

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SAFETY POLICY DIVISION

Resolution M-4855  
August 5, 2021

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

**Resolution M-4855. Approving and denying elements of Pacific Gas and Electric Company's (PG&E) Advice Letter 4401-G/6116-E Requests to Comply with Decision 20-05-053 to Implement an Independent Safety Monitor (ISM).**

PROPOSED OUTCOME:

- Approves with modifications PG&E's request to implement an ISM consistent with the Commission's Decision (D) 20-05-053 approving PG&E's Bankruptcy Plan of Reorganization.
- Adopts a solicitation and selection process, scope of work, schedule, and \$5 million annual budget over 5 years for the ISM (collectively, the ISM Plan).
- Denies PG&E's request to establish a new memorandum account to track ISM Plan costs.
- Denies cost recovery and finds PG&E shareholders must pay ISM Plan costs.

SAFETY CONSIDERATIONS:

- The ISM will fulfill a role that supports the Commission's ongoing safety oversight of PG&E's activities.

ESTIMATED COST: None

By Advice Letter 4401-G/6116-E, filed on March 15, 2021.

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## **SUMMARY**

In Decision (D) 20-05-053, approving the Bankruptcy Plan of Reorganization for Pacific Gas and Electric Company (PG&E), the Commission directed PG&E to file a Tier 3 Advice Letter (AL) to establish terms for PG&E to engage an Independent Safety Monitor (ISM). The ISM will fulfill a role that supports the Commission's ongoing oversight of PG&E's activities related to electric and gas safety. Pursuant to the process described herein, the ISM's engagement will begin before the term of the Federal Monitor appointed in PG&E's federal criminal probation proceeding before Judge William Alsup, case number CR 14-00175 WHA (N.D. Cal.), expires in early 2022, and will continue for five (5) years thereafter.

On March 15, 2021, PG&E submitted AL 4401-G/6116-E pursuant to Decision (D) 20-05-053. This Resolution approves portions of the AL with modifications, and denies PG&E's request to establish a memorandum account. Specifically, the Resolution addresses the following: 1) solicitation and selection of the ISM; 2) ISM scope of work; 3) annual budget; 4) schedule and duration; and 5) memorandum account and cost recovery. As directed in Decision (D) 20-05-053, the Commission seeks to ensure the ISM has a role "functionally equivalent" to the Federal Monitor, with adaptations adopted herein.

## **BACKGROUND**

### ***Federal Monitor***

On January 26, 2017, PG&E was criminally convicted of violating the U.S. Pipeline Safety Act and obstructing an agency proceeding in association with its role in the deadly 2010 San Bruno gas pipeline explosion.<sup>1</sup> As a result of PG&E's conviction, the federal court ordered PG&E to report to a federal probation officer that would evaluate, assess, and monitor company activities for five years, commencing in January 2017.<sup>2</sup> The federal probation officer is known as the Federal Monitor.

The federal court's order required PG&E and the United States Attorney's Office to collaborate and select an acceptable entity to serve as the Federal Monitor. Kirkland & Ellis LLP was selected for this role, and was directed to evaluate, assess, and monitor PG&E's safety activities related to gas transmission pipeline safety and maintenance.

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<sup>1</sup> *United States v. Pacific Gas and Electric Co.*, Case No. 3:14-CR-00175, [2017 WL 1434572](#), Sentencing Memorandum (N.D. Cal. Jan. 9, 2017).

<sup>2</sup> *Id.* at Dkt. No. 916, Order (Jan. 26, 2017).

After PG&E equipment was found to have been the ignition source of catastrophic wildfires in 2017, the work of the Federal Monitor was expanded to include evaluation of PG&E's wildfire preparedness. In April 2019, the federal court adopted additional conditions of probation requiring the Federal Monitor to assess specific wildfire mitigation efforts including vegetation management and power inspections and maintenance.<sup>3</sup> In August 2020, the court added further conditions of probation requiring in-house management at PG&E to oversee workforce resources, document asset age conditions and anticipate expected useful life of critical asset components.<sup>4</sup>

On January 26, 2022, PG&E's five-year criminal probation and the work of the Federal Monitor will end.

### ***Commission Directive for the ISM***

On May 28, 2020, the Commission issued Decision (D) 20-05-053, approving PG&E's Bankruptcy Plan of Reorganization. The decision requires the establishment of "an Independent Safety Monitor that will report to the Commission and be functionally equivalent to the federal court monitor."<sup>5</sup>

Decision (D) 20-05-053 required PG&E to submit a Tier 3 AL proposing a scope of work, budget, solicitation process for an Independent Safety Monitor (ISM), and a process for selection/approval by the Commission.<sup>6</sup> On March 15, 2021, PG&E submitted its Tier 3 AL requesting implementation of an ISM in response to Decision (D) 20-05-053.

### **NOTICE**

Notice of AL 4401-G/6116-E was published in the Commission's Daily Calendar on March 17, 2021. PG&E states that copies of the AL were mailed and distributed in accordance with Section IV of General Order 96-B.

### **ADVICE LETTER, PROTESTS, COMMENTS, AND REPLIES**

#### ***Advice Letter and Submission Dates***

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<sup>3</sup> *Id.* at Dkt. No. 1040, Order Adopting New Conditions of Probation (Apr. 3, 2019).

<sup>4</sup> *Id.* at Dkt. No. 1243, Order (Aug. 7, 2020).

<sup>5</sup> D.20-05-053 at 22.

<sup>6</sup> *Id.* at 122, Ordering Paragraph 8.

PG&E's AL proposes a solicitation and selection process, scope of work and budget for the ISM. PG&E also requests the Commission's approval to establish a new memorandum account to track and record costs related to its implementation of the ISM Plan.

On April 5, 2021, Public Advocates Office (Cal Advocates) and The Utility Reform Network (TURN) filed timely protests to AL 4401-G/6116-E.

On April 12, 2021, PG&E responded to the parties' protests. The issues raised in PG&E's advice letter, the parties' protests, and PG&E's responses are summarized below.

Timely comments were submitted by:

- PG&E
- Rural County Representatives of California (RCRC)
- TURN

Timely reply comments were submitted by:

- Cal Advocates
- TURN

The parties submitting comments or replies either recommended that the Commission adopt the proposal to implement the proposed ISM Plan, or to adopt a modified version with changes as summarized below.

### ***Advice Letter Process***

#### *Protests and Reply to Protests*

Cal Advocates and TURN argue that a formal hearing is required and that the submitted Tier 3 Advice Letter does not comply with Commission process rules requiring a hearing for such matters as set forth in General Order (GO) 96-B, Rule 7.4.2, part 5.<sup>7</sup> TURN requests that the ISM process be addressed in PG&E's Safety Culture Investigation (I) 15-08-019.<sup>8</sup>

PG&E responded that it complied with the Commission's requirement to submit a Tier 3 AL to establish an ISM.

