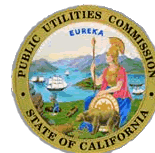


**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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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)

**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**



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I. INTRODUCTION

Pacific Gas and Electric Company (PG&E) is the “long-term steward[] of a utility system that is dedicated to the public convenience and necessity and that is paid for and supported by ratepayers.”¹ Accordingly, “ratepayers should have the highest expectation that PG&E will competently manage and safely operate these assets dedicated to public service, and that PG&E should not incur imprudent costs, losses, or damages.”² To the extent PG&E falls short of this duty, the Commission must act to protect the public interest.

In recognition of this duty, the Commission recently opened the third phase of this investigation into whether the organizational culture and governance of PG&E and PG&E Corporation prioritize safety, with the issuance of the *Assigned Commissioner’s Scoping Memo and Ruling* on December 21, 2018 (*Phase 3 Scoping Memo*). The Commission recounted PG&E’s history of “serious safety problems with both its gas and electric operations,” starting with the catastrophic rupture of PG&E’s natural gas transmission pipeline in San Bruno on September 9, 2010, and ending with “historically large wildfires” in 2017 and 2018, plus the newly opened Commission investigation into allegations of PG&E’s “systematic violations of rules to prevent damage to natural gas pipelines during excavation activities” in Order Instituting Investigation (I.) 18-12-007.³

¹ Order Instituting Investigation (I.) 15-08-019, p. 14.

² I.15-08-019, p. 14.

³ I.15-08-019, pp. 7-8.

Citing the principle that “continuous, safe, and reliable electric and gas service at just and reasonable rates must be provided to Northern California in order to protect human life and sustain prosperity,” the Commission confirmed its obligation to examine whether PG&E “is positioned to provide safe electric and gas service,” or “whether there is a better way to serve Northern California.”⁴

Pursuant to the *Phase 3 Scoping Memo*, and Administrative Law Judge (ALJ) Allen’s E-Mail Ruling Granting Extension of Time, The Utility Reform Network (TURN) respectfully submits these preliminary comments on alternatives to the status quo.⁵ TURN’s comments first summarize the context in which this inquiry occurs, then describe the principles we urge the Commission to keep in mind in determining how best to proceed, and finally address some of the specific alternatives set forth by the Commission in the *Phase 3 Scoping Memo* (in compliance with the Commission’s directives about presentation of issues and page limits). In sum:

- The Commission should ensure that the end-state for customers currently served by PG&E provides access to safe, reliable, and affordable energy utility services, and that the manner in which such services are provided supports the State’s energy policies, including environmental and equity goals.
- The Commission should ensure that ratepayers continue to benefit from their investment in PG&E’s assets.
- The Commission should guard against severe de-averaging of electric rates across PG&E’s service territory.
- The Commission should ensure that low-income customers do not face worse affordability challenges.

⁴ *Scoping Memo and Ruling of Assigned Commissioner*, issued December 21, 2018, pp. 1-3, 8.

⁵ *E-Mail Ruling Granting Extension of Time*, issued by ALJ Allen on Jan. 15, 2019 (extending the due date for opening comments from January 30 to February 13, 2019 and for reply comments from February 13 to February 28, 2019).

- The Commission should ensure that electric resource planning will occur in a coherent and coordinated manner to support cost-effective achievement of the State's clean energy goals.
- The Commission should protect ratepayers from the risks of market power.
- The Commission should acknowledge that wildfire liability costs could affect any potential alternative electric service provider, as long as utilities can be held strictly liable for property damage caused by their facilities irrespective of negligence.
- The Commission should assess interest by other entities in acquiring some or all of PG&E's electric or natural gas system before concluding how best to provide these utility services to PG&E's current customers.
- The Commission should prepare itself for a more invasive approach to regulation, as long as PG&E continues to provide electric and gas service to Californians.
- Irrespective of the ultimate outcome in this proceeding, the Commission should direct PG&E to add Independent Directors who have actual experience with safety, and add safety experience to the list of requirements for its Independent Directors.
- Irrespective of the ultimate outcome in this proceeding, the Commission should 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), and also remove subjective metrics from both LTIP and STIP, so that only objective and auditable safety metrics are included.
- The Commission should explore state ownership of PG&E's electric transmission system and certain other PG&E assets that offer unique statewide value, such as its hydroelectric generation system.
- Irrespective of the ultimate outcome in this proceeding, the Commission should condition a portion of PG&E's authorized return on equity on making progress on safety performance.
- The Commission should hold a prehearing conference after preliminary opening and reply comments are filed to obtain input from parties on procedural next steps.

II. BACKGROUND LEADING UP TO THE COMMISSION'S CURRENT CONSIDERATION OF CHANGES TO PG&E'S FRANCHISE, AMONG OTHER ACTIONS

As the Commission made clear in opening this investigation in late 2015, “PG&E’s obligation to safely and reliably operate its utility system is paramount.”⁶ At that time, the Commission was concerned that, despite PG&E’s public commitment to improving the safety of its operations following the San Bruno pipeline explosion and damning report by the National Transportation Safety Board (NTSB), “accidents and events affecting the safety of its customers, the general public, workers and agents, the utility system and the environment have continued to occur.”⁷ The Commission explained, “The persistence of safety incidents motivates us to undertake this investigation to determine whether this persistence is rooted in PG&E’s organizational culture and governance and PG&E Corp.’s role in PG&E’s safety culture.”⁸

The Commission warned PG&E at that time that it intended to exercise its authority – and indeed its responsibility – to “actively, not passively, supervise and regulate” PG&E in light of the utility’s safety performance.⁹ The Commission explained:

The Commission, invested by the California Constitution and the Public Utilities Code with police power to regulate public utilities, among other actions sets rates, authorizes capital investments and operating budgets, and awards franchises to companies such as PG&E. *A “franchise to operate a public utility ... is a special privilege which ... may be granted or withheld at the pleasure of the State.”* Holding that franchise, PG&E must “comply with the comprehensive regulation of its rates, services, and facilities as specified in the Public Utilities Code.” [footnotes in original

⁶ I.15-08-019, p. 13.

⁷ I.15-08-019, pp. 2-3. *See also*, I.15-08-019, pp. 10-12 (providing a list of PG&E’s “significant safety incidents and lapses after the San Bruno explosion and the NTSB Report”).

⁸ I.15-08-019, p. 3.

⁹ I.15-08-019, p. 13 (citing *Sale v. Railroad Commission* (1940) 15 Cal. 2d 612, 617).

omitted]¹⁰

In the first phase of this proceeding, the Commission directed its Safety and Enforcement Division (SED) to act in its advisory capacity and evaluate PG&E's and PG&E Corp.'s organizational culture, governance, policies, practices, and accountability metrics in relation to PG&E's record of operations, including its record of safety incidents, and to produce a report on the issues and questions specified by the Commission.¹¹ Once that report, prepared by SED's expert consultant NorthStar Consulting Group (NorthStar), became available, the Commission opened the second phase of this proceeding.

