

August 19, 2020

VIA EMAIL

Ms. Caroline Thomas Jacobs
Director, Wildfire Safety Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Pacific Gas and Electric Company's Request for 2020 Safety Certification Pursuant to Public Utilities Code § 8389

Dear Ms. Thomas Jacobs:

Pacific Gas and Electric Company ("PG&E") respectfully submits this reply to the August 12, 2020 comments of the Public Advocates Office ("Cal Advocates") and The Utility Reform Network ("TURN") regarding PG&E's request for a 2020 safety certification. As PG&E explains below, Public Utilities Code § 8389(e) and the Wildfire Safety Division's ("WSD") May 6 and June 25, 2020 guidance set out standards for issuance of a safety certification that are straightforward, readily administered, and nothing like what Cal Advocates and TURN advocate.

Section 8389(e)(1) requires PG&E to have an "approved wildfire mitigation plan"—which PG&E has by virtue of the Commission's June 11, 2020 conditional approval of PG&E's 2020 Wildfire Mitigation Plan. Section 8389(e)(1) does not require, as Cal Advocates and TURN advocate, that WSD determine whether PG&E has satisfied stated conditions to such approval. Cal Advocates' and TURN's position would require WSD effectively to determine whether PG&E has complied with its Wildfire Mitigation Plan, which the statute does not require and which WSD could not accomplish within the 90-day period it has to act on a safety certification request. *See* Pub. Util. Code § 8389(f)(2). Indeed, WSD stated in its June 25 guidance that the statute imposes a bright-line rule that does *not* require such a determination: "Commission ratification of the Wildfire Safety Division's approval of an electrical corporation's 2020 Wildfire Mitigation Plan, subject to the conditions specified in Appendix A of the ratifying resolution, constitutes documentation of an approved WMP pursuant to Pub. Util. Code § 8389(e)(1)." (June 25, 2020 WSD Ltr. at 2.)

Similarly, § 8389(e)(2) requires PG&E to have "agreed to implement the findings of its most recent safety culture assessment"—which PG&E has done, in that its most recent safety culture assessment, conducted by NorthStar Consulting Group ("NorthStar"), was updated in 2019, and PG&E has agreed to implement all of NorthStar's original and updated recommendations. Again, this is a clear, bright-line standard. The statute does not require or permit, as TURN appears to advocate, that WSD conduct a fresh, deep-dive analysis of an electrical corporation's safety culture in connection with issuing a safety certification. Indeed, the statute does not even require the Commission to adopt a process for safety culture assessments by WSD until December 1, 2020. *See* Pub. Util. Code § 8389(d)(4).

The statute also does not permit the two-step procedure advocated by TURN whereby WSD merely would prepare “draft resolutions” on safety certification requests, to be “voted on by the CPUC.” (TURN’s Comments at 11-12.) Instead, the statute unambiguously prescribes a more streamlined process: “*The division shall issue a safety certification within 90 days of a request if the electrical corporation has provided documentation that it has satisfied the requirements of [§ 8389,] subdivision (e).*” *Id.* § 8389(f)(2).

Because PG&E has provided documentation that it has satisfied all of those requirements, its request for a 2020 safety certification should be approved.

1. PG&E “has an approved wildfire mitigation plan” (§ 8389(e)(1))

PG&E has an approved wildfire mitigation plan. On June 11, 2020, the Commission unanimously adopted Resolution WSD-002 and Resolution WSD-003, which approved PG&E’s 2020 Wildfire Mitigation Plan subject to the conditions specified in Appendix A. On June 25, 2020, WSD issued guidance making explicit that this suffices for purposes of § 8389(e)(1): “Commission ratification of the Wildfire Safety Division’s approval of an electrical corporation’s 2020 Wildfire Mitigation Plan, subject to the conditions specified in Appendix A of the ratifying resolution, constitutes documentation of an approved WMP pursuant to Pub. Util. Code § 8389(e)(1).” (June 25, 2020 WSD Ltr. at 2.) That is dispositive.

TURN and Cal Advocates nevertheless argue that WSD should not issue a 2020 safety certification until WSD reviews PG&E’s Remedial Compliance Plan¹ and finds that it is “sufficient to resolve the outstanding Class A deficiencies.” (Cal Advocates’ Comments at 5.) TURN further contends that WSD must find that PG&E has “satisfactorily remedied the Class A deficiencies and any other failures to comply with the requirements for the[] 2020-2022 WMP.” (TURN’s Comments at 10.)

These arguments have no basis in the text of the statute, and therefore are arbitrary. These arguments also directly conflict with WSD’s June 25 guidance—guidance that Cal Advocates cites but never addresses (*see* Cal Advocates’ Comments at 2), and that TURN does not even acknowledge. Cal Advocates’ and TURN’s proposals also are not practical, given that § 8389(f)(2) mandates that WSD act on safety certification requests within 90 days. Cal Advocates’ and TURN’s arguments should be rejected; PG&E has an approved Wildfire Mitigation Plan for purposes of § 8389(e)(1).

2. PG&E “is in good standing” because it has “agreed to implement the findings of its most recent safety culture assessment” (§ 8389(e)(2))

Section 8389(e)(2) is clear that WSD’s inquiry into whether an electrical corporation meets the “good standing” requirement is a narrow one. The statute does not require or permit WSD to assess the applicant’s safety culture during the 90-day window for acting on a safety certification request. It does not require or permit WSD to conduct an extensive review of highly publicized safety incidents from several years ago, even if legal proceedings arising from those incidents resolved only recently. And the statute does not require or permit WSD to re-canvass expansive safety topics that already were the subject of recent proceedings (including, in this case, I.19-09-016, the OII concerning PG&E’s Chapter 11 Plan of Reorganization, which extensively focused on PG&E’s safety culture and performance). Instead, § 8389(e)(2) imposes a simple, bright-line test: whether the electrical corporation has “agreed to implement the findings of its most recent safety culture assessment.”

