



**Friday, November 8**  
**1:30 pm to 2:45 pm**

### **Session 302 | Perspectives on Crisis Management**

Facing a government investigation, experiencing an environmental disaster or filing for bankruptcy can be a defining moment for a company. But facing all three or more at the same time is the definition of crisis management. How should company or outside counsel help the business prioritize its response? What type of oversight should the Board provide in a crisis? How do you resolve competing or conflicting issues while under the glare of public, shareholder and government scrutiny? Join our panel of experts, which includes a former General Counsel for Pacific Gas & Electric Corp. (PG&E), an Independent Board Director, a former FERC Commissioner, and bankruptcy counsel for PG&E, as they explore the effect of multiple interconnected crises using the recent events facing PG&E as a jumping off point. They will provide their unique perspectives on issues in energy, bankruptcy, white collar, mass torts, and environmental law such as handling environmental disasters in the age of climate change, jurisdictional battles between FERC and bankruptcy courts, and the effect of a criminal investigation and probation on handling these type crises.

#### **Moderator**

**Lily Chinn**, Managing Partner, San Francisco Bay Area Office of Katten LLP  
(Co-Chair of Energy, Environmental and Sustainability Committee)

#### **Speakers**

1. **Hyun Park**, Former Senior Vice President and General Counsel for PG&E Corporation
2. **Anna Catalano**, Independent Board Director
3. **Norman Bay**, Partner at Willkie Farr & Gallagher LLP (Former FERC Chairman and Commissioner)
4. **Jane Kim**, Partner at Keller & Benvenuti LLP

# Perspectives on Crisis Management

Session 302

National Asian Pacific American Bar Association  
Annual Conference

November 8, 2018 | 1:30 pm to 2:45 pm

# SPEAKERS

## ▶ Moderator

- ▶ Lily Chinn: Managing Partner SF Bay Area, Katten

## ▶ Panelists

- ▶ Hyun Park: Former SVP / General Counsel for PG&E
- ▶ Anna Catalano: Independent Board Director
- ▶ Norman Bay: Partner, Willkie Farr & Gallagher LLP  
(Former Chairman and Commissioner FERC)
- ▶ Jane Kim: Partner, Keller & Benvenuti LLP

# ROADMAP FOR TODAY'S DISCUSSION

- ▶ Jointly Sponsored by NAPABA's Energy Environment & Sustainability Committee & Bankruptcy Committee
- ▶ Use recent crises experienced by PG&E to explore various perspectives on crisis management
  - ▶ General Counsel
  - ▶ Outside Counsel
  - ▶ Board of Directors
  - ▶ Regulators

# THE STAKES

- ▶ High profile incidents continue to drive focus on crisis response and liability management
- ▶ “Stakes” are higher than ever
  - As business environment gets more complex, crisis arise more frequently, even simultaneously, and can be more devastating
  - Incidents are increasingly criminalized
  - Social media increases potential for lasting reputational harm
- ▶ A coordinated, well-managed response is essential
- ▶ Every company will experience a crisis (of some sort) during its existence

# EXAMPLES OF CORPORATE CRISIS

- ▶ Government investigation and civil/criminal enforcement action
- ▶ Natural disaster or fire
- ▶ Accident resulting in fatalities or serious injury
- ▶ Major infrastructure failure/supply chain disruption
- ▶ Bankruptcy
- ▶ Product recall and/or product safety issues
- ▶ Whistleblower employee

# THE ANATOMY OF A CRISIS

- ▶ Four components of crises management/response
  - ▶ Operations
  - ▶ Communications
  - ▶ Legal and regulatory
- ▶ The components are interrelated and require a strategic response
- ▶ What is role of General Counsel, Board and Outside Counsel?
- ▶ What are expectations of regulators during a crisis?