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<sup>7</sup> TURN Protest at 1; Cal Advocates Protest at 2.

<sup>8</sup> TURN Protest at 1.

*Comments and Reply Comments*

No comments or reply comments on this topic were submitted by parties.

***ISM Solicitation and Selection Process***

*Advice Letter*

PG&E's AL proposes to institute, "in close coordination with Commission staff," a solicitation process to identify ISM candidates.<sup>9</sup> PG&E would then present three high-scoring ISM candidates from the Request for Proposals for Commission staff selection and approval.<sup>10</sup>

*Protests and Reply to Protests*

In their protests, Cal Advocates and TURN ask the Commission to minimize and clarify PG&E's involvement in the ISM selection process. Cal Advocates asserts that PG&E should have no role in selecting the ISM. TURN suggests that if PG&E is involved, the Commission staff must approve the solicitation documents and select the ISM.<sup>11</sup>

PG&E disagrees and states there is nothing unusual or objectionable about its involvement in the selection process. PG&E notes that the federal court allowed it to collaborate with the U.S. Attorney to select the Federal Monitor. PG&E urges for Commission staff and PG&E to coordinate selection of the ISM. PG&E agrees with TURN that the Commission may approve the solicitation documents but asks that the Commission consider PG&E's recommendations.<sup>12</sup>

*Comments and Reply Comments*

PG&E has no objections to the Commission's proposed solicitation and selection process and "supports the ... process set forth in the Draft Resolution."<sup>13</sup>

TURN "recommends that the Draft Decision's ISM Solicitation and Selection Process expressly adopt uncontested conflict of interest requirements that were presented in

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<sup>9</sup> PG&E AL at 4.

<sup>10</sup> *Id.*

<sup>11</sup> TURN Protest at 8.

<sup>12</sup> PG&E Reply to Protest at 3.

<sup>13</sup> PG&E Comments at 2.

PG&E's advice letter and TURN's protest,"<sup>14</sup> and proposes amendments to paragraph four that would disqualify contractors and subcontractors if they are or have been, "within the past two years," an "employee, agent, or representative of PG&E" or if they "hold any interest in or relationship with PG&E or its affiliates, employees, or directors."<sup>15</sup>

### ***ISM Scope of Work***

#### *Advice Letter*

PG&E proposes that the scope of work be developed in close coordination with Commission staff for the ISM's focus on: (1) governance processes, (2) risk management processes, (3) recordkeeping and record management, (4) policy, procedures and training, (5) data analytics, and (6) prioritization, evaluation and performance of safety initiatives.<sup>16</sup>

#### *Protests and Reply to Protests*

Cal Advocates and TURN comment that PG&E's proposed ISM scope of work lacks detail and should more closely mirror the scope of the Federal Monitor's work. Cal Advocates states that PG&E's scope does not comply with the requirement in Decision (D) 20-05-053 that the ISM be the "functional equivalent" of the Federal Monitor.<sup>17</sup> TURN argues that "the AL does not even discuss how these matters are addressed in connection with the federal monitor ... [and] PG&E provides no comparison of its proposal with the provisions governing the federal monitor in order to meet the functional equivalence standard...."<sup>18</sup>

PG&E disputes TURN and Cal Advocates' interpretation of the ISM's functional equivalence to the Federal Monitor and states that in Decision (D) 20-05-053 the Commission envisioned that there would be a new scope of work specific to the ISM. PG&E believes "the ISM can be equivalent in the manner in which it functions (as an independent monitor reporting to the regulating body), without having the same scope of work." PG&E states that just as the Federal Monitor's work is dynamic to match evolving needs, there should be flexibility in the ISM's mandate, and the ISM should not duplicate the work of the Commission's Safety and Enforcement Division (SED) and

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<sup>14</sup> TURN Comments at 2.

<sup>15</sup> TURN Comments at 3-4.

<sup>16</sup> PG&E AL at 4-5.

<sup>17</sup> Cal Advocates Protest at 6.

<sup>18</sup> TURN Protest at 2.

Wildfire Safety Division (WSD), and the Office of Energy Infrastructure Safety (OEIS).<sup>19</sup> PG&E also asserts “it is typical for the subject of a monitorship to be involved in the development of the monitor’s work plan.”<sup>20</sup>

*Comments and Reply Comments*

TURN asks that the Commission “make explicit that the ISM will have responsibility for ensuring that PG&E is not just performing the highest priority safety mitigations, but is doing that work with the requisite quality and effectiveness.”<sup>21</sup> While TURN believes that this language was implied in the draft resolution, TURN recommends adding clarifying language to this effect given PG&E’s historic issues with properly executing safety activities as identified by the federal monitor.<sup>22</sup>

TURN also recommends that “the Draft Resolution should determine the reporting requirements the ISM should meet or, in the alternative, specify a process to address this issue,”<sup>23</sup> consistent with topics reserved for future consideration within Decision (D) 20-05-053. TURN suggests adding ordering paragraph 5A, or at least stating the public process the Commission intends to use to address this issue.” TURN’s proposed language calls for an “initial review report, semi-annual reports, and a final report” and for the ISM’s reports to be “made public as much as possible consistent with legitimate claims of confidentiality.”<sup>24</sup>

RCRC advocates that the Draft Resolution should have a more comprehensive scope of work and fails to capture how the ISM would be functionally equivalent to the Federal Monitor.<sup>25</sup> RCRC states the Draft Resolution “must be revised to include the Federal Monitor’s current scope of work to ensure consistent, uninterrupted accountability of PG&E,” including oversight of PG&E’s wildfire mitigation efforts and Public Safety Power Shutoffs (PSPS).<sup>26</sup> Further, RCRC argues that the WSD’s successor entity, the Office of Energy Infrastructure Safety, “will be in its infancy and a memorandum of understanding with the Commission has yet to be formally executed,” which could “limit

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<sup>19</sup> Pursuant to Pub. Util Code § 326(b) and Govt. Code § 15473, WSD became the OEIS on July 1, 2021.

<sup>20</sup> PG&E Reply to Protest at 4.

<sup>21</sup> TURN Comments at 1.

<sup>22</sup> *Id.* at 2.

<sup>23</sup> *Id.* 1-2.

<sup>24</sup> *Id.* at 3; Comments at Appendix A.

<sup>25</sup> RCRC Comments at 1.

