to enforce §399.2 by ensuring utilities operate their distribution facilities in a safe and reliable manner and regardless of the Commission's own directive that all PSPS events be assessed for "Reasonableness".

After concluding that the PSPS events initiated by SCE, SDGE, and PGE in the Fall of 2019 violated §451 and adopted Commission decisions and directives, D.21-06-014 does not prosecute these violations by imposing penalties, fines, or sanctions. Instead, the Decision establishes a non-compulsory "incentive" program; utilities that choose to participate will receive a financial incentive upon showing that they have "improved their conduct" in future PSPS events²³. D.21-06-021 does not require utilities to pursue these "incentives", so utilities can choose to forego them and not "improve their conduct" in future PSPS events. In other words, D.21-06-014 permits utilities to "pick and choose" whether, and to what extent, they will comply with PSPS directives in future. Moreover, the Decision establishes no mechanism to assess how (or even if) the "improved conduct" that utilities claim is actually incorporated in their PSPS events, and it establishes no metric for determining when utility conduct is sufficiently "improved" to warrant incentive award. The record also demonstrates that these "incentives" are of negligible value²⁴.

²⁰ Conclusions of Law #44, #46, #54, and #56.

²¹ Conclusions of Law #12, #18, #20, #26, #29, #30, #31, #36, #38, #40, #44, #47, #49, #51, #52, #54, #56, #57, #59, #61, #62, and #64.

²² Conclusions of Law #13, #77, and #81.

²³ Conclusion of Law #16.

²⁴ OP #1: the "incentive" is the "authorized revenue requirement equal to estimated unrealized volumetric sales and unrealized revenue" resulting from PSPS events. PGE estimates it is virtually imperceptible compared to typical revenue values [PGE response filed April 7, 2021 at 13]. SCE estimates it is only 0.01% of its total system usage [SCE response filed March 24, 2021 at 8].

Importantly, the Decision does not explain how the "incentive" program will deter future utility violations of §451 and adopted PSPS directives or how it achieves full compliance with the Public Utilities Code and Commission decisions and directives. In fact, it is clear that the "incentive" scheme established by D.21-06-014 will not achieve compliance because compliance is not a prerequisite for the utilities to obtain the incentives. This is particularly disturbing, given the abundance of record evidence showing that the violations of Commission PSPS directives which were perpetrated by the utilities during their 2019 PSPS events were repeated in 2020²⁵ and again in 2021²⁶.

Odder still, the Decision adopts this "incentive" program based on an unsupported contention that the Commission must "strike a balance between the need in 2019 for utilities to initiate PSPS events in response to evolving, dangerous conditions against the equally compelling need to conduct PSPS events in a safe manner"²⁷. Notably, D.21-06-014 does not cite to any record evidence showing that there was a "need" for utilities to initiate PSPS events in 2019 or that "evolving, dangerous conditions" even existed when customers were de-energized. In fact (and as discussed in detail below), the record shows there was no "need" for the utilities to initiate the PSPS events that de-energized more than two million customers in the Fall of 2019. Additionally, the record clearly

²⁵ For instance, the post-event reports submitted by SCE, SDGE, and PGE for their PSPS activities in 2020 do not demonstrate that the public safety risks posed by their 2020 de-energization events were outweighed by a demonstrated public safety benefit. In fact, none of the utilities even report the public safety concerns that were created by their PSPS events (the ATC has pointed this out to the Commission - See comments on SCE Post Event Reports submitted by the ATC on November 25, December 17, and December 24, 2020 and on January 5, January 13, and January 25, 2021 – these comments are incorporated herein by reference). Additionally, the utilities did not explain how they deployed de-energization in 2020 as a "last resort" measure; they merely state that they used PSPS as a last resort measure. The utilities also did not provide the detailed criteria that they relied upon in their PSPS decision process as required by both ESRB-8 and D.19-05-042.

²⁶ For instance, the post-event report submitted by SCE for its PSPS events on January 18, 2021 does not demonstrate that the public safety risks posed by these de-energization events were outweighed by a demonstrated public safety benefit; SCE does not even report that its 2021 PSPS events actually posed a public safety risk (thought the ATC has - See comments on SCE Post Event Reports submitted by the Acton Town Council on March 1, 2021 – these comments are incorporated herein by reference). Additionally, the post event reports of 2021 do not demonstrate how the utilities deployed de-energization solely as a "last resort" measure as required by both ESRB-8 and D.19-05-042.

²⁷ Conclusion of Law #16.

shows that the utilities did not conduct their 2019 PSPS events "in a safe manner". Therefore, it is a complete non-sequitur to conclude that the Commission must "strike a balance" between perceived "needs" which simply do not exist. In other words, the reasons given by D.21-06-014 for not prosecuting the substantial statutory violations perpetrated by the utilities in 2019 via penalties and fines is both illogical and unsupported by the evidentiary record.

IN ADOPTING THE DECISION, THE COMMISSION HAS FAILED TO PROCEED IN A MANNER REQUIRED BY LAW.

In a number of ways, the Commission failed to proceed in a manner required by law when it adopted the D.21-06-014; all of these failures have substantially prejudiced the Community of Acton and provide grounds for judicial review under Division 1 Part 1 Chapter 9 Article 3 of the Public Utilities Code.

The Commission has Failed to Proceed as Required by Public Utilities Code §2101 Because D.21-06-014 Does Not Materially Prosecute Violations of Public Utilities Code §451.

§2101 states in pertinent part "The commission *shall* see that the provisions of the Constitution and statutes of this State affecting public utilities... are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the State therefor recovered..." (emphasis added). §2101 explicitly directs the Commission to enforce the public utilities code by prosecuting violations that are perpetrated by utilities; the Commission is not permitted to sidestep or avoid these prosecutorial duties. ("Where a statute or ordinance clearly defines the specific duties or course of conduct that a governing body must take, that course of conduct becomes mandatory and eliminates any element of discretion." [*Rodriguez v. Solis* (1991) 1 Cal. App. 4th]). Yet, that is precisely what the Commission has done by closing this proceeding without materially prosecuting any of the §451 violations that were perpetrated by SCE, SDGE, and PGE in 2019 and which are clearly identified in D.21-06-014²⁸. The Decision imposes no fines or penalties and it does not initiate any adjudicatory process to secure fines or penalties. It does not hold the utilities accountable for their §451 violations. Worst of all, the non-binding "incentive" scheme established by D.21-06-014 in lieu of penalties does not achieve the enforcement purposes of §2101 because it does not deter utilities from perpetrating similar violations in the future; this is because the non-compulsory "incentive" scheme established

²⁸ Conclusions of Law #12, #18, #20, #26, #29, #30, #31, #36, #38, #40, #44, #47, #49, #51, #52, #54, #56, #57, #59, #61, #62, and #64.

by D.21-06-014 fails to compel compliance and instead merely asks utilities to "improve" their future conduct in exchange for a negligible financial reward. In short, D.21-06-021 does not satisfy the Commission's statutory obligation under §2101 to enforce and prosecute clearly identified violations of §451. D.21-06-015 gives what is essentially a "free pass" to SCE, SDGE, and PGE despite the horrendously dangerous PSPS activities they initiated in 2019²⁹ and the gross statutory violations that they perpetrated. This deficiency is particularly appalling in light of the fact that the evidentiary record proves that the §451 violations perpetrated by the utilities in 2019 were repeated in 2020³⁰ and again in 2021³¹. Accordingly, when the Commission adopted D.21-06-014 and closed Proceeding I.19-11-013 without materially prosecuting known violations of §451, the Commission failed to proceed in a manner required by §2101.

Recently, the Commission adopted D.20-12-015 addressing the Commission's statutory obligations under §2101 to "see" that the public utilities code is "enforced and obeyed" by utilities and that violations are "prosecuted". In that decision, the Commission considered a rehearing request alleging that the Commission had failed to discharge its duties under §2101 when it imposed penalties and fines on a utility for violating the public utilities code, but then later suspended the fines (but not the penalties). In denying the Application for Rehearing, D.20-12-015 offers

²⁹ The evidentiary record proves that SCE's PSPS events in the Fall of 2019 put the rural residents of Acton and surrounding areas in grave danger: SCE's PSPS events resulted in wildfires, they impeded evacuation efforts, they prevented the dissemination of emergency evacuation orders in the middle of the night, they endangered lives by forcing terrified residents to gather together their family members and pets in the pitch blackness of night and then flee from oncoming flames, they cut power to residential wells which prevented residents from putting out spot fires and caused the loss of at least one residence, etc. (see Acton Town Council Response to Order Instituting Investigation Of Power Shutoff Events filed January 10, 2020 in Proceeding I.19-11-013 at 10-15).

³⁰ None of the post-event reports submitted by SCE, SDGE, and PGE for their PSPS activities in 2020 demonstrate that the public safety risks posed by these de-energization events were outweighed by a clearly defined benefit, so the utilities continue to violate §451. SCE in particular has failed to even admit that its 2020 PSPS events even posed public safety risks (though the ATC has proven that they did - See comments on SCE Post Event Reports submitted by the Acton Town Council on November 25, December 17, and December 24, 2020 and on January 5, January 13, and January 25, 2021 – these comments are incorporated herein by reference).

³¹ The post-event report submitted by SCE for its PSPS events on January 18, 2021 does not demonstrate that the public safety risks posed by these de-energization events were outweighed by a clearly defined benefit; SCE does not even report that these PSPS events even posed a public safety risk (though the ATC has - See comments on SCE Post Event Reports submitted by the Acton Town Council on March 1, 2021 – these comments are incorporated herein by reference).

extensive reasoning which sheds light on the Commission's perception of its statutory enforcement obligations under §2101; the factors set forth in D.20-12-005 and upon which the Commission rejected the applicant's claimed violations of §2101 are:

Reason 1: The Applicants interpret §2101 as "requiring that a fine be assessed and collected for every single utility violation, the wording of the statute is far more general than that. If, as rehearing applicants suggest, it is mandatory for the Commission to fully prosecute and recover fines for each and every violation, the statute would have said "each and every," but it does not include either word." (at 6).

Reason 2: "rehearing applicants' extreme interpretation of section 2101 is unworkable and inconsistent with Commission practice. Such an interpretation would hobble our ability to settle or informally investigate and resolve violations" (at 6).

Reason 3: "Even where we have pursued formal enforcement and find a violation, we have discretion to determine that no fine or penalty is warranted" [citing *Brown v. So. Cal Gas Co.* (1996) 66 Cal.P.U.C.2d 764] (at 6).

Reason 4: The Commission "has not always imposed a large fine or a fine at all" [citing D.09-09-005 which assigned no penalties for impermissible share transfers occurring at a public auction and the unlawful indirect transfer of control of a company by an officer of the company without the knowledge or consent of company management] (at 6).

