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

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 No. 18-12-009
(Filed December 13, 2018)

**RESPONSE OF PACIFIC GAS AND ELECTRIC
COMPANY (U 39 M) TO THE MOTION FOR PARTY
STATUS OF THE AD HOC COMMITTEE OF SENIOR
UNSECURED NOTEHOLDERS OF PACIFIC GAS AND
ELECTRIC COMPANY**

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I. INTRODUCTION

Pacific Gas and Electric Company (PG&E) responds to the *Motion For Party Status Of The Ad Hoc Committee Of Senior Unsecured Noteholders Of Pacific Gas And Electric Company* filed October 21, 2019 (Motion) pursuant to Rule 11(e) of the Rules of Practice and Procedure (Rules) of the California Public Utilities Commission (Commission).

The Commission should deny the Motion as untimely. This proceeding was opened in December 2018. The parties to this proceeding have already submitted opening and rebuttal testimony, engaged in months of discovery, and have concluded all but one day of evidentiary hearings. Thus, the record in this proceeding is largely complete. Against this backdrop, the Ad Hoc Committee has shown no legitimate need to join this proceeding at this late juncture or indicated how its participation would aid the Commission in the resolution of the proceeding. The Ad Hoc Committee has been engaged in litigation with PG&E in its Bankruptcy proceeding since January 2019 and presumably was aware that this General Rate Case (GRC) was underway. Allowing its participation at the eleventh-hour, places PG&E and other parties at a disadvantage and constitutes the kind of prejudice that the Commission's procedural rules are designed to avoid.

Second, the new issue the Ad Hoc Committee seeks to address – the relationship between

the revenue requirement in this proceeding and its competing plan of reorganization – is out of the scope of the proceeding. The Ad Hoc Committee claims its status as proponents of a competing plan of reorganization merits allowing its late participation in the proceeding. However, whether the revenue requirement in this proceeding is sufficient to support either PG&E’s or the Ad Hoc Committee’s competing plans of reorganization and allow PG&E to exit bankruptcy is not in the scope of this proceeding. The Ad Hoc Committee admits it is seeking to expand the scope of issues to be considered.¹ Adding this issue to the scope of the proceeding should not be allowed at this late date. The assigned Administrative Law Judges (ALJs) recently denied without prejudice a motion by TURN to consider PG&E’s plan of reorganization in this proceeding. The same result should occur here. The Motion should be denied.

II. BACKGROUND

PG&E filed its GRC for Test Year 2020 application in December 2018. The March 8, 2019 Scoping Memo established a schedule and scope for the proceeding. While it required PG&E to notify the parties of certain material events in PG&E’s bankruptcy, it did not include in the scope of the proceeding consideration of PG&E’s plan of reorganization.²

The Ad Hoc Committee is composed primarily of financial institutions with interests in PG&E debt. It has been active in PG&E’s bankruptcy proceeding since PG&E filed its Chapter 11 proceeding in January 2019. As stated in footnote 2 of the Motion, members of the Ad Hoc Committee purport to hold in excess of \$10 billion of funded debt claims against PG&E. The Ad Hoc Committee’s proposed plan of reorganization will be evaluated in the Bankruptcy Court and would be subject to review, and possible approval, by the Commission in the Bankruptcy Order Instituting Investigation (OII) (I. 19-09-016) and related proceedings under Public Utilities Code § 854 (Bankruptcy OII). Any issues surrounding approval or implementation of the Ad Hoc Committee’s POR will be addressed in the Bankruptcy Court and the Bankruptcy OII. Its

¹ See Motion, p. 2 (“The Ad Hoc Committee’s intervention will not unduly broaden the issues under consideration in this proceeding.”)

² *Assigned Commissioner’s Scoping Memo and Ruling*, p. 6 (March 8, 2019).

interests here do not appear particular to PG&E's GRC, but appear to be a more general financial interest in PG&E overall, as it filed for party status this week in eighteen dockets involving PG&E.³ The Ad Hoc Committee may have an interest in continuing to follow proceedings, such as this GRC, but should not be allowed to intervene at this late date.

III. DISCUSSION

A. The Motion Should Be Denied In Its Entirety As The Ad Hoc Committee's Belated Participation Would Not Assist The Commission In Resolving This Proceeding.

Rule 1.4 permits the ALJs to deny a late motion for intervention. This proceeding is almost concluded. The parties have fully submitted their written testimony, concluded months of discovery, and submitted 306 exhibits into the record following sixteen days of evidentiary hearings. The only activities remaining are a single day of hearings on two issues – cross bores in the City and County of San Francisco and PG&E's update testimony and opening and reply briefs. It is too late for the Ad Hoc Committee to introduce any additional evidence into the record of the proceeding. It would also be extremely prejudicial to the parties if the Ad Hoc Committee is allowed to introduce new arguments or issues in this proceeding through post hearing briefing as none of the parties had any notice or opportunity to address any issues that the Ad Hoc Committee may now raise.