<sup>26</sup> *Id.*

the overall effectiveness of the ISM.”<sup>27</sup> Finally, RCRC argues that the Commission should “articulate public access for the output of the ISM and any substantial changes to its tasks.”<sup>28</sup>

PG&E supports the Draft Resolution’s goal to avoid duplicating efforts of the Commission and states “that the scope of work set forth in the Draft Resolution reflects a reasonable balance.”<sup>29</sup> However, PG&E has concerns regarding privileged materials and the Draft Resolution’s statement that “PG&E may produce records under a generalized claim of confidentiality and reserve privilege objections but shall not delay the production of records due to the need to conduct a confidentiality or privilege review,” if time is of the essence.<sup>30</sup> PG&E argues that “[i]n California, the disclosure of privileged information to government entities—even if viewed as compelled, and made pursuant to a confidentiality agreement—risks waiver of attorney-client privilege and work-product protections.”<sup>31</sup> To alleviate this concern, PG&E requests amendments to the resolution that delete the term “privileged” and “privilege” from a description of material that must be provided to the ISM in a timely manner and add a sentence providing them with the ability to “use its best efforts to provide the ISM with comparable information without compromising the asserted privilege or protection.”<sup>32</sup>

In reply comments, TURN argues that it is appropriate for the Draft Resolution to require PG&E to grant the ISM broad access to its decision-making processes and records since the ISM “must be able to raise safety concerns with PG&E and the Commission immediately as they arise.”<sup>33</sup> TURN additionally points out that the Draft Resolution allows PG&E to reserve privilege objections.<sup>34</sup>

Further, TURN rejects PG&E’s assertion that requested changes are needed due to California Law, and argues that invoking the precedent cited by PG&E is misleading.<sup>35</sup>

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<sup>27</sup> *Id.* at 1-2.

<sup>28</sup> *Id.*

<sup>29</sup> PG&E Comments at 2.

<sup>30</sup> *Id.* at 2-3; Draft Resolution at 11.

<sup>31</sup> PG&E Comments at 3 (primarily citing *McKesson HBOC, Inc. v. Superior Court*, 115 Cal.App.4th 1229, 1236-39 (2004) (rejecting selective waiver of attorney-client privilege and work-product protection where materials were disclosed to government, despite confidentiality agreement; *McKesson* waived the work product protection under California law)).

<sup>32</sup> *Id.*

<sup>33</sup> TURN Reply Comments at 2; Draft Resolution at 3.

<sup>34</sup> TURN Reply Comments at 2.

<sup>35</sup> *Id.* at 2-3 (citing *Regents of University of California v. Superior Court*, 165 Cal. App. 4th 672, 683 (2008)).



TURN adds that PG&E neglects to mention more recent legal precedent finding that “an involuntary disclosure of documents in response to a government demand does not constitute a waiver of applicable privileges.”<sup>36</sup>

TURN concludes by recommending that the Commission reject PG&E’s proposed changes regarding privileged information, stating that “consistent with *Regents*, the process prescribed in the Draft Resolution allows PG&E to ‘reserve privilege objections’ and make clear that it is only producing documents it considers to be privileged because of a government requirement to do so, thereby avoiding a waiver under California law.”<sup>37</sup>

In its reply comments, Cal Advocates also disagrees with PG&E’s proposed modification and finds that “PG&E’s privileged documents should be compelled in production ordered by the Commission.”<sup>38</sup> However, Cal Advocates recommends that if PG&E’s request is approved, then the Commission require PG&E to maintain and share a complete privilege log with the ISM that includes “a description of the privileged information requested by the ISM, copies of the ‘comparable information’ provided to the ISM, an explanation of why the original information is privileged, and the steps taken by PG&E to allow the ISM access to the original information, if any.”<sup>39</sup> Cal Advocates further recommends that the Commission “establish a process to review PG&E’s claims of privileged information to determine whether they are appropriate and reasonable,” and set a time limit of no more than ten calendar days for PG&E to complete its confidential or privileged review of records.<sup>40</sup>

Finally, while Cal Advocates agrees with TURN’s proposed addition of ordering paragraph 5A(b), Cal Advocates recommends clarification “that Commission staff, including Cal Advocates, are covered under statutes regarding confidentiality and do not need to execute a nondisclosure agreement with PG&E to access confidential versions of the ISM’s reports.”<sup>41</sup>

### ***ISM Budget***

#### *Advice Letter*

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<sup>36</sup> *Id.*

<sup>37</sup> TURN Reply Comments at 3.

<sup>38</sup> Cal Advocates Reply Comments at 4.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 5.

PG&E proposes an annual budget of \$2 to \$5 million for the ISM. PG&E bases its proposed budget on the cost of retaining NorthStar Consulting in connection with the Commission's investigation of PG&E's safety culture.<sup>42</sup>

*Protests and Reply to Protests*

In their protests, Cal Advocates and TURN argue that this amount is inadequate and that it is inappropriate to use NorthStar's budget to estimate the ISM's budget. Cal Advocates notes that PG&E does not provide any additional supporting details for this budget figure.<sup>43</sup> TURN also argues the "budget should serve as an estimate, not a cap."<sup>44</sup>

PG&E asserts that the budget comparison is valid "because the ISM, similar to NorthStar, will effectively operate as an arm of the Commission, and will have the benefit of the experience and resources of Commission staff."<sup>45</sup> In addition, PG&E argues that much of the Federal Monitor's current scope overlaps with the Commission's regulatory oversight activities, which should not be duplicated by the ISM."<sup>46</sup> PG&E concludes that an annual budget of \$2 to \$5 million for the ISM is "reasonable and appropriate for the proposed scope of work."<sup>47</sup>

*Comments and Reply Comments*

PG&E argues that while it does not object to \$5 million as a ceiling for the annual budget, a static budget amount will "incentivize firms to submit estimates that reach \$5 million even if that amount is not necessary to efficiently and effectively complete the required scope of work."<sup>48</sup> Instead, PG&E requests a range of \$2 to \$5 million be established for the ISM's annual budget.<sup>49</sup>

In its reply comments, TURN agrees that the Draft Resolution's budget of \$5 million per year "is appropriately broad and flexible" and should be maintained.<sup>50</sup> TURN disagrees with PG&E's suggestion to implement a budget of \$2 to \$5 million a year, arguing that

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<sup>42</sup> PG&E AL at 5.

<sup>43</sup> Cal Advocates Protest at 5.

<sup>44</sup> TURN Protest at 8.

<sup>45</sup> PG&E Reply to Protest at 5.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> PG&E Comments at 4.

<sup>49</sup> *Id.*

<sup>50</sup> TURN Reply Comments at 4.

