

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



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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, 2017.  
(U39M)

Application 15-09-001  
(Filed September 1, 2015)

**REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON THE PROPOSED  
DECISION REGARDING PACIFIC GAS AND ELECTRIC COMPANY'S PETITION  
FOR MODIFICATION OF DECISION 17-05-013 TO REFLECT TAX LAW CHANGES**

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## **REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON THE PROPOSED DECISION REGARDING PACIFIC GAS AND ELECTRIC COMPANY’S PETITION FOR MODIFICATION OF DECISION 17-05-013 TO REFLECT TAX LAW CHANGES**

On July 12, 2019, the Commission issued the Proposed Decision of Administrative Law Judge Stephen Roscow (Proposed Decision) addressing Pacific Gas and Electric Company’s (PG&E) petition for modification of Decision (D.) 17-05-013 in order to revise its 2018 and 2019 authorized revenue requirements to incorporate the effects of the federal Tax Cuts and Jobs Act of 2017 (Tax Act). On August 1, 2019, PG&E filed opening comments that seek substantial modifications to the Proposed Decision. Pursuant to Rule 14.3(d) of the Commission’s Rules of Practice and Procedure, The Utility Reform Network (TURN) submits these reply comments, urging the Commission to adopt the Proposed Decision as drafted, with only minor modifications to indicate that the Internal Revenue Service may address related matters through its “guidance” process rather than through its “private letter ruling” process.

### **I. Background**

The Proposed Decision seeks to implement the 2018 and 2019 revenue requirement reductions that arise from the federal tax law changes adopted in late 2017. In April of 2018, PG&E filed its Petition for Modification, seeking to make the necessary changes to its test year 2017 GRC decision (D.17-05-013), and proposing reductions of \$267 million for 2018 and \$296 million for 2019 based on its calculations. TURN’s response to PG&E’s Petition raised objections to the utility’s proposed calculations, particularly with regard to PG&E’s use of the Average Rate Assumption Method (ARAM) for all categories of excess Accumulated Deferred Income Taxes (ADIT). TURN argued that such an approach unduly delayed the return to ratepayers of overpaid amounts. Instead, TURN proposed that the Commission instead return to ratepayers the amounts in “unprotected” categories of ADIT, excluding future cost of removal, over the course of the next few years, rather than over a period of decades by having the return extend over the depreciation life of the associated plant.

In these ways, the situation in this PG&E GRC is not materially different than the situation that the Commission addressed in the test year 2018 GRC decision for Southern California Edison Company (SCE). And the Proposed Decision here adopts the same course as was taken in D.19-05-020 on these issues. Where the amounts fall into categories for which the

Commission has discretion regarding how they are returned to ratepayers, the Proposed Decision directs that the return occur relatively quickly, consistent with the outcome in D.19-05-020. As was the case in D.19-05-020, the Proposed Decision notes that this approach serves to increase the likelihood that the ratepayers who receive the refund are the ratepayers who effectively overpaid their tax bills.<sup>1</sup> The Commission also directed SCE to reduce its revenue requirements immediately, rather than waiting for input from the Internal Revenue Service on the underlying disputed question.<sup>2</sup> If the IRS issued a Private Letter Ruling (PLR) that reached a different conclusion on the question of the appropriate treatment of COR for these purposes, the Commission acknowledged that steps may be required to subsequently adjust SCE's revenue requirement and rate base to comply with the IRS's position.<sup>3</sup> Thus, in all material ways the outcome that the Proposed Decision would adopt here is the same as the Commission adopted for SCE in D.19-05-020.

## **II. PG&E's Comments Fail To Present The Commission With A Sufficient Basis To Abandon The Approach Taken Three Months Ago When The Same Issue Was Addressed In The SCE Test Year 2018 GRC Decision.**

PG&E asks the Commission to adopt an outcome that would effectively reverse key elements of the outcome the Commission adopted in the SCE GRC with regard to the treatment of cost of removal. PG&E has not cited any legal or factual error in the Proposed Decision as written. Rather, it merely notes that the Proposed Decision adopted a treatment of cost of removal that is contrary to the arguments in its petition, and states its confidence that the IRS will ultimately support the utility's position.<sup>4</sup> It also cites an IRS "request for comments" issued in May of this year. None of the reasons cited in PG&E's comments warrants anything other than relatively minor changes to the Proposed Decision as written.

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<sup>1</sup> Proposed Decision, Section 4.4.3.1 (pp. 19-22) and Conclusion of Law 7 ("repayment now returns excess deferred taxes to ratepayers who are the closest in time to the ratepayers who contributed the funds to these accounts.") *See also* D.19-05-020, pp. 298-299 and Finding of Fact 234.

<sup>2</sup> *Id.*, p. 20.

<sup>3</sup> D.19-05-020 (SCE GRC), p. 297 and Ordering Paragraph 9.

<sup>4</sup> PG&E Comments on PD, p. 6.

**A. The IRS Request for Comments Does Not Warrant A Change To The Approach Taken In The SCE GRC.**

PG&E's comments cite the Internal Revenue Service (IRS) having issued "Notice 2019-33" seeking comments on normalization issues for public utilities. PG&E contends, "[i]t is expected that this guidance will resolve several open questions around implementation of the tax normalization rules, including the questions addressed in Section 4.4 of the Proposed Decision."<sup>5</sup> PG&E provides the URL address for the IRS's ruling, but cites only the most general language therein as support for the utility's stated expectation of the questions the IRS intends to resolve through this process.<sup>6</sup>

The Commission should determine that PG&E has failed to demonstrate that this action by the IRS warrants any change to the substantive outcome the Proposed Decision would adopt. The Request for Comments is an eleven-page, double-spaced document that includes several elements the Commission should find noteworthy.