³ The 2020 Cost of Capital cases, (A.19-04-014, et seq.), PG&E's TY 2020 GRC I (A.18-12-009), the Safety Culture Investigation (I.15-08-091), the capital structure waiver applications, (A.19-02-016 and A.19-02-017), the wildfire Investigation (I.19-06-015), the Mark and Locate Investigation (I. 18-12-007), the Catastrophic Event Memorandum Account (A.18-03-015), the Wildfire Mitigation Plans proceeding (R.18-12-007), Wildfire Cost Recovery pursuant to SB 901 (R.19-01-006), Residential Electric Service Disconnection (I.18-07-008), the Mobile Application and Supporting Systems Pilot (A.19-07-019), the proceeding on violations of Article I and Rule 1.1. (I.15-11-015), the Emergency Disaster Relief Program (R.18-03-011), Examination of Electric Utility De-Energization of Power Lines in Dangerous Conditions (R.18-12-005), Wildfire Fund non-bypassable charge (R.19-01-017), and Establish Standards for Disaster and Emergency Preparedness Plans for Electrical Corporations and Regulated Water Companies (R.15-06-009).

The ALJs have the right to deny intervention under these circumstances and should do so.⁴ Rule 1.4(c) provides:

The assigned Administrative Law Judge may, where circumstances warrant, deny party status or limit the degree to which a party may participate in the proceeding.

As observed in a 2018 ALJ ruling in the Order Instituting Investigation regarding the San Onofre Nuclear Generating Station:

The Commission has denied the right to intervene where a party joins very late in the proceeding, raises issues covered by other parties, or raises new issues. *See, e.g.*, Decision (D.) 08-11-031 n.166, 2008 Cal. PUC LEXIS 571 (denying motion to intervene to party that did not participate early in the proceeding and addressed issues amply covered by other commenters); D.98-12-004, 1998 Cal. PUC LEXIS 876 (interpreting prior Rule; denying party status where party attempted to join late in proceeding and raised new issues).⁵

The ruling then denied the motion of the University of California (UC) for Party Status when UC sought party status at the eleventh hour, citing UC's lack of justification for not intervening earlier although aware that the proceeding was ongoing.⁶

The authorities cited by the Ad Hoc Committee do not indicate a different result is appropriate here. In *Application of Cox California Telecom, LLC*, A.19-01-014, the moving party there – unlike here – listed very specific positions and legal issues in the motion for party status that were unique to that party, within the scope of the proceeding, and would potentially affect its interests.⁷ The Commission limited the participation of the moving party to

⁴ Rule 14 (c) of the Commission's Rules of Practice and Procedure.

⁵ Administrative Law Judge's Ruling Denying the Motion of the University of California for Party Status, p. 1 (I. 12-10-013) (Feb. 13, 2018).

⁶ *Id.*, p. 3.

⁷ *E-Mail Ruling Granting Comcast Phone Of California, LLC's Motion For Party Status On A Limited Basis*, A.19-01-014 (Oct. 10, 2019). The ruling is available at this [Link](#).

commenting on the proposed decision.⁸ It did not, as the Ad Hoc Committee requests here, allow the late intervenor to fully participate in the proceeding. The second ruling cited by the moving parties has no discussion of the circumstances and thus is not informative.⁹

Further, the Ad Hoc Committee's counsel, Davis Wright Tremaine, has been on the service list of this proceeding since it was initiated. Thus, it is reasonable to conclude that it and its attorneys who filed the motion, were well aware of this GRC and could have intervened were the interests it purports to represent at issue. It does not allege otherwise.

B. The Ad Hoc Committee Is Attempting to Insert Issues into the GRC that are Out of Scope and are the Subject of Ongoing Litigation In The Bankruptcy Court and Bankruptcy OII.

Rule 1.4 requires a moving party to “state the factual and legal contentions that the person intends to make and show that the contentions will be reasonably pertinent to the issues already presented.”¹⁰ The Ad Hoc Committee does not meet this burden. It states:

The Utility's proposed revenue requirement and rates also represent integral components of the TCC/AHC Plan. The TCC/AHC Plan is designed to be, at a minimum, rate neutral and will ensure that when the utility emerges from bankruptcy it will have the financial, managerial, and operational capability and corresponding commitment to provide safe, reliable, and cost-effective service to California customers. Accordingly, the Ad Hoc Committee has a substantial interest in this proceeding and others involving the Debtors' financial condition, ability to address fire safety and risk mitigation, and emergence from bankruptcy.¹¹

Whether this Commission will award PG&E a revenue requirement that benefits the Ad

⁸ *Id.*

⁹ *Administrative Law Judge's Amended Ruling Granting In Part And Denying In Part The Motion Of Dish Network Corporation For Party Status And For Official Notice Of Documents Filed With The Federal Communications Commission*, A.18-07-011 (Feb. 25, 2019).