Reason 5: "courts have afforded the Commission a great deal of deference regarding implementation of its enforcement program. Accordingly, the Commission's authority to craft enforcement measures pursuant to section 2101 must be interpreted broadly" [citing *Pacific Gas & Electric Co. v. Public Utilities Com. (PSEP Penalties)* (2015) 237 Cal.App.4th] (at 7).

Reason 6: "the section 2101 language is most appropriately understood as general instructions to the Commission to ensure that utilities follow the law, which we do" (at 7).

Reason 7: "Simply because a matter is not litigated in a formal enforcement action does not mean that it was not investigated. Notably, the Decision specifically calls for the analysis of root causes to continue outside the confines of the enforcement action" (at 23).

Reason 8: "we approved a settlement that provides for \$2.137 billion in penalties, including a suspended fine. Again, the settlement represents a compromise that we found was in the public interest.... Because the compromise includes \$2.137 billion in penalties, Del Monte cannot claim that we have not performed our enforcement duties" (at 23).

The ATC has carefully evaluated each of these factors established by D.20-12-015, and for the reasons set forth below, we have concluded that they do not provide grounds for rejecting the claims made herein that the Commission failed to comply with its statutory enforcement and prosecution obligations under §2101 when it adopted D.21-06-014:

Reason #1: Though §2101 obligates the Commission to see that statutes affecting public utilities are enforced and obeyed and that violations thereof are promptly prosecuted, D.20-12-015 asserts that the wording of §2101 is general and that, because it does not say that "each and every violation" must be prosecuted, it does not mean that a fine must be assessed for every single utility violation. This reasoning does not apply to the ATC's rehearing request because we are not arguing that the Commission must prosecute "each and every violation". Rather, we are saying that, when violations are found, the Commission is obligated to pursue *some* sort of prosecutorial action which is binding on the perpetrating utility and sufficient to deter future violations in a manner that achieves the enforcement purposes of §2101. D.21-06-014 does not do this because the "incentive" scheme that it establishes in lieu of penalties or other prosecutorial measures is non-binding and does not even compel compliance (since incentives are awarded when a utility merely "improves its conduct" – whatever that means). Unlike the circumstances presented in D.20-12-015 (wherein violations were extensively prosecuted through the imposition of both penalties *and* fines, but the fines were ultimately suspended due to unusual circumstances) D.21-06-014 imposes *no* fines and *no* penalties and *no* binding obligations on the utilities to address their horrendous violations in 2019. The ATC agrees with the statement in D.20-12-015 that the wording in §2101 is general, but the wording cannot be construed to be so general as to mean that §2101 imposes no prosecutorial obligations whatsoever. Yet that is what D.21-06-014 does because the "incentive" program it establishes in lieu of penalties is entirely optional, it can be completely ignored by the utilities, and does not compel compliance anyway. The plain language of §2101 imposes a prosecutorial obligation on the Commission which has been completely ignored in D.21-06-014, therefore D.21-06-014 is legally deficient, and Reason #1 set forth in D.20-12-015 provides no basis for rejecting the ATC's Application for Rehearing.

Reason #2: D.20-12-015 asserts that §2101 cannot be interpreted in a way that "hobbles" the Commission's ability to settle or investigate and resolve violations. This reasoning does not apply to the ATC's rehearing request because our interpretation of the "plain language" of §2101 does not "hobble" or impede or in any way affect the Commission's ability to settle or investigate or resolve violations. To the contrary, our interpretation is merely that §2101 obligates the Commission *to* resolve violations and not "give them a pass" as D.21-06-014 has done. The problem with D.21-06-014 is that it merely identifies the violations perpetrated in 2019; it does not "resolve" them. In fact, D.21-06-014 does nothing about the 2019 violation at all because it establishes a non-compulsory

"incentive" scheme that does not even compel compliance anyway. D.21-06-014 is legally deficient because it fails to resolve statutory violations perpetrated by utilities in 2019. Reason #2 provides no basis for rejecting the ATC's Application for Rehearing.

Reason #3: D.20-12-015 clarifies that, even when the Commission finds a violation, it has discretion to determine that no fine or penalty is warranted. This reasoning does not apply to the ATC's rehearing request because D.21-06-014 does not conclude that "no fine or penalty is warranted" by the 2019 PSPS violations perpetrated by SCE, SDGE and PGE. To the contrary, D.21-06-014 concludes that the utilities' behavior in 2019 was so flawed that penalties are warranted (see "Conclusion of Law #16"). Because D.21-06-014 does not conclude that the utilities' violations in 2019 do not warrant penalties, Reason #3 set forth in D.20-12-015 provides no basis for rejecting the ATC's Application for Rehearing.

Reason #4: According to D.20-12-015, the Commission does not always impose a large fine or a fine at all, and it cites D.09-09-005. Notably, D.09-09-005 provided substantive reasons why the Commission chose not to impose penalties on the violations that were found in that proceeding; these reasons were supported by adopted "findings of fact" and by substantial evidence. Similarly, D.20-12-015 provided substantive reasons for suspending the fines that had been imposed on PGE; these reasons were also supported by findings and substantial evidence. Together, D.09-09-005 and D.20-12-015 reveal that Commission decisions which do *not* impose fines in response to serious utility violation are always supported by both findings of fact and substantial evidence. Notably, these are not the circumstances presented by D.21-06-014. Specifically, and as discussed in more detail below, the reasons that are set forth in D.21-06-014 to justify the Commission's decision to not impose penalties are not supported by either findings or substantial evidence. In other words, and unlike the circumstances presented by D.20-12-015 and D.09-09-005, D.21-06-014 does not provide substantive reasons for not imposing penalties in response to the utilities' horrendous PSPS events in 2019. Therefore, Reason #4 provides no basis for rejecting the ATC's Application for Rehearing.

Reason 5: The ATC agrees that the courts have afforded the Commission a great deal of deference regarding implementation of its enforcement program, and that the Commission's authority to craft enforcement measures pursuant to §2101 should be interpreted broadly. However, the Courts are not so obeisant that they allow the Commission to implement its enforcement program or interpret the enforcement and prosecutorial provisions of §2101 in such a manner that it renders §2101

meaningless and ineffective: "the Commission's interpretation of the Public Utilities Code should not be disturbed unless it fails to bear a reasonable relation to statutory purposes and language...." [*Greyhound Lines, Inc. v. Public Utilities Com.* (1968) 68 Cal.2d.]. Yet, this is precisely what the Commission has done in adopting D.21-06-014. Specifically, D.21-06-014 **does not** achieve the enforcement purpose and language of §2101 because it **does not** bring SCE, SDGE, and PGE into compliance with any of the statutes and Commission directives that they violated in 2019; instead, D.21-06-014 establishes an "incentive" program that the utilities can completely ignore and which does not even seek compliance because it merely asks utilities to "improve their conduct".

Nothing about the enforcement measures established by D.21-06-014 "bear a reasonable relation" to the statutory purpose and language of §2101: they **do not** enforce compliance of statutes and Commission directives, they **do not** prosecute violations of statutes and Commission directives, and they **do not** compel utilities to obey statues and Commission directives. Because the enforcement measures crafted by D.21-06-014 do not bear a reasonable relation to the statutory purposes and language of §2101, the Commission's decision to adopt D.21-06-014 is owed no deference by the courts. Reason #5 provides no basis for rejecting the ATC's Application for Rehearing.

Reason #6: The ATC agrees that §2101 is appropriately understood as general instructions to the Commission to ensure that utilities "follow the law". Notably, D.21-06-014 does not ensure that utilities "follow the law"; in fact, D.21-06-014 does not even **ask** utilities to "follow the law". Instead, D.21-06-014 pays utilities "incentives" for just "improving their conduct". Worse yet, D.21-06-014 closes proceeding I.19-11-013 without bothering to even determine whether the utilities "followed the law" when they de-energized millions of customers in 2019 (often for days on end) because the Commission has heretofore refused to conduct the "Reasonableness Reviews" that are necessary to assess compliance with §399.2 and which are mandated by the Commission's own adopted PSPS directives. D.21-06-014 does not ensure that utilities "follow the law" therefore Reason #6 provides no basis for rejecting the ATC's Application for Rehearing.

Reason #7: The ATC agrees that, simply because a matter is not litigated in a formal enforcement action does not mean that it was not investigated, particularly if the Commission continues to investigate root causes of violations outside the confines of an enforcement action. However, these are not the circumstances presented by D.21-06-014. For instance, D.21-06-014 does not incorporate any "enforcement action". It also willfully shuts down all investigations of utility PSPS events in 2019 by closing proceeding I.19-11-013. D.21-06-014 also deliberately avoids investigating

critical violation allegations (including allegations that the de-energization of more than two million customers in 2019 was not "reasonable" because there is no record evidence demonstrating that conditions warranted such de-energizations). Therefore, Reason #7 provides no basis for rejecting the ATC's Application for Rehearing.

Reason #8: The ATC agrees that a settlement which is in the public interest and includes billions of dollars in penalties provides abundant evidence that the Commission has performed its "enforcement duties" pursuant to §2101. However, these are not the circumstances presented by D.21-06-014. D.21-06-014 does not include any penalties, it imposes no compulsory compliance obligations on any utility, it fails to investigate allegations of statutory violations that are extensively supported by substantial evidence, and it does not comport with the Commission's own directives to conduct "Reasonableness Reviews" of every PSPS event. D.21-06-014 does not even claim that the "incentive" scheme it establishes is in the public interest (nor could the Commission ever make such a claim since it is decidedly *not* in the public interest to reward utilities for merely "improving" their conduct rather than "compelling" their compliance"). Therefore, Reason #8 provides no basis for rejecting the ATC's Application for Rehearing.

For these reasons, the Commission failed to proceed as required by Public Utilities Code §2101 when it adopted D.21-06-014 without properly prosecuting noted violations of Public Utilities Code §451.

The Commission has Failed to Proceed in a Manner Required by Public Utilities Code §2101 Because it has Not Enforced §399.2 Despite Clear Record Evidence that Violations of §399.2 Occurred.

Despite the clear mandate established by §2101 that the Commission "see" that state statutes affecting public utilities "are obeyed" and that violations are "promptly prosecuted", D.21-06-014 fails to address or even consider the extent to which utilities violated §399.2 of the Public Utilities Code when they de-energized millions of California ratepayers in the Fall of 2019; this constitutes another means by which the Commission has not proceeded in a manner required by law.

Additionally, D.21-06-014 ignores substantial record evidence indicating that SCE's PSPS events in 2019 did not comply with §399.2 and it has failed to investigate and prosecute these potential violations.

