

ATTACHMENT A

Administrative Consent Order

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the matter of:

SAN DIEGO GAS AND ELECTRIC
2021 Public Safety Power Shutoff Events

[PROPOSED] ADMINISTRATIVE
CONSENT ORDER AND AGREEMENT

Issued pursuant to Commission Resolution
M-4846 (adopting Commission Enforcement
Policy)

[PROPOSED] ADMINISTRATIVE CONSENT ORDER AND AGREEMENT

Dated: May 17, 2024

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[PROPOSED] ADMINISTRATIVE CONSENT ORDER AND AGREEMENT

This Administrative Consent Order and Agreement (hereinafter “ACO” or Agreement”) is entered into and agreed to by and between the Safety and Enforcement Division (“SED”) of the California Public Utilities Commission (“CPUC” or “Commission”) and San Diego Gas and Electric (SDG&E) (collectively, “Parties”) pursuant to Resolution M-4846, dated November 5, 2020, titled *Resolution Adopting Commission Enforcement Policy*.

WHEREAS:

- The Commission has authorized SED “to investigate, negotiate, and draft proposed Administrative Consent Orders, subject to review and consideration by the Commission” via resolution;¹
- The Commission’s Enforcement Policy requires that a “negotiated proposed settlement . . . be memorialized in a proposed Administrative Consent Order,” which requires certain items as set forth in Section 2, below;²
- Consistent with Resolution M-4846, this ACO is a product of direct negotiations between the Parties to resolve and dispose of all claims, allegations, liabilities, and defenses related to SDG&E’s 2021 Public Safety Power Shutoff (PSPS) events.
- This ACO is entered into as a compromise of disputed claims and defenses in order to minimize the time, expense, and uncertainty of an evidentiary hearing, any further enforcement proceedings, and/or any subsequent appeals, and with the Parties having taken into account the possibility that each of the Parties may or may not prevail on any given issue, and to expedite timely action on initiatives that benefit California consumers;
- The Parties agree to the following terms and conditions as a complete and final resolution of all enforcement actions which have been brought by SED related to or arising from SDG&E’s compliance with for its 2021 PSPS events, and all of SDG&E’s defenses thereto, based on the information known to the Parties, and without trial and adjudication of any issue of law or fact.

NOW, THEREFORE it is agreed that this ACO is made and entered into.

¹ Resolution M-4846 at 15 (Findings and Conclusions No. 8).

² Resolution M-4846, Enforcement Policy at 10.

I. PARTIES

The parties to this ACO and Agreement are SED and SDG&E.

SED is a division of the Commission charged with enforcing compliance with the Public Utilities Code and other relevant utility laws and the Commission's rules, regulations, orders, and decisions. SED is also responsible for investigations of utility incidents, including PSPS, and assisting the Commission in promoting public safety.

SDG&E is a public utility, as defined by the California Public Utilities Code. SDG&E provides electric and gas service to approximately 1.4 million customers in San Diego County and southern Orange County, California.

II. ELEMENTS REQUIRED BY SECTION III.A.7 OF THE COMMISSION'S ENFORCEMENT POLICY FOR ADMINISTRATIVE CONSENT ORDERS

Except as explicitly stated herein, the Parties expressly agree and acknowledge that neither this ACO nor any act performed hereunder is, or may be deemed, an admission or evidence of the validity or invalidity of any allegations of SED, nor is the Agreement or any act performed hereunder to be construed as an admission or evidence of any wrongdoing, fault, omission, negligence, imprudence, or liability on the part of SDG&E. This is a negotiated settlement of disputed matters.

A. The law or Commission order, resolution, decision, or rule violated by the regulated entity and the facts that form the basis for each violation

Appendix I to this ACO contains the Notice of Violation (NOV) issued by SED on SDG&E, on April 7, 2023. The NOV includes a discussion of the Commission orders and decisions that SDG&E violated, and the facts that form the basis for each alleged violation. SDG&E submitted a response to the NOV (SDG&E's NOV Response), contained in Appendix II to this ACO, on May 5, 2023, which includes more information from SDG&E's 2021 PSPS

event. As a result of SDG&E's response and the new information, SED dismisses three violations alleged in the NOV, listed in II.A.1, II.A.2, and II.A.3.

