



The Protect Our Communities Foundation
4452 Park Boulevard #202
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July 9, 2020

California Public Utilities Commission
Attn: Caroline Thomas Jacobs, Director
Wildfire Safety Division
505 Van Ness Ave., 4th Floor
San Francisco, CA 94102

Sent Via Email (wildfiresafetydivision@cpuc.ca.gov)

RE: The Protect Our Communities Foundation's Comments on Safety Certification Requests

Dear California Public Utilities Commission:

Pursuant to the June 25, 2020 letter from Wildfire Safety Division (WSD) Director Caroline Thomas Jacobs to the service list in R.18-10-007 (June 25, 2020 letter), The Protect Our Communities Foundation (PCF) provides the following comments on any safety certification requests related to the utilities 2020 wildfire mitigation plans (WMPs) which the Commission recently determined remain deficient,¹ and specifically the June 16, 2020 request for a safety certification by San Diego Gas & Electric Company (SDG&E).²

I. THE UTILITIES ARE NOT ENTITLED TO THE BENEFITS OF SAFETY CERTIFICATIONS BECAUSE THEY HAVE NOT YET REMEDIED THE DEFICIENCIES IN THEIR 2020 WILDFIRE MITIGATION PLANS AND THEY HAVE NOT YET SATISFIED THE CONDITIONS OF APPROVAL.

Safety certifications issued pursuant to AB 1054 deem reasonable a utilities' conduct even for causing a wildfire,³ providing the utilities a virtual safe harbor from liability. A valid safety certification shifts the burden of proof away from the otherwise applicable standard requiring the utilities to justify the reasonableness of their conduct, and uniquely requires other parties to "create[] serious doubt as to the reasonableness" of the utilities' conduct.⁴ As a practical matter, this difficult standard all but ensures that utilities with valid safety certificates will not be held financially responsible for the wildfires they cause.

¹ See e.g. Resolution WSD-002, *Guidance Resolution on 2020 Wildfire Mitigation Plans Pursuant to Public Utilities Code Section 8386* (June 11, 2020), p. 44-47 (OP 6, 12)

² Letter from Dan Skopec, Vice President of Regulatory Affairs for SDG&E to WSD Director Jacobs re San Diego Gas & Electric Company's Request for a 2020 Safety Certification Pursuant to Public Utilities Code Section 8389 (June 16, 2020) (hereafter June 16, 2020 letter from SDG&E).

³ Pub. Util. Code. § 451.1, subd. (c).

⁴ *Ibid.*

Safety certificates also enable the utilities to access the wildfire safety fund⁵ which, as a practical matter, largely serves to insulate the utilities from third party damage awards.⁶ Without a valid safety certificate, the utilities are not entitled to the full benefits of the fund.⁷ Evidencing the extraordinary value AB 1054 provides to the utilities, SDG&E notified the Commission that it intended to seek the benefits of the wildfire safety fund less than a week after AB 1054's effective date.⁸

Critically, however, AB 1054's extraordinary benefits do not accrue to the utilities unless and until the utilities first comply with legislative directives to "minimize the risk of catastrophic wildfire" posed by the utilities' systems, to prepare WMPs that meet all twenty-two statutory requirements, and to implement WMPs that the Commission has verified comply with "all applicable rules, regulations, and standards."⁹ These statutory mandates serve as prerequisites which must be met before the Commission issues a safety certificate to a utility.

As discussed below, the Commission recently determined that each of Section 8386(c)'s requirements have not yet in fact been met, and that to date the Commission has been unable to verify that the utilities' WMPs comply with all applicable rules, regulations, and standards.

In claiming that the recent Commission ratifications of WSD's respective conditional approvals of the utilities' 2020 WMPs constitute "documentation of an approved WMP pursuant to Pub. Util. Code § 8389(e)(1)," the June 25, 2020 letter violates the letter and spirit of the wildfire mitigation statutory scheme and makes a mockery of Legislative efforts to keep Californians safe from both utility-related wildfires and unfair costs resulting from unjustified utility decision-making.

