After the Wildfires: PG&E, Bankruptcy, and Corporate Sustainability

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INTRODUCTION

On January 29, 2019, the Pacific Gas and Electric Company ("PG&E") announced its intentions to file for Chapter 11 bankruptcy protection following a series of California wildfires.[2] The following article seeks to answer two questions. First, how did PG&E — one of the nation's largest and most stable utilities providers — reach this point? Second, if and when PG&E resurfaces from

1 I am grateful for my wife, best friend, editor, and advisor, Elvia Lopez Litteral, for her keen insight and patience. I would also like to thank Juan Eduardo Ibañez and Javiera Izurieta for their friendship as well as their commitment to Corporate Sustainability at the Pontificia Universidad Católica de Chile, where I learned about the subject under their guidance.

2 *See* Katherine Blunt & Russell Gold, *PG&E Files for Bankruptcy Following California Wildfires*, WALL ST. J. (Jan. 29, 2019), https://www.wsj.com/articles/pg-e-files-for-bankruptcy-following-california-wildfires-11548750142?mod=searchresults&page=2&pos=9.; *see also*, "Reorganization Information," PG&E, https://www.pge.com/en_US/about-pge/company-information /reorganization.page?WT.pgeac=Alerts_Reorganization-Jan19.

bankruptcy, how might the company embrace corporate sustainability principles to regain the trust of its customers, shareholders, and society at large?

Section I provides an overview of PG&E — the company, its leadership, and its decision to file for bankruptcy. Section II examines PG&E's approach to corporate sustainability, exploring how enhanced sustainability practices may have averted the need for bankruptcy. Lastly, Section III presents five recommendations informed by effective corporate sustainability practices across a broad array of companies and industries, including the Ford Motor Company, the Coca-Cola Company, CVS Health, AT&T, Inc., and the Rabobank Group.

I. THE DECISION TO FILE FOR BANKRUPTCY

A. Who is PG&E?

PG&E is the primary gas and electricity supplier to northern California, serving an estimated consumer base of 16 million over 70,000 square miles.[3] PG&E is an investor-owned utility ("IOU"), in contrast to a publicly owned utility ("POU"). IOUs are private companies with a shareholder-elected board. POUs, on the other hand, are subject to local public control and regulation, and are organized in various forms, including municipal districts, city departments, irrigation districts, and rural cooperatives. Both are regulated by the California Public Utilities Commission ("CPUC").[4] The goal of an IOU is to optimize return on investment for shareholders, while POUs are organized for the benefit of local customer owners.[5] PG&E is the largest IOU in northern California.

From a legal standpoint, the difference between these two formations—IOUs and POUs—represents a distinction in corporate law dating back to at least 1919. In *Dodge v. Ford Motor Company*, the Michigan Supreme Court described the profit motive:

> A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of directors is to be exercised in the choice of means to attain that end, and does not extend to a change in the end itself, to the reduction of profits, or to the non-distribution [sic] of profits among stockholders in order to devote them to other purposes.[6]

Dodge's definition of a business corporation continues to manifest in IOUs today. At times, the profit motive may lead companies to pursue the interests of

[3] *See* Ivan Penn, *PG&E Bankruptcy Tests who Will Pay for California Wildfires*, N.Y. TIMES (Jan. 14, 2019), https://www.nytimes.com/2019/01/14/business/energy-environment/pge-bankruptcy-california.html.

[4] *See Differences Between Publicly and Investor-Owned Utilities*, CALIFORNIA ENERGY COMM'N, https://www.energy.ca.gov/pou_reporting/background/difference_pou_iou.html (last visited Oct. 29, 2019).

[5] *See id.*

[6] Dodge v. Ford Motor Co., 204 Mich. 459, 507 (1919).

shareholders at the expense of others. In 2019, California's wildfires resulted in massive costs to both shareholders and non-shareholders—namely, PG&E ratepayers—arguably indicative of PG&E's management decisions prioritizing return on investment. Whether the singular focus on shareholders instead of corporate sustainability led to shortsighted and costly choices is the subject of the remainder of this article.

Before PG&E's decision to file for bankruptcy in 2019, the company faced scrutiny for suspect business operations for nearly a decade.[7] PG&E was faulted in 2010 for a natural-gas explosion in San Bruno, a suburb of San Francisco, that resulted in the death of eight people.[8] Consequently, the company was fined $1.6 billion by the State of California and faced lawsuit liabilities in excess of $900 million.[9] Political and financial pressures increased after fire investigators determined that PG&E equipment was responsible for at least 18 of 21 major electricity-related fires in California between 2017 and 2018.[10] As a result of these determinations, PG&E faced an estimated $30 billion in liability—far surpassing PG&E's insurance coverage and assets.[11]

Many of the California fires were the result of deficiencies in PG&E's distribution and transmission equipment.[12] The legal question of whether or not PG&E's negligence contributed to the cause of successive wildfires is not clear.[13] Regardless of whether the company acted negligently, it may still be held to account under California's doctrine of "inverse condemnation."[14] California utility providers are held responsible for damages caused by their equipment, regardless of whether the company acted negligently.[15] Inverse condemnation also applies whether or not the utility provider complied with CPUC's safety

[7] *See* Penn, *supra* note 3.

[8] *Id*.

[9] *Id*.

[10] *See* Ivan Penn, *PG&E Chief Is Out as Utility Faces California Fire Liability*, N.Y. TIMES (Jan. 13, 2019) https://www.nytimes.com/2019/01/13/business/energy-environment/pge-geisha-williams-wildfires.html.

