

**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)

**REPLY COMMENTS OF PACIFIC GAS AND ELECTRIC
COMPANY (U 39 M) AND PG&E CORPORATION REGARDING THE
ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING**

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TABLE OF CONTENTS

| | | |
|------|--|----|
| I. | INTRODUCTION | 1 |
| II. | PARTIES RECOGNIZE THE IMPORTANCE OF A CONSTRUCTIVE, TRANSPARENT, AND SYSTEMIC APPROACH TO SAFETY MANAGEMENT, CLIMATE, AND CULTURE..... | 3 |
| III. | PARTIES ARE BROADLY ALIGNED THAT GOVERNANCE AND MANAGEMENT PROPOSALS SHOULD BE CONSIDERED | 6 |
| A. | Parties Broadly Support Changes To The Board..... | 7 |
| B. | PG&E Does Not Understand Any Party To Advocate Changing The Statutory Business Judgment Rule | 7 |
| C. | PG&E Supports Considering Additional Safety Reporting Obligations | 8 |
| D. | PG&E Supports Considering Changes To Incentive Compensation..... | 9 |
| IV. | PARTIES SHOULD FURTHER DEVELOP THEIR NUMEROUS AND CONFLICTING STRUCTURING PROPOSALS BEFORE THE COMMISSION DETERMINES WHICH PROPOSALS MERIT FURTHER CONSIDERATION..... | 9 |
| A. | The Nexus Between Organizational Structure And Safety Is Indirect And Uncertain..... | 9 |
| B. | Given The Uncertain Relationship Between Structure And Safety, Identifying Structural Proposals That Have A Demonstrated Nexus To Safety, Supported By Data, Should Be A Threshold Inquiry For Parties And The Commission | 10 |
| C. | Separation Of PG&E’s Electric And Gas Businesses Should Be Considered | 11 |
| D. | Parties Express Concerns Regarding Legally Separate Regional Entities..... | 12 |
| E. | Regional Municipalization Of Portions Of PG&E’s System Presents The Same Concerns As Dividing PG&E Into Regional Utilities And Raises Additional Legal and Technical Complications | 14 |
| F. | No Party Supporting Government Ownership Of Portions Of PG&E’s System Presents A Clear Nexus To Improved Safety Performance, The Core Question In This Proceeding..... | 15 |
| V. | PARTIES’ “WIRES ONLY” PROPOSALS FAIL TO ADDRESS HOW TRANSITIONING TO SUCH A MODEL WOULD IMPROVE SAFETY | 18 |

TABLE OF CONTENTS
(Continued)

| | <u>Page</u> |
|--------------------------|--------------------|
| VI. OTHER PROPOSALS..... | 20 |
| VII. CONCLUSION..... | 20 |

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I. INTRODUCTION

Pacific Gas and Electric Company (PG&E) and PG&E Corporation welcome and appreciate parties' constructive proposals for how PG&E can do better when it comes to safety. PG&E looks forward to further development of these proposals as this proceeding unfolds. PG&E respectfully submits these reply comments to make five key points.

First, as noted in our opening comments,¹ a long-term, systemic approach to safety and safety culture that is constructive, proactive, and transparent is critical. The Office of Safety Advocate (OSA) appears to share this vision, emphasizing the need "to view a company's safety commitment from a holistic standpoint," the importance of a "safety management system consisting of a robust safety culture," and the benefits of "a system that encourages reporting of actual and potential safety incidents" similar to "the Federal Aviation Administration (FAA's) Aviation Safety Action Program."² Similarly, the Public Advocates Office's (PAO) comments urge a "transparent" approach that incentivizes "management to focus on safety, to be

¹ See Opening Comments of Pacific Gas and Electric Company (U 39 M) and PG&E Corporation on the Assigned Commissioner's Scoping Memo and Ruling at 5-7 (Feb. 13, 2019) (PG&E Opening Comments).

² Opening Comments of the Office of Safety Advocate at 2-3, 6, 7 (Feb. 13, 2019) (citation omitted) (OSA Opening Comments).

forthcoming, and to strive to be a good corporate citizen.”³ These parties’ comments are productive and merit further consideration. As noted in PG&E’s opening comments, proposals to develop an effective safety management system (SMS) and increase transparency in management also align with the Commission’s approach to the Risk Assessment Mitigation Phase (RAMP) of the General Rate Case (GRC) proceeding, and the Safety Model Assessment Proceedings (S-MAP).⁴

Second, PG&E and PG&E Corporation have implemented or are pursuing a number of the governance proposals, including replacing the CEO and the heads of the electric business, pursuing a replacement of a majority of Board Members,⁵ and using an independent nominating committee to identify new Board candidates.⁶ With respect to additional suggestions for safety reporting and potential changes to management and compensation,⁷ PG&E believes that further consideration is warranted.

Third, some of the numerous, disparate, and often conflicting proposals for altering PG&E’s corporate structure merit careful consideration, though in some cases, the Commission should be more circumspect. For example, as noted in PG&E’s opening comments, legally separating the gas and electric businesses merits further study since it may increase operational focus on safety and be feasible from a technical perspective. Other proposals, however, seem disconnected from or even counterproductive to improving safety performance. PG&E recommends that in order for a structural proposal to be a potentially viable option under

³ Opening Comments of the Public Advocates Office on the Questions in the Assigned Commissioner’s Scoping Memo and Ruling at 3, 10 (Feb. 13, 2019) (PAO Opening Comments).

