

January 21, 2020 L. Jan Reid



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, 2020. (U39M)

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

**COMMENTS OF L. JAN REID ON THE SETTLEMENT AGREEMENT
BETWEEN PACIFIC GAS AND ELECTRIC COMPANY AND OTHER PARTIES**

January 21, 2020

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I. Introduction

Pursuant to Rule 12.2 of the Commission's Rules of Practice and Procedure (Rules) and the December 2, 2019 email of Administrative Law Judge Rafael Lirag, L. Jan Reid (Reid) hereby files comments to the Settlement Agreement (SA) between Pacific Gas and Electric Company (PG&E) and other parties in Application (A.) 18-12-009, which is Pacific Gas and Electric Company's (PG&E's) Test Year 2020 General Rate Case (GRC) Application. Comments on the SA are due on January 21, 2020. I will send this pleading to the Docket Office on Tuesday, January 21, 2020 using the Commission's electronic filing system, intending that the pleading will be timely filed.

On December 20, 2019, the Settling Parties (SP) filed and served a motion (Motion) that requested Commission approval of the SA. The motion included the proposed SA. The Settling Parties are Pacific Gas and Electric Company, 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, and California City County Street Light Association.

Reid opposes part of the SA while supporting other elements of the SA. Reid's failure to comment on a specific section of the SA does not indicate Reid's support for that portion of the SA.

II. Summary of Recommendations

Reid recommends that:

1. The Commission should find that increases in the Community Wildfire Safety Program (CWSP) should be paid by shareholders, not by ratepayers. (pp. 3-4)
2. If the Commission decides to authorize additional ratepayer funding of PG&E's CWSP, the Commission should reject Sections 2.3.2.1, 2.3.2.2, and 4.1.1.5 of the SA. (pp. 3-9)
3. The Commission should order PG&E to file and serve any publicly available Federal Monitor reports on the 2020 GRC service list thereby making the report available to the public. (pp. 9-10)
4. The Commission should reject Sections 2.3.4.2.1 and 2.3.4.2.2 of the SA. (pp. 10-11)
5. The Commission should reject the SA's proposal to allow PG&E to close ten customer-service offices. (pp. 11-13)

III. Proposed Findings

Reid's recommendations are based on the following proposed findings.

1. PG&E did not provide a cost-effectiveness analysis of its proposed wildfire-mitigation plan. (pp. 5-6)
2. If the Commission approves Sections 2.3.2.1, 2.3.2.2, and 4.1.1.5 of the Settlement Agreement (SA), PG&E will be allowed to spend an additional \$427.758 million, for a total expenditure of approximately \$3.279 billion on the CWSP from 2020-2022. (pp. 5-6)
3. If the Commission approves Sections 2.3.4.2.1 of the SA, PG&E will be allowed to spend an additional \$362.785 million, for a total expenditure of approximately \$2.176 billion on Vegetation Management from 2020-2022. (pp. 5-6)
4. PG&E did not provide a cost-effectiveness analysis of its proposed wildfire-mitigation plan and refused to provide such information to Reid. (pp. 5-6)
5. PG&E is required by the U.S. District Court for the Northern District of California to fully comply with all applicable laws concerning vegetation management and clearance requirements, including Sections 4292 and 4293 of the California Public Resources Code, CPUC General Order 95, and FERC FAC-003-4. (p. 6)

6. Public Utilities Code Section (PUC §) 453(a) requires that “No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage.” (p. 11)

IV. Legal Requirements

The Commission has the right to approve settlements in their entirety, to modify settlements, or to reject settlements in their entirety. Rule 12.1(d) states that “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.”

Rule 12.2 states that “Comments must specify the portions of the settlement that the party opposes, the legal basis of its opposition, and the factual issues that it contests.”

Rule 12.4(c) states that after rejecting a settlement the Commission may “Propose alternative terms to the parties to the settlement which are acceptable to the Commission and allow the parties reasonable time within which to elect to accept such terms or to request other relief.”