First, it is not at all clear that the Request for Comments is expected to address the issue the Commission has identified here. The IRS document describes an underlying method of normalization that clearly includes cost of removal as a key element of "net salvage":

Under § 168(i)(9)(A)(ii), if the amount allowable as a deduction under § 168 differs from the amount that would be allowable as a deduction under § 167 using the method, period, first and last year convention, and salvage value used to compute regulated tax expense under § 168(i)(9)(A)(i), then the taxpayer must make adjustments to a reserve to reflect the deferral of taxes resulting from such difference.<sup>7</sup>

The Request for Comments also mentions that ARAM requires that the tax rate reduction be flowed back to ratepayers only in years when book depreciation exceeds tax depreciation for specific assets.<sup>8</sup> But the IRS's Request is completely silent on the definition of book depreciation and, in particular, on the key Commission-specified issue here – whether book depreciation includes or excludes net salvage when calculating ARAM for protected excess

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<sup>5</sup> PG&E Comments on PD, p. 3.

<sup>6</sup> <https://www.irs.gov/pub/irs-drop/n-19-33.pdf>.

<sup>7</sup> IRS Request for Comments (Notice 2019-33), page 2 [emphasis added].

<sup>8</sup> *Id.*, p. 6.

ADIT.<sup>9</sup> Notably, the IRS’s Request sets out seven specific questions, none of which directly address that issue.<sup>10</sup> So while one cannot dispute PG&E’s assertion that the IRS has issued the Request for Comments, the Commission should determine that it is not at all clear that, through the process initiated by this notice, the IRS is likely to address the key issue here.

Second, even if the Commission were to determine that the IRS has teed up this matter for resolution or clarification through the process initiated with its Request for Comments, it is not clear that this distinction should make any difference to the Commission’s actions here. Absent the IRS’s notice, the Commission anticipated and accommodated the possibility that the IRS could weigh in through the private letter ruling (PLR) process. With the recently-issued notice, it appears there is a possibility the IRS could weigh in through a different process. But if and when the IRS weighs in, the upshot for the Commission remains the same as it was in the SCE GRC – should the IRS unequivocally state that the Commission’s approach would create a normalization violation, the Commission will need to adopt an appropriate future adjustment.

In sum, the recent IRS request for comments does not warrant any substantive change to the Proposed Decision. At most, the Commission may wish to consider an edit to acknowledge that the IRS position on the normalization question could now come in the form of either a PLR or a “guidance” issued through this just-initiated process.

**B. The Commission Should Disregard PG&E’s Claim That Reducing The Near-Term Relief to Ratepayers Would Represent “Faster Relief” Or Otherwise Be Preferable To The Proposed Decision’s Approach.**

PG&E professes to support the Proposed Decision’s stated intention of providing rate relief as soon as possible, even as it proposes changes that would reduce the scale of the near-term rate relief.<sup>11</sup> The utility’s arguments are utterly without merit in this regard. As PG&E describes it, the rate changes here would take place in conjunction with “other rate changes” such

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<sup>9</sup> In both the SCE GRC decision and the Proposed Decision here, the Commission has specified the question it would need to have answered by the IRS: “Is including Cost of Removal/Negative Net Salvage in the ARAM calculation for the return of excess deferred taxes to ratepayers inconsistent with normalization requirements?” D.19-05-020, Ordering Paragraph 8; Proposed Decision, Ordering Paragraph 7.

<sup>10</sup> IRS Request for Comments (Notice 2019-33), pages 8-10.

<sup>11</sup> PG&E Comments, pp. 4-6.

as those coming out of its 2020 ERRA Forecast Application.<sup>12</sup> The ERRA-related rate changes will go into effect on January 1, 2020. This leaves PG&E three-to-four months to perform the calculations needed to determine the figures consistent with the outcome called for in the Proposed Decision. Rather than focus on the differences between a 15-day period under a Tier 1 advice letter and a 30-day period under a Tier 2 advice letter to implement a decision likely to issue in the next few weeks, the Commission should determine that even PG&E should be able to perform and submit the necessary calculations before the end of 2019.

Similarly, PG&E's unsolicited advice to "the Commission and stakeholders" that it would "be wise to embrace this opportunity to find efficiencies and reduce PG&E's costs" is woefully misdirected.<sup>13</sup> While PG&E might incur administrative costs of thousands of dollars for the revenue requirement calculations needed to implement the Proposed Decision, the near-term benefits to ratepayers are likely to be in the millions of dollars. And the risk of "possible confusion" should there be a downward adjustment now, followed by a potential offsetting adjustment later, might have some bearing if this were the only revenue requirement adjustment PG&E's customers are likely to see at the start of 2020 or during the next few years. But a quick scan of the numerous elements that feed into annual revenue requirement changes through the ERRA proceeding and the Annual Electric True-up (AET) advice letter, some of which serve to offset prior years' adjustments, should convince the Commission that the measure of any incremental confusion here rounds to approximately zero.

More importantly, PG&E's arguments run counter to the goal of "return[ing] excess deferred taxes to ratepayers who are the closest in time to the ratepayers who contributed those funds."<sup>14</sup> Lacking any support for the abandonment of that goal, PG&E says nothing about it in its comments, and simply proposes striking that language from the Proposed Decision.<sup>15</sup>

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<sup>12</sup> *Id.*, pp. 4-5.

<sup>13</sup> *Id.*, p. 5.

<sup>14</sup> Proposed Decision, Conclusion of Law 7; D.19-05-020 (SCE GRC), Conclusion of Law 234.

<sup>15</sup> PG&E Comments, Appendix, p. A-4 (striking the second sentence of Conclusion of Law 7).

Date: August 6, 2019

Respectfully submitted,

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