[11] *Id.*

[12] Alejandra Reyes-Velarde, "PG&E Admits Its Equipment May Have Sparked Several Fires This Year," L.A. TIMES (Oct.10, 2019), https://www.latimes.com/california/story/2019-10-10/pge-admits-equipment-may-have-sparked-several-fires-this-year.

[13] David R. Baker, *The California Rule that Doomed PG&E: Inverse Condemnation*, BLOOMBERG NEWS (Jan. 15, 2019), https://www.bloomberg.com/news/articles/2019-01-15/the-california-rule-that-doomed-pg-e-inverse-condemnation.

[14] *Id*.

[15] *Id; see also*, CALIFORNIA STATE ASSOCIATION OF COUNTIES, https://www.counties.org/sites/main/files/file-attachments/csac_issue_brief_inverse_condemnation_7-25-18.pdf (last visited Mar. 7, 2020) ("Article One, Section 19 of the California Constitution states 'Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner.'").

rules.[16] PG&E, therefore, faced an imminent obligation to make those whole those who were affected regardless of a finding that PG&E was negligent.

In light of inverse condemnation liability, a series of events followed at PG&E's direction. First, in early January 2019 PG&E's Chief Executive Officer, Geisha Williams stepped down and was replaced in the interim by PG&E General Counsel, John Simon.[17] Second, PG&E announced that it would pursue a Chapter 11 bankruptcy "as the only viable option" to address its liability and "restore PG&E's financial stability, to fund ongoing operations, and provide safe services to customers."[18] Third, Moody's Investors and S&P Global Ratings downgraded PG&E's bonds to junk.[19] PG&E's market shares lost about two-thirds of the value from their position just two months earlier.[20] Fourth, PG&E failed to make a $21.6 million interest payment due on January 15 for its 2040 senior notes.[21] Finally, by the end of January, PG&E formally announced that it would file for Chapter 11 bankruptcy.[22] Due to bankruptcy, PG&E creditors lost the ability to call loans or demand interest payments, all lawsuits were tabled, and claimants had no recourse other than to negotiate directly with PG&E for their claims.[23]

The decision to file for bankruptcy reflected PG&E's belief that bankruptcy presented the only viable option to protect corporate assets as wildfire threats still loomed. But it also distanced PG&E from accountability. Thus, in accordance with the principles set forth in *Dodge*, PG&E prioritized the immediate interests of shareholders. As discussed below, PG&E's actions both before and after the wildfires were inconsistent with its messaging and its professed role as a responsible corporate citizen.

II. PG&E'S APPROACH TO CORPORATE SUSTAINABILITY: "MORE IMPORTANT THAN ANY ONE COMPANY CAN DEAL WITH"

Well before the California wildfires, PG&E had acknowledged the importance of corporate sustainability. PG&E published its first environmental report on

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16 *Id.*

17 Penn, *supra* note 10.

18 Penn, *supra* note 3.

19 Penn, *supra* note 10.

20 Penn, *supra* note 3.

21 Kate Duguid, *PG&E Misses Interest Payment; Bonds, Shares Dive*, REUTERS (Jan. 15, 2019), https://www.reuters.com/article/us-pg-e-us-bankruptcy-debt/pge-misses-interest-payment-bonds-shares-dive-idUSKCN1P92AC?mod=article_inline.

22 California Public Utilities Commission, "PG&E Bankruptcy," https://www.cpuc.ca.gov/pgechapter11/

23 Jessica DiNapoli et al., *PG&E Restructuring Highlights Arcane California Legal Rule*, REUTERS (Jan. 15, 2019), https://www.reuters.com/article/us-pg-e-us-bankruptcy-law/pge-restructuring-highlights-arcane-california-legal-rule-idUSKCN1P91BY.

corporate sustainability in 1990.[24] That report strictly concerned PG&E's impact on California's environment.[25] PG&E has since expanded its focus to more thoroughly encompass corporate sustainability as it is understood today. Accordingly, PG&E's annual report covers public and workplace safety, diversity and inclusion, environmental performance, customer energy programs, and economic vitality of the communities in which it operates.[26] The public scrutiny following the 2017 and 2018 wildfires begs the question whether PG&E's corporate sustainability reports have adequately evolved in the face of climate change. What was PG&E's sustainability approach and how did its stated goals comport with its actions during that period of time? Were PG&E's stated goals appropriately prioritized?

The 2018 *Corporate Responsibility and Sustainability Report* begins with a message to stakeholders from then-CEO, Geisha Williams.[27] Williams addresses the "more frequent and destructive" wildfires occurring in California as a result of climate change.[28] Williams states that the issues presented by climate change are more important than any one company can deal with.[29] The report describes "extreme drought conditions" and millions of dead trees, providing tinder for more rampant wildfires, as the "new normal" for California.[30] The efforts to tackle some of these problems included the creation of its Community Wildfire Safety Program ("Program").[31]

The Program establishes PG&E's mission to "safely and reliably deliver affordable and clean energy to our customers and communities every single day, while building the energy network of tomorrow."[32] The Program espouses that "with a sustainable energy future as our North Star, we will meet the challenge of climate change while providing affordable energy to all customers."[33] The Program also demonstrates a commitment to PG&E's core value to "put safety first."[34]

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[24] *PG&E's Annual Corporate Responsibility and Sustainability Report: Gain a Complete Perspective of PG&E*, PAC. GAS & ELECTRIC, https://www.pge.com/en_US/about-pge/company-information/pge-annual-corporate-responsibility-and-sustainability-report/pge-annual-corporate-responsibility-and-sustainability-report.page (last visited Oct. 29, 2019).

[25] *Id*.

