



PVA/jnf 7/15/2020

**FILED**  
07/15/20  
03:16 PM

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

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

**(NOT CONSOLIDATED)**

Order Instituting Investigation on the Commission's Own Motion to Consider the Ratemaking and Other Implications of a Proposed Plan for Resolution of Voluntary Case filed by Pacific Gas and Electric Company, pursuant to Chapter 11 of the Bankruptcy Code, in the United States Bankruptcy Court, Northern District of California, San Francisco Division, In re Pacific Gas and Electric Corporation and Pacific Gas and Electric Company, Case No.19-30088.

Investigation 19-09-016

**ADMINISTRATIVE LAW JUDGE'S RULING ON CASE STATUS**

**1. Summary**

In Decision (D.) 20-05-053 this Commission approved the reorganization plan of Pacific Gas and Electric Company (PG&E) and its holding company PG&E Corporation (PG&E Corp.) with conditions and modifications. PG&E's reorganization plan was subsequently approved by the federal Bankruptcy Court, and PG&E has emerged from bankruptcy.

While these actions provided some limited sense of resolution, they mark more of a beginning than an end to the process of making PG&E into a safe and

responsible utility. PG&E and this Commission have more work to do, and that work will take time; while some of the measures adopted in D.20-05-053 to drive improvements in safety are already being implemented, others will require longer to implement. In the process of moving forward, one issue to be resolved is the appropriate role and focus of Investigation (I.) 19-09-016 (PG&E Reorganization) and I.15-08-019 (PG&E Safety Culture).

Given the Commission's approval of PG&E's reorganization plan in D.20-05-053 and PG&E's exit from bankruptcy, it no longer appears necessary to keep open proceeding I.19-09-016, whose scope was focused primarily on the reorganization plan. Absent compelling reasons to keep that proceeding open, it will be closed in the near future.

The closer call is what to do with I.15-08-019, which focuses more broadly on PG&E's safety culture. While it is clear that the Commission must remain focused upon PG&E's safety culture, the role of I.15-08-019 in that process going forward is less clear. This ruling requests party input on the next steps to be taken in that proceeding.

## **2. Background and Status of the PG&E Safety Culture Investigation - I.15-08-019**

The existing scope of this proceeding is quite broad; the most recent Scoping Memo in the proceeding, issued on December 21, 2018, identified the following issues as being within the scope of the proceeding:

### **Corporate Governance - Board of Directors**

- Should PG&E and PG&E Corp. be subject to a utility-specific business judgment rule (BJR) to require the Board of Directors to account for safety beyond the current fiduciary duties? If so, should such a utility-specific business judgment rule apply to corporate officers as well?

- Should the PG&E Board of Directors regularly file with the Commission a report of how the Board met its duties under the BJR to account for safety? Should this include a summary of the oversight exercised by the Board including information reviewed, when deliberations occurred, and the depth of the review? Should the report include the Board review of the corporate officers' leadership as it pertains to safety? Should compensation to the Board Members be dependent on a Commission finding that the Board members discharged their safety duties appropriately?
- Should PG&E form an independent nominating committee to identify and select candidates for the Board of Directors?
- Should PG&E identify specific criteria for potential Board of Directors members? For example, should PG&E have one or more Board of Directors members be experts in organizational safety, gas safety, and/or electrical safety? If so, should the appointment of safety experts be made subject to Commission or Governor approval?
- Should PG&E form an audit committee constituted of independent directors possessing financial and safety competence, as defined by the Commission, to evaluate the Board of Directors' discharge of their duties and make recommendations for qualifications of future members of PG&E's Board of Directors?
- The Securities and Exchange Commission requires publicly traded companies to file an 8-K Form when a material event occurs. Generally, an event is material if there is a substantial likelihood that a reasonable investor would consider the information important in making an investment decision. Should PG&E file an analogous safety report with the Commission when PG&E makes a significant decision regarding capital expenditures pertaining to safety, a change in management as it pertains to safety, or any other decision that may impact safety?
- Should PG&E file a public annual report of all Directors and Officers insurance policies obtained by PG&E and

identify the risk PG&E identified to obtain the insurance?  
If PG&E amends its Directors and Officers insurance,  
should it notify the Commission of the risk identified and  
the terms of the amended policy?

- Should part or all of the existing Board of Directors resign and be replaced by directors with a stronger background and focus on safety?

