



# Moraga-Orinda Fire District

## Board of Directors

### CALL AND NOTICE OF A SPECIAL MEETING

January 20, 2021

**6:30 CLOSED SESSION ONLY**

*Pursuant to Executive Order N-29-20, Teleconferencing Restrictions of the Brown Act have been suspended.*

#### **PLEASE NOTE TELECONFERENCE MEETING INFORMATION:**

To join the Meeting:

By Phone: 1-669-900-6833

Please click the link below to join the webinar by Zoom:

<https://us02web.zoom.us/j/89062959419>

Webinar ID: 890 6295 9419

**Public Participation** is encouraged by joining via the ZOOM link or the dial-in information above. You can access either via a smartphone or computer App (Zoom) or via phone.

Live Public Comment can be provided via the Zoom app (during public comment) by the raise hand or chat function. If participating by phone, dial \*9 to *raise your hand*. Staff will unmute participant to allow comment. Participants will be unmuted in the order of hands raised or chat request to comment.

Written Public Comment can be provided via email at [info@mofd.org](mailto:info@mofd.org). Emails will be read into the record by staff during public comment at their normal cadence and will be limited to a maximum of 3 minutes. To be read into the record, e-mail must contain in the subject line "Public Comment – Not on the Agenda" or "Public Comment – Agenda Item #" with the relevant agenda item indicated.

The meeting will be live streamed via the MOFD YouTube Channel. A link is accessible via the District's website.

#### 1. OPENING CEREMONIES

- 1.1. Call the Meeting to Order
- 1.2. Roll Call

#### 2. PUBLIC COMMENT

General public comment on any closed session item that will be heard. Comments may be limited to no more than three minutes pursuant to board policy.

#### 3. CLOSED SESSION

- 3.1. **Conference with Legal Counsel – Existing Litigation**  
(Paragraph (1) of subdivision (d) of Section 54956.9)  
Pacific Gas and Electric Company vs. Moraga-Orinda Fire Protection District, Contra Costa County Superior Court – Martinez.

#### 4. RECONVENE THE MEETING

- 4.1. Call the Meeting to Order
- 4.2. Roll Call

#### 5. REPORT OF CLOSED SESSION ACTION

#### 6. PUBLIC COMMENT – ITEMS NOT ON THE AGENDA

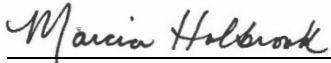
At the beginning of each regular District Board meeting, any member of the public may address the District Board concerning any item **not** on the Board's agenda but within the subject matter jurisdiction of the Board. Speakers will be limited to three (3) minutes unless otherwise specified by the Presiding Officer. The public will be given an opportunity to speak on each agenda item at the time it is called. The Board may discuss and/or take action regarding any or all of the items listed below. Once the public comment portion of any item on this agenda has been closed by the Board, no further comment from the public will be permitted unless authorized by the Board and if so authorized, said additional public comment shall be limited to the provision of information not previously provided to the Board or as otherwise limited by order of the Presiding Officer or the Board.

7. ADJOURNMENT

*The Moraga-Orinda Fire Protection District ("District"), in complying with the Americans with Disabilities Act ("ADA"), requests individuals who require special accommodations to access, attend and/or participate in District Board meetings due to a disability, to please contact the District Chief's office, (925) 258-4501, at least one business day prior to the scheduled District Board meeting to ensure that we may assist you.*

Any disclosable public records related to an open session item on a Regular meeting agenda and distributed by the Moraga-Orinda Fire District to a majority of members of the Board of Directors less than 72 hours prior to that meeting are available for public inspections at 1280 Moraga Way, Moraga, during normal business hours.

I hereby certify that this agenda in its entirety was posted on **January 19, 2021**, at the Moraga and Orinda Fire Administration offices, Stations 41, 42, 43, 44, and 45. Agenda provided to the Moraga Town Office (Hacienda) and Orinda City Hall.