[26] *Id.*

[27] PAC. GAS & ELECTRIC, PG&E 2018 CORPORATE RESPONSIBILITY AND SUSTAINABILITY REPORT 1 (2018) [hereinafter PG&E 2018].

[28] *Id.*

[29] *Id.*

[30] *Id.* at 2.

[31] *Id*; the report further states that those interested in learning more about the program can visit: www.pgecommitment.com. The webpage is for sale currently by a third party. PG&E should prioritize enhancing the public's accessibility to the Community Wildfire Safety Program via the web.

[32] PG&E 2018, *supra* note 24, at 11.

[33] *Id*.

[34] *Id*.

Since the Program's founding, it has recorded some important successes.[35] During wildfire season, the Program offers 24/7 staffing of a Wildfire Safety Operations Center.[36] Staff have cleared over 130 miles of vegetation around power lines in neighborhoods and communities that are under threat of wildfire.[37] The Program has installed over 100 new weather stations to help better predict wildfire conditions.[38] Staff have installed nine fire detection cameras and have engaged communities with over 350 informal and collaborative meetings.[39] Over 570,000 emails and letters were sent to residents concerning the threat of wildfires.[40]

Today, PG&E's approach to corporate sustainability is governed by three levels. First, PG&E's Board of Directors has oversight of company operations.[41] The Board is organized along seven standing committees, including: Executive, Audit, Compensation, Compliance and Public Policy, Finance, Nominating and Governance, and Safety and Nuclear Oversight.[42] Sustainability falls under the Compliance and Public Policy Committee.[43] However, the Report fails to describe *which* committees hold these responsibilities. Provided the importance of accountability, the spate of wildfires, and the company's establishment of the Wildfire Safety Program, one would expect more transparency and accountability. Transparency within PG&E may assist policymakers and the public in understanding how the Utility functions with respect to accountability.

Second, PG&E has created a Chief Sustainability Officer position tasked with leading PG&E efforts in this area.[44] The company has also integrated an internal Sustainability Leadership Council that is co-chaired by the Chief Sustainability Officer and the Chief Customer Officer.[45] This council is cross-functional, meaning its members come from the gas and electric operations, supply chain management, corporate real estate, transportation services, environmental compliance, and customer energy solutions.[46] Together, council members develop

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35 *PG&E Community's Wildfire Safety Program Marks Key Milestones to Enhance Safety and Help Reduce Growing Wildfire Threat*, BUS. WIRE (Sept. 28, 2018) https://www.businesswire.com/news/home/20180928005499/en/PGE-Community%E2%80%99s-Wildfire-Safety-Program-Marks-Key.

36 *Id*.

37 *Id*.

38 *Id*.

39 *Id*.

40 *Id.*

41 *Id.* at 5.

42 *Id.*

43 *Id*. (The Sustainability Report notes that other Board Committees address issues such as "public and employee safety.")

44 *Id.*

45 *Id*.

46 *Id.*

targets and strategies to minimize PG&E's impact on the environment.[47] Third, employees work with volunteers to reduce energy use, water use, and waste.[48] These efforts are complemented by the Employee Resource Group.[49]

In 2014 PG&E conducted its first materiality assessment on corporate sustainability.[50] This process identifies topics that are important to the long-term growth and sustainability of PG&E's operations.[51] PG&E's 2017 and 2018 materiality assessments both identified 18 core material issues.[52] These issues are organized along a matrix that identifies the issues that shareholders and PG&E, respectively perceive as important or material. In 2017, the two issues of highest importance were public safety and infrastructure reliability and resilience.[53] In 2018, public safety and workforce safety were identified as important issues.[54] The 2018 materiality assessment did not list infrastructure reliability and resilience amongst its most important issues. Relabeled from infrastructure reliability and resilience to energy reliability, this issue lost ground in terms of importance to the company's long-term sustainability. Although PG&E's energy infrastructure was cited as proximate cause of the California wildfires, it is curious that it was not given higher priority by the company. But the materiality assessment consistently ranked safety as a primary concern in both reports.[55]

PG&E's 2018 materiality assessment also identified climate resilience in the middle of PG&E's priorities—ranking neither as of high importance nor low importance.[56] Climate resilience is defined by PG&E as "adapting to a changing climate and changing weather patterns in ways that mitigate the potential consequences to PG&E's assets, infrastructure, operations, employees and customers."[57] This also includes "the risk of more frequent and severe wildfires, droughts, storms and heat waves, as well as longer-term changes, such as sea level rise."[58] PG&E identified climate change as the overarching reason for the wildfires and acknowledged the changing realities of doing business in areas that were likely more susceptible to wildfires.[59] But provided PG&E's understanding

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47 *Id*.

48 *Id*.

49 *Id.*

50 *Id*. at 7.

51 *Id.*at 5.

52 PAC. GAS & ELECTRIC, PG&E 2017 CORPORATE RESPONSIBILITY AND SUSTAINABILITY REPORT 6 (2017); PG&E 2018, *supra* note 24.

53 PAC. GAS & ELECTRIC, PG&E 2017 CORPORATE RESPONSIBILITY AND SUSTAINABILITY REPORT 6 (2017).

54 PG&E 2018, *supra* note 24

55 *See supra* note 52.

56 PG&E 2018, *supra* note 24

57 *Id*. at 9.

58 *Id.*

59 *Id*. at 2.

of the changing climate and the new realities of doing business, it is surprising that climate resilience was not given more attention.