“the distinctions among proposals will likely relate to the amount of work that can be performed within a \$5 million budget – as well as the quality of the ISM team – and not on whether the work can be performed for less than \$5 million.”<sup>51</sup> TURN notes the absence of an argument from PG&E that the federal monitor has operated with an annual budget of less than \$5 million.<sup>52</sup>

### ***ISM Term***

#### *Advice Letter*

PG&E proposes a two-year period of engagement for the ISM.<sup>53</sup>

#### *Protests and Reply to Protests*

Cal Advocates and TURN comment that PG&E’s proposed two-year duration of the ISM is insufficient. Cal Advocates asks the Commission to adopt a term that is the longer of either five years or three years after PG&E is no longer under the Six Step Enhanced Oversight and Enforcement (EOE) process adopted in Decision (D) 20-05-053.<sup>54</sup> TURN likewise argues two years is too short, and that the ISM should serve no fewer than four years. TURN adds “provided that PG&E is not in any step of the EOE process, PG&E should be allowed to submit a Tier 3 AL requesting sunseting of the ISM [accompanied by] a wholly independent statement from the ISM regarding whether the ISM’s term should be terminated and the reasons for the ISM’s position.”<sup>55</sup>

PG&E asserts a two-year engagement is reasonable to complete the duties of an ISM and points out that the Commission retains the authority to extend the ISM’s tenure if needed.<sup>56</sup>

#### *Comments and Reply Comments*

Rather than the proposed five years, PG&E argues “that three years is a reasonable period of time for the ISM to complete an initial monitoring period and achieve its scope of work as described in the Draft Resolution, and for the Commission to evaluate whether

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> PG&E AL at 5.

<sup>54</sup> Cal Advocates Protest at 5.

<sup>55</sup> TURN Protest at 9.

<sup>56</sup> PG&E Reply to Protest at 5-6.

the ISM is effective in complementing the work of the Commission and WSD (soon to be the Office of Energy Infrastructure Safety).”<sup>57</sup>

However, PG&E does not oppose the Commission’s ability to extend the duration of the ISM’s engagement “at the end of the initial term if determined to be warranted.”<sup>58</sup>

In reply comments, TURN and Cal Advocates state the Draft Resolution’s ISM Term, of five years with ability of the Commission to extend the initial duration, is necessary and appropriate.<sup>59</sup> Cal Advocates argues that “given PG&E’s documented pattern of disputing or ignoring their failures to prioritize safe operation ... an [ISM] for only three years is an inadequate timeframe to identify, assess, solve, and guarantee that PG&E’s failures have been corrected.”<sup>60</sup> TURN and Cal Advocates recommend rejecting PG&E’s request to shorten the ISM’s term to three years.<sup>61</sup> Cal Advocates also recommends that “the ISM engagement should run for a period of at least five years and until PG&E has remained outside of the Enhanced Oversight and Enforcement process for at least three years.”<sup>62</sup>

### ***ISM Memorandum Account and Cost Recovery***

#### *Advice Letter*

In their AL, PG&E requests Commission approval to establish a memorandum account to track and record (a) ISM solicitation and selection costs, and (b) ISM engagement costs. PG&E states that the “mere opening of a memorandum account does not prejudice any party’s ability to contest the recorded costs at the point that PG&E seeks cost recovery” and would “preserve PG&E’s ability to later request Commission review and approval of the recoverability of such costs.”<sup>63</sup>

#### *Protests and Reply to Protests*

In their protests, Cal Advocates and TURN oppose PG&E’s request to establish a memorandum account. Cal Advocates asserts that “the need for an [ISM] arises from PG&E’s imprudent and/or unreasonable conduct, the resulting costs are the responsibility of the shareholders,” adding that the Commission should order PG&E to record all costs

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<sup>57</sup> PG&E Comments at 4.

<sup>58</sup> *Id.*

<sup>59</sup> TURN Reply Comments at 5; Cal Advocates Reply Comments at 5.

<sup>60</sup> Cal Advocates Reply Comments at 5.

<sup>61</sup> TURN Reply Comments at 5; Cal Advocates Reply Comments at 4-5.

<sup>62</sup> Cal Advocates Reply Comments at 4-5.

<sup>63</sup> PG&E AL at 6.

in a ledger to ensure that ratepayers are not burdened with the cost of the ISM.<sup>64</sup> TURN similarly argues that PG&E's shareholders should pay for the ISM, noting that one of the key features of the federal monitorship is that all costs have been paid by PG&E's shareholders and the ISM is only needed because of PG&E's unabated "track record of criminal and negligent conduct."<sup>65</sup>

PG&E clarifies its request by stating it is not seeking "a determination that costs associated with the ISM are recoverable in rates," but only "authorization to open a memorandum account that will permit PG&E to track costs associated with the ISM." In addition, PG&E states that any party can "contest cost recovery for costs recorded in the memorandum account should PG&E seek authorization to recover these costs in the future."<sup>66</sup>

### *Comments and Reply Comments*

PG&E opposes the Commission's Draft Resolution determination that costs associated with the ISM are to be paid by PG&E shareholders. PG&E states "there is not presently a sufficient record before the Commission to support those determinations" and reiterates the request for authorization to establish a memorandum account to track ISM-related costs to "preserve PG&E's ability to later request Commission review and approval of the recoverability of such costs."<sup>67</sup> While acknowledging the protests submitted by TURN and Cal Advocates that opposed this request,<sup>68</sup> PG&E submits it is "reasonable and appropriate for the Commission to authorize PG&E to establish a memorandum account at this time, and to reserve any final determination on cost recovery until such time as PG&E may request to recover from ratepayers costs associated with the ISM and there is briefing from the parties specifically on that issue."<sup>69</sup>

In its reply comments, TURN states the ISM is an "extraordinary remedy to address conduct by PG&E that has consistently fallen far short of the reasonableness standard for cost recovery."<sup>70</sup> TURN argues that: (1) PG&E's history of "less than reasonable conduct" created the need for the ISM, (2) the record is "overwhelming and indisputable that the need for the ISM results from unreasonable conduct by PG&E," and (3) "that no further information is needed for the Commission to make a well-supported decision that

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<sup>64</sup> Cal Advocates Protest at 8-9.

<sup>65</sup> TURN Protest at 6.

<sup>66</sup> PG&E Reply to Protest at 6.

<sup>67</sup> PG&E AL at 6; PG&E Comments at 4-5.

<sup>68</sup> PG&E Comments at 5; Cal Advocates Protest at 8-9; TURN Protest at 6.

<sup>69</sup> PG&E Comments at 5.

<sup>70</sup> TURN Reply Comments at 4.

it would not be appropriate under the just and reasonable standard of Public Utilities Code Section 451 to require ratepayers to pay for the ISM.”<sup>71</sup> TURN recommends that PG&E’s request to defer this determination be rejected.<sup>72</sup>

## **DISCUSSION**

The Commission makes the following determinations, based on the information before us.

### ***Advice Letter Process***

A Tier 3 AL and this Resolution are required pursuant to Decision (D) 20-05-053,<sup>73</sup> which directs that there “be an Independent Safety Monitor that will report to the Commission and be functionally equivalent to the federal court monitor.”<sup>74</sup> Therefore, a Tier 3 AL process is appropriate, and the appropriate challenge to this process was in the proceeding leading to Decision (D) 20-05-053.