Marcia Holbrook  
District Secretary/Clerk

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Andre W. Brewster III (State Bar No. 306241) 560 Mission Street Twenty Seventh Floor San Francisco, CA 94105 TELEPHONE NO.: (415) 512-4000 FAX NO.: (415) 512-5058 ATTORNEY FOR (Name): Pacific Gas and Electric Company	<b>FOR COURT USE ONLY</b>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Contra Costa STREET ADDRESS: 725 Court Street MAILING ADDRESS: CITY AND ZIP CODE: Martinez, 94553 BRANCH NAME: Wakefield Taylor Courthouse	CASE NUMBER:
CASE NAME: Pacific Gas and Electric Co. v. Moraga-Orinda Fire Protection District	JUDGE:  DEPT:
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

*Items 1-6 below must be completed (see instructions on page 2).*

1. Check **one** box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |   |  |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties  | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence  | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a.  monetary    b.  nonmonetary; declaratory or injunctive relief    c.  punitive
4. Number of causes of action (specify): One
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 18, 2020  
 Andre W. Brewster III  
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET**

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

**CASE TYPES AND EXAMPLES**

**Auto Tort**

- Auto (22)–Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
  - Medical Malpractice–Physicians & Surgeons
  - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

**Non-PI/PD/WD (Other) Tort**

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

**Employment**

- Wrongful Termination (36)
- Other Employment (15)

**Contract**

- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
- Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case–Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

**Real Property**

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quiet Title
  - Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

**Unlawful Detainer**

- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

**Judicial Review**

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ–Administrative Mandamus
  - Writ–Mandamus on Limited Court Case Matter
  - Writ–Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal–Labor Commissioner Appeals

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)**

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

**Enforcement of Judgment**

- Enforcement of Judgment (20)
  - Abstract of Judgment (Out of County)
  - Confession of Judgment (*non-domestic relations*)
  - Sister State Judgment
  - Administrative Agency Award (*not unpaid taxes*)
  - Petition/Certification of Entry of Judgment on Unpaid Taxes
  - Other Enforcement of Judgment Case

**Miscellaneous Civil Complaint**

- RICO (27)
- Other Complaint (*not specified above*) (42)
  - Declaratory Relief Only
  - Injunctive Relief Only (*non-harassment*)
  - Mechanics Lien
  - Other Commercial Complaint Case (*non-tort/non-complex*)
  - Other Civil Complaint (*non-tort/non-complex*)

**Miscellaneous Civil Petition**

- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief From Late Claim
  - Other Civil Petition

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND NO LATER THAN FEBRUARY 26, 2021. READ INFORMATION BELOW.**

**AVISO! LO HAN DEMANDADO. SI NO RESPONDE A MÁS TARDAR EL 26 DE FEBRERO, 2021, LA CORTE PUEDE DECIDIR EN SU CONTRA SIN ESCUCHAR SU VERSIÓN. LEA LA INFORMACIÓN A CONTINUACIÓN.**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA

PACIFIC GAS AND ELECTRIC  
COMPANY,

Petitioner,

vs.

MORAGA-ORINDA FIRE PROTECTION  
DISTRICT and ALL PERSONS  
INTERESTED IN THE VALIDITY OF  
ORDINANCE NO. 20-04 OF THE  
MORAGA-ORINDA FIRE PROTECTION  
DISTRICT,

Respondents.

Case No.

**SUMMONS (CITACION JUDICIAL)**  
(Code of Civil Procedure section 860 *et seq.*)

**NOTICE TO RESPONDENTS: MORAGA-ORINDA FIRE PROTECTION DISTRICT and ALL PERSONS INTERESTED IN THE MATTER OF THE VALIDITY OF ORDINANCE NO. 20-04 OF THE MORAGA-ORINDA FIRE PROTECTION DISTRICT.**

1. Pacific Gas and Electric Company (“PG&E”) has filed a Petition for Declaratory Relief and for Reverse Validation under Code of Civil Procedure section 860 *et seq.* (“Petition”) in the Contra Costa County Superior Court – Martinez.

2. The Petition relates to the adoption of an ordinance by the Moraga-Orinda Fire Protection District (“District”). The title of the ordinance is “Ordinance No. 20-04: An Urgency Ordinance of the Moraga-Orinda Fire Protection District of Contra Costa County, California Requiring Electrical Utilities to Provide Notice of Work in High-Risk Areas and Restricting Certain Electrical Utility Work During Red Flag Warning Periods” (the “Ordinance”). PG&E is

challenging the validity of the Ordinance. PG&E asserts that the Ordinance violates the California Constitution and provisions of the Health and Safety Code, and is therefore invalid.