1. For the November 24-26 event, SED dismisses the NOV violation of the Commission's requirement that each utility "must notify multi-family building account holders, and make reasonable efforts to notify building managers, prior to conducting a proactive de-energization event." (D.21-06-034, Appendix A, p.9).
2. For the November 24-26 event, SED dismisses the NOV violation of the Commission's requirement that "investor-owned utilities must provide...the methods of notifications and who made the notification (the utility or local public safety partners)." (D.19-05-042 at A22-A23).
3. For the January 14-16 event, SED dismisses the NOV violation of the requirement that utilities explain in the Post Event Report Template why it failed to send notifications to public safety partners 1-4 hours in advance of anticipated de-energization. (Requirement of PSPS Template issued by Administrative Law Judge in R.18-12-005).

This ACO addresses and resolves SDG&E's remaining alleged violations as set forth in the NOV. SDG&E admits and agrees to the remaining violations as set forth in the NOV and the associated penalties, as further discussed in SDG&E's NOV Response and set forth herein.

B. Information related to the potential for additional or ongoing violations

The Parties intend this Agreement to be a complete and final resolution of all enforcement actions which have been brought by SED related to SDG&E's 2021 PSPS events, based on the information known by the Parties.

C. An agreement by the regulated entity to correct each violation

SDG&E asserts that it has remediated any alleged violations and, as further discussed in SDG&E's NOV Response, is implementing processes and systems to ensure compliance with the PSPS requirements going forward.

D. An agreement by the regulated entity to pay any penalty by a date specified
SDG&E agrees to penalties and remediation payments totaling \$70,830.00.

1. Penalty to the General Fund

SDG&E shall pay a monetary penalty of \$70,830.00 to the California State General Fund within thirty (30) days after the date of Commission Approval (as defined in Section IV.E. below).

III. ADDITIONAL TERMS

A. Confidentiality and Public Disclosure Obligations

The Parties agree to continue to abide by the confidentiality provisions and protections of Rule 12.6 of the Commission's Rules of Practice and Procedure, which governs the discussions, admissions, concessions, and offers to settle that preceded execution of this ACO and Agreement and that were exchanged in all efforts to support its approval. Those prior negotiations and communications shall remain confidential indefinitely, and the Parties shall not disclose them outside the negotiations without the consent of both Parties. The Parties agree to coordinate as to the timing and content of mutual and/or individual public communications. Notwithstanding the foregoing, SDG&E may make any disclosures it deems legally necessary, in its sole discretion, in order to satisfy its obligations under securities laws.

B. Future Proceedings

The Parties agree to avoid and abstain from making any collateral attacks on this ACO or taking positions in other venues that would undermine the effect or intent of the ACO.

Nothing in this ACO constitutes a waiver by SED of its legal obligations, authority, or discretion to investigate and enforce applicable safety requirements and standards (including, without limitation, provisions of GO 95 and GO 165) as to other conduct by SDG&E unrelated to this ACO or the 2021 PSPS events that SED may identify as the basis for any alleged

violation(s). SED shall retain such authority regardless of any factual or legal similarities that other SDG&E conduct, and any alleged violation(s), may have to SDG&E's conduct/alleged violations related to the 2021 PSPS events. Accordingly, any such similarities shall not preclude SED from using other conduct and alleged violation(s) as a basis for seeking future penalties.

