

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Executive Division

Date: April 15, 2021  
Resolution M-4851

**R E S O L U T I O N**

**RESOLUTION M-4851: RATIFIES AND UPHOLDS THE LETTER FROM DIRECTOR OF WILDFIRE SAFETY DIVISION GRANTING SAFETY CERTIFICATION TO PACIFIC GAS AND ELECTRIC COMPANY PURSUANT TO PUBLIC UTILITIES CODE SECTIONS 8389(e) AND (f)**

**SUMMARY**

This Resolution is issued to ratify and uphold the action of the Director of the Commission’s Wildfire Safety Division (WSD) taken by letter dated January 14, 2021, granting Pacific Gas and Electric Company (PG&E) a safety certification pursuant to Public Utilities Code Sections 8389(e) and (f). The Utility Reform Network (TURN) requested review on January 25, 2021. We address the request for review as if it were filed pursuant to Commission General Order (GO) 96-B, Section 7.6.3.

Assembly Bill (AB) 1054 (Stats. 2019, Ch. 79) provides for issuance of a safety certification if enumerated conditions are present. The WSD found, and the Commission affirms, that PG&E satisfied the statutory conditions when the safety certification was issued. TURN asserts other problems with PG&E’s safety record, and while they are important, none of TURN’s assertions are legally sufficient to overturn the WSD’s determination.

The WSD and Commission have many oversight procedures and remedies available to monitor whether PG&E acts in accordance with its Wildfire Mitigation Plan (WMP) and meets its safety obligations. Nothing in the grant of a safety certification undermines those procedures and remedies or limits the Commission’s authority.

**BACKGROUND**

AB 1054 provides for the WSD to issue an annual safety certification to electrical corporations. Issuance of the safety certification gives an electrical corporation such as PG&E the benefit of a less stringent burden of proof to recover wildfire-related costs from ratepayers than would otherwise be the case. Public Utilities Code Section 451.1(c) provides that the conduct of an electrical corporation with a safety certification for the relevant time period is deemed reasonable, unless another party creates a serious doubt as to reasonableness:

If the electrical corporation has received a valid safety certification for the time period in which the covered wildfire ignited, an electrical corporation's conduct shall be deemed to have been reasonable pursuant to subdivision (b) unless a party to the proceeding creates a serious doubt as to the reasonableness of the electrical corporation's conduct. Once serious doubt has been raised, the electrical corporation has the burden of dispelling that doubt and proving the conduct to have been reasonable.

Without an approved safety certification, the electrical corporation bears the burden at the outset of proving entitlement to ratepayer coverage of costs pursuant to Public Utilities Code Section 451.1(b):

- (b) When determining an application by an electrical corporation to recover costs and expenses arising from a covered wildfire, the commission shall allow cost recovery if the costs and expenses are just and reasonable. Costs and expenses arising from a covered wildfire are just and reasonable if the conduct of the electrical corporation related to the ignition was consistent with actions that a reasonable utility would have undertaken in good faith under similar circumstances, at the relevant point in time, and based on the information available to the electrical corporation at the relevant point of time. Reasonable conduct is not limited to the optimum practice, method, or act to the exclusion of others, but rather encompasses a spectrum of possible practices, methods, or acts consistent with utility system needs, the interest of the ratepayers, and the requirements of governmental agencies of competent jurisdiction. Costs and expenses in the application may be allocated for cost recovery in full or in part taking into account factors both within and beyond the utility's control that may have exacerbated the costs and expenses, including humidity, temperature, and winds.

Because PG&E elected to and is participating in the Wildfire Insurance Fund established under AB 1054, the effect of a Commission finding that PG&E may recover wildfire-related costs in rates means that PG&E shareholders are not required to reimburse the fund for any eligible claims paid to wildfire victims. *See* Decision (D.) 19-10-056 at 35-36.

