

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



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Order Instituting Investigation on the
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)

**REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON
ALTERNATIVE APPROACHES TO PROVIDING ELECTRIC AND NATURAL
GAS SERVICE TO CUSTOMERS CURRENTLY SERVED
BY PACIFIC GAS AND ELECTRIC COMPANY**



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I. INTRODUCTION

Pursuant to the *Assigned Commissioner’s Scoping Memo and Ruling* issued on December 21, 2018 (*Phase 3 Scoping Memo*) and Administrative Law Judge (ALJ) Allen’s E-Mail Ruling Granting Extension of Time, The Utility Reform Network (TURN) respectfully submits these preliminary reply comments on alternatives to the status quo.¹ In response to the opening comments of other parties, TURN urges the Commission to safeguard the continued existence of fully regulated “provider of last resort” service for all customers in Pacific Gas and Electric Company’s (PG&E’s) service territory, even if PG&E becomes a “wires-only” utility or publicly owned utility service expands. TURN also addresses the critical role of the Commission in ensuring that California consumers receive safe, reliable, and affordable electric and gas utility services now and in the future.

II. REPLY COMMENTS

**A. Publicly Owned Utility, Cooperative, Community Choice
Aggregation or Other Models**

The Commission asked whether “some or all of PG&E [should] be reconstituted as a publicly owned utility or utilities” or whether PG&E should become a “wires-only company” that provides electric distribution and transmission services, with generation

¹ *E-Mail Ruling Granting Extension of Time*, issued by ALJ Allen on Jan. 15, 2019 (extending the due date for opening comments from January 30 to February 13, 2019 and for reply comments from February 13 to February 28, 2019).

services provided by other entities.² A number of parties find one, or the other, or both of these options attractive.

Several parties specifically advocate an expansion of publicly owned utility (POU) service in what is now PG&E's service territory. For example, South San Joaquin Irrigation District (SSJID) advocates "splitting PG&E into local POUs" to improve safety culture.³ SSJID explains,

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. Not every geographic area is appropriate for municipalization, but those areas willing and capable of forming a POU should be encouraged and enabled to [do] so.⁴

The City and County of San Francisco (CCSF) asserts, "The time has come for the Commission to support and encourage the replacement of service from PG&E with service from local publicly-owned utilities who choose to provide that service."⁵ While not taking a position on PG&E's future, the American Public Power Association touts the "significant safety, reliability, and other benefits" of electric POUs as compared to investor owned utilities (IOUs).⁶

Other parties call for a future in which PG&E ceases to provide any generation services, instead serving as a "wires-only" utility. MCE, for example, "supports PG&E transitioning to a wires-only company" to reduce its operational scale and scope, thus

² *Phase 3 Scoping Memo*, p. 12.

³ South San Joaquin Irrigation District, p. 2.

⁴ South San Joaquin Irrigation District, p. 2.

⁵ City and County of San Francisco, p. 2.

⁶ American Public Power Association, pp. 1-13.

permitting a greater focus on safe, reliable, and affordable utility service.⁷ While MCE sees existing and new CCAs playing a key role in providing generation services, MCE also recognizes that “CCAs are not the sole solution where PG&E is a wires-only company.”⁸ MCE thus calls for the Commission to launch “a thoughtful stakeholder process to determine an appropriate generation structure” that can meet the state’s goals for safety, decarbonization, and equity.⁹

Similarly, the Joint CCAs, comprised of East Bay Community Energy, Peninsula Clean Energy Authority, Pioneer Community Energy, Silicon Valley Clean Energy, Sonoma Clean Power, Valley Clean Energy Alliance and City of San Jose (San Jose Clean Energy), recommend “removing PG&E from the retail generation business” to focus its attention and investments on electric transmission and distribution.¹⁰ The Joint CCAs encourage the Commission to reduce barriers to new CCA formation and municipalization across PG&E’s service territory.¹¹ For those communities that choose not to provide retail electric generation service, the Joint CCAs suggest that a publicly owned and governed successor to PG&E should provide this service.¹²

Shell Energy North America (Shell) also calls for a future in which PG&E is a “pipes and wires” utility, fully divested of its energy generation and procurement

⁷ MCE, pp. 4-5, 8.

⁸ MCE, pp. 12-13.

⁹ MCE, p. 1, 14

¹⁰ Joint CCAs, pp. 4-5, 17.

