

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



**FILED**  
10/09/19  
04:59 PM

Application of Pacific Gas and Electric  
Company for Authority, Among Other  
Things, to Increase Rates and Charges for  
Electric and Gas Service Effective on January  
1, 2020. (U 39 M)

Application 18-12-009  
(Filed December 13, 2018)

**RESPONSE OF THE UTILITY REFORM NETWORK TO  
PACIFIC GAS AND ELECTRIC COMPANY'S MOTION TO STRIKE  
TURN'S REVISED TESTIMONY**

October 9, 2019

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**RESPONSE OF THE UTILITY REFORM NETWORK TO  
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**I. INTRODUCTION AND SUMMARY OF RESPONSE**

The Utility Reform Network (TURN) submits this response to the Motion of Pacific Gas and Electric Company (PG&E) to Strike the Revised Testimony of TURN (Motion to Strike).

PG&E seeks to strike revised testimony by TURN’s witness Jennifer Dowdell served on October 4, 2019 that responds to changes to PG&E’s 2019 work plan for Cross Bore inspections. We now know that PG&E decided on these changes in February 2019,<sup>1</sup> but PG&E did not reflect the changes in its testimony until the service of its rebuttal testimony on September 4, 2019. PG&E’s rebuttal testimony materially changes the deferred work testimony on Cross Bore inspections that, as required by the Deferred Work Settlement adopted by D.17-05-013, PG&E presented in its direct testimony. PG&E never corrected that direct testimony, which is what TURN reasonably responded to in its July 26, 2019 testimony. The impact of the change from PG&E’s direct testimony is to significantly modify the nature of the cross bore inspection work that PG&E is deferring, in a way that TURN is concerned puts cost considerations ahead of safety, contrary to PG&E’s obligations under Public Utilities Code Sections 451 and 963(b)(3).<sup>2</sup> PG&E’s significantly changed testimony has, not surprisingly, altered TURN’s analysis and recommendations regarding Cross Bore deferred work.

As explained in the sections that follow, TURN did not intend to “misuse the hearing process” or “unduly prejudic[e]” PG&E by serving revised testimony addressing PG&E’s revised work plan.<sup>3</sup> To the contrary, TURN sought to provide PG&E notice, as soon as practicably feasible, that, in light of PG&E’s changed testimony, TURN intended

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<sup>1</sup> Hearing Exhibit (Hrg. Ex.) 44, PG&E’s Response to TURN Data Request (DR) 87-1.c.

<sup>2</sup> Section 963(b)(3) states that is the state’s policy that gas corporations place safety of the public and gas corporation employees as the top priority.

<sup>3</sup> See PG&E Motion, pp. 2, 6.

to present a different recommendation to the Commission on deferred Cross Bore work. Another approach would have been to wait until TURN's opening brief to address PG&E's showing in rebuttal. However, that approach would have provided PG&E with only a single opportunity to respond – in PG&E's reply brief. Erring on the side of transparency, TURN believed it made the most sense to present the revisions to Ms. Dowdell's deferred work testimony now, when PG&E still has time to question Ms. Dowdell during hearings and can respond to TURN's recommendations in its opening brief. Moreover, as TURN informed PG&E before serving TURN's revised testimony, TURN does not object to sur-rebuttal from PG&E on these issues, given PG&E's burden in this proceeding.

Given the unusual circumstances presented here, TURN recommends that the Commission take either of the following two actions. First, the Commission could deny PG&E's motion and allow PG&E to prepare sur-rebuttal testimony responding solely to TURN's revised testimony on cross bore deferred work. TURN believes that this approach best promotes the Commission's interest in a complete and fair record. Alternatively, the Commission could grant PG&E's motion and make clear that TURN may present its analysis and recommendations in briefing, based on the record without TURN's revised testimony. TURN notes that this option would still provide PG&E with the intended benefit of TURN's revised testimony: a preview of the recommendations TURN will present in its opening brief. However, as explained in Section VI below, to avoid undue controversy and complications that could arise when TURN's witness testifies, under this alternative, PG&E should be directed to refrain from asking questions related to Ms. Dowdell's Cross Bore deferred work testimony, which no longer accurately reflects TURN's conclusions.