The Commission's executive director issues an initial safety certification, but certifications in subsequent years are issued by the WSD.<sup>1</sup> In order to secure a safety certification, an electrical corporation must satisfy certain board of directors and executive compensation requirements (which are not at issue in TURN's request of review) and also satisfy the following requirements:

- (1) The electrical corporation has an approved wildfire mitigation plan.
- (2) The electrical corporation is in good standing, which can be satisfied by the electrical corporation having agreed to implement the findings of its most recent safety culture assessment, if applicable. Pub. Util. Code §§ 8389(e)(1) & (2).

### **TURN'S REQUEST FOR REVIEW**

TURN asserts that PG&E cannot satisfy Section 8389(e)(1) because, while the WSD approved, and the Commission ratified, the WSD's approval of PG&E's 2020 WMP, such approval came with conditions. TURN also asserts that the "most recent" safety culture assessment is out-of-date, and therefore cannot satisfy the requirement of Section 8389(e)(2).

### **DISCUSSION**

Upon review, TURN's assertions do not warrant overturning the WSD's decision to grant PG&E a safety certification. First, the safety certification provision requires that an electrical corporation have an approved WMP, and that it be carrying out that WMP. The Commission approved PG&E's WMP on June 11, 2020, and PG&E has filed several compliance reports since then demonstrating that it is carrying out its WMP. Second, TURN is correct that the "most recent" safety culture assessment dates from 2019 and builds upon earlier requirements adopted in PG&E's safety culture proceeding, Investigation (I.) 15-08-019. However, PG&E's agreement to implement the most recent safety culture assessment findings is what the statute requires, and PG&E has so agreed.

#### **A. The Commission Approved PG&E's 2020 WMP; PG&E Therefore Satisfied Section 8389(e)(1)**

PG&E's 2020 WMP met all of the requirements of Public Utilities Code Section 8386(c), as the WSD determined and the Commission ratified in Resolution WSD-003.<sup>2</sup> TURN is correct that the WSD and the Commission conditioned their approval on PG&E (and

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<sup>1</sup> Pub. Util. Code § 8389(f)(2).

<sup>2</sup> At the same time, the Commission adopted Resolution WSD-002, which contains "guidance" conditions applicable to all electrical corporations including PG&E.

other electrical corporations) meeting various requirements, but the statute contemplates such action. Section 8389.3(a) provides for modifications before approval: “Before approval, the division may require modifications of the plan.”

TURN contends that the conditions the WSD and Commission imposed in Resolution WSD-003 do not meet the statutory intent allowing “modifications.” TURN is incorrect. The statute contemplates that a WMP may not fully meet all of the statutory requirements, and that the WSD and Commission may require modifications to a WMP. Here, the conditions were modifications – requirements that PG&E modify its WMP or furnish more information.

The WSD and Commission approved PG&E’s 2020 WMP on June 11, 2020. TURN did not seek rehearing of the approval, which is now final.

It is true that after PG&E submitted the modifications and information, the WSD found deficiencies. Resolutions WSD-002 and 003 required PG&E to submit information within 45 days of the Resolutions’ adoption in a Remedial Compliance Plan, and within 90 days of the Resolutions’ adoption in Quarterly Reports.

PG&E submitted the Remedial Compliance Plan and Quarterly Reports on schedule, and thereafter the WSD imposed additional requirements that PG&E must meet with its 2021 WMP update pursuant to Public Utilities Code Section 8386(c)(22). The WSD also issued a “Notice of Non Compliance” as to the Remedial Compliance Plan and Quarterly Reports. Therefore, the WSD has made clear what PG&E is required to do to address the deficiencies, and the 2021 WMP updates – submitted on February 5, 2021 – should address them. If PG&E’s 2021 WMP update does not address the new matters, there are remedies available to the WSD and the Commission. However, nothing in the foregoing process has the effect of undoing WSD approval and Commission ratification of the 2020 WMP, which occurred more than half a year ago.