### ***ISM Solicitation and Selection Process***

The Commission’s Safety Policy Division (SPD) staff will direct PG&E in its support of the drafting and issuance of solicitation materials, including a Request for Proposals (RFP). Allowing PG&E’s administrative involvement as the conduit for the preparation and issuance of the RFP under direction from SPD will facilitate a timely completion of the solicitation process prior to the expiration of the Federal Monitor’s engagement. While PG&E will serve in an administrative facilitation role for the issuance of the RFP under the direction of SPD, the Commission’s Executive Director or her designee will have sole responsibility and discretion to review and select the ISM from eligible candidates that respond to the RFP.

We find the conflict-of-interest provisions recommended by TURN<sup>75</sup> to be broad categories of exclusion which could significantly reduce the pool of qualified vendors. SPD staff will evaluate applicants’ potential conflicts and consult with the Commission’s Legal Division to avoid conflicts that could jeopardize the independence of the ISM. SPD and the Commission’s Legal Division will consider the extent and nature of any prior work, relationships of principals within potential business groups to

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<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> D.20-05-053 at 122, Ordering Paragraph 8.

<sup>74</sup> *Id.* at 24.

<sup>75</sup> TURN Comments at 2.

PG&E, as well as any other factors that may compromise the work of the ISM. Every applicant for the ISM and its assigned employees will be prohibited from holding a direct financial interest in PG&E and, in consultation with the Commission's Legal Division, will be subject to a conflict-of-interest review to assess potential conflicts-of-interest or the appearance of conflicts-of-interest. Commission staff will review, revise (as appropriate), and approve PG&E's proposed services contract with the ISM prior to execution, and the Commission shall be a third-party beneficiary of that contract.

### ***ISM Scope of Work***

Consistent with this Resolution, the ISM shall fulfill a role that supports the Commission's ongoing oversight of PG&E's activities related to electric and gas safety that is functionally equivalent to the current Federal Monitor, as required by Decision (D) 20-05-053.<sup>76</sup>

### ***Recognition of Parallel Safety Initiatives***

In determining the scope of work, we have considered the extensive additional safety regimes established in recent years by the California Legislature, the Commission, and the federal government to mitigate safety risks posed by utilities' electric and natural gas infrastructure generally, and for PG&E specifically, that had not been implemented when the Federal Monitor began its oversight of PG&E. These initiatives include, but are not limited to, the following:

1. Wildfire Mitigation Plans (WMPs);<sup>77</sup>
2. Annual Safety Culture Assessments;<sup>78</sup>
3. Independent Evaluators;<sup>79</sup>

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<sup>76</sup> D.20-05-053 at 24 (“[T]his decision directs that there will be an Independent Safety Monitor that will report to the Commission and be functionally equivalent to the federal court monitor.”).

<sup>77</sup> Pursuant to SB 901 (Dodd, 2018) and AB 1054 (Holden, 2019), WSD/OEIS reviews utilities' three-year Wildfire Mitigation Plans, which outline their proposed activities to prevent and reduce impacts from utility-caused wildfires.

<sup>78</sup> AB 1054 (Holden, 2019) requires WSD/OEIS to conduct annual Safety Culture Assessments for each electrical corporation with a focus on wildfire.

<sup>79</sup> Independent, third-party evaluators must assess compliance with annual WMPs; validate quality assurance/control programs in place for WMP compliance; and determine if utility failed to fund any activities within their WMPs, per AB 1054 (Holden, 2019) and SB 901 (Dodd, 2018).

4. Safety Culture Assessments;<sup>80</sup>
5. Safety Model Assessment Proceeding (S-MAP);<sup>81</sup>
6. Risk Assessment Mitigation Phase (RAMP);<sup>82</sup>
7. Root Cause Analysis Consultants;<sup>83</sup>
8. Safety Evaluators;<sup>84</sup>
9. Enhanced Oversight and Enforcement;<sup>85</sup>
10. Locate and Mark System Enhancement Initiatives;<sup>86</sup> and
11. Oversight of Public Safety Power Shutoffs.<sup>87</sup>

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<sup>80</sup> Pursuant to SB 901 (Dodd, 2018), SPD will develop a process for each regulated electric and gas utility to conduct a comprehensive safety culture assessment at least once every five years.

<sup>81</sup> Through S-MAP, the Commission reviews the models that major energy utilities use to identify, rank, and budget for safety risk mitigations. The Commission is refining metrics adopted in the first phase of the S-MAP proceeding (D.19-04-020) in R.20-07-013 and developing new safety and operational metrics as needed to link to the Enhanced Oversight and Enforcement Process (below).

<sup>82</sup> Large utilities are required to incorporate a risk-based decision framework to evaluate the safety and reliability improvements in their General Rate Case (GRC) applications, as directed by D.14-12-025. Through RAMP, utilities describe their plans to identify, assess and mitigate risks.

<sup>83</sup> In D.20-05-019, the Commission required an independent root cause analysis (RCA) consultant to conduct RCAs for specific 2017 and 2018 wildfires that involved PG&E facilities. The RCA consultant will analyze the factors that contributed to wildfire ignitions and make recommendations of systemic, programmatic, management, and structural matters that should be addressed to mitigate the risk of similarly caused fires in the future.

<sup>84</sup> In D.20-05-019, the Commission directed independent consultant(s) to perform independent audits and reviews of PG&E's policies and procedures, practices, and compliance with shareholder-funded System Enhancement Initiatives and to assess financial data related to PG&E's Wildfire Safety Plans over a three-year period.

<sup>85</sup> If PG&E makes insufficient progress related to specific triggering events described within its bankruptcy decision (D.20-05-053), PG&E triggers the Enhanced Oversight and Enforcement Process (EOE Process). On April 15, 2021, PG&E was placed in Step 1 of the EOE Process for insufficiently prioritizing its Enhanced Vegetation Management based on risk and was required to submit a Corrective Action Plan within 20 days (Resolution M-4852).

<sup>86</sup> In D.20-02-036 (approving the Locate and Mark settlement), the Commission required PG&E to complete 28 System Enhancement Initiatives including retaining three independent consultants to conduct a compliance and ethics corrective action audit, locate and mark compliance and timeliness audit, and a locate and mark field compliance audit.

<sup>87</sup> In the Phase 1 (D.19-05-042) and Phase 2 (D.20-05-051) Decisions of the Public Safety Power Shutoff (PSPS) Rulemaking (R.18-12-005), the Commission issued requirements for electric investor-owned utilities to mitigate the impacts of PSPS on customers and communities and to

*Footnote continued on next page*



We find that the ISM's scope of work should complement but not unnecessarily duplicate the work of Commission staff or the OEIS that is the successor to the Commission's WSD. On the other hand, the ISM's role should not be restricted by such safety oversight manifested in applicable laws and regulations, and in other proceedings.

