

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

Order Instituting Rulemaking to Implement  
Electric Utility Wildfire Mitigation Plans  
Pursuant to Senate Bill 901 (2018).

Rulemaking 18-10-007  
(Filed October 25, 2018)

**REQUEST FOR REVIEW BY THE UTILITY REFORM NETWORK  
OF THE WILDFIRE SAFETY DIVISION DETERMINATION TO APPROVE A  
SAFETY CERTIFICATION FOR PACIFIC GAS AND ELECTRIC COMPANY**



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January 25, 2021

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On January 14, 2021, the Wildfire Safety Division (WSD) Director Caroline Thomas Jacobs issued a 2020 Safety Certification for Pacific Gas and Electric Company (PG&E). Pursuant to General Order 96-B, Rule 7.6.3, The Utility Reform Network (TURN) submits this request for Commission review and reversal of the WSD disposition and determination that a 2020 Safety Certification is warranted or appropriate. For the reasons discussed below, the WSD’s determination is legally erroneous in that it fails to correctly apply the “good standing” and “approved wildfire mitigation plan” requirements of Assembly Bill (AB) 1054.

## **1. INTRODUCTION AND SUMMARY**

The WSD 2020 Safety Certification for PG&E identifies numerous shortcomings to the utility’s showing to-date and ongoing conditions that raise significant and very substantial doubts regarding whether any sort of safety certification is warranted for the utility at this time. The twelve-page document includes a three-page discussion of “WSD Concerns” that, arguably in each case and certainly when viewed in the aggregate, clearly describe circumstances that warrant not issuing this certification based on PG&E’s current status and showing.<sup>1</sup> Nonetheless, WSD would issue a Safety Certification for PG&E, choosing to leave the identified shortcomings to be addressed elsewhere, and relying largely on “conditional” approval of the utility’s Wildfire Management Plan (WMP) and executive compensation structure.

The WSD-adopted outcome is all the more frustrating because of the lip service paid to a broader and more effective consideration of the factors associated with the issuance of a Safety Certification. At its outset, the 2020 Safety Certification acknowledges that, while the division’s

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<sup>1</sup> WSD Safety Certification for PG&E (January 14, 2021), pp. 9-11.

review of PG&E’s request begins with the statutory requirements of Public Utilities Code §8389(e), the issuance of a Safety Certification should also reflect other relevant and critical factors.

The WSD takes a particular interest, however, in how the utilities are implementing all the components required in the Safety Certification across the organization to reduce the risk of utility-caused catastrophic wildfires. Specifically, the WSD is attuned to understanding how key metrics identified in WMPs, Executive Compensation structures, and Safety Culture Assessments are aligned to ensure the reduction of wildfire risks.<sup>2</sup>

Unfortunately, WSD’s approach relegates the consideration of these “key metrics” to, at best, secondary status. It would permit PG&E to obtain a Safety Certification based on promises of future performance; if the determination were based on PG&E’s actual performance in the areas subject to those metrics, the certification would have to be denied at this time.

The consequences of PG&E obtaining a Safety Certification serve to further illustrate the inappropriateness of WSD’s approach. With a Safety Certification in hand, PG&E will have a relaxed burden of proof regarding establishing the reasonableness of its actions and activities associated with a wildfire.<sup>3</sup> The Commission needs to ask itself what it is about PG&E’s performance of late that might warrant such a reduced burden for this particular utility. Indeed, the Safety Certification itself highlights a number of reasons why the reduced burden would be particularly unsupportable at this time, including “field inspection defect findings,” “Federal Monitor findings,” and inadequate responses to identified “Class A” and “Class B” deficiencies.<sup>4</sup> Yet despite these numerous indicia of cause for maintaining the burden of proof on PG&E for its wildfire mitigation-related activities, the

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<sup>2</sup> WSD Safety Certification for PG&E (January 14, 2021), p. 2.

<sup>3</sup> Pub.Util. Code §451.1(c).

<sup>4</sup> WSD Safety Certification for PG&E (January 14, 2021), pp. 3 and 9-10.

