

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



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Order Instituting Investigation on the
Commission's Own Motion to Determine
Whether Pacific Gas and Electric Company
and PG&E Corporation's Organizational
Culture and Governance Prioritize Safety.

Investigation 15-08-019
(Filed August 27, 2015)

**COMMENTS OF PACIFIC GAS AND ELECTRIC
COMPANY (U 39 M) AND PG&E CORPORATION ON ALJ
ALLEN'S MAY 7, 2019 PROPOSED DECISION**

HENRY WEISSMANN
JAMES C. RUTTEN
GIOVANNI SAARMAN GONZÁLEZ

JANET C. LODUCA
WILLIAM V. MANHEIM

Munger, Tolles & Olson LLP
350 South Grand Avenue
Los Angeles, California 90071-3426
Telephone: (213) 683-9150
Facsimile: (213) 683-5150
E-Mail: henry.weissmann@mto.com

Pacific Gas and Electric Company
77 Beale Street, B30A
San Francisco, California 94105
Telephone: (415) 973-6628
Facsimile: (415) 973-5520
E-Mail: William.Manheim@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY
and PG&E CORPORATION

Dated: May 28, 2019

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SUBJECT INDEX OF RECOMMENDED CHANGES

Pursuant to Rule 14.3(b) of the California Public Utilities Commission's ("CPUC" or "Commission") Rules of Practice and Procedure, Pacific Gas and Electric Company ("Utility") and PG&E Corporation (collectively, "PG&E") provide the following Subject Index of Recommended Changes in support of their Comments on the May 7, 2019 Proposed Decision of ALJ Allen Ordering Reporting of Safety Experience and Qualifications of the Board of Directors of Pacific Gas and Electric Company and PG&E Corporation and Establishing Advisory Panel on Corporate Governance (the "Proposed Decision"):

- Clarify that any quarterly reporting of non-confidential minutes of Board or Board committee meetings be (1) prospective and (2) limited to the portions that refer or relate to safety.

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Since this past April, PG&E's Boards of Directors have taken the unprecedented step of turning over more than 80% of their members. This is part and parcel of PG&E's commitment to vast changes in its business to improve its safety operations and safety culture substantially. That commitment starts with the directors, who joined PG&E fully understanding the critical nature of this mission and with complete dedication to it.

Now refreshed, the Boards are not simply taking over where the prior Boards left off. Rather, the new Boards are fully engaged in guiding PG&E to resolve the many complex, critical issues that PG&E faces. In the seven weeks since PG&E's new Boards were seated:

- Board members have participated in 13 formal Board and Board committee meetings, in addition to many additional calls and meetings;
- All Board committee chairs have been appointed;
- The Boards have held weekly calls and other meetings with officers and other leaders to accelerate the Boards' learning and focus on key issues such as safety, preparing for the upcoming wildfire season, and PG&E's bankruptcy;
- The Boards have met with the federal monitor to hear his perspective on PG&E's progress in safety operations and changing its safety culture; and

- Individual Board members have been on field visits and tours.

Over the coming weeks and months, PG&E Board members are planning multiple additional field visits to engage with employees and PG&E stakeholders to get feedback on changes PG&E should make to be a safer, better company. Each Board member has committed to at least three site visits per year, and members of the Safety and Nuclear Oversight (“SNO”) Committees will conduct additional site visits. The Boards fully understand that safety is PG&E’s most important public responsibility, and that safety and operational excellence also are necessary for PG&E’s financial success. The Boards welcome the chance to share their progress over the course of this proceeding.

PG&E also welcomes the chance to show why its new Boards are eminently qualified to oversee PG&E in all facets of its business. As with any large public company board, no one Board member likely has (or necessarily should have) the full range of expertise in operations, safety, finance, accounting, government regulation, clean energy, restructuring, finance, and new and emerging risk areas necessary to oversee an enterprise such as PG&E. A board should possess this diverse range of skills as a whole, so that, collectively, it has the capability to guide the enterprise. This is also true within the safety realm in particular; as NorthStar emphasizes in its reports and as discussed in the Commission’s public forums in this proceeding, safety is a multi-dimensional issue that includes employee safety, public safety, process safety, cyber-security, and enterprise risk management as well as compliance. The PG&E Board members bring a diverse set of skills and experiences to guide PG&E through its challenges and widen the aperture on safety and safety culture across all aspects of PG&E’s business.

