

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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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)

**REPLY COMMENTS OF SOUTH SAN JOAQUIN IRRIGATION DISTRICT ON
PROPOSALS TO ADDRESS SAFETY CULTURE**

Vidhya Prabhakaran
Emily P. Sangi
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Tel. (415) 276-6500
Fax. (415) 276-6599
Email: vidhyaprabhakaran@dwt.com
Email: emilysangi@dwt.com

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Attorneys for South San Joaquin Irrigation
District

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Pursuant to the December 21, 2018 *Assigned Commissioner's Scoping Memo and Ruling*¹ ("Scoping Memo"), South San Joaquin Irrigation District ("SSJID")² offers the following reply comments on possible approaches to address the underlying issue of Pacific Gas and Electric Company's ("PG&E") deficiencies in its safety culture. SSJID disagrees with much of what PG&E presents in its opening comments. However, SSJID's reply comments are limited to explaining why the California Public Utilities Commission ("Commission") should reject the arguments PG&E raises against exploring municipalization in response to the Scoping Memo's question regarding whether "some or all of PG&E [should] be reconstituted as a publicly owned utility or utilities."³ Further, the Commission should initiate a separate track of the present proceeding to determine the benefits and current impediments in municipalizing or decentralizing PG&E into a group of publicly-owned utilities ("POUs").

¹ On January 22, 2019, ALJ Peter V. Allen issued an E-Mail ruling Granting Extension of Time to file comments and reply comments.

² SSJID is located in southeastern San Joaquin County and is engaged in legal proceedings to acquire PG&E's electrical distribution system within its service territory. The Commission has found that "SSJID's proposal to provide retail electrical service to existing PG&E customers could raise rates for PG&E's remaining customers; the magnitude of the estimated increase, however, is small relative to PG&E's current system average rates, and thus does not substantially impair PG&E's ability to provide adequate service at reasonable rates within the remainder of its service territory." See Resolution E-4301, at 1.

³ Scoping Memo, at 12.

Nearly half of the twenty-one sets of comments expressed support for municipalization, representing the interests of more than a dozen stakeholders, including municipal and public power associations and community choice aggregators (“CCAs”), among others.⁴ PG&E was the only party to oppose municipalization.⁵

The Commission should reject PG&E’s arguments against exploration of municipalization in this proceeding for five reasons:

- 1) PG&E improperly broadens the proceeding’s specific inquiry into PG&E’s operational failures and whether municipalization offers a better alternative to the status quo given those particular failures to a generic examination of whether the POU model is superior to the investor-owned utility (“IOU”) model;
- 2) POUs offer high workforce stability that promote a superior safety culture to PG&E’s, despite PG&E’s unsubstantiated claims that it is particularly successful at attracting and retaining skilled leadership and a skilled workforce;
- 3) the POUs that replace PG&E will better incentivize safety;
- 4) the POUs that replace PG&E will be well-regulated despite not being subject to the Commission’s general jurisdiction; and,
- 5) the issues and complexities associated with municipalization are solvable, and the Commission can and should ensure that both the municipalization process is not as complex, lengthy, or contentious as PG&E claims it will be and that PG&E participates in the process in good faith.

I. RECOGNIZING THE VIABILITY OF MUNICIPALIZATION AS A BETTER ALTERNATIVE TO PG&E’S CONTINUED FAILED OPERATIONS, PG&E ATTEMPTS TO RECAST THE POSSIBILITY OF PG&E MUNICIPALIZATION AS A BROADER INDICTMENT ON THE IOU MODEL ITSELF

PG&E devotes more than six pages attempting to undermine the alternative proposal of transitioning some or all of PG&E to a POU; it spends only between a half a page to a page or two responding to each of the nineteen other proposals included in the Scoping Memo. The

⁴ See *SSJID Comments*; *California Municipal Utilities Association (“CMUA”) Comments*, at 2; *American Public Power Association (“APPA”) Comments*, at 3-14; *City and County of San Francisco (“CCSF”) Comments*, at 13-16; *Joint CCA Comments*, at 4-5; *Marin Clean Energy (“MCE”) Comments*, at 8; *Monterey Bay Community Power (“MBCP”) Comments* at 5; *City of San Jose Comments*, at 3; *EMF Safety Network Comments*, at 2.