C. Regulatory Approval Process

Pursuant to Resolution M-4846, this ACO shall be submitted for public notice and comment. Upon approval or ratification of this ACO, the final resolution will “validate[] the order, which becomes an act of the Commission itself.”³

By signing this ACO, the Parties acknowledge that they pledge support for Commission Approval and subsequent implementation of all the provisions of this ACO. The Parties shall use their best efforts to obtain Commission Approval of this ACO without modification, and agree to use best efforts to actively oppose any modification thereto. Should any Alternate Draft Resolution seek a modification to this ACO, and should either of the Parties be unwilling to accept such modification, that Party shall so notify the other Party within five business days of issuance of the Alternate Draft Resolution. The Parties shall thereafter promptly discuss the modification and negotiate in good faith to achieve a resolution acceptable to the Parties and shall promptly seek approval of the resolution so achieved. Failure to resolve such modification to the satisfaction of either of the Parties, or to obtain approval of such resolution promptly thereafter, shall entitle any Party to terminate this Agreement through prompt notice to the other Party. (*See also* Section IV.D. below.)

³ Resolution M-4846 at 8.

If Commission Approval is not obtained, the Parties reserve all rights to take any position whatsoever regarding any fact or matter of law at issue in any future enforcement action or proceeding related to the 2021 PSPS events.

D. Admissibility

If this ACO is not adopted by the Commission, its terms are inadmissible for any evidentiary purpose unless their admission is agreed to by the Parties.

E. Due Process

SDG&E's waiver of its due process rights for the Commission to hear and adjudicate the alleged violations set forth in Part II of the Appendix to this ACO is conditioned on a final Commission resolution or order approving this ACO without modification, or with modifications agreeable to each of the Parties.

IV. GENERAL PROVISIONS

A. Full Resolution

Upon Commission Approval, this ACO fully and finally resolves any and all enforcement actions and disputes between SED and SDG&E related to the 2021 PSPS events, and provides for consideration in full settlement and discharge of all disputes, rights, enforcement actions, notices of violations, citations, and causes of action which have, or might have been, brought by SED related to the 2021 PSPS events based on the information known, or that could have been known, to SED at the time that SED executes this ACO.

B. Non-Precedent

This ACO is not intended by the Parties to be precedent for any other proceeding, whether pending or instituted in the future. The Parties have assented to the terms of this ACO only for the purpose of arriving at the settlement embodied in this ACO. Each of the Parties expressly reserves its right to advocate, in other current and future proceedings, or in the event

that the ACO is not adopted by the Commission, positions, principles, assumptions, arguments and methodologies which may be different than those underlying this ACO. The Parties agree and intend that, consistent with Rule 12.5 of the Commission's Rules of Practice and Procedure, a final Commission resolution approving this ACO should not be construed as a precedent or statement of policy of any kind for or against either Party in any current or future proceeding with respect to any issue addressed in this ACO.

C. General Considerations for Settlement

Section III.B of the Commission's Enforcement Policy states that "the following general considerations should be evaluated as part of any proposed settlement to be submitted for Commission review: 1. Equitable Factors; 2. Mitigating circumstances; 3. Evidentiary issues; and 4. Other weaknesses in the enforcement action[.]"⁴ The Parties explicitly considered these factors in their confidential settlement communications. Without waiving the protections of Rule 12.6 of the Commission's Rules of Practice and Procedure, the Parties represent that they took these factors into account, and each Party considered the risks and weaknesses of their positions. When taken as a whole, the Parties agree that the ACO amounts set forth in Section II are within the range of reasonable outcomes had this matter proceeded to formal litigation.

D. Incorporation of Complete ACO

The Parties have bargained in good faith to reach the ACO terms set forth herein, including in the Appendix. The Parties intend the ACO to be interpreted as a unified, integrated order and agreement, so that, consistent with Section III.C. above, if the Commission rejects or modifies any portion of this ACO or modifies the obligations placed upon SDG&E or SED from those that the ACO would impose, each of the Parties shall have a right to withdraw. This ACO

⁴ Resolution M-4846, Enforcement Policy at 15 (Section III.B.).

is to be treated as a complete package and not as a collection of separate agreements on discrete issues. To accommodate the interests related to diverse issues, the Parties acknowledge that changes, concessions, or compromises by a Party in one section of this ACO resulted in changes, concessions, or compromises by the other Party in other sections. Consequently, consistent with Section III.C. above, the Parties agree to actively oppose any modification of this ACO, whether proposed by any Party or non-Party to the ACO or proposed by an Alternate Draft Resolution, unless both Parties jointly agree to support such modification.