Safety Certification would mean that PG&E's operations are "deemed to have been reasonable" unless some other party "creates a serious doubt" as to that reasonableness.<sup>5</sup>

In addition, under Section 3292(h), whether or not a utility has a safety certification can affect how much it must reimburse the Wildfire Insurance Fund for wildfire claims costs. Thus, the safety certification decision has potentially multi-billion dollar financial consequences for both utilities and ratepayers. For this reason, ensuring that the safety certification is conferred only on utilities that meet high standards for safety is an important tool for meeting the State's goal of preventing catastrophic wildfires and other safety failures. Unfortunately, WSD's approach would take a "lower the bar" approach, enabling PG&E to gain this very substantial benefit despite an inability to demonstrate that its current practices and operations meet appropriate standards. The "conditional" approvals that provide the basis for WSD's determination only mean PG&E is not there yet, but might be in the future. Rather than rely on hoped-for future performance, particularly from this utility, the Commission should deny the Safety Certification until PG&E achieves actual performance.

In the sections that follow, TURN explains why the Commission should review WSD's Safety Certification and reach the conclusion that PG&E's request should not be approved at this time. The primary reason is PG&E's failure to show, as required by Section 8389((e)(2), that it is "in good standing" in terms of its safety culture. Less than two months before it filed its request, PG&E was convicted on 85 felony counts relating to the tragic Camp Fire, establishing the utility acted recklessly and with a disregard for human life or indifference to the consequences of its action. As WSD's Safety Certification lays out, there are also recent the field inspection defect findings, the findings of the federal monitor involved due to PG&E's prior conviction arising from unsafe operations, and the insufficiency of PG&E's response to WSD-identified deficiencies. All of these factors weigh heavily

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<sup>5</sup> Pub. Util. Code §451.1(c).

against a determination that PG&E is in “good standing” as a safe operator of its facilities. But WSD chose not to weigh those factors, instead relying on the same “update” document from March 2019 that was also the basis for PG&E’s previous request for a Safety Certification, an approach inconsistent with the reliance on a current, annual safety culture assessment as contemplated by AB 1054. If the good standing requirement has any meaning, which it must under basic principles of statutory construction, PG&E must be denied a certification that it is a safe utility.

Even if the Commission were to conclude that PG&E should be found to be in “good standing” as a safe operator, it should not grant a Safety Certification until the utility has demonstrated full compliance with the requirements for an approved wildfire mitigation plan (WMP) as required under Section 8389(e)(2). At the very least, PG&E must remedy the many significant (“Class A”) deficiencies and any other failures to comply with WMP requirements, failures that are noted in the WSD Safety Certification, but inappropriately treated as having no bearing on PG&E’s compliance with the statutory requirement.

For these reasons, which are discussed further below, the Commission should review and reverse WSD’s determination to grant a Safety Certification to PG&E.

**2. BASED ON A REASONABLE ASSESSMENT OF THE RECENT INDICATORS REGARDING PG&E’S SAFETY CULTURE, THE COMMISSION CANNOT REASONABLY FIND THAT PG&E SATISFIES THE ‘GOOD STANDING’ REQUIREMENT REQUIRED FOR A SAFETY CERTIFICATION**

In its relatively brief discussion of the “Safety Culture Assessment” required under Section 8389(e)(2), the WSD Safety Certification refers to TURN’s argument in its August 12, 2020 comments that the Commission cannot certify PG&E as a safe utility in light of its 2020 criminal conviction for the November 2018 Camp Fire and the 84 deaths resulting therefrom, a development

the utility chose to not even mention when it sought the Safety Certification at issue here.<sup>6</sup> WSD also notes the Commission’s recognition from earlier this year (in the decision regarding PG&E’s bankruptcy reorganization plan) that PG&E’s record on safety performance warrants “greater regulatory scrutiny” because that performance has been so “abysmal.”<sup>7</sup> As the Commission stated very clearly, such an approach should continue until the utility has demonstrated “that it can consistently provide safe and reliable service.”<sup>8</sup>

Even though it states that it shares the concerns raised by TURN and the Commission, WSD would have the “good standing” finding require nothing more than the utility having agreed to findings from an outdated safety culture assessment.<sup>9</sup> As TURN explained in its comments on PG&E’s request for safety certification, this would permit PG&E to rely on the same March 2019 safety culture assessment that it used for its 2019 safety certification, without any meaningful discussion of relevant events that have taken place since then and should have some bearing on the Commission’s determination here. Rather than provide a Safety Certification that would have the Commission proceed as if the March 2019 assessment were the most recent relevant development on PG&E’s safety culture, the Commission should consider the more recent events and developments and, on that basis, determine no Safety Certification should issue at this time.

