

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
FAX: (650) 589-5062
agraf@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
JAVIER J. CASTRO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. MESSING

Of Counsel
MARC D. JOSEPH
DANIEL L. CARDOZO

*Not admitted in California.
Licensed in Colorado.

December 22, 2021

Via Electronic Filing

Caroline Thomas Jacobs, Director
Office of Energy Infrastructure Safety
California Natural Resources Agency
Sacramento, CA 95184
caroline.thomasjacobs@energysafety.ca.gov
efiling@energysafety.ca.gov

Re: **Reply Comments of the Coalition of California Utility Employees on the Safety Certification Request of Pacific Gas & Electric Company (Docket No. 2021-SCs: 2021 Safety Certifications)**

Dear Director Thomas Jacobs:

We write on behalf of the Coalition of California Utility Employees (CUE) to provide reply comments on the Safety Certification Request of Pacific Gas & Electric Company (PG&E).

CUE is a coalition of labor unions whose approximately 43,000 members work at nearly all the California utilities, both publicly and privately owned. CUE's coalition union members make up the on-the-ground workforces of the three large electrical corporations that implement electric operations and maintenance policies and practices, including, for example, service restoration following a power safety power shutoff event. CUE's coalition union members are directly impacted by implementation of the IOUs' wildfire mitigation plans (WMPs) and Safety Culture Assessments (SCAs). CUE has participated in proceedings before the California Public Utilities Commission for more than 25 years, including as a party to the Order Instituting Rulemaking to Implement Electric Utility Wildfire Mitigation Plans Pursuant to Senate Bill 901 (2018), R. 18-10-007 and other related proceedings. CUE has also provided comments on the 2021 Safety Certification Guidance issued by the Office of Energy Infrastructure safety (Energy Safety), as well as SCE and SDG&E's 2021 Safety Certification Requests.

1011-1835acp

CUE's comments address the recommendations of the Public Advocates Office (Cal Advocates) on requirements for future safety certification submissions and its erroneous interpretation of the "good standing" requirement.¹ Cal Advocates makes 4 recommendations: (1) Energy Safety should provide clear criteria that the utility must meet to be found in "good standing" to receive a safety certification, (2) Energy Safety should require PG&E to describe how it intends to implement the recommendations from its Safety Culture Assessment, (3) Energy Safety should align future WMP review and approval schedules with Safety Certification periods, and (4) Energy Safety should require utilities to provide executive compensation structures that cover the period of their Safety Certification.

As a threshold matter, Cal Advocates' recommendations should be rejected because they are not germane to the question at hand – that is, whether PG&E provided adequate documentation in compliance with Public Utilities Code § 8389(e) and the 2021 Safety Certification Guidance to receive a safety certification. To which, the answer is yes. Because PG&E has provided the documentation required by Public Utilities Code § 8389(e), Energy Safety must issue a Safety Certification.² Regardless, Cal Advocates' recommendations to modify the "good standing" requirements must be rejected because they are inconsistent with AB 1054 and therefore have correctly been previously dismissed by Energy Safety.

AB 1054 established a Wildfire Fund that allows participating electrical corporations to seek payments for eligible third-party catastrophic wildfire liability claims that have been settled or finally adjudicated. An electrical corporation can only access the Wildfire Fund if it has a valid safety certification on the date of the ignition. Energy Safety is responsible for issuing safety certifications to an electrical corporation based on the electrical corporation's demonstration that it satisfied the requirements of Pub. Util. Code § 8389(e).

¹ Letter to Caroline Thomas Jacobs, Office of Energy Infrastructure Safety from Carolyn Chen, Public Advocates Office re: Comments of the Public Advocates Office on the Safety Certification Request of PG&E, Case No. 2021-SCs (Dec. 13, 2021) (*hereinafter* "Cal Advocates Comments").

² Public Utilities Code § 8389(e) (OEIS "shall issue a safety certification to an electrical corporation if the electrical corporation provides documentation" of (1) an approved WMP, (2) good standing, (3) a board of directors' safety committee, (4) executive incentive compensation structure, (5) board-of-director level reporting on safety issues, (6) executive compensation structure, and (7) implementation of approved WMP.

1011-1835acp

Section 8389(e)(2) requires an IOU to demonstrate that it is in “good standing” by “having agreed to implement the findings of its most recent safety culture assessment, if applicable.” Energy Safety clarified in its 2021 Safety Certification Guidance that “[a]n electrical corporation can satisfy the ‘good standing’ requirement by agreeing to implement all of the findings (including recommendations for improvement) of its most recent safety culture assessment performed pursuant to Pub. Util. Code §§ 8386.2 and 8389(d)(4), if applicable.”³ PG&E met this requirement by providing a copy of the letter notifying Energy Safety that the utility agrees to implement the findings of the 2021 SCA.⁴ Energy Safety accepted similar documentation when it found SCE and SDG&E in “good standing” for purposes of their 2021 safety certification requests.⁵

Cal Advocates raises two substantive concerns with PG&E’s safety certification request. First, they contend that PG&E does not meet the “good standing” requirement because the utility experienced safety issues during the past year.⁶ Cal Advocates explains that PG&E’s safety issues can be considered during the safety certification process because Energy Safety has statutory authority to define “good standing.”⁷ However, Cal Advocates’ interpretation of Pub. Util. Code § 8389(e)(2) is inconsistent with AB 1054’s plain language.

