

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



FILED

11/17/20
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. (U39M)

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

**REPLY COMMENTS OF THE JOINT COMMUNITY CHOICE
AGGREGATORS ON THE PROPOSED DECISION ADDRESSING THE TEST YEAR
2020 GENERAL RATE CASE OF PACIFIC GAS & ELECTRIC COMPANY**

Jacob Schlesinger
KEYES & FOX LLP
1580 Lincoln St., Suite 880
Denver, CO 80209
Telephone: (720) 639-2190
E-mail: jschlesinger@keyesfox.com

Tim Lindl
Julia Kantor
KEYES & FOX LLP
580 California Street, 12th Floor
San Francisco, CA 94104
Telephone: (510) 314-8385
E-mail: tlindl@keyesfox.com
jkantor@keyesfox.com

November 17, 2020

On behalf of the Joint CCAs

**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. (U39M)

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

**REPLY COMMENTS OF THE JOINT COMMUNITY CHOICE
AGGREGATORS ON THE PROPOSED DECISION ADDRESSING THE TEST YEAR
2020 GENERAL RATE CASE OF PACIFIC GAS & ELECTRIC COMPANY**

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), East Bay Community Energy, Marin Clean Energy, Peninsula Clean Energy Authority, Pioneer Community Energy, San José Clean Energy, and Sonoma Clean Power (collectively “JCCAs” or “Joint CCAs”) hereby submit these reply comments on the *Proposed Decision Addressing the Test Year 2020 General Rate Case of Pacific Gas & Electric Company* (“Proposed Decision” or “PD”).¹

In opening comments, the Settling Parties² ask the Commission to adopt the Settlement³ without modification based on a suggested form of review inconsistent with the legal standard for evaluating settlements. Consistent with the PD’s articulation of the standard for review and its process for analyzing the Settlement,⁴ the Commission must substantively evaluate each section

¹ A.18-12-009, *Proposed Decision Addressing the Test Year 2020 General Rate Case of Pacific Gas & Electric Company* (October 23, 2020) (“Proposed Decision”).

² A.18-12-009, *Joint Comments of Pacific Gas and Electric Company, the Public Advocates Office, The Utility Reform Network, Small Business Utility Advocates, the National Diversity Coalition, Coalition Of California Utility Employees, and The Safety and Enforcement Division on the Proposed Decision* (November 12, 2020) (“Opening Comments of Settling Parties”). All references herein to the Settling Parties refer to the parties defined as the “Settling Parties” in this filing.

³ A.18-12-009, *Joint Motion of the Public Advocates Office, The Utility Reform Network, Small Business Utility Advocates, Center for Accessible Technology, the National Diversity Coalition, Coalition Of California Utility Employees, California City County Street Light Association, The Office of the Safety Advocate and Pacific Gas and Electric Company for Approval Of Settlement Agreement* (December 20, 2019) (“Settlement Motion”). All references herein to the Settlement Agreement refer to Attachment 1 to the Settlement Motion.

⁴ Proposed Decision, pp. 19-20 (describing the Commission’s analysis as follows: “The decision examines each major topic, analyzes the settlement terms . . . that the settling parties agree on, and makes an analysis as to the reasonableness thereof in light of the evidence presented and comments from parties.”).

of a settlement to ensure that it is reasonable, consistent with law, and in the public interest. The Commission should not be persuaded to discard its modifications to the Settlement based on the inaccurate framing of this legal standard urged by the Settling Parties.

Pacific Gas & Electric Company (“PG&E”) asks the Commission to limit the scope of the data that it must collect, going forward, for purposes of justifying its functionalization proposals, based on its suggestion that that PD lacks clarity on this point. The PD is clear that PG&E must track data on all Customer Care services and programs, and this is the right approach. All this data will be necessary to ensure that the costs associated with all these services—which are available to all customers, but potentially utilized differently by different customers groups—are allocated based on the relative utilization of these services. What the PD must clarify is precisely what *type* of data PG&E must collect on these services and programs. PG&E should be required to collect data regarding which customers are utilizing the services, rather than data regarding which utility function the services support.