II. ISSUING A SAFETY CERTIFICATION AT THIS TIME WOULD VIOLATE SECTION 8389(e) BECAUSE THE UTILITIES' WMPs REMAIN DEFICIENT AND SUBJECT TO UNMET CONDITIONS.

The Commission recently determined that the utilities' WMPs cannot yet be considered to be "deemed in compliance with Public Utilities Code Section 8386."¹⁰ Thus, the utilities' 2020 WMPs are deficient and violate the wildfire mitigation statutes.

⁵ See Wildfire Safety Division webpage regarding Implementation of Assembly Bill 1054, available at <https://www.cpuc.ca.gov/wildfires/> [last accessed July 9, 2020].

⁶ Pub. Util. Code, § 1701.8, § 3292.

⁷ Pub. Util. Code, § 3292, subd. (h)(3)(B).

⁸ Letter from Scott Drury to Commissioners re Notification of San Diego Gas & electric Company's Commitment to Provide Fund Contributions Pursuant to Public Utilities Code Section 3292(a) (July 18, 2019).

⁹ Pub. Util. Code, § 8386, § 8389, subd. (e)(1), (7).

¹⁰ Resolution WSD-002, p. 44-45 (OP 6) ("Each of the following electrical corporations: Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, PacifiCorp, Liberty Utilities, and Bear Valley Electric Service shall comply with the Guidance Conditions

A. The Commission Delineated Myriad Deficiencies in the Utilities’ 2020 WMPs that Preclude Issuance of a Safety Certificate.

The Commission concluded last month that it still could not verify that the utilities have complied with the wildfire statutes and all applicable rules, regulations, and standards; and, accordingly, expressly conditioned 2020 WMP approval on the utilities remedying numerous identified deficiencies:

Nothing in the review and approval of WMPs relieves the electrical corporations of any otherwise applicable environmental laws or other statutory requirements. Moreover, environmental stewardship is an important value to California and electrical corporations are expected to consider environmental values in all their decision-making. **Each electrical corporation shall meet the listed conditions in its individual Resolution in full in order for its Wildfire Mitigation plan to be deemed in compliance with Public Utilities Code Section 8386 and Wildfire Mitigation Plan Guidelines.**¹¹

The Commission identified three classes of deficiencies in the utilities’ WMPs; and, depending on the deficiency, ordered the utilities to remedy those deficiencies by submitting a remedial compliance plan (RCP) within 45 days, quarterly reports starting in 90 days, or by providing additional detail and information in its 2021 WMP update.¹²

set forth in Appendix A to this Resolution in order for its Wildfire Mitigation Plan to be deemed in compliance with Public Utilities Code Section 8386 and the Wildfire Safety Division’s Wildfire Mitigation Plan Guidelines...”).

¹¹ Resolution WSD-002, p. 46-47(OP 12) (emphasis added).

¹² Resolution WSD-002, p. 45-46 (OP 7, 8, 9) (“For Class A deficiencies, Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, PacifiCorp, Liberty Utilities, and Bear Valley Electric Service must submit Remedial Compliance Plans (RCP) to the Director of the Wildfire Safety Division within 45 days of Commission ratification of the Wildfire Mitigation Plan Resolutions. An RCP must present all missing information and/or articulate the electrical corporation’s plan, including proposed timeline, to bring the electrical corporation’s WMP into compliance...For Class B deficiencies, Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, PacifiCorp, Liberty Utilities, and Bear Valley Electric Service must submit quarterly reports to the Director of the Wildfire Safety Division. Information requested in the quarterly reports shall be submitted either one time in the first quarterly report or on an ongoing basis as specified by each condition...The first quarterly report must be submitted 90 days after the Commission ratifies the Wildfire Mitigation Plan Resolutions, and every three months thereafter. In some cases, individual Resolutions impose other additional reporting requirements, and the Resolutions contain relevant detail for those reports with which named electrical corporations must comply...For Class C deficiencies, Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, PacifiCorp, Liberty Utilities, and Bear Valley Electric Service must submit additional detail and information or otherwise come into compliance in its 2021 annual Wildfire Mitigation Plan update.”).