E. Commission Approval

“Commission Approval” means a resolution or decision of the Commission that is (a) final and no longer subject to appeal, which approves this ACO in full; and (b) does not contain conditions or modifications unacceptable to either of the Parties.

F. Governing Law

This ACO shall be interpreted, governed, and construed under the laws of the State of California, including Commission decisions, orders and rulings, as if executed and to be performed wholly within the State of California.

G. Other

1. The representatives of the Parties signing this ACO are fully authorized to enter into this Agreement.
2. The Parties agree that no provision of this ACO shall be construed against either of the Parties because a particular party or its counsel drafted the provision.
3. This ACO constitutes the entire agreement between the Parties and, supersedes all prior or contemporaneous agreements, negotiations, representations, warranties, and understandings of the Parties with respect to the subject matter set forth herein.
4. The rights conferred and obligations imposed on either of the Parties by this ACO shall inure to the benefit of or be binding on that Party’s successors in interest or assignees as if such successor or assignee was itself a party to this ACO.

5. Should any dispute arise between the Parties regarding the manner in which this ACO or any term shall be implemented, the Parties agree, prior to initiation of any other remedy, to work in good faith to resolve such differences in a manner consistent with both the express language and the intent of the Parties in entering into this ACO.
6. The Parties are prohibited from unilaterally filing a petition for modification or application for rehearing of the Commission resolution or decision approving this ACO with modification.
7. This ACO may be executed in counterparts.
8. Nothing in this ACO relieves SDG&E from any safety responsibilities imposed on it by law or Commission rules, orders, or decisions.
9. The provisions of Paragraph III.C. shall impose obligations on the Parties immediately upon the execution of this ACO.

V. DISCUSSION OF PENALTY ASSESSMENT METHODOLOGY FACTORS

The Penalty Assessment Methodology appended to the Commission's Enforcement Policy sets forth five factors that staff and the Commission must consider in determining the amount of a penalty for each violation: (1) severity or gravity of the offense; (2) conduct of the regulated entity; (3) financial resources of the regulated entity; (4) totality of the circumstances in furtherance of the public interest; and (5) the role of precedent.⁵ This ACO and Agreement was the result of arms-length negotiation between SED and SDG&E, which was guided by the factors set forth in the Penalty Assessment Methodology. As discussed below, consideration of those factors supports a Commission finding that the ACO and Agreement is reasonable and in the public interest. The attached NOV Appendix I to this ACO stipulates facts which provide a record basis for the Commission's determination. SDG&E's NOV Response at Appendix II provides additional detail to support the reasonableness of the ACO and Agreement. As listed in

⁵ Resolution M-4846 (Nov. 5, 2020), Enforcement Policy, Appendix I; *see* D.22-04-058 at 3–4 (affirming that consideration of the Penalty Assessment Methodology provides a basis for the Commission to determine that a negotiated settlement under the Commission's Enforcement Policy is reasonable and in the public interest).

II.A.1, II.A.2, and II.A.3, three violations from the NOV were dismissed in response to more information provided by SDG&E, attached in Appendix II.

