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**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) |

# OPENING COMMENTS ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE ROSCOW OF PACIFIC GAS AND ELECTRIC COMPANY, THE OFFICE OF RATEPAYER ADVOCATES, THE UTILITY REFORM NETWORK, CENTER FOR ACCESSIBLE TECHNOLOGY, COALITION OF CALIFORNIA UTILITY EMPLOYEES, CONSUMER FEDERATION OF CALIFORNIA, ENVIRONMENTAL DEFENSE FUND, MARIN CLEAN ENERGY, MERCED IRRIGATION DISTRICT, MODESTO IRRIGATION DISTRICT, NATIONAL DIVERSITY COALITION, SMALL BUSINESS UTILITY ADVOCATES, AND SOUTH SAN JOAQUIN IRRIGATION DISTRICT CONCERNING THE STANDARD FOR EVALUATING SETTLEMENTS

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Dated: March 20, 2017

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## SUMMARY OF RECOMMENDATIONS

- The Settling Parties recommend that the Commission's legal standard for evaluating settlements be clarified to follow past Commission precedent as follows:

> In assessing settlements we consider individual settlement provisions but, in light of strong public policy favoring settlements, we do not base our conclusion on whether any single provision is the optimal result. Rather, we determine whether the settlement as a whole produces a just and reasonable outcome.

- The Settling Parties recommend that the Proposed Decision be revised to restore the original Settlement Agreement provisions.

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## I. INTRODUCTION

Pacific Gas and Electric Company, the Office of Ratepayer Advocates, The Utility Reform Network, Center for Accessible Technology, Coalition of California Utility Employees, Consumer Federation of California, Environmental Defense Fund, Marin Clean Energy, Merced Irrigation District, Modesto Irrigation District, National Diversity Coalition, Small Business Utility Advocates, and South San Joaquin Irrigation District (collectively, the Settling Parties)[1] submit these Opening Comments on the Proposed Decision (PD) issued by the Administrative Law Judge (ALJ) on February 27, 2017, in the above-captioned matter.

[1] Collaborative Approaches to Utility Safety Enforcement and the Alliance for Nuclear Responsibility were also parties to the August 3, 2016 Settlement Agreement, although these parties have not joined in these comments.

These Opening Comments solely concern the standard for evaluating settlements, and the application of that standard to the proposed settlement here.[2] In these Opening Comments, the Settling Parties explain that the PD's modifications to the Settlement Agreement filed by the Settling Parties on August 3, 2016, are contrary to precedent and should be rejected.

## II. BACKGROUND

The PD proposes four modifications to the Settlement Agreement filed by the Settling Parties on August 3, 2016.[3] Those modifications pertain to four provisions in the Settlement Agreement: Sections 3.1.3.1., 3.1.5.2, 3.1.9.3 and 3.2.2.8. These four provisions relate to three substantive areas in the Settlement Agreement: Rule 20A, Residential Rate Reform Memorandum Account (RRRMA) costs and taxes. The PD recognizes that by modifying these provisions, Commission Rule 12.4 is triggered which pertains to the steps to be taken upon rejection of a settlement.[4]

In these Opening Comments, the Settling Parties address the legal standard for evaluating settlements and urge that the PD be revised to restore the original Settlement Agreement provisions.

## III. COMMISSION PRECEDENT CALLS FOR THE EVALUATION OF INDIVIDUAL PROVISIONS IN LIGHT OF THE REASONABLENESS OF THE ENTIRE SETTLEMENT

The legal standard for evaluating settlements is set forth in Commission Rule 12.1(d). It states, "The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest." As the Settling Parties discussed in their joint motion submitting the Settlement Agreement, "The Commission approves settlement agreements based on whether the settlement agreement is just and reasonable as a whole, not based on its individual terms."[5]

The Commission explained its approach:

> In assessing settlements we consider individual settlement provisions but, in light of strong public policy favoring settlements, we do not base our conclusion on whether any single provision is the optimal result. Rather, we determine whether the settlement as a whole produces a just and reasonable outcome.[6]

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[2] On March 17, 2017, pursuant to a request from PG&E, Administrative Law Judge Roscow orally authorized the filing of separate comments as long as the subject matter covered by the separate comments did not overlap. Hence, comments on other aspects of the PD may be submitted separately by individual Settling Parties.