¹¹ Joint CCAs, pp. 6-8.

¹² Joint CCAs, pp. 8-9. *See also* Monterey Bay Community Power, pp. 3-5.

functions in the electricity and gas lines of business.¹³ But Shell’s vision is very different than that offered by the advocates of public power and CCA service. Shell proposes that these services instead be provided on a competitive retail basis by non-IOU load serving entities and other third parties, including but not limited to PG&E’s unregulated affiliates.¹⁴ For customers that do not otherwise select a retail supplier, Shell suggests that the Commission assign “provider of last resort” (POLR) service obligations to “one or more third parties.”¹⁵

Under any of these models, it is reasonable to expect that some consumers will not be offered service by a CCA or POU, or will opt out of CCA service, and will require generation services by another entity. Under that scenario, TURN urges the Commission to ensure that such service is provided on a fully regulated, cost of service basis. These customers should be protected from unfair or unjustified prices, unclear or misleading marketing, and unfair terms of service, as well as the loss of any of the many consumer protections and affordability programs currently required by the Commission for the IOUs. The best way to achieve that end is to treat the entity (or entities) with POLR obligations as a utility – whether a non-profit or for-profit entity – that is subject to the Commission’s full jurisdiction.

Any future scenario that fails to provide consumers not served by a CCA or POU with regulated utility generation services is unacceptable. In the past year, state consumer advocates in at least four states have demonstrated the harm to consumers from

¹³ Shell Energy North America, pp. 3-4.

¹⁴ Shell Energy North America, pp. 3-5.

¹⁵ Shell Energy North America, pp. 4-5.

their residential retail electric supply markets and called for change. On March 29, 2018, the Massachusetts Attorney General's Office released a report finding that Massachusetts residential consumers paid competitive electric suppliers \$176.8 million more from July 2015 to June 2016 than they would have paid for electricity from their utility. The report also found that low-income consumers are disproportionately affected because they are more likely to sign-up for competitive supply and are more likely to be charged higher rates. As a result, Massachusetts Attorney General Maura Healey has called for an end to the individual residential electric supply market to prevent further harm to consumers.¹⁶

Similarly, Illinois Attorney General Lisa Madigan has repeatedly called for a ban on alternative retail electric suppliers in the residential market because of rampant consumer abuses and lack of economic benefits. In a press release issued on November 19, 2018, she noted that customers of alternative retail electric suppliers in the ComEd territory in Illinois paid about \$138 million more for electricity than traditional utility customers from June 2017 through May 2018. Statewide, residential and small commercial customers enrolled with alternative retail electric suppliers paid more than \$600 million more for electricity from 2015-2018 than customers of the regulated utilities.¹⁷ The Maryland Office of People's Counsel likewise published an analysis in November 2018, detailing economic harm to Maryland's households from electric and gas supply retail competition, which resulted in consumers paying \$54.9 million more

¹⁶ <https://www.mass.gov/competitive-electric-supply>.

¹⁷ Illinois Attorney General Press Release: Madigan Sues Another Alternative Retail Electric Supplier & Reaches \$3 Million Settlement for Defrauded Customers (Madigan Alleges Company's Deceptive and Misleading Sales Tactics Disproportionately Harmed African-American Communities on Chicago's South and West Sides), November 19, 2018, available at http://illinoisattorneygeneral.gov/pressroom/2018_11/20181119b.html.

annually for electricity and gas than if they had purchased energy from their utilities.¹⁸

Most recently, on February 1, 2019, the State of Connecticut Office of Consumer Counsel called for an end to residential retail choice because of economic harm. The CT Office of Consumer Counsel explained that consumers with third-party electric suppliers have paid an estimated \$200 million more since 2015 than consumers receiving standard electric utility service; CT has the most robust consumer protections in the United States and vigorous enforcement by the state, yet harm persists; and CT's most vulnerable populations are harmed and targeted in CT's retail choice market, among other factors.¹⁹

Should the Commission determine that PG&E should be a "wires only" utility or otherwise encourage the expansion of CCA and POU service where PG&E currently provides bundled utility services, the Commission must also protect customers not taking service from a CCA or POU, including customers that affirmatively opt-out of CCA service. To that end, the Commission must reject any approach that lets unregulated, or "lightly" regulated, entities fill in the gaps.