PG&E Corporation’s new CEO Bill Johnson, who serves on the Utility’s Board, will be a critical part of making safety the top priority throughout the PG&E organization. The PG&E

Boards strongly believe that Mr. Johnson is the right person for this job. He has a proven track record of leadership on safe utility operations. During his time as President and CEO of the Tennessee Valley Authority, the organization achieved the best safety record in its 85-year history and was a perennial top safety performer in the utility industry. Mr. Johnson has dedicated his career, including previous service as President and CEO of Progress Energy, to delivering safe and reliable electricity service to millions of customers. Like the Tennessee Valley Authority, Progress Energy was an industry leader in safety and safety performance during his tenure. Mr. Johnson also has received training in numerous safety courses during the course of his career.

Independent members of the PG&E Boards also possess the expertise, skills, and motivation to oversee the transformation of PG&E's safety performance. The independent members include individuals with decades of experience serving as executives of other utilities, with demonstrated track records of achieving superior safety performance, whether it be gas pipeline safety, electric transmission and distribution safety, nuclear safety, occupational safety, cyber-security, or employee and industrial safety:

- Nora Mead Brownell, the new Chair of the PG&E Corporation Board, served on the Safety, Environment and Health Committee of National Grid (an electricity and natural gas company), received extensive safety training, was involved in process safety restructuring, reviewed root cause analyses of safety incidents, and made multiple site visits each year. While serving on the boards of Spectra (a pipeline company) and Oncor (an electric transmission company), Ms. Brownell also actively reviewed safety performance, metrics, and incidents. (And, as

discussed below, Ms. Brownell brings other substantial safety related experience based on her roles as utility regulator.)

- Dr. Frederick Buckman served as President and CEO of PacifiCorp, President and CEO of Consumers Energy (f/k/a Consumers Power Company), and Chairman and CEO of Trans-Elect (an independent company dedicated to the ownership, operation, and development of electric transmission assets). He has more than 35 years of experience in operations and management of companies recognized for safe, reliable, and economic utility operations. His decades of experience include, among other things, responsibility for all aspects of safety, operations, and emergency planning for two nuclear power plants; and responsibility for the safe and efficient operation of a seven-state electric production, transmission, and distribution system. While CEO of Consumers Power Company, that company won, three times, the National Safety Council award for the nation's best safety performance by a combined gas and electric utility. Additionally, while Mr. Buckman served on the board of Solomon Corporation, the board initiated an upgrade to safety culture and performance, and in the following five years, there was a six-fold improvement in overall safety performance.
- Cheryl Campbell served as President and CEO of WestGas InterState and Senior Vice President of Xcel Energy, Inc. In managing Xcel's gas operations, she oversaw the development of a pipeline safety management system (American Petroleum Institute Recommended Practice 1173) and was a member of the Executive Safety Team—meeting quarterly to discuss safety progress and safety culture issues. She also participated in a number of safety programs that covered,

among other things, behavioral safety, safety leadership, and identifying hazards. She also participated in annual working foreperson conferences for linepersons and fitters where a significant portion of the agenda related to safety. During her tenure, employee and public safety metrics improved significantly.

- Fred Fowler served as President and CEO of Spectra Energy Corp. and President and COO of Duke Energy. He has over 45 years of experience in utility company operations, including safety, natural gas and gas liquids production, transportation and marketing, and electricity generation, transmission and distribution. In these and other positions, utilities under Mr. Fowler's leadership have consistently achieved top quartile safety performances.
- Kristine Schmidt has over 35 years of experience in the energy sector, having held senior management positions at Xcel Energy, served as President of ITC Great Plains (the nation's largest independent high-voltage transmission company), and served as CEO of Peak Utility Services Group (a provider of services for the recurring repair, replacement, maintenance, and upgrade of electric power and natural gas infrastructure). In these positions, Ms. Schmidt oversaw Xcel Energy's development and implementation of (and compliance with) its North American Electric Reliability Corporation ("NERC") mandatory standards compliance plan, reviewed safety performance and safety culture, and approved safety goals, budgets and targets. She also attended numerous employee safety training sessions and tours of critical bulk power facilities, including power plants, high-voltage transmission lines, substations, control centers, distribution systems, and crew service centers.

