

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



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Order Instituting Rulemaking to Examine Electric
Utility De-Energization of Power Lines in Dangerous
Conditions.

Rulemaking 18-12-005
(Filed December 13, 2018)

**JOINT MOTION REQUESTING COMMISSION REVIEW
OF PSPS POST-EVENT REPORTS**

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Pursuant to Rule of Practice and Procedure 11.1(a) of the California Public Utilities Commission (“Commission”), AT&T Services, Inc., the California State Association of Counties, the California Community Choice Association, the Center for Accessible Technology, the City of San Jose, CTIA, the Joint Local Governments (the Counties of Kern, Marin, Mendocino, Napa, Nevada, San Luis Obispo, Santa Barbara, and Sonoma, and the City of Santa Rosa), Mussey Grade Road Alliance, The Protect Our Communities Foundation, the Rural County Representatives of California, Sprint Spectrum L.P. dba Sprint, T-Mobile West LLC dba T-Mobile,¹ the Utility Consumer Action Network, and The Utility Reform Network (together the “Joint Parties”) respectfully request that the Commission undertake a review of each determination by the major investor owned utilities (“IOUs”)² to initiate a public safety power shut off (“PSPS”) event to assess whether it was a reasonable exercise of the IOU’s discretion under the Public Utilities Code, as contemplated by prior Commission decisions.

I. INTRODUCTION AND SUMMARY OF REQUEST

From 2017 through 2019, the IOUs have conducted 33 power shutoffs. Following each shutoff, the IOU is required to file a post-event report with the Commission. The Commission has previously indicated that it will review those reports and issue a determination as to whether each shutoff was properly conducted and whether the shutoff was a reasonable exercise of the IOU’s discretion. To date, there has been no determination by the Commission that any of the

¹ With the April 2020 consummation of the merger between T-Mobile US, Inc. and Sprint Corporation, T-Mobile West LLC and Sprint Spectrum L.P. are now both wholly-owned subsidiaries of T-Mobile USA, Inc.”

² In this pleading, “IOUs” refers to Pacific Gas and Electric Company (“PG&E”), Southern California Edison Company (“SCE”) and San Diego Gas & Electric Company (“SDG&E”).

shutoff events initiated by the IOUs has been a reasonable exercise of their discretion.³ Such determinations are necessary in order to help ensure that future PSPS events are properly conducted and only used as a tool of last resort, and to otherwise mitigate the impact of these events.

Prior to entering the 2020 peak power shutoff “season,”⁴ it is imperative that at least some of these reasonableness determinations be completed. Absent such, California could experience a repeat of last fall, with wide spread shutoffs covering huge swaths of the state for extended periods of time, as the Commission has provided no guidance as to whether the IOUs prior determinations to shutoff power were reasonable; i.e., were “last resort” options, necessary to protect public safety and where the “benefit of de-energization outweighed potential public safety risks.”⁵ The need for this type of guidance from the Commission is further heightened given the potential impact of such shutoffs during the COVID-19 crisis.

Specifically, the Joint Parties recommend that the Commission focus on conducting a review of the fall 2019 PSPS events first, as these events were the most impactful. The Commission should start with the one most recent in time for each IOU and work its way back through the events. For each event reviewed, the Joint Parties respectfully request that the

³ In May of 2018, the Safety and Enforcement Division issued one report addressing two PSPS events in SDG&E’s service territory in December 2017. *See* https://www.cpuc.ca.gov/uploadedFiles/CPUC_Website/Content/About_Us/Organization/Divisions/News_and_Outreach_Office/May%202018%20SED%20Review%20of%20SDGE%20December%202018%20De-energization%20Events_.pdf. While SED stated that SDG&E’s “actions appear to have been reasonable” it caveated this statement that the report “does not bind SED to any statements made [therein].” *Id.*, p. 1.

⁴ While the Joint Parties recognize that PSPS events can occur at any time at which certain conditions exist, review of the Commission’s website on these events show that the vast majority have occurred in October and November.

⁵ *See* D. 19--05-042, Appendix A, Public Safety Power Shutoff Guidelines, p. A 24.