The Commission also issued individual resolutions on each utility's 2020 WMP which identified additional deficiencies which also must be remedied as a condition of WMP approval.¹³ A condition is defined as a "future and uncertain event on which the existence or extent of an obligation or liability depends; an uncertain act or event that triggers or negates a duty to render a promised performance."¹⁴ In other words, when the Commission imposed conditions of approval, the Commission necessarily determined that the utilities are not in compliance with Section 8386 unless and until the utilities have remedied the deficiencies that the Commission identified in the 2020 WMPs. Thus, the utilities are not in possession of the approval contemplated by AB 1054, a prerequisite to unlocking the extraordinary benefits that accrue to utilities with validly-issued safety certificates.¹⁵

Safety certificates may be issued only when the utilities both satisfy the conditions of WMP approval and implement thoroughly-vetted and complete WMPs which achieve the fundamental statutory mandate to reduce wildfire risks effectively.¹⁶ To date, however, the Commission has repeatedly determined that it has not yet been possible to ascertain the effectiveness of the utilities' WMPs to actually reduce wildfire risks.¹⁷

As discussed below, one of the reasons the Commission has been unable to ascertain the effectiveness of the utilities' WMPs includes the persistent troubling fact that the utilities' risk assessments remain seriously defective.

¹³ See e.g. Resolution WSD-005, *Resolution Ratifying Action of the Wildfire Safety Division on San Diego Gas & Electric Company's 2020 Wildfire Mitigation Plan Pursuant to Public Utilities Code Section 8386* (June 11, 2020), p. 53-54 (OP 1, 2) ("Ratification of the Wildfire Safety Division's approval of San Diego Gas & Electric Company's Wildfire Mitigation Plan is subject to conditions set forth in Appendix A." "The Wildfire Safety Division's approval of San Diego Gas & Electric Company's (SDG&E) 2020 Wildfire Mitigation Plan, conditioned upon SDG&E's compliance with the conditions listed in Appendix A, is hereby ratified.")

¹⁴ Black's Law Dictionary (10th ed.).

¹⁵ Resolution WSD-002, p. 46-47(OP 12); Pub. Util. Code, § 8386.3, subd. (a), § 8389, subd. (e)(1), (7).

¹⁶ Pub. Util. Code, § 8386, subd. (e)(1), (7) (Safety certificates cannot be issued unless "(1) The electrical corporation has an approved wildfire mitigation plan...(7) The electrical corporation is implementing its approved wildfire mitigation plan..."); D.19-05-036, *Guidance Decision on 2019 Wildfire Mitigation Plans Submitted Pursuant to Senate Bill 901* (May 30, 2019), p. 3 (recognizing duty "to ensure that the Wildfire Mitigation Plans actually reduce the risk and occurrence of wildfire"); *id.* at 26 (recognizing the statutory mandate is to effectively mitigate catastrophic wildfires); Resolution WSD-002, p. 2; Pub. Util. Code, § 8386, subd. (a).

¹⁷ See e.g. D.19-05-036, p. 4-5 ("There are limits on what can be accomplished in this proceeding, as the strict statutory deadlines – three months to approve the Wildfire Mitigation Plans, with very limited exceptions – provide little time to evaluate each Plan's effectiveness. At the same time, this is only the first of what we anticipate will be many Wildfire Mitigation Plan proceedings, so this decision contains many substantive and procedural requirements for future plans based on lessons learned this year); Resolution WSD-002, p. 19-30.

¹⁷ See e.g. D.19-05-036, p. 4-5, 27-29; Resolution WSD-002, p. 19-30.