## **II. THE ROOT OF THE PROBLEM: PG&E DID NOT CORRECT ITS CROSS BORE DEFERRED WORK DIRECT TESTIMONY WHEN IT CHANGED ITS WORK PLAN IN FEBRUARY 2019, EVEN THOUGH THE DEFERRED WORK SETTLEMENT ADOPTED IN THE 2017 GRC DECISION MADE DEFERRED WORK A KEY ISSUE IN THIS CASE**

The testimony addressed by PG&E's Motion to Strike relates to deferred work, a

topic that the Deferred Work Settlement adopted by D.17-05-013<sup>4</sup> made a key issue in this case. The Deferred Work Settlement requires PG&E to “take additional steps” in this 2020 GRC whenever it elects to defer previously authorized and funded safety work and seeks to charge ratepayers for that work a second time.<sup>5</sup> Those additional steps include a requirement that PG&E provide, in its direct testimony, a demonstration of how the deferral of work is consistent with six Deferred Work principles enumerated in the Settlement. The six principles generally speak to the company’s responsibility to perform work that is necessary for safe and reliable service without allowing financial impacts to the company to interfere with that responsibility. For example, Principle 1 states:

Where funds are originally collected from ratepayers based on representations that the work is necessary to provide safe and reliable service and, yet, PG&E does not perform all of the designated work, the fact that PG&E must pay for a higher priority activity or program does not nullify or extinguish its responsibilities to fund forecasted and authorized work unless such work is no longer deemed necessary for safe and reliable service.<sup>6</sup>

According to PG&E’s direct testimony, the Cross Bore inspection program is one of the programs that meets the requirements of the Deferred Work Settlement, therefore requiring PG&E to address the “additional steps” in its direct showing. In various places in both PG&E-2 and PG&E-3, PG&E identified Cross Bore as one of several deferred work programs in the 2020 GRC, stating that PG&E expected to perform only 101,541 of the authorized and imputed 123,307 inspections for 2017-2019, a deferral of 21,766 inspections.<sup>7</sup> PG&E attempted to justify that deferred work on the grounds that PG&E believed it was important to perform 10,000 unable to access (UTA) inspections in San Francisco in 2019, which PG&E said provided much greater risk reduction than other

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<sup>4</sup> The entirety of the Deferred Work Settlement is attached as Appendix C to the Prepared Testimony of Thomas Long dated July 26, 2019 (Long Testimony), pre-marked as Ex. TURN-10.

<sup>5</sup> Long Testimony, App. C, p. C-2.

<sup>6</sup> Long Testimony, App. C, p. C-1.

<sup>7</sup> See, e.g., Hrg. Ex. 2 (PG&E-2), p. 2-25; Hrg. Ex. 10 (PG&E-3), pp. 2-36, 2-37 to 2-38.

cross bore inspections outside San Francisco.<sup>8</sup>

Unbeknownst to TURN, in February 2019, PG&E significantly changed its work plan for 2019 cross bore inspections.<sup>9</sup> Under that new workplan, PG&E would forego the planned 10,000 San Francisco UTA inspections that its direct testimony said provided the most risk reduction benefit. Instead, under the new plan, PG&E would perform a sufficient number of other inspections to reach the authorized and imputed amount for 2017 to 2019. This change of workplan rendered PG&E's direct testimony related to Cross Bore deferred work out of date and inaccurate. Indeed, the February 2019 internal PG&E document describing the revised workplan noted at the top that the new plan "will impact 2020 GRC testimony."<sup>10</sup>

Even though PG&E made this decision in February 2019 and knew that it would impact its GRC testimony on a key issue in the case, PG&E never corrected its direct testimony. It bears emphasis that, had PG&E timely corrected its direct testimony to reflect its revised 2019 workplan, TURN would have had ample opportunity to conduct discovery and analysis regarding the changed plan and would have been able to address the changed workplan in its July 26, 2019 testimony. In other words, the issues presented by PG&E's Motion to Strike were entirely avoidable, if PG&E had simply corrected its direct testimony to reflect the new workplan.