[3] PD, pp. 219-220 (Ordering Paragraph 1).

[4] PD, pp. 199-200.

[5] Joint Motion, p. 9 (August 3, 2016).

[6] D.10-04-033 (Investigation on the Commission's Own Motion Into the Operations and Practices of Calpine Power America-CA, LLC; Notice of Opportunity for Hearing; and Order to Show Cause Why the Commission Should Not Impose Fines and Sanctions for Calpine's 2007 Violation of System and Local Resource Adequacy Requirements), *mimeo*, p. 9 (emphasis added); see also D.05-12-025 (Application of

There is widespread precedent for this approach.[7]

The PD strays from this precedent. The PD describes its approach:

> [W]e review the Settlement Agreement in the order in which it was presented. For each section, we provide Settling Parties' description of the issue, and address that issue. If we agree with the resolution, we state that the outcome is reasonable and should be adopted. In the event we disagree, or determine that additional discussion and clarification of a provision is needed, we provide that as necessary.[8]

It is not clear from the face of this discussion whether the PD intends to prescribe a new standard for evaluating settlements.

The Settling Parties do not intend to suggest that the PD was wrong to carefully evaluate the individual substantive provisions of the Settlement Agreement. (The Joint Motion filed by the Settling Parties envisioned that the Commission would do so.) However, in three substantive areas – Rule 20A, RRRMA costs, and taxes – the PD appears to seek an "optimal" result in these individual areas instead of evaluating the provisions in light of the settlement as a whole.[9]

The Settling Parties believe these individual provisions, when viewed in the context of the overall Settlement Agreement, are reasonable in light of the whole record, consistent with law, and in

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Pacific Gas and Electric Company To Revise Its Electric Marginal Costs, Revenue Allocation, and Rate Design), *mimeo*, p. 7; D.10-01-023 (Order Instituting Rulemaking to Address the Gas Utilities' Incentive Mechanisms and the Treatment of Hedging Under Those Incentive Mechanisms), *mimeo*, pp. 47-48; D.16-10-004 (Application of Southern California Gas Company and San Diego Gas & Electric Company for Authority to Revise their Natural Gas Rates Effective January 1, 2017 in this Triennial Cost Allocation Proceeding), *mimeo*, p. 21.

[7] See, e.g., D.94-07-064 (Order Instituting Rulemaking into Natural Gas Procurement and System Reliability Issues and Related Matters), 55 CPUC 2d 452, 454 ("Although we have concerns about certain elements of the modified settlement, the issue before the Commission is not whether individual settlement elements are optimal but whether the package as a whole is reasonable and in the public interest."); D.03-12-035 (Order Instituting Investigation into the ratemaking implications for Pacific Gas and Electric Company pursuant to the Commission's Alternative Plan of Reorganization under Chapter 11 of the Bankruptcy Code), *mimeo*, p. 21 and D.04-03-009 (Order Instituting Investigation into the ratemaking implications for Pacific Gas and Electric Company pursuant to the Commission's Alternative Plan of Reorganization under Chapter 11 of the Bankruptcy Code), *mimeo*, p. 13 ("In reviewing a settlement we must consider individual provisions but we do not base our conclusion on whether this or that provision of the settlement is, in and of itself, the optimal outcome. Instead, we stand back from the minutiae of the parties' positions and determine whether the settlement, as a whole, is in the public interest.").

[8] PD, p. 34. See also, PD, p. 125 ("[W]e remain required to ensure that the components of this [overall revenue requirement] result meet the requirements of Rule 12.1(d), namely, that it is reasonable in light of the whole record, consistent with law, and in the public interest. This was the purpose of our item-by-item review. . .").