V. The Settlement Agreement

A. Community Wildlife Safety Program

As explained in Exh. 56 14:4-13, I recommend that the Commission order PG&E to pay for all incremental costs of the Community Wildfire Safety Program (CWSP) for the following reasons:

1. It is unfair for ratepayers to be required to pay an additional \$500 million in an attempt to mitigate future wildfires. All of the safety improvements should be paid by shareholders.

2. PG&E did not provide a cost-effectiveness analysis of its proposed wildfire mitigation plan and refused to provide such information to Reid. (See PG&E response to question 6 of Reid discovery set 1)
3. PG&E has a poor safety record, as discussed in Section X [of Exhibit 56], Safety Performance.
4. There is no assurance that PG&E will spend the money that it has budgeted for safety.

If the Commission decides to authorize additional ratepayer funding of PG&E's CWSP, the Commission should reject Sections 2.3.2.1, 2.3.2.2, and 4.1.1.5 of the SA. As explained in Section V.A.2 below, these sections of the SA would allow PG&E to incur over \$427 million in additional costs from 2020-2022.

1. Proposed Costs

In its application, PG&E stated that it "proposes to spend approximately \$5 billion in expense and capital from 2018 to 2022 on our expanded Community Wildfire Safety Program." The SA allows PG&E to spend a minimum of approximately \$2.851 billion on expense and capital from 2020-2022. Of this amount, proposed spending for the Community Wildfire Safety Program (CWSP) is \$166.411 million in expense and \$2,685.308 million for capital over the three-year period. The total expenditures are based on information provided in the SA. (See SA, Table 2, p. 5)¹

¹ The settling parties refer to the values in Table 1 of the SA as the CWSP revenue requirement.

2. Balancing Accounts

The SA states that:

The Settling Parties agree that PG&E shall establish a two-way expense and capital balancing account . . . (SA, Section 2.3.2.1, p. 5)

If PG&E's actual total costs exceed 115% of the CWSP revenue requirement (as shown in Table 1) or PG&E's recorded average per mile unit costs exceed 115% of the CWSP average per mile unit costs (as shown in Table 2) during the Review Period, PG&E is required to establish the reasonableness of the amount of its actual costs that exceed either or both of these 115% thresholds in the Tier 3 advice letter. Costs up to 115% of the CWSP revenue requirement and 115% of the designated unit costs are deemed just and reasonable. (SA, Section 2.3.2.2.2, p. 5)

Thus, the SA allows PG&E to incur cost overruns of 15% with no reasonableness review or explanation by PG&E. If the Commission approves this portion of the SA, PG&E will be allowed to spend an additional \$427.758 million for a total expenditure of approximately \$3.279 billion.

Public Utilities Code Section (PUC §) 451 states that:

All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.

Rates are not just and reasonable unless the underlying costs are just and reasonable. In this case, there must be a showing that the expenditures are cost effective for ratepayers. The settling parties have not made such a showing of cost effectiveness. PG&E did not provide a cost-effectiveness analysis of its proposed wildfire mitigation plan and refused to provide such information to Reid. (Exh. 56 14:7-9)

3. Safety

Reid testified that: (Exh. 56 14:14-26)

PG&E is required by the U.S. District Court to fully comply with all applicable laws concerning vegetation management and clearance requirements, including Sections 4292 and 4293 of the California Public Resources Code, CPUC General Order 95, and FERC FAC-003-4.

Shareholders will benefit from such compliance because compliance could tend to minimize wildfires and increase profits, thereby increasing PG&E Corporation's stock price and allowing PG&E Corp. to resume dividend payments to shareholders.²

...

PG&E caused the fires that swept through its service territory. I note that PG&E is currently under probation for its criminal negligence in the 2010 San Bruno fire . . . Despite its poor safety record, PG&E now expects ratepayers to pay an additional \$500 million for safety improvements which may or may not reduce wildfires.

Reid testified that: (Exh. 56 15:2-24, Exh. 56 16:1-16)

PG&E has a history of poor safety performance. Barron's has reported that: (Barron's, May 16, 2019, available at <https://finance.yahoo.com/m/4fc24cdd-d1d8-3ca1-ab63-280d4ae07c17/pg%26e-power-lines-caused-the.html>)

(PCG)'s electrical transmission lines caused the deadliest fire in California's history, says the state's Department of Forestry and Fire Protection. CAL FIRE officials said Wednesday that last November's Camp Fire, which killed 85 civilians, burned 153,336 acres, and destroyed 18,804 structures, was caused by electrical transmission lines owned and operated by PG&E in the area around the town of Pulga, in California's Butte County. PG&E accepted CAL FIRE's determination in a statement.