⁵ See *PG&E Comments*, at 28-34.

length of its response reveals PG&E's concern that municipalization offers a viable and better alternative to continued PG&E mismanagement. The Commission should look very specifically at PG&E's failures in determining whether municipalization could offer a better alternative given those specific failures.

The actual inquiry is whether municipalization would provide a viable and preferable alternative — i.e., “provide Northern Californians safer ... electric service at just and reasonable rates”⁶ — compared to maintaining PG&E's status quo. The Commission need only decide that municipalization of *some* of PG&E is a viable solution. The Commission need not decide that POU's are always superior to IOU's to determine that municipalization of portions of PG&E warrants serious consideration in the course of this proceeding.

PG&E inappropriately attempts to cast the proposal as an investigation into whether the POU model is superior to the IOU model in general, and suggests that the “complex factual and legal considerations”⁷ associated with such an inquiry should make the Commission hesitate in exploring municipalization as an option. PG&E improperly classifies the scope of examination of municipalization in this proceeding to be a broad indictment of the IOU model overall, which it is not. Rather, the scope of this proceeding involves an examination of whether municipalization is an appropriate means of curing the ills endemic to PG&E in particular.

The Commission should not be swayed by PG&E's selective quotations from academic literature aimed at exploring the IOU vs. POU model in a generic fashion.⁸ Limited data may be available to settle a generic debate about the IOU vs. POU model, but such a debate is outside the scope of this proceeding. Ample data exists showing that PG&E has failed to provide safe

⁶ Scoping Memo, at 9.

⁷ *PG&E Comments*, at 28.

⁸ See discussion *infra* at 8.

and reliable electric service⁹ and, in fact, the deficiencies of PG&E's safety culture are what led to this rulemaking in the first place.¹⁰ Similarly, high-performing POU's exist that can take PG&E's place.¹¹ Thus, the Commission should explore allowing entities that wish to municipalize in parts of PG&E's service territory to do so and make PG&E a smaller and more focused company.

II. POU'S CAN EFFECTIVELY ATTRACT AND RETAIN HIGHLY SKILLED WORKFORCES

PG&E provides no support for its assertion that "PG&E in particular, ha[s] been effective in attracting and retaining a highly skilled workforce."^{12,13} PG&E's contention that POU's inherently have more difficulty attracting and retaining a highly skilled workforce and leadership¹⁴ is similarly unfounded. The Commission should recognize that POU's offer high workforce stability, which in turn, promotes a superior safety culture to PG&E's and reject PG&E's attempts to discredit municipalization as a viable option.

Here again, the Commission must focus on whether municipalization would provide a viable and preferable alternative — i.e., "provide Northern Californians safer ... electric service at just and reasonable rates"¹⁵ — compared to allowing PG&E to carry on business as usual. Having experienced and stable leadership as well as an experienced and stable workforce will best ensure Northern Californians safer electric service at just and reasonable rates.

⁹ See Scoping Memo, at 3-8.

¹⁰ *Id.*, at 5-6.

¹¹ See *infra* at 13-14 (discussing electric POU's operating in California).

¹² *PG&E Comments*, at 28.

¹³ Even if PG&E has been effective in doing so, their alleged success in attracting and retaining a highly skilled workforce has not prevented or cured the deficiencies in PG&E's safety culture, which is the reason for this discussion. PG&E's focus on the skill of its workforce ignores the fact that safety culture is engendered by leadership and management.

¹⁴ See *id.*, at 28-29.

¹⁵ Scoping Memo, at 9.

PG&E's senior leadership in the eight years since the San Bruno pipeline explosion tragedy has been a veritable revolving door: PG&E has had seven different people rotating in and out as its CEO or President: John Simon, Geisha Williams, Nick Stavropoulos, Lee Cox, Anthony Earley, Christopher Johns, and Peter Darbee. Compared to PG&E, POUs across the state have shown great stability in their senior-most leaders¹⁶ and any new POUs replacing PG&E can be expected to have similarly low turn-over in management.