I. The Settling Parties Urge a Review of the Settlement Inconsistent With the Legal Standard for Evaluating Settlements.

In opening comments, the Settling Parties urge the Commission to adopt the Settlement without modification because, on balance, the terms are in the public interest and reasonable in light of the whole record.⁵ While recognizing that the Commission has the authority to make changes to the terms of settlements, the Settling Parties nonetheless submit that “the more reasonable and appropriate outcome” here is to adopt the Settlement without modifications because “the settlement terms are reasonable in light of the record as a whole” and because the Settlement represents a compromise across many parties to the proceeding, who have thoroughly reviewed the record and signed off on this Settlement as originally drafted.⁶ The Settling Parties are advancing a standard of review that is inconsistent with clear Commission precedent.

The Commission recently reiterated the parameters of Rule 12.1(d) and its standard for evaluating settlements in Decision 17-05-013 approving, with modifications, the proposed settlement agreement in connection with PG&E’s 2017 general rate case.⁷ There, the Commission explicitly rejected PG&E and the other settling parties’ interpretation of Commission precedent on this standard, as this interpretation erroneously suggested that a settlement agreement must be

⁵ Opening Comments of Settling Parties, pp. 2-4.

⁶ *Id.*, p. 3.

⁷ D.17-05-013.

evaluated based solely on whether it is just and reasonable as a whole, not based on its individual terms.⁸ In response, the Commission made clear that a substantive evaluation of *each section of the settlement* is integral to its evaluation, and that specific sections of an agreement will be rejected when “they are found, individually, to be either not reasonable in light of the whole record, not consistent with law, or not in the public interest, and thus contrary to Rule 12.1(d).”⁹ Further, the Commission pointed to the unreasonable outcome that would result if individual terms of a settlement were not evaluated in this manner:

It is simply illogical for Settling Parties to suggest to the Commission that it should carefully evaluate the individual substantive provisions of the Settlement Agreement, but if it finds specific items to be either not reasonable in light of the whole record, not consistent with law, or not in the public interest, it should approve them anyway because the Settlement Agreement as a whole is acceptable to the Commission. By that standard, the Commission should never reject any specific aspect of a Settlement, no matter how egregious, if the remainder of the Settlement was acceptable to the Commission. Such an approach would reduce the Commission to a bystander in its own proceedings.¹⁰

Responding to cited precedent suggesting that the Commission’s evaluation should focus on “whether the settlement as a whole produces a just and reasonable outcome[,]”¹¹ the Commission clarified that:

The correct interpretation of the cited decisions is that the Commission does not reject an entire settlement in the event that it finds that specific components of that settlement fail to meet the standard required by Rule 12.1(d). Rather, as provided for in Rule 12.4, the Commission exercises the options available to it, to either hold hearings on the underlying issues, allow parties time to renegotiate the settlement, or propose alternative terms to the parties which are acceptable to the Commission.¹²

Thus, a substantive evaluation of each settlement term and whether it meets the standard in Rule 12.1(d) is necessary, and Rule 12.4 provides the procedural options available to the Commission in the event that it rejects all or certain portions of the settlement as failing to meet that standard. The Commission should not be persuaded to discard this standard and its revisions to the Settlement Agreement in this proceeding based on Settling Parties’ insistence that, on balance, the Settlement is reasonable and represents a compromise that should not be disrupted.

⁸ *Id.*, p. 217.

⁹ *Id.*, p. 220.

¹⁰ *Id.*, pp. 220-221.

¹¹ D.10-04-033, p. 9.

¹² D.17-05-013, pp. 219-220.

Further, and contrary to the Settling Parties' suggestion,¹³ there is no strong policy in favor of settlements when settlements are disputed and do not cover the full range of issues in the record.¹⁴ The Commission has made clear that it "cannot simply defer to the Settling Parties as to whether the Settlement is in the public interest, particularly when it is not an all-party Settlement . . . where there are disputed terms, the Commission will look closely at the record to address the Settlement."¹⁵ In line with this precedent, the Commission should retain its close evaluation of each individual term of the Settlement in the Proposed Decision.

II. The Commission Should Require PG&E to Collect Utilization Data On All its Customer Care Programs and Services Going Forward.

PG&E asks the Commission to limit the scope of the data it must track and present in future proceedings, for purposes of justifying its cost allocation proposals, to data related to its Contact Centers. The utility justifies this request solely on the basis that the PD is unclear as to what data PG&E must track going forward.¹⁶ There is no basis for this requested modification, and it should be denied.