3. The Ordinance requires electrical utilities, including PG&E, to provide advance notice to the District before engaging Safety and Infrastructure Protection Teams or otherwise engaging in fire safety, prevention, or mitigation services within defined high fire risk areas (“HFRA’s”) in the District during certain times, and to provide internal documentation of safety briefings following such work. The Ordinance also forbids electrical utilities from performing scheduled, non-emergency work that requires engaging a SIPT or other personnel to engage in fire safety, prevention, or mitigation services in HFRA’s in the District during certain weather conditions. The Ordinance authorizes fines for violations of these requirements.

4. All persons interested in this matter may contest the legality or validity of the Ordinance by appearing and filing with the Court a written answer to the Petition not later than February 26, 2021. Persons who contest the legality or validity of the matter will not be subject to punitive action, such as wage garnishment or seizure of their real or personal property. If you do not file a written answer with the Court, PG&E may apply to the Court for the relief demanded in the Petition.

5. **You may seek the advice of an attorney in any matter connected with the Petition or this summons. Such attorney should be consulted promptly so that your pleading may be filed or entered within the time required by this summons.**

6. The name and address of the court are: Wakefield Taylor Courthouse, 725 Court Street, Martinez, CA 94553.

7. The name, address, and telephone number of PG&E’s attorney are: Erin J. Cox; 350 South Grand Avenue, Fiftieth Floor, Los Angeles, California 90071-3426; (213) 683-9100.

DATE: \_\_\_\_\_, Clerk  
Contra Costa County Superior Court

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Attorneys for Petitioner  
PACIFIC GAS AND ELECTRIC COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA

PACIFIC GAS AND ELECTRIC  
COMPANY,

Petitioner,

vs.

MORAGA-ORINDA FIRE PROTECTION  
DISTRICT and ALL PERSONS  
INTERESTED IN THE VALIDITY OF  
ORDINANCE NO. 20-04 OF THE  
MORAGA-ORINDA FIRE PROTECTION  
DISTRICT,

Respondents.

Case No.

**PETITION FOR DECLARATORY  
RELIEF AND FOR REVERSE  
VALIDATION UNDER CODE OF CIVIL  
PROCEDURE SECTION 860 *ET SEQ.***

Dept.:  
Judge:

## INTRODUCTION

1. Petitioner Pacific Gas and Electric Company (“PG&E”) brings this action under Code of Civil Procedure section 860 *et seq.* against Respondent Moraga-Orinda Fire Protection District (the “District”) seeking to invalidate the District’s “Ordinance No. 20-04: An Urgency Ordinance of the Moraga-Orinda Fire Protection District of Contra Costa County, California Requiring Electrical Utilities to Provide Notice of Work in High Fire-Risk Areas and Restricting Certain Electrical Utility Work During Red Flag Warning Periods” (the “Ordinance”). The Ordinance purports to regulate matters within the exclusive regulatory authority of the California Public Utilities Commission (the “Commission”), exceeds the authority granted to the District by the Constitution and the Legislature, and is preempted. Under the validation statute, all persons interested in the validity *vel non* of the Ordinance are also parties to this case.

2. PG&E is a state-regulated public utility, subject to the exclusive regulatory jurisdiction of the Commission. The Commission has paramount jurisdiction over all matters germane to the operation of public utilities, including matters related to the maintenance and safe operation of utility equipment as a matter of statewide public safety. Indeed, the Constitution and applicable statutes confer exclusive jurisdiction over such matters to the Commission. The Commission has also been active in its exercise of this jurisdiction. The Commission reviews and approves electric utilities’ plans to maintain and operate their equipment in a manner that mitigates wildfire risk. The Commission approved PG&E’s Wildfire Mitigation Plan (“WMP”), which provides for the deployment of PG&E’s Safety and Infrastructure Protection Teams (“SIPTs”) to provide standby support for electrical work and monitor conditions that affect wildfire risk, as well as performing various other tasks. PG&E’s WMP also provides for many activities designed to reduce fire risk that are performed by non-SIPT PG&E personnel. In addition, the Commission has specifically provided guidelines applicable to the implementation of Public Safety Power Shutoff (“PSPS”) events by electric utilities—that is, proactive de-energization of power lines during unusually dry and windy weather conditions in order to prevent catastrophic wildfires and preserve life and property—including the notice that should be provided to service providers such as fire departments and emergency responders. As explained in PG&E’s most recent WMP,



“[w]hen PG&E activates for a PSPS event, it deploys the SIPT teams to collect valuable weather and fuel data and report this information” to PG&E’s Wildfire Safety Operations Center. “SIPT crews also support PSPS zone generation sites by patrolling overhead sections of re-energized lines.”