#### **Corporate Management - Officers and Senior Leadership**

- Should PG&E retain new corporate management in all or in part?
- Should the questions posed above for Corporate Governance be similarly considered for corporate management?
- Should compensation for non-officer executives be modified? Does the current incentive structure properly incent PG&E decision-makers?

#### **Corporate Structure**

- Should PG&E's gas and electric distribution and transmission divisions be separated into separate companies? If so, should the separate companies be controlled by a holding company? Should the holding company be a regulated utility?
- Should PG&E's corporate structure be reorganized with regional subsidiaries based on regional distinctions? For example, PG&E could be divided into multiple smaller utilities operating under a single parent company. If so, should such a reorganization apply to both gas and electric services? Do the physical characteristics of the gas and electric systems lend themselves to the same regional structure, or do the physical characteristics of the respective systems lend themselves to different regional structures?
- Should the Commission revoke holding company authorization, so PG&E is exclusively a regulated utility?

Should all affiliates and subsidiaries be spun off or incorporated into the regulated utility?

- Should the Commission form a standing working group with the union leadership of PG&E to identify the safety concerns of PG&E staff?

### **Publicly Owned Utility, Cooperative, Community Choice Aggregation or other Models**

- Should some or all of PG&E be reconstituted as a publicly owned utility or utilities?
- Should PG&E be a “wires-only company” that only provides electric distribution and transmission services with other entities providing generation services? If so, what entities should provide generation services?

### **Return On Equity**

- Should the Commission condition PG&E’s return on equity on safety performance?
- What are the safety considerations for the utility if its financial status is downgraded by the investment community?

### **Other Proposals**

- What other measures should be taken to ensure PG&E satisfies its obligation to provide safe service?  
(December 21, 2018 *Assigned Commissioner’s Scoping Memo and Ruling* at 9-12, footnotes omitted.)

Previously, consistent with directions in the Safety Culture OII, the Commission’s Safety and Enforcement Division (SED) had contracted with a consultant, the NorthStar Consulting Group, Inc. (NorthStar). In a ruling issued on May 7, 2019,<sup>1</sup> that contract was extended in order to allow NorthStar to continue to work with SED on issues relating to the proceeding.

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<sup>1</sup> *Assigned Commissioner Ruling Extending Contract with NorthStar Consulting Group, Inc.*

The most recent activity in the proceeding consisted of parties filing comments in response to a June 18, 2019 ruling<sup>2</sup> that set forth four specific proposals:

- 1) Separating PG&E into separate gas and electric utilities or selling the gas assets;
- 2) Establishing periodic review of PG&E's Certificate of Convenience and Necessity (CPCN);
- 3) Modification or elimination of PG&E Corp.'s holding company structure; and
- 4) Linking PG&E's rate of return or return on equity to safety performance metrics.

The status of these four proposals was addressed in D.20-05-053. In that decision, the Commission held that:

- 1) Separating PG&E into separate gas and electric utilities or selling the gas assets: in June of 2019 the Commission was interested in exploring this idea, but it is less of a priority today, particularly in light of the pending regionalization. Whether or not this proposal remains within the scope of the PG&E Safety Culture OII will be determined in that proceeding;
- 2) Establishing periodic review of PG&E's CPCN: this proposal has been superseded by the proposal for the Enhanced Oversight and Enforcement Process, and will be taken out of the scope of the PG&E Safety Culture OII;
- 3) Modification or elimination of PG&E Corp.'s holding company structure: this issue was presented in this proceeding and remains a live issue within the scope of the PG&E Safety Culture OII or other appropriate proceeding; and
- 4) Linking PG&E's rate of return or return on equity to safety performance metrics: this issue was presented in this

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<sup>2</sup> *Joint Assigned Commissioner's and Administrative Law Judge's Ruling on Proposals to Improve the Safety Culture of Pacific Gas and Electric Company and PG&E Corporation.*

proceeding and remains a live issue within the scope of the PG&E Safety Culture OII or other appropriate proceeding. (D.20-05-053 at 110.)

Of those four proposals, only one - establishing periodic review of PG&E's CPCN - has been expressly removed from the scope of I.15-08-019. A second proposal - separating PG&E into separate gas and electric utilities or selling the gas assets - may continue to be within the scope of the proceeding. The other two proposals - modification or elimination of PG&E Corp.'s holding company structure and linking PG&E's rate of return or return on equity to safety performance metrics - expressly remain in the scope of I.15-08-019.