As noted, PG&E's materiality assessment identifies 18 issues along four broad categories, ranging from safety and security to climate change to customer engagement and retention to integrity and credibility.[60] The question arises how any *one* company can address 18 issues. Some issues seemingly prioritized may be borne from self-interest over public benefit; for example, "policymaker engagement" ranked higher on PG&E's scale of importance than climate resilience.[61] PG&E defined "policymaker engagement" as "effectively engaging policymakers and regulators on climate, energy and related policies, including working in coalitions with transparency; ensuring the alignment of public policy advocacy with PG&E values."[62] In 2018, PG&E spent about $10 million on lobbying efforts following the California wildfires.[63] But perhaps unsurprisingly, most of PG&E's lobbying efforts aimed to reduce PG&E's liability for wildfires under the "inverse condemnation" doctrine.[64] Lobbying efforts proved unsuccessful.[65] Moreover, lobbying dollars failed to improve infrastructure resilience and enhance public safety. In other words, PG&E should have focused more on a proactive strategy to improving the company's ability to adapt to the changing realities of doing business rather than on a reactive strategy of lessening liability for its failures to do so.

If materiality assessments are PG&E's best tool to achieve corporate sustainability, PG&E may adjust priorities to course correct from previous years. It may be useful for PG&E to consider who conducts the assessments and the extent to which stakeholders inform the assessment. PG&E's 2018 Sustainability Report does not indicate whether or not an external or internal agency was responsible for the materiality assessment. The Report also does not indicate if stakeholders are engaged effectively through the Sustainability Advisory Council.[66] Adding to the confusion, PG&E notes that "material" issues are those identified as important "based on the perspectives of internal and external stakeholders;"[67] however, the matrix used to prioritize sustainability issues only cites the perspective of PG&E and shareholders, presumably minimizing input from ratepayers.[68] Lacking public input, PG&E must engage sufficiently diverse

60 *Id*. at 6.

61 *Id*.

62 *Id.* at 11.

63 Kathleen Ronayne, *Embattled California Utility Spent Most for 2018 Lobbying*, ASSOCIATED PRESS (Feb. 1, 2019), https://www.apnews.com/cbbdf051368e4c34b77be127bd2f423e.

64 *Id.*

65 *Id.*

66 PG&E 2018, *supra* note 24, at 12-13.

67 *Id*. at 8.

68 *Id.*

stakeholders to shape short-term and long-term objectives to reconcile corporate profit motive and public safety.

Finally, PG&E measures objectives through so-called "Key Performance Indicators" ("KPI"). PG&E divides the KPIs into five categories: business, safety, customers and communities, employees, and environment.[69] The report fails to provide any context for how the KPIs work.[70] The report instead highlights each metric demonstrating the company's performance in relation to the set of objectives.[71] Internally, PG&E may assign great weight to KPIs, however, it is unclear whether KPIs align with the materiality assessment or stakeholder engagement. Greater integration of these three areas—materiality assessment, stakeholder engagement, and KPIs—would likely enhance PG&E's approach to corporate sustainability.

III. FROM BANKRUPTCY TO CORPORATE SUSTAINABILITY

If and when PG&E emerges fully from bankruptcy, the company might reevaluate and reorient its approach to corporate sustainability. Overall the promise of achieving corporate sustainability lies in increased adaptation to, and mitigation of, climate change; decreased liability through wildfire prevention; and enhanced public safety. Drawing on the sustainability practices of corporate citizens who have experienced success in this area, PG&E should adopt five principles to achieve greater sustainability as an IOU. First, like the Ford Motor Company, PG&E must build a culture of integrity with its mission, vision, and values.[72] Second, consistent with the Coca-Cola Company's approach, PG&E should mandate that principles of sustainability inform the company's governance structure (e.g. CEO, Board of Directors, and leadership).[73] Third, like CVS Health, AT&T, Inc., General Motors, and the Samsung Group, PG&E must meaningfully engage diverse stakeholders to inform its own materiality assessment.[74] Fourth, PG&E should develop a tailored and robust sustainability policy framework. The Rabobank Group offers a promising approach in this regard.[75] Finally, in line with Accenture, Inc., Brambles, Ltd., and the Telenor Group, PG&E should create and track clear, quantifiable, and targeted KPIs.[76] Each case study demonstrates that a firm can successfully pursue a *Dodge* profit motive while also embracing principles of corporate sustainability.

69 *Id.* at 15-19.
70 *Id*.
71 *Id*.
72 *See* PG&E 2018, *supra* note 24, at Sec. IV (A).
73 *See* PG&E 2018, *supra* note 24, at Sec. IV (B).
74 *See* PG&E 2018, *supra* note 24, at Sec. IV (C).
75 *See* PG&E 2018, *supra* note 24, at Sec. IV (D).
76 *See* PG&E 2018, *supra* note 24, at Sec. IV (E)

A. Mission, Vision, and Values

In 2008, the Ford Motor Company faced a perilous state of affairs. Ford faced imminent bankruptcy, three years of staggering financial losses totaling nearly $30 billion, and the impending Great Recession.[77] Competitors like General Motors and Chrysler received $79.7 billion from the U.S. Government to avert bankruptcy; these events necessitated Ford to do something different: the company sharpened its company culture to build a new blueprint for financial resiliency.[78] Former Ford CEO, Alan Mulally, called it "One Ford," renewing the company's vision. By 2010, Ford posted $6.6 billion of earnings.[79]

When he joined Ford in 2006, Mulally recalled that "no one knew what the blue oval (the Ford emblem) stood for anymore."[80] In reality, Ford consisted of several different entities.[81] By some accounts, there was little cooperation between departments and little respect for new ideas.[82] Mulally began by bringing together several of Ford's "best and the brightest" to develop a new vision.[83] Ford developed a new vision for itself as a "Mobility Company"[84] in which every vehicle "had to be best in its class."[85] Communication lines opened between stakeholders in the company with renewed attention to make everyone "feel safe" to contribute.[86] Mulally went as far as instituting new ground rules for executive meetings that had once been combative.[87] Stakeholders reciprocated the respect imbued by new leadership.[88] Some Ford employees even began working weekends until late hours in the evenings to contribute.[89] Simultaneously, Ford made many improvements.[90] Ford's culture shifted toward collaboration and

[77] Marli Guzzetta, *The 4 Keys to One of the Biggest Turnarounds in Business History,* INC. 5000 (Oct. 12, 2017), https://www.inc.com/marli-guzzetta/how-alan-mulally-turned-ford-around-inc5000.html.