The Boards also include independent members with safety experience as utility regulators—providing a different and important perspective on safety issues. Ms. Brownell, for example, has served as a Commissioner of the Federal Energy Regulatory Commission (“FERC”), a member of the Pennsylvania Public Utility Commission, and President of the National Association of Regulatory Utility Commissioners. Ms. Schmidt has served as a FERC Commissioner Advisor. While at FERC, both Ms. Brownell and Ms. Schmidt received training in safety issues pertaining to hydroelectric assets, liquefied natural gas facilities, cyber-security, and pipelines. Both Ms. Brownell and Ms. Schmidt also received Top Secret briefings on cyber-security and physical and critical infrastructure security and participated in joint meetings with the Nuclear Regulatory Commission on the security of nuclear facilities in the United States.

The Boards’ independent members also have significant experience on safety committees and task forces:

- Ms. Campbell served as a member of the U.S. Department of Transportation’s Gas Pipeline Advisory Committee. Her tenure included providing guidance on gas pipeline safety rule changes, and she sat on a task force whose purpose was to understand and reduce barriers to implementing pipeline safety management. She also serves as a member of the independent panel assessing the enterprise risk management and overall safety of the 11 gas utilities in Massachusetts in the aftermath of the September 2018 explosions and fires in Merrimack Valley. Ms. Campbell also is Executive Director of the Gold Shovel Association, which uses safety management programs and metrics to identify areas of improvement when it comes to excavating near gas, electric, and other underground infrastructure.

- Mr. Fowler served as Chair of the Pipeline Safety Task Force of the Interstate Natural Gas Association of America, established to improve security practices in the industry and to evaluate and improve interaction and communication with federal, state and local governments to enhance security. He also currently serves on the Corporate Responsibility, Environmental, Health and Safety Committee of the Board of Directors of Encana Corporation and has served on the boards of Spectra Energy Partners and DCP Partners, all of which have achieved top safety performances.
- Alejandro Wolff, a former United States Ambassador to the United Nations and to Chile, has experience safeguarding lives and infrastructure in areas susceptible to natural disasters like earthquakes and wildfires. He currently serves on three corporate boards—Albemarle Corporation, a specialty chemicals company, where he sits on the Health, Safety and Environment Committee; Versum Materials, an electronic materials company, where he chairs the Governance Committee; and JetSMART Holdings Limited, an airline operating in South America. In these capacities he shares oversight responsibilities for all safety-related issues affecting the companies, their employees and customers, and the communities in which they operate. Additionally, as Chair or a member of the Compensation Committee of each of these boards, he has experience developing incentive pay structures that prioritize and successfully promote superior safety performance.

The Boards' new members also have safety experience from other relevant and important contexts. For example, Jeffrey Bleich, the new Chair of the Utility's Board, served as Ambassador to Australia where he was responsible for the safety and security of all U.S.

Embassy personnel and all U.S. forces in the Commonwealth of Australia. He participated in establishing protocols for—and extensive safety trainings in—various threat contexts including natural disasters and cyber-threats. He received safety training in high-threat environments as Senior Advisor to the Director of National Intelligence and Special Counsel to the President of the United States. He also helped develop protocols for—and participated in—safety trainings for multiple campuses as a member of the California State University Board. He has participated in and conducted multiple safety trainings in cyber-security, a critical safety area for a major utility like PG&E.

PG&E also recently retained Christopher Hart, the immediate past chair of the National Transportation Safety Board and a widely recognized expert on improving safety in complex and hazardous industries. He will serve as a special independent safety advisor reporting directly to Mr. Johnson to provide an additional perspective on PG&E’s safety operations and culture. PG&E believes that retaining a former industry regulator with Mr. Hart’s expertise reflects its strong commitment to strengthening its safety culture.

With that background, PG&E offers the following comments on the specific proposals in the Proposed Decision:

A. Reporting of Board Safety Experience

The Proposed Decision references NorthStar’s recommendation III-1 in the category of Governance and Strategy, which was to “[a]dd safety to the list of qualifications used in selecting Independent Directors,” “[p]eriodically revisit the qualifications matrix and requirements for Independent Directors as industry and requirements change,” and “[a]dd Independent Directors

to the Board who have experience with safety, perhaps in another industry such as aviation.”¹

The Proposed Decision recommends that PG&E submit a compliance filing setting forth specified information about its directors, such as safety-specific work experience, to assist the Commission in “examin[ing] whether PG&E’s appointment of [its] new directors is consistent with effective implementation of the recommendations in the NorthStar Report.”²