§399.2 states: "It is the policy of this state, and the intent of the Legislature, to reaffirm that each electrical corporation shall continue to operate its electric distribution grid in its service territory and

shall do so in a safe, reliable, efficient, and cost-effective manner." §399.2 mandates that utilities operate their distribution facilities in a manner that is both "reliable" and "safe"; a utility's obligation to operate their distribution system "reliably" is as weighty as its obligation to operate it "safely" service (as the Commission has persuasively clarified³²). In other words, "safety" and "reliability" are not mutually exclusive and utilities are not permitted to operate their distribution grid in a manner that sacrifices safety for reliability (or vice versa). This obligation is emphasized in §399 which declares that the California legislature considers "Reliable electric service" to be of the utmost importance to the safety, health, and welfare of the state's citizenry and economy and it directs utilities to make prudent investments to protect the integrity of their electric distribution grid. Because §399.2 compels utilities to maintain and operate their distribution equipment in a manner that provides reliable electrical service, a utility may be deemed to violate §399.2 when it initiates a power shutoff because its distribution equipment poses a public safety risk by not complying with standards imposed by General Order 95 ("GO95")³³.

To be clear: Utilities have the authority under §451 to de-energize customers if the physical circumstances of its equipment threaten public safety; however, if the utility has not met its obligation to maintain and operate its equipment in a safe and reliable manner, then the physical circumstances which gave rise to the de-energization event do not comply with §399.2 even if the de-energization event itself was "necessary" and complied with §451. In other words, just because a PSPS event complies with §451 because it was initiated to promote public safety, that does not mean the PSPS event was "reasonable" and complied §399.2. To the contrary, a §451-compliant PSPS event is intrinsically "unreasonable" and it violates §399.2 if it is triggered because of structurally incompetent equipment. The evidentiary record indicates these circumstances occurred in 2019:

- Substantial record evidence shows that SCE's distribution facilities in Acton include more than 500 elements with structural concerns designated as "Level 2" GO95 violations (which SCE refers to as "high P2" elements). This record evidence is in the form of a Discovery Response from SCE that was explicitly discussed on page 10 of the Acton Town Council's Opening Comments on the Proposed Decision in this proceeding and cited in Footnote 30. For completeness, this Discovery Response is reproduced in Attachment 1.

³² "Operating a safe system also includes the reliable provision of electricity" D.09-09-030 at 57.

³³ As discussed in the ATC's comments on the Proposed Decision filed May 10, 2021, GO95 formulates design, construction, and maintenance requirements for overhead lines to ensure adequate service and secure safety to the public in general (Rule 11). It is axiomatic that equipment not meeting GO95 standards is *by definition* not operated in a safe and reliable manner as required by §399.2. Equipment that complies with GO95 can withstand 56 mph windloads [D.14-12-089 at 5].

- The record evidence reproduced in Attachment 1 indicates that, because of the Level 2 GO95 violations in Acton, SCE reduced the PSPS wind thresholds in Acton and cut power to Acton residents at lower windspeeds. Had SCE initiated de-energization events in Acton at higher windspeeds, the PSPS events that Acton residents were forced to endure would have been shorter, less frequent, and perhaps avoided altogether.
- GO95 requires SCE to repair all "Level 2" violations within 6 months in Tier 3 Fire Hazard areas (including Acton)³⁴. Nonetheless, evidence provided by SCE's post event reports filed for PSPS events in 2020 and 2021 show that SCE continued to cut power to Acton residents throughout this 12+ month period according to the low windspeed thresholds established based on the presence of "Level 2" GO 95 violations. This indicates that "Level 2" GO95 violations in Acton persisted for at least 12 months and were not repaired within 6-months (which suggests additional GO95 violations).
- Substantial record evidence shows that SCE cut power to Acton residents served by the "Shovel" circuit when windspeeds were only 25 mph because the "Shovel" circuit could not withstand a 31 mph windspeed without mechanical failure. This evidence is further proof that SCE equipment in Acton does not comply with GO95 structural standards (which the Commission has established should be capable of withstanding 56 mph as discussed above). This record evidence is in the form of comments and an attachment submitted to the Commission which were explicitly discussed on page 10 of the Acton Town Council's Opening Comments on the Proposed Decision in this proceeding and cited in Footnote 30. For completeness, these comments and attachment are reproduced in Attachment 2.
- The record evidence reproduced in Attachment 2 shows SCE applied the 25 mph windspeed threshold to the "Shovel" circuit until late 2020, which means the structural deficiencies on "Shovel" persisted throughout the 15-month period between October 2019 and December 2020 when SCE initiated extensive and frequent PSPS events on "Shovel". It also suggests that SCE did not correct these structural concerns within the 6-month timeframe required by GO95.
- According to the record evidence reproduced in Attachment 2, SCE believes it has "roughly a dozen" distribution circuits that are de-energized at reduced windspeeds (below 31 mph sustained and 46 mph gusts which SCE refers to as "NWS" levels) because of "maintenance" issues. It further indicates that these circuits would continue to be de-energized at reduced windspeeds until maintenance is completed that will allow them to "sustain higher windspeeds". This suggests that SCE has not maintained these distribution circuits in accordance with GO95 (because they are apparently unable to withstand 56 mph wind loads) and that, as a result, it has unreasonably de-energized customers served by those circuits at low windspeeds. Furthermore, the evidence reproduced in Attachment 2 shows that SCE applies low windspeed thresholds to far more than a "dozen" distribution circuits which suggests that SCE's implementation of unreasonable de-energization events may be widespread.

³⁴ GO95 requires utilities to take corrective action within 6 months to repair "Level 2" GO95 violations located in Tier 3 High Fire-Threat Districts (Rule 18). Acton is wholly located within a Tier 3 High Fire District [<https://ia.cpuc.ca.gov/firemap/>], which means that Level 2 violations in Acton should be repaired within 6 months.

- SCE has attempted to refute this record evidence without success: SCE has argued "SCE designs and constructs its facilities in compliance with the requirements of GO 95"³⁵. This argument ignores the salient issue and therefore misses the point. To be clear: the issue is not whether SCE has designed and constructed its equipment in compliance with GO95. The issue is whether SCE has ***maintained*** its equipment in compliance with GO95³⁶. The record suggests that PSPS events are initiated in Acton because SCE's equipment has not been maintained in a manner that complies with GO95's 56 mph windload standard; SCE attests to this by stating that, until late in 2020, the "Shovel" circuit could not withstand NWS wind levels without mechanical failure. This clearly suggests that SCE has acted unreasonably by initiating PSPS events in Acton because of apparent equipment deficiencies. SCE also states that its equipment can withstand NWS levels without mechanical failure³⁷ but this statement is controverted by the SCE statements reproduced in Attachment 2. Finally, SCE claims that it initiates PSPS to mitigate wildfire ignition risk posed by flying debris which occurs at NWS wind levels³⁸. Here again, SCE's argument ignores the salient issue and thus fails: Record evidence indicates that SCE initiates PSPS in Acton at windspeeds that are ***well below*** NWS levels, which means that "flying debris" concerns do not drive SCE's de-energization decisions in Acton. The record evidence reproduced in Attachment 2 indicates that SCE cuts power at unreasonably low windspeeds because of maintenance failures and not because of "flying debris".

The record evidence summarized above suggests that the hundreds of "Level 2" elements present on SCE distribution equipment in Acton were of such great concern that SCE cut power in Acton at low wind speeds and thus frequently curtailed reliable electric service to Acton residents for extended periods of time throughout 2019 and 2020. Furthermore, this record evidence indicates that SCE's PSPS events in Acton did not comply with ESRB-8 or D.19-05-042 because they were driven by structural problems and potential GO95 violations and not because "strong winds" posed a wildfire ignition risk. Correspondingly, this evidence suggests that SCE sacrificed reliability for safety in a manner that is contrary to §399.2 and intrinsically "unreasonable". Furthermore, SCE did not disclose these factors in any of its post event reports, thus the Commission was unaware that

³⁵ SCE Reply Comments on the Phase 3 Proposed Decision in Proceeding R.18-12-005 at 4.

³⁶ As equipment ages, becomes weathered and is exposed to the environment, its structural integrity becomes compromised; this is why GO95 structural standards include safety factors and mandate repair/replacement when these safety factors are not met. And, as discussed above, distribution equipment which complies with GO95 structural standard does not experience "mechanical failure" at windloads of less than 56 mph. The fact that SCE's distribution equipment in Acton was susceptible to "mechanical failure" at NWS wind levels of only 31 mph (sustained) and 46 mph (gusts) proves that it was not maintained in compliance with GO95 structural standards.

³⁷ SCE Reply Comments on the Phase 3 Proposed Decision in Proceeding R.18-12-005 at 4 [found here: <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M388/K404/388404631.PDF>]

³⁸ Ibid.

SCE was potentially using PSPS in 2019 to mask structural deficiencies until the ATC brought these facts to light. D.21-06-014 ignores all of this substantial evidence; it also ignores the potential violations of GO95, ESRB-8 and §399.2 which are suggested by this evidence, and it fails to hold SCE accountable for these potential violations. By failing to discharge its statutory duty to see that §399.2 is "obeyed" and that potential violations of §399.2 are investigated and (if found) promptly prosecuted, the Commission has failed to proceed in a manner required by §2101.

The Commission has Failed to Proceed in a Manner Required by Public Utilities Code §2101 By Not Compelling Utilities to Obey §702 Or Assessing Potential Violations of §702.

Public Utilities Code §702 mandates that utilities comply with every order and decision prescribed by the commission, and (as discussed above) §2101 mandates that the Commission "see" that §702 is "obeyed" and that violations of §702 are "promptly prosecuted". Despite this clear mandate, D.21-06-014 fails to address or even consider the substantial record evidence suggesting that SCE has not complied with §702 by maintaining its equipment in compliance with GO95 structural standards. The Commission has ignored this evidence, refused to investigate these potential violations, and undertaken no activities to enforce them. Accordingly, the Commission has failed to proceed in a manner required by Public Utilities Code §2101.

The Commission has Failed to Proceed in a Manner Required by §1705.

Public Utilities Code §1705 requires the Commission to issue decisions that include separately stated "findings of fact" and "Conclusions of Law" on all material issues. And, pursuant to §1757, the Courts will overturn Commission Decisions when "Conclusions of Law" are not supported by findings and when findings are not supported by substantial evidence. D.21-06-014 embodies both of these legal errors.

Material Issues Raised in D.21-06-014 and Not Supported by Findings.

A material issue raised in the Decision is whether penalties should be assessed to address the utility violations noted in the Decision. This issue is addressed in Conclusion of Law #16 which states:

"In striking a balance between the need in 2019 for utilities to initiate PSPS events in response to evolving, dangerous conditions against the equally compelling need to conduct PSPS events in a safe manner, rather than adopt penalties, it is reasonable to adopt a future incentive for utilities to improve their conduct related to their decision-making process leading up to initiating future PSPS events and to only use power shutoffs as a mitigation measure of last resort. "

Conclusion of Law #16 is a critical element of D.21-06-014 because it provides the sole justification for the Commission's decision to not impose penalties on the utilities for their acknowledged failure to comply with state statutes and Commission directives in the Fall of 2019. Conclusion of Law #16 is based entirely on the twofold premise that "evolving, dangerous conditions" existed in 2019, and that this created a "need in 2019 for utilities to initiate PSPS events". However, the Decision makes no finding that "dangerous" conditions existed when utilities initiated PSPS events in the Fall of 2019 and it makes no finding that there was a "need" for the utilities to initiate PSPS events in 2019. Therefore, the Conclusion of Law #16 does not comply with §1705.

