

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Commission's Own Motion to Determine
Whether Pacific Gas and Electric Company
and PG&E Corporation's Organizational
Culture and Governance Prioritize Safety.

Investigation 15-08-019
(Filed August 27, 2015)

**OPENING COMMENTS OF THE
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES
IN RESPONSE TO SCOPING MEMO OF DECEMBER 21, 2018**

February 13, 2019

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The Center for Energy Efficiency and Renewable Technologies ("CEERT") respectfully submits these Opening Comments in response to the Assigned Commissioner's Scoping Memo and Ruling issued in this Investigation ("I.") 15-08-019 on December 21, 2018 ("Scoping Memo").¹ These Opening Comments are timely file and served pursuant to the Commission's Rules of Practice and Procedure ("Commission Rules"), the Scoping Memo, and the Administrative Law Judge's ("ALJ's") Email Ruling issued on January 22, 2019, which granted an extension of time to file these Comments to today, February 13, 2019, pursuant to Commission Rule 11.6.

**I.
BACKGROUND**

The Scoping Memo identifies "serious safety problems" that Pacific Gas and Electric Company ("PG&E") has had with "both its gas and electric operations for many years."² As to these problems, the Scoping Memo identifies, among others, the PG&E natural gas transmission pipeline rupture in San Bruno in 2010, the Butte Fire in 2015, and the "historically large

¹ CEERT's Motion for Party Status in this Investigation (filed on February 8, 2019) was granted by ALJ Allen's Email Ruling of February 8, 2019.

² Scoping Memo, at p. 1.

wildfires” in PG&E’s service territory in 2017 and 2018.³ While the Commission investigations of these latter fires remains “ongoing,” the Scoping Memo commits to considering in this Investigation “the fact that PG&E’s service territory includes fire prone land according to the Commission’s fire threat maps [footnote omitted], which is a critical safety challenge for PG&E.”⁴

In response, the Scoping Memo determines that this Investigation will address and mitigate these safety risks going forward by considering “a broad range of alternatives to current management and operational structures for providing electric and natural gas in Northern California,” namely, “PG&E and PG&E Corp. as presently constituted,” to determine if they would “provide Northern Californians safer gas and electric service at just and reasonable rates.”⁵ Parties are directed to comment on proposals set forth by the Scoping Memo, including “initial observations” on feasibility, and, in addressing the “desirability” of any alternative, including any “additional proposal,” parties are to discuss “how each proposal impacts the following considerations”:

- the safety and reliability of utility service;
- the operational integrity and technical unity of components within PG&E’s gas and electric transmission and distribution systems;
- the stability and adequacy of the utility workforce;
- the utility’s relationships with and role in local communities;
- the ability of the state to implement its energy policies, including the need to reduce GHG emissions and local criteria pollutants in both the utility sector and the economy as a whole;
- the ability of the utility to meet financial challenges posed by large catastrophic events such as earthquakes and wildfires;

³ Scoping Memo, at pp. 3-7.

⁴ Scoping Memo, at p. 7.

⁵ Scoping Memo, at p. 9.

- the utility’s ability to raise capital and purchase gas, electricity, equipment and services; and
- the cost of utility service.⁶

II. CEERT RESPONSE TO PROPOSALS AND ALTERNATIVES

The Scoping Memo directs parties to comment on proposals in the “sequence” it has followed – namely, “Corporate Governance, Corporate Management, Corporate Structure, Public Utility or Cooperative, Return on Equity, and Other Proposals.”⁷ However, CEERT’s primary focus is on identifying an alternative measure or “Other Proposal” that is not included in the Scoping Memo, but must necessarily be part of any action taken by the Commission in this Investigation. Namely, CEERT recommends that the Commission direct that all Commission authorized renewable and other carbon-free resource contracts and programs needed to maintain, comply with, and advance the State’s climate change and clean energy mandates are honored regardless of any adopted corporate structure. To that end, CEERT necessarily begins its Comments with the final section of the Scoping Memo, namely: “Other Proposals.”

“Other Proposals”

In this section of the Scoping Memo (“Other Proposals”), the Commission asks: “What other measures should be taken to ensure PG&E satisfies its obligation to provide safe service?”⁸ Clearly, the chief concern of the Commission in this Investigation is to examine and adopt proposals that will ensure the “safe operation” of electric service in Northern California to mitigate “risk” and “harm” to the public.⁹ As confirmed by the Scoping Memo, the “safety” culture at PG&E has been questioned by a number of recent events, including the “historically

⁶ Scoping Memo, at pp. 12-13.