In the second phase, the Commission evaluated the recommendations of NorthStar and considered whether additional measures should be adopted to improve PG&E's safety culture and performance.¹² In D.18-11-050, which resolved the second phase, the Commission ordered PG&E to promptly implement the recommendations of NorthStar by July 1, 2019, and submit quarterly reports on implementation status, starting in the fourth quarter of 2018.¹³ The Commission withheld judgement on the sufficiency of PG&E's plans for implementing NorthStar's recommendations, stating, "Results are a higher priority than intentions."¹⁴ The Commission deferred consideration of TURN's additional recommendations, such as: adopting safety performance metrics and targets

¹⁰ I.15-08-019, p. 13 (emphasis added).

¹¹ I.15-08-019, pp. 16-17; D.18-11-050, pp. 1-2.

¹² *Scoping Memo and Ruling of Assigned Commissioner*, issued May 8, 2017, p. 2.

¹³ D.18-11-050, p. 3. The Commission directed PG&E to submit the status reports to SED and serve them on the service list to this proceeding.

¹⁴ D.18-11-050, p. 4.

applicable to PG&E; determining that a portion of PG&E's return on equity should be tied to its safety performance; directing PG&E to increase the weighting of safety in its Long-Term Incentive Plan to at least 50%; and requiring PG&E to add Independent Directors with actual safety experience and expertise.¹⁵ The Commission indicated its preference for "a more holistic approach, rather than nibbles around the edges of the problem," and expressed its intention to "look at a potentially broader set of changes" in the next phase of this proceeding.¹⁶

Now, more than three years after the Commission opened I.15-08-019, the Commission rightfully continues to be troubled by PG&E's organizational commitment to safety, as demonstrated by its safety performance. Even before the Commission opened the newest investigation into PG&E's gas safety practices, I.18-12-007, the Commission stated in D.18-11-050,

[W]e continue to have concerns about whether PG&E truly is changing its culture, or is just trying to "check the boxes." ... The Commission wants PG&E to have a genuine and effective safety culture that permeates the organization, not just a thin veneer or window dressing that superficially looks good but fails under stress.¹⁷

Judge William Alsup, the United States District Judge overseeing PG&E's five-year corporate probation period resulting from its six felony convictions,¹⁸ was blunter on

¹⁵ See Ex. TURN-1 (Cheng); D.18-11-050, pp. 4-5, 8.

¹⁶ D.18-11-050, p. 4.

¹⁷ D.18-11-050, p. 5.

¹⁸ As explained by Judge Alsup on page 1 of his Jan. 9, 2019, *Order to Show Cause Why PG&E's Conditions of Probation Should Not Be Modified*, "In 2016, a jury convicted PG&E on six felony counts of knowingly and willfully violating safety standards and obstructing an investigation by the National Transportation Security Board arising out of the San Bruno explosion of a PG&E gas pipeline that killed eight and destroyed 38 homes. A corporation cannot go to prison, so the criminal judgment imposed the largest fine allowed by law and several conditions of probation."

January 30, 2019, when PG&E appeared before him to address his proposal to adopt specific electrical system operational mandates to prevent PG&E from causing any wildfires in 2019 (in addition to charges that it violated conditions of its probation).¹⁹

Judge Alsup “lashed out at” PG&E “for spouting platitudes and paying dividends instead of addressing the looming threat of wildfires.”²⁰ He asked: “Does a judge turn a blind eye and let PG&E continue what you’re doing, let you keep killing people?” “Can’t we have electricity that is delivered safely in this state?”²¹

TURN applauds the Commission for acting now to ensure that PG&E’s customers receive safe and reliable electric and gas service, at just and reasonable rates, in the future, even if that requires fundamental changes to the way in which these services are managed and delivered. Indeed, the Commission’s duty to actively supervise and regulate PG&E requires nothing short of considering whether PG&E’s franchise – that special privilege to provide monopoly electric and natural gas services to Californians residing in its service territory – should be modified or revoked to serve the public interest.²²

¹⁹ *Order to Show Cause Why PG&E’s Conditions of Probation Should Not Be Modified*, issued Jan. 9, 2019, U.S. District Court, N.D. Cal., Docket No. 0971 3:14CR00175-001 WHA, available at http://s1.q4cdn.com/880135780/files/doc_downloads/2019/Alsup-PGE-01.09.19.pdf; *Petition for Summons for Offender Under Supervision*, issued Jan. 9, 2019, U.S. District Court, N.D. Cal., Docket No. 0971 3:14CR00175-001 WHA, available at http://s1.q4cdn.com/880135780/files/doc_downloads/2019/Probation-Summons-for-1-30-2019.pdf.

²⁰ Jaxon Van Derbeken, *Judge Chides PG&E on Safety; Wildfire Attorneys Heartened*, NBC BAY AREA (January 30, 2019), available at <https://www.nbcbayarea.com/investigations/Judge-Chides-PGE-on-Safety-Wildfire-Attorneys-Heartened-505116161.html>.

²¹ Matthias Gafni, *Federal judge asks PG&E: Should I ‘let you keep killing people?’ Rules utility violated its felony probation*, THE MERCURY NEWS (January 31, 2019), available at <https://www.mercurynews.com/2019/01/30/federal-judge-to-decide-whether-to-toughen-pges-probation-terms-today/>.

²² See I.15-08-019, pp. 13-15 (affirming, among other things, that, “Whereas ‘a court is a passive

In the meantime, one thing is abundantly clear: the Commission must prepare itself to regulate PG&E more aggressively, more invasively, than in the past. PG&E's repeated safety incidents demonstrate that a regulatory approach of "trust but verify" is woefully inadequate under the current circumstances.

III. PRINCIPLES TO GUIDE THE COMMISSION'S EVALUATION OF THE BEST WAY TO PROVIDE SAFE, RELIABLE, AND AFFORDABLE SERVICE TO CUSTOMERS CURRENTLY SERVED BY PG&E

The *Phase 3 Scoping Memo* indicates that the Commission will consider a range of factors as it evaluates proposed alternatives to the status quo. These factors include the following:

- the safety and reliability of utility service;
- the operational integrity and technical unity of components within PG&E's gas and electric transmission and distribution systems;
- the stability and adequacy of the utility workforce;
- the utility's relationships with and role in local communities;
- the ability of the state to implement its energy policies, including the need to reduce greenhouse gas (GHG) emissions and local criteria pollutants in both the utility sector and the economy as a whole;
- the ability of the utility to meet financial challenges posed by large catastrophic events such as earthquakes and wildfires;
- the utility's ability to raise capital and purchase gas, electricity, equipment and services; and

forum,' the Commission 'is an active instrument of government charged [under Article XII of the California Constitution] with the duty of supervising and regulating public utilities' services and rates.'").

- the cost of utility service.²³

The Commission also clarified that it will not consider alternatives in this proceeding that lack a viable transition process from the status quo, due to legal, financial, or technical grid issues.²⁴

TURN urges the Commission to additionally uphold the principles discussed below in weighing the various options for the future provision of electric and natural gas utility services to PG&E's customers. These principles reflect the Commission's core responsibility to "protect[] consumers, safeguard[] the environment, and assure[] Californians' access to safe and reliable utility infrastructure and services."²⁵

A. The End-State for Customers Currently Served by PG&E Must Ensure That They Have Access to Safe, Reliable, and Affordable Energy Utility Services, and That the Manner in Which Such Services are Provided Supports the State's Energy Policies, Including Environmental and Equity Goals.