Findings are essential to “help the Commission avoid careless or arbitrary action” and to assist a reviewing court “to determine whether [the Commission] acted arbitrarily” and thus abused its discretion. [Cal. Manufacturers Assn. v. P.U.C. (1979) 24 Cal.3d 251, 258-59]. Ultimately, if the Commission “fail[s] to comply with required procedures, appl[ies] an incorrect legal standard, or commit[s] some other error of law,” its decision will be reversed on appeal. [Pedro v. City of Los Angeles (2014) 229 Cal.App.4th 87, 99]. Because the Decision fails to adopt findings to support Conclusion of Law #16 that "dangerous" conditions existed when 1,300+ circuits were de-energized in 2019 and that there was a "need" to initiate PSPS events that cut power to more than 2 million customers, the Decision is both careless and arbitrary and it will not withstand judicial review.

Material Issues Raised in The Decision and Not Supported by Substantial Evidence.

Claims must also be supported by substantial evidence, and a claim made by a utility that is not supported by substantial evidence is not dispositive. The record in this proceeding provides no substantial showing that "dangerous" conditions existed on the circuits that were de-energized by SCE, SDGE, and PGE in the Fall of 2019:

- PGE's "Post Event" reports from its 2019 PSPS activities present extensive forecast data but fail to show "dangerous" conditions existed when and where PGE de-energized circuits in the Fall of 2019. The following are the only instances in which actual wind speeds are presented in PGE's post event reports from the Fall of 2019: 1) The October 5-6 reports identifies windspeeds recorded on 43 circuits (page 16) but 40 of these circuits (or 94%) were below 40 mph, so "dangerous" conditions could not have existed throughout most of the shutoff "footprint"; 2) The October 9-12 report identifies peak windspeeds measured in each County (at 34-36), at "Grapevine peak"(at 8), "the top of Mount Saint Helena" (at 8) and at an undisclosed location (at 8), but it does not show "dangerous" conditions existed on the 400+ circuits that

were cut to 732,000 customers; 3) The October 23-25 report lists peak wind gusts measured in each county (at 34-35) and that "North Bay" measurements were 70-80 mph (at 33), but it does not show "dangerous" wind conditions on the 140+ circuits that were cut to de-energize 176,000 customers; 4) The October 26-29 report lists peak wind gusts measured in each county (at 40-43) and "north bay" readings reaching 102 mph (at 36) but it does not show "dangerous" conditions existed on the 500+ circuits that were cut to de-energize nearly 1 million customers; 5) The November 20-21 report lists peak wind gusts measured in each County (at 29-30), but does not show "dangerous" wind conditions on the 50+ circuits that were cut to de-energize more than 49,000 customers.

- SDGE's "Post Event" reports from its 2019 PSPS activities present forecasts but fail to show that "dangerous" conditions existed when and where SDGE de-energized circuits in the Fall of 2019. The following are the only instances in which actual wind speeds are listed in SDGE's Fall 2019 reports: 1) The October 10-11 report lists gusts exceeding 40 mph (at 2) and "areas" experienced 40-43 mph gusts (at 2 and 38) but fails to show "dangerous" conditions existed on circuits when they were de-energized. 2) The October 20 - November 1 report indicates gusts were in excess of 40 mph (at 5) and "areas" experienced 35-50 and 40-50 mph gusts (at 6) but it fails to show "dangerous" conditions existed where and when power was cut on 70+ circuits serving nearly 50,000 customers. 3) The November 17-19 report lists gusts recorded in excess of 40 mph (at 4) and "areas" experienced 50+ mph wind gusts (at 5) but fails to show "dangerous" conditions existed when and where circuit were de-energized.
- SCE's "Post Event" reports from its 2019 PSPS activities present forecasts but fail to show "dangerous" conditions existed when and where SCE de-energized circuits in the Fall of 2019. The following are the only instances in which actual wind speeds are discussed in SCE's reports for the Fall of 2019: 1) The October 2-12 report lists a wind gust of 51 mph in San Bernardino County near one circuit (at 6) but fails to show "dangerous" conditions existed when power was cut on 36 circuits serving 24,000+ customers; 2) The October 12-21 report lists a 44 mph windspeed in Mono County (at 4), a 50 mph wind speed measured in Mono County (at 5, 7), a 55 mph gust measured in Los Angeles County (at 7), a 50 mph gust measured in San Bernardino County (at 7); and a 35 mph gust in Los Angeles County (page 8) but fails to show "dangerous conditions" existed when and where power was cut; 3) The October 21-26 report lists a 40 mph gust measured in Ventura County (at 5) and a 58 mph gust in San Bernardino County (at 6 and 17) but it fails to show "dangerous" conditions existed when and where power was cut on 37

circuits serving 30,521 customers; 4) The October 27-Nov 4 report lists wind gusts under 35 mph (at 8) but fails to show "dangerous" conditions existed when and where power was cut on 126 circuits to 126,364 customers. 6) The November 15-17 report only identifies winds of 26 mph and 38 mph gust in Ventura (at 6 and 10) which does not in any way demonstrate the presence of "dangerous conditions".

Importantly, and contrary to what is implied in Conclusion of Law #16, the evidentiary record does not demonstrate that "dangerous" conditions existed when and where power was cut during the utilities' PSPS events in 2019:

- PGE de-energized 43 circuits on October 5, 2019, however windspeeds never exceeded 40 mph on 40 of those circuits³⁹. In other words, at least 93% of the circuits PGE de-energized that day did not experience circumstances posing a wildfire threat to structurally competent equipment⁴⁰.
- On October 20, 2019, SCE cut power to customers on the "Shovel" in Acton when wind gusts were only 35 mph⁴¹.
- October 26, 2019, SCE cut power on the "Shovel" circuit again even before wind gusts reached 35 mph⁴².
- SCE openly admits that its windspeed threshold on the Anton circuit is only 24 mph (sustained) and that, on November 17, it cut power to the Anton circuit with sustained winds of only 24 mph and gusts of only 38 mph⁴³.

³⁹ Page 16 of PGE's Post Event Report for October 5 PSPS event dated October 25, 2019.

⁴⁰ "Dangerous" conditions are defined by ESRB-8 as being circumstances in which "strong winds" pose an "imminent and significant risk" that it will either "topple power lines" or "cause major vegetation related impacts" (page 4). The Commission has determined that electrical facilities which comply with General Order 95 ("GO-95") are capable of withstanding wind loads greater than 56 miles per hour (D.09-09-0309 and D.14-02-015), so winds less than 56 mph do not pose a "danger" of toppling power lines. Regarding the risk of "vegetation related impacts": The National Weather Service recognizes the "Beaufort" Scale which establishes winds must meet or exceed 39 mph before twigs will even break off trees [<https://www.weather.gov/mfl/beaufort>] therefore "dangerous" conditions do not exist when winds are at or below 40 mph because they pose no "imminent and significant" risk of "vegetation related impacts".

⁴¹ SCE's Post Event Report for October 20 PSPS event Dated November 1, 2019 at 8.

⁴² SCE's Amended PSPS Post Event Report Dated November 26, 2019 at 9.

⁴³ SCE's PSPS Post Event Report Dated December 2, 2019 at 6, 10, and 12.

This record evidence indicates that "dangerous conditions" may not have been present when utilities cut power to more than 2 million customers in the Fall of 2019. It also suggests that the 2019 PSPS events extensively violated §399.2 because utilities de-energized circuits under circumstances which posed no wildfire ignition threat to structurally competent equipment operated in compliance with GO95. This substantial evidence is not controverted anywhere in the record. Because no substantial record evidence exists to support a conclusion that "dangerous conditions" threatened utility equipment or created a "need" for utilities to cut power to more than 2 million customers in 2019, the Commission cannot adopt findings to support Conclusion of Law #16. In other words, the Commission cannot correct the legal error it made when it adopted Conclusion of Law #16 because no substantial evidence exists to support Conclusion of Law #16. The purpose of substantial evidence review is to uncover "irrational findings and thus preclude the risk of affirming a finding that should be disaffirmed as a matter of law" [Roddenberry v. Roddenberry (1996) 44 Cal.App.4th 634, 651-52)]. Accordingly, any findings proffered in support of Conclusion of Law #16 will be deemed irrational by a reviewing court due to a lack of substantial evidence. Therefore, Conclusion of Law #16 must be eliminated along with the "incentive" program it recommends in lieu of assessing penalties for the identified statutory violations perpetrated by the utilities in 2019.

The Commission has Failed to Proceed in a Manner Required by Public Utilities Code §1701.5(a).

§1701.5(a) states in pertinent part "In a ratesetting or quasi-legislative case, the commission shall resolve the issues raised in the scoping memo within 18 months of the date the proceeding." For this investigation proceeding, the assigned Commissioner issued a scoping memo which established that the proceeding would evaluate the implementation of the 2019 PSPS events and whether utilities "complied with criteria set forth in D.19-05-042 and other applicable laws and regulations"⁴⁴. However, the Decision fails to resolve all the issues set forth in the scoping memo. For instance, the Commission did not conduct "Reasonableness Reviews" for any of the 2019 PSPS events even though the Scoping Memo explicitly affirms the requirement imposed by D.19-05-042 that the Commission's Safety and Enforcement Division "engage in a Reasonableness Reviews of all PSPS events"⁴⁵. In fact, the Commission recently revealed that it "has not to date undertaken a review of

⁴⁴ Scoping Memo issued in I.19-11-013 on August 3, 2020 at 8.

⁴⁵ Id at FN11.

the reasonableness of a utility's decision to call a PSPS event"⁴⁶ *even though its own adopted decisions and directives require such reviews.* D.21-06-014 also fails to address whether the utilities' 2019 PSPS events complied with applicable laws such as Public Utilities Code §399.2 (as discussed above). Because the Decision fails to address all the issues set forth in the scoping memo as required by §1701.5(a), the Commission has failed to proceed in a manner required by law.

IN ADOPTING THE DECISION, THE COMMISSION ABUSED ITS DISCRETION

Courts will review a Commission decision in accordance with Public Utilities Code §1757 to determine whether the Commission abused its discretion; an administrative agency may be deemed to abuse its discretion when it acts arbitrarily or capriciously [*Woodbury v. Brown-Dempsey* (2003) 108 Cal.App.4th 421, 438; see also *City of Stockton v. Marina Towers LLC* (2009) 171 Cal.App.4th 93, 114]. A determination that is not supported by a fair or substantial reason is arbitrary and capricious [*Western Oil and Gas Assn. v. State Lands Com.* (1980) 105 Cal.App.3d 554, 565]. In adopting D.21-06-014, the Commission abused its discretion in a number of ways.