[78] Julie Bort, *Ford Chairman: Employees Voluntarily Worked with No Pay to Keep Us Out of Bankruptcy in 2008*, BUS. INSIDER (Mar. 13, 2017), https://www.businessinsider.com/ford-chairman-employees-worked-with-no-pay-to-thwart-bankruptcy-2017-3.

[79] Robert Schoenberger, *Turning Around an American Icon, How Ford Went from Losing More than $30 Billion to Positing Big Profits*, CLEVELAND.COM (Jan. 29, 2011) https://www.cleveland.com/business/index.ssf/2011/01/turning_around_an_american_ico.html.

[80] Guzzetta, *supra* note 77.

[81] *Id*.

[82] *Id.*

[83] Guzzetta, *supra* note 77.

[84] Sarah Miller, *Why Ford's Alan Mulally Is an Innovation CEO for the Record Books*, FORBES (Jun. 25, 2014) https://www.forbes.com/sites/sarahcaldicott/2014/06/25/why-fords-alan-mulally-is-an-innovation-ceo-for-the-record-books/#8d6122d7c048.

[85] Guzzetta, *supra* note 77.

[86] *Id.*

[87] *Id*.

[88] Bort, *supra* note 78.

[89] *Id*.

[90] Guzzetta, *supra* note 77.

resiliency.[91] Ford began to engineer sustainable, fuel efficient vehicles.[92] Automobiles were equipped with new technologies to improve customer experience.[93] Through these and other changes, Ford avoided collapse and recorded large profits for its stakeholders.

Much like the Ford Motor Company, PG&E faces a precarious situation. With billions of dollars in liabilities, Chapter 11 bankruptcy initiated, and a serious loss in public trust, PG&E should rebrand itself as a utility provider that values and prioritizes the safety of its employees and the public. In doing so, PG&E should engage a diverse group of stakeholders from across the company to participate in building a resilient culture for the challenges ahead.

B. Corporate Governance

PG&E has already shown its willingness to integrate safety and sustainability into its mission, vision, and values. After all, one of PG&E's core values is to "put safety first."[94] But it is not enough to amend PG&E's mission, vision, and values without more thoroughly integrating a culture of integrity into the company. One way to do so would be to transform PG&E's corporate governance structure to exemplify a culture of leadership with greater integrity. The Coca-Cola Company provides an example of one company that embraces corporate sustainability in its leadership structure.

In recent years, the Coca-Cola Company has prioritized recycling, clean waterways, and women's empowerment.[95] Led by its CEO, the Coca-Cola's operations are divided into four groups—the Asia Pacific Group; the Europe, Middle East and Africa Group; the Latin America Group; and the North America Group.[96] Each Group is led by a Group President.[97] The CEO and these groups are complemented by ten Senior Executives and 18 Vice Presidents.[98] Nearly all of the important decisions must be approved by the Board of Directors ("Board").[99] The Board itself consists of 16 members.[100] All newly appointed board members must participate in Coca-Cola's orientation program, which

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91 *Id*.

92 Bort, *supra* note 78.

93 Miller, *supra* note 84.

94 *See* PG&E 2018, *supra* note 24, at 4.

95 *Board Committees*, THE COCA-COLA CO., https://investors.coca-colacompany.com/corporate-governance/board-committees (follow link to Public Policy and Sustainability Charter) (last visited Mar. 7, 2019).

96 *Operations Leadership*, THE COCA-COLA CO., https://www.coca-colacompany.com/our-company/senior-operations-leadership (last visited Oct. 29, 2019).

97 *Id*.

98 *Id*.

99 *Board Committees*, THE COCA-COLA CO https://investors.coca-colacompany.com/corporate-governance/board-committees (last visited Oct. 29, 2019).

100 *Id.*

entails presentations by senior management on topics from business and strategic plans to risk management and compliance.[101] Following their election, board members are assigned to one of seven committees, including the Public Issues and Diversity Review Committee and the Compensation Committee.[102]

The Public Issues and Diversity Review Committee is foundational to Coca-Cola's sustainability efforts.[103] This committee is tasked with several objectives. First, the Committee must monitor the Company's diversity goals and progress toward achieving those goals.[104] Second, members must review the nature and scope of Coca-Cola's sustainability goals, monitor Coca-Cola's progress, and receive presentations by the Chief Sustainability Officer.[105] Third, the Committee tracks Coca-Cola's human and workplace rights policies in the business system, supply chains, and the communities in which the company operates.[106] Fourth, members retain outside counsel, experts, and advisors to accomplish the company's sustainability goals.[107] Finally, the Committee issues regular reports and presentations to the entirety of the board. Importantly, this committee's efforts are then evaluated by the full Board at the end of the year to ensure accountability.[108]

The Board's Compensation Committee contributes to Coca-Cola's sustainability efforts.[109] Compensation Committee Board members are responsible for evaluating and approving compensation plans, policies, and programs.[110] The Committee ensures that pay is aligned with performance in accordance with Coca-Cola's key strategic drivers of long-term growth.[111] Sustainability is a part of this measurement.[112] Additionally, members take care to avoid incentives that reward unnecessary or excessive risk-taking.[113]

Although the Board is integral to Coca-Cola's sustainability efforts, Senior Vice President and Chief Communications, Public Affairs, Sustainability and

[101] *Corporate Governance Guidelines*, THE COCA-COLA CO., https://investors.coca-colacompany.com/corporate-governance/board-committees (follow link to Director and Corporate Governance Committee Charter) (last visited Oct. 29, 2019).