3. The Ordinance, adopted by the District on or about October 21, 2020, (a) requires that PG&E must provide at least 48 hours’ notice to the District before engaging a SIPT or otherwise engaging in fire safety, prevention, or mitigation services within defined high fire risk areas (“HFRAs”) at specified times; (b) requires PG&E to provide internal documentation of safety briefings following such work; and (c) forbids PG&E from performing scheduled, non-emergency work that requires engaging a SIPT or other personnel to engage in fire safety, prevention, or mitigation services in HFRAs during certain weather conditions. The Ordinance imposes a fine if PG&E does not comply with the foregoing requirements. These requirements interfere with PG&E’s ability to respond flexibly to changing conditions in order to protect public safety. More broadly, they pertain to matters within the exclusive jurisdiction of the Commission, fall beyond the District’s jurisdiction granted to it by the Constitution and the Legislature, and are preempted. These requirements of the District’s Ordinance thus warrant invalidation pursuant to Code of Civil Procedure section 860 *et seq.*

### **PARTIES**

4. PG&E is a regulated public utility that provides electricity and natural gas, and related services, to approximately 16 million customers in northern and central California. PG&E serves customers and operates equipment within Contra Costa County. PG&E is an “interested person” pursuant of Code of Civil Procedure section 863.

5. The District is an autonomous Special District as defined under the Fire Protection District Law of 1987, Health and Safety Code section 13800 *et seq.* It is governed by a five-member Board of Directors. The District’s geographical area is located in Contra Costa County, California. The services provided by the District include fire suppression and emergency medical response.

6. The other respondents in this matter are All Persons Interested in the matters set forth herein, and are named in this Petition pursuant to Code of Civil Procedure sections 861, 861.1, 862, and 863.

### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over the subject matter of this action pursuant to Code of Civil Procedure section 860 *et seq.* and Health and Safety Code section 13806. Health and Safety Code section 13806 provides that any action to determine the validity of any action of a fire protection district created pursuant to the Fire Protection District Law of 1987 shall be brought pursuant to Chapter 9 of Title 10 of Part 2 of the Code of Civil Procedure, section 860 *et seq.* Code of Civil Procedure section 863, in turn, provides that any interested person may bring an action within the time and in the court specified by section 860 to determine the validity of a matter that is authorized to be determined pursuant to that chapter.

8. Venue in this Court is proper under Code of Civil Procedure sections 860 and 863. Section 860 provides that an action to determine the validity of a matter pursuant to section 860 *et seq.* may be brought “in the superior court of the county in which the principal office of the public agency is located.” The District’s administration building is located in Moraga, California, which is part of Contra Costa County, and therefore venue in this Court is proper.

### **GENERAL ALLEGATIONS**

9. The California Constitution enables the Legislature to vest in the Commission exclusive power and authority with respect to “all matters cognate and germane to the subject of public utilities.” (*Pacific Tel. & Tel. v. Eshleman* (1913) 166 Cal. 640, 652-660; *see* Cal. Const., art. XII, § 5.) The Constitution, moreover, explicitly prohibits municipalities from regulating “matters over which the Legislature grants regulating power to the Commission.” (Cal. Const., art. XII, § 8.) Factors which resolve any doubts as to the scope of the Commission’s jurisdiction include the Commission’s technical expertise and the state’s interest in regulating the safety of utility operations and equipment (*Los Angeles Metropolitan Dist.* (1962) 60 Cal.P.U.C. 125, 135 (Dec. No. 64151)), and the state’s interest in protecting utilities from the effects of multiple,

inconsistent local regulations. (*Los Angeles Ry. Corp. v. Los Angeles* (1940) 16 Cal.2d 779, 783-784; *California Water & Tel. Co. v. Los Angeles* (1967) 253 Cal.App.2d 16, 31).