Section 8389(e)(2) expressly states that the “good standing” requirement “can be satisfied by the electrical corporation having agreed to implement findings of its most recent safety culture assessment, if applicable.” Because the Legislature explained how the utility can satisfy the “good standing” requirement, Energy Safety must accept that method. This does not mean that Energy Safety is

³ Office of Energy Infrastructure Safety, Office of Energy Infrastructure Safety’s Final 2021 Safety Certification Guidance Pursuant to Public Utilities Code § 8389(f)(2) (July 26, 2021) p. 4 (hereinafter “Final 2021 Guidance”).

⁴ Letter to Caroline Thomas Jacobs, Director, Office of Energy Infrastructure Safety from Adam L. Wright, Executive Vice President, Operations and Chief Operating Officer, Pacific Gas and Electric Corporation (Nov. 12, 2021), Attach. A.

⁵ Letter to Dan Skopek, Senior Vice President and Chief Regulatory Officer, San Diego Gas & Electric Company from Caroline Thomas Jacobs, Director, Office of Energy Infrastructure Safety re: Office of Energy Infrastructure Safety Issuance of San Diego Gas & Electric Company’s Safety Certification (Dec. 6, 2021) pp. 2-3; Letter to Michael Backstrom, Vice President, Southern California Edison from Caroline Thomas Jacobs, Director, Office of Energy Infrastructure Safety re: Office of Energy Infrastructure Safety Issuance of Southern California Edison Company’s Safety Certification (Dec. 10, 2021) pp. 3-4.

⁶ Cal Advocates Comments at pp. 4-6.

⁷ *Id.* at pp. 3-4.

prohibited from establishing *alternative* means for a utility to demonstrate “good standing” when a utility cannot meet the statutory criteria (i.e., fails to agree to implement the most recent SCA findings). Rather, Energy Safety cannot require additional criteria because it would contradict AB 1054’s plain language by preventing utilities from demonstrating good standing in a manner authorized by statute.

Indeed, Energy Safety already rejected utilizing additional criteria to evaluate “good standing.” In its draft 2021 Safety Certification Guidelines, Energy Safety proposed to consider “the findings of any other SCAs and the extent to which an electrical corporation is implementing the associated recommendations” when evaluating compliance with the “good standing” requirement.⁸ However, Energy Safety declined to adopt additional criteria in response to comments from CUE and the IOUs showing that AB 1054 limits Energy Safety’s assessment to whether the electrical corporation has agreed to implement the findings of its most recent SCA.⁹ Cal Advocates has not demonstrated that changes to the 2021 Safety Certification Guidance are necessary or permissible under the law.

In sum, the statute essentially authorizes a two-step review process for the “good standing” requirement. Energy Safety first must consider whether the utility has agreed to implement the findings of its most recent safety culture assessment. If the utility demonstrates that it agreed to implement the findings of its most recent SCA, then Energy Safety must find that the utility is in good standing and the inquiry ends. If, however, the utility fails to make that showing, then Energy Safety may utilize alternative criteria to evaluate whether the utility met the “good standing” requirement.

Second, Cal Advocates complains that PG&E failed to describe how it intends to implement the SCA recommendations.¹⁰ Energy Safety has already rejected such a requirement.¹¹ AB 1054 does not mandate a retrospective review of a utility’s implementation of SCA recommendations. Rather, the statute requires a commitment from the utility to improve safety and execute prudent wildfire mitigation efforts. The Legislature could have demanded proof that the utility is

⁸ Wildfire Safety Division, Wildfire Safety Division’s Proposed Changes to the 2021 Safety Certification Guidance pursuant to Public Utilities Code § 8389(f)(2) (May 11, 2021) pp. 4-5.

⁹ Office of Energy Infrastructure Safety, Office of Energy Infrastructure Safety Response to Comments on the 2021 Safety Certification Guidelines (July 26, 2021) pp. 1-2.

¹⁰ Cal Advocates Comments at pp. 7-8.

¹¹ *See supra* note 5, Issuance of SCE and SDG&E Safety Certifications. 1011-1835acp

December 22, 2021

Page 5

implementing the findings of its most recent SCA as it did with WMPs,¹² but it did not. Moreover, the utility's history of implementing SCA recommendations is already captured through the SCA process because any future recommendations would take into consideration an IOU's past performance. Compelling utilities to provide documentation showing its history of implementing SCA recommendations is duplicative and inconsistent with AB 1054's explicit requirements.

Finally, Cal Advocates contends that that a utility's safety certification should be suspended if the utility fails to submit an adequate and reasonable WMP in the year that the safety certification was granted.¹³ But AB 1054 does not authorize this action. Public Utilities Code § 8389(f)(1) clearly states: "A safety certification shall be valid for 12 consecutive months following the issuance of a safety certification." A safety certification also remains valid until Energy Safety acts on a utility's pending safety certification request.¹⁴

Energy Safety cannot modify a safety certification after it has been approved. In fact, Energy Safety's only role with respect to the safety certification is to determine whether the utility provided adequate documentation of the items listed in Public Utilities Code § 8389(e). If the utility does so, then Energy Safety must issue the safety certification. Cal Advocates' recommendation to suspend a safety certification following its issuance must be rejected as it is inconsistent with AB 1054.

For the reasons stated above, Energy Safety should decline to adopt Cal Advocates' recommendations. Because PG&E produced adequate documentation showing that it met the statutory requirements to receive a safety certification, Energy Safety must approve PG&E's request.

Sincerely,



Andrew J. Graf

AJG:acp

¹² Pub. Util. Code § 8389(e)(7) (requiring an electrical corporation provide documentation showing that it "is implementing its approved wildfire mitigation plan"); *see also* Final 2021 Guidance at p. 3.

¹³ Cal Advocates Comments at p. 9.

¹⁴ Pub. Util. Code § 8389(f)(4).