⁷ Scoping Memo, at p. 13.

⁸ Scoping Memo, at p. 12.

⁹ Scoping Memo, at p. 8.

large wildfires” over the last several years that PG&E has contended have also created “extraordinary financial challenges” requiring it to initiate its recent filing for Chapter 11 bankruptcy protection.¹⁰

On that point, PG&E’s bankruptcy petition has included requested authorization of debtor-in-possession (“DIP”) financing to address “\$30 billion in potential exposure for the catastrophic wildfires that occurred in Northern California in 2017 and 2018.”¹¹ Similarly, in seeking exemptions from Commission statutory review authority for such financing, PG&E asserted its need to access “the capital needed to support ongoing operations and enable the company to continue investing in its systems, infrastructure and wildfire mitigation initiatives.”¹² By Decision (“D.”) 19-01-025 and D.19-01-026, the Commission approved PG&E’s requested exemptions, stating, among other things: “Absent timely procurement of DIP financing, this Commission faces a substantial risk that the public health and safety of California will be severely impaired with potentially catastrophic results, if the provision of safe and reliable gas and electric service to the public, including but not limited to Californian’s homes, hospitals and public facilities, is compromised.”¹³

Notwithstanding what specifically sparked these fires, some of which are still under investigation, Commission President Picker recently confirmed an important nexus between these “catastrophic” wildfires and PG&E’s financial jeopardy as follows:

“I think everybody is thinking a lot about climate change, fires and the impact that they are having on our utilities already. We are hearing people compare the

¹⁰ U.S. Bankruptcy Court, Northern District of California, Southern Division Case Nos. 19-30088-DM; 19-30089-DM (January 29, 2019); PG&E Debtor-in-Possession Motion; Memorandum of Points and Authorities, at p. 8 of 34.

¹¹ *Id.*

¹² D.19-01-026, at p. 6.

¹³ *Id.*, at p. 7.

incident case of PG&E as being one of the first major business failures due to *climate change*.”¹⁴

The impact of climate change on safe and reliable electric service clearly cannot be ignored here and requires that explicit “measures” to address or reduce that impact are included in any Commission decision maintaining or adopting an alternative to the “current management and operational structures for providing electric and natural gas in Northern California.”¹⁵ Thus, CEERT clearly supports the Scoping Memo’s requirement that each of the proposals it identifies are to be addressed in consideration of “the ability of the state to implement its energy policies, including the need to reduce GHG emissions and local criteria pollutants in both the utility sector and the economy as a whole” and “the utility’s ability to raise capital and purchase gas, electricity,” especially as a means to achieve those reductions.¹⁶

However, this “consideration” is not reflected in any specific or meaningful way in any of the “proposals” or “alternatives” put forward by the Scoping Memo. For this reason, CEERT strongly recommends that *a separate* “proposal” or “direction” that preserves existing carbon-free energy resources and furthers future investment in those resources must be part of any Commission adopted structure for providing electric service in Northern California. Today, those resources include renewable resources (i.e., solar, wind, and geothermal) that are used to generate electricity, and energy efficiency, demand response, and storage, that reduce or help manage electric demand and grid integration of renewable resources. Each is critical for California to continue to meet its GHG emission reduction mandates.

With respect to renewable electric generation, it has taken years of implementation by this Commission – since 1979 – of mandates by both the federal government (Public Utility

¹⁴ A.18-10-003 (PG&E Short Term Borrowing), Reporter’s Transcript (“RT”) at 36; emphasis added.

¹⁵ Scoping Memo, at pp. 8-9.

¹⁶ Scoping Memo, at pp. 12-13.