10. The Legislature, in turn, has granted the Commission broad authority to regulate public utilities. Public Utilities Code section 701 provides that “[t]he commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in [the Public Utilities Act] or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.” Section 768 further provides that the Commission may “require every public utility to construct, maintain, and operate its line, plant, system, equipment, apparatus, tracks, and premises in a manner so as to promote and safeguard the health and safety of its employees, passengers, customers, and the public,” and may “require the performance of any other act which the health or safety of its employees, passengers, customers, or the public may demand.” The Legislature has also specifically required, in Public Utilities Code section 8386, subdivision (a), that “[e]ach electrical corporation shall construct, maintain, and operate its electrical lines and equipment in a manner that will minimize the risk of catastrophic wildfire posed by those electrical lines and equipment.” Section 8385, subdivision (b), provides that “[t]he commission shall supervise an electrical corporation’s compliance with [that] requirement[.]”

#### **The Commission’s Exercise of Regulatory Authority**

11. Consistent with the Commission’s responsibility to supervise electrical corporations’ compliance with wildfire mitigation requirements, Public Utilities Code section 8386(b) requires electrical corporations to submit WMPs to the Commission for its review and approval. The statute sets forth specific topics that WMPs must address; SB901, effective January 1, 2019; AB 1054, effective July 12, 2019; and SB 70, SB 167, and SB 560, effective January 1, 2020, expanded these requirements. The required content of WMPs includes, among other things, “[a] description of the preventive strategies and programs to be adopted by the electrical corporation to minimize the risk of its electrical lines and equipment causing catastrophic wildfires,” “[p]lans for vegetation management,” and “[p]lans for inspections of the electrical corporation’s electrical infrastructure.” Public Utilities Code section 8386.1 requires the Commission to assess penalties on a utility that fails to substantially comply with its WMP.

Public Utilities Code section 8386.3 requires the Commission's Wildfire Safety Division to oversee an electrical corporation's compliance with an approved WMP, and, under section 8389, subdivision (g), "[I]f the division determines an electrical corporation is not in compliance with its approved wildfire mitigation plan, it may recommend that the commission pursue an enforcement action against the electrical corporation for noncompliance with its approved plan."

12. On October 25, 2018, the Commission issued an Order Instituting Rulemaking, initiating Rulemaking 18-10-007 to implement the provisions of SB 901 related to WMPs by providing guidance on the form and content of the plans and providing a venue for review of utilities' plans. PG&E and other utilities submitted their WMPs to the Commission on February 6, 2019. PG&E later amended its WMP on February 14, 2019. On June 3, 2019, the Commission issued Decision D.19-05-037, approving PG&E's WMP as consistent with the requirements of Public Utilities Code section 8386. PG&E submitted its 2020 WMP on February 7, 2020. The Commission issued a resolution ratifying the Wildfire Safety Division's conditional approval of PG&E's 2020 WMP on June 11, 2020.

13. In its WMP, PG&E described the various programs it is undertaking in order to prevent wildfires. As reflected in its WMP, PG&E performs activities that address wildfire risk in accordance with the Commission's regulatory standards for the design, procurement, construction, testing, operations, and maintenance of its electrical assets.

14. One type of program described in PG&E's WMP is the use of SIPTs to support PG&E's work in high fire-risk conditions. For the SIPTs, PG&E employs approximately 60 highly qualified personnel, including former firefighters and first responders, to comprise two-person teams.

15. As stated in PG&E's WMP submitted on February 6, 2019, "[t]he purpose of the SIPT is to assist [PG&E's Wildfire Safety Operations Center ("WSOC")] decision making, protect PG&E assets, and assist with emergency response as approved and directed by the [Agency Having Jurisdiction ("AHJ")] (e.g., CAL FIRE)." In addition, SIPTs are deployed to take real-time weather observations and monitor conditions in the field both before and during PSPS events. Reports of conditions by SIPTs to the WSOC before a PSPS event may inform whether a PSPS

event is necessary to protect public safety, and such reports during an event help determine when fire risk has abated sufficiently for re-energization to occur. PG&E's WMP submitted on February 7, 2020, explained that "SIPT crews are used to gather critical data to help PG&E prepare for and manage wildfire risk. When PG&E activates for a PSPS event, it deploys the SIPT teams to collect valuable weather and fuel data and report this information to the WSOC"; "SIPT crews also support PSPS zone generation sites by patrolling overhead sections of re-energized lines." "SIPT crews are also utilized to collect localized live fuel moisture data to help PG&E make more informed operational decisions."