In 2019, the Commission raised serious concerns about the utilities’ risk assessments and analyses in its decisions on the utilities’ 2019 WMPs,¹⁸ describing the utilities’ risk assessments as a “black box with insufficient description of the supporting information and rationale for proposed programs” and noting that a “trust us, we know what we are doing” approach to risk assessment is not appropriate given recent wildfire activity.”¹⁹

This year, the Commission again determined that the utilities’ 2020 WMPs continue to fail to assess and analyze risk properly.²⁰ As discussed below, the Commission’s determinations with respect to the utilities’ risk assessment failures – both in 2019 and now again in 2020 – necessarily means not only that the utilities continue to violate Section 8386’s threshold risk reduction mandate, but also that all the utilities’ 2020 WMPs continue to violate the specific provisions set forth in Section 8386(c) regarding the required elements necessary for inclusion in WMPs.²¹

The utilities’ continued risk assessment failures violate the specific provisions of Section 8386(c) because the statute requires the utilities “to include all relevant wildfire risk and risk mitigation information” required by the Commission’s Safety Model Assessment Proceeding (S-MAP) and Risk Assessment and Mitigation Phase (RAMP) proceedings in the utilities’ WMPs.²²

The utilities’ continued risk assessment failures cause or contribute to the Commission’s inability to ascertain whether the utilities’ WMPs will effectively reduce risk because proper risk assessment comprises the backbone of effective risk reduction. Effective risk reduction requires adequate risk assessment both as a matter of common sense, and pursuant to the Commission’s S-MAP and RAMP decisions that were incorporated into the requirements of Section 8386, as PCF describes below.

¹⁸ D.19-05-036, p. 28-29; D.19-05-038, *Decision on Southern California Edison Company’s 2019 Wildfire Mitigation Plan Pursuant to Senate Bill 901* (May 30, 2019), p. 22-23, 52-53 (OP 6); D.19-05-039, *Decision on San Diego Gas & Electric Company’s 2019 Wildfire Mitigation Plan Pursuant to Senate Bill 901* (May 30, 2019), p. 23-24, p. 31 (OP 12); D.19-05-037, *Decision on Pacific Gas and Electric Company’s 2019 Wildfire Mitigation Plan Pursuant to Senate Bill 901* (May 30, 2019), p. 56 (OP 27), p. 60 (OP 8).

¹⁹ D.19-05-036, p. 29, fn. 42.

²⁰ Resolution WSD-002, p. 19-30; *id.* at Appendix A, p. A1, A3, A5, A6; Resolution WSD-003, *Resolution Ratifying Action of the Wildfire Safety Division on Pacific Gas & Electric Company’s 2020 Wildfire Mitigation Plan Pursuant to Public Utilities Code Section 8386* (June 11, 2020), p. 23-28, 33-34, 36, 42, 45-46, 55; Resolution WSD-004, *Resolution Ratifying Action of the Wildfire Safety Division on Southern California Edison Company’s 2020 Wildfire Mitigation Plan Pursuant to Public Utilities Code Section 8386* (June 11, 2020), p. 10-12, 18, 22-23, 25-29, 34-36, 38-40, 43, 46, 48-49; Resolution WSD-005, p. 11-12, 23-25, 33, 37-38, 43-44, 46, 49.

²¹ *See e.g.* Pub. Util. Code, § 8386, subd. (a), (c); D.19-05-036, Appendix A, p. A2.

²² Pub. Util. Code, § 8386, subd. (c)(11); D.19-05-036, p. 28-29.

B. The Troubling History of the Utilities' Longstanding Failures to Comply with Safety Requirements Supports Withholding any Safety Certificate Until the Utilities Meet Current Safety Mandates.

In R.13-11-006, the Commission adopted “a risk-based decision-making framework, consisting of the Safety Model Assessment Proceeding [S-MAP], the Risk Assessment and Mitigation Phase [RAMP] proceeding, and the filing of annual verification reports consisting of the Risk Mitigation Accountability Report and the Risk Spending Accountability Report.”²³ In proceeding R.13-11-006, the Commission issued D.14-12-025 which required the utilities to file comprehensive²⁴ RAMP submissions that contained the following information:

- The utility’s prioritization of the risks it believes it is facing and a description of the methodology used to determine these risks...
- A description of the controls currently in place, as well as the “baseline” costs associated with the current controls.
- The utility’s prioritization of risk mitigation alternatives, in light of estimated mitigation costs in relation to risk mitigation benefits (Risk Mitigated to Cost Ratio).
- The utility’s risk mitigation plan, including an explanation of how the plan takes into account: Utility financial constraints; Execution Feasibility; Affordability Impacts; Any other constraints identified by the utility.
- For comparison purposes, at least two other alternative mitigation plans the utility considered and an explanation of why the utility views these plans as inferior to the proposed plan.²⁵

In addition to requiring RAMP reports, D.14-12-025 required at least two S-MAP proceedings for the large energy utilities, so that the Commission and the parties could “explore and analyze each energy utility’s approach to prioritize the risk to safety associated with each utility’s system and services, and the tools or activities that the energy utilities use to manage, mitigate, and minimize those safety risks.”²⁶

²³ D.14-12-025, *Decision Incorporating a Risk-Based Decision-Making Framework into the Rate Case Plan and Modifying Appendix A of Decision 07-07-004* (December 4, 2014), p. 54-55 (OP 1).

²⁴ D.14-12-025 at 39-40 (Limiting the utility’s RAMP submission to just 10 asset categories may prevent the Commission and interested parties from having a comprehensive view of the utilities potential safety risks, and its plans for addressing those risks. Since the RAMP will provide the first opportunity for parties to see how the utility prioritizes safety in terms of its assets and operations, the RAMP should not be limited to a maximum of 10 asset categories. Accordingly, the utility’s RAMP submission shall include all of its risk assessments and mitigation plans.”).

²⁵ D.14-12-025, p. 32.

²⁶ D.14-12-025, p. 25, 27.

D.16-08-018, the first decision the Commission issued in the first S-MAP proceeding, highlighted the importance of a cost effectiveness analysis and clarified that calculating risk reduction per dollar “is required by D.14-12-025 and is necessary information for balancing safety with reasonable rates and holding utilities accountable for safety spending,” found that “[p]rioritizing based on cost-effectiveness measures is an important improvement to rate cases and an important step to optimizing portfolios,” concluded that the “utilities’ RAMP filings should include calculations of risk reduction and a ranking of mitigations based on risk reduction per dollar spent,” and ordered that RAMP filings “shall explicitly include calculation of risk reduction and a ranking of mitigations based on risk reduction per dollar spent.”²⁷ D.16-08-018 also concluded that “[p]rioritizing the reduction of safety risks should be geared towards safety risk, and should not include financial interests” and directed the utilities “to remove shareholders’ financial interests from consideration in their risk models and decision frameworks used to support case expenditure proposals, especially at the operational level, unless the utility can make a good case for an exception in its” RAMP filing.²⁸

Later in the S-MAP proceeding, in D.18-12-014, the Commission adopted a settlement agreement between all of the large utilities, the Public Advocates Office, and several intervenors, which expanded on the requirements of D.14-12-025 and D.16-08-018.²⁹ Among other things, D.18-12-014 mandates that (1) the utilities “clearly and transparently explain its rationale for selecting mitigations for each risk and for its selection of its overall portfolio of mitigations;” (2) that “[i]nputs and computations... should be clearly stated and defined” and “the sources of inputs should be clearly specified,” (3) that the utilities “use utility specific data” in identifying potential consequences of and frequency of a risk event; (4) that the utilities measure risk reduction provided by a risk mitigation; and (5) that the utilities calculate risk spend efficiency (RSE) “by dividing the mitigation risk reduction benefit by the mitigation cost estimate.”³⁰ Additionally, D.18-12-014 limits reliance on subject matter experts (SMEs) to situations where utility-specific data is unavailable; and, when SMEs must be used, requires the utilities to describe the process, assumptions, and information utilized.³¹ As the Commission has explained, the settlement agreement approved in D.18-12-014 “provided a more robust and stronger version of the ten recommended RAMP components than was first introduced in D.16-08-018,” including the requirement “that risk spend efficiency [RSE] calculations for risk mitigations are independent of RAMP risk selection.”³²

²⁷ D.16-08-018, *Interim Decision Adopting the Multi-Attribute Approach (Or Utility Equivalent Features) and Directing Utilities to Take Steps Toward a More Uniform Risk Management Framework* (August 18, 2016), p. 187 (Finding of Fact 81, 82), p. 192 (Conclusion of Law 30), p. 196 (OP 8).