Commission issue a determination as to whether the IOU's decision to initiate the PSPS event, and its implementation of such event, was in fact reasonable.⁶

II. DISCUSSION

A. Background

Over eight years ago, the Commission began addressing the need to place parameters around the IOUs' discretion to de-energize their power lines. Throughout this progression, the Commission has repeatedly emphasized its jurisdiction to assess the reasonableness of such actions, and has stressed the importance of post-event reports as the touchstone of such reasonableness reviews.

In 2012, the Commission issued Decision ("D.") 12-04-024, which acknowledged that SDG&E has the discretion to de-energize its electrical circuits under certain circumstances and conditions. In doing so, the Commission stated:

Any decision by SDG&E to shut off power under its statutory authority may be reviewed by the Commission pursuant to its broad jurisdiction over matters regarding the safety of public utility operations and facilities. The Commission may decide at that time whether SDG&E's decision to shut off power was reasonable and qualifies for an exemption from liability under SDG&E's Electric Tariff Rule 14.⁷

In assessing whether SDG&E's decision to shut off power was reasonable, the Commission stated that it would consider certain factors. Before delineating such factors, the Commission emphasized that "there is a strong presumption that power should remain on for

⁶ The Joint Parties recognize that the recently released Public Report on the Late 2019 Public Safety Power Shutoff Events in I.19-11-013 includes reporting recommendations but none of these explicitly address the information necessary to conduct a proper reasonableness review. See Safety and Enforcement Division, *Public Report on the Late 2019 Public Safety Power Shut Off Events* (April 30, 2020) ("SED Fall 2019 PSPS Event Report"), pp. 86-87. Accordingly, as part of its reasonableness review, the Joint Parties submit that the Commission establish a detailed framework going forward as to what each post-event report must contain in order to demonstrate that the benefit of de-energization outweighed potential public safety risks and was deployed by the IOU only as a last resort.

⁷ D.12-04-024, p. 30. The Commission made the same statement in D. 09-09-030 (p.62).

public safety reasons” and thus “SDG&E will have the burden of demonstrating that its decision to shut off power was necessary to protect public safety.”⁸ In addition, the Commission determined that a demonstration of reasonableness included a showing that SDG&E relied “on other measures, to the extent available, as alternatives to shutting off power.”⁹ To enable timely review of any SDG&E determination to shut off power, D.12-04-024 required SDG&E to submit a post-event report, with specified content, no later than 10 business days after any shutoff. In addition to an enumerated list of items that must be included in the report, the Commission stated that SDG&E should include “*any other matters that SDG&E believes are relevant to the Commission’s assessment of the reasonableness of SDG&E’s decision to shut off power.*”¹⁰

Following the 2017 wildfire season, which was described as “the most destructive wildfire season on record ... including 5 of the 20 most destructive wildland-urban interface fires in the state’s history,”¹¹ the Commission, in July of 2018, approved Resolution ESRB-8, which extended the de-energization requirements of D.12-04-024 to all IOUs and added new requirements, including expanded reporting requirements. Resolution ESRB-8 emphasized that the post-event report is “important to allow safety oversight by SED....”¹² Moreover, in Resolution ESRB-8, the Commission summarized the factors that it had previously ascribed to SDG&E’s de-energization decisions, and added: “As other electric IOUs are developing and/or instituting de-energization plans, *it is important that these factors be used to assess the reasonableness of all electric IOU de-energization events* in order to ensure that the power shut

⁸ *Id.*, p. 30.

⁹ *Id.*, p. 31.

¹⁰ D.12-04-024, p. 33 (emphasis added).

¹¹ Resolution ESRB-8, p. 2.