16. SIPTs are deployed to the field in non-emergency conditions to provide standby resources for crews performing work. SIPTs monitor the crews' work and provide emergency services to the crews if incidents arise. In some instances SIPTs may provide labor support for crews performing electrical work. SIPTs also perform vegetation management work, including critical fuel reduction work around PG&E assets to prevent damage from wildfires, and defensible space inspections.

17. Whether the level of fire risk is sufficiently heightened to require a SIPT deployment depends on the weather conditions, including wind, humidity, and heat, as well as the terrain on which the work is being performed, for example urban areas or wildland areas with dry brush. Weather conditions may change rapidly, increasing or decreasing fire risk and therefore affecting whether a SIPT is needed to support a crew performing work in a particular area. Such a change could require a SIPT to be deployed within a short period of time, including less than 48 hours.

18. SIPTs also engage in limited emergency activities. SIPTs do not engage in firefighting activities without authorization from an AHJ. Rather, in emergency situations, SIPTs work in cooperation with the local fire AHJs. In the event of a fire ignition at a PG&E worksite, a SIPT's first priority is to dial 911. Once first responders are on site, the SIPT will follow the Incident Command Structure established by the responding agency. After receiving authorization from the AHJ, the SIPT may work to protect PG&E's utility poles and other equipment from fire damage.

19. SIPTs' non-emergency and emergency activities do not increase wildfire risk, but rather serve to reduce it.

20. PG&E also works to mitigate fire risk through its scheduled maintenance work performed by PG&E employees other than SIPT members. PG&E performs extensive vegetation management work, trimming or removing millions of trees each year. Much of this work takes place in areas with high fire risk. It is extremely unusual for such routine work to cause the ignition of a fire.

21. PG&E's vegetation management program is highly dynamic, involving daily inspections to assess fire risk and determine which conditions must be addressed. In order to perform needed work in an efficient manner, PG&E's scheduling of this work must remain flexible. The schedules of crews performing non-emergency maintenance work may change rapidly, such as when a crew assigned to perform routine work is diverted to perform emergency work, or when a crew that is performing emergency work observes a non-emergency condition that is slated to be addressed and immediately addresses the condition, in order to avoid the need to make an additional visit to the site to do so.

22. PG&E also routinely performs inspections of electric assets within High Fire Threat Districts and repairs actual and potential equipment problems that could contribute to a failure or wildfire ignition. Inspection techniques may include routine patrols by ground (truck and walking) or helicopter; use of enhanced visual, infrared and ultrasonic inspection methods; and structure climbing, aerial image capture, wood pole testing, and ground and below-grade foundation assessment. PG&E's 2020 WMP notes that the scheduling of such inspections may be adjusted to align with PG&E's understanding of the risks associated with changing weather patterns, repairs, replacements, and information gathered via inspections.

23. PG&E's crews that perform such scheduled, non-emergency work take additional precautions related to fire prevention when there is a heightened fire risk, as determined by the daily fire index developed by PG&E's meteorology department. PG&E's crews only cease performing scheduled, non-emergency work, and exclusively perform emergency work, when the daily fire index reaches its highest level, designated R5+. Employing the appropriate precautions,

PG&E’s crews may continue to perform scheduled, non-emergency work during the issuance of a Red Flag Warning by the National Weather Service.

24. In addition to the foregoing wildfire mitigation efforts, PG&E has also planned for the implementation of PSPS events, which involve the proactive de-energization of a portion of the electric system, and consequent shutoff of power to customers in affected areas, in order to mitigate the heightened risk of wildfires caused by unusually dry and windy weather conditions. The sole purpose of undertaking a PSPS is to prevent PG&E’s equipment from sparking a catastrophic wildfire, and thereby to preserve lives and avoid widespread property damage. Plans for implementing PSPS events are specifically required to be addressed in PG&E’s WMP: Public Utilities Code section 8386(c)(6) requires WMPs to include “[p]rotocols for disabling reclosers and deenergizing portions of the electrical distribution system that consider the associated impacts on public safety, as well as protocols related to mitigating the public safety impacts of those protocols, including impacts on critical first responders and on health and communication infrastructure.”