⁴ See PG&E Opening Comments at 6-7.

⁵ Opening Comments of The Utility Reform Network on Alternative Approaches to Providing Electric and Natural Gas Service to Customers Currently Served by Pacific Gas and Electric Company at 28 (Feb. 13, 2019) (“TURN Opening Comments”); see also PAO Opening Comments at 10 (noting that PG&E has already announced planned changes to the Board).

⁶ See PAO Opening Comments at 7.

⁷ *Id.* at 8-10; TURN Opening Comments at 30; Opening Comments of City and County of San Francisco on Assigned Commissioner’s Scoping Memo and Ruling at 11 (Feb. 13, 2019) (San Francisco Opening Comments); OSA Opening Comments at 3-4.

consideration, its proponent first should be required to bring forth data or other evidence demonstrating a strong nexus to safety. Just as legal, financial, and technical feasibility is a gating issue, a demonstrated nexus to safety should be a gating issue for structural proposals.

Moreover, the parties championing many of the structuring proposals have not grappled with the myriad practical issues, potential detriments, and unintended consequences. A number of parties express concerns about breaking up PG&E into smaller companies based on geographic region. As PG&E's opening comments pointed out, regionalization could create significant risks and costs, such as diverting safety resources away from higher-risk areas, de-averaging customer rates, and creating dis-synergies. Yet some parties nevertheless propose local government takeovers of portions of PG&E's business, even though such piecemeal municipalization would engender the same downsides and challenges as a regional breakup. PG&E recommends that the Commission proceed cautiously with respect to structuring proposals, first determining which have an evidence-based potential for furthering safety, and of those, which are potentially viable and desirable from operational, legal, consumer, and other perspectives.

Fourth, proponents of transitioning PG&E to a "wires only" business offer only a peripheral connection between their proposals and improved safety performance—the primary goal of this proceeding. Because this concept is already being considered in other proceedings and by the Legislature, PG&E recommends that such proposals be deemed out-of-scope.

Finally, there is a consensus among the parties that addressed the issue that inverse condemnation reform is needed. PG&E urges the Commission to continue working with the Legislature to reform this flawed legal doctrine.

II. PARTIES RECOGNIZE THE IMPORTANCE OF A CONSTRUCTIVE, TRANSPARENT, AND SYSTEMIC APPROACH TO SAFETY MANAGEMENT, CLIMATE, AND CULTURE

As discussed in PG&E's opening comments, a systemic approach to safety through an enterprise safety management system is the essential means of effective governance, including identifying, evaluating, and mitigating safety risks in operations, culture, management, and

leadership. OSA and PAO put forth general approaches for improving safety that are consistent with this vision and are constructive. These parties appear to recognize, as have prominent safety experts, that improving safety requires more than just creating and enforcing a prescriptive set of rules; rather, it requires a holistic approach that focuses on the interplay “between the concepts of safety management, safety climate and safety culture.”⁸ As these parties observe, such a comprehensive approach requires Board and management “expertise in organizational safety, gas safety, and[] electrical safety,” a relentless “focus on safety” in day-to-day decision-making, “robust internal controls to enforce safety protocols,” management attention to “the first-hand expertise of PG&E employees,” and many other things.⁹ Ultimately, as OSA notes, “a comprehensive SMS across PG&E’s entire enterprise” is the long-term foundation for continually and effectively driving improvements in safety.¹⁰

OSA and PAO also appear to recognize that regulators’ approach to oversight can foster and support, or alternatively hinder and undercut, a systematic approach to safety. OSA and PAO suggest that an unduly prescriptive or punitive approach contravenes best safety practices because it discourages self-reflection, “transparen[cy],”¹¹ and voluntary “reporting of actual and potential safety incidents.”¹² OSA’s and PAO’s comments align with the NorthStar report, which recommended “a non-punitive system for reporting actual and potential safety incidents to

⁸ R. Kennedy & B. Kirwan, *Development of a Hazard and Operability-Based Method for Identifying Safety Management Vulnerabilities in High Risk Systems*, 30 *Safety Science* 249, 250 (1998). “Safety management is . . . the documented and formalised version of the safety management system which will exist as a paper-based system of policy, procedures and instructions, etc.” *Id.* “Safety climate reflects the symbolic (e.g. posters in the workplace, state of the premises, etc.) and political (e.g. managers voicing their commitment to safety, allocation of budgets to safety, etc.) aspects of the organisation which constitute the work environment.” *Id.* at 251. “Safety culture . . . is made up of the cognition (e.g. information processing and evaluation which occurs prior to a decision or action being carried out) and emotion (e.g. whether people feel happy or upset about something) which give groups, and ultimately the organisation, its character. Unlike safety management and climate, which can often be a reactive response to a certain situation, the safety culture is a stable and enduring feature of the organisation.” *Id.*

⁹ PAO Opening Comments at 3, 8, 10, 12.

¹⁰ OSA Opening Comments at 8.

¹¹ PAO Opening Comments at 3.