With respect to the general workforce, POUs that replace PG&E will likely provide ample opportunity for the lateral hiring of PG&E's existing workforce. Indeed, such "brain drain" from the IOUs, and PG&E in particular, to the burgeoning number of CCAs launching in California is already occurring. Further, POUs can offer employment benefits to its workers on par or exceeding those of PG&E. Important monetary and non-monetary employment benefits POUs can offer that attract workers and promote workforce stability include: (1) union representation through IBEW membership (which is also currently enjoyed by PG&E employees); (2) economic stability (less likelihood of layoffs, elimination of positions); (3) local assignment for employees, no relocation; and (4) other benefits of serving as a civil servant.¹⁷

PG&E cites to a 2017 comparative study performed by Synapse Energy Economics, Inc. of four electric utility municipalization efforts undertaken since the 1990's to support a contention that POUs that replace PG&E would have difficulty in locating and/or retaining a skilled workforce.¹⁸ However, a closer examination of the study reveals no such support for that

¹⁶ For example, SMUD's current General Manager and CEO, Arlen Orchard, has held this position for approximately five years and has been with the POU for nearly 30 years; available at <https://www.linkedin.com/in/arlen-orchard-483b5778/>. Mr. Orchard replaced John Di Stasio who had a similarly long tenure at SMUD, having worked at the POU for more than three decades; available at <https://www.bizjournals.com/sacramento/news/2013/08/16/smud-chief-john-di-stasio-steps-down.html>.

¹⁷ See *SSJID Comments*, at 7-8.

¹⁸ *PG&E Comments*, at 29 (note 37) citing Synapse Energy Economics, Inc., *An Analysis of Municipalization and Related Utility Practices*, Prepared for the District of Columbia Department of Energy and Environment (DC DOEE) (September 30, 2017), available at

specific contention. For three of the four case studies (Long Island, NY; Jefferson County, WA; and Boulder, CO), the Synapse Report does not mention any difficulty in locating and/or retaining a skilled municipal utility workforce. In fact, the Long Island case acknowledges that the management of the electric system procured by the muni was performed by the restructured utility company that retained many employees of the former IOU.¹⁹

In the remaining municipalization case study in Winter Park, FL, the Synapse Report acknowledges that the hiring of linemen was problematic for the POU in part because, at the time of hire, “linemen were in particularly high demand throughout the region.”²⁰ **However, the Synapse Report acknowledged that the hurdles the muni faced with respect to management and operations were due to deliberate obstruction by the departing IOU, not the POU’s inability to find and retain a skilled workforce.**²¹ Importantly, the study also finds that employees laid off by the IOU at issue were hired by the muni, because “[s]ome of these employees valued what the muni could provide: economic stability—as employees of the muni were less likely to be laid off—and assurance that they would not be frequently relocated, as happened with the IOU.”²²

Ultimately, the single case study that discussed POU hiring challenges concluded not only that the POU “attracted enough employees to sustain operations”, but that by hiring local

<https://doee.dc.gov/sites/default/files/dc/sites/ddoe/publication/attachments/An%20Analysis%20of%20Municipalization%20and%20Related%20Utility%20Practices.pdf> (“Synapse Report”).

¹⁹ See Synapse Report, at 11.

²⁰ *Id.*, at 16.

²¹ *Id.*, at 15 (“Taking up the management and operations of the muni proved to be an unforeseen challenge. Perhaps because of the adversarial and litigious nature of the separation from the IOU, the flow of information from [the IOU] to the muni was contentious, constrained, and slow. According to our interviews, the muni did not receive adequate information about the IOU’s maintenance plans and faced numerous unexpected problems with the infrastructure.”).