¹² *Id.*, p. 4.

off is executed only as a last resort and for a good reason.”¹³ The Commission accordingly applied expanded reporting requirements and “[t]he reasonableness review discussion in D.12-04-024” to all IOUs.¹⁴

In late 2018, the Commission initiated a rulemaking to further examine the IOUs’ de-energization of power lines (R. 18-12-005). As a result of that rulemaking, last summer, the Commission further expanded its de-energization requirements in D.19-05-042, including an increase in the elements that are required to be included in post-event reporting. Of critical import, the IOUs were directed to provide an “explanation of how the utility determined that the benefit of de-energization outweighed potential public safety risks”¹⁵ and information on the “[d]ecision criteria leading to de-energization, including an evaluation of alternatives to de-energization that were considered.”¹⁶

In D.19-05-042, the Commission re-affirmed its intent to undertake reasonableness reviews and further highlighted the importance of the submission of the post-event reports and their role in assessing the reasonableness of each event:

The Commission views post-event reporting as a means of facilitating learning and improvement across utilities, state and local public safety agencies and local jurisdictions. Therefore, it is imperative that the utilities provide detailed and accurate information to the Commission and that the Commission review each de-energization event for reasonableness. As with other elements of de-energization, reporting will be an iterative process that will be further developed with time.¹⁷

After the issuance of D. 19-05-42, the state of California experienced shutoffs of unprecedented scope and duration. In the fall of 2019, the IOUs shut off power 12 times,

¹³ *Id.*, p. 4 (emphasis added).

¹⁴ *Id.*, p. 5.

¹⁵ D. 19-05-042, Appendix A, p. A22.

¹⁶ *Id.*, Appendix A, p. A24.

¹⁷ D.19-05-042, p. 106 .

affecting up to 38 counties and 975,000 customers.¹⁸ For one of those shutoffs, the average duration was 58 hours.¹⁹ As required by Resolution ESRB-8 and Decision 19-05-042, the IOUs submitted post-event reports for all incidents to SED. Pursuant to Decision 19-05-042, many stakeholders provided substantive comments on these reports “in order to inform SED’s reasonableness review.”²⁰

Subsequently, the Commission again updated the PSPS Guidelines via D.20-05-051. In that decision, the Commission noted that it “may also take a wholistic review of the reporting requirements that have been developed for de-energization events in the third phase of this proceeding.”²¹

In November of 2019, the Commission opened an investigation to consider whether the fall 2019 shutoffs complied with the Commission’s de-energization requirements.²² As part of the OII, SED was tasked with preparing a report that assessed the IOUs’ implementation of the PSPS Guidelines during the late 2019 PSPS events and to identify areas where the PSPS Guidelines and/or utility actions must be improved.²³

On June 8, 2020, the ordered SED Report was released in the OII. As stated therein, the report:

...provides an *initial* assessment of electric IOU performance regarding the issues presented in the preliminary scoping memo, including the effectiveness of notifications and communications, effectiveness of efforts to minimize the impact of PSPS events, effectiveness of actions taken to ensure public safety, whether

¹⁸ OII, p. 4. The term “customer” is associated with a metered account, thus these shut offs impacted millions of people.

¹⁹ *Id.*

²⁰ D.19-05-042, Appendix A, p.22. Due to the extent and number of the shutoffs, the Commission expanded the normal 15 day comment period to 25 days.

²¹ D.20-05-051. p. 75.

²² OII, p. 1.

²³ *Id.*, p. 12, Ordering Paragraph 4.

electric IOU delays in implementing any of the Guideline requirements presented challenges, and whether a lack of preparation or coordination interfered with an electric IOU's ability to properly conduct PSPS during the late 2019 PPS events.²⁴

The SED Fall 2019 PPS Event Report does not contain an assessment as to whether the determinations made by the IOUs in the Fall of 2019 to shutoff power were reasonable exercises of their discretion under the Public Utilities Code.

B. Relief Requested

As noted above, the Commission has repeatedly emphasized the importance of the post-PSPS event reports and recognized that “it is *imperative* ... that the Commission review each de-energization event for reasonableness.”²⁵ However, as we head into the fall 2020 shutoff season, there have been no apparent assessments of whether the IOUs' past determinations to turn off the power were reasonable based upon the criteria previously established by the Commission, including whether the benefit of de-energization outweighed the potential public safety risks.