TURN urges the Commission to use its broad authority to protect the public interest by ushering in a future in which Californians living in PG&E's service territory have access to safe, reliable, and affordable energy utility services, and that the manner in which such services are provided supports the State's energy policies, including environmental and equity goals. The end state achieved through the Commission's decisions in this proceeding – and those of other governmental actors with the authority

²³ *Phase 3 Scoping Memo*, p. 2.

²⁴ *Phase 3 Scoping Memo*, pp. 2-3.

²⁵ www.cpuc.ca.gov, ("The CPUC regulates services and utilities, protects consumers, safeguards the environment, and assures Californians' access to safe and reliable utility infrastructure and services. The essential services regulated include electric, natural gas, telecommunications, water, railroad, rail transit, and passenger transportation companies. On this website you'll find information about the many initiatives underway at the CPUC.").

to shape how essential utility services are provided to Californians currently served by PG&E – must honor this fundamental mandate. Anything short of this outcome would be an abject failure.

A future where PG&E continues to provide electric and gas service to its customers on the same terms as today, through existing management and operational structures, is untenable. However, there are foreseeable risks associated with fundamental structural change that the Commission must carefully navigate in considering alternatives for how electric and gas service should be provided to PG&E's customers in the future. TURN offers the following principles, in addition to the overarching objective stated here, to guide the Commission's deliberations in this proceeding.

B. Ratepayers Should Continue to Benefit from Their Investment in PG&E's Assets.

First, the Commission must protect the investment ratepayers have already made in PG&E's infrastructure. Everything we see around us associated with PG&E's utility services was paid for by ratepayers. Ratepayers have paid for – and continue to pay for in every bill – PG&E's gas pipelines; electric poles, wires, and meters; power plants; buildings and land; and vehicles; as well as less obvious infrastructure like the IT systems that support PG&E's electric and gas operations and customer service functions. If some or all of these assets are acquired or assumed by another entity, the Commission must ensure that ratepayers are treated fairly, which means that these assets should continue to serve customers for their useful lives, and customers should not have to pay more to

enjoy their benefits or pay again for duplicate systems.²⁶

For instance, in PG&E's proposed Plan of Reorganization in its first bankruptcy, submitted in 2001, PG&E proposed to transfer most of the valuable assets owned by the utility, paid for by ratepayers, and subject to state oversight to its parent corporation. These assets included 7,100 MW of electric generation, 18,500 miles of electric transmission lines, and 6,300 miles of gas pipelines. Under PG&E's proposal, its hydroelectric and nuclear generation assets, freed from the state requirement that limits prices to the actual cost of operations, would produce power that would be sold back to PG&E utility customers under a nonnegotiable 12-year contract at much higher prices than currently in effect and permitted by California law at that time. PG&E also proposed that its parent company would 'cut the cord' with what remained of the utility in order to ensure that state regulators would be unable to exert any future control over the use or operation of facilities that have historically been supported with funds contributed by PG&E ratepayers.²⁷ Fortunately, this plan did not come to fruition, but it serves as a warning of the types of outcomes that could harm PG&E's ratepayers by failing to preserve benefits ratepayers deserve from their investments in PG&E's infrastructure.

²⁶ See I.15-08-019, p. 14 ("We view PG&E as long-term stewards of a utility system that is dedicated to the public convenience and necessity and that is paid for and supported by ratepayers. Because PG&E's customers bear this cost-responsibility, ratepayers should have the highest expectation that PG&E will competently manage and safely operate these assets dedicated to public service, and that PG&E should not incur imprudent costs, losses, or damages. PG&E's major capital expenditures are invested in long-lived assets that require this competence, prudence, and dedication to safety, so that the full useful life of the asset is realized and customers' and the public's expectations of safety and reliability are met.").

²⁷ TURN Report, January 29, 2002, "Highway Robbery: Unmasking the PG&E Bankruptcy Plan's Financial Impact on California Consumers".

Going forward, the Commission must ensure that ratepayers are justly compensated for their payment for and support of PG&E's utility system. Any outcome that undercuts the benefits ratepayers expect and deserve should be rejected.

C. The Commission Should Guard Against Severe De-Averaging of Electric Rates Across PG&E's Service Territory.

PG&E's service territory encompasses areas of California with tremendous variation in climate, as well as physical geography and human geography. There are rural, suburban, and urban communities; newly constructed communities and communities with aging infrastructure in need of replacement; wealthy and impoverished communities; communities located in hard-to-reach mountain ranges and in flat valleys, in deserts and in redwood forests, and in areas with temperate and extreme climate. Some parts of PG&E's service territory are prone to earthquakes or wildfires or both. As a result of this great diversity, not all communities have the same cost of service. And yet the current configuration for providing electric and gas service tempers the rates customers in high cost-of-service areas might otherwise pay because all costs and risks are spread across a large customer base -- PG&E 5.4 million electric customers and 4.3 million natural gas customers.²⁸ This "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. If rates were instead based on location, or "de-averaged," access to service would be jeopardized for customers living in the high-cost areas.

The possibility of dividing up PG&E's service territory into smaller regions

²⁸ https://www.pge.com/en_US/about-pge/company-information/profile/profile.page.

served by different providers creates the risk of de-averaging. As the Commission contemplates alternatives to the status quo, the Commission should prevent an outcome where rates sky-rocket in some communities or service quality dramatically declines, because those communities are more costly or riskier to serve with fewer customers to share the costs. Some variation in pricing is surely tolerable, but there are limits to what customers can and should be asked to bear. Thus, the Commission should promote balance in how costs and risks are apportioned if segmentation occurs so that all of PG&E's current customers can enjoy safe, reliable, and affordable utility services in the future.

TURN's concern about severe de-averaging should not be mistaken for opposition to divisions in PG&E's service territory. Rather, our concern is with where and how the lines might be drawn. Suffice it to say, the public interest would not be well served by a transition plan that, for example, offered the promise of lower rates and safer, more reliable service for some communities, while disadvantaging places like Butte County with heightened wildfire-related risks that have already suffered tremendous hardship.

D. The Commission Should Ensure that Low-Income Customers Do Not Face Worse Affordability Challenges.

Currently, PG&E's low-income customers have access to several programs intended to promote bill affordability that are funded by ratepayers. These programs primarily include (1) the California Alternate Rates for Energy (CARE) program, which provides discounted electric and gas rates for households with incomes up to 200% of the Federal Poverty Guidelines, (2) the Family Electric Rate Assistance (FERA) program, which provides a smaller electric rate discount than CARE for households with at least three members and incomes between 200-250% of the Federal Poverty Guidelines, and

(3) the Energy Savings Assistance Program, which provides no-cost energy efficiency and weatherization services to customers meeting the same income eligibility requirements as for the CARE program.²⁹ Customers with certain medical conditions or who rely on energy-using medical equipment may also be eligible for additional electric and/or gas discounts through the Medical Baseline program, irrespective of household income.³⁰

The program with the largest enrollment is CARE. Twenty-five percent of PG&E's customers are enrolled in the CARE program, and slightly more are eligible.³¹ In 13 of the 48 counties served by PG&E, at least 40% of households are eligible for CARE.³² That percentage drops to 20% or less in 7 counties, including most of the Bay Area counties (Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara), plus El Dorado County.³³ Currently, the cost of providing low-income assistance is spread across millions of customers throughout PG&E's service territory.