The Commission Abused Its Discretion by Refusing to Conduct the "Reasonableness Reviews" of the 2019 PSPS Events to Ensure Enforcement of §399.2.

Public Utilities Code §2101 imposes a statutory mandate on the Commission to actively enforce, and prosecute violations of, applicable state statutes including Public Utility Code §399.2 (which requires utilities to operate electrical distribution systems in a safe and reliable manner). The Commission's enforcement and prosecutorial obligations under §399.2 are ongoing, continuous, and particularly pertinent whenever a utility deliberately shuts off power to customers for long periods of time (such as what occurred during the PSPS events of 2019). The Commission's statutory obligation to assess whether a utility's decision to de-energize customers was "reasonable" and in compliance with §399.2 weighs most heavily in instances where substantial evidence indicates that the shutoff was not "reasonable"⁴⁷.

⁴⁶ D.21-06-034 at 23

⁴⁷ For instance, de-energizing customers to reduce liability risk from utility-infrastructure wildfire ignitions is intrinsically "unreasonable" and explicitly prohibited by D.19-05-042 (page 68). Similarly, de-energizing customers because there are structural deficiencies on a circuit which make it susceptible to mechanical failure (and therefore wildfire ignition) at windloads that are below GO95 structural standards, while necessary, is intrinsically unreasonable because it violates the utility's statutory obligation under §399.2 to operate its equipment safely and reliably.

To discharge its statutory enforcement and prosecutorial obligations pursuant to §399.2 and other laws, the Commission relies on the "Reasonableness Review" mechanism described above. Furthermore, the Commission's own adopted PSPS directives (ESRB-8 and D.19-05-042) require that a "Reasonableness Review" be undertaken for every PSPS event that is initiated. Even the Phase 2 Scoping Memo issued for this Investigation affirms the Commission's obligation to undertake "Reasonableness Reviews" of all the 2019 PSPS events in accordance with to D.19-05-042⁴⁸. Certainly, most parties in this proceeding anticipated that the Commission would conduct "Reasonableness Reviews" of all the 2019 PSPS events and that the results would substantially inform the outcome of this proceeding⁴⁹. However (and inexplicably), the Commission adopted D.21-06-014 and closed this Investigation Proceeding *without* undertaking "Reasonableness Reviews" of any of the 2019 PSPS events. D.21-06-014 provides no explanation for this lapse. Odder still, D.21-06-014 states on page 42 that Section 7 of the Decision addresses "the reasonableness of the decision-making process relied upon by utilities immediately prior to proactively shutting off electric power" however Section 7 does *not* address the "reasonableness" of the utilities' 2019 PSPS decision-making process.

Recently, the Commission announced that it has not conducted any "Reasonableness Reviews" of any PSPS events⁵⁰ and expressed the entirely new concept that "Reasonableness Reviews" are *not* mandatory in the Commission's post-PSPS review processes because they are subject to the whim of the Commission⁵¹. The Commission does not explain how this newly-minted opinion sprang into being⁵². In any event, it is clear that the Commission has done a complete "about face" and now obdurately refuses to assess the "Reasonableness" of utility de-energization decisions in 2019 or take any other step necessary to investigate potential violations of §399.2 and PSPS Guidelines. The fact

⁴⁸ Scoping Memo issued in I.19-11-013 on August 3, 2020 at 8.

⁴⁹ See Opening Comments in Proceeding I.19-11-013 by the City of San Jose (at 21), Center for Accessible Technology (at 23) Small Business Utility Advocates (at 10, 13), Joint Communications Parties (at 4), Joint CCA (at 3), Joint Local Governments (at 1 and 44), and the ATC (at 24-27).

⁵⁰ D.21-06-034 at 23.

⁵¹ *Ibid.*

⁵² This newly-minted Commission conclusion was revealed in D.21-06-034 in Phase 3 of Proceeding R.18-12-005. It appears to have been developed unilaterally and without stakeholder input. The critical issue that it raises is whether "Reasonableness Reviews" should be reclassified as an optional element of the PSPS Guidelines.

that the Commission offers no explanation or reason for this inexplicable decision to forgo critical analyses that are essential to the enforcement of §399.2 renders D.21-06-014 arbitrary and capricious. Accordingly, the Commission has abused its discretion by not undertaking the "Reasonableness Reviews" necessary for the prosecution of its statutory duty to enforce §399.2 and prosecute violations pursuant thereto. This abuse of discretion is magnified by the fact that the record of this proceeding provides abundant and substantial evidence indicating that §399.2 violations did occur during the utilities' PSPS events of 2019.

The Commission Abused its Discretion by Ignoring Its Statutory Obligation to Prosecute Documented Violations of §451, §702, D.19-05-042, and ESRB-8 and by Substituting an "Incentive" Scheme that is Structurally and Procedurally Incapable of Securing Compliance with §451, §702, D.19-05-042, and ESRB-8 or Deterring Future Violations.

As explained above, D.21-06-014 concludes that SCE, SDGE, and PGE violated §451 when they initiated PSPS events in 2019 in a manner that did not promote safety of customers. D.21-06-014 also establishes that SCE, SDGE, and PGE violated PSPS directives embodied in D.19-05-042 and ESRB-8 which, by extension, means that SCE's, SDGE's, and PGE's 2019 PSPS events also violated §702⁵³. Accordingly, and consistent with Public Utilities Code §2101, the Commission is statutorily obligated to promptly prosecute these §451 and §702 violations; this statutory obligation is unequivocal and cannot be avoided, substituted, or replaced. Nonetheless, the Commission has issued D.21-06-014 and closed this Investigative Proceeding without materially prosecuting these violations in a manner that deters future violations. Instead, D.21-06-014 establishes a non-compulsory "incentive" scheme in Ordering Paragraph #1 which (as discussed above) is highly problematic because:

- It will not bring utilities into actual and constructive compliance with §451, §701, D.19-05-042 and ESRB-8 because participation is entirely voluntary (which means that the utilities can choose whether, and to what extent, they wish to comply).
- It does not hold utilities accountable for their horrendously dangerous PSPS events in 2019.
- Because participation in this "incentive" scheme it is not mandatory, it will not deter future violations which renders it an ineffective enforcement tool.
- The "Conclusion of Law #16" that justifies this "incentive" scheme" is not supported by findings or substantial evidence.

⁵³ D.21-06-014 does not discuss §702 violations that occurred in 2019; nonetheless they did occur because none of the utilities' 2019 PSPS events substantially complied with ESRB-8 or D.19-05-042.

Furthermore, there is no conceivable interpretation of §2101 which would allow the Commission to conclude that the "incentive" scheme established by D.21-06-014 will satisfy the Commission's statutory obligation to enforce and prosecute violations of §451 and §701. When construing a statute, Courts look to the intent of the Legislature "so as to effectuate the purpose of the law" and they look first to the words of the statute while "keeping in mind the statutory purpose". [*Steinfeld v. Foote-Goldman Proctologic Medical Group, Inc.* (1997) 60 Cal.App.4th]. It is clear from the plain language of §2101 that the legislature intends the Commission to construe and implement §2101 in a manner that achieves utility "obedience" with state statutes and adopted Commission directives; any Commission enforcement action that does not deter future violations or compel utility obedience with state statutes and Commission directives is intrinsically insufficient and does not satisfy the Commission's statutory obligation under §2101. These are precisely the circumstances presented by the "incentive" scheme established by D.21-06-014; it does not compel obedience and it will not deter future violations because 1) It does not require compliance and only asks utilities to "improve" their conduct; 2) Participation by the utilities is optional which means that utilities can simply choose to ignore it completely; and 3) The value of the "incentive" offered by the scheme is so paltry that it will not be worthwhile for utilities to participate in the scheme anyway. Accordingly, D.21-06-014 does not satisfy the Commission's statutory enforcement and prosecutorial obligations pursuant to by §2101. The *Steinfeld* Court further held that, where uncertainty exists, "consideration should be given to the consequences that will flow from a particular interpretation". Applying this tenant to the "incentive" scheme offered by D.21-06-014 further demonstrates its insufficiency because it allows utilities to choose whether they will "improve" their compliance performance and it rewards "incentives" even though full compliance is not achieved. The adverse consequences for ratepayers and citizens that would flow from construing the enforcement and prosecution provisions of §2101 to mean that utilities can be allowed to simply "pick and choose" which regulations they will obey and to what extent they will be obeyed is simply *unimaginable*.

All of this renders D.21-06-014 arbitrary and capricious.

Accordingly, the Commission has abused its discretion by willfully avoiding its statutory obligation to prosecute known violations of §451, §702, D.19-05-042 and ESRB-8 and for instituting as a substitute measure an insupportable "incentive" scheme that is optional, ineffective and incapable of every achieving the enforcement purposes of §2101.

The Commission Abused Its Discretion When It Adopted Conclusion of Law #16

The Courts have found that the Commission abuses its discretion when material issues addressed by Commission decisions are not supported by findings or substantial evidence. These are the circumstances presented by Conclusion of Law #16 in D.21-06-014 (as discussed above). Thus, the Commission abused its discretion by including Conclusion of Law #16 in D.21-06-014.

The Commission Abused Its Discretion by ignoring Substantial Evidence of §702 Violations and Failing to Enforce §702 in the Manner Required by Law.

As discussed above, the record provides substantial evidence suggesting that SCE violated §702 by not maintaining its distribution equipment in accordance with GO95. The Commission has ignored this evidence, refused to investigate these violations, and undertaken no enforcement activities pursuant to §702. In so doing, the Commission has abused its discretion by not enforcing §702 in the manner required by §2101.

The Commission abused its discretion by Adopting D.21-06-014 Without First Resolving All of the Issues Set Forth in the Phase 3 Scoping Memo and Thereby Failed to Proceed According to Law.

As discussed above, D.21-06-014 failed to resolve all the issues set forth in the Phase 2 Scoping Memo, including matters pertaining to "Reasonableness Reviews" and the attendant §399.2 compliance implications of 2019 PSPS events. In so doing, the Commission has abused its discretion by failing to proceed in the manner required by §1701.5(a).

D.21-06-014 LACKS SUBSTANCE AND FAILS TO ADDRESS THE CORE ISSUES IN PROCEEDING I.19-11-013.