Severity or Gravity of the Offense. The Commission has stated that the severity or gravity of the offense includes several considerations, including economic harm, physical harm, and harm to the regulatory process. Violations that caused actual physical harm to people or property are considered particularly severe.⁶

SDG&E's violations occurred over the course of two separate PSPS events, January 14-16, 2021, and November 24-26, 2021. Only the event occurring on November 24-26, 2021 resulted in a de-energization. As a result of those violations, SDG&E agrees to pay fines related to three specific violations which all occurred during the November 24-26, 2021 event; failure to provide notification to customers, failure to include a link to its Post Event Report on its website, and failure to open a Community Resource Center (CRC) on time. There is no evidence that any physical or economic harm occurred as a result of these violations. Pursuant to Commission requirements and orders, electrical corporations are required to provide customers with six notifications during a PSPS event resulting in de-energization. Due to circumstances further described in the NOV (Appendix I) and SDG&E's NOV Response (Appendix II), SDG&E customers failed to receive 6,983 PSPS notifications during the November 24-26 event. Due to the emphasis the Commission has placed on these requirements, these violations resulted in financial penalties totaling \$70,830.

SDG&E also had several reporting and notification violations as summarized in the NOV. These violations did not result in any physical or economic harm. These violations also

⁶ D.20-05-019 at 20; Enforcement Policy at 16.

had little potential of resulting in physical or economic harm. As such, these violations resulted in no penalty.

The Conduct of the Utility. In evaluating the conduct of the utility, the Commission considers the utility's conduct in preventing the violation, detecting the violation, and disclosing and rectifying the violation.⁷

SDG&E attributed the missed notifications mostly to "system failure" and a handful of others due to database coding issues. It was forthcoming in providing SED with information regarding the notification failures in both the Post Event Report and SDG&E's NOV Response. The system failure and database coding issues with SDG&E's notification have been resolved.

In response to SED's NOV, SDG&E responded with more information and context of their violation. As a result of this information, SED dismissed three violations. SDG&E accepts the facts from the NOV to be true. SDG&E was forthcoming during the discovery process and negotiated in good faith.

Financial Resources of the Utility. The Commission has described this criterion as follows:

Effective deterrence also requires that staff recognize the financial resources of the regulated entity in setting a penalty that balances the need for deterrence with the constitutional limitations on excessive penalties If appropriate, penalty levels will be adjusted to achieve the objective of deterrence, without becoming excessive, based on each regulated entity's financial resources.⁸

SDG&E is one of the largest electric utilities in the State of California in terms of customers and revenue. This amount is enough to emphasize the importance of the notification requirements relative to its size.

⁷ Enforcement Policy at 17.

⁸ Enforcement Policy at 17.

Totality of Circumstances in Furtherance of Public Interest. The Commission has

described this criterion as follows:

Setting a penalty at a level that effectively deters further unlawful conduct by the regulated entity and others requires that staff specifically tailor the package of sanctions, including any penalty, to the unique facts of the case. Staff will review facts that tend to mitigate the degree of wrongdoing as well as any facts that exacerbate the wrongdoing. In all cases, the harm will be evaluated from the perspective of the public interest.

An economic benefit amount shall be estimated for every violation. Economic benefit includes any savings or monetary gain derived from the act or omission that constitutes the violation.²

The Commission must evaluate penalties in the totality of the circumstances, with an emphasis on protecting the public interest. The ACO Amounts described above were tailored to the unique facts of the case and are reasonable. SDG&E was also fined for PSPS violations in 2020 for \$24,000 as a result of 49 missed de-energization notification violations. It should be noted that the 2020 finable violations did not include advanced notifications as it does in 2021. Including advance notifications, SDG&E had 8,790 notifications violations in 2020. SDG&E had no PSPS events in 2022.

Furthermore, with an appropriate resolution having been reached, it is in the public interest to resolve this proceeding now. The ACO obviates the need for SED to initiate an enforcement proceeding and for the Commission to adjudicate the disputed facts, alleged violations, and appropriate penalty. Approval of the ACO promotes administrative efficiency so that the Commission and parties are not required to spend substantial time and resources on continued litigation for a matter that has been satisfactory resolved.