[102] *Id.*

[103] *See* THE COCA-COLA CO., *supra* note 95.

[104] *Id.*

[105] *Id.*

[106] *Id.*

[107] *Id.*

[108] THE COCA-COLA CO., *supra* note 96.

[109] Muhtar Kent & Alexis Herman, *2017 Sustainability Report: Letter from Our Board of Directors*, THE COCA-COLA CO. (Aug. 24, 2018), https://www.coca-colacompany.com/stories/2017-sustainability-report-letter-from-muhtar-kent-alexis-herman.

[110] *Compensation Committee Charter*, THE COCA-COLA CO., https://www.coca-colacompany.com/investors/committee-charters (last visited Oct. 29, 2019).

[111] *Id*.

[112] *Id*.

[113] Kent & Herman, *supra* note 109.

Marketing Assets Officer, Beatriz Perez, oversees Coca-Cola's sustainability operations.[114] Perez leads a cross-functional team consisting of experts in public affairs, communications, sustainability, and marketing.[115] Through this team, Perez works toward "open dialogue" with diverse stakeholders from employees, consumers, bottling partners, suppliers, governments, NGOs, and shareholders.[116] She then uses these communications to evaluate Coca-Cola's sustainability priorities.[117]

In 2014, relying on these communications, Coca-Cola conducted its first priority issue analysis in accordance with the Global Reporting Initiative Reporting Principles.[118] The next year, Coca-Cola conducted more face-to-face engagements with stakeholders and expanded and reoriented its sustainability priorities.[119] These priorities were then turned into action items for implementation.[120] Coca-Cola's efforts in this area are published in its Annual Sustainability Report.[121] Perez's efforts are also complemented by those of the regional groups each of which produce an annual progress report detailing the regions' efforts toward achieving Coca-Cola's sustainability goals.[122] The Legal Division, led by Senior Vice President, in-house counsel, and Chief Legal Officer ("CLO"), Bernhard Goepelt, advises Coca-Cola on the legality of its sustainability practices and prioritizing diversity.[123]

114 *Senior Leadership: Biatriz Perez*, THE COCA-COLA CO., https://www.coca-colacompany.com/company/leadership/bea-perez (last visited Mar. 7, 2020).

115 *Id.*

116 James Quincey & Bea Perez, *2017 Sustainability Report: Letter from Our CEO and CSO*, THE COCA-COLA CO. (Aug. 24, 2018), https://www.coca-colacompany.com/stories/2017-sustainability-report-letter-from-james-quincey-bea-perez.

117 James Quincey & Bea Perez, *2017 Sustainability Report: Priority Issue Analysis*, THE COCA-COLA CO. (Aug. 24, 2018), https://www.coca-colacompany.com/stories/2017-sustainability-report-letter-from-james-quincey-bea-perez.

118 *Id; see also*, NEF CONSULTING, *GRI Guidelines*, https://www.nefconsulting.com/our-services/evaluation-impact-assessment/prove-and-improve-toolkits/gri-guidelines/ (The Global Reporting Initiative is an independent institution whose mission is to develop sustainability reporting guidelines that may assist companies in their sustainability efforts.).

119 *See supra* note 116.

120 *Id*.

121 *Id.*

122 *Id.*

123 *The Coca-Cola Company Names Cleary Gottlieb as Recipient of 2011 Living the Values Award*, THE COCA-COLA CO. (Feb. 29, 2012), https://www.coca-colacompany.com/press-center/press-releases/the-coca-cola-company-names-cleary-gottlieb-as-recipient-of-2011-living-the-values-award; Each year the CLO presents the "Living the Values" Award to a U.S. based law firm that partners with the company and which best demonstrates a commitment to Coca-Cola's Diversity Mission. Goepelt has recently stated, for example, that "Diversity is more than just a priority for our Legal Division, it is a core value for our Company." Accordingly, the Legal Department encourages law firms to demonstrate a commitment to representation of minorities and women in the firm generally and in the firm leadership. Firms must also demonstrate rigor in firm-wide diversity programming to encourage firm-wide ownership and participation of this central value.

Like Coca-Cola, PG&E should adopt a horizontally and vertically integrated governance structure. First, while PG&E has a Compliance and Public Policy Committee, this committee counts sustainability as *one* of its priorities. PG&E may benefit from a Board committee whose sole focus is on sustainability issues. Second, PG&E ought to integrate Board committees so as to facilitate cross-functional collaboration. Committees should work together to address and incentivize sustainability across the company. Third, PG&E's Chief Sustainability Officer should be empowered to develop strategies to address sustainability issues across the company. This officer must have direct access to the Board. Fourth, as Coca-Cola's CEO illustrates, there is an opportunity to further embed the role of General Counsel ("GC"). The GC should work closely with the Sustainability Officer and Chief Compliance Officer.

C. Dynamic Stakeholder Engagement

Once PG&E adjusts its governance structure to pursue corporate sustainability, the utility provider should adopt a dynamic approach to stakeholder engagement. Engagement must actually inform PG&E's materiality assessment. It is not enough to engage stakeholders as a publicity tool, or to merely integrate the input from stakeholders narrowly defined as shareholders. PG&E should not discount the views of stakeholders that it perceives as less important. CVS Health,[124] AT&T, Inc.,[125] General Motors,[126] and the Samsung Group[127] demonstrate that it is possible to integrate a diverse range of external stakeholders, such as customers, employees, and governments.