PG&E's Motion to Strike attributes its decision not to correct its direct testimony to a PG&E internal policy of not revising its testimony unless a change in plans affects the GRC forecast.<sup>11</sup> This rationale should not excuse PG&E's decision not to correct its inaccurate testimony. PG&E points to no Commission rule or order that sanctions the withholding of changed facts that render direct testimony inaccurate, whether or not the changed facts cause a change in the revenue requirement. Moreover, PG&E's attempted

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<sup>8</sup> Hrg. Ex. 10, pp. 2-37 to 2-40, 2-49, 4-11, 4-23. PG&E asserted that

<sup>9</sup> TURN did not learn that the decision to change the 2019 workplan was made in February 2019 until TURN was so informed in response to TURN's data request on the rebuttal testimony. Hrg. Ex. 44, PG&E's Response to TURN DR 87-1.c.

<sup>10</sup> Hrg Ex. 44, Atch01Redacted, 2<sup>nd</sup> bullet at top left of document.

<sup>11</sup> Motion to Strike, p. 3.

excuse pays insufficient regard to the Deferred Work Settlement’s “additional steps” relating to deferred work that are required to be addressed in the direct testimony. The Commission’s adoption of the Deferred Work Settlement made clear that deferred work was to be a key issue in this case. The Commission should not excuse and encourage PG&E’s unilateral decision that its inaccurate testimony regarding Cross Bore deferred work was not important enough to correct.

### **III. ABSENT CORRECTION OF ITS TESTIMONY, PG&E’S JUNE 18<sup>TH</sup> DATA REQUEST RESPONSE DID NOT PROVIDE CLEAR NOTICE OF A DEFINITIVE CHANGE IN PG&E’S 2019 WORKPLAN**

PG&E argues repeatedly that a single paragraph in a June 18, 2019 response to a TURN data request should have made it clear to TURN that PG&E had changed its 2019 workplan.<sup>12</sup> This argument fails in two respects.

First, a data request response is not the same as corrected testimony. Rather than promptly informing the parties through corrected testimony that its direct testimony was no longer accurate, PG&E waited until it received a data request about Cross Bore deferred work – a full four months after it revised its 2019 plans -- to share any information about its changed workplan. Even if the June 18<sup>th</sup> response was clear and fully informative (which it was not, as discussed below), given that the Public Advocates Office’s (Cal Advocates) testimony was due on June 28, 2019, Cal Advocates was deprived of any meaningful opportunity to address in its testimony any concerns it may have had about PG&E’s decision to forego San Francisco UTA inspections in 2019. Indeed, if TURN had not asked a data request in June, one wonders when, if ever, PG&E would have informed the Commission and the parties that its direct testimony was no longer accurate.

Second, the June 18<sup>th</sup> response was not the clear signal to TURN that PG&E supposes it to be. Most importantly, the response did not say that PG&E would be correcting its testimony to reflect its revised 2019 workplan. That one sentence, which often appears in data request responses, would have caught TURN’s attention and made clear that TURN should not view PG&E’s direct testimony as accurate. In addition, the

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<sup>12</sup> Motion to Strike, *e.g.*, p. 1.

paragraph on which PG&E relies speaks of a “re-evaluation” of the 2019 work plan and “moving away” from UTA inspections. It does not say that PG&E had made a final decision to change its 2019 plan and that the new adopted plan was to fully abandon the 10,000 UTA inspections in San Francisco. PG&E may have *thought* it was clearly communicating the full extent and import of its revised workplan in that paragraph, but the paragraph was not nearly as clear to TURN -- which unlike PG&E knew nothing of the February 2019 internal PG&E decision -- as PG&E seems to believe. Absent any indication in the response that PG&E’s direct testimony was no longer accurate, the paragraph simply did not get TURN’s attention.

In retrospect, ideally, TURN would have flagged the data response paragraph cited by PG&E and asked follow-up questions. But TURN did not, not because it consciously chose to ignore that paragraph, but because it did not capture TURN’s attention for the reasons given above. In addition, it should be understood that the paragraph in question responded to one subpart of one question out of more than 175 total questions (including subparts) that TURN served regarding PG&E’s direct testimony on deferred work issues.