**B. PG&E Agreed to Carry out the Requirements of its Most Recent Safety Culture Assessment; PG&E Therefore Meets the Requirements of Public Utilities Code Section 8389(e)(2)**

TURN’s second argument – that the WSD was in error in relying on the PG&E safety culture assessment in the safety culture proceeding, I.15-08-019, to approve PG&E’s safety certification – finds no support in AB 1054. That statute requires that the utility agree to implement the findings of its most recent assessment, and TURN does not dispute that PG&E did this.

TURN’s argument is that the WSD and the Commission are required to conduct a safety culture assessment on a required schedule. Failure to meet this schedule, TURN asserts, makes it impossible to rely on the results of the most recent safety culture assessment in reviewing a request for safety certification. However, the WSD letter granting PG&E a

safety certification explains that a new safety culture assessment process will occur early this year, stating that to date, the WSD has not implemented its recently approved process for annual safety culture assessments, which is anticipated to begin in early 2021.

The Commission approved the WSD's safety culture assessment process on November 19, 2020, in Resolution WSD-011, to begin in 2021. PG&E will be subject to that process for its next annual safety certification, but the Commission cannot require adherence to requirements that have not yet been implemented.

Therefore, the WSD appropriately relied on the existing safety culture assessment process in the Commission's formal investigation, I.15-08-019. The assessment referred to in that proceeding is the "most recent" safety culture assessment for purposes of Public Utilities Code Section 8389(e)(2). TURN disputes that I.15-18-019 is the appropriate assessment to rely upon but does not dispute that PG&E agreed to implement all requirements of that assessment.

TURN argues that the Commission was required to carry out a safety culture assessment of PG&E at some time after the assessment in R.15-08-019 (the safety culture proceeding) and before early 2021. However, AB 1054 does not require that. Section 8389(d)(4), which TURN cites, did not trigger a process for "annual" safety culture reviews until December 1, 2020:

(d) By December 1, 2020, and annually thereafter, the commission, after consultation with the division, shall adopt and approve all of the following:

...(4) A process for the division to conduct annual safety culture assessments for each electrical corporation.

The Commission adopted a process, as required, by December 1, 2020, in Resolution WSD-011, and the WSD will implement that process in early 2021.

Finally, nothing in this Resolution abridges or otherwise affects the authority of the Commission or the Wildfire Safety Division to take enforcement action against Pacific Gas and Electric with regard to any matter in its 2020 or 2021 Wildfire Mitigation Plan and update, including matters contained in Assembly Bill 1054 or D.20-05-053.

## **COMMENTS**

Public Utilities Code Section 311(g)(1) provides that this Resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission.

**FINDINGS**

1. The WSD approved and the Commission ratified WSD's approval of PG&E's 2020 WMP.
2. TURN did not seek rehearing of Resolutions WSD-002 or WSD-003.
3. PG&E met the WSD's deadlines for filing a Remedial Compliance Plan and Quarterly Report as set forth in Resolutions WSD-002 and 003.
4. Upon reviewing PG&E's Remedial Compliance Plan and Quarterly Report, the WSD set additional requirements due with PG&E's 2021 WMP update on February 5, 2021.
5. Review of PG&E's 2021 WMP update will include review of the material required in the previous finding.
6. The most recent safety culture assessment of PG&E was issued in connection with I.15-18-019.
7. Resolution WSD-011 timely adopted a process for the WSD to conduct annual safety culture assessments.
8. The WSD will implement safety culture assessment process adopted in Resolution WSD-011 in early 2021.
9. The Commission has several available enforcement mechanisms related to wildfire.

**THEREFORE, IT IS ORDERED that:**

1. The Request for Review filed by The Utility Reform Network of the Wildfire Safety Division's letter dated January 14, 2021, attached as Appendix A, granting Pacific Gas and Electric Company an annual safety certification is denied.

This Resolution is effective today.

I certify that the foregoing Resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on April 15, 2021, the following Commissioners voting favorably thereon:

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RACHEL PETERSON  
Executive Director