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124 CVS HEALTH, 2017 CORPORATE SOCIAL RESPONSIBILITY REPORT 15-17 (2017).

125 *Stakeholder Engagement,* AT&T, INC. https://www.att.com/Common/about_us/downloads/stakeholder_engagement.pdf (last visited Oct. 29, 2019).

126 GENERAL MOTORS, 2017 SUSTAINABILITY REPORT 21-22 (2017).

127 SAMSUNG GRP., SAMSUNG ELECTRONICS SUSTAINABILITY REPORT 2017 24 (2017).

Stakeholder Groups

CVS Health	
- Consumers and Patients	- Investors and Stockholders
- Colleagues	- Government & Regulators
- Industry Groups & Forums	- Nonprofits & NGOs
- Suppliers	- Local Communities
- Clients	- Media
AT&T, Inc.	
- Customers	- Employees
- Consumer & Privacy Interest Groups	- Suppliers
- Industry Analysts	- Environmental NGOs
- Education & Research Institutions	- Public Policy Makers
- Investors	- Community Agency Groups
General Motors	
- Customers	- Investors & Analysts
- Current & Former Employees	- Suppliers, Tier I and Beyond
- Dealiers & Dealer Councils	- Communities of Operation
- National, State, Local Governments	- Environmental & Social NGOs
Samsung Group	
- Customers	- Shareholders & Investors
- Employees	- Suppliers
- Local Communities	- NGOs, CSR Councils, Specialized Institutions
- Governments	
- Media	

PG&E has already enumerated a number of stakeholders that it connects with. Stakeholder Advisory Groups provide input on a variety of projects like PG&E's Electric Vehicle Charge Network and the Green Tariff Shared Renewable External Advisory Board.[128] This is a start, but these efforts alone are too far removed from PG&E's core operations. PG&E should thus integrate input from a wider set of stakeholders to determine which issues to prioritize.

Unlike PG&E's Community Wildfire Safety Program website, successful public engagement must be easily accessible to the public. As the chart below demonstrates, there are a number of similarities between the stakeholder-engagement methods employed by CVS Health,[129] AT&T, Inc.,[130] General

[128] PAC. GAS & ELECTRIC (2018), *supra* note 52, at 12-13.
[129] CVS HEALTH, *supra* note 124, at 15-17.
[130] AT&T, INC., *supra* note 125.

Motors,[131] and the Samsung Group.[132] Most common among these practices are in-person meetings, electronic surveys, company websites, focus groups, and social media.

Methods of Engagement	In Person Engagement						Remote Engagement						
	Focus Groups	Meetings	Interviews	Trainings	Roundtables	Volunteering	Customer Hotline	Surveys	Social Media	Emails	Phone Briefings	Conference Calls	Website
CVS Health	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
AT&T, Inc.	✓	✓			✓			✓					✓
General Motors	✓	✓						✓	✓				✓
Samsung Group		✓				✓	✓	✓	✓				✓

PG&E already uses a number of these methods. But instead of solely yielding to the conventional profit motive to guide operations, PG&E should allow public engagement to more effectively inform its direction.

D. Sustainability Policies

As PG&E implements feedback from stakeholders into its operations, the utility provider may find the Rabobank Group's Sustainability Policy Framework useful.[133] The Rabobank Group engages key stakeholders to inform its materiality assessment.[134] After this step, Rabobank identifies key and peripheral issues.[135] Then, Rabobank divides its Sustainability Policy Framework into four categories: General Sustainable Development Policy, Core Policies, Theme Policies, and

131 GENERAL MOTORS, *supra* note 126, at 21-22.

132 SAMSUNG GRP., *supra* note 127, at 24.

133 RABOBANK GRP., SUSTAINABILITY POLICY FRAMEWORK 9-20 (2018).

134 *Id.* at 12.

135 *Id.* at 9.

Sector Policies.[136] Each of the policies, described below, contribute to Rabobank Group's approach to corporate sustainability while remaining value-driven.

i. Rabobank's General Sustainable Development Policy

Rabobank's Sustainable Development Policy is an overarching policy that undergirds all other policies for every product and service offered by the Group.[137] This policy represents the Rabobank's commitment to refrain from causing or contributing to adverse social and environmental impacts.[138] Unlike conventional banks, Rabobank aims to integrate material sustainability criteria into every business decision and commercial activity.[139] Further, Rabobank encourages clients to improve their sustainability performance and supports them in such efforts.[140]

In practice, Rabobank's policy is rigorous. Clients whose practices do not comport with Rabobank's agenda are removed from Rabobank's list of partners and the relationship is terminated.[141] Moreover, Rabobank's clients and partners must agree to contractual clauses regarding compliance with Rabobank's sustainability policies.[142] These clauses are inserted into relevant contracts and letters for prospects.[143] As a part of this effort, Rabobank has implemented an effective program of monitoring compliance along with an accessible whistleblower program.[144]

ii. Rabobank's Core Policies

Rabobank's core policies also reflect its commitment to environmental, social, and governance issues.[145] As described above, clients are required to foresee the impact of their actions on the environment.[146] Clients must avoid negative impact through their work or otherwise work to mitigate negative impact.[147] Second, Rabobank's clients must conduct their operations in line with the *United Nations*

136 *Id*.

137 *Id.* at 8.

138 *Id*.