¹² OSA Opening Comments at 7.

the CPUC to encourage reporting and facilitate lessons learned.”¹³ Their comments also align with analyses of recognized safety experts and the Commission’s approach in this proceeding.¹⁴

OSA’s and PAO’s comments stand in stark contrast, however, to those of The Utility Reform Network (TURN), which proffers a very different vision—one that urges the Commission to take “a more invasive approach to regulation.”¹⁵ By “invasive,” PG&E presumes that TURN means a greater reliance on command-and-control regulations enforced through inspection and penalties (*i.e.*, the traditional regulatory model). The Commission’s Safety and Enforcement Division (SED) is charged with traditional compliance and enforcement functions. The Commission, however, is looking to foster other approaches: “The core of SED’s work is compliance and enforcement . . . [but] the challenges facing the State require SED to not only assure that infrastructure is safe and code compliant today, but to *also think about tomorrow and how we can better assure safety in the future.*”¹⁶

In contrast to TURN, OSA rightly encourages the Commission to look to SMS standards and “a new Safety Program modeled after the . . . FAA’s[] Aviation Safety Program (ASAP).”¹⁷

¹³ See I.15-08-019, Scoping Memo and Ruling of Assigned Commissioner, Attachment: Assessment Of Pacific Gas And Electric Corporation And Pacific Gas And Electric Company’s Safety Culture Prepared for California Public Utilities Commission at I-10 (May 8, 2017) (NorthStar Report).

¹⁴ See, *e.g.*, Assigned Commissioner’s Scoping Memo and Ruling at 9 (Dec. 21, 2018) (Scoping Memo) (“This is not a punitive exercise.”); A. Ciavarelli, Human Factors Associates, Inc., *Integration of Human Factors into Safety and Environmental Management Systems*, Offshore Technology Conference, 4, 7, 13 (2016) (describing the importance of non-punitive reporting in oil and gas operations); Manoj S. Patankar and Edward J. Sabin, *The Safety Culture Perspective*, in *Human Factors in Aviation* 114 (2010) (noting the importance of a non-punitive reporting environment to promote an effective safety culture).

¹⁵ TURN Opening Comments at 24, 26.

¹⁶ Cal. P.U.C., Safety and Enforcement Div., 2018 Annual Work Plan at 4 (emphasis added), *available at* <http://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/Safety/Other/2018%20SED%20Annual%20Plan.pdf>.

¹⁷ OSA Opening Comments at 6; *see also id.* at 5. The Center for Catastrophic Risk Management recommendations attached to OSA’s Opening Comments note ambiguities in vocabulary used to describe safety. *Id.*, Attachment A at 2; *see also* FAA, *A Practical Guide to Maintenance ASAP Programs* (Sept. 2009), *available at* https://www.faa.gov/about/initiatives/asap/policy/media/Maintenance_ASAP_DOT-FAA-AR-9-28.pdf; FAA, *Aviation Safety (AVS) Safety Management System Requirements* (May 9, 2017), *available at* https://www.faa.gov/documentLibrary/media/Order/VS_8000_367B.pdf. The Commission may wish to establish a process to define common safety vocabulary for the California utility sector.

PG&E believes that the FAA's program has much to recommend it. The cornerstone of the FAA's approach is "trust and collaboration between employees, management and the regulator, toward achieving a higher goal—safety."¹⁸ Among other things, the FAA's model:

- Recognizes that a "critical part of [an] SMS program is safety culture improvement, and [that] the foundation of safety culture improvement is a reporting culture, which is facilitated by non-punitive reporting of errors";
- Recognizes that "[t]he role of senior management in communicating and practicing a strong safety message cannot be overstated," that leadership "must visibly support the [safety] program through resources and public commitments," and that it "must be able to make structural and procedural changes in the organization to ensure that safety is consistently valued";
- "[B]uilds a reporting culture, allowing a non-punitive flow of information between the person who committed [an] error and the management who is entrusted to develop a comprehensive, systemic solution so that others are not placed in a similar situation"; and
- "[I]dentif[ies] the conditions that [lead] to . . . errors and facilitate[s] the implementation of a comprehensive safety net, reducing the probability of a catastrophic accident."¹⁹

The long-term success of aviation safety in the United States and Europe evidences the effectiveness of these practical safety solutions.

PG&E looks forward to working with the Commission and parties on ways to advance and improve PG&E's overall approach to safety management, climate, and culture.

III. PARTIES ARE BROADLY ALIGNED THAT GOVERNANCE AND MANAGEMENT PROPOSALS SHOULD BE CONSIDERED

PG&E strongly believes that leadership is a critical part of an effective enterprise-wide approach to safety and is committed to reinforcing a strong safety culture among Board members and all levels of management. PG&E accordingly is open to considering a wide array of constructive governance and management proposals—though some parties express skepticism that the particular changes proposed in the Scoping Memo would meaningfully impact safety.²⁰

¹⁸ FAA, *A Practical Guide to Maintenance ASAP Programs*, *supra*, at 5; *see also generally* FAA, *Aviation Safety (AVS) Safety Management System Requirements*, *supra*.

¹⁹ FAA, *A Practical Guide to Maintenance ASAP Programs*, *supra*, at 2, 3, 7.

²⁰ *See, e.g.*, San Francisco Opening Comments at 11.

PG&E urges a thoughtful approach to all such proposals. PG&E responds below to some of the specific opening comments offered by various parties.

A. Parties Broadly Support Changes To The Board

The composition of PG&E and PG&E Corporation's Boards will change. As noted in PG&E's opening comments, the PG&E Corporation Board expects that no more than five of PG&E Corporation's current directors will stand for election at the 2019 Annual Meeting of Shareholders, which is currently scheduled for May 21, 2019. The PG&E Corporation Board intends that a majority of PG&E Corporation's directors will be new independent directors by the time of the 2019 Annual Meeting, subject to proper consideration of new candidates.²¹ The PG&E Corporation Board is working to develop its slate of director nominations for shareholders to vote on at the 2019 Annual Meeting.