*Areas of ISM Focus*

Accordingly, the ISM's scope of work shall cover the following areas:

- 1) Monitor and alert Commission staff whether PG&E is implementing its highest priority and risk-driven safety mitigations. In fulfilling this scope of work, the ISM will help the Commission ensure that PG&E prioritizes and implements the highest level of risk reduction across all levels of the company, from senior officials to field personnel. The ISM will assess PG&E's risk management activities in the field to ensure PG&E implements activities the Commission, the ISM, or PG&E itself have identified as a priority to reduce the public safety risks from its electric and gas systems. The ISM shall support the Commission's efforts to ensure PG&E's risk assessment process identifies where its operations and infrastructure create the greatest risk to public safety.
- 2) Monitor PG&E's safety-related recordkeeping and record management systems. The ISM will support the Commission's oversight so that modernization efforts PG&E implements are informed by prior failures and support the safe system construction, operation, and maintenance in PG&E's electric and gas lines of business. The ISM shall assess the availability and effective use of records and data for safety-related decision-making at all levels.

We agree with TURN's suggestion to explicitly include "requisite quality and effectiveness"<sup>88</sup> into the description of the scope. Ensuring the quality and effectiveness of risk mitigation work is an important element of oversight efforts intended to ensure public safety is protected and ratepayer funds are expended efficiently.

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protect public safety. I.19-11-013 and the Phase 3 Decision for R.18-12-005, expected in summer 2021, will broaden existing guidelines to include pre-and post-season reporting and identification of critical facilities and infrastructures.

<sup>88</sup> TURN Comments at 1.

We understand RCRC's concern that the scope of the ISM should be explicitly defined to include evaluation of PG&E's wildfire mitigation efforts. However, we find that the scope of work proposed within the Draft Resolution sets clear guidance for the ISM without being overly restrictive. Oversight of PG&E's wildfire-related activities will be part of the ISM's duty to oversee risk mitigation implementation and safety-related recordkeeping and record management. We disagree with RCRC's assertion that the WSD's successor entity is in its "infancy." Rather, we find that the transition from WSD to the OEIS has not changed its operational capabilities and it will continue the work that WSD has refined since 2019, including reviewing utility Wildfire Mitigation Plans and hiring Independent Evaluators to monitor and assess their implementation. Finally, we note that the Commission oversees PG&E's implementation of PSPS by: reviewing PG&E's bi-weekly reports on corrective actions related to PSPS preparedness; refining PSPS guidelines through Rulemaking (R) 18-12-005; and monitoring utility compliance with PSPS guidelines through assessment of PSPS post-event reports. Rulemaking (R) 20-07-013 also provides a framework for the parties to develop a methodology for modeling the risks and consequences of PSPS events for the Risk Assessment Mitigation Phase of General Rate Cases.

*Public and Confidential Reporting, and Privileged or Confidential Information*

In Decision (D) 20-05-053, the Commission stated its vision for the relationship between the CPUC and the ISM.<sup>89</sup> The achievement of that vision requires careful attention to the issues raised in comments requesting clarity on the ISM's public and confidential reporting, and the treatment of privileged or confidential information. Throughout the duration of this monitorship, the Commission will consider and balance transparency and the need to protect from public disclosure utility confidential information and certain communications and reporting by the ISM to the Commission that is needed to inform and facilitate the Commission's decisions regarding regulatory oversight of PG&E. We will therefore require semiannual public reporting by the ISM to the Commission but will also allow and require confidentiality in communications and other reports.

*Public and Confidential Reporting*

We agree with TURN's suggestion that the scope of work specified here would benefit from determining "the reporting requirements the ISM should meet."<sup>90</sup>

First, the ISM shall provide public summary reports of their activities every six months to the Commission. This is consistent with the frequency of public reporting requirements

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<sup>89</sup> At 24.

<sup>90</sup> TURN Comments at 1-2.

of the Federal Monitor. The Commission may hold a public workshop or other forum about the summary reports.

The ISM will also verbally report on its safety oversight, regularly and confidentially to raise any concerns with PG&E's safety performance. Commission staff may request additional reports on specific topics to be provided confidentially, subject to a Commission determination whether to make such reports public. The purpose of confidential reporting shall be to identify areas where PG&E should or can improve its safety performance and may inform Commission determinations to take additional regulatory and oversight actions. Providing for some confidential reporting allows free and frank exchange of information, subject to appropriate confidentiality limitations, so that the ISM and Commission can improve PG&E's safety performance.

### *Privileged or Confidential Information*

We now turn to the related issue of privileged and/or confidential information raised in comments by TURN and PG&E.

To start, we acknowledge the unusual contours of the contractual and consulting relationships here. The Commission has oversight and decision-making control of the contracting process that is to be effectuated by PG&E. For example, Commission staff will review and have final approval of the contract that is issued for bids. Commission staff will interview the bidders and select the ISM. Following the Commission's selection, the ISM shall contract directly with PG&E, just as the Federal Monitor is contracted directly with PG&E.

However, the relationship between the Commission and the ISM is of primary importance. The ISM shall serve as the Commission's consultant, dispensing reports, materials, advice, opinions and recommendations to the Commission by which government policy is processed and formulated.<sup>21</sup> Consistent with the contours of the federal monitorship, the ISM's work is directed by the Commission and shall be performed for the Commission's benefit as well as PG&E's. We therefore direct PG&E to name the Commission as a third-party beneficiary of the contract between PG&E and the ISM, and the Commission may require a non-disclosure agreement with the ISM.

Next, we address issues of privilege and confidentiality between the ISM and PG&E, and then between the ISM and the Commission.

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<sup>21</sup> The deliberative process privilege may apply to communications between the ISM and the Commission, consistent with Govt. Code § 6250 *et seq.* (For discussion of the deliberative process privilege, see 55 Cal. Jur. 3d Records and Recording Laws § 38.)

In order to fulfill its role and effectively perform the areas within this scope of work, the ISM must be embedded within PG&E and have ongoing and regular access to PG&E's non-privileged, every-day decision-making at all levels. The ISM must be able to raise safety concerns with PG&E and the Commission immediately as they arise. Accordingly, PG&E shall grant the ISM access to personnel and records on the same basis as it has given the Federal Monitor. The ISM must monitor the real-time execution of PG&E's safety activities to ensure that PG&E's field implementation matches its prioritization and that PG&E demonstrates utmost safety in execution.

PG&E's comments express concern that the proposed process requiring PG&E to produce materials potentially subject to valid claims of attorney-client or attorney work-product privileges imposes a risk that PG&E might waive these protections. We acknowledge the importance of these statutory privileges and adopt language consistent with the Order establishing the federal monitorship.<sup>22</sup>

We impose the same "best efforts" obligation on PG&E with regard to privileged information as was imposed on it by the federal court. PG&E's production of non-privileged, potentially confidential information shall not be delayed. To the extent the ISM seeks access to materials that PG&E asserts are subject to attorney-client privilege or attorney work-product, PG&E shall use its best efforts to provide the ISM with comparable information without compromising the asserted privilege or protection.