The Commission's role is to enforce state statutes pertaining to safe and reliable electrical service. By assuming this role, the Commission protects the interests of the public by prosecuting statutory violations to achieve the twofold purpose of holding utilities accountable and deterring future violations. D.21-06-014 does not fit this enforcement paradigm, and in adopting it, the Commission has stepped out of its customary role. This is because D.21-06-014 protects the interests of the utilities by not prosecuting violations in a manner that holds utilities accountable and deters future violations. In fact, D.21-06-014 does nothing to address the devastation created by the utilities during their PSPS events of 2019. The truth of this statement is proven by simply considering the

PSPS events of 2019 through the "lens" of D.21-06-014 to "see" if the 2019 PSPS events would have proceeded differently had D.21-06-14 been in effect in October of 2019. The results of this analysis are set forth below, and they demonstrate that, had D.21-09-014 been adopted before the Fall of 2019, it would have made no difference in the horrendous "lived experiences" of California residents during the PSPS events of 2019 because the only substantive measures adopted by D.21-09-014 are 1) regular meetings in which utilities share "lessons learned", "best practices" and "feedback" and "receive input" on the risks and harms of PSPS events; 2) additional post-event and annual reporting requirements, 3) optional "incentives" to induce utilities to "improve their conduct" of PSPS events ; 4) additional notification, website, and "portal management" requirements; 5) improved "liaising", data sharing, and communications with public safety partners and critical facilities; 6) improved website management; 7) additional communication exercises; and 8) the development of a utility program to assess and provide backup power to critical infrastructure "to the extent required by law". None of these measures address the factors contributing to the devastating impacts on Acton area residents resulting from SCE's 2019 PSPS events and, had D.21-06-014 been in effect in the Fall of 2019, it would have made no difference to our community:

- Acton residents would have still endured the same extensive and unreasonable PSPS events because documented equipment deficiencies extant on SCE's system would remain unaddressed;
- The "Tick" fire and other wildfires resulting from SCE's PSPS event would have still been ignited and the evacuation of tens of thousands of people would have still occurred.
- Area residents would have still been forced to gather their family and pets in the pitch black and flee in terror.
- All communication platforms would have still been lost and mandatory evacuation orders would have still failed to get through⁵⁴; All the risks to public safety that resulted from SCE's PSPS events in 2019 would have simply been repeated.

⁵⁴ Ordering Paragraph #57 will not mitigate the loss of all communication platforms that occur in Acton whenever SCE initiates a PSPS event. This is because Ordering Paragraph #57 only requires utilities to assess and provide communication facilities with backup power "to the extent required by law" and it defers to the utilities' opinions regarding whether they have any legal obligation to take such action. SCE has made it clear that it does not believe it is obligated to assist communication facilities by providing backup power: in Opening Comments on the Phase 2 Scoping Memo filed on September 2, 2020 in this proceeding, SCE states that "Critical infrastructure providers are required by law or industry best practice to have sufficient back-up generation to support resiliency in the event of any type of power outage". This SCE position has been reiterated in other Commission Proceedings (see Opening Comments on the Phase 2 Proposed Decision filed May 19 2020 in R.18-12-005 at 2-5). In other words, Ordering Paragraph #57 does not mitigate the loss of communication platforms in Acton during SCE PSPS events.

- Students in our local school district would have still lost 10 days of classroom time;
- Residents would have still had no access to water for cooking, cleaning and sanitary purposes for days on end.

A similar analysis addressing the extent to which PGE's PSPS events in 2019 would have differed if D.21-06-014 had been in effect at the time would doubtlessly produce similar results: PGE would still have de-energized more than 1,000 circuits even though "strong wind" conditions were not demonstrably shown to exist, and it would still have cut power to nearly two million customers and thereby caused the same inexpressible hardships.

In other words, D.21-06-014 is effectively meaningless in terms of achieving utility compliance with state statutes and Commission-adopted PSPS directives.

The implications of this conclusion are dreadful: Because D.21-06-014 does not materially address the horrendous public safety risks created by the utilities' 2019 PSPS events or include reasonable deterrence measures, it will be singularly ineffective at preventing similarly horrendous events in future.

The reason D.21-06-014 is so ineffective is because it does not address the core issue that drove all the public safety risks and hazards posed by the utilities' 2019 PSPS events: namely, *was it reasonable for the utilities to de-energize more than two million customers in 2019 and maintain their circuits in a de-energized state for days on end?* D.21-06-014 does not answer this question, and thereby fails to assess and prosecute violations of §399.2. Most importantly, D.21-06-014 fails to establish directives that will materially improve future PSPS events by ensuring that they comply with the Public Utilities Code and adopted Commission PSPS directives. Therefore, D.21-06-014 is legally deficient. The deficiencies in D.21-06-014 can only be rectified by modifying the decision to expand I.19-11-013 to properly assess the reasonableness of SCE's, SDGE's and PGE's decisions to initiate PSPS events in the Fall of 2019 and hold them accountable for violations in a meaningful manner that deters future violations and comports with the Commission's enforcement mandate under §2101. This would necessarily require a complete overhaul of D.21-06-014.

ORAL ARGUMENT

An applicant may request that the Commission set an oral argument pursuant to Commission Rule of Practice and Procedure 16.3 if doing so will "materially assist the Commission" in addressing a

challenge to a decision which "adopts new Commission precedent" or "presents legal issues of exceptional controversy, complexity, or public importance".

Oral argument will materially assist the Commission in resolving this Application for Rehearing because it will permit the Commission to receive direct answers to questions regarding legal matters of significance pertaining to the new path that D.21-06-014 establishes and which the Commission will surely follow in all future assessments of broad-based PSPS events. This is no small thing; before 2019, PSPS events were rare and most utilities had never even considered them. Now, however, PSPS events are being initiated by utilities on almost a monthly basis, and D.21-06-014 is the first Commission decision which broadly addresses multiple PSPS events that were conducted by multiple utilities and affected millions of customers. In essence, D.21-06-014 "sets the stage" for all future PSPS event assessments by the Commission; the scope of the precedent that is established by D.21-06-014 cannot be overstated and its implications warrant oral argument. Additionally, the matters raised herein present legal issues that are of exceptional public importance because PSPS events affect millions of Californians: they turn lives upside down and expose both communities and individuals to very real and very significant public hazards. Therefore, oral argument is warranted.

CONCLUSION

The Commission's Decision issued in Phase 2 of Proceeding I.19-11-013 fails to hold SCE, SDGE, and PGE accountable for the dangerous violations of state statutes and Commission directives that they perpetrated in the Fall of 2019. In adopting D.21-06-014, the Commission has failed to prosecute identified statutory violations that were committed by these utilities and has ignored substantial evidence of additional statutory violations that should have been identified and enforced but were not.

D.21-06-014 does not protect Californians from future utility PSPS abuses; to the contrary, it sends a clear message to the utilities that compliance with state statutes and Commission directives is optional and that substantial violations perpetrated by utilities which gravely endanger the public *will not* be prosecuted. And, because D.21-06-014 closes the Commission's investigation into all 2019 PSPS activities without even considering whether they were "reasonable", it solidifies the Commission's newly minted (and statutorily insupportable) position that PSPS events are not subject to mandatory "Reasonableness Review" requirements. Everything about D.21-06-014 serves the interests of the utilities; in fact, it puts the utilities on notice that:

- They will never be compelled to comply with state statutes or Commission directives when they initiate PSPS events in future;
- The Commission will not prosecute statutory violations that occur during PSPS events;
- The Commission will not investigate allegations of statutory violations that occur during PSPS events and it will ignore substantial evidence supporting such allegations;
- PSPS events will never be subject to "Reasonableness Review" requirements, so de-energization decisions made by the utilities will never be questioned;
- The Commission will not compel utilities to prove that PSPS is used as a "measure of last resort" because utilities need only explain that they used PSPS as a last resort measure;
- The Commission will not compel utilities to demonstrate that the substantial public safety risks posed by their PSPS events are outweighed by identified public safety benefits because utilities need only explain that the risks posed by their PSPS events were outweighed.

Conversely, nothing about D.21-06-014 serves the interest of the public; in fact, it puts the public on notice that the Commission will never question utility decisions to initiate PSPS events no matter how dangerous or frequent or extensive such events are. This *fact* is demonstrated by D.21-06-014 because it reveals the Commission's clear disinclination to question utilities' PSPS decisionmaking process even when their PSPS events go on for days at a time, affect millions of Californians, cause wildfires, and gravely endanger the public (all of which happened in 2019).

In short, D.21-06-014 is arbitrary, capricious, inconsistent with adopted law, and constitutes an abuse of discretion. Because it will not withstand judicial review, the Commission should grant the Acton Town Council's Application for Rehearing and revise D.21-06-014 in a manner that addresses all of these concerns.

Respectfully submitted;

/S/ Jacqueline Ayer

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On behalf of The Acton Town Council

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July 7, 2021

ATTACHMENT 1

SCE DISCOVERY REQUEST TO THE ACTON TOWN COUNCIL

Southern California Edison
R.18-12-005 – PSPS OIR

DATA REQUEST SET A c t o n - S C E - 0 0 1

To: Acton
Prepared by: Nathanael Gonzalez
Job Title: Senior Advisor
Received Date: 2/16/2021

Response Date: 2/23/2021

Question 004:

Please describe in detail the methodologies and provide the calculations that were used to derive the following information provided on pages 7 and 8 of "Attachment A" that was included in SCE's Post Event Report dated February 4, 2021:

- a) The "FPI Value" of 12.88 reported for the "Shovel" circuit on page 7.
- b) The "FPI Value" of 12.8 reported for the "Shovel" circuit on page 8.
- c) The "FPI Value" of 12.82 reported for the "Pick" circuit on page 8.
- d) The 108% value reported for the "Shovel" circuit reported on page 7.
- e) The 90% value reported for the "Shovel" circuit reported on page 8.
- f) The 109% value reported for the "Pick" circuit reported on page 8.
- g) The 25/40 mph "threshold" for the "Shovel" circuit reported on page 7.
- h) The 31/46 mph "threshold" for the "Shovel" circuit reported on page 8.
- i) The 31/46 mph "threshold" for the "Pick" circuit reported on page 8.
- j) The 23/36 mph "Adjusted trigger" for the "Shovel" circuit reported on page 7.
- k) The 28/41 mph "Adjusted trigger" for the "Shovel" circuit reported on page 8.
- l) The 28/41 mph "Adjusted trigger" for the "Pick" circuit reported on page 8.

Response to Question 004:

Response to Parts a, b, c:

SCE uses an expert atmospheric modeling vendor, Atmospheric Data Solutions (ADS), to provide forecasts of FPI for all circuits in the high fire risk area, at the hundredths level. SCE's expert meteorologists use the best available model guidance from multiple public and proprietary data sources to refine and calibrate the forecasted FPI to reflect the most accurate integration of available data for the forecasted period of concern. These refined FPI values are used to determine which circuits are forecast to potentially breach PSPS criteria during the event, and the values are recorded on SCE's monitored circuit list for all circuits potentially subject to PSPS de-energization. In many cases, these initial estimated FPI values are then further refined in real-time during the period of concern based on careful consideration of quantitative and qualitative factors by SCE's meteorologists and operations experts.