¹⁰ Rule 1.4 (b) (2) (emphasis added).

¹¹ Motion, p. 2.

Hoc Committee and supports the goals of its proposed plan of reorganization is not pertinent to this proceeding and is not an issue that should be added to its scope. The Commission is considering the proposed plans of reorganization in the Bankruptcy OII, not this General Rate Case. In fact, the assigned ALJs recently rejected a request by TURN – who has actively participated in this proceeding – to address PG&E’s plan of reorganization in this proceeding.¹² As the Ad Hoc Committee’s plan of reorganization is not “reasonably pertinent to the issues already presented” its Motion to address it in the GRC should be similarly denied.

The Motion demonstrates the Ad Hoc Committee has a Commission venue, the Bankruptcy OII, to vet its proposed plan of reorganization and that it has already filed its plan of reorganization with its October 18, 2019 response in that proceeding.¹³ It states: “[t]he Ad Hoc Committee has submitted the most recent version of the TCC/AHC Plan, filed with the Bankruptcy Court on October 17, 2019, as Exhibit A to its response filed on October 18, 2019, in Investigation 19-09-016.”¹⁴ Thus, denial of its Motion will not preclude it from vetting its plan in an appropriate Commission proceeding.

¹² See *Motion Of The Utility Reform Network For Modification Of The Schedule To Accommodate Material Events In Pacific Gas And Electric Company’s Chapter 11 Bankruptcy Case*, dated July 29, 2019 and PG&E’s Response dated August 2, 2019. There has not been any testimony presented about the contents of any plan of reorganization, to date in this proceeding. The assigned ALJs recently denied a motion by The Utility Reform Network to introduce evidence in this proceeding regarding PG&E’s plan of reorganization, indicating that they were following the Bankruptcy OII and would react to activities in that case as appropriate. (Vol. 20, pp. 2223 line 13 to p. 2224, line 4.) This ruling was confirmed by email dated October 11, 2019. (“We also denied without prejudice at this time TURN’s motion (filed on July 29, 2019) for a modification of the proceeding schedule to accommodate material events in PG&E’s Chapter 11 bankruptcy”)

¹³ Motion, p. 2.

¹⁴ Motion, p. 2.

C. The Commission Should Follow Its Own Procedural Rules and Deny the Ad Hoc Committee's Request to Intervene Late In The Proceeding and Raise New Issues.

The Court of Appeal has required the Commission to follow its own procedures, and limit decisions in proceedings to matters that were timely included in the Scoping Memo. In *Southern California Edison Company v. Public Utilities Commission*, 140 Cal.App.4th 1085 (2006) (*SCE v. PUC*), the Commission issued a scoping memo in a rulemaking regarding “bid shopping.” The Scoping Memo listed the topics at issue in the proceeding and included a proceeding schedule. As here, a party later sought to address an issue that was not included in the Scoping Memo by serving comments many months after the scoping memo was issued and the comments were due. The assigned ALJ attempted to amend the scoping memo and provided the parties only three business days to respond to the proposals.^{15/} The Court of Appeal found this process to be unlawful:

The PUC’s failure to comply with its own rules concerning the scope of issues to be addressed in the proceeding therefore was prejudicial.

In summary, the . . . proposal was beyond the scope of issues identified in the scoping memo, the PUC violated its own rules by considering the new issue, and three business days was insufficient time for the parties to respond to the new proposals. We therefore conclude that the PUC failed to proceed in the manner required by law [Pub.Util.Code, § 1757.1, subd. \(a\)](#) and that the failure was prejudicial.^{16/}

In this case, the Commission should not similarly err by addressing newly-raised issues outside the scope of the proceeding that are being litigated in the Bankruptcy Court and the Bankruptcy OII.

If, however, the Commission decides to grant the Motion, the Ad Hoc Committee should be confined to commenting on the proposed decision as in the *Application of Cox California Telecom*, and should not be allowed to use this proceeding to introduce statements or information about its plan of reorganization.

¹⁵ *SCE v. PUC*, 140 Cal. App. 4th at 1106.

¹⁶ *Ibid.*

IV. CONCLUSION

For all the foregoing reasons, the Commission should deny the Motion. If the Motion is granted, the Ad Hoc Committee's participation should be limited to commenting on the proposed decision next year.

Respectfully Submitted,

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