²² *Id.*

employees “with community ties,” the POU’s “tree trimming effort” — a critical consideration in maintaining a safe and reliable electric distribution system — “went more smoothly for the [POU] than it had for the IOU.”²³ Thus the Synapse Report proffered by PG&E to discredit municipalization in fact provides evidence of POU workforce stability and success. The Commission should reject PG&E’s attempts to question the strength and stability of POU workforce and leadership potential and recognize that POUs offer high workforce stability that promotes a superior safety culture to PG&E.

III. THE POUS THAT REPLACE PG&E WILL BETTER INCENTIVIZE SAFETY

A. PG&E’s Shareholder Accountability is not Equivalent to the Incentive for Safety Provided by Local Control, Transparency, and Accountability Directly to Ratepayers

PG&E states that its corporate structure incentivizes safety by making management and the board accountable to shareholders for the successful operation of the business and, as proof for this assertion, points to its recent numerous “significant changes to management” following its “[s]afety failures”.²⁴ PG&E’s current structure is reactive, not proactive, and thus incentivizes nothing. Firing management after the fact does nothing to prevent disasters in the first place. PG&E’s profit-based structure does not reward safety performance as alleged. Instead, it simply does not penalize management and the board until after a breach in safety protocol or failure in performance has occurred.

In contrast to PG&E, POUs are instead better equipped to implement and enforce a superior safety culture because they are community-focused, locally governed, not-for-profit entities held directly accountable by their ratepayers.²⁵ With the open meetings and other

²³ *Id.*, at 15-16 (emphasis added).

²⁴ *PG&E Comments*, at 29.

²⁵ *SSJID Comments*, at 2-7 (discussing how four factors — (1) decentralization, (2) localization, (3) transparency and accountability, and (4) financial stability — ensure that splitting PG&E into local POUs will result in a superior safety culture.).

transparency laws applicable to POU, combined with direct access to decision makers by the public, there is constant monitoring which can identify potential issues early in their development as opposed to when they reach crisis level. POU will provide local control and accountability to its customers because ownership, maintenance, and operation of the electrical system will be entrusted to locally elected officials directly accountable to voters in the communities served by the POU.²⁶

B. Decentralization Can Ensure More Prudent Capital Investments that Create Safer Electric Systems

PG&E suggests that its profit motive ensures more prudent capital investments and better operations.²⁷ Once again, PG&E attempts to divert attention from its own failed capital investments and dismal safety record by pointing to assumptions regarding the IOU model in general. The academic article PG&E cites to support its assertion that “IOUs have [a] stronger profit incentive[] to make investments that improve safety or quality of service” is devoid of any actual discussion of safety; the article instead contends that private ownership incentivizes “investments that improve the ways or reduce the costs of using the assets, because the owner has the power to reap more of the rewards on these innovations.”²⁸ Even assuming *arguendo* that such alleged “innovations” do result from the IOU structure, more efficient or cost-effective use of utility assets does not necessarily translate into a safer electric system.

²⁶ See *SSJID Comments*, at 8. See, e.g., *MID Electric Services: Lighting the Way for 20 Years*, Merced Irrigation District’s explanation of the benefits of public power: “Public power means that there are no profits – it also means local decision making. Unlike investor-owned utilities, there are no investors, no stock shares and no dividends. Power is provided “at the cost of service” with no-markups. The revenue generated by MID is returned to the benefit of all electric customers through investments in the electric system and providing the lowest possible rates.”), available at <http://www.mercedid.com/index.cfm/power/lighting-the-way-for-20-years/> (emphasis added).

²⁷ See *PG&E Comments*, at 30.

²⁸ *Id.* at 30 (note 39) citing Andrei Shleifer, *State Versus Private Ownership*, 12 J. Econ. Persp., at 133, 137 (Fall 1998).

PG&E also cites to scholarly articles that contend that IOUs are more “efficient” than POUs,²⁹ and which credit “privatization” for making firms “more efficient, more profitable, and financially healthier, and increas[ing] their capital investment spending.”³⁰ Again, these articles make no mention of system safety *per se* and PG&E fails to show a connection between safety and the efficiency and profitability allegedly resulting from the profit-motive of the IOU model.