139 *Id*; *see also* Opinion | Want to Do Something About Climate Change? Follow the Money, Nytimes.com (2020), https://www.nytimes.com/2020/01/11/opinion/climate-change-bank-investment.html (last visited Jan 12, 2020).

140 RABOBANK GRP., *supra* note 133, at 8.

141 *Id*. at 11.

142 *Id*.

143 *Id.*

144 *Id*.

145 *Id.* at 15.

146 *Id*.

147 *Id*.

Declarations of Human Rights.[148] Clients must respect human rights in their business decisions and must influence their suppliers to align their decisions with the Declaration.[149] Third, Rabobank obliges its clients to respect and promote labor standards as set out in the *International Labor Organization Declaration on Fundamental Principles and Rights at Work* (and other similar conventions).[150] Finally, Rabobank has adopted anti-corruption and anti-bribery standards that apply consistently across its operations.[151] All of these core policies support Rabobank's approach to corporate sustainability.

iii. Rabobank's Theme and Sector Policies

Rabobank's theme policies concern issues that Rabobank regards as material to their business operation.[152] For example, theme policies relate to animal welfare, biodiversity, gene technology, investing in agricultural commodity derivatives, and land governance.[153] At the center of each of these policies is due regard for responsible management, care, and compliance with applicable laws.[154] Concerning animal welfare, for example, clients are expected to follow the practices outlined in the International Finance Corporation's Good Practice Note, *Animal Welfare in Livestock Operations*.[155] Similarly, with regard to biodiversity, clients must not damage UNESCO World Heritage sites and RAMSAR wetlands.[156]

Rabobank's sector policies concern clients in several sectors from aquaculture, fisheries and seafood processing, to biofuels to forestry.[157] Although each of Rabobank's policies may not be directly relevant to PG&E, their examples demonstrate how sustainability oriented companies can achieve financial success.

E. Key Performance Indicators

PG&E should revise key performance indicators to monitor its own progress. It is not clear which policies KPIs actually track within PG&E. As PG&E emerges from bankruptcy it should ensure that each KPI aligns with the operations. KPIs should be precise, quantifiable, and achievable by a target date. First, PG&E should gather a diverse group of stakeholders to express what the company intends to achieve. Critically, this is not what PG&E *hopes* to achieve or believes

148 *Id*.
149 *Id.*
150 *Id.*
151 *Id*. at 16.
152 *Id.* at 9.
153 *Id*. at 16-17.
154 *Id*.
155 *Id*. at 16.
156 *Id.*
157 *Id.* at 18.

it will achieve; rather, the question is what the company will realistically achieve within a given period of time. For example, Accenture, Inc., often regarded as one of the world's most sustainable companies, set a goal to hire more female employees in 2017.[158] This goal is specific and is also measurable. In fiscal year 2017, 45 percent of Accenture's newly hired employees were women, a 40 percent increase since fiscal year 2013.[159]

Second, PG&E's metrics must be quantifiable to be meaningful. Brambles Ltd., another company widely regarded as a sustainable company, sought a "better workplace."[160] This simple goal was subdivided into measurable categories: (1) reduce Brambles' injury frequency rate by 25 percent; (2) increase representation of women in leadership to at least 30 percent on the Board and all other management positions; and (3) achieve global best practice employee engagement of 73 percent and enablement of 71 percent.[161] Translating qualitative goals into quantifiable ones can help companies achieve a better workplace. Simultaneously, PG&E should set a target date or period of time in which the company would consider its efforts successful based on the metrics. For example, the Telenor Group has stated that one of its most important goals is to assist vulnerable groups develop their capacity, skills, and resilience online.[162] Consequently, Telenor states that it will facilitate training and education for four million children regarding online safety by 2020.[163]

IV. CONCLUSION

PG&E is at a critical stage. Sending a strong statement, the CPUC indicated it might replace all or some of PG&E's board of directors.[164] The CPUC even contemplated whether to set conditions on PG&E return on equity or safety performance.[165] Additionally, other discussions have presumed PG&E might be broken up into separate companies and placed under a holding company creating several regional subsidiaries.[166] PG&E could also have its holding company

158 ACCENTURE, INC., CORPORATE CITIZENSHIP REPORT 2017 66 (2018).

159 *Id.*

160 BRAMBLES, LTD., 2017 SUSTAINABILITY REVIEW 13 (2017).

161 *Id.*

162 TELENOR GRP., SUSTAINABILITY REPORT 2017 9, 24 (2017).

163 *Id.* at 7. The phrase "vulnerable groups" is further defined as children. There is also a number of children identified.

164 Robert Walton, *As California Considers Breaking Up PG&E, Utility 'Open to Range of Solutions*, *Utility Dive* (Dec. 28, 2018), https://www.utilitydive.com/news/as-california-considers-breaking-up-pge-utility-open-to-a-range-of-solut/545011/.

165 *Id*.

166 Usman Khalid, *Calif. Regulators Mull Possible PG&E Restructuring, Breakup*, S&P GLOB. MKT. INTELLIGENCE (Dec. 24, 2018), https://www.spglobal.com/marketintelligence/en/news-insights/trending/ruwoLeXnTdYY3HVVeQWOfw2.

authorization revoked to become fully regulated.[167] Furthermore, the possibility remains of converting PG&E's operations from an IOU to public ownership.[168] If PG&E emerges from bankruptcy intact, it must regain public confidence through corporate sustainability. PG&E must renew its mission, vision, and values. The company should alter its governance structure to more fully align itself with a culture of integrity organized around concern for safety and the environment. PG&E should meaningfully engage stakeholders for its materiality assessment and align its operations and policies with the findings. Finally, PG&E must develop KPIs to track its progress and maintain accountability.

167 *Id.*
168 *Id.*