Regulatory Policies Act (“PURPA”) and California (e.g., Renewable Portfolio Standard (“RPS”) Program) to achieve renewable project development that has allowed PG&E to procure electricity from renewable resources to reach and comply with those mandates. As reported by the Commission to the Legislature in November 2018, PG&E currently serves 33% of its 2017 retail electricity sales with renewable power and, along with the State’s other Investor Owned Utilities (“IOUs”) is “well positioned to meet their procurement requirements for the 60% RPS mandate” mandated by Senate Bill (“SB”) 100 signed into law in 2018.¹⁷ That same law further requires all the State’s electricity to come from carbon-free resources by 2045.¹⁸

What must be recognized is that those achievements are largely the result of third party developers and investors that have taken the risk of developing these projects in advancement of California’s climate goals and mandates. Early action by California in the fight against climate change has permitted technological advancement and efficiency gains that have served as the foundation for cost declines over the past decade. PG&E’s role has been to procure electricity from these resources at prices authorized by this Commission for recovery in rates. In other words, PG&E has enjoyed a pass through of these costs without incurring any of the risks, and ratepayers have been assured of the cost reasonableness of that procurement by this Commission in its review and approval of those contracts.

What is also clear is that electric generation from renewable resources is a core means by which PG&E, and all providers of electricity in California, regardless of corporate structure, can address and reduce the ravages of climate change, including the “catastrophic” wildfires, and can foster safe and reliable service to California energy consumers. No change in corporate structure

¹⁷ CPUC California Renewables Portfolio Standard Annual Report (November 2018), at pp. 2-3 [http://cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Energy - Electricity and Natural Gas/Renewables%20Portfolio%20Standard%20Annual%20Report%202018.pdf](http://cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Energy_-_Electricity_and_Natural_Gas/Renewables%20Portfolio%20Standard%20Annual%20Report%202018.pdf)

¹⁸ SB 100 (Stats. 2018; ch. 312), Section 1(b).

or bankruptcy filing by PG&E should do anything to diminish the investment that has been made to date in these carbon-free resources or to jeopardize or chill needed future investment in these same resources by 2045. Thus, if this Commission were to allow PG&E to abrogate or modify the terms of its existing renewable electric generation procurement agreements, it would not only threaten the continued operation of those projects, but also create uncertainty in the California market that will certainly act as a disincentive to future investments in renewable generation in this State.

For these reasons, CEERT proposes, and strongly requests, that, as to PG&E's current corporate structure and any change in that structure or action taken by the Commission to promote the safety of electric service in Northern California, the Commission should direct and order (1) that PG&E's current renewable electric generation procurement contracts and obligations must be honored and maintained, and (2) that, in providing service going forward, there is a commitment to a corporate structure that can continue to invest in new renewable and other zero carbon resources to meet State clean energy and climate change mandates.

In this regard, notwithstanding PG&E's bankruptcy filing, PG&E remains an operating IOU subject to this Commission's regulatory jurisdiction and Commission orders issued pursuant to that authority, which can certainly include the measures recommended by CEERT above.

Further, as Commissioner Rechtschaffen stated in voting to approve exemptions from the Commission statutory review authority for PG&E's DIP financing:

"It is important to reiterate that the actions here are necessary to ensure the continued service of safe and reliable gas and electric service to the people of California and to protect public safety and health. It is important that we maintain our regulatory jurisdiction and controls even if PG&E files for bankruptcy. ... We've also received a lot of concerns about potential impairment of contracts including renewable energy contracts and other clean energy contracts, I fully expect that PG&E will honor all of its existing contracts and not seek to modify or abrogate them during bankruptcy."

While CEERT agrees with this sentiment, it is not enough to have that view expressed only as a public statement by one Commissioner. Instead, it must be embodied as to existing procurement contracts and future investment in renewable electric generation as an order in a decision by this Commission to ensure that it can and will be enforced with respect to PG&E, again, regardless of its corporate form. For the Commission to do otherwise will place this State on a dangerous reverse trajectory in achieving its carbon reduction goals and, in turn, contribute to, not ameliorate, the climate change that is responsible for the costly and “catastrophic” wildfires that are a core basis for the current scope for this Investigation in the first place.

“Corporate Governance” – “Corporate Management” – “Corporate Structure”

With respect to “alternatives” or questions posed in the Scoping Memo specific to PG&E’s “Corporate Governance – Board of Directors,” “Corporate Management – Officers and Senior Leadership,” and “Corporate Structure,” any such alternative must certainly incorporate the directions by the Commission proposed and identified by CEERT above. Again, these directions are necessary to preserve and increase procurement of carbon-free resources to meet customer demand and to reduce climate change risks, such as wildfires, that have endangered the health and safety of Northern Californians. Those CEERT recommended measures can also be reinforced by the Commission ensuring that modification or renegotiation of an existing renewables procurement contract by PG&E is not authorized unless agreed to by all parties and reviewed and approved by the Commission.