# PG&E CASE STUDY IN CRISIS MANAGEMENT

- ▶ **2010 San Bruno Gas Pipeline Explosion**
  - ▶ 8 fatalities & many other injuries
  - ▶ 38 homes destroyed & other property damage
  - ▶ 2016 criminal conviction
  - ▶ 2017 sentence to 5 year probation including monitorship
- ▶ **2015 to 2018 California Wildfires**
- ▶ **2019 Bankruptcy**



# 2010 GAS EXPLOSION IN SAN BRUNO, CA



# THE ROLE OF GENERAL COUNSEL

- ▶ The GC is a key player in a company's crisis response
- ▶ The GC's primary function in a crisis is to steer the business side of the company away from a tendency to respond spontaneously and emotionally
- ▶ The GC should adhere to crisis response protocols, and focus on investigation, remediation and, if necessary, litigation
- ▶ Specific areas of responsibility will include C suite and Board advice, oversight of privilege, forensic evidence preservation, public statements and commitments

# MULTIPLE INVESTIGATIONS: FEDERAL, STATE & LOCAL AGENCIES



# CONSTANT NEGATIVE PRESS COVERAGE

## The Mercury News

PG&E loses ruling in San Bruno explosion trial



PG&E will face sentencing in January on its criminal convictions linked to a fatal explosion in San Bruno after a federal judge Thursday night denied the embattled utility's request to throw out the jury's verdicts.

Bay Area News Group

# MULTIPLE SIMULTANEOUS LEGAL PROCEEDINGS

- ▶ Civil tort cases
- ▶ CPUC regulatory enforcement actions
- ▶ Shareholder derivative suits
- ▶ Criminal investigation, conviction & probation

# PG&E CASE STUDY IN CRISIS MANAGEMENT

- ▶ **2010 San Bruno Gas Pipeline Explosion**
- ▶ **2015 to 2018 California Wildfires**
  - ▶ Five of the 10 most destructive fires in California since 2015 have been linked to PG&E's electrical network. (See <https://www.nytimes.com/interactive/2019/03/18/business/pge-california-wildfires.html>)
    - ▶ 2017 Napa Fires - over 100,000 acres, 1475 structures destroyed
    - ▶ 2018 Camp Fire - nearly 14,000 homes destroyed, 85 fatalities
- ▶ **2019 Bankruptcy**
  - ▶ Filed for Chapter 11 in January 2019
  - ▶ Jurisdictional disputes with FERC over power purchase agreements

# CURRENT CRISES FACING PG&E

- ▶ **Climate Change Risks / Climate Resiliency Issues**
  - ▶ Civil litigation from Wildfires
  - ▶ Civil & Criminal investigations related to cause of wildfires
  - ▶ SEC investigation related to public disclosures and accounting for wildfires

# CURRENT CRISES FACING PG&E

## ▶ Bankruptcy Issues

- ▶ Largest utility and sixth largest corporate bankruptcy to date
- ▶ Protection from civil litigation from recent wildfires
- ▶ No impact to government investigations
- ▶ Any protection from future climate change related litigations (e.g., future wildfires)?



# CURRENT CRISES FACING PG&E

## ▶ Concurrent FERC Jurisdiction

- ▶ PG&E is one of a number of cases around the country where FERC is challenging unilateral jurisdiction of bankruptcy court to alter purchase power agreements.
  - ▶ Fifth Circuit (*In the Matter of Mirant Corp.*, 378 F.3d 511 (5th Cir. 2004))
  - ▶ SDNY (*In re Calpine Corp.*, 337 B.R. 27 (S.D.N.Y. 2006))
  - ▶ Sixth Circuit (*In re: FirstEnergy Solutions Corp. et al.*, No. 18-3787)
- ▶ Impact of concurrent jurisdiction to bankruptcy proceedings

# CURRENT CRISES FACING PG&E

- ▶ **Heightened Scrutiny from Criminal Probation**
  - ▶ Requirement to report any new civil or criminal investigations to the Court
  - ▶ Independent monitor assessing ongoing compliance actions
  - ▶ Active court oversight
    - ▶ May 2019 - ordered Board to form committee focused on oversight of wildfire mitigation plan and tour areas affected by wildfires
    - ▶ April 2019 - barred payment of dividends until compliance with new vegetation management requirements
    - ▶ Jan. 2019 - finding of probation violation for failure to report criminal investigation of wildfires

# CRISIS PLANNING

- ▶ Assess risks
- ▶ Prepare plans (including potential obstacles/issues)
- ▶ Define roles and responsibilities
- ▶ Appoint crisis response team
- ▶ Develop communication plan
- ▶ Identify key contacts / organizational chart
- ▶ Promote crisis-ready culture
- ▶ Publish plans and conduct training
- ▶ Test, review and practice

# MAINTAINING BALANCE DURING CRISIS

- ▶ Crisis management is stressful
- ▶ Leadership in crisis requires courage
- ▶ Take care of your team
- ▶ Take care of you

QUESTIONS?