In contrast, decentralized POUs’ capital investments are not driven by a profit motive; rather, POUs have a responsibility to make investments appropriate for and beneficial to their ratepayers. POU capital investments are driven by operational necessity instead of profits and there is no monetary incentive for POUs to defer safety-promoting maintenance and capital improvements.

C. Smaller Service Territories Enable POUs to Better Address Local Needs and Conditions

PG&E incorrectly assumes that its current large-scale corporate structure better promotes safety culture because it can mitigate risks “. . . across its entire service territory. . . using its resources to direct risk reduction activities to the areas within the service territory that have the highest risk.”³¹ But having such an expansive service territory as PG&E’s 70,000 square mile footprint³² necessarily results in “prioritizing” some areas at the expense of others — an issue particularly problematic in large-scale emergencies such as state-wide weather events. It also results in areas of low risk or low emergency response demand “subsidizing” those of high risk

²⁹ *Id.* at 30 (note 41) citing Dan Michael Berry, *Private Ownership Form and Productive Efficiency: Electric Cooperatives versus Investor-Owned Utilities*, 6 J. Reg. Econ. 399, 399 (1994) (explaining that “the cooperative sector of the electric power industry produces its output in a much less efficient manner than does the investor-owned sector.”).

³⁰ *Id.* (note 41) citing William L. Megginson & Jeffry M. Netter, *From State to Market: A Survey of Empirical Studies on Privatization*, 39 J. Econ. Lit., 321, 380-81 (2001).

³¹ *PG&E Comments*, at 19.

³² See *PG&E Company Profile*, available at https://www.pge.com/en_US/about-pge/company-information/profile/profile.page.

and repeated emergency responses. In contrast, small-scale operations such as POU³³ are better equipped to deal with local conditions and can focus all of their energy and resources on meeting local needs.

IV. THE POUs THAT REPLACE PG&E WILL BE WELL-REGULATED

A. CPUC General Jurisdiction over an Entity, Alone, Does Not Automatically Guarantee Safe Utility Operations

As PG&E has demonstrated, CPUC regulation consisting of directives to implement safety standards and practices is effective if — and only if — the entity being regulated complies with those directives. Despite previous admonitions to PG&E, there has been no “massive overhaul” of PG&E, except to repeatedly discharge members of upper management and leadership. PG&E has proven that it is simply too large to be well-regulated by any entity. All that a regulator can do with the PG&E that exists today is use its technical expertise to create best practices and overall standards for PG&E to adopt and implement. Municipalization can, through subtraction, make PG&E smaller and more manageable and all utility customers (both municipalized and those remaining with PG&E) will receive better service as a result.

B. POU Accessibility and Transparency Promotes Regulation by Ratepayers

Municipalization increases transparency and accountability to ratepayers and the public at large, which in turn, increases public safety.³⁴ As a public agency, a POU is subject to the Brown Act³⁵ and Public Records Act,³⁶ thereby increasing transparency and public participation.

³³ For example, the electric service territories of Sacramento Municipal Utility District (“SMUD”) and Modesto Irrigation District (“MID”) are 900 and 560 square miles, respectively. *See SMUD, Our Service Area*, available at <https://www.smud.org/en/Corporate/About-us/SMUDs-Territory-Map> and *MID Fast Facts*, available at <https://www.mid.org/about/fastfacts.html>.

³⁴ *See SSJID Comments*, at 4-5.

³⁵ The Ralph M. Brown Act (Cal. Gov’t Code §§ 54950, *et seq.*) was enacted in 1953 and guarantees the public’s right to attend and participate in meetings of local legislative bodies.

³⁶ The California Public Records Act (Cal. Gov’t Code §§ 6250, *et seq.*) was enacted in 1968 and requires the inspection or disclosure of governmental records to the public upon request, unless excepted by law.