Under a future scenario where PG&E ceases to be the provider for electric or gas utility service in some or all of its service territory, the Commission should ensure that

²⁹ See <http://www.cpuc.ca.gov/iqap> (Income Qualified Assistance Programs).

³⁰ See <http://www.cpuc.ca.gov/medicalbaseline/>.

³¹ *Compliance Filing of PG&E on Behalf of Itself, Southern California Gas Company, San Diego Gas & Electric Company, and Southern California Edison Company Regarding Annual Estimates of CARE Eligible Customers and Related Information*, filed Feb. 8, 2019, in A.14-11-007 et al., Attachment A (“Pacific Gas and Electric Company – Estimated CARE Penetration as of December 31, 2018”). As of December 31, 2018, PG&E's service territory encompassed 5,507,346 households, with 1,446,414 (26.26%) eligible for CARE and 1,376,003 (24.98%) enrolled.

³² *Id.*

³³ *Id.*

any successor provider(s) will offer support to low-income customers.³⁴ Otherwise, low-income customers in some communities could end up without access to safe, reliable, and affordable utility services.

If customers in different locations are to be served by different providers, the cost of serving low-income customers could be higher in some locations than in others, given the extent to which need varies by county and region. Also, these costs would be spread over a much smaller customer base than PG&E's, which could drive up rates for other customers in some communities (depending on a variety of factors). Mindful of this risk, TURN recommends that the Commission consider both the availability of support for low-income customers and also how potential successors to PG&E will continue to provide this assistance to newly acquired low-income customers without materially affecting bill affordability for other customers.

E. The Commission Should Ensure that Electric Resource Planning Will Occur in a Coherent and Coordinated Manner to Support Cost-Effective Achievement of the State's Clean Energy Goals.

Three years ago, the Commission embarked upon the ambitious task of developing an electricity integrated resource planning framework, encompassing not only the electric investor owned utilities (IOUs), but also the growing number of other load-serving entities, including Direct Access providers and Community Choice Aggregators (CCAs), consistent with the requirements of Senate Bill (SB) 350 (De Leon, 2015). In opening Rulemaking (R.) 16-02-007, the Commission explained:

We open this rulemaking to continue our efforts to ensure a safe, reliable

³⁴ Of course, if the rates of a successor provider are significantly lower than PG&E's, affordability challenges faced by low-income customers would likewise lessen.

and cost-effective electricity supply in California. The primary emphasis in this rulemaking will be the implementation of Senate Bill (SB) 350 (Stats. 2015, Ch. 547), which mandates that the Commission adopt a process for integrated resource planning to ensure that load serving entities meet targets to be established by the California Air Resources Board, reflecting the electricity sector's contribution to achieving economy-wide greenhouse gas emissions reductions of 40 percent from 1990 levels by 2030.³⁵

The statewide, coordinated approach required of the Commission is intended to protect ratepayers by ensuring that the State's GHG, clean energy, and reliability goals are met through optimized planning and procurement. For instance, if the process works as intended, the procurement practices of one LSE should not increase costs for another LSE because of unintended grid impacts, particularly as renewables procured by all LSEs to meet state mandates are integrated into the system. Yet, the Commission's ability to oversee this coordination "and give effect or meaning to the Legislature's direction in the IRP [Integrated Resource Planning] process" depends on its authority to review and approve or reject the Integrated Resource Plans of LSEs.³⁶

The Commission's authority over the IOUs' resource planning and procurement processes is uncontroversial and well-understood. However, the Commission's authority over non-IOU LSEs remains untested. The Commission in D.18-02-018 clarified its authority as follows regarding CCAs:

The Commission's authority is primarily with respect to the planning process, in order to assess the aggregated impact of all of the LSE plans combined, to ensure that the portion of the electric sector under our authority and jurisdiction is meeting its GHG and reliability obligations on behalf of the electric system. ...

Taken together, [Public Utilities Code] Sections 454.51 and 454.52 give

³⁵ Order Instituting Rulemaking 16-02-007, p. 1.

³⁶ D.18-02-018, p. 29.

the Commission the basic authority and requirements to identify the optimal portfolio of resources to meet the state's GHG emissions goals in the electricity sector, and to adopt a process to require each LSE to file IRP [Integrated Resource Plans], as stated in Section 454.52(a)(1), to meet those state goals. The recognition in the statute of the unique role of the CCAs' governing boards does not in any way reduce the Commission's authority to review and approve the substance of the CCA plans. ...

Thus, it is within the authority of the Commission to require IRP filings, in any manner it determines, and to review the substance of those filings for compliance with the requirements articulated by the Commission in this decision, which are within the requirements outlined in Sections 454.51 and 454.52.³⁷

In the event that the aggregated Integrated Resource Plans (IRPs) submitted by LSEs reveal overall deficiencies relative to need, or otherwise fail to satisfy overall clean energy and climate goals, the state must have a mechanism for authorizing remedial procurement to fill the gaps. Although the IOUs have been the most likely candidates to perform this procurement, the establishment of a statewide authority could provide another option. This option would allow the Commission to direct such procurement and authorize cost recovery without the need to consider the financial status of an individual IOU.

Among the many potential future scenarios for the provision of electric service in PG&E's service territory is one in which many of PG&E's current customers are served by a collection of small utilities, such as municipal utilities and cooperatives. If that were to be the case, the Commission and Legislature would need to re-think how to coordinate resource planning and procurement across these entities to support the goals set forth in SB 350. Otherwise, the Commission's IRP efforts could unravel, to the detriment of

³⁷ D.18-02-018, pp. 26, 28-29.

consumers and the environment.

Options for addressing the risks of further fragmentation in electric resource planning and procurement in Northern California could include an expansion by the Legislature of the Commission's authority to reach LSEs not currently subject to its IRP jurisdiction. Or the Legislature could change how the Commission's IRP process relates to the process overseen by the California Energy Commission (CEC). Another approach could be to establish (through legislation) a non-profit centralized procurement entity, which would procure resources as directed by the Commission or CEC, and potentially also manage electric generation previously under contract with an LSE, such as resource adequacy contracts funded by multiple LSEs through the Cost Allocation Mechanism (CAM). Other options may exist, as well. The important thing at this point is that the Commission recognize the need to ensure that electric resource planning will occur in a coherent and coordinated manner -- no matter how electricity is provided to PG&E's customers in the future -- to support the cost-effective achievement of California's clean energy goals.

