BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

REQUEST FOR REVIEW

Pursuant to Title 20 of the California Code of Regulations, Rule 14.4(b), I hereby request review of the Presiding Officer's Decision Approving Proposed Settlement Agreement with Modifications which addresses the penalties and other remedies that should be imposed on Pacific Gas and Electric Company (PG&E) for the role its electrical facilities played in igniting wildfires in its service territory in 2017 and 2018 (Presiding Officer's Decision), mailed February 27, 2020, in the above-referenced docket. The specific grounds on which I request review are as follows:

1. <u>Payment of Fines</u>

The Presiding Officer's Decision adds a requirement for PG&E to pay a $200 million cash fine to the General Fund. It also provides that the cash fine must be paid out of funds that would not otherwise be available to satisfy the claims of wildfire victims.[1] In its Motion Requesting Other Relief Regarding the Presiding Officer's Decision

[1] Ordering Paragraph 2(a).

(Motion) and an Appeal of Presiding Officer's Decision Approving Settlement Agreement With Modifications (Appeal), PG&E objects to payment of a $200 million fine out of funds that would not otherwise be available to satisfy claims of wildfire victims. It recommends the following modification to the Presiding Officer's Decision:

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

PG&E asserts that imposition of the $200 million fine jeopardizes confirmation of the Plan of Reorganization in its pending bankruptcy case.[3] It explains that confirmation is dependent on the "Backstop Commitment Letters" where parties agree to purchase $9 billion in equity; but if PG&E agrees to pay the $200 million fine from funds that are not otherwise available to compensate wildfire claimants, the parties have a right to terminate this backstop financing commitment.[4]

It would not be appropriate to include the $200 million fine in the Fire Victims Trust because the fines are dissimilar in nature to the claims of the wildfire victims, and they should not be pitted against each other. However, because payment of the $200 million fine from other sources could jeopardize PG&E's financing commitments and exit from bankruptcy, I request review to consider suspending the cash fine permanently, so there is no requirement for payment of the fine. More specifically, the settlement should include imposition of a $200 million cash fine without any restriction as to the source of funds but should expressly state that the obligation to pay the fine is permanently suspended. This is appropriate due to the unique situation of PG&E's

[2] Motion at p.47; Appeal at p. 52.

[3] In re PG&E Corp., No. 19-30088.

[4] Motion at p.22; Appeal at p. 26.

bankruptcy, its indebtedness to hundreds of wildfire claimants for loss of life and property, and the current upheaval in the financial markets.

2. Tax Savings For the Benefit of Ratepayers

In its Motion and Appeal, PG&E also objects to the modification to the settlement agreement in the Presiding Officer's Decision relating to tax benefits associated with the financial obligations in the settlement agreement.[5] This provision requires that any such tax savings (financial benefits) shall be returned for the benefit of ratepayers after they are realized. This would be accomplished by reporting those tax savings in the next General Rate Case after they are realized and applying them to reduce expenses recorded in one of PG&E's wildfire memorandum accounts.[6] The financial obligations consist of certain costs specified in the settlement agreement related to wildfire response and prevention, that are disallowed for recovery from ratepayers, and accordingly will be borne by PG&E's shareholders.

PG&E requests modification of the Presiding Officer's Decision as follows:

> Eliminate the Tax Modification, as it is contrary to Commission precedent and invites PG&E to violate the IRS normalization rules, and because it is unclear whether the ALJ considered the impact of a potential $518 million increase in penalties that may result from the Tax Modification.[7]

PG&E explains that under the tax laws, a utility may take an accelerated depreciation tax benefit but must follow Internal Revenue Code "normalization rules."[8]

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[5] Ordering Paragraph 1(b).

[6] Id.

[7] Motion at p. 47; Appeal at p. 51.

[8] These rules describe how the utility receives accelerated tax benefits in the early years of an asset's regulatory life, "but passes that benefit through to ratepayers ratably over the regulatory useful life of the asset in the form of reduced rates." (Motion at p.41; Appeal at p.45). This conflicts with the direction in the Presiding Officer's Decision to return the tax benefits to ratepayers *when they are realized*.

It states that the tax benefit provision in the Presiding Officer's Decision "would cause PG&E to violate the normalization consistency rule…" It further asserts this would "preclude PG&E from taking the benefits of accelerated tax depreciation under section 168 of the Code on *all* of its property, not just the property subject to the rate of disallowance."[9]

The Presiding Officer's Decision does state, in footnote 94: "The tax savings shall be applied in accordance with any applicable Internal Revenue Service normalization rules." While recognizing the issue, this footnote may not be clear enough or broad enough to address the potential legal barriers to effectuating the requirements in the Presiding Officer's Decision with respect to tax benefits that accrue from capital expenditures. Therefore, a limitation should be added to the tax benefit provision to avoid potential violation of the normalization rules in section 168(i)(9) of the Internal Revenue Code, as follows: "This paragraph shall apply to tax savings associated with operating expenses only, and shall not apply to any tax savings associated with capital expenditures."

This change would apply to all tax benefits associated with the capital expenditures that are disallowed for rate recovery in the settlement agreement as modified. While it is arguable that the normalization rule cited by PG&E only applies to tax deductions for accelerated depreciation and does not prohibit returning tax benefits calculated in the same manner as the ordinary depreciation to ratepayers, this change would err on the side of caution and remove the tax benefit provision with respect to all the tax benefits associated with capital expenditures. This proposed change would eliminate any potential legal conflict with IRS rules and preserve the tax benefits for shareholders from an estimated $403 million in capital expenditures.[10]

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[9] Motion at pp. 40-41; Appeal at p. 45.

[10] PG&E Motion at p. 40.

PG&E's Motion and Appeal do not identify any legal barrier to applying the tax benefit provision to financial obligations in the settlement agreement relating to operating expenses as opposed to capital expenditures. Therefore, the provision that requires returning tax benefits arising from payment of the applicable operating expenses to ratepayers should remain as set forth in the Presiding Officer's Decision, and these benefits should inure to the benefit of ratepayers at the time that they are realized by PG&E (which will likely be deferred, in all or part, until some years in the future).

I am requesting review so the Commission may consider the above changes to the Presiding Officer's Decision, if those changes are acceptable to the settling parties. With these changes, the settlement would appropriately resolve the claims in this action and would facilitate PG&E's timely exit from bankruptcy.

Dated March 27, 2020, at San Francisco, California.

/s/ CLIFFORD RECHTSCHAFFEN
CLIFFORD RECHTSCHAFFEN
Commissioner