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<sup>6</sup> WSD Safety Certification for PG&E (January 14, 2021), p. 7.

<sup>7</sup> *Id.*, p. 8, quoting D.20-05-023, p. 68. WSD does not mention that the same decision labels PG&E’s recent safety performance as ranging “from dismal to abysmal.” D.20-05-023, p. 17.

<sup>8</sup> D.20-05-023, pp. 68-69.

<sup>9</sup> WSD Safety Certification for PG&E (January 14, 2021), p. 8.

**2.1. A 2021 Safety Certification Must Reflect A More Current Safety Culture Assessment Than The March 2019 Assessment Used for PG&E’s 2019 Safety Certification**

AB 1054 mandates that, before an electric utility can be granted a safety certification, it must satisfy each of seven enumerated provisions under Section 8389(e), including subsection (2) which requires:

(2) The electrical corporation 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.

The phrase “most recent safety culture assessment” refers to the “*annual* safety culture assessments” (emphasis added) to be performed by WSD, which are also mandated by AB 1054 in Section 8389(d)(4), just a few lines before Section 8389(e)(2).<sup>10</sup> In legislation focused on reducing the risks and consequences of catastrophic wildfires from utility operations, it was critical that there be annual safety culture assessments and that such assessments be performed by WSD, the division charged with getting the utilities to improve their wildfire safety efforts.

In its virtually identical May 6, 2020 letters to PG&E and the other utilities, consistent with Section 8389(e)(2), WSD addressed the showing that utilities must make to satisfy subsection (2):

To satisfy the requirements of §8389(e)(2), if the electrical corporation has an approved safety culture assessment, the electrical corporation shall submit documentation to show that it is implementing the findings of the safety culture assessment. Absent a current safety culture assessment, the electrical corporation shall submit the following documentation [followed by six specified categories of information].<sup>11</sup>

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<sup>10</sup> Section 8389(d) requires that the Commission approve the process for WSD’s annual safety culture assessments by December 1, 2020. No such process has been approved and thus WSD safety culture assessments have not yet been performed. The Legislature contemplated this possibility by including the phrase “if applicable” in Section 8389(e)(2). As discussed below, WSD’s May 6, 2020 letters to the electric utilities provided direction for the information that must be submitted absent the required *current* safety culture assessment.

<sup>11</sup> WSD’s May 6, 2020 Letter to PG&E re WSD Guidance on 2020 Safety Certification Requests Pursuant to Public Utilities Code §8389(f)(2) (May 6, 2020 Letter) (emphasis added).

WSD's use of the word "current" in its May 6, 2020 letter was important and consistent with the requirements of AB 1054.

In an unexplained change of approach, WSD would permit PG&E to qualify for its safety certification based on claimed implementation of the recommendations in NorthStar's March 29, 2019 "update" to NorthStar's more complete May 8, 2017 report. As TURN explained in its comments on PG&E's request, this March 2019 update is the same document that PG&E relied upon for its 2019 safety certification. WSD does not challenge TURN's characterization, nor does it make any effort to explain how PG&E's attempt to rely upon the same stale NorthStar update that the utility used for last year's request complies with the Division's earlier letter describing the need for an alternative showing in the absence of a current safety culture assessment. Moreover, NorthStar's March 2019 update was by its terms quite limited in scope. NorthStar only reviewed PG&E's implementation of six of NorthStar's over 60 recommendations to PG&E in NorthStar's 2017 report. The March 2019 update makes clear: "In accordance with SED's direction, NorthStar did not review the status of all recommendations or perform a detailed follow-up review of PG&E's safety culture."<sup>12</sup> Furthermore, NorthStar's March 2019 Update was not conducted by WSD, as required by Section 8389(d)(4) and thus was not necessarily undertaken from the perspective of assessing PG&E's safety culture with respect to the risk of catastrophic wildfires.