Several parties advocate increasing the safety and operational experience on the Boards.²² The PG&E Corporation Board has an independent nominating committee, and safety and energy/utility industry experience have been—and remain—two of the enumerated skills and characteristics desired on the Boards as a whole and considered when evaluating individual director candidates.²³ PG&E and PG&E Corporation support further increasing safety and operations expertise on the Boards, but the Board composition ultimately is determined by the shareholders, not management or other stakeholders.

B. PG&E Does Not Understand Any Party To Advocate Changing The Statutory Business Judgment Rule

PAO states: “[a]ny BJR must ensure that safety is the top priority and not allow the Board of Directors to avoid responsibility for missteps and misdeeds.”²⁴ PAO does not appear to

²¹ See PG&E Opening Comments at 16.

²² See, e.g., TURN Opening Comments at 28-29; PAO Opening Comments at 7-8; OSA Opening Comments at 3; Comments of Engineers and Scientists of California on Scoping Memo at 2 (Feb. 13, 2019) (Engineers & Scientists Opening Comments).

²³ See PG&E Opening Comments at 11-13.

²⁴ PAO Opening Comments at 4.

suggest a change to the business judgment rule, which is statutory and subject to amendment only by the Legislature.²⁵ PAO merely comments on its understanding of the existing rule.

PG&E certainly agrees that oversight of safety of operations is a critical responsibility of the Boards. As noted in PG&E's opening comments, the existing business judgment rule is fully compatible with prioritizing safety and facilitates recruiting and retaining qualified directors.²⁶ PG&E does not understand PAO or any other party to argue otherwise.

C. PG&E Supports Considering Additional Safety Reporting Obligations

Several parties propose requiring PG&E to submit additional reports to the Commission, the public, or both. OSA, for example, proposes that the Commission evaluate PG&E's progress in developing an enterprise-wide SMS.²⁷ PAO suggests reporting on Board changes in response to safety incidents, file reports that are analogous to Securities and Exchange Commission Form 8-Ks, and report on directors' and officers' insurance.²⁸

PG&E is open to OSA's suggestion that PG&E report on progress towards developing and implementing an enterprise-wide SMS; this is consistent with the "process-based reporting" that PG&E observed in its opening comments would be most effective.²⁹ PG&E also is open to considering additional reporting obligations, similar to those proposed as part of the S-MAP proceeding and ultimately the RAMP filing whereby PG&E has committed to transparent reporting on the implementation of risk mitigations and the risk reduction results achieved for its top safety risks. PG&E agrees with PAO, however, that any such additional reporting should not

²⁵ See Cal. Corp. Code § 309. Among other things, the business judgment rule permits a board of directors to rely in good faith on expertise of, and information provided by, officers, employees, and other advisors that the board believes are reliable, consistent with the board's oversight duties, as compared to management's responsibility for day-to-day operations.

²⁶ See PG&E Opening Comments at 8-9.

²⁷ See OSA Opening Comments at 2-7.

²⁸ See PAO Opening Comments at 5, 9, 10.

²⁹ See PG&E Opening Comments at 10-11.

be “duplicative of the safety reports that the Commission already receives,”³⁰ because duplicative reporting would not increase safety or otherwise add value, and could distract from substantive work in safety and other areas. PG&E files, for example, reports related to “deferred work” as part of the GRC process. PG&E’s independent Monitor is also expected to generate a publicly available report that likely will address safety related issues.³¹

D. PG&E Supports Considering Changes To Incentive Compensation

Several parties recommend changing PG&E’s incentive compensation structure. TURN, for example, urges the Commission to “direct PG&E to increase the weighting of safety in its Long-Term Incentive Plan (LTIP) to 50%, consistent with the weighting of safety in PG&E’s Short Term Incentive Plan (STIP).”³² OSA, on the other hand, cautions that “any . . . proposed incentive program should be explicitly defined and well vetted to prevent unintentional negative impacts and reduced safety.”³³ PG&E agrees that incentive compensation proposals merit consideration. PG&E is currently developing new 2019 short-term incentive structures subject to approval by the Bankruptcy Court, and expects to seek approval for its 2019 Short Term Incentive Plan in the coming weeks.

IV. PARTIES SHOULD FURTHER DEVELOP THEIR NUMEROUS AND CONFLICTING STRUCTURING PROPOSALS BEFORE THE COMMISSION DETERMINES WHICH PROPOSALS MERIT FURTHER CONSIDERATION

A. The Nexus Between Organizational Structure And Safety Is Indirect And Uncertain

As discussed in PG&E’s opening comments, any evaluation of structural reform proposals must recognize that the exposure, drivers, frequency, and consequences of risks remain unchanged regardless of corporate structure or ownership of utility operations.³⁴ As such, at

³⁰ PAO Opening Comments at 9.

³¹ See PG&E Opening Comments at 15.

³² TURN Opening Comments at 30.

³³ OSA Opening Comments at 9.

³⁴ See PG&E Opening Comments at 18.

most, changes to corporate structure can affect safety risks only indirectly. For instance, this could occur if a particular structure would improve PG&E's operational focus or better support a comprehensive, effective, and proactive SMS.