In sum, in the absence of any indication from PG&E that the “re-evaluation” it referenced in its data request response necessitated a change in PG&E’s direct testimony, TURN submits that it was reasonable for TURN’s July 26, 2019 testimony to address PG&E’s direct testimony, not an ambiguous paragraph in a data request response. In any event, at worst, TURN made an innocent mistake in not flagging the paragraph in question for follow-up. In contrast, PG&E apparently made a conscious choice not to correct its testimony to reflect the February 2019 decision to change the work plan, even though its own internal document reflects awareness that the new plan “will impact [the] 2020 GRC testimony.” TURN submits that the Commission should consider the totality of these circumstances in its disposition of PG&E’s motion.

#### **IV. PG&E’S REBUTTAL TESTIMONY WAS THE FIRST PG&E TESTIMONY THAT EXPLAINED ITS CHANGE IN APPROACH TO CROSS BORE DEFERRED WORK**

Because PG&E never corrected its direct testimony, the first testimony that explains PG&E’s revised approach to Cross Bore deferred work is PG&E’s rebuttal



testimony, which was served on September 4, 2019. In addition to re-stating in testimony the information in the paragraph from Data Request response 31-4.a, the rebuttal made clear something that was not clear in that paragraph – that PG&E now plans to complete the 21,766 inspections that PG&E described as deferred in its direct testimony.<sup>13</sup> In addition, the rebuttal recites other facts that were not provided in the data request response -- that “PG&E expects to exceed its originally planned number of inspections of 23,387 in 2019” which “will result in PG&E completing approximately 123,300 inspections over the 3-year period 2017 to 2019, meeting the 2017 imputed unit count . . . .”<sup>14</sup>

With this testimony, TURN for the first time understood that PG&E’s direct testimony was inaccurate and that TURN’s July 26, 2019 testimony had responded to an approach to Cross Bore deferred work that PG&E had abandoned. The next section explains how TURN responded to this unanticipated development.

**V. GIVEN THE QUANDARY POSED BY PG&E’S CORRECTION TO ITS DEFERRED WORK SHOWING IN REBUTTAL TESTIMONY, TURN HAS PROCEEDED REASONABLY AND WITH PROPER INTENTIONS**

PG&E suggests that TURN “misuse[d] the hearing process” by submitting its revised testimony after cross-examining PG&E’s witnesses, resulting in undue prejudice to PG&E.<sup>15</sup> PG&E misunderstands TURN’s intentions and the reasons for the timing of TURN’s revised testimony. As detailed below, once TURN completed its evaluation of PG&E’s rebuttal testimony regarding its revised Cross Bore work plan for 2017-2019, TURN’s intention was to provide PG&E with *more notice* and a *greater opportunity to respond* to TURN’s reaction than would occur if TURN presented its recommendation for the first time in its opening brief.

As soon as TURN received PG&E’s rebuttal testimony, TURN sought to understand PG&E’s changed Cross Bore work plan and the reasons for the change as expeditiously as possible. TURN promptly served discovery on that rebuttal within days

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<sup>13</sup> Hrg. Ex. 6 (PG&E-16), p. 2-8, Answer 15.

<sup>14</sup> *Id.*, p. 2-9, Answer 17.

<sup>15</sup> Motion to Strike, pp. 2, 6.

of receiving it.<sup>16</sup> After receiving PG&E's responses, the focus of TURN's staff working on deferred work issues was, by necessity, on preparing for cross-examination of PG&E's witnesses sponsoring testimony on deferred work issues, all of whom were scheduled to appear at the start of hearings.<sup>17</sup> Prior to completing this cross-examination on September 30, TURN was unsure how PG&E's changed work plan would impact TURN's analysis and recommendations. Afterwards, TURN's team had the bandwidth and necessary information to develop a position on PG&E's revised Cross Bore work plan. The testimony of PG&E's witnesses during hearings reinforced TURN's initial concerns that PG&E was putting its financial interests ahead of safety issues.