D.20-05-053 identified a number of other issues that would more appropriately be addressed in I.15-08-019 rather than in I.19-09-016, including: 1) recommendation that the Commission develop a plan to phase out PG&E's retail electric generation service to customers, including associated procurement activities, by 2025 (D.20-05-053 at 107); 2) a request that the Commission require PG&E to undertake asset sales in order to improve its financial condition (*Id.*); and 3) a proposal that PG&E's electric distribution service should be restructured as an Open Access Distribution System Operator. (*Id.*) Those issues are in the scope of I.15-08-019.

D.20-05-053 identified other issues that would more appropriately be addressed in proceedings other than I.15-08-019. Specifically, those issues are the development of safety and operational metrics (D.20-05-053 at 42-47), consideration of metrics to measure PG&E's quality of service and quality of management (*Id.* at 105) and executive compensation (*Id.* at 102). Those issues would not be addressed in I.15-08-019.

Accordingly, the potential scope of I.15-08-019 at this time includes the issues identified in the December 21, 2018 Scoping Memo as modified by

D.20-05-053, plus the ongoing work of NorthStar. At the same time, PG&E has just emerged from bankruptcy, is implementing the significant changes required by D.20-05-053, and has filed applications for issuing secured debt (Application (A.) 20-04-023) and regional restructuring (A.20-06-011).

Given that context, while the issues in the scope of I.15-08-019 remain on the table, it is not clear as a practical matter how many of those issues can be or should be addressed at this time. The Commission wants to ensure that PG&E does a good job of implementing the requirements of D.20-05-053, many of which are not simple tasks, particularly regional restructuring. Some of the issues that theoretically remain within the scope of I.15-08-019 are quite major, such as splitting PG&E into separate gas and electric utilities, revoking the holding company structure, or turning PG&E into a “wires-only” company, and taking these issues on now would be disruptive of the course of action that the Commission has set forth in D.20-05-053. Other issues within the scope of I.15-08-019, while more minor and potentially manageable, have been effectively (if not expressly) superseded by D.20-05-053, such as some of the proposals relating to PG&E’s board of directors.

It is clear that the Commission should not immediately proceed to address all of the issues currently within the scope of I.15-08-019. At the same time, however, the Commission expressly rejected PG&E’s request for a five-year “moratorium” on Commission action on issues raised in I.15-08-019. (D.20-05-053 at 110-111.) The Commission will be closely monitoring PG&E’s progress and actions, and needs to maintain the ability to take action as necessary and appropriate.

Given this context, there are several possible options for how to move forward with I.15-08-019. Those options are:

- 1) Keep the proceeding open and proceed to address a manageable subset of the potential issues, with NorthStar continuing in a monitoring role.
- 2) Keep the proceeding open as a vehicle to monitor PG&E's progress and address issues that arise, with NorthStar continuing in a monitoring role. Issues could be raised in the proceeding by parties or the Commission.
- 3) Keep the proceeding open for NorthStar to continue in a monitoring role and for the Commission to address issues identified by staff or NorthStar. Parties could not raise issues to be addressed in the proceeding, but would have the opportunity to address issues raised by the Commission.
- 4) Close the proceeding and open a more narrowly focused proceeding on specific short-term issues. The Commission could open additional new proceedings in the future to address the same or related issues as presented in I.15-08-019. NorthStar may continue in a monitoring role.
- 5) Close the proceeding. The Commission could open additional new proceedings in the future to address the same or related issues as presented in I.15-08-019. NorthStar may continue in a monitoring role.

Party input on these options would be useful.

**IT IS RULED** that:

1. Parties to I.15-08-019 and/or I.19-09-016 may file comments no later than August 4, 2020, addressing the following questions:
  - a) Should I.19-09-016 be closed or kept open? If kept open, state the purpose of keeping it open, including the issues to be addressed and when it would be closed.
  - b) Which of the above options for I.15-08-019 should be adopted, and why?
  - c) If Option 1 is recommended, identify and provide the basis for the "manageable subset" of issues to be addressed, along with a proposed schedule.

- d) If Option 4 is recommended, identify and provide the basis for the “specific short-term issues” to be addressed, along with a proposed schedule.
- e) Is there another option for I.15-08-019 that is not listed that should be adopted? If so, describe the recommended approach, including its scope and schedule.

2. Parties to I.15-08-019 and/or I.19-09-016 may file reply comments no later than August 13, 2020.

Dated July 15, 2020, at San Francisco, California.

/s/ PETER V. ALLEN  

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Peter V. Allen  
Administrative Law Judge