[9] In contrast, see D.07-03-044 (Application of Pacific Gas and Electric Company for Authorization, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 2007), *mimeo*, p. 13 ("The purpose of our issue-by-issue review is not to second guess the Settlement outcome for every individual issue, but to assess whether the Settlement as a whole is reasonable in light of the entire record, consistent with applicable law, and in the public interest.").

the public interest. Accordingly, the Settling Parties ask that the PD be revised to restore these individual provisions to their original Settlement Agreement terms. In doing so, the PD can also be revised to eliminate the references to the "Notice to Accept" or "Motion Requesting Other Relief," which would be rendered superfluous if the Settlement Agreement is adopted under its original terms.

## IV. CONCLUSION

For the reasons set forth above, the Settling Parties respectfully request that the Commission adopt the Settlement Agreement as filed, without the modifications proposed in the PD concerning Rule 20A, RRRMA costs and taxes.

Pursuant to Commission Rule 1.8(d), counsel or representatives for the Settling Parties have authorized PG&E to submit these comments on their behalf.

Respectfully submitted,
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**APPENDIX A**

**THE SETTLING PARTIES' PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS COMPARED AGAINST THOSE FOUND IN THE PROPOSED DECISION CONCERNING THE STANDARD FOR EVALUATING SETTLEMENTS**

## Findings of Fact

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5. ~~With the exception of the agreed-upon Rule 20A amount, t~~The agreed-upon 2017 Electric Distribution expenses and capital expenditures are reasonable.

6. ~~The agreed-upon Rule 20A amount is not reasonable.~~

* * * * *

9. ~~With the exception of the agreed-upon amounts and ratemaking treatment regarding PG&E's Residential Rates Reform Memorandum Account, t~~The agreed-upon 2017 Customer Care expenses and capital expenditures are reasonable.

10. ~~A tax memorandum account would increase the transparency of PG&E's incurred and forecasted income tax expenses to the Commission, so that the Commission can more closely examine revenue impacts caused by PG&E's implementation of various tax laws, tax policies, tax accounting changes, or tax procedure changes.~~

## Conclusions of Law

* * * * *

5. ~~With the exception of the agreed-upon capital expenditures for Rule 20A, t~~The agreed-upon 2017 Electric Distribution expenses and capital expenditures should be adopted.

6. ~~The provisions in Section 3.1.3.1 and Section 3.2.2.8 of the Settlement Agreement regarding Rule 20A should not be adopted because they are not in the public interest.~~

7. ~~The annual PG&E Electric Tariff Rule 20A work credit allocation amount of $41.3 million should not be extended through 2019. PG&E should restore the annual 2017-2019 work credit levels that are allocated to governmental entities to the 2010 level: $80.988 million, and should apply the two-part formula in its Commission-approved Rule 20 tariff to allocate this amount to eligible governmental entities.~~

8. ~~PG&E should establish a Rule 20A balancing account that tracks the annual capital and expense costs for Rule 20A undergrounding projects, on a forecast and recorded basis, so that overcollected balances in the account remain available for future Rule 20A projects. The Commission shall review the balances in the account in PG&E's next GRC proceeding.~~

* * * * *

11. ~~The provisions in Section 3.1.5.2 of the Settlement Agreement regarding PG&E's Residential Rates Reform Memorandum Account should not be adopted because they are neither reasonable, in the public interest, nor consistent with the law.~~

12. ~~PG&E should file a standalone application for recovery of costs recorded in its Residential Rates Reform Memorandum Account, or may seek recovery of those recorded costs in its next GRC application.~~

13. ~~PG&E should establish a two-way tax memorandum account to track any revenue differences resulting from the differences in the income tax expense forecasted in this proceeding, and the tax expenses incurred during the 2017-2019 GRC period.~~

* * * * *

15. ~~Except for the Settling Parties' agreements with respect to (1) Rule 20A, (2) PG&E's Residential Rates Reform Memorandum Account, and (3) a tax memorandum account, t~~The Settlement Agreement attached to the Joint Settlement Motion is reasonable, in the public interest, and consistent with the law.