The Proposed Decision is clear and consistent in the body of the decision, the Conclusions of Law, and the Ordering Paragraphs that, going forward, PG&E must track data on *all* its Customer Care services and programs.¹⁷ In fact, PG&E quotes the PD's unambiguous language directing the collection of data for all Customer Care services and programs, but then based off of this quote, claims that the Commission must clarify this direction because "'customer services and programs' is not a specific term."¹⁸ The PD did not use this term in directing PG&E to collect this data; while it is therefore unclear to what PG&E is referring here, there is no lack of clarity in the PD's direction to PG&E.

Requiring the collection of this data for all Customer Care services and programs is the right approach. PG&E's Customer Care organization "drives the Company's customer strategy across all Lines of Business and delivers a broad range of services, products and support to residential, small and medium business (SMB), large commercial and industrial (LCI), and

¹³ Opening Comments of Settling Parties, pp. 3-4.

¹⁴ See D.14-12-040, p. 15.

¹⁵ *Id.*, p. 15.

¹⁶ A.18-12-009, *Opening Comments of PG&E on the Administrative Law Judges' Proposed Decision*, p. 17 (November 12, 2020) ("Opening Comments of PG&E").

¹⁷ Proposed Decision, pp. 315, 317, Conclusion of Law 121, and Ordering Paragraph 18.

¹⁸ Opening Comments of PG&E, p. 17.

agricultural customers across PG&E's service area."¹⁹ Customer Care therefore touches all customers. Because these services and programs are generally available to all customers, but potentially utilized differently by different customer groups, this data is necessary to guide cost allocation for all these services and programs to ensure that cost responsibility is aligned with customers' relative utilization of these services and programs. There is no compelling reason to limit this data collection just to Contact Centers, as this rationale for collecting this data applies equally to Contact Centers and to Customer Care services and programs more broadly.

As the Joint CCAs discussed in opening comments,²⁰ to ensure that the data PG&E collects on all its Customer Care services and programs is useful in informing cost allocation proposals that assign costs based on cost causation, the Commission does need to revise its direction to PG&E regarding this data collection. Specifically, the PD should be revised to make clear that PG&E must track the relative *utilization* (among bundled electric, unbundled electric, and gas customers) of all Customer Care services and programs, rather than data on "the extent to which [these services] support [PG&E's] electric generation function as compared to its electric distribution and gas distribution functions."²¹ This data will be useful to inform allocators that can assign costs to these customer groups, via the electric generation, electric distribution, and gas distribution utility functions, in a way that ensures that each customer group is paying for their proportionate share of each service. Tracking utilization data by customer group is also likely to be a clearer, easier, and more straightforward way to collect data on these common services;²² in fact, PG&E has made clear that this kind of tracking is possible, noting in opening comments that it has already begun tracking calls to its Contact Centers by customer type.²³ This is the form of data collection that must now be extended to all Customer Care services and programs.

III. Conclusion.

The Joint CCAs appreciate the Commission's consideration of the recommendations herein, and urge the Commission to revise the Proposed Decision in line with the recommendations in the Joint CCAs' opening comments.

¹⁹ See Exh. 91 at 1-1:8-11.

²⁰ A.18-12-009, *Opening Comments of the Joint CCAs on the Proposed Decision Addressing the Test Year 2020 General Rate Case of PG&E*, pp. 19-21 (November 12, 2020) ("Opening Comments of the Joint CCAs").

²¹ Proposed Decision, p. 315.

²² See Opening Comments of the Joint CCAs, p. 12.

²³ Opening Comments of PG&E, p. 17.

Dated: November 17, 2020

Respectfully submitted,

/s/ Jacob Schlesinger
Jacob Schlesinger
KEYES & FOX LLP
1580 Lincoln St., Suite 880
Denver, CO 80209
Telephone: (720) 639-2190
E-mail: jschlesinger@keyesfox.com

Tim Lindl
Julia Kantor
KEYES & FOX LLP
580 California Street, 12th Floor
San Francisco, CA 94104
Telephone: (510) 314-8385
E-mail: tlindl@keyesfox.com
jkantor@keyesfox.com