The FPI values that are included in post-event reports represent the best estimate of FPI at the time of de-energization. In some cases, this value is taken directly from the monitored circuit list, and in many other cases, SCE records the real-time expected FPI value that was determined at the time of de-energization by meteorology and operations professionals.

SCE is unable to provide the specific inputs that were used at the time of de-energization to compute the real-time FPI because these decisions are highly dynamic, event specific, and based on professional judgement of meteorology and operations staff at the time of the event. In addition, the individual components that are used by ADS to calculate FPI are not retained by SCE.

Please see the "Definitions" section below for the equation used to calculate FPI. If Acton Town Council would prefer, SCE team is available to answer any follow-up questions via a conference call.

Response to Part d:

The 108% value reported for the Shovel circuit on page 7 was derived by comparing the de-energization trigger value to the actual windspeed at the time of de-energization, $43.5/40 * 100 = \sim 108\%$.

$$(\text{Actual Windspeed mph/Mph Gust Trigger} * 100 = x)$$

Response to Part e:

The 90% value reported for the Shovel circuit on page 8 was derived by comparing the de-energization trigger value to the actual windspeed at the time of de-energization, $36.9/41 * 100 = 90\%$.

$$(\text{Actual Windspeed mph/Mph Gust Trigger} * 100 = x)$$

Response to Part f:

The 109% value reported for the Pick circuit on page 8 was derived by comparing the de-energization trigger value to the actual windspeed at the time of de-energization, $44.57/41 * 100 = \sim 108\%$.

$$(\text{Actual Windspeed mph/Mph Gust Trigger} * 100 = x)$$

Response to Part g:

The 25/40 mph value provided for the Shovel circuit on page 7 in the Post-Event Report was incorrect. The correct threshold value for the Shovel circuit as of December 16, 2020, should have been 31/46 mph. Despite this change, actual wind speeds and real-time conditions breached the correct de-energization trigger value, at which point the circuit was deenergized.

Response to Part h and i:

SCE sets its PSPS activation and notification thresholds as the lower of the 99th percentile wind speed for the local area of the circuit, or the National Weather Service (NWS) wind advisory levels capped at 31/46 mph, (set at the wind speeds where debris fly-ins become a concern). Wind speed thresholds may also be adjusted based on other factors or circuit design.

Response to Parts j, k, and l:

Triggers are determined by multiplying a discount factor that is informed by FPI, circuit health and ignition consequence modeling (REAX score) to the baseline threshold. Discount multipliers range

from 0.8 to 1.0 and the Baseline Threshold is the lower of NWS Advisory (31/46) or 99th % historical. (Baseline Threshold) * (Discount multiplier) = Trigger value.

See the "Definitions" section below for additional information.

Response to Part j:

Starting factors for the Shovel circuit were: FPI of 12.88, Sustained (Baseline) Threshold: 25 mph, (Baseline) Gust Threshold: 40 mph, High P2s: 124, Long Span Count: 33, REAX: Highest.

The Sustained (Baseline) Threshold and the (Baseline) Gust Threshold were multiplied by 0.9, the determined multiplier.

(25 mph * 0.9) = 22.5, rounded to 23 mph wind trigger, and (40 mph * 0.9) = 36 mph wind trigger, yielding the "Adjusted trigger" for the Shovel circuit as reported on page 7.

Response to Part k:

Starting factors for the Shovel circuit were: FPI of 12.8, Sustained (Baseline) Threshold: 31 mph, (Baseline) Gust Threshold: 46 mph, High P2s: 209, Long Span Count: 33, REAX: Highest.

The Sustained (Baseline) Threshold and the (Baseline) Gust Threshold were multiplied by 0.9, the determined multiplier.

(31 mph * 0.9) = 27.9, rounded to 28 mph wind trigger, and (46 mph * 0.9) = 41.4, rounded to 41 mph wind trigger, yielding the "Adjusted trigger" for the Shovel circuit as reported on page 8.

Response to Part l:

Starting factors for the Pick circuit were: FPI of 12.82, Sustained (Baseline) Threshold: 31 mph, (Baseline) Gust Threshold: 46 mph, High P2s: 253, Long Span Count: 1, REAX: Highest.

The Sustained (Baseline) Threshold and the (Baseline) Gust Threshold were multiplied by 0.9, the determined multiplier.

(31 mph * 0.9) = 27.9, rounded to 28 mph wind trigger, and (46 mph * 0.9) = 41.4, rounded to 41 mph wind trigger, yielding the "Adjusted trigger" for the Pick circuit as reported on page 8.

Definitions

The Fire Potential Index (FPI) is a tool that is used to estimate fire potential across the landscape based on weather and fuel (vegetation) condition, and is calculated as:

$$FPI = \left(\frac{DL}{LFM} + G \right) FLx + Wx$$

The index is forecast at the circuit level twice per day out to 5 days at a 3-hourly temporal

resolution. Individual components of the FPI score are forecast hourly for each grid cell by a 2km WRF (Weather Research and Forecasting) model that has been optimized to best capture weather and fire weather conditions in Southern California Edison’s territory. The grid cell forecasts associated with each of the FPI components are then summarized by circuit for three-hour forecast periods. Meteorologists and Fire Scientists may adjust the FPI score as needed based on observations, fuel sampling, additional weather models and climatology.

These forecast variables used to generate FPI score are forecast for each hour:

- Wind Speed
- Dewpoint Depression
- Energy Release Component
- 10-hour dead fuel moisture
- 100-hour dead fuel moisture
- Live fuel moisture
- Normalized Difference Vegetation Index

The individual components of the FPI equation are as follows:

- DL is the dryness level which is comprised of the Energy Release Component and the 10-hour dead fuel moisture time-lag.
- LFM is the moisture content of the living vegetation.
- G is the degree of green-up of the annual grass based on the Normalized Difference Vegetation Index (NDVI).
- FLx is the fuel loading modifier associated with low, moderate, and heavy fuel loading corresponding to .5, .75, and 1 respectively. This represents a measure of the amount of vegetation on the ground.
- Wx is the weather component of the FPI, also known as the weather score, and references a lookup table of paired sustained wind speed and dew point depression (representative of the dryness of the air) values as in the figure below. The value ranges from 0 to 6.

FPI Weather Component (Wx)							
		Wind Speed (mph)					
		<=5	6-10	11-16	17-22	23-28	>=29
Dew Point Depression	>=50	2	3	3	4	5	6
	40-49	2	2	3	3	4	5
	30-39	1	2	2	3	3	4
	20-29	1	1	2	2	3	3
	10-19	0	0	1	1	1	1
	<10	0	0	0	0	0	0

The full FPI output ranges from 1 to 17 which has been broken in three categories: Normal (1-11.99), Elevated (12-14.99), and Extreme (15+).

Triggers: SCE’s de-energization decisions are made on a circuit-by-circuit basis, often on a sub-circuit level, only when current conditions in the immediate area warrant action. De-energization

wind speed triggers are unique to each circuit and are dynamic based on evolving environmental and circuit-specific characteristics. Some factors that are taken into consideration when setting de-energization triggers include wind speed, FPI, ignition consequence modeling, circuit conditions, length of conductor, and other technical characteristics for the applicable circuit. The IMT takes characteristics such as a higher FPI, multiple historical outages or outstanding maintenance items into account when determining if wind speed thresholds for recommending de-energization should be modified.

Rounded FPI are used as inputs for calculating the potential sustained wind and potential gust triggers. The “Peak FPI” is rounded to the nearest whole number to determine the “Rounded FPI.” In cases where the “Peak FPI” ends in “.5”, the value will be rounded up (e.g., a Peak FPI of 14.5 will be rounded to 15).

Once the Rounded FPI value is determined, a Multiplier is applied per the table below

Rounded FPI	Multiplier (X)
15+	0.8
14	0.85
13	0.9
12	0.95
<12	1

Table 1 – Rounded FPI and Multipliers

Circuit Health (Based on SCE’s inspection and remediation program for all SCE’s electrical infrastructure):

SCE remediates anything that is imminently about to fail (P1s) regardless of weather and fuel conditions for safety and reliability. Medium risk (P2s) items are typically items that will fail within 6 to 12 months in SCE’s High Fire Risk Area. However, medium risk (P2s) items can become a high-risk issue due to other factors such as weather and fuel. These set of medium risk issues are reclassified as higher risk and are remediated more quickly than the 6- and 12-month timelines.

High P2s and Long Spans. The calculation then considers whether a circuit has High P2s or Long Spans. This value is calculated as “True” if there are any High P2s on the circuit or if the circuit has Long Span conditions.

REAX Score. The calculation also considers whether a circuit has a High REAX. The value is “True” if a circuit’s REAX is “High” or “Highest.”

Once these values are set, the change to the multiplier is determined based on the potential severity. The table below shows the outcome of each scenario.

High P2s OR Long Spans	High Reax	Net Change to X (Never above 1)
True	True	No Change
True	False	+0.05
False	True	No Change
False	False	+0.10

Table 2 – Modified Multiplier Determination

Covered Conductor Calculations: In cases where we do not have a circuit that is fully covered with Covered Conductor, we will use the table below to modify our multiplier.

High P2s OR Long Spans	High Reax	Net Change to X (Never above 1)
True	True	+0.05
True	False	+0.05
False	True	+0.10
False	False	+0.10

After determining the modified multiplier, we must determine if it's to be applied to the circuit's "Wind/Gust Threshold" or its "99th Percentile" threshold. The "Wind/Gust Threshold" is determined by historical wind-related outages and the "99th Percentile" threshold is determined by the 99th percentile of historical wind speeds recorded for the circuit. Based off the High P2s, Long Spans, and REAX for each circuit, we determine which set of thresholds to use as shown in Table 3 below.

High P2s OR Long Spans	High Reax	Trigger is Multiplied to
True	True	Wind/Gust Threshold
True	False	99 th Percentile
False	True	99 th Percentile
False	False	99 th Percentile

Table 3 – Wind/Gust vs. 99th Percentile Thresholds

Covered Conductor Exception: In cases where we have a fully covered circuit, we will apply the multiplier to the High Wind Warning levels provided by the National Weather Service of 40 mph for sustained winds and 58 mph for wind gusts. The following table shows the case for all completely covered circuits.

High P2s OR Long Spans	High Reax	Trigger is Multiplied to
True	True	NWS High Wind Warning
True	False	NWS High Wind Warning
False	True	NWS High Wind Warning
False	False	NWS High Wind Warning

The Sustained Wind Trigger and Gust Trigger are determined by applying the multiplier to the Wind/Gust Threshold or 99th Percentile. The Sustained Wind Trigger cannot exceed 40 mph and the Gust Trigger cannot exceed 58 mph, respectively.