PG&E welcomes the chance to provide such information. PG&E has explicitly added safety expertise to the “director skills matrix”—*i.e.*, the diverse range of skills necessary for a board to oversee an enterprise like PG&E—as reflected in PG&E’s 2018 and 2019 Proxy Statements,³ and NorthStar subsequently noted this action as part of its finding that its recommendation III-1 “has been implemented.”⁴ PG&E also believes that, although NorthStar did not define what it meant by adding directors who have “experience with safety,” as noted above the new Boards collectively possess such experience under any definition, by virtue of the directors’ service as executives of other energy companies, as federal and state regulators, as members of industry safety committees and task forces, and otherwise. PG&E looks forward to submitting a filing that further details the Boards’ safety credentials.

¹ Scoping Memo and Ruling of Assigned Commissioner, Attachment: Assessment of Pacific Gas and Electric Corporation and Pacific Gas and Electric Company’s Safety Culture, NorthStar Consulting Group at I-12 (May 8, 2017) (“NorthStar Report”).

² Proposed Decision at 3.

³ PG&E Corporation & Pacific Gas and Electric Company, 2018 Joint Proxy Statement at 5, 23 (Apr. 10, 2018); PG&E Corporation & Pacific Gas and Electric Company, 2019 Joint Proxy Statement at 37 (May 17, 2019).

⁴ E-Mail Ruling Distributing NorthStar Report (Apr. 3, 2019), Attachment: Assessment of Pacific Gas and Electric Corporation and Pacific Gas and Electric Company’s Safety Culture, First Update, NorthStar Consulting Group at III-55 (Mar. 29, 2019).

More broadly, the NorthStar Report identified certain areas of concern related to PG&E's corporate governance and its Boards of Directors leading up to and in the time since the San Bruno tragedy.⁵ These included concerns related to the composition and safety experience of the prior Boards as well as the active involvement, oversight, leadership, and strategic planning by the Boards on safety issues. NorthStar also identified concerns related to PG&E's safety culture. NorthStar also described, though, positive changes PG&E had made, including the shift from an incident-based disciplinary approach to a behavior-based, non-punitive "speak up" culture, and identified a number of additional recommendations.

The new Boards are acutely aware of the gravity and urgency of the concerns raised in the NorthStar Report—and the Boards are committed to getting it right. The Boards believe that the explicit addition of safety to the director skills matrix, the safety experience the new Boards possess, and the proven leadership strengths the directors bring to the task are responsive to NorthStar's concerns and are important and positive first steps. The Boards also recognize that much work remains to be done, and they are focused on strategies, both near-term and long-term, to further transform PG&E's safety culture and performance.

B. Reporting of Board Safety Training

The Proposed Decision recommends that PG&E include in its quarterly reports to the Safety and Enforcement Division ("SED") under D.18-11-050 "[a]ll training, education or other support on safety that PG&E and PG&E Corp. are providing to board members to ensure that they can adequately perform their duties on safety issues."⁶ PG&E welcomes the chance to provide non-confidential versions of this information as well. The Boards recognize the

⁵ See NorthStar Report at III-1 to III-22.

⁶ Proposed Decision at 4.

importance of safety training, and each Board member will receive additional safety training annually.

C. Submission of Board Minutes to SED

The Proposed Decision also would require PG&E to include “[n]on-confidential versions of the minutes of all board meetings and safety committee meetings” in its quarterly reports to SED.⁷ As PG&E has previously stated, it is “open to changing the way it reports to the Commission on Board-level safety-related decisions.”⁸ PG&E requests clarification, however, that any requirement to provide non-confidential Board and SNO Committee minutes be (1) prospective and (2) limited to the portions that refer or relate to safety matters, which is the core issue in this proceeding.⁹

PG&E appreciates the Proposed Decision’s statement that only non-confidential versions of the minutes would be provided. PG&E anticipates that it would redact material non-public information,¹⁰ privileged information, classified national security information, or other sensitive information.¹¹ PG&E recommends that SED review the minutes in person or via a secure data

⁷ *Id.*

⁸ Opening Comments of PG&E on the Assigned Commissioner’s Scoping Memo and Ruling at 10 (Feb. 13, 2019).

⁹ See Assigned Commissioner’s Scoping Memo and Ruling at 9 (Dec. 21, 2018).