F. The Commission Should Protect Ratepayers from the Risks of Market Power.

The Commission should be mindful of the harm to consumers from alternatives that would result in an increase in market power for the provider of gas or electric service to PG&E's customers. For instance, if PG&E were to sell its gas system assets – as it has publicly contemplated – and Sempra Energy were to purchase those assets, California would effectively have a single firm providing natural gas utility service (with some carve outs for Southwest Gas and municipal gas utilities). Further consolidation in the natural gas utility service market in California could increase the opportunity for the gas

utility to manipulate the level of supply, demand, or both, thus affecting costs and prices paid by consumers. TURN does not intend to suggest that this is the only scenario giving rise to the risk of market power, but it is an obvious one.

G. The Commission Should Acknowledge that Wildfire Liability Costs Could Affect Any Potential Alternative Electric Service Provider, as Long as Utilities Can Be Held Strictly Liable for Property Damage Caused by Their Facilities Irrespective of Negligence.

When the legal doctrine of inverse condemnation is applied to a public utility, the utility can be held strictly liable for property damage where its facilities were a substantial cause of the damage, even where the utility operated its facilities in a safe and reasonable manner and complied with all laws and regulations. As the Commission explained in D.18-07-025, *Order Denying Rehearing of D.17-11-033*:

Inverse condemnation is a reverse eminent domain proceeding. Both derive from the constitutional principle that private property may not be “taken” or damaged for public use without just compensation. In an eminent domain proceeding, a public or governmental entity seeks to condemn or “take” private property for a public use (such as the construction of an electric transmission line).

In an inverse condemnation proceeding, a property owner seeks to hold a public or government entity strictly liable for any physical injury/damages that may have been caused by that entity’s public improvement. Traditionally, the doctrine has covered damages to real property. But it can also compensate for the loss of personal property.

... The policy underlying inverse condemnation is one of cost sharing or cost spreading. It is intended to relieve individual property owners from the economic burden of damages by spreading the costs among the larger community of individuals that benefit from the public improvement. (footnotes omitted)³⁸

³⁸ D.18-07-025, p. 23. In D.17-11-033, as affirmed in D.18-07-025, the Commission denied San Diego Gas & Electric Company’s (SDG&E’s) request to recover \$379 million in wildfire liability claims recorded in its Wildfire Expense Memorandum Account associated with three wildfires

Traditionally, the doctrine of inverse condemnation was applied only to governmental entities, such as municipal water and power departments, but courts in California have more recently allowed inverse condemnation claims against Commission-regulated, investor-owned utilities.³⁹

Any utility providing electric service as a successor to PG&E could be subject to wildfire liability claims under the doctrine of inverse condemnation. As such, any utility could face liability for property damage caused by its facilities, whether or not the damage was foreseeable, and even if there was no fault or negligence by the utility.⁴⁰

This risk is not unique to PG&E.

At the same time, the doctrine of inverse condemnation would not necessarily threaten the financial stability of every potential successor to PG&E. While PG&E pointed to wildfire risks arising from inverse condemnation liability as one of the factors it weighed in deciding to seek voluntary Chapter 11 Bankruptcy protection on January 30, 2019,⁴¹ PG&E's actual liabilities for the 2017 Northern California wildfires and the 2018 Camp Fire may primarily stem from its own negligence, as opposed to the doctrine

ignited by SDG&E's electric transmission facilities in 2007. In its application for recovery of claims expense not otherwise covered by liability insurance, SDG&E explained to the Commission that it settled the 2,500+ lawsuits filed by property owners and governmental entities after the San Diego Superior Court permitted plaintiffs to bring a cause of action against SDG&E under the doctrine of inverse condemnation, citing the great financial risk associated with its potential liability. D.18-07-025, pp. 24-25.

³⁹ See D.18-07-025, pp. 23-24.

⁴⁰ See D.18-07-025, p. 23 (citing *Marshall v. Department of Water and Power of the City of Los Angeles* ("Marshall") (1990) 219 Cal.App.3d 1124, 1138-1139)).

⁴¹ PG&E Corporation and PG&E Form 8-K, dated January 13, 2019, at Items 1.03 and 8.01, available at https://www.pge.com/pge_global/common/pdfs/about-pge/company-information/reorganization/reorganization-8-K.pdf.

of inverse condemnation. The California Department of Forestry and Fire Protection (CAL FIRE) has thus far completed its investigation of eighteen of the 2017 Northern California wildfires. CAL FIRE found that seventeen of those wildfires were caused by PG&E's facilities (all but the Tubbs Fire), and of those, eleven were caused by PG&E's violation of vegetation management requirements (including the McCourtney, Lobo, Honey, Sulphur, Blue, Norrom, Partrick, Pythian, Adobe, Pocket, and Atlas Fires).⁴² CAL FIRE referred those eleven investigations to the appropriate local county District Attorney's office for review due to evidence of alleged violations of state law.⁴³ Furthermore, based on PG&E's own reports to the Commission, it appears that the most devastating of the 2017 and 2018 wildfires, the Camp Fire, could prove to be the result of

⁴² CAL FIRE New Release, "CAL FIRE Investigators Determine Cause of Four Wildfires in Butte and Nevada Counties," May 25, 2018, available at [http://calfire.ca.gov/communications/downloads/newsreleases/2018/2017_WildfireSiege_Cause%20v2%20AB%20\(002\).pdf](http://calfire.ca.gov/communications/downloads/newsreleases/2018/2017_WildfireSiege_Cause%20v2%20AB%20(002).pdf); CAL FIRE New Release, "CAL FIRE Investigators Determine Causes of 12 Wildfires in Mendocino, Humboldt, Butte, Sonoma, Lake, and Napa Counties," June 8, 2018, available at http://calfire.ca.gov/communications/downloads/newsreleases/2018/2017_WildfireSiege_Cause.pdf; CAL FIRE New Release, "CAL FIRE Investigators Determine the Cause of the Cascade Fire," October 9, 2018, available at <http://calfire.ca.gov/communications/downloads/newsreleases/2018/Cascade%20Fire%20Cause%20Release.pdf>; CAL FIRE New Release, "CAL FIRE Investigators Determine the Cause of the Tubbs Fire," January 24, 2019, available at <http://calfire.ca.gov/communications/downloads/newsreleases/2019/TubbsCause1v.pdf>.

⁴³ CAL FIRE New Release, "CAL FIRE Investigators Determine Cause of Four Wildfires in Butte and Nevada Counties," May 25, 2018 (referring the McCourtney, Lobo, and Honey Fire investigations to the appropriate county District Attorney's offices for review due to evidence of alleged violations of state law), available at [http://calfire.ca.gov/communications/downloads/newsreleases/2018/2017_WildfireSiege_Cause%20v2%20AB%20\(002\).pdf](http://calfire.ca.gov/communications/downloads/newsreleases/2018/2017_WildfireSiege_Cause%20v2%20AB%20(002).pdf); CAL FIRE New Release, "CAL FIRE Investigators Determine Causes of 12 Wildfires in Mendocino, Humboldt, Butte, Sonoma, Lake, and Napa Counties," June 8, 2018 (referring the Sulphur, Blue, Norrom, Partrick, Pythian, Adobe, Pocket, and Atlas investigations to the appropriate District Attorney's offices for review due to evidence of alleged violations of state law), available at http://calfire.ca.gov/communications/downloads/newsreleases/2018/2017_WildfireSiege_Cause.pdf.

negligent construction or maintenance of a PG&E transmission tower.⁴⁴

Despite the specific facts surrounding PG&E’s potential liabilities for the 2017 and 2018 Northern California wildfires, it is worth recognizing that any utility operating prudently in California could still be liable for wildfire-related property damage under inverse condemnation; it is simply impossible to eliminate all risk that utility facilities will cause wildfires, even where the utility acts reasonably and complies with all laws and regulations. The Commission should recognize this risk in considering the ability of the potential successors to PG&E to meet financial challenges posed by large catastrophic events such as earthquakes and wildfires (one of the criteria identified in the *Phase 3 Scoping Memo*).