Each of the above criticisms was raised in TURN's comments on PG&E's request for a Safety Certification; none of them is meaningfully addressed in WSD's Safety Certification. Instead, WSD

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<sup>12</sup> NorthStar Consulting Group, First Update to Assessment of PG&E's Safety Culture, March 29, 2019, p. I-1 (emphasis added).

would rely on statements made in testimony PG&E presented in January 2018, and in August 2020 comments that called on the Commission to close its investigation on the utility's safety culture.<sup>13</sup>

In sum, the Commission must not permit PG&E to obtain a Safety Certification for 2021 that relies on the same NorthStar review that was the basis for the utility's safety certification request last year. The notion of a safety certification under AB 1054 is that the WSD and the Commission are to engage in an ongoing effort to continuously assess each utility's current status and to determine whether that current status represents the utility having achieved and maintained an adequate level of safety in its operations and management. The WSD Safety Certification would represent a substantial step away from that approach, instead permitting a narrow and incomplete March 2019 NorthStar update to serve as the basis for issuing the 2021 Safety Certification. PG&E's felony convictions and other developments since that March 2019 update have only magnified the serious problems with PG&E's safety culture; none of those developments were considered in that March 2019 document. Absent the current safety culture assessment that AB 1054 requires, PG&E should have submitted the extensive documentation that WSD required for utilities that lack an up-to-date safety culture assessment. When PG&E failed to do so, WSD should have determined that the utility failed to meet Section 8389(e)(2)'s good standing requirement, and denied its requested safety certification.

**2.2. PG&E's Felony Convictions Since Its Previous Safety Certification Underscore the Serious and Persistent Safety Culture Problems that PG&E Fails to Address in its Request**

On June 18, 2020, PG&E was convicted of 85 felony counts related to the 2018 Camp Fire. The crimes that PG&E committed reflect a broken safety culture at PG&E. Yet, WSD's Safety

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<sup>13</sup> WSD Safety Certification for PG&E (January 14, 2021), p. 7, citing PG&E's testimony of January 8, 2018, and Opening Comments in I.15-08-019 (August 4, 2020), p. 17. The cited portion of PG&E's opening comments merely recounts the utility's implementation of NorthStar's recommendations from the May 2017 report and the March 2019 partial update.

Certification merely acknowledges that TURN's earlier arguments that PG&E cannot be found "in good standing" relied in part on the company having been found criminally negligent for causing the fire and 84 deaths. In the next breath, WSD suggests this development is irrelevant, given PG&E's agreement to the findings from the 2019 partial update from NorthStar.<sup>14</sup> TURN reiterates the assertion made in the August 2020 comments on PG&E's request: PG&E simply cannot be certified as a safe utility when it has been convicted of these serious crimes and has not even attempted to explain why WSD and the public should be convinced that such crimes can never happen again. As further explained in TURN's earlier comments, PG&E's convictions establishes that the utility acted "recklessly," meaning that it was aware that its actions posed an unjustifiable risk of causing a fire, yet ignored that risk. They further confirm that the utility's actions displayed a "disregard for human life or indifference to the consequences" of its acts.<sup>15</sup> The Butte County District Attorney's *Camp Fire Public Report: A Summary of the Camp Fire Investigation* (DA Report), made public on June 16, 2020 and attached as Exhibit A to TURN's August 12, 2020 comments, presents a detailed set of findings condemning PG&E's corporate culture with regard to the unduly low priority the utility assigned to safe operations. The DA Report identified serious and entrenched safety culture failures that need to be addressed and resolved before PG&E can be considered worthy of a safety certificate. Unfortunately, WSD labels such concerns as matters to be considered elsewhere, and unworthy of consideration in its deliberations regarding PG&E's Safety Certification request. The Commission must adopt a different approach, one consistent with the Camp Fire convictions and the abhorrent conduct and callous company culture on which those convictions were based. Until the Commission is presented with a convincing showing from PG&E that it has made the deep and pervasive changes

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<sup>14</sup> WSD Safety Certification for PG&E (January 14, 2021), pp. 7-8.

<sup>15</sup> Comments of TURN on the Request for Safety Certification of PG&E (August 12, 2020), pp. 5-7.

necessary to render it incapable of committing such crimes again, a Safety Certification is unsupportable.