POU actions and decision-making are also subject to Proposition 218;³⁷ Proposition 26;³⁸ and the Political Reform Act of 1974.³⁹ POU customers who want to have a voice in decisions that set rates or policies affecting them can attend regular POU Board meetings held in their community and have a meaningful opportunity to interact with the decision-makers. This is in sharp contrast to the current scenario, where concerned PG&E ratepayers must travel to San Francisco and appear before the CPUC in order to have a meaningful opportunity to be heard — an option that is not realistic, much less convenient, for the average ratepayer living outside the Bay Area. Ultimately, a POU’s leadership answers directly to, and is held accountable by, the public through the various laws applicable to public agencies. If a POU’s customers are dissatisfied with leadership, they are vested with the power to take direct action — either through voter recall or election of new board members. PG&E’s leadership, on the other hand, is exempt from this layer of direct public oversight and accountability, and instead serves at the pleasure of its shareholders, whose decision-making is unavoidably influenced by profitability and the company’s “bottom line.”

PG&E further attempts to condemn the POU model as a solution, stating there is a “risk that political and other factors that influence spending decisions can lead to inferior outcomes.” The only support PG&E proffers for this statement is a singular study citing data that appears to show that publicly-owned hospitals and power plants have historically violated the U.S. Clean Air Act more frequently, and publicly-owned water utilities have violated the California Safe

³⁷ Adopted by voters in November 1996, Proposition 218 (a.k.a. the Right to Vote on Taxes Act) amended the California Constitution (at article XIIC) to require that all taxes imposed by a local government be approved by a vote of the local electorate.

³⁸ Proposition 26, adopted by voters in 2010, amended article XIII C to provide a more detailed definition of what types of charges constitute a “tax” requiring voter approval. The term “tax” means “any levy, charge, or exaction of any kind imposed by a local government,” unless that “levy, charge, or exaction” fits into one of seven enumerated exceptions.

³⁹ See Cal. Gov. Code §§ 81000, *et seq.*

Drinking Water Act more frequently than their investor-owned counterparts.⁴⁰ From this, PG&E infers, and thereby suggests that the Commission conclude, that POU's would likewise have increased regulatory violations over those currently incurred by PG&E. This hypothesis proffered by PG&E is premised on data derived from a study that neither relates to retail electricity services nor provides meaningful information regarding public versus private rendering of services generally. Moreover, PG&E's "authority" does not even slightly address the unique inquiry at hand: Whether a public entity can assume the duties of, and perform better than PG&E, an IOU that has been found to have multiple, ongoing, and extensive failings concerning a number of regulatory matters, including those that have compromised the public health, safety, and welfare.

C. The CPUC's Guidelines and Requirements Can Serve as a Framework for POU's

The technical expertise of the CPUC will continue to guide POU's which have implemented and adopted a regulatory agency's requirements and directives as "best practices," despite not being legally bound to adhere to them. For example, POU's generally recognize that General Order 95 (imposing various rules and requirements for the construction of electrical facilities to ensure safety and reliability) and General Order 128 (specifying rules for the construction of underground electric supply and communication systems) provide "great value" in serving as "industry standards."⁴¹

Moreover, through the California Municipal Utilities Association ("CMUA") — which represents the interests of its members on energy issues before the California Legislature, the Governor's Office, and the various California energy agencies, including the CPUC —

⁴⁰ *PG&E Comments*, at 32 (note 48) citing David M. Konisky and Manuel P. Teodoro, *When Governments Regulate Governments*, 60 *Amer. Journal of Political Science* 559, 572 (July 2016).

⁴¹ *See Opening Comments of the California Municipal Utilities Association*, R.08-11-005, at 3 (December 3, 2008).

municipal utilities have routinely participated in the various relevant regulatory proceedings, specifically including those related to fire safety,⁴² pole attachments,⁴³ physical security,⁴⁴ the renewables portfolio standard,⁴⁵ and the cap-and-trade program.⁴⁶

V. THE CPUC CAN PLAY A ROLE IN SIMPLIFYING THE MUNICIPALIZATION PROCESS

The length of any transition process from PG&E to municipalization will be dictated by PG&E's resistance and likely ensuing litigation. However, if municipalization were ordered by the CPUC, including as part of a regulator-imposed disciplinary measure or settlement, the process would be greatly abbreviated. In short, the CPUC has the ability to ensure that the transition of PG&E to one or more POU's is not nearly as complex, lengthy, or contentious as PG&E argues it will be and can help to ensure that PG&E participates in the process in good faith.