However, should California find an alternative way to spread costs and risks associated with wildfires, such as a broad-based compensation mechanism that equitably allocates compensation for catastrophic losses in the absence of utility negligence,⁴⁵ electric utilities could be relieved of the risk of strict liability.

H. The Commission Should Assess Interest by Other Entities in Acquiring Some or All of PG&E’s Electric or Natural Gas System Before Concluding How Best to Provide These Utility Services to PG&E’s Current Customers.

In the *Phase 3 Scoping Memo*, the Commission instructed that alternatives to the status quo must have a viable transition process, in terms of legal, financial, or technical

⁴⁴ PG&E “20-Day Electric Incident Report” for the Camp Fire, December 11, 2018, available at http://s1.q4cdn.com/880135780/files/doc_downloads/2018/wildfire/12/12-11-18.pdf.

⁴⁵ The Commission on Catastrophic Wildfire Cost and Recovery created by Article 10 of SB 901 is charged with evaluating and making recommendations on options for socializing costs associated with catastrophic wildfires in an equitable manner and establishing a fund to assist in the payment of costs associated with catastrophic wildfires. Pub. Resources Code Section 4205(b).

grid issues, to be considered for adoption.⁴⁶ TURN recommends that the Commission also explore whether there is interest from would-be market participants in alternatives that otherwise seem viable. Specifically, for alternatives that involve acquisition of some or all of PG&E's electric or gas system by other entities, it is important to gauge whether any other entities would even consider assuming that responsibility, and if so, whether takeover by any of those entities would serve the public interest. TURN raises this issue to help prevent a situation where the Commission and stakeholders devote extensive resources to developing a transition plan to such an alternative, only to learn that no one wants the job.

Given the range of entities that have sought and received party status in this proceeding in response to the *Phase 3 Scoping Memo*, it is possible that opening comments will provide some indication of interest by other market actors in serving PG&E's customers in the future. To the extent that does not occur, the Commission has other tools to invite preliminary expressions of interest, such as through a Request for Information. The Commission recently issued a Request for Information in advance of an upcoming Request for Proposals for Integrated Resource Planning Consulting Services.⁴⁷ Employing something similar here, albeit tailored to these circumstances, might provide the Commission with more insight into potential (not just theoretical) alternatives to PG&E's continued provision of electric and gas utility services.

⁴⁶ *Phase 3 Scoping Memo*, pp. 2-3.

⁴⁷ See <https://caleprocure.ca.gov/event/8660/0000011637>.

I. The Commission Should Prepare Itself for a More Invasive Approach to Regulation, as Long as PG&E Continues to Provide Electric and Gas Service to Californians.

The facts recounted by the Commission in the *Phase 3 Scoping Memo* leave no doubt that something has gone horribly awry at PG&E. But the Commission has been clear that its inquiry into potential alternatives to the status quo “is not a punitive exercise.”⁴⁸ It is a forward-looking exercise, borne of PG&E’s past conduct, with the sole purpose of determining whether there are viable alternatives that would provide “Northern Californians safer gas and electric service at just and reasonable rates.”⁴⁹ Still, having more facts about PG&E’s safety culture and performance could help inform the Commission’s efforts to usher in a better future for PG&E’s customers.

However, the record in this proceeding excludes critical information regarding PG&E’s safety-related operations and performance. As noted above, CAL FIRE has thus far prepared 18 Investigation Reports following the 2017 Northern California wildfires and will eventually issue a Report on the 2018 Camp Fire. None of these reports are in the record of this proceeding, but more importantly, TURN does not believe that the 11 Investigation Reports referred by CAL FIRE to the applicable local county District Attorney for possible criminal prosecution are publicly available. Additionally, the Federal Monitor, appointed to evaluate and assess certain aspects of PG&E’s operations and culture as a result of PG&E’s criminal conviction, also would seem to have valuable insight into PG&E’s safety culture and practices.⁵⁰ Last but certainly not least, absent

⁴⁸ *Phase 3 Scoping Memo*, p. 9.

⁴⁹ *Phase 3 Scoping Memo*, p. 9.

⁵⁰ See “Federal Monitor Submission Pursuant to November 27, 2018 Notice,” submitted Dec. 31, 2018, to Judge William Alsup, United States District Court (describing the Monitor’s access to

from this proceeding are the Commission's staff investigations into PG&E's compliance with rules and regulations governing its electric facilities at the time of the wildfires in its service territory in 2017 and 2018.⁵¹ Without this information, it is difficult to diagnose the culprit or culprits within PG&E's management and operations. Consequently, it is unclear whether some of the specific proposals identified in the *Phase 3 Scoping Memo* related to PG&E's Corporate Governance (Board of Directors), Corporate Management (Officers and Senior Leadership), and Corporate Structure would help to improve PG&E's future performance in providing safe, reliable and affordable utility service.

On the other hand, what is clear is that the Commission must change its approach to regulating PG&E for as long as PG&E enjoys the privilege of providing essential electric and gas utility services to Californians (a privilege the Commission can revoke). In addition to the facts recounted by the Commission, PG&E is a convicted felon, serving a sentence that involves probation, and further has violated the terms of its probation. Although TURN doubts that a "trust but verify" approach ever makes sense for investor-owned utilities with the duty to maximize shareholder returns, it clearly makes no sense for PG&E now.

PG&E personnel at all levels and to documents, procedures, and databases, as well as the expansion of the scope of the Monitorship following the Wine Country fires in 2017, which originally focused on assessing PG&E's gas operations and gas transmission system, its Corporate Compliance and Ethics program, and safety, but now includes PG&E's electric distribution system and emergency response practices), available at http://s1.q4cdn.com/880135780/files/doc_downloads/2019/2018-12-31-Federal-Monitor-submission-file-stamped-copy.pdf.

⁵¹ See "Staff Investigations" at <http://www.cpuc.ca.gov/CPUCNewsDetail.aspx?id=6442454974> (identifying the following wildfires in PG&E's service territory as currently under staff investigation: 2018 - Camp Fire (Butte County); 2017 - Cherokee Fire (Butte County); Point Fire (Calaveras County); Adobe, Norrbom, Nuns, Pythian-Oakmond, Pocket, and Youngs Fires (Sonoma County); Sulphur Fire (Lake County); Lobo Fire (Nevada County); La Porte Fire (Butte County); and Patrick and Atlas Fires (Napa County)).