OSA appears to share this perspective.³⁵ The paper from the Center for Catastrophic Risk Management (CCRM) at the University of California at Berkeley, attached to OSA's comments, states that "the relation of safety culture to organizational structure can be complex and uncertain" and "[t]here is ambiguity as to . . . its causal relationship . . . to accidents and incidents."³⁶ According to CCRM, "the idea that a structural change is a guarantee of safety culture and safety management improvement is not supported by research."³⁷

B. Given The Uncertain Relationship Between Structure And Safety, Identifying Structural Proposals That Have A Demonstrated Nexus To Safety, Supported By Data, Should Be A Threshold Inquiry For Parties And The Commission

The Scoping Memo identifies "the keystone question" for this phase as: "[C]ompared to PG&E and PG&E Corp. as presently constituted, would any of the following proposals provide Northern Californians safer gas and electric service at just and reasonable rates?"³⁸ Many parties that support structural proposals do not point to data or evidence supporting a nexus between the specific structure and safety. And the limited data currently available do not necessarily support conclusions drawn by the American Public Power Association (APPA) and others.³⁹

PG&E recommends that, for a structural proposal to be considered a potentially viable option, its proponent must bring forward data or other evidence demonstrating a strong nexus to

³⁵ See OSA Opening Comments at 5.

³⁶ *Id.*, Attachment A at 2.

³⁷ *Id.*, Attachment A at 3.

³⁸ Scoping Memo at 9.

³⁹ See *infra*, Part IV.F.

safety. Just as legal, financial, and technical feasibility is a gating issue,⁴⁰ a demonstrated nexus to safety should be a gating issue for structural changes. The parties should make such a demonstration before any broad discovery, as suggested by PAO,⁴¹ is conducted regarding PG&E's internal plans and valuations related to potential reorganizations. Treating a nexus to safety as a threshold issue will allow the parties and the Commission to focus on identifying and evaluating proposals directly relevant to the keystone question at hand—what will enhance safety. Given the wide scope of this proceeding, failing to require a showing of a safety nexus creates the risk that this proceeding will digress into a forum for larger debates regarding the future of the gas and electric industries in California, whereas the focus should remain on improving PG&E's provision of safe and reliable electric and gas service.⁴²

C. Separation Of PG&E's Electric And Gas Businesses Should Be Considered

As noted in PG&E's opening comments, separating the electric and gas businesses seems technically and operationally feasible and has the potential to reduce the total risks managed by a single entity, which could improve operational focus and development of safety management systems.⁴³ Marin Clean Energy observes that "separation . . . into independently operated gas and electric entities would be a fundamental first step towards improving PG&E's operational scale and scope in order for PG&E to better focus on safe, reliable and economic provision of utility service to customers."⁴⁴ The City and County of San Francisco vaguely appears to

⁴⁰ See Scoping Memo at 2-3 ("If there is not a clear path forward to implement an alternative (including consideration of legal, financial, and technical grid issues), then the alternative will not be considered a viable option in this proceeding.").

⁴¹ See PAO Opening Comments at 11-12.

⁴² See Opening Comments of Silicon Valley Clean Energy at 4-5 (Feb. 13, 2019) (proposing a distribution system operator, a market for distribution grid services, and an open access distribution tariff); Opening Comments of the Center for Climate Protection in Response to Assigned Commissioner's Scoping Memo and Ruling at 3, 6 (Feb. 13, 2019) (proposing a number of structural changes, including a distribution system operator, that "would be applicable to the other IOU distribution utilities and could thereby serve as the basis of a uniform regulatory framework for reforming electric distribution service").

⁴³ See PG&E Opening Comments at 20-21.

⁴⁴ Opening Comments of Marin Clean Energy on the Assigned Commissioner's Scoping Memo and Ruling at 4-5 (Feb. 13, 2019) (Marin Clean Energy Opening Comments).

support proposals that might break up PG&E into smaller entities, including separating gas and electric,⁴⁵ but other parties either do not comment or do not express support for or opposition to such a breakup.⁴⁶

If separation is pursued, care must be taken to ensure “[g]reater coordination” through an enterprise SMS in order “to increase consistency, improve efficiencies, minimize operational gaps, and facilitate sharing of best practices.”⁴⁷ Also, there are certain legal and practical challenges associated with separating the gas and electric businesses, including potential one-time and ongoing incremental costs, but there are possible mechanisms available to help minimize them. Engineers and Scientists of California (Engineers & Scientists) raises concerns with any proposal to separate PG&E, including separation of gas and electric businesses.⁴⁸ Engineers & Scientists observes that separation would involve incremental costs, but also argues that separation proposals would negatively affect employees, causing retirements and jeopardizing continued accrual of pension benefits.⁴⁹ While some of these concerns are valid, there also are ways to minimize any adverse effects on employees, including, for instance, through assumption of collective bargaining commitments or pension benefits. Accordingly, PG&E recommends that the Commission consider this proposal further.

D. Parties Express Concerns Regarding Legally Separate Regional Entities

A number of parties express concerns similar to PG&E’s regarding dividing PG&E into regional utilities. The California Farm Bureau, for instance, notes that “[b]oth natural gas and electric transmission infrastructure cross county boundaries, cities and other geographical divisions without adherence to any parameters that would necessarily align with appropriately

⁴⁵ San Francisco Opening Comments at 12.