This task was not performed by SED in its production of the SED Fall 2019 PPS Event Report. While it does not evaluate the various events, the Report notes the “inadequacies” of the material that each IOU provided to illustrate how it determined that the benefit of de-energization outweighed potential public safety risks.²⁶ Specifically with respect to PG&E, SED found:

In its post-event reports, PG&E did not provide an in-depth discussion of how PG&E determined that the benefit of de-energization outweighed potential public safety risks. PG&E provided general information with minimal quantitative supporting data or rationale. In the data request response about this requirement, PG&E did not provide a direct response to this inquiry and instead directed SED

²⁴ SED Fall 2019 PPS Event Report, p. 2 (emphasis added).

²⁵ D.19-05-042, p. 106 (emphasis added).

²⁶ SED Fall 2019 PPS Event Report, p. 56.

to PG&E's "Public Safety Power Shutoff Annex," which is an annex to PG&E's Company Emergency Response Plan.²⁷

Turning to SCE, SED determined :

In its post-event reports for October 26, 2019 and November 4, 2019, SCE did not provide an in-depth discussion on how SCE determined that the benefit of de-energization outweighed potential public safety risks. In its reports, SCE provided general information with minimal quantitative supporting data or rationale.²⁸

Finally, with respect to SDG&E, SED found that:

In its post-event reports for October 10-11, 2019 and October 20-November 1, 2019, SDG&E did not provide an adequate explanation regarding its decision to de-energize. SDG&E did not provide an in-depth discussion on how it determined that the benefit of de-energization outweighed potential public safety risks. In its reports, SDG&E provided general information with minimal quantitative supporting data or rationale.²⁹

Given the overall lack of information provided by the IOUs regarding their respective determinations to shutoff power, SED could make no findings or recommendations on whether the shutoffs were reasonable exercises of the IOUs' discretion. Instead, SED merely offers suggestions regarding additional data that the IOUs should submit as part of their post-event reports. The SED Fall 2019 PSPS Event Report does not fulfill the Commission's oft-stated intention to assess the reasonableness of the IOUs' actions.

Thus, at present, neither the IOUs, consumers, the parties to this motion, nor the many other stakeholders in these proceedings have received guidance as to whether the Commission believes that the IOUs determinations to shutoff power have been a reasonable exercise of their authority to shut off power in emergency situations when necessary to protect public safety.

²⁷ *Id.*

²⁸ *Id.*, p. 58.

²⁹ *Id.*, p.60.

In order to help ensure that future shutoffs are guided by the Commission's assessments of the IOUs' prior actions, the Joint Parties respectfully request that the Commission take the action that it previously determined was imperative -- reviewing each PSPS event for reasonableness. Such review for each event should result in a determination as to whether the IOU's decision to shut off the power was a reasonable exercise of its discretion under the Public Utilities Code and necessary in order to protect public safety. Given the widespread impact of the PSPS events that occurred in the Fall of 2019, the Commission should begin its review with the one most recent in time for each IOU and work its way back through the events, with the goal of issuing at least a few of its determinations prior to the peak 2020 shutoff season.

In addition, the Joint Parties respectfully submit that the Commission use this opportunity to establish clear informational requirements to which the IOUs must adhere in order to demonstrate in their post-event reports that the required public safety analysis was performed.

Finally, the Joint Parties request that these actions be taken within this docket rather than Investigation 19-11-013, for several reasons. First, all post-event reports should be evaluated, not only those involving the events under investigation in I.19-11-003. Second, this rulemaking is more amenable to making determinations in time for peak shutoff season. Third, in D.19-05-042 issued in this docket, the Commission emphasized the importance of its review of the PSPS events to determine their reasonableness.

III. CONCLUSION

Joint Parties agree with the Commission that a post-event review process is a critical tool for assessing the efficacy and prudence of PSPS so as to refine its use as a last resort. For the reasons stated above, Joint Parties respectfully request that the Commission, beginning with the Fall 2019 PSPS events, issue a determination for each event as to whether the IOU's decision to initiate the PSPS event, and its implementation of such event, was in fact reasonable.

Respectfully submitted June 15, 2020, at San Francisco, California.

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