A. The “Complexities” Associated with Municipalization Are Resolvable

Examples of successful electric utility municipalizations in California demonstrate that any “complexities” associated with the process that may exist are not insurmountable, and that such efforts have resulted in stable and long-lasting service providers:

- SMUD has been successfully serving its territory since 1946.⁴⁷ Since then, it has connected more than 628,000 customers to its electric system,⁴⁸ has helped power the

⁴² See, e.g., CPUC Rulemaking 15-05-006.

⁴³ See, e.g., CPUC Rulemaking 07-12-001.

⁴⁴ See, e.g., CPUC Rulemaking 15-06-009.

⁴⁵ See, e.g., Energy Commission Docket No. 16-RPS-01.

⁴⁶ See, e.g., CARB 2016 Rulemaking to Consider Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation.

⁴⁷ SMUD, *Our History*, available at <https://www.smud.org/en/Corporate/About-us/Company-Information/Our-History>.

⁴⁸ SMUD, *Company Information*, available at <https://www.smud.org/en/Corporate/About-us/Company-Information>.

region's explosive growth, met the challenges of the energy crisis, and become a nationwide leader in green energy and conservation.⁴⁹

- The Merced Irrigation District (“MID”) has exercised its authority to sell power to retail electric customers beginning in 1995 and has since connected over 8,500 customers to its electric system.⁵⁰
- Modesto Irrigation District (also “MID”) has provided electric service to customers since 1923 and currently has over 122,000 accounts.⁵¹

Each of the above POUs have successfully overcome the obstacles and challenges PG&E has characterized as insurmountable hurdles, and are currently operating as safe, reliable, and effective electric utilities.

With respect to the difficulties associated with the selective and targeted division of PG&E's existing services into POUs (which PG&E improperly classifies as “balkanizing”⁵² — a term which presupposes hostility among newly created units⁵³), not only have the abovementioned POUs successfully and efficiently performed such “untangle[ings]”, but so too have smaller electric IOUs, such as Liberty Utilities (CalPeco Electric) LLC when it acquired Nevada-based Sierra Pacific Power Company's California service territory in 2010.⁵⁴ Distribution system separation/severance plans for utilities undergo extensive feasibility and other studies prior to execution.⁵⁵ The demonstrated success of past, successful utility

⁴⁹ See *supra* note 47.

⁵⁰ About MID, available at <http://www.mercedid.com/index.cfm/about/>; MID Celebrates Public Power Week and 20 Years as a Public Utility, available at <http://www.mercedid.com/index.cfm/power/mid-celebrates-public-power-week-and-20-years-as-a-public-utility/>.

⁵¹ See MID Fast Facts, available at <https://www.mid.org/about/fastfacts.html>.

⁵² PG&E Comments, at 33.

⁵³ From the term “Balkanize” to break up (a region, a group, etc.) into smaller and often hostile units, Merriam-Webster, available at <https://www.merriam-webster.com/dictionary/balkanize>.

⁵⁴ See D.10-10-017.

⁵⁵ See, e.g., Staff Report Resolution of Necessity Hearing for SSJID's Retail Electric Project -- Property Acquisition (June 28, 2016) at 20-26 (describing SSJID's comprehensive separation planning process),

separations or divisions, reveals that these actions are not precluded by the “obstacles” PG&E identifies.