In the event the ISM believes PG&E is inappropriately claiming privileges as to documents or information, the ISM will expeditiously alert the Commission's Executive Director and General Counsel of the dispute by letter and copy PG&E. PG&E shall provide a privilege log within ten days of the ISM's letter, sufficient for the Executive Director or General Counsel to determine appropriate procedural steps to establish whether such documents are protected by the attorney-client privilege and/or work-product doctrine, or if the materials should be provided to the ISM.

Further, if material is confidential, PG&E may so mark the material. If time is of the essence, PG&E may produce records to the ISM under a generalized claim of confidentiality but shall not delay the production of records due to the need to conduct a confidentiality review.

As to materials received by the Commission from the ISM, such communications and reports shall be deemed preemptively confidential, pending further staff review, on two bases. First, they may be protected by the deliberative process and/or official information

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<sup>22</sup> *United States v. PG&E*, *Supra* at Dkt. No. 916, Order (Jan. 26, 2017).

privileges.<sup>23</sup> Second, they may be prohibited from disclosure as PG&E confidential information under Public Utilities Code Section 583 and PG&E's claims of confidentiality made to the ISM. Staff may conduct further review and take appropriate steps, working with PG&E as may be necessary pursuant to General Order 66-D, to determine if public disclosure is warranted and whether such disclosure requires an order of the Commission.<sup>24</sup>

### *Changes in ISM Scope*

The ISM's effectiveness may require adjustments to this scope of work in response to changed circumstances or unanticipated risks. Accordingly, revisions to the ISM's scope of work may be proposed either by the ISM or Commission staff, and the Commission or its Executive Director may approve revisions so long as they are achievable within the approved budget. In the event that the Commission or its Executive Director changes the scope of work, such changes shall be published.

### ***ISM Budget***

The budget for the ISM shall be \$5 million annually, calculated from the date the ISM begins work, and continuing for 12-month periods thereafter through the term of the ISM. This amount is appropriate considering the scope of work. The Commission may expand the budget as appropriate and necessary, consistent with Commission procedures.

We understand PG&E's point about a "static budget amount" incentivizing "firms to submit estimates that reach \$5 million..."<sup>25</sup> but given the enormous task of effectively monitoring PG&E's high-risk and expansive territory, we agree with TURN that "the distinctions among proposals will likely relate to the amount of work that can be performed within a \$5 million budget – as well as the quality of the ISM team– and not on whether the work can be performed for less than \$5 million."<sup>26</sup>

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<sup>23</sup> The deliberative process privilege may apply to material received by the Commission, as appropriate within Govt. Code § 6250 *et seq.* The official information privilege may also apply pursuant to Evid. Code § 1040. The deliberative process privilege is derived from Govt. Code § 6250 *et seq.* The official information privilege is established in Evid. Code § 1040.

<sup>24</sup> In relevant part, the Commission's GO 66-D, Art. 3.4 allows for the Commission to preemptively designate certain information as confidential or public in a decision, specifying that information submitted to the Commission per this section shall clearly designate the relevant decision adopting the applicable confidential determination. This provision further states that: "If the information is appropriately identified as being preemptively determined to be confidential, the Commission will not release information in response to a CPRA, unless by order of the Commission."

<sup>25</sup> PG&E Comments at 4.

<sup>26</sup> TURN Reply Comments at 4.

As discussed above, we have recognized and considered numerous safety initiatives newly instituted by the Commission in recent years that are intended to enhance PG&E's and other regulated utilities' safety, that were not in place at the time the Federal Monitor began its work. The ISM scope and budget approved herein has been carefully considered to complement such new initiatives that are directed at monitoring and ensuring PG&E is effectively prioritizing safety and risk mitigation to improve its safety performance. While Decision (D) 20-05-053 requires the ISM to be "functionally equivalent" to the Federal Monitor, the Commission has the discretion to define the ISM's role such that it will not duplicate other safety-related work carried out by the Commission or the OEIS.

### ***ISM Term***

The ISM shall presumptively be engaged for a term of five years. This timeframe is appropriate as it will provide a sufficient initial period to monitor PG&E's performance. While PG&E proposed two years, we agree with TURN that two years is insufficient for the ISM to initiate and achieve the scope of work adopted. We further agree with TURN that a longer term is warranted in light of the Commission's ongoing and extensive concerns with PG&E's safety progress. This initial term may be extended by the Commission if warranted by findings of safety conditions that would benefit from continued ISM involvement.

We reject PG&E's request to reduce the term of the ISM to three years and agree with TURN<sup>27</sup> and Cal Advocates<sup>28</sup> that substantial challenges facing PG&E and its record of prior safety lapses warrant a period of five years, matching the length of the Federal Monitor's term. Five years is a reasonable amount of time considering the enormous task of developing a thorough understanding of PG&E's lines of business and the numerous and complex safety risks associated with it.

### ***ISM Memorandum Account and Cost Recovery***

We deny PG&E's request to establish an ISM memorandum account for ISM Plan costs as PG&E has not demonstrated a memorandum account is warranted. Additionally, we find that these costs should be paid by PG&E shareholders and that PG&E may not seek cost recovery of ISM Plan costs in the future.

A memorandum account allows a utility to track costs arising from events that were not reasonably foreseen in the utility's last general rate case. By tracking these costs in a memorandum account, a utility preserves the opportunity to seek recovery of these costs

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<sup>27</sup> *Id.* at 5.

<sup>28</sup> Cal Advocates Reply Comments at 4-5.

at a later date without raising retroactive rate-making issues.<sup>99</sup> In determining when a memorandum account is appropriate, the Commission has taken into account various factors, including determining if the cost at issue was caused by an event of an exceptional nature that is not under the utility's control, and whether ratepayers will benefit from the memorandum account treatment.<sup>100</sup>

Decision (D) 20-05-053 did not direct PG&E to establish a memorandum account nor did it determine whether shareholders or ratepayers are responsible for the cost of the ISM.<sup>101</sup> Yet, PG&E does not address in its AL any of the criteria or conditions that the Commission considers relevant to a determination to authorize memorandum account treatment.