⁴⁶ *E.g.*, TURN Opening Comments at 31 (indicating that it may address corporate structure in reply comments); PAO’s Opening Comments at 11-12.

⁴⁷ NorthStar Report at I-10.

⁴⁸ *See* Engineers & Scientists Opening Comments at 3-5.

⁴⁹ *See id.* at 3-4.

designated subsidiaries.”⁵⁰ It also notes the difficulty of regionalizing PG&E when “infrastructure was built based on the needs of the system, siting constraints and myriad other factors under the umbrella of an integrated utility.”⁵¹ Likewise, Marin Clean Energy agrees that there are technical and operational complexities to regional division and also sees potential equity concerns among ratepayers without any clear safety benefit to such a proposal.⁵² While TURN does not specifically comment on this proposal, TURN urges the Commission to guard against severe de-averaging of electric rates across PG&E’s service territory.⁵³ TURN notes the diversity in PG&E’s service territory and customer base and argues that “‘averaging’ promotes access to essential utility services for high-cost areas of the state, and particularly for those customers without the financial means to pay much higher rates,” and further argues that “access to service would be jeopardized for customers living in the high-cost areas” if rates were de-averaged.⁵⁴

The concerns expressed by the California Farm Bureau, Marin Clean Energy, and TURN underscore that legally separating PG&E’s operations into regional entities would be a lengthy, technically and operationally complex, and costly process.⁵⁵ It also could lead to skewed or heterogeneous allocation of risk and resources among the regional entities, negatively affect enterprise risk management, and potentially lead to greater financial instability. To TURN’s point, it necessarily would involve some de-averaging of customer rates. The combination of (i) the technical constraints of separating each system, gas and electric, by region; (ii) the

⁵⁰ Comments of the California Farm Bureau on Rulemaking Examining Pacific Gas and Electric Company’s Corporate Governance, Structure, and Operations at 2 (Feb. 3, 2019).

⁵¹ *Id.*

⁵² See Marin Clean Energy Opening Comments at 6-7.

⁵³ See TURN Opening Comments at 12-13, 31.

⁵⁴ *Id.* at 12. San Francisco is the only party to express support for regional separation, though its comment is brief. (See San Francisco Opening Comments at 12 (“Dividing PG&E into smaller entities could allow each to perform more effectively. This separation could be geographic (for example, regional entities . . .).”.)

⁵⁵ See PG&E Opening Comments at 22-26.

regional differences or incongruities among and between the gas and electric distribution and transmission systems; and (iii) the considerable *regional* differences among PG&E customers, significantly constrains the options, if any, for dividing PG&E into regional companies.⁵⁶

E. Regional Municipalization Of Portions Of PG&E's System Presents The Same Concerns As Dividing PG&E Into Regional Utilities and Raises Additional Legal and Technical Complications

Various parties express support for options involving government ownership of aspects of PG&E's business. While TURN appears to support State ownership of all of PG&E's transmission system and, perhaps, certain generation assets,⁵⁷ no party advocates that the State acquire PG&E's entire electric and gas businesses. Rather, parties supporting government ownership favor piecemeal municipalization of portions of PG&E's electric system by region.⁵⁸ This is analogous to dividing PG&E into regional utilities, albeit government owned ones. As such, this presents the same concerns that inhere in regionalization, but to an even greater degree.

There are significant operational, technical, and legal difficulties with transitioning parts of PG&E to municipalities or government owned utilities. As noted in PG&E's opening comments, it would be an enormous undertaking to redesign and modify PG&E's system into smaller systems based on defined political boundaries.⁵⁹ There also could be significant adverse effects on safety and customer rates due to regional differences, including the distribution of

⁵⁶ See *id.* at 25-26.

⁵⁷ See TURN Opening Comments at 31-32. TURN does not identify any safety benefits that would result from this proposal.

⁵⁸ *E.g.*, Opening Comments of the City of San José at 3 (Feb. 13, 2019) (San José Opening Comments); Opening Comments of East Bay Community Energy, Peninsula Clean Energy Authority, Pioneer Community Energy, Silicon Valley Clean Energy, Sonoma Clean Power, Valley Clean Energy Alliance, and City of San José at 8-9 (Feb. 13, 2019) (Joint CCAs Opening Comments); Comments of South San Joaquin Irrigation District on Proposals to Address Safety Culture at 2 (Feb. 13, 2019) (South San Joaquin Irrigation District Opening Comments). The Joint CCAs ask the Commission to rule that local jurisdictions can condemn and pay book value for PG&E assets. (See Joint CCAs Opening Comments at 8.) But eminent domain requires paying “the fair *market* value of the property.” Cal. Code Civ. Proc. § 1263.310 (emphasis added); see also *id.* § 1263.320(a). The Commission has rejected book value as an appropriate measure. See *Re Vandenberg Village Community Servs. Dist.*, D.87-07-080, 1987 WL 1498409, at *5 (C.P.U.C. July 29, 1987).

⁵⁹ See PG&E Opening Comments at 33.

risks and resources, as discussed by TURN and Marin Clean Energy regarding rate de-averaging. And smaller, regional, government owned utilities may be less able to make the necessary infrastructure and other investments needed to advance the State's aggressive clean energy goals.