Rather, the Commission needs to have the resources to *ensure compliance* with the standards its sets for PG&E's performance, which will require far greater oversight over PG&E's operations going forward. Effective regulation requires:

... the utility to satisfy the regulator's standards for performance at "lowest feasible cost,"³ to use "all available cost savings opportunities"⁴; and to pursue its customers' legitimate interests free of conflicting business objectives. In return, the regulator must establish compensation that is commensurate with the utility's performance. But there is more. **To set standards for performance and ensure compliance, the regulator must have the resources, expertise and political support that is at least the equal of the utility's.** And for this relationship to work to each party's benefit, it must include a mutual commitment not to use the political process to undermine either the utility's or the regulator's ability to do their jobs.

³ *Potomac Electric Power Co. v. Public Service Commission*, 661 A.2d 131, 137 (D.C. 1995).

⁴ *Midwestern Gas Transmission Co. v. East. Tenn. Natural Gas Co.*, 36 FPC 61, *28 (1966), *aff'd sub nom. Midwestern Gas Transmission Co. v. Federal Power Commission*, 388 F.2d 444 (7th Cir. 1968).⁵²

TURN understands that the Commission has requested 13 more positions dedicated to wildfire safety and enforcement next year, in addition to the existing team of 19 who conduct on-the-ground preventative safety audits and spot checks, while also investigating wildfires.⁵³ TURN would eagerly support an emergency budget request to provide the Commission with additional resources to oversee PG&E's compliance with regulations aimed at preventing wildfires, such as vegetation management requirements.

In the meantime, TURN encourages the Commission to increase publicity around

⁵² Scott Hempling, *What "Regulatory Compact"?*, Effective Regulation of Public Utilities – Monthly Essays (March 2015), available at <https://www.scotthemplinglaw.com/essays/what-regulatory-compact>. (emphasis added)

⁵³ Taryn Luna, *California utility equipment sparked more than 2,000 fires in over three years*, LOS ANGELES TIMES (Jan. 28, 2019), available at <https://www.latimes.com/politics/la-pol-ca-california-utilities-wildfires-regulators-20190128-story.html>.

the Safety and Enforcement Division’s whistleblower program for anonymous and protected reporting of safety violations.⁵⁴ This program may help increase the Commission’s awareness of what is happening in the field, beyond the reach of the Commission’s current staff.

Furthermore, the Commission should consider “embedding” staff within PG&E to promote accountability and compliance in operations acutely related to safety, such as vegetation management and facilities inspection. TURN understands that the Commission employed this strategy in the past when it was regularly auditing telecommunications providers, and similarly, that the Nuclear Regulatory Commission has embedded staff at nuclear power plants in California.

IV. COMMENTS ON ALTERNATIVES

TURN offers these preliminary comments on some of the issues raised in the *Phase 3 Scoping Memo*. TURN anticipates offering more extensive input in reply comments.

A. Corporate Governance

In I.15-08-019, the Commission expressed its expectations for the role of PG&E’s Board of Directors:

PG&E’s major capital expenditures are invested in long-lived assets that require this competence, prudence, and dedication to safety, so that the full useful life of the asset is realized and customers’ and the public’s expectations of safety and reliability are met. In this vein, PG&E’s executive and senior management should be serving as patient capital managers, with an appropriate emphasis on an organizational culture that prioritizes safety and reliability. Accordingly, PG&E’s Board of Directors should be holding its executive and senior management accountable for

⁵⁴ See <https://ia.cpuc.ca.gov/whblow/>.

meeting these expectations through its governance and leadership in corporate culture. If PG&E's Board and executive and senior management do not, then the Commission, in its regulation of public utilities, must act accordingly.⁵⁵

Given PG&E's track-record with safety, the *Phase 3 Scoping Memo* asks whether PG&E's Board of Directors should be replaced by directors with a stronger background and focus on safety.⁵⁶

In Phase 2 of this investigation, TURN recommended that the Commission direct PG&E to (1) add Independent Directors who have actual experience with safety, and (2) add safety experience to the list of requirements for its Independent Directors, both of which related to recommendations in the NorthStar Report.⁵⁷ While PG&E claimed to have implemented both of these recommendations, TURN demonstrated that PG&E was overstating the safety experience of several of its Directors.⁵⁸ TURN also warned that PG&E's addition of safety experience to the list of *desired* skills and experiences for Independent Directors "seems more like a like a check-the-box effort than an earnest effort to include Board members with safety expertise and experience" compared to *requiring* these attributes.⁵⁹ The Commission in D.18-11-050 likewise found PG&E's actions unsatisfying. The Commission expressed its continued "concerns about whether PG&E truly is changing its culture, or is just trying to 'check the boxes,'" and worried

⁵⁵ I.15-08-019, p. 14.

⁵⁶ *Phase 3 Scoping Memo*, p. 10.

⁵⁷ See, e.g. TURN Opening Brief, filed May 9, 2018, pp. 11-13.

⁵⁸ D.18-11-050, p. 5 (discussing TURN's cross-examination of PG&E's witness about the safety training and experience of the three Directors PG&E claimed had safety experience).

⁵⁹ TURN Opening Brief, pp. 12-13.

that PG&E’s safety culture might be “a thin veneer or window dressing that superficially looks good but fails under stress.”⁶⁰

TURN continues to believe our recommendations in Phase 2 are important directives, even if PG&E ceases to be the utility provider for some or all Northern Californians at some point in the future. PG&E’s Independent Directors should also have bona fide utility operating experience (not just legal and financial expertise).

On January 4, 2019, PG&E announced that it was conducting a “Board refreshment process” at both PG&E and PG&E Corp. to “add fresh perspectives to augment its existing expertise in safety, operations, and other critical areas.”⁶¹ PG&E Corp. has since indicated that the Board “intends that a majority of the directors of the Company will be new independent directors by the time of the 2019 Annual Meeting, subject to proper consideration of new candidates.”⁶² This initiative may, or may not, be sufficient. Based on PG&E’s previous assertions about the qualifications of its Independent Directors, the Commission should evaluate any future claims by PG&E that its Board of Directors reflects significant experience in organizational safety, gas safety, or electrical safety.

B. Corporate Management

The *Phase 3 Scoping Memo* asks whether “compensation for non-officer

⁶⁰ D.18-11-050, p. 5.

⁶¹ PG&E Press Release, “PG&E Board Committed to Change,” Jan. 4, 2019, available at <http://investor.pgecorp.com/news-events/press-releases/press-release-details/2019/PGE-Board-Committed-to-Change/default.aspx>.

⁶² PG&E Press Release, “PG&E Provides Update on Board Refreshment Process,” Feb. 11, 2019, available at <http://investor.pgecorp.com/news-events/press-releases/press-release-details/2019/PGE-Provides-Update-on-Board-Refreshment-Process/default.aspx>.

executives” should “be modified” and related, whether “the current incentive structure properly incent[s] PG&E decision-makers.”⁶³

In Phase 2 of this investigation, TURN offered two recommendations to increase the role of safety in PG&E’s executive compensation structure. First, TURN recommended that the Commission 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).⁶⁴ TURN explained that LTIP has been the largest component of executive compensation for the last three years, averaging 121% of the executives’ salary, and total shareholder return accounts for 50% of LTIP. TURN demonstrated that PG&E’s 10% weighting of safety was insufficient to meaningfully tie safety performance with compensation or serve as a significant incentive.⁶⁵ Second, TURN recommended that the Commission direct PG&E to remove subjective metrics from both LTIP and STIP and only include safety metrics that are both objective and auditable.⁶⁶

The *Phase 3 Scoping Memo* references SB 901 (Dodd, 2018), which prohibits an electrical corporation from recovering any annual salary, bonus, benefits, or other consideration of any value, paid to an officer of the corporation from ratepayers.⁶⁷ However, as a practical matter, that prohibition is irrelevant here, since PG&E’s ratepayers do not currently pay for LTIP, and PG&E has not requested ratepayer funding

⁶³ *Phase 3 Scoping Memo*, p. 11.