¹ Pacific Gas and Electric Company 2020 Wildfire Mitigation Plan Remedial Compliance Plan (July 27, 2020).

PG&E has done so. PG&E's most recent safety culture assessment was carried out by NorthStar, which culminated in (i) a May 8, 2017 report entitled *Assessment of [PG&E's] Safety Culture*; (ii) a March 29, 2019 *First Update to Assessment of [PG&E's] Safety Culture*; and (iii) PG&E's agreement to implement the scores of recommendations in these original and updated assessments. That is dispositive under the unambiguous language of the statute.

TURN nevertheless argues that NorthStar's assessment does not qualify, on the theory that the phrase "most recent safety culture assessment" in § 8389(e)(2) refers to the annual safety culture assessments WSD will undertake. The statute, however, does not refer to "most recent safety culture assessment carried out by WSD." Instead, it provides for safety certifications to be issued in 2019 and 2020, *see* Pub. Util. Code § 8389(f)(1)-(2), but does not require the Commission to adopt a process for WSD's annual safety culture assessments until December 1, 2020, *see id.* § 8389(d)(4).

TURN also asserts that NorthStar's assessment is "stale." (TURN Comments at 1, 3, 4, 7.) Again, the statute does not provide for any such qualitative assessment, but instead refers to the "most recent" safety culture assessment, which NorthStar's unquestionably is. Moreover, TURN's temporal critique is inconsistent: While claiming that NorthStar's report, which was updated just last year, is stale, TURN urges WSD to evaluate PG&E's current safety culture by taking a deep dive into the circumstances leading to the Camp Fire, which occurred in 2018, and the San Bruno tragedy in 2010. Any such evaluation would consider PG&E's conduct in the years prior to these events. TURN's reliance on events from many years ago belies its effort to portray NorthStar's extensive safety culture assessment, updated in 2019, as "stale."

PG&E has agreed to implement the findings of its most recent safety culture assessment, and that is dispositive under § 8389(e)(2).

3. PG&E has a compliant "executive compensation structure" (§ 8389(e)(4), (e)(6))

TURN acknowledges that the Commission found in D.20-05-053 that PG&E's executive compensation structure conditionally satisfies the requirements of § 8389(e)(4) and (e)(6), subject to potential refinement in future proceedings. While TURN asserts without citing authority that this is not enough "to meet the requirements for safety certifications," TURN does not advocate withholding a 2020 safety certification on this basis. (TURN's Comments at 10 (capitalization removed).) Rather, TURN simply says that WSD should emphasize that "2021 executive compensation programs are dependent on gaining WSD approval." (*Id.* at 11 (emphasis added).) TURN's comments on this issue therefore should not affect WSD's decision on PG&E's application for a 2020 safety certification.²

4. TURN's "draft resolution" proposal should be rejected

TURN once again seeks to complicate the straightforward safety certification process by proposing that WSD not resolve safety certification requests at all, and instead prepare only non-binding "draft resolutions" that would be "be voted on by the CPUC." (TURN's Comments at 11-12.) TURN's

² WSD instructed that "PG&E's executive compensation structure for its 2020 safety certification is within the scope of I.19-09-016 and must be considered within and according to the standards of evaluation set in that proceeding." (Jan. 17, 2020 WSD Ltr. at 2 (footnote omitted).) The Commission's conditional approval of PG&E's structure subject to future proceedings "for the further refinement of [PG&E's] executive compensation plan" (D.20-05-053 at 102), appropriately recognizes that executive compensation structures are not static, that PG&E may make changes to the structure, and that the Commission and WSD will have opportunities to review. The Commission's contemplation of future proceedings does not detract from the fact that the Commission approved PG&E's structure for purposes, in part, of PG&E's 2020 safety certification application.

proposal necessarily would engender delay and thereby undermine the stated purpose of the wildfire fund: to support the “credit worthiness of electrical corporations and provide a mechanism to attract capital for investment in safe, clean, and reliable power for California at reasonable cost to ratepayers.” AB 1054 § 1(a)(5). Further, because § 8389(f)(2) assigns WSD the responsibility of issuing safety certifications, it is doubtful that WSD even has the legal authority to adopt TURN’s proposal. *Cf. Bagley v. City of Manhattan Beach*, 18 Cal. 3d 22, 24 (1976) (“When the Legislature has made clear its intent that one public body or official is to exercise a specified discretionary power, the power . . . may not be exercised by others in the absence of statutory authorization.”); *Central Delta Water Agency v. State Water Res. Control Bd.*, 124 Cal. App. 4th 245, 261 (2004) (“[The State Water Resources Control] Board . . . may not delegate the authority to determine the merits of an application for a permit to appropriate water [to the Chief of the Division of Water Rights], except as provided by statute. . . . [T]he statutory authority to issue a permit for the appropriation of water is conferred on the Board.”). TURN’s proposal should be rejected.

PG&E respectfully submits that it has met the requirements set forth in § 8389(e), and that it is entitled to issuance of a 2020 safety certification within 90 days of its July 29, 2020 application. Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Robert S. Kenney". The signature is written in a cursive, flowing style.

Robert S. Kenney

cc: Service list of Rulemaking 18-10-007