In addition, the Commission would have a limited role in overseeing regional municipalization: Political boundaries, not technical and operational factors or how best to advance safety and maintain equity across PG&E's entire service area, would dictate where the lines are drawn. While San Francisco, San José, or other cities and municipalities may have the desire and capacity to form government owned utilities, others, including the areas with the greatest wildfire risk, may not. Indeed, the South San Joaquin Irrigation District acknowledges that "[n]ot every geographic area is appropriate for municipalization" but recommends that it be considered for "those areas willing and capable of forming" a government owned utility.⁶⁰

There is a real possibility that only those areas with the highest resources and lowest risks would choose to form government owned utilities. Indeed, those areas have the most to gain financially. This cherry picking could leave the remaining entity, whether PG&E, another utility, or other local governments, to shoulder the burden of serving a less diverse customer base with disproportionately higher risks and fewer resources. Rather than charting a path forward for safe and reliable electric and gas service for all of PG&E's service territory, regional government utilities could "disadvantag[e] places like Butte County with heightened wildfire-related risks that have already suffered tremendous hardship."⁶¹

F. No Party Supporting Government Ownership Of Portions Of PG&E's System Presents A Clear Nexus To Improved Safety Performance, The Core Question In This Proceeding

While various parties express support for government ownership of portions of PG&E's gas and electric systems,⁶² none presents a clear nexus between government ownership and

⁶⁰ South San Joaquin Irrigation District Opening Comments at 2.

⁶¹ TURN Opening Comments at 13.

⁶² See San Francisco Opening Comments at 13-16; San José Opening Comments at 3; South San Joaquin Irrigation District Opening Comments at 2-9; Marin Clean Energy Opening Comments at 8; Opening

improved safety performance. CCRM observes that “studies differentiating public vs. privately owned utilities find little variation in safety and reliability based on the ownership variable alone. Geography, technology, public levels of risk tolerance as well as managerial and regulatory quality seem more important.”⁶³

APPA is the only party to discuss data regarding the performance of government owned and investor-owned utilities (IOUs), but that data relates to reliability, rather than safety, and it fails to account for key differences between typical IOUs and government owned utilities.

APPA cites the “strong record” of government owned utilities on safety.⁶⁴ While government owned utilities may deal with the standard risks to workers and the public associated with delivering electric and gas service to customers, it is not clear that government owned utilities have experience managing the specific and “large catastrophic risks such as earthquakes and wildfires”⁶⁵ with which the Commission and the State are most concerned. This is understandable given the typical size and location of most government owned utilities. The relatively smaller size of most government owned utilities may also limit their capacity to address such risks. As noted in PG&E’s opening comments, large IOUs benefit from significant economies of scale, avoid the need for duplicative infrastructure, and better align risk management resources and risks, enabling risk management on a broader scale.⁶⁶ While APPA points to potential cooperation and mutual aid among government owned utilities,⁶⁷ such arrangements are not unique to government owned utilities and it is unclear how this would

Comments of the California Municipal Utilities Association at 1-3 (Feb. 13, 2019); Opening Comments of the American Public Power Association at 3-14 (Feb. 13, 2019) (APPA Opening Comments).

⁶³ OSA Opening Comments, Attachment A at 5.

⁶⁴ APPA Opening Comments at 4.

⁶⁵ Scoping Memo at 13.

⁶⁶ See PG&E Opening Comments at 21, 23-24.

⁶⁷ See APPA Opening Comments at 5-6.

provide similar day-to-day benefits for government owned utilities, including economies of scale, access to resources, and broader safety management.

APPA cites the oversight of elected officials as a key accountability mechanism in the government owned utility model. But APPA fails to present any evidence showing that such oversight necessarily improves accountability or safety performance relative to IOUs. As discussed in PG&E's opening comments, the IOU model has powerful incentives.⁶⁸

Management is overseen by and accountable to the Board of Directors and, in turn, the Board of Directors is overseen by and accountable to shareholders. Fiduciary duties and other financial accountability mechanisms, including the profit motive, likewise provide strong incentives. Further, IOUs are overseen by an independent and expert state regulator, the Commission for PG&E. Although some government owned utilities have excellent safety records, they do not benefit from the independence and technical capacity of a state regulator in the same manner.⁶⁹

APPA presents a variety of data related to System Average Interruption Duration Index and System Average Interruption Frequency Index data for IOUs, municipal utilities, and electric cooperatives. But these are reliability metrics, not safety metrics. APPA concludes that "public power utilities have lower (*i.e.*, better) average SAIDI and SAIFI values than either investor-owned utilities or electric cooperatives."⁷⁰ There are, however, key differences in the typical service area associated with each of the three ownership models: municipal utilities often serve compact urban cores, electric cooperatives typically serve rural areas, and IOUs tend to have large, diverse service territories, consisting of both urban, suburban, and rural portions. Urban areas with dense populations and certain system redundancies have better reliability and, as a result, on average have significantly lower SAIDI and SAIFI values, regardless of the ownership model. By contrast, rural areas tend to have less reliable service due to a number of factors, including less redundancy and increased time to complete service requests and repairs. Indeed,

⁶⁸ See PG&E Opening Comments at 29.

⁶⁹ See *id.* at 30-31.

⁷⁰ APPA Opening Comments at 8.

APPA's own data bear this out: Electric cooperatives serving rural areas have the highest SAIDI and SAIFI values, IOUs serving diverse territories are in the middle, and municipal utilities serving urban areas have the lowest SAIDI and SAIFI values.