The Commission considered a requirement for an ISM as a condition of its approval of PG&E's bankruptcy plan of reorganization to address compliance issues and to enhance PG&E's safety performance.<sup>102</sup> Decision (D) 20-05-053 clearly states that in "order for the Commission to approve PG&E's reorganization plan under AB 1054, the Commission must find that the reorganization plan (and other documents resolving the insolvency proceeding) is 'acceptable in light of the electrical corporation's safety history.'"<sup>103</sup> The Commission approved PG&E's reorganization plan with conditions and modifications, one of which was the imposition of the ISM. PG&E's advice letter, as required by Decision (D) 20-05-053, and the ISM Plan approved by this resolution effectuates the Commission's conditional approval of PG&E reorganization plan. This approval was informed by PG&E's safety performance, which the decision characterized as ranging from "dismal to abysmal."<sup>104</sup> These facts are well known to PG&E. We find that the costs PG&E will incur to engage the ISM are not of an exceptional nature outside PG&E's control. We accordingly deny PG&E's request due to its failure to demonstrate memorandum account treatment is warranted.

Because PG&E's request to establish a memorandum account is denied, and for the reasons stated above, PG&E may not seek cost recovery from ratepayers of the ISM Plan costs in the future. We note that this treatment is also consistent with the fact that PG&E's costs for the Federal Monitor are not recoverable, as they resulted from PG&E's safety transgressions. We agree with the arguments of TURN and Public Advocates that shareholders must pay for such costs. We disagree with PG&E's arguments that the

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<sup>99</sup> CPUC Resolution W-4835 at 4.

<sup>100</sup> See, e.g., CPUC Resolution W-4835 at 4.

<sup>101</sup> D.20-05-053 at 24.

<sup>102</sup> *Id.* at 21.

<sup>103</sup> *Id.* at 17.

<sup>104</sup> *Id.*

imposition of ISM Plan costs on its shareholders is improper because the issue of cost recovery was not raised in PG&E's advice letter, is not before the Commission, and there is an insufficient record before the commission to support its decision. Denying the memorandum account naturally and appropriately results in the imposition of ISM Plan costs on PG&E's shareholders.

## **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. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding. The comment period for this resolution was neither waived nor reduced.

## **FINDINGS**

1. On January 26, 2017, PG&E was criminally convicted of violating the U.S. Pipeline Safety Act and obstructing an agency proceeding in association with its role in the deadly 2010 San Bruno gas pipeline explosion.
2. As a result of PG&E's conviction, the federal court ordered PG&E to report to a Federal Monitor that would evaluate, assess, and monitor company activities for five years, commencing in January 2017.
3. After PG&E equipment was found to have been the ignition source of catastrophic wildfires in 2017, the work of the Federal Monitor was expanded to include evaluation of PG&E's wildfire preparedness.
4. On January 26, 2022, PG&E's five-year criminal probation and the work of the Federal Monitor are scheduled to end.
5. On May 28, 2020, the Commission issued Decision (D) 20-05-053, approving PG&E's Bankruptcy Plan of Reorganization. The decision requires the establishment of "an Independent Safety Monitor that will report to the Commission and be functionally equivalent to the federal court monitor."
6. Decision (D) 20-05-053 required PG&E to submit a Tier 3 AL with a proposed scope of work, budget, solicitation process for an ISM, and a process for selection/approval by the Commission.
7. A Tier 3 AL process is appropriate to establish the ISM.



8. The ISM's scope of work should complement but not unnecessarily duplicate the work of Commission staff or the Office of Energy Infrastructure Safety. On the other hand, the ISM's role should not be restricted by such safety oversight manifested in applicable laws and regulations, and in other proceedings.
9. PG&E has not demonstrated that a memorandum account to record and track the ISM Plan costs is warranted.
10. The ISM costs should be paid by PG&E shareholders, not recovered from ratepayers.

**THEREFORE IT IS ORDERED THAT:**

1. Pacific Gas and Electric Company Advice Letter 4401-G/6116-E is approved as modified herein.
2. The Commission's Executive Director or designee shall select an Independent Safety Monitor to fulfill a role that supports the Commission's ongoing oversight of Pacific Gas and Electric Company's activities related to electric and gas safety that is functionally equivalent to the current Federal Monitor, as required by Decision (D) 20-05-053.
3. Pacific Gas and Electric Company shall work at the direction of the Commission's Safety Policy Division in an administrative role to support the drafting and issuance of solicitation materials including a Request for Proposals.
4. The Commission's Executive Director or designee will select the Independent Safety Monitor from among eligible responses to Request for Proposals.
5. Pacific Gas and Electric Company (PG&E) shall allow Commission staff to review, revise (as appropriate), and approve PG&E's proposed services contract with the Independent Safety Monitor prior to execution, and the Commission shall be a third-party beneficiary of that contract.
6. The Independent Safety Monitor's scope of work shall focus on the following areas, which are designed to support the Commission's ability to ensure Pacific Gas and Electric Company (PG&E) prioritizes the reduction of its highest risk activities and executes its safety-related work with the necessary quality and effectiveness: (a) Monitor and alert Commission staff whether PG&E is implementing its highest priority and risk-driven safety mitigations with the requisite quality and effectiveness; and (b) Monitor PG&E's safety-related recordkeeping and record management systems.

7. Revisions to the Independent Safety Monitor's (ISM) scope of work may be proposed by the ISM or Commission staff and may be revised, within the approved budget, with approval from the Commission or the Commission's Executive Director, as reasonably needed based on Pacific Gas and Electric Company's safety record and performance or changes in risks.
8. Should the Independent Safety Monitor (ISM) seek access to materials that Pacific Gas and Electric Company (PG&E) asserts are subject to attorney-client privilege or attorney work-product, the following process shall apply: PG&E shall use its best efforts to provide the ISM with comparable information without compromising the asserted privilege or protection. In the event the ISM believes PG&E is inappropriately claiming privileges as to documents or information, the ISM shall expeditiously alert the Commission's Executive Director and General Counsel of the dispute and copy PG&E. PG&E shall provide a privilege log within ten days of the ISM's letter, sufficient for the Executive Director or General Counsel to determine appropriate procedural steps to establish whether such documents are protected by the attorney-client privilege and/or work-product doctrine, or if the materials should be provided to the ISM.
9. Pacific Gas and Electric Company may produce records to the Independent Safety Monitor (ISM) under a generalized claim of confidentiality, if time is of the essence, and shall not delay the production of records due to the need to conduct a confidentiality review. Materials received by the Commission from the ISM shall be deemed preemptively confidential, pending further staff review.
10. The Independent Safety Monitor budget shall be \$5 million annually over the term of the ISM unless modified by the Commission.
11. The Independent Safety Monitor (ISM) term shall be for five years from the date the ISM begins work and may be extended by the Commission if warranted by findings of safety conditions that would benefit from continued ISM involvement.
12. Pacific Gas and Electric Company's request for authorization to establish an Independent Safety Monitor memorandum account is denied.
13. Pacific Gas and Electric Company shareholders shall bear the Independent Safety Monitor costs.

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 August 5, 2021; the following Commissioners voting favorably thereon:

/s/ RACHEL PETERSON

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Rachel Peterson  
Executive Director

MARYBEL BATJER

President

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

DARCIE L. HOUCK

Commissioners