B. PG&E Ignores the Critical Role IOUs Play in Making the POU Transition Process More Difficult

PG&E argues that because the process of municipalization *could be* “complex, lengthy, and potentially contentious,” and *could* cause upward pressure on rates, then it should not be attempted.⁵⁶ PG&E conveniently ignores the role it has actively played in making the municipalization process more difficult to achieve for those public entities ready, willing, and able to assume its duties as retail electrical service provider. For example, even though citizens voted to create the Sacramento Municipal Utility District (“SMUD”) as a community-owned, not-for-profit electric service in 1923, “years of engineering studies, political battles and legal wrangling delayed SMUD’s purchase of PG&E’s local electrical system” and it wasn’t until 1946 when SMUD began operations, following the California Supreme Court’s denial of PG&E’s final petition to halt the sale.⁵⁷ Transition problems occur when the departing IOU obstructs the transition process and deliberately withholds information from the assuming POU as demonstrated in the Long Island muni case study noted in the Synapse Report discussed above.⁵⁸ So long as PG&E does not engage in similar obstructionist behavior in any transition process, the concerns it expresses regarding the same are without merit.

63-64 (discussing that acquisition of PG&E’s electric distribution system by SSJID would obviate the need for construction of duplicate facilities), available at <https://www.ssjid.com/assets/pdf/Staff-Report-Resolution-of-Necessity-Hearing-For-SSJID's-Retail-Electric-Project--Property-Acquisition.pdf>.

⁵⁶ *PG&E Comments*, at 32-33.

⁵⁷ SMUD, *Our History*, available at <https://www.smud.org/en/Corporate/About-us/Company-Information/Our-History>.

⁵⁸ *See supra* at 5-6.

C. PG&E Provides No Support for Its Contention That Only Municipal Entities with Low Wildfire Risk Will Want to Become a POU

PG&E makes the unsupported statement that only municipal entities with relatively lower wildfire risk will consider municipalizing.⁵⁹ If anything, municipal entities who believe that PG&E has failed to meet the existing safety risks and fear the next disaster on PG&E's watch will be the most motivated to municipalize to ensure that the next tragedy does not occur. Municipalizations would allow PG&E to better focus on managing the specific risks of its smaller utility.

D. PG&E's Discussion of the Potential Loss of Property Tax and Franchise Fee Revenue as a Reason to Not Pursue Municipalization is Overblown

A POU's property is generally not subject to taxation.⁶⁰ However, a practice common among cities and other public agencies that operate utilities is a "payment in lieu of taxes" ("PILOT"), which is an inter- or intragovernmental transfer from a POU to a county and/or city's general fund to cover the costs of services other county or city departments provide the utility (e.g. the costs for maintenance and the POU's use of county/city streets, roads, highways and other public rights of way; police service; fire protection; and other public health and safety services, etc.). That "PILOT fees can be challenged" as PG&E points out,⁶¹ does not mean that they are a *per se* unlawful or unconstitutional mechanism to mitigate the loss of government revenue. In fact, the California Supreme Court recently upheld such a PILOT transfer from the City of Redding's utility enterprise fund to the City's general fund.⁶² The key takeaway from legal challenges surrounding PILOT fees is that the legality of a PILOT is a fact-specific inquiry,

⁵⁹ *PG&E Comments*, at 33.

⁶⁰ Cal Const. Art. XIII, § 3, subd. (b).

⁶¹ *PG&E Comments*, at 34.

⁶² *Citizens for Fair REU Rates v. City of Redding*, 6 Cal. 5th 1, 15 (2018) (finding that payment in lieu of taxes ("PILOT") transferred from city electrical utility to city's general fund was not a "tax" requiring voter approval under Proposition 26; as the POU had more than enough non-rate revenue to cover the PILOT, "the PILOT was not necessarily passed through to and imposed on ratepayers.").

and there are certain processes and restrictions that a POU must follow to ensure its PILOT meets legal muster.

VI. CONCLUSION

The depth and breadth in range of benefits of municipalization identified in the comments received by the CPUC warrant serious and in-depth consideration by the CPUC. As such, SSJID respectfully requests that the Commission seriously consider municipalization as a solution to the underlying issues of PG&E's safety culture, preferably in a separate track of this proceeding.

Respectfully submitted,

/s/

Vidhya Prabhakaran
Emily P. Sangi
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Tel. (415) 276-6500
Fax. (415) 276-6599
Email: vidhyaprabhakaran@dwt.com
Email: emilysangi@dwt.com

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Attorneys for South San Joaquin Irrigation
District