APPA acknowledges that "SAIDI and SAIFI values can be influenced by a wide variety of factors, including customer density and the natural features (*e.g.*, vegetation) of a utility's service territory,"⁷¹—but these differences likely account for the entire difference.

V. PARTIES' "WIRES ONLY" PROPOSALS FAIL TO ADDRESS HOW TRANSITIONING TO SUCH A MODEL WOULD IMPROVE SAFETY

Parties' proposals regarding converting PG&E to a "wires only" business generally track their organizational objectives. For example, the Joint CCAs argue that "[t]he Commission should focus the entirety of PG&E's attention and resources on planning, operating, and improving its electric transmission and distribution systems."⁷² The City of San José supports making PG&E a "wires only" business, combined with other measures, like municipalization.⁷³ And Marin Clean Energy advocates "a single purpose, wires-only, electricity provider, and a separate single-purposed gas provider."⁷⁴ Conversely, clean energy providers with existing power purchase agreements with PG&E generally oppose this move. NextEra Energy, for example, raises concerns about "procurement of electricity" and "safe and reliable electrical service."⁷⁵ TURN also identifies the challenges in achieving the state's clean energy and climate goals as a result of fragmentation among a much larger number of load serving entities.⁷⁶

Parties supporting "wires only" proposals have not brought forward any data or other evidence showing that such a conversion would improve safety. The Commission is examining

⁷¹ *Id.* at 9.

⁷² Joint CCAs' Opening Comments at 5.

⁷³ *See* San José Opening Comments at 3.

⁷⁴ Marin Clean Energy Opening Comments at 6.

⁷⁵ Opening Comments of NextEra Energy Resources, LLC in Response to Assigned Commissioner's Scoping Memo and Ruling at 5 (Feb. 13, 2019).

⁷⁶ *See* TURN Opening Comments at 17-18.

the broad policy questions implicated by removing IOUs from the electricity supply business, as is the Legislature. While PG&E welcomes further discussion of those issues as they relate to the State’s clean energy objectives, they should occur in those other forums, not this one.

This is particularly so because transitioning PG&E to a “wires only” business raises a host of complex issues that proponents of this change have not addressed. PG&E’s opening comments noted, for example, the difficulties involved in separating certain integrated reliability assets like the Humboldt Bay Generating Station, and non-salable assets like the Diablo Canyon Power Plant.⁷⁷ Additionally, any transition likely would consume significant resources at every level. The Board and management would need to consider how such changes impact PG&E and PG&E Corporation’s Chapter 11 reorganization, how to maintain the operational integrity of PG&E’s remaining enterprises, and how to work with the Legislature and other parties to modify PG&E’s provider-of-last-resort obligations. Employees with technical expertise would need to assist in separating PG&E’s existing infrastructure, analyze how to preserve transmission networks, design service areas that have sufficient infrastructure to operate independently, and assess safety risks and other problems associated with the assets being divested.

PG&E is also concerned that proponents of a “wires only” model have not presented any viable plan for addressing the risks associated with PG&E’s existing generation capacity, as well as its portfolio of power supply contracts. PG&E maintains several assets—including nuclear and hydroelectric plants—that carry serious potential safety risks. PG&E’s generation line of business has been effective at using PG&E’s utility-wide resources, and its own expertise and institutional knowledge, to maintain PG&E’s strong safety record in this area. Any successor to these assets would need to be similarly prepared to address the risks that these assets pose. None of the proponents of divestiture, however, offers a plan for maintaining nuclear, hydroelectric, and other high-risk facilities. At best, Monterey Bay Community Power says that it is “confident that [successor] entities would be willing to take on the role of generation provider as the

⁷⁷ See PG&E Opening Comments at 33-34.

alternative to PG&E service,”⁷⁸ but this statement does not address who would be both qualified and willing to take on PG&E’s nuclear and hydroelectric generation facilities, with the risks relating thereto, or its power supply contracts.

VI. OTHER PROPOSALS

Every party that addresses the issue of inverse condemnation seems to agree that reform is needed. For example, the APPA correctly observes that “California’s no-fault, strict liability laws[for] electric utilities” have created a “system of wildfire liability allocation that is *unsustainable* in the face of increasingly severe and frequent weather.”⁷⁹ TURN notes that “[w]hen the legal doctrine of inverse condemnation is applied to a public utility, the utility can be held strictly liable . . . even where the utility operated its facilities in a safe and reasonable matter.”⁸⁰ PG&E urges the Commission to continue working with the Legislature to reform this flawed legal doctrine, which threatens to destroy the ability of PG&E or any other utility to provide safe and reliable service to the people of the State of California, and to render meaningless any safety reforms that may emerge from the present proceeding.

VII. CONCLUSION

PG&E is committing to doing better in the critical area of safety. It looks forward to working with the Commission and the parties on the many constructive proposals for improving its safety management, climate, and culture.

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⁷⁸ Opening Comments of Monterey Bay Community Power at 5 (Feb. 13, 2019).

⁷⁹ APPA Opening Comments at 13 (emphasis added).

⁸⁰ TURN Opening Comments at 19.

Respectfully Submitted,

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⁸¹ As previously noted, PG&E Corporation is participating as a respondent in I.15-085-019 and wishes to engage constructively with the Commission and stakeholders, consistent with the Commission's limited jurisdiction over it. *See PG&E Corp. v. Public Util. Comm'n*, 118 Cal. App. 4th 1174 (2004).