* * * * *

## O R D E R

**IT IS ORDERED** that:

1. The August 3, 2016 joint motion for adoption of settlement agreement (Settlement Motion) regarding the Test Year 2017 General Rate Case (GRC) of Pacific Gas and Electric Company (PG&E), including attrition years 2018 and 2019 is granted~~, with the exceptions listed below~~. ~~With these specified exceptions, t~~The Settlement Agreement attached to the Settlement Motion is adopted.

~~a. The provision in Section 3.1.3.1 of the Settlement Agreement that provides for a reduction in Major Work Category 30 equal to $23.7 million is not adopted. PG&E's authorized revenue requirements for Rule 20A undergrounding work are $83.74~~

million in 2017, $83.068 million in 2018, and $72.064 million in 2019. With these adjustments, a Test Year 2017 revenue requirement of $8.002 billion is adopted.

b. Section 3.2.2.8 of the Settlement Agreement is not adopted. PG&E shall restore the annual Rule 20A undergrounding 2017-2019 work credit levels that are allocated to governmental entities to the 2010 level: $80.988 million, and shall apply the two-part formula in its Commission-approved Rule 20 tariff to allocate this amount to eligible governmental entities.

c. Section 3.1.5.2 of the Settlement Agreement is not adopted. PG&E shall file a standalone application for recovery of recorded costs in its Residential Rates Reform Memorandum Account, or shall seek recovery in its next GRC application.

d. Section 3.1.9.3 of the Settlement Agreement is not adopted. Instead, as described in Ordering Paragraph 10 below, PG&E shall file an advice letter to establish a two-way tax memorandum account. Pursuant to Rule 12.4(c) of the Commission's Rules of Practice and Procedure, Settling Parties shall have 15 days from today's date to file with the Docket Office, and serve, a "Notice To Accept PG&E's Adopted Test Year 2017 Revenue Requirement," or to file a "Motion Requesting Other Relief."

2. In the event a "Motion Requesting Other Relief" is filed, parties may respond to the motion as provided for in Rule 11.1. The adopted Test Year 2017 revenue requirement for Pacific Gas and Electric Company shall remain in effect until a decision resolving the request for other relief is adopted by the Commission.

* * * * *

8. Pacific Gas and Electric Company (PG&E) shall file a Tier 2 Advice Letter within 30 days of the effective date of this decision to establish a one-way Rule 20A balancing account that tracks the annual capital and expense costs for Rule 20A undergrounding projects, on a forecast and recorded basis. Overcollected balances in the account shall remain available for future Rule 20A projects. The Commission shall review the balances in the account in PG&E's next General Rate Case proceeding.

9. Pacific Gas and Electric Company (PG&E) shall file a Tier 2 Advice Letter within 30 days of the effective date of this decision to establish a two-way tax memorandum account to record any revenue differences resulting from the income tax expenses forecasted in its general rate case (GRC) proceedings, and the tax expenses incurred by PG&E during this 2017-2019 GRC period and each subsequent GRC period.

a. This tax memorandum account shall remain open and the balance in the account shall be reviewed in every subsequent GRC until a Commission decision closes the account.

b. The account shall have separate line items detailing the differences between tax expenses forecasted and tax expenses incurred, specifically resulting from 1) net revenue changes, 2) mandatory tax law changes, tax accounting changes, tax procedural changes, or tax policy changes, and 3) elective tax law changes, tax accounting changes, tax procedural changes or tax policy changes.

* * * * *

21. Application 15-09-001 shall be closed following the filing of a "Notice to Accept Pacific Gas and Electric Company's Adopted Test Year 2017 Revenue Requirement" and disposition of the compliance items ordered in this decision:

a. Filing and service of the SmartMeter Update calculations as instructed in Section 5 of this Decision.
b. Filing and service of the Rule 20A audit plan described in Section 4.1.3.7 of this Decision.

22. In the event a "Motion Requesting Other Relief" is filed in connection with Application (A.) 15-09-001, A.15-09-001 shall remain open until a decision or ruling resolves the motion, and the issues raised by this motion shall extend the time for resolving this matter by another 18 months as provided for in Public Utilities Code Section 1701.5.

* * * * *