¹⁰ See 17 C.F.R. § 243.100(a) (Regulation FD) (“Whenever an issuer, or any person acting on its behalf, discloses any material nonpublic information regarding that issuer or its securities to any person described in paragraph (b)(1) of this section, the issuer shall make public disclosure of that information as provided in § 243.101(e).”).

¹¹ See, e.g., David A. Katz & Laura A. McIntosh, *Boardroom Confidentiality Under Focus*, N.Y.L.J. (Jan. 23, 2014), <https://www.law.com/newyorklawjournal/almID/1202639470029/boardroom-confidentiality-under-focus/>. The authors note that public disclosure of “sensitive board information,” even if it is not proprietary or trade secret information, “can be highly damaging to a company.” Indeed, even the fact that a board meeting occurred on a particular date may be sensitive information when litigation is threatened or ongoing. See, e.g., *Westmoreland Cty. Emp. Ret. Sys. v. Parkinson*, 727 F.3d 719, 728 (7th Cir. 2013) (denying a

room without copying or downloading to protect their sensitive nature. Relatedly, PG&E understands the Proposed Decision to require inclusion of the minutes in the quarterly reports submitted to SED but *not* in the reports served on the service list for this proceeding (I.15-08-019) under D.18-11-050, Ordering Paragraph 2. PG&E believes that this is important, in that a broad public disclosure requirement would exacerbate concerns about the highly sensitive and confidential nature of Board and SNO Committee minutes.

D. Creation of a CPUC Advisory Panel

The Proposed Decision recommends establishing a CPUC Advisory Panel to provide the Commission with expertise on corporate governance, including advice related to the qualifications and performance of utility boards of directors.¹² PG&E acknowledges that the Commission has authority to retain advisors and to seek expert advice as necessary, and whether to do so in a particular instance is a matter internal to the Commission. That said, the Proposed Decision does not make clear what type of advice on corporate governance the Commission believes it needs or why establishing an advisory panel in this proceeding is necessary to obtain it. If the Commission articulates the perceived gaps in its knowledge or expertise, the parties could help educate the Commission with respect to these areas, including, for example, other applicable state and federal statutory and regulatory requirements to which the PG&E Boards are subject. PG&E expresses its continued willingness to provide the Commission with additional information in these and any other areas the Commission may need in order to perform its regulatory functions. To the extent the Commission wishes to establish an advisory panel to

motion to dismiss where “the complaint alleges particularized facts (*e.g.*, meeting dates and minutes) indicating that the directors were intimately involved in overseeing the remedial effort”).

¹² See Proposed Decision at 4–5.

assist the Commission more broadly with assessing the appropriate balance of safety and other skills that boards of directors of all Commission-jurisdictional public utilities should possess, PG&E recommends that the Commission do so outside of this proceeding, whose scope is limited to PG&E's safety culture.

Respectfully Submitted,

HENRY WEISSMANN
JAMES C. RUTTEN
GIOVANNI SAARMAN GONZALEZ

By: /s/ Henry Weissmann

Henry Weissmann

Munger, Tolles & Olson LLP
350 South Grand Avenue
Los Angeles, California 90071-3426
Telephone: (213) 683-9150
Facsimile: (213) 683-5150
E-Mail: henry.weissmann@mto.com

JANET C. LODUCA
WILLIAM V. MANHEIM

Pacific Gas and Electric Company
77 Beale Street, B30A
San Francisco, California 94105
Telephone: (415) 973-6628
Facsimile: (415) 973-5520
E-Mail: William.Manheim@pge.com

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Attorneys for PACIFIC GAS AND ELECTRIC
COMPANY and PG&E CORPORATION

Attachment A

PG&E's Proposed Changes to the Findings of Fact and Conclusions of Law

PG&E's Proposed Changes to the Findings of Fact and Conclusions of Law

IT IS ORDERED that:

1. Pacific Gas ~~&~~[and](#) Electric Company and PG&E Corporation are to provide the specified information for each board member by a compliance filing in this proceeding within 20 days of the effective date of this decision.
2. Pacific Gas ~~&~~[and](#) Electric Company and PG&E Corporation are to provide the specified information in the quarterly reports submitted to the Commission's Safety and Enforcement Division pursuant to Decision 18-11-050. [Non-confidential versions of the minutes of all future Board meetings that refer or relate to safety matters, and of all future Safety and Nuclear Oversight Committee meetings, shall be made available to the Safety and Enforcement Division via in-person review or secure data room without copying or downloading.](#)