Such regulatory oversight of a jurisdictional utility is not altered by PG&E’s bankruptcy filing, as the Commission made clear in its decision on PG&E’s DIP financing. Thus, the Commission confirmed that it remains the Commission’s “responsibility... to ensure the

continuation of safe and reliable service by PG&E during the pendency of its Chapter 11 case.”¹⁹ Such circumstances further require that the Commission ensures that any corporate structure, whether existing or in the future, must be financially strong and creditworthy and be able to carry out the responsibility to meet climate objectives and the administration of the contracts and programs to achieve climate reductions.

Finally, as to PG&E Board actions proposed in the Scoping Memo, CEERT does support PG&E being required to file a “safety report with the Commission when PG&E makes a significant decision regarding capital expenditures pertaining to safety, a change in management as it pertains to safety, or any other decision that may impact safety.”²⁰ First, the Commission has already confirmed that “a condition requiring reporting is an appropriate exercise of [the Commission’s] oversight jurisdiction.”²¹ Second, CEERT believes that it should also be made clear that reported “capital expenditures pertaining to safety, a change in management as it pertains to safety, or any other decision that may impact safety” must include any efforts by PG&E to modify or alter its commitments to renewables and carbon free resource procurement for the reasons identified above.

“Publicly Owned Utility, Cooperative, Community Choice Aggregation or other Models”

The jurisdictional reach of this Commission to “reconstitute” PG&E as a “publicly owned utility” is a clear threshold legal question that, if pursued by the Commission, should first be the subject of legal briefs, especially to avoid any unnecessary use of limited resources and time. The Commission’s current focus should be on adopting safety measures, like the ones proposed by CEERT above to preserve and enhance carbon free resources to meet electric needs, that can be enforced immediately on the jurisdictional utility, PG&E. However, it is also incumbent on

¹⁹ D.19-01-026, at p. 2; see also, pp. 7-8, 12.

²⁰ Scoping Memo, at p. 10.

²¹ D.19-01-026, at p. 8.

the Commission to continue enforcement of RPS Program mandates that apply to Community Choice Aggregators (“CCAs”) and have been increased by SB 100. To do otherwise will undermine that law and jeopardize its ultimate goal for all of the State’s electricity to come from carbon-free resources by 2045.

“Return On Equity”

As noted above, the financial viability of the electric service provider(s) for Northern California is a critical part of ensuring safe and reliable service that can also meet climate objectives. However, the Commission has long recognized the importance of imposing rate of return penalties where the jurisdictional utility has failed to comply with its orders or, as may be the case here, continues to perform or be operated in a way that risks the safety and health of its customers and workers.

Thus, in a decision still heralded by the Commission for “leading the nation in 1979” in directing utilities to purchase alternative sources of electricity,²² that same decision (D.91109, 3 CPUC 2d 1 (1979)) also imposed a rate of return penalty on PG&E based on PG&E’s failure to adequately perform and make “reasonable efforts” to pursue these alternative resources despite the Commission’s repeated notice to PG&E to do so and their “obvious benefits” to PG&E and its ratepayers.²³ CEERT does not recommend any such action at this time relative to PG&E’s “safety” culture, but, again, does believe that the Commission has the authority to use this “tool” where and if necessary to enforce adopted measures, including the ones recommended by CEERT herein.

²² Order Instituting Rulemaking (“R.”) 17-06-015, at p. 3; see also, D.11-04-031, at p. 4.

²³ D.91109, 3 CPUC 2d at p. 32; see also, pp. 28-31.

III. CONCLUSION

For the reasons stated herein, CEERT again proposes, and strongly requests, that, as to PG&E's current corporate structure and any change in that structure or action taken by the Commission to promote the safety of electric service in Northern California, the Commission should direct and order (1) that PG&E's current renewable electric generation procurement contracts and obligations must be honored and maintained, and (2) that, in providing service going forward, there is a commitment to a corporate structure that can continue to invest in new renewable and other zero carbon resources to meet California's clean energy and climate change mandates.

Respectfully submitted,

February 13, 2019

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