25. In accordance with this regulatory framework, PG&E has developed processes to identify conditions under which a PSPS event is needed to protect public safety and to implement such events. Deciding whether to initiate a PSPS event involves consideration of numerous decision factors, including forecasted weather and wind conditions. In the event that PG&E’s meteorology team issues forecasts of fire danger and high wind conditions, PG&E activates its Emergency Operations Center (“EOC”), and PG&E teams continually monitor the latest weather forecasts as well as local conditions in areas forecasted for high fire risk. As indicated above, SIPTs’ real-time observation of conditions in such areas informs this analysis. While these conditions continue, the officer in charge of the EOC will evaluate whether to call for a PSPS, based on information provided by SIPTs and other inputs.

### **The District’s Ordinance**

26. On or about October 21, 2020, at the regular meeting of the District’s Board of Directors (the “Board”), the Board voted to adopt the Ordinance.

27. Section One of the Ordinance appears to reference PG&E’s WMPs submitted to the Commission on February 6, 2019 and February 28, 2020,<sup>1</sup> and the deployment of SIPTs pursuant to PG&E’s WMP. That section states that “[i]n order to ensure the public’s safety and the orderly provision of emergency services in the District, and to comply with Public Utilities Code section 764, an electrical utility must coordinate with the exclusive provider of fire emergency services when engaging in private fire safety and prevention, mitigation, or maintenance services.” Section One also notes that certain portions of the District fall within the “Very High Fire Hazard Severity Zones as identified on the most recent California Department of Forestry and Fire Protection Fire and Resource Assessment Program map”; the “Tier 2 - Elevated and Tier 3 – Extreme zones as identified on the most recent California Public Utilities Commission Fire-Threat Map”; and “locally designated Wildland Urban Interface – Fire Areas supported by a finding of fact and as defined in MOFD Ordinance 20-02,” all of which areas the Ordinance defines as HFRA. Section One of the Ordinance states that “[g]iven the substantial risk of wildfires, the District has determined it is unsafe for electric utilities to perform scheduled, ‘non-emergency’ work that requires the deployment of a SIPT or any other personnel to engage in fire safety, prevention, or mitigation services within the [HFRA]s of the District’s jurisdictional boundaries during periods when the National Weather Service has issued a Red Flag Warning for the work area.”

28. The Ordinance purports to regulate matters within the regulatory power of the Commission, as discussed in greater detail below. Subsection 2 of Section Two of the Ordinance, entitled “Notice of Utility Work,” requires that “any electrical utility engaging a SIPT or otherwise engaging in fire safety, prevention, or mitigation services in an area designated as a[n] [HFRA] during any time between June 1 and December 1 or when the District has imposed an Open Burning Ban, must provide notice to the District.” This notice must describe “the location, time, and type of work the utility is undertaking”; must be sent via email; and must be provided to the District no less than 48 hours before starting any scheduled work, although “when the electrical utility must make critical or emergency repairs in situations where it is not possible to give the

<sup>1</sup> The Ordinance refers to a “Wildfire Safety Plan” submitted to the Commission by PG&E on February 6, 2019, and updated on February 28, 2020.



required 48 hours notice, the electrical utility must provide notice at the earliest possible time.” The Ordinance does explicitly provide any flexibility—such as allowing for notice at the “earliest possible time” even though less than 48 hours—for fire safety, prevention, or mitigation services that are not “critical or emergency repairs.” Pursuant to another ordinance adopted by the District, Ordinance 20-03, an Open Burning Ban becomes effective 24 hours following its declaration, which would make it impossible to provide the required 48 hours’ notice of planned work under some circumstances. The Ordinance provides that any violation thereof is an infraction punishable by a monetary fine.

29. The extraordinarily broad language of this requirement encompasses not only SIPTs’ activities—including those relating to vegetation management or data collection—but also any other personnel “engaging in fire safety, prevention, or mitigation services” within HFRAs during more than half the year, reaching every PG&E agent in any line of business engaged in such efforts. It would therefore demand, upon penalty of a fine, that PG&E provide 48 hours’ notice of a wide range of routine activities, including the activities described above, that PG&E performs in order to meet its statutory and regulatory obligations to maintain its equipment in a manner that will minimize wildfire risk.