### **2.3. Several Other Developments Since PG&E’s Safety Certification Was Approved in 2019 Show That PG&E Should Not Be Allowed to Rely Upon the Stale March 2019 NorthStar Update**

PG&E’s criminal convictions and the accompanying DA Report, by themselves, clearly warrant denial of PG&E’s request for a Safety Certification at this time. But there are additional troubling developments that show that the serious problems that caused the Camp Fire cannot be considered isolated in nature. These developments include:

- Cal Fire has determined that the October 2019 Kincade Fire that scorched 78,000 acres and destroyed 374 buildings was, like the Camp Fire, caused by PG&E transmission lines. Cal Fire has forwarded its investigative report to the Sonoma County District Attorney’s office for potential criminal prosecution.
- Judge Alsup, presiding over PG&E’s criminal probation resulting from the San Bruno felony convictions, found it necessary to impose additional probation conditions on PG&E, relating to vegetation management inspections, improved condition assessment and recordkeeping for transmission tower components, and improved and verified transmission facility inspections.<sup>16</sup> These additional conditions are the result of PG&E’s continuing failure to operate a safe electric system.
- On October 16, 2020, the Federal Monitor overseeing PG&E’s probation provided a report that includes the following conclusion with respect to infrastructure inspections: “The Monitor team recently discovered that the Company failed to perform enhanced climbing inspections” of any of the 967 transmission towers that PG&E had earmarked for such inspections in HFTDs [High Threat Fire Districts] prior to peak fire season this

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<sup>16</sup> *Order Approving and Adopting Proposed Conditions of Probation*, United States v. PG&E, No. CR 14-00175, August 7, 2020.

year.<sup>17</sup> According to the Monitor, “[t]he failure to time inspect the HFTD transmission towers pursuant to PG&E’s plan appears to have been caused by human error, lack of oversight, miscommunications, and failure to appropriately escalate matters.”<sup>18</sup> This important finding shows a serious, ongoing safety culture problem at PG&E and is not mentioned in WSD’s determination.

- In the CPUC’s decision regarding PG&E’s bankruptcy plan of reorganization, the Commission found as “a cause for concern” that “PG&E seems reluctant to take ownership of its safety history and acknowledge its failings.”<sup>19</sup> This finding is yet another indication of a failed safety culture. Without recognizing its past failures, PG&E will not be able to remedy them.
- On November 24, 2020, CPUC President Marybel Batjer sent PG&E’s Interim CEO a letter expressing concern about “what appears to be a pattern of vegetation and asset management deficiencies that implicate PG&E’s ability to provide safe, reliable service to customers. Specifically, Wildfire Safety Division staff has identified a volume and rate of defects in PG&E’s vegetation management that is notably higher than those observed for the other utilities. In addition, CPUC staff are reviewing recent filings made by PG&E in its federal criminal proceeding regarding deficiencies and inconsistencies in its vegetation management practices and recordkeeping.”<sup>20</sup>

Each of these recent developments reflects an assessment that is more recent than the NorthStar 2019 partial update that WSD would treat as the most recent safety culture assessment and, therefore, the basis for determining PG&E is in “good standing.” Along with the DA Report for the Camp Fire, they underscore the fact that PG&E’s safety culture remains demonstrably broken.

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<sup>17</sup> 10/16/20 Monitor Letter, pp. 3-4.

<sup>18</sup> *Id.*, p. 4.

<sup>19</sup> D.20-05-053, p. 17.

<sup>20</sup> 11/24/20 Letter from CPUC President Batjer, p. 1.

PG&E's request offered absolutely no reason to believe that PG&E has fixed its deep and persistent safety problems. In granting the Safety Certification under these circumstances, WSD would permit an outcome fundamentally at odds with the goals of AB 1054. The Commission should take a more rational approach, and conclude that PG&E has failed to satisfy the Section 8389(e)(2) good standing requirement. Accordingly, PG&E's requested safety certification must be denied at this time.

**3. PG&E'S SAFETY CERTIFICATION MUST NOT BE APPROVED UNTIL PG&E HAS SATISFIED THE CONDITIONS FOR APPROVAL OF ITS WILDFIRE MITIGATION PLAN, ESPECIALLY THE CLASS A DEFICIENCIES**

The foregoing has established that PG&E has failed to satisfy the Section 8389(e)(2) good standing requirement. Because all seven of the Section 8389(e) provisions must be satisfied, this failure mandates denial of PG&E's request at this time. However, in the event that the Commission somehow finds that PG&E meets the good standing requirement, there is an additional basis for denying PG&E's request.