²⁸ D.16-08-018, p. 195-196 (OP 7); *see also id.* at 192-193 (Conclusion of Law 36, 37).

²⁹ D.18-12-014, *Phase Two Decision Adopting Safety Model Assessment Proceedings (S-MAP) Settlement Agreement with Modifications* (December 13, 2018), Attachment A, p. A-3 (defining Settling Parties).

³⁰ D.18-12-014, Attachment A, p. A-8, A-12, A-13, A-14, A-17.

³¹ D.18-12-014, Attachment A, p. A-8, A-17, A-18.

³² I.19-11-010/011, *Order Instituting Investigation into the Risk Assessment and Mitigation Phase Submission of San Diego Gas & Electric Company* (November 7, 2019), p. 3-4.

Although last year the Commission ordered the utilities in their 2020 WMPs to comply with Section 8386’s mandate that the utilities “include all relevant wildfire risk and risk mitigation information” required by the Commission’s S-MAP and RAMP decisions, including the Risk-Spend Efficiency analysis required by D.18-12-014,³³ the utilities failed to comply with the Commission’s directive. The Commission correctly concluded, for example, that the utilities in their 2020 WMPs continue to fail to provide the requisite analysis of risk reduction per dollar spent,³⁴ and continue to fail to provide sufficient details so as to clearly and transparently reveal the reasons for selecting mitigation activities and the effectiveness of those activities.³⁵ The Commission ordered the utilities to remedy their deficient risk assessments by filing RCPs and quarterly reports as a condition of any WMP approval.³⁶

AB 1054, which became effective after the Commission’s decisions on the utilities’ 2019 WMPs, did not change the requirement that the utilities’ WMPs must adhere to the S-MAP and RAMP decisions. Thus, the utilities remain statutorily-required to demonstrate compliance with the Commission’s safety orders in D.14-12-025, D.16-08-018, and with D.18-12-014, each of which require a cost-effectiveness analysis in order properly to assess risk and prioritize risk reduction measures.³⁷ Until the utilities comply with the Commission’s RAMP and S-MAP decisions as required by Section 8386, no safety certification may validly issue.

³³ D.19-05-036, p. 28-29 (“The WMP statute refers to the Commission’s safety-oriented processes carried out during GRCs.[.] We interpret the inclusion of those processes to reflect a desire to ensure the safety work in GRCs is incorporated into WMPs. We agree that both processes are important to a consideration of the adequacy of utility safety efforts. Our recent decision in the S-MAP/GRC context adopted an approach that prioritizes actions based on their ‘Risk-Spend Efficiency.’ The approach uses a tool called Multi-Attribute Value Function (MAVF) that provides a single value to measure the combined effects of each mitigation measure on a certain risk event. The process involves performing risk assessments and ranking risks using safety, reliability, and other attributes. This approach provides a means to compare the programs against each other for effectiveness, especially when multiple overlapping programs are proposed for the same assets and intended to mitigate the same risk event (i.e., increased vegetation clearing coupled with installing covered conductor and expanded de-energization practices). Including such analysis in the WMPs would provide the Commission a transparent and effective way to balance overlapping programs in the WMP and assess which programs are needed and effective. As stated above, the statute requires ‘all relevant wildfire risk and risk mitigation information that is part of the Safety Model Assessment Proceeding and Risk Assessment Mitigation Phase filings.’ This quantitative information is relevant, and the process of conducting these analyses may allow stakeholders to better understand the cost effectiveness of proposed mitigations.”).

³⁴ Resolution WSD-002, p. 20 (“Although RSE concepts have been considered for several years through Commission GRCs, utilities still display unrefined and limited abilities to produce such information. Considering that utilities propose to spend billions of dollars on WMP initiatives, not having quantifiable information on how those initiatives reduce utility ignition risk relative to their cost severely limits the WSD’s ability to evaluate the efficacy of such initiatives and each utility’s portfolio of initiatives, as outlined in 2020 WMPs.”).