⁶⁴ TURN Opening Brief, filed May 9, 2018, pp. 14-18.

⁶⁵ *Id.*; TURN Reply Brief, filed May 23, 2018, pp. 4-6.

⁶⁶ TURN Opening Brief, filed May 9, 2018, p. 17.

⁶⁷ *Phase 3 Scoping Memo*, p. 11, fn. 16.

for LTIP in its 2020 General Rate Case (GRC).⁶⁸ Nonetheless, given the tie between safety performance and executive compensation recognized by NorthStar and acknowledged by PG&E, it is incumbent upon the Commission to evaluate PG&E’s executive compensation structure in this proceeding and adopt orders it finds necessary to improve PG&E’s safety culture and performance.⁶⁹

To that end, TURN continues to believe our recommendations in Phase 2 are valuable directives now, even if PG&E ceases to be the utility provider for some or all Northern Californians at some point in the future. But the devil is always in the detail. Any time metrics are used to motivate desired behavior – in this case, improved safety performance – they must be carefully designed to avoid problems of subjectivity and prevent “managing to the metrics” (i.e. missing the forest for the trees). Otherwise, the utility might meet the intermediate metrics but not meet the ultimate objective of improving safety overall.

C. Corporate Structure

TURN may address this issue in reply comments.

D. Public Utility or Cooperative

The *Phase 3 Scoping Memo* asks whether “some or all of PG&E” should “be reconstituted as a publicly owned utility or utilities.”⁷⁰

In 2001, the State of California considered purchasing the transmission assets of

⁶⁸ See D.17-05-013, p. 102 (PG&E 2017 GRC Decision); A.18-12-009 (PG&E 2020 GRC Application), PG&E-08, p. 4-16, fn. 36.

⁶⁹ TURN Opening Brief, filed May 23, 2018, pp. 13-14.

⁷⁰ *Phase 3 Scoping Memo*, p. 12.

Southern California Edison through a Memorandum of Understanding and legislation that was under active consideration until the end of session.⁷¹ Although the proposed transfer did not come to fruition, the underlying rationale for state ownership of transmission assets remains valid today. State ownership provides an opportunity to reduce costs and provide some protection against efforts by the Federal Energy Regulatory Commission to interfere in California's wholesale markets.

PG&E's transmission rates have increased far more quickly than any other rate component. Since 2010, PG&E's system average transmission rate increased by 217% compared to 34% for distribution and 27% for generation.⁷² State ownership would provide an opportunity to reduce transmission rates by eliminating the portion of those costs attributable to the shareholder return on equity and reducing the cost of debt.

The rationale for state ownership could also extend to certain PG&E assets that offer unique statewide value such as its hydroelectric generation system. Retaining cost-of-service rates for these assets, combined with the elimination of any shareholder return on equity and lower cost of debt, would ensure that ratepayers continue to pay the lowest possible rates. Public ownership would also guarantee that the facilities are operated for the benefit of the state and dispatched to maximize their ability to integrate intermittent renewable resources.

E. Return on Equity

The *Phase 3 Scoping Memo* asks whether the Commission should "condition

⁷¹ Memorandum of Understanding between the California Department of Water Resources and Southern California Edison, April 9, 2001; ABxx82 (2001)

⁷² Data based on responses provided to TURN by PG&E on historical rates by class and rate component.

PG&E's return on equity on safety performance.”⁷³

In Phase 2 of this proceeding, TURN recommended that the Commission conclude that some portion of PG&E's authorized return on equity should be dependent on making progress on safety performance. TURN also noted that certain issues associated with such a policy could, and perhaps should, be addressed in another proceeding, such as a Cost of Capital or GRC, including what portion of return on equity should be dependent on safety, the time period over which this mechanism should be in place, and consequences if PG&E fails to meet the targets. But TURN urged that this proceeding is the appropriate forum in which to define indicators of PG&E's progress, including safety metrics and targets each year.⁷⁴

TURN continues to believe our recommendation in Phase 2 is appropriate, even if PG&E ceases to be the utility provider for some or all Northern Californians at some point in the future. But as noted above, the devil is always in the detail when metrics are used to motivate desired behavior. The Commission must take care to ensure that metrics are designed in a way that avoids subjectivity and managing to the metric; otherwise, the ultimate objective of improving safety overall may not be achieved.

F. Other Proposals

The *Phase 3 Scoping Memo* asks, “What other measures should be taken to ensure

⁷³ *Phase 3 Scoping Memo*, p. 12.

⁷⁴ TURN Opening Brief, filed May 14, 2018, pp. 6-7; TURN Reply Brief, filed May 23, 2018, pp. 2-3. *See also* D.18-11-050, p. 8 (deferring action on TURN's proposal in Phase 2 but confirming that performance-based ratemaking and safety performance metrics and targets are within the scope of this proceeding).

PG&E satisfies its obligation to provide safe service?”⁷⁵ At this juncture, it is unclear whether PG&E *can* satisfy that obligation, but TURN looks forward to reviewing the proposals of other parties to this end.

V. PROCEDURAL ISSUES

The *Phase 3 Scoping Memo* invites parties to offer “preliminary comments” on the desirability of alternatives to the status quo and sets due dates for opening and reply comments.⁷⁶ It further indicates, “Once comments are received, the assigned Commissioner and ALJ will determine the next procedural steps to take.”⁷⁷ ALJ Allen offered more information in his *E-Mail Ruling Granting Extension of Time*: “Parties are reminded that consistent with the Scoping Memo, at this stage the Commission is engaged in a preliminary vetting of concepts, and further opportunities for party comment will be available.”⁷⁸

TURN has prepared these comments, which are focused on principles the Commission should apply in vetting concepts, in reliance on having additional opportunities to offer recommendations on how electric and natural gas services should be provided in the future to customers currently served by PG&E. TURN recommends that the Commission hold a prehearing conference following receipt of reply comments on February 28, 2019, to obtain input from parties on procedural next steps.

⁷⁵ *Phase 3 Scoping Memo*, p. 12.

⁷⁶ *Phase 3 Scoping Memo*, p. 12.

⁷⁷ *Id.*, p. 15.

⁷⁸ *E-Mail Ruling Granting Extension of Time*, issued Jan. 15, 2019.

VI. CONCLUSION

For the foregoing reasons, TURN respectfully recommends that the Commission adopt the recommendations set forth herein.

Date: February 13, 2019

Respectfully submitted,

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