ATTACHMENT 2

**ACTON TOWN COUNCIL COMMENTS SUBMITTED TO THE COMMISSION ON MARCH 29,
2021**

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

Order Instituting Rulemaking to Implement
Electric Utility Wildfire Mitigation Plans
Pursuant to Senate Bill 901 (2018).

Rulemaking 18-10-007
(Filed October 25, 2018)

**ACTON TOWN COUNCIL SUPPLEMENTAL COMMENTS ON THE
2021 WILDFIRE MITIGATION PLAN UPDATES FILED BY
THE LARGE INVESTOR OWNED UTILITIES**

In accordance with Resolution WSD-011 adopted November 20, 2020 by the Wildfire Safety Division ("WSD") of the California Public Utilities Commission ("Commission") on November 20, 2020 as modified by the March 1, 2021 Commission letter extending the comment deadline to March 29, 2021, the Acton Town Council hereby submits the following Supplemental comments on the 2021 Wildfire Mitigation Plan ("WMP") Updates filed by the large Investor Owned Utilities ("IOUs").

1.0 SUPPLEMENTAL COMMENTS

On March 18, 2021, the Acton Town Council submitted comments to the WSD on the large IOU 2021 WMP Updates, and we were advised that the deadline for submitting comments had been extended to March 29, 2021. Accordingly, we have prepared the following supplemental comments which augment our initial comments submitted on March 18.

In the initial comments submitted by the Acton Town Council, we set forth in detail our concerns with the PSPS protocols described in SCE's and PGE's 2021 WMP Update that appear to controvert Commission's Resolution ESRB-8 and various Commission Decisions which establish clear restrictions on when Public Safety Power Shutoff ("PSPS") events are authorized by Pub. Util. Code §399.2(a) and §451. These comments explained that PSPS events are not "reasonable" and do not comport with ESRB-8 or other Commission Decisions if they are initiated out of concern that equipment deficiencies could result in wildfire ignitions or under "Black Swan" conditions where winds pose no "imminent or significant" risk of toppling

equipment or causing "vegetation related impacts". The Acton Town Council is not disputing whether such power shutoffs are necessary for public safety; rather we are explaining why they would not be deemed "reasonable" as that term is contemplated in Resolution ESRB-8 and Decision D.19-05-042. To clarify the matter, the Acton Town Council points to a recent Discovery Response submitted by SCE to the CPUC Public Advocates Office (Cal Advocates) which indicates that SCE's de-energization decisions in Acton are driven by distribution equipment that does not appear to comply with structural standards imposed by General Order 95 ("GO95"). Specifically, the Discovery Response (provided in Attachment A) explains that, for the "Shovel" circuit in Acton, SCE has established very low PSPS windspeed thresholds of only 25 mph (sustained) and 40 mph (gusts) out of concern that its equipment could experience mechanical failure at sustained windspeeds of 31 mph and wind gusts of 46 mph (far below the wind load standards set by GO95¹). This Discovery Response affirms that mechanical failure concerns drive SCE's PSPS decisions in Acton; while such shutoffs may be necessary for public safety purposes, they are nonetheless "unreasonable" because SCE has a duty to maintain its equipment in compliance with GO95. This is why it is critical that the PSPS elements of all the IOU WMPs be expanded to: 1) Identify the location of structurally deficient items on the utility's circuits; 2) Explain how these equipment deficiencies are factored into PSPS decisions; and 3) Explain whether these equipment deficiencies result in "downward adjustments" to PSPS windspeed thresholds. If these issues are not addressed by the IOU WMPs and subsequently disclosed in Post Event Reports, then the Commission will not be able to conduct mandatory post event "Reasonableness Reviews" of IOU PSPS events.

Another concern raised by SCE's Discovery Response to CalAdvocates is that SCE apparently believes that there are only "roughly a dozen" circuits that, like the "Shovel" circuit in Acton, have PSPS windspeed thresholds "marginally" less than 31 mph (sustained) and 46 mph (gusts). This is incorrect: The Post Event Report addressing SCE's January 2021 PSPS activities (dated February 4, 2021) shows that nearly 50 circuits² have windspeed thresholds below 31/46 mph. These circuits are listed in Table 1.

¹ As discussed in Footnote 1 of the Acton Town Council's Initial Comments, D.14-02-015 establishes that electrical equipment should withstand wind levels exceeding 56 mph based on the combined wind load and safety factor requirements of GO-95 (see Pages 56-58).

² See pages 7-12 of Attachment A of SCE's Post Event Report dated February 4, 2021.

SCE's PSPS Wind Thresholds for the De-Energization Events of January 14-19.

	Circuit	Sustained Wind threshold (mph)	Wind Gust Threshold (mph)
1	SHOVEL (portion)	23	36
2	METTLER	21	33
3	MIDDLE ROAD	21	33
4	COVENTRY	25	36
5	SHERWOOD	25	36
6	HILLCREST	26	37
7	ACCENT	27	38
8	CONINE	27	38
9	JONAGOLD	28	39
10	VARGAS (portion)	26	39
11	EASTER	27	39
12	SUTT	26	39
13	ECHO	26	39
14	SAGINAW	24	40
15	MACIEL	26	40
16	HONEYCRISP	27	40
17	CORSAIR	28	40
18	ESTABAN	28	40
19	COBRA	31	40
20	ANACONDA	31	40
21	GREEN RIVER	31	40
22	BELPAC (portion)	31	40
23	SAND CANYON	28	41
24	CUTHBERT (portion)	28	41
25	DAVENPORT	28	41
26	LOUCKS (portion)	28	41
27	PLATEAU	28	41
28	BIG ROCK (portion)	28	41
29	ENERGY (portion)	28	41
30	GITAR	28	41
31	BLACKHILLS (portion)	28	41
32	NORTHPARK (portion)	28	41
33	TWIN LAKES (portion)	28	41
34	ANTON	28	41
35	CALGROVE (portion)	28	41
36	FROZEN	28	41
37	CONDOR	28	41
38	GNATCATCHER	28	41
39	PICK	28	41
40	PYTHON	28	41
41	VETERANS	28	41
42	DE MILLE	28	41
43	LOPEZ	28	41
44	BOUQUET	28	41
45	ESCONDIDO	28	41
46	LYONS	28	41
47	TAPO (RAR6509)	28	41
48	STEEL	29	41

These data indicate that Acton is not the only community where SCE has initiated power shutoffs based on low windspeed thresholds; however, it is not known whether these low windspeed thresholds are driven by equipment deficiencies or whether, by extension, the PSPS events themselves are "unreasonable" pursuant to ESRB-8. This is why it is important that each WMP provide detailed information regarding the scope and extent of structural deficiencies which drive PSPS decisions; without such information, the Commission is unable to properly conduct the "Reasonableness Reviews" that D.19-05-042 establish as an "imperative".

2. CONCLUSION

For all the reasons expressed in our initial comments on the large IOU 2021 WMP Updates and supplemented herein, the Acton Town Council respectfully requests that the Commission not approve the PSPS component of any IOU WMP until the following conditions are met:

- The PSPS protocols are revised to properly reflect the restrictions and conditions that the Commission has imposed on de-energizations activities as set forth in ESRB-8 and D.19-05-042 which authorize PSPS when there is an "imminent and significant risk" that structurally competent electrical equipment will topple or experience "vegetation related impacts".
- The utilities provide substantial technical evidence to support claims regarding the windspeed thresholds at which windblown vegetation becomes an "imminent and significant" threat.
- SCE must explain why it initiates PSPS when conditions are not "extreme" by relying on an FPI threshold of only 12 *particularly in light of the compelling evidence provided in SDGE's 2021 WMP which demonstrates that "extreme" conditions do not exist until the FPI reaches 14.*
- The IOUs provide substantive evidence that their "ignition consequence", "fire spread potential" and/or "wildfire propagation" models accurately represent "real world" circumstances and accurately project "real world" outcomes.
- The PSPS protocols in the IOU WMPs must describe in detail the methodology that will be used to identify and quantify the very real and substantial public safety hazards and risks posed by PSPS and furthermore explain the process that will be used to show how these hazards and risks are deemed to be outweighed by a material public safety benefit.

Respectfully submitted,

/S/ Jeremiah Owen
Jeremiah Owen, President
The Acton Town Council
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Acton, CA 93510
(661) 468-7496
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March 29, 2021

ATTACHMENT A

SCE DISCOVERY RESPONSE TO CALADVOCATES DATED MARCH 9, 2021

Southern California Edison

WSD-011 – Resolution implementing the requirements of Public Utilities Code Sections 8389(d)(1), (2) and (4) related to catastrophic wildfire caused by electrical corporations subject to the Commission’s regulatory authority

DATA REQUEST SET Cal Advocates - SCE - 2021 WMP - 09

To: Cal Advocates
Prepared by: Kyle Ferree
Job Title: Senior Advisor
Received Date: 3/4/2021

Response Date: 3/9/2021

Question 014:

The following questions relate to the use of live field observers (LFO) immediately prior to and during a PSPS event.

In its 2021 WMP, SCE states that:

SCE considers the National Weather Service Wind Advisory levels (defined as 31 mph sustained wind speed and 46 mph gust wind speed) and the 99th percentile of historical wind speeds in the area to set activation thresholds.

However, in a response to the Acton Town Council’s discovery request, SCE states that:

After determining the modified multiplier, we must determine if it’s to be applied to the circuit’s “Wind/Gust Threshold” or its “99th Percentile” threshold. The “Wind/Gust Threshold” is determined by historical wind-related outages and the “99th Percentile” threshold is determined by the 99th percentile of historical wind speeds recorded for the circuit.

Is the Wind/Gust Threshold the same as SCE’s use of NWS Wind Advisory level of 31 mph (sustained) and 46 mph (gust)? If not, explain which criteria SCE currently uses.

Response to Question 014:

In almost all cases, SCE uses the lower of the NWS Wind Advisory level of 31 mph (sustained) and 46 mph (gust) or a circuit’s 99th percentile wind speed to perform PSPS notifications and Incident Management Team activation.

However, roughly a dozen SCE distribution circuits have outage-informed thresholds that are marginally lower than the NWS Wind Advisory level of 31 mph (sustained) and 46 mph (gust). These circuits have sustained concerning historical outages at wind speeds lower than the NWS Wind Advisory level and have had their threshold capped until completed maintenance has demonstrated the ability for each circuit to sustain higher wind speeds.

An example of this treatment was seen on the Shovel circuit in Acton in 2020. SCE was able to raise Shovel’s outage-informed threshold of 25 mph (sustained) or 40 mph (gust) to the NWS Wind Advisory level. This occurred in late 2020 after confirming that key outstanding maintenance was completed and that the circuit was able to withstand NWS Wind Advisory level wind speeds without mechanical failure.