³⁵ Resolution WSD-002, Appendix A, p. A1-A3, A5-A10.

³⁶ See e.g. Resolution WSD-002, p. 19-30; Resolution WSD-002, Appendix A, p. A1-A3.

³⁷ See e.g. D.19-05-036, p. 28-29; D.16-08-018, p. 187; D.18-12-014, Attachment A, p. A-13.

III. ISSUING A SAFETY CERTIFICATION TO SDG&E AT THIS TIME WOULD VIOLATE SECTION 8389(e)(2) BECAUSE SDG&E CANNOT BE SAID TO BE IN GOOD STANDING FOR WILDFIRE MITIGATION PURPOSES.

Section 8389(e)(2) provides that a safety certification may not issue unless a utility “is in good standing, which can be satisfied by the electrical corporation having agreed to implement the findings of its most recent safety culture assessment, if applicable.”³⁸ SDG&E has not yet undergone a safety culture assessment, and cannot otherwise be said to be in good standing. To the contrary, the Commission has determined that SDG&E failed to comply with the Commission’s express orders related to its vegetation management practices.³⁹ Another example of SDG&E’s failure to comply with express Commission orders involves SDG&E’s risk assessment failures.⁴⁰ A utility that fails to comply with the Commission’s express orders cannot be considered “in good standing” under any reasonable interpretation of that statutory term.

Additionally, SDG&E cannot be considered “in good standing” pursuant to the list of factors set forth in the May 6, 2020 letter from WSD Director Jacobs to SDG&E’s Dan Skopec (May 6, 2020 letter). For example, the May 6, 2020 letter required SDG&E to include “Safety policies, including employee and contractor safety, gas pipeline and electrical safety,” but SDG&E failed to provide information regarding its gas pipeline safety and its electrical safety.⁴¹

³⁸ Pub. Util. Code, § 8389, subd. (e)(2).

³⁹ Resolution WSD-005, Appendix A, p. A9 (“Specifically, SDG&E does not detail proposed guidelines for where such a clearance will reduce wildfire risk, as directed in our decision approving SDG&E’s 2019 WMP...SDG&E’s WMP does not provide results or analysis of the effectiveness of this measure since implementation of its 2019 WMP, as required by D.19-05-039. Without the ability to understand or even observe an incremental benefit of this increased clearance, it will be difficult to determine the effectiveness of this measure.”).

⁴⁰ Resolution WSD-002, Appendix A, p. A1 (“2020 WMP submissions contain sparse and sporadic detail regarding the RSE of WMP initiatives. RSE calculations are critical for determining whether utilities are effectively allocating resources to initiatives that provide the greatest risk reduction benefits per dollar spent, thus ensuring responsible use of ratepayer funds. Although RSE concepts have been considered for several years through Commission GRCs, utilities still display unrefined and limited abilities to produce such information. Considering that utilities propose to spend billions of dollars on WMP initiatives, not having quantifiable information on how those initiatives reduce utility ignition risk relative to their cost severely limits the WSD’s ability to evaluate the efficacy of such initiatives and each utility’s portfolio of initiatives, as outlined in 2020 WMPs.”); *see also id.* at Appendix A, p. A2-A3, A-5-A-6, A-8-A-10; D.19-05-039, p. 30 (OP 12) (“San Diego Gas & Electric’s 2020 Wildfire Mitigation Plan shall use the quantitative risk assessment framework adopted in Decision 18-12-014 in the Safety Model Assessment Proceeding to evaluate and compare the cost effectiveness of each of the mitigations that were under consideration in developing the Wildfire Mitigation Plan. The Wildfire Mitigation Plan shall provide the risk spend efficiency results of the quantitative risk analysis and include an explanation of the Multi-Attribute Variable Framework used and how it was constructed.”)

⁴¹ May 6, 2020 letter from WSD, p. 2; June 16, 2020 letter from SDG&E, p. 2.