At the beginning of October, TURN concluded its analysis of PG&E's revised work plan and developed recommendations to present to the Commission. At that point, TURN faced a quandary: TURN could wait for opening briefs to present its new recommendations or present those recommendations via revised testimony in time for PG&E to address them during its cross-examination of TURN's witness. The Commission has made clear that an intervenor need not present a recommendation in testimony to offer it in briefing, so TURN knew this was an accepted approach.<sup>18</sup> However, it would put TURN's witness and PG&E in an awkward position during hearings, as her testimony would no longer accurately reflect TURN's position on deferred Cross Bore work. To the extent PG&E's cross-examination elicited an explanation of TURN's new analysis from Ms. Dowdell, PG&E might accuse TURN of unfair surprise. Or perhaps worse, PG&E might first learn of TURN's revised recommendation when reading TURN's opening brief. TURN thus concluded that the approach most fair to PG&E was to share its revised analysis and recommendations as soon as it was complete in the form of revised testimony. TURN accordingly notified

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<sup>16</sup> This particular set of data requests, TURN Data Request Set 87 served on September 10, was one of 18 sets of data requests that TURN prepared between the time TURN received PG&E's rebuttal testimony on September 4 and the start of hearings thirteen business days later on September 23, 2019.

<sup>17</sup> TURN reminds the Commission of the vast differences in the resources TURN is able to bring to a GRC, as compared to the utility.

<sup>18</sup> See, e.g. D.14-08-032 (PG&E's TY 2014 GRC), p. 609.

PG&E on October 3 that revised testimony would be served on October 4 and made clear that TURN would not object to allowing PG&E to serve sur-rebuttal in light of PG&E's burden of proof.

As a result, PG&E received notice of TURN's new analysis and recommendations before TURN's witness will take the stand for cross-examination. This timing permits PG&E to anticipate her reactions to the revised Cross Bore work plan and examine the basis for those reactions. Likewise, PG&E can respond to TURN's new recommendations in its opening brief, as well as in its reply brief. TURN's approach, while clearly unpopular with PG&E, achieved the intended result of providing PG&E with notice of TURN's recommendations as soon as practicable under the circumstances and avoiding surprises later on. These results reflect TURN's proper intentions and reasonable actions in navigating a complicated set of circumstances.

## **VI. TURN'S RECOMMENDED OPTIONS FOR RESOLVING THIS MOTION**

Given the unusual circumstances presented here, TURN recommends that the Commission take one of two actions. As indicated in Section I, TURN's preferred option is to deny the motion and allow PG&E's cross examination of TURN's witness to proceed based on her revised testimony. Under this option, TURN has no objection to allowing PG&E to submit sur-rebuttal testimony that is, of course, limited to responding to TURN's revised testimony. TURN believes that this is the best approach under the circumstances and promotes the Commission's interest in having a complete and fair record that accurately reflects the facts and analysis presented by all parties.

Alternatively, the Commission could grant PG&E's motion and make clear that TURN may present its analysis and recommendations in briefing, based on the record without TURN's revised testimony.<sup>19</sup> TURN notes that this option would still provide PG&E with the intended benefit of TURN's revised testimony: a preview of the recommendations TURN will present in its opening brief. This option also has the benefit of avoiding potential delays in the schedule associated with sur-rebuttal

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<sup>19</sup> If the Commission adopted this option, TURN would need to prepare a new version of Ms. Dowdell's testimony that removes the revised Cross Bore testimony, but includes the traditional errata in the Revised Testimony circulated on October 4, 2019.

testimony. However, this alternative option presents complications relating to the testimony of TURN's witness, Jennifer Dowdell, who would be testifying to Cross Bore recommendations that no longer accurately reflect TURN's views. In this regard, TURN is concerned that, if PG&E were to ask questions relating to the witness's Cross Bore deferred work testimony, her answers either on cross or re-direct examination would appropriately include points made in the stricken testimony. To avoid this problem under the alternative option, TURN recommends that PG&E be directed to refrain from asking questions that relate to Ms. Dowdell's Cross Bore deferred work testimony, which no longer accurately reflects TURN's conclusions on that issue.

## **VII. CONCLUSION**

For the reasons set forth above, TURN recommends that the Commission resolve this motion by adopting one of the two options presented in Section VI above.

Date: October 9, 2019

Respectfully submitted,

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