Section 8389(e)(1) requires an "approved" WMP. The Resolutions approving PG&E's 2020-2022 WMP made clear that those approvals were conditioned on the satisfaction of "deficiencies," which were categorized as Class A, Class B, or Class C, with Class A being the most serious.<sup>21</sup>

Resolution WSD-02 described Class A deficiencies as follows:

Class A deficiencies are of the highest concern and require an electrical corporation to develop and submit to the WSD, within 45 days of Commission ratification of the WMP Resolutions, a remedial compliance plan (RCP) to resolve the identified deficiency. An RCP must present all missing information and/or articulate the electrical corporation's plan, including proposed timeline, to bring the electrical corporation's plan into compliance.<sup>22</sup>

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<sup>21</sup> Res. WSD-02, p. 17.

<sup>22</sup> Res. WSD-02, pp. 17-18 (emphasis added).

This discussion makes clear that, until Class A deficiencies have been remedied, the utility’s WMP is not in compliance with applicable requirements and thus cannot be deemed an “approved” WMP under Section 8389(e)(1).

WSD-003 identifies eight Class A deficiencies for PG&E. Consistent with their classification as Class A deficiencies, these are serious problems that go to the heart of whether PG&E is entitled to a Safety Certification. All of the identified deficiencies concern critical elements that must be met before PG&E can be found to warrant a certification as a safe utility.

The WSD Safety Certification reports that PG&E submitted an RCP and quarterly report in response to the identified deficiencies in its 2020 WMP. But it also refers to the analysis released by WSD on December 30, 2020, which found that PG&E’s responses to each of the eight Class A deficiencies were insufficient. On January 8, 2021, WSD followed-up with an analysis finding that 23 responses out of 30 Class B deficiencies were also deficient.<sup>23</sup> Despite these more recent determinations establishing widespread and significant deficiencies associated with PG&E’s WMP, WSD relies on its earlier “conditional approval” of the WMP to find that PG&E has satisfied the requirement under Section 8389(e)(1).<sup>24</sup>

The Commission should recognize and call out the striking illogic in WSD’s approach. It simply makes no sense to rely on an earlier “conditional approval” to establish satisfaction of the requirement that the utility have an “approved wildfire mitigation plan,” where the more recent determination by the same Division is that PG&E has failed to satisfy the required conditions. Within a matter of just a few weeks, WSD has effectively stated that PG&E’s WMP should be treated as approved for purposes of the Safety Certification, but insufficient for purposes of satisfying the

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<sup>23</sup> WSD Safety Certification for PG&E (January 14, 2021), p. 3.

<sup>24</sup> *Id.*, p. 2.

conditions that were required to be met in order to gain the requisite approval. In any context, if an approval requires that conditions be met and those conditions are then found to have not been satisfied, no reasonable person would conclude that approval has been conferred. WSD’s approach simply cannot be squared with the plain meaning of a “condition,” as a contingency that must be satisfied to gain approval.

If this were merely a puzzling disconnect between nearly contemporaneous regulatory outcomes, it would still warrant the Commission taking action to correct the flawed logic. Where, as here, the disconnect is tied to some of the agency’s most critical work, regarding a utility with PG&E’s safety track record of late, it is essential that the Commission determine that PG&E’s current WMP does not satisfy the requirement of Section 8389(e)(1). Furthermore, Section 8389(e)(1) mandates “an approved” WMP, which unambiguously does not allow a conditional approval to satisfy the requirement. Absent meeting this required element, PG&E’s Safety Certification must be denied.

**4. THE COMMISSION SHOULD REVIEW THE WILDFIRE DIVISION’S DISPOSITION OF PG&E’S 2020 SAFETY CERTIFICATION, AND TURN’S REQUEST PRESENTS AN APPROPRIATE VEHICLE FOR SUCH REVIEW.**

WSD issued PG&E’s 2020 safety certification based on a determination that the utility has met the minimum requirements of Pub. Util. Code §8389. Yet a substantial portion of WSD’s reasoning in this regard is devoted to enumerating and describing several “ongoing concerns with PG&E’s implementation of its 2020 Wildfire Mitigation Plan and its conduct of safe operations.”<sup>25</sup> At a minimum, the numerous and well-founded “ongoing concerns” associated with PG&E’s “conduct of safe operations” raise questions regarding any determination that a safety certification should issue.