30. This notice requirement interferes with PG&E’s ability to respond flexibly to protect public safety. Specifically, requiring two days of advance notice of routine work within HFRAs may hinder PG&E from taking needed actions to maintain its electrical lines and equipment in a safe, timely, and efficient manner. The requirement to provide notice in advance of engaging a SIPT or otherwise engaging in fire safety, prevention, or mitigation services may also delay PG&E’s efforts to assess the conditions that determine whether the initiation of a PSPS is necessary to protect public safety. Given that SIPTs’ activities and other fire mitigation services by PG&E do not increase fire risk, but rather reduce it, this notice requirement is not needed to allow the District to carry out its duties as the provider of fire prevention and suppression services.

31. Subsection 2 of Section Two of the Ordinance also requires that, “[i]n addition to the notice prior to starting work, the electrical utility shall provide to the District a copy of the form used to document the daily safety briefing at the work site the utility is required to complete

for each day of work, no later than three days after each working day.” Again, the Ordinance provides for a fine for any violation of this requirement. As with the other notice requirement in the Ordinance, this requirement is not necessary for the District to carry out its duties as the provider of fire prevention and suppression services, and exceeds the District’s authority.

32. Subsection 3 of Section Two of the Ordinance, entitled “Restrictions on Utility Work During Red Flag Warnings,” provides that “[a]n electrical utility is prohibited from conducting scheduled, non-emergency work which requires engaging a SIPT or any other personnel to engage in fire safety, prevention, or mitigation services within the High Fire Risk Areas of the District’s jurisdictional boundaries during periods when the National Weather Service has issued a Red Flag Warning for the work area.” As with the Ordinance’s other requirements, any violation of this restriction is deemed an infraction subject to a monetary fine. This restriction also uses broad language that encompasses a wide range of PG&E activities, since many types of work involve engaging in activities that mitigate fire risk, such as vegetation removal surrounding PG&E assets. Because this prohibition categorically prevents PG&E from performing a wide variety of routine work in HFRA’s during certain time periods, simply on the basis of the District’s judgment as to whether it is safe to perform such work, it necessarily interferes with PG&E’s obligation to maintain its electrical lines and equipment in a manner that minimizes the risk of catastrophic wildfire, subject to the Commission’s supervision.

### **CAUSE OF ACTION**

#### **Reverse Validation Action, Declaratory Relief and Writ Under Code of Civil Procedure §§ 860, 863**

33. PG&E incorporates herein the allegations of the foregoing paragraphs.

34. Pursuant to Code of Civil Procedure §§ 860 and 863, PG&E seeks to invalidate the District’s Ordinance. The District has adopted the Ordinance in violation of article XII, section 8 of the California Constitution. The Ordinance’s requirement that PG&E provide at least 48 hours’ notice to the District of engaging a SIPT or other otherwise engaging in fire safety, prevention, or mitigation services within HFRA’s; requirement that PG&E provide documentation of internal safety briefings; prohibition on non-emergency work that requires engaging a SIPT or any other

personnel to engage in fire safety, prevention, or mitigation services within HFRA's during Red Flag Warnings; and imposition of a fine if PG&E does not comply with such requirements purport to regulate matters within the exclusive regulatory authority of the Commission, exceed the authority granted to the District by the Legislature, and are preempted as they interfere with activities regulated by the Commission.

35. The Ordinance's notice requirements regarding the engagement of SIPTs or other fire safety, prevention, and mitigation services and regarding documentation of internal safety briefings, as well as the prohibition on non-emergency work within HFRA's, also exceed the District's authority to adopt ordinances pursuant to Health and Safety Code section 13861, subdivision (h).


#### **PRAYER FOR RELIEF**

PG&E prays for judgment against Respondents as follows:

1. That the Court make a judicial determination pursuant to Code of Civil Procedure §§ 860 *et seq.* that the requirements of the District's Ordinance pertaining to notice, the prohibition of non-emergency work during a Red Flag warning, and fines for noncompliance are invalid, null, and void.
2. That the Court issue a declaration that the requirements of the District's Ordinance pertaining to notice, the prohibition of non-emergency work during a Red Flag warning, and fines for noncompliance are invalid, null, and void.
3. That the Court issue a peremptory writ of mandamus ordering the District to set aside and invalidate the requirements in the Ordinance declared to be invalid by this Court.
4. For reasonable attorneys' fees, costs of suit, and such other and further relief as this Court deems just and proper.

DATED: December 18, 2020

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