B. Other Proposals

The Commission asked, "What other measures should be taken to ensure PG&E

¹⁸ Susan M. Baldwin and Sarah M. Bosley (on Behalf of the Maryland Office of People's Counsel) "Maryland's Residential Electric and Gas Supply Markets: Where Do We Go from Here?", November 2018, available at <http://opc.maryland.gov/Portals/0/Hot%20Topics/Maryland%20Electric%20and%20Gas%20Residential%20Supply%20Report%20November%202018.pdf>.

¹⁹ State of Connection Office of Consumer Counsel Fact Sheet: In Support of Legislation to End the Residential Retail Choice Electric Supply Market, February 1, 2019, available at https://www.cga.ct.gov/ET/related/20190205_Informational%20Forum%20on%20Regulators%20&%20Utilities/OCC%20Residential%20Retail%20Legislation%20Fact%20Sheet%20Regulator%20Forum%202.5.19.pdf. See also https://www.ct.gov/occ/lib/occ/2-4-19_press_release.pdf.

satisfies its obligation to provide safe service?”²⁰ In response, the Office of Safety Advocates (OSA) recommends that the Commission “secur[e] additional safety oversight resources.”²¹ OSA also suggests that the Commission consider “embedding resident safety staff at each of the large utilities, similar to what the Nuclear Regulatory Commission does through its Resident Inspection Program.”²²

These proposals are consistent with the input offered by the Center for Catastrophic Risk Management (CCRM) at the University of California, Berkeley, through the memorandum from CCRM that OSA attached to its comments.²³ CCRM recommends that the Commission recognize, as part of the weighing of PG&E restructuring options, “the need to upgrade its own inspection capacities if it hopes to realize and sustain the safety management and safety culture improvements that are driving this” proceeding.²⁴ CCRM suggests that this upgrade should entail “more inspectors, with advanced training in safety culture and safety management, spending more time at PG&E sites watching actual behavior at all levels from investment and budget meetings, to work planning sessions to actual task performance in operations and maintenance jobs.”²⁵ CCRM points to the inspection capacity of the Nuclear Regulatory

²⁰ *Phase 3 Scoping Memo*, p. 12.

²¹ Office of Safety Advocates, p. 9.

²² Office of Safety Advocates, p. 7.

²³ Office of Safety Advocates, Attachment A (“CCRM Recommendations”). OSA explains on p. 5 of its comments that members from CCRM sent this memo to Commission President Picker and OSA to outline CCRM’s observations and recommendations related to the impact of Corporate Structure on safety.

²⁴ Office of Safety Advocates, Attachment A (“CCRM Recommendations”), Recommendation 3.

²⁵ *Id.*

Commission, which has had since 1978 “a resident inspection force of 150 persons, with 2 full-time resident inspectors on site at all nuclear power plants and nuclear fuel production facilities it oversees.”²⁶ While CCRM suggests that these “upgrades” to the Commission’s inspections process are necessary as a general matter for the Commission to be able to monitor and assess safety culture, CCRM also points to the particular need for upgraded Commission inspections now due to the impact of PG&E’s bankruptcy:

There is now significant organizational turbulence within PG&E that is likely to increase – with the departure of key executive and managerial personnel and the uncertainty of cost reductions and possible employee layoffs that might ensue under bankruptcy settlement proceedings and those decisions by the judge presiding over them. This turbulence will distract the attention of many personnel from important ongoing tasks as well as create serious declines in morale and employee engagement across the organization. These are likely to have immediate implications for safety in PG&E operations. It seems to us that upgraded CPUC inspections and other oversight activity is called for during this period to help prevent lapses in attention, compliance and care in safety critical functions throughout PG&E gas and electric asset families.²⁷

TURN fully agrees with OSA and CCRM regarding the need for the Commission to expand – or upgrade, in CCRM’s parlance – its capacity to inspect PG&E’s “safety critical functions.” This need is pressing today, independent of the Commission’s ultimate conclusions regarding how electric and gas utility services should be provided to PG&E’s customers in the future. For this reason, TURN also offered recommendations to facilitate an expanded Commission inspection function in our opening comments.²⁸

²⁶ *Id.* (referencing <https://www.nrc.gov/reading-rm/doc-collections/fact-sheets/resident-inspectors-bg.html>).

²⁷ *Id.*, Recommendation 4.

²⁸ TURN, pp. 26-27.

III. CONCLUSION

For the foregoing reasons, TURN respectfully recommends that the Commission adopt the recommendations set forth herein and in TURN's opening comments.

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