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<sup>25</sup> *Id.*, p. 9.

More importantly, as discussed above, the WSD determination is legally incorrect in finding that PG&E has met the necessary “good standing” and “approved WMP” requirements.

There is no established procedure that specifically addresses the manner by which the Commission is to review the WSD’s issuance of a safety certification. However, this cannot mean that no such review is permitted. After all, WSD’s action implicates not only safety concerns of the highest order, but also very substantial financial implications, particularly given PG&E’s recent history with wildfires resulting from its operations. Therefore, the absence of an established procedure means the Commission should determine the procedure best-suited to achieving effective review of a decision made by one of its divisions.

TURN submits that the Commission can and should rely upon the provisions of General Order 96-B for this purpose. PG&E’s informal request for its 2020 safety certification – that is, a request not made as part of a formally docketed proceeding – constitutes an “advice letter” as that term is defined in the General Order.<sup>26</sup> The Wildfire Safety Division should be treated as an “industry division” for purposes of the General Order, even though, because it did not exist when the General Order was last updated, it is not one of the specified divisions.<sup>27</sup> The WSD’s issuance of a safety certification is an act effectively identical to the “Industry Division disposition” General Order 96-B describes as

“appropriate where statutes or Commission orders have required the action proposed in the advice letter, or have authorized the action with sufficient specificity, that the Industry Division need only determine as a technical matter whether the proposed

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<sup>26</sup> G.O. 96-B, General Rule 3.1 (defining “advice letter” in part as “an informal request by a utility for Commission approval, authorization, or other relief....”)

<sup>27</sup> G.O. 96-B, General Rule 3.8 (defining “industry division” to mean “the Energy, Telecommunications, Water Division or, when acting in an advisory capacity, the Safety and Enforcement Division or the Consumer Protection and Enforcement Division, or their successors.”) G.O. 96-B was last modified on May 10, 2018, in Resolution ALJ-346; at the time, the Wildfire Safety Division did not yet exist.

action is within the scope of what has already been authorized by statutes or Commission orders.”<sup>28</sup>

Where a matter is addressed through industry division disposition of a utility advice letter, General Rule 7.6.3 provides for further Commission review and sets forth certain conditions for such review.<sup>29</sup> TURN’s request for review meets each of those conditions here. The comments TURN served on August 12, 2020, are in all material respects equivalent to a protest in response to PG&E’s informal request for the safety certification. With the instant pleading, TURN has met the 10-day timeline under the rule, with service upon PG&E and all parties on the service list for R.18-10-007, the rulemaking for implementation of Senate Bill 901. In the sections above, TURN has set forth the grounds on which it contends WSD’s disposition to be unlawful or erroneous. Finally, General Rule 7.6.3 of General Order 96-B further provides for WSD to prepare a proposed resolution for the Commission’s consideration and action during one of the agency’s business meetings.

If the Commission does not agree that General Rule 7.6.3 would serve as an appropriate procedure for reviewing WSD’s disposition of PG&E’s request for a Safety Certification, it should establish and inform TURN of the appropriate course for TURN to follow in order to present these

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<sup>28</sup> G.O. 96-B, General Rule 7.6.1 (Industry Division Disposition of Advice Letters).

<sup>29</sup> G.O. 96-B, General Rule 7.6.3 (Review of Industry Division Disposition) [“The utility or a person submitting a protest, or any third party whose name and interest in the relief sought appear on the face of the advice letter, may request Commission review of an Industry Division disposition. In exceptional circumstances, a person who has an interest in the advice letter but who did not submit a protest may request Commission review. The request must explain the circumstances that entitle the person to make the request (e.g., the person was unable to submit a protest or submitted a response supporting the advice letter). The request for Commission review shall be submitted to the reviewing Industry Division within 10 days after the issuance of the disposition, shall be served on the utility, all persons submitting protests or responses, and any third party whose name and interest in the relief sought appear on the face of the advice letter, and shall set forth specifically the grounds on which the requester considers the disposition to be unlawful or erroneous. Upon submittal of a timely request for Commission review, the Industry Division will prepare and place on the Commission’s meeting agenda a proposed resolution, and will serve it on the requester and all others on whom the request was served. Pending Commission action on the proposed resolution, the advice letter will take effect if it was approved under the Industry Division disposition.”