Similarly, the May 6, 2020 letter explains that a utility must provide information regarding “CPUC investigations and court actions, if any, related to safety violations of the electrical corporations, including ongoing and closed investigations,” but SDG&E identified only I.19-11-013 and failed to identify any closed investigations or any court actions regarding its safety violations.⁴²

Most egregiously, however, in responding to the requirement in the May 6, 2020 letter that a utility must provide “Responses to any Wildfire Safety Division requests for remedies as a result of compliance findings from evaluation of the 2019 and 2020 Wildfire Mitigation Plans,” SDG&E went so far as to claim that it has not been ordered to remedy the deficiencies in its WMP.⁴³ That SDG&E continues to refuse to even acknowledge the Commission’s direct orders does not bode well for wildfire safety in 2020.

IV. SAFETY CERTIFICATIONS ISSUED AT THIS TIME WOULD BE INVALID.

To its credit, SDG&E does acknowledge that its Tier 1 advice letters remain under review.⁴⁴ However, other than a conclusory reference to the statute, SDG&E does not attempt to explain “how the information reported in the advice letters complies with §8389(e)(7)” as WSD required.⁴⁵ To the contrary, SDG&E correctly points out that the wildfire mitigation statutes do not contemplate that safety certificates would flow from conditional approvals.⁴⁶

Although SDG&E argues that “WSD should have made clear that conditional approval is not intended to impact an electrical corporation’s ability to obtain a safety certification in 2020, for which an approved WMP is a prerequisite,”⁴⁷ no such changes were in fact made prior to the Commission’s ratification of the resolutions on the 2020 WMPs. Thus, the post-hoc interpretation provided in the post-resolution June 25, 2020 letter cannot be considered to be part of the determinations ratified by the Commission and set forth in the recently issued resolutions.

More importantly, as discussed above, the post-hoc interpretation provided in the June 25, 2020 letter is contrary to AB 1054 and thus cannot be effectuated or ratified by the Commission in the future.⁴⁸

⁴² May 6, 2020 letter from WSD, p. 2; June 16, 2020 letter from SDG&E, p. 3.

⁴³ May 6, 2020 letter from WSD, p. 3; June 16, 2020 letter from SDG&E, p. 3 (“SDG&E has not provided responses to any WSD requests for remedies as a result of compliance findings from evaluation of the 2019 and 2020 WMPs, as no such requests have been issued.”).

⁴⁴ June 16, 2020 letter from SDG&E, p. 2, 7.

⁴⁵ May 6, 2020 letter from WSD, p. 3 (Guidance #7).

⁴⁶ June 16, 2020 letter from SDG&E, p. 2 (the statute “does not contemplate ‘conditional approval’”).

⁴⁷ June 16, 2020 letter from SDG&E, p. 2.

⁴⁸ *Southern California Gas Co. v. Public Utilities Com.* (1979) 24 Cal.3d 653, 659 (Commission lacks authority to disregard legislative directives).

Thus, SDG&E's request for expeditious issuance of a safety certificate because its prior safety certificate is expiring⁴⁹ should be rejected. SDG&E's prior certificate cannot be deemed to be or treated as a valid certificate for the reasons explained above, including that SDG&E's 2019 WMP was never "approved" as that term is used in the wildfire mitigation statutes.⁵⁰

V. CONCLUSION

SDG&E's request for a safety certification is, at best, premature and should be denied. Should the Commission reward SDG&E and others with safety certifications despite the utilities' repeated failures to demonstrate effective wildfire risk reduction, Californians can have little hope for the wildfire safety promised by their legislative representatives.

Sincerely,

/s/ Malinda Dickenson

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⁴⁹ June 16, 2020 letter from SDG&E, p. 1, 6.

⁵⁰ Pub. Util. Code, § 8386.3, subd. (a) ("The Wildfire Safety Division shall approve or deny..."); *see e.g.* D.19-05-039, p. 31 (OP 15) ("Nothing in this decision relieves San Diego Gas & Electric of the requirement to conform all of the activities described in its Wildfire Mitigation Plan to existing law, regulation and Commission General Orders.").