The Role of Precedent. The Commission has described this criterion as follows:

Penalties are assessed in a wide range of cases. The penalties assessed in cases are not usually directly comparable. Nevertheless, when a case

² Enforcement Policy at 19.

involves reasonably comparable factual circumstances to another case where penalties were assessed, the similarities and differences between the two cases should be considered in setting the penalty amount.¹⁰

While not binding precedent, prior settlements are useful for comparison, with the acknowledgement that settlements involve compromise positions. SED considered the following settlements in evaluating this incident and the ACO:

- In 2020, SDG&E initiated five PSPS events. During one event on September 8-9, 49 customers never received notifications during de-energization or re-energization. SED issued an Administrative Enforcement Order (AEO) alleging SDG&E violated the PSPS notification requirements under Commission decision D.19-05-042 and assessed a fine of \$24,000. SED also imposed eight corrective actions to ensure future compliance with the Commission's PSPS rules. SDG&E accepted the AEO and the Commission approved the settlement in Resolution M-4863.
- In 2020, PacifiCorp initiated two PSPS events. While SED did find PacifiCorp violated some PSPS guidelines, they opted not to assess a penalty because they successfully notified customers as required by the Commission's decisions. SED opted to impose eight corrective actions on PacifiCorp to ensure future compliance with the Commission's PSPS rules. The Commission approved the settlement in Resolution M-4862.
- In 2020, Pacific Gas and Electric (PG&E) initiated seven PSPS events. SED found that PG&E failed to provide any customer notifications during de-energization. SED issued an AEO alleging PG&E violated the PSPS notification requirements under Commission decision D.19-05-042 and assessed a fine of \$12,000,000. SED also included six corrective actions to ensure future compliance with the Commission's PSPS rules. PG&E challenged the AEO. SED and PG&E settled the matter with an \$8 million fine. The amount was split up between a \$500,000 penalty to the General Fund and \$7,500,000 for the Independent Safety Monitor between 2023 and 2026. PG&E also had to comply with the eight corrective actions. The Commission approved the settlement in Resolution ALJ-445.
- In 2020, Southern California Edison (SCE) initiated sixteen PSPS events. SED found that 25,573 customers failed to get notifications spread out over the course of the sixteen events. SED issued an AEO alleging SCE violated the PSPS notification requirements under Commission decision D.19-05-042 and assessed a fine of \$10,000,000. SED also included fourteen corrective actions to ensure future compliance with the

¹⁰ Enforcement Policy at 21.

Commission's PSPS rules. SCE challenged the AEO. SED and SCE settled the dispute with a \$7 million fine. The amount was split up between a \$500,000 shareholder-funder fine to the General Fund, a \$500,000 shareholder-funded payment to SCE's Energy Assistance Fund, and \$6 million permanent disallowance of PSPSP program-related costs that are eligible for tracking in the Wildfire Mitigation Plan Memorandum Account. SCE also had to comply with the fourteen corrective actions. The Commission approved the settlement in Resolution ALJ-440.

The prior settlements reflect outcomes that included a mix of penalties, shareholder funding of programs, and/or remedial action plans. The Parties believe that the ACO results in a reasonable outcome considering these precedents and the criteria discussed in this section.

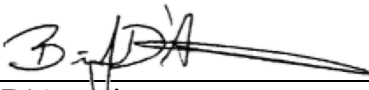
The Parties mutually believe that, based on the terms and conditions stated above, this ACO is reasonable, consistent with the law, and in the public interest.

IT IS HEREBY AGREED.

[Signatures immediately follow this page]

DATED: May 17, 2024

San Diego Gas and Electric Company

By: 

Brian D'Agostino
Vice President
Wildfire and Climate Science
San Diego Gas and Electric Company

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DATED: June 3rd, 2024

Safety and Enforcement Division
California Public Utilities Commission

By: **Leslie L Palmer** Digitally signed by Leslie L Palmer
Date: 2024.06.03 10:36:26 -07'00'

Leslie L. Palmer
Director, Safety and Enforcement Division
California Public Utilities Commission

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