² The last sentence of Judge Alsup's order states that "PG&E may not issue any dividends until it is in compliance with all applicable vegetation management requirements as set forth above." (Order, p. 2)

This is not the first time that PG&E equipment has caused wildfires. The Los Angeles Times has found that³ “Pacific Gas & Electric, the state’s largest utility providing electricity from Eureka to Bakersfield, reported 1,552 equipment-related fires from June 2014 through the end of 2017.” (Los Angeles Times, January 28, 2019, available at <https://www.latimes.com/politics/la-pol-ca-california-utilities-wildfires-regulators-20190128-story.html#nws=mcnewsletter>)

At a January 30, 2019 hearing, U.S. District Court Judge Alsup said that “There is one very clear-cut pattern here, and that’s that PG&E is starting these fires.” (Wall Street Journal, January 30, 2019, available at <https://www.wsj.com/articles/pg-e-violated-probation-federal-judge-says-in-heated-hearing-11548877120>)

According to the Wall Street Journal:

PG&E Corp. knew for years that hundreds of miles of high-voltage power lines could fail and spark fires, yet it repeatedly failed to perform the necessary upgrades.

Documents obtained by The Wall Street Journal under the Freedom of Information Act and in connection with a regulatory dispute over PG&E’s spending on its electrical grid show that the company has long been aware that parts of its 18,500-mile transmission system have reached the end of their useful lives.

³ Los Angeles Times, January 28, 2019, available at <https://www.latimes.com/politics/la-pol-ca-california-utilities-wildfires-regulators-20190128-story.html#nws=mcnewsletter>.

PG&E has effectively admitted that it caused at least some of the wildfires. Business Wire has reported that:⁴

Pacific Gas and Electric Company (PG&E) has reached agreements to resolve the wildfire claims held by 18 local public entities (cities, counties, districts and public agencies) impacted by the 2015 Butte Fire, 2017 Northern California wildfires and 2018 Camp Fire. Under the agreements, \$1 billion in payments will be made as part of a Chapter 11 Plan of Reorganization to be filed in PG&E's pending Chapter 11 case (POR).

4. Cost Causation

It is longstanding Commission policy that whoever caused a cost should pay for it. This is often referred to as the cost causation principle. Since PG&E caused the wildfires, the incremental CWSP costs should be paid for by PG&E shareholders and not by ratepayers.

The Energy Division has defined cost causation as a "Method of allocating costs (e.g., generation, transmission, distribution) and designing rates based on the drivers of the cost categories in an attempt to assign those costs to the customers who caused the costs to be incurred."⁵

Although cost causation is usually related to customer costs, it is applicable to the utilities as well. In 2015, Reid filed an Application for Rehearing (AFR) of D.15-09-018. One of the issues raised by Reid in his AFR was the allocation of intervenor compensation costs between the three major IOUs. Reid argued that

⁴ Business Wire, June 19, 2019, available at <https://finance.yahoo.com/news/pg-e-local-public-entities-130000294.html>.

⁵ California Public Utilities Commission Residential Rate Structure OIR R.12-06-013, Workshop Presentation, Rate Design Elements, Concepts and Definitions, December 5, 2012, <http://www.cpuc.ca.gov/NR/rdonlyres/B0A548AC-5286-42F3-A98A-BA8241DEAECF/0/SlidesforRRSOIRWorkshopDec562012.pdf>

PG&E should pay all of Reid's intervenor compensation costs since PG&E was the driver of these costs. (Application for Rehearing by L. Jan Reid on Decision 15-09-018, October 21, 2015, pp. 11-12)

The Commission agreed with Reid on this issue and required PG&E to pay the entire compensation award authorized by the Commission. (See D.16-12-057, Conclusion of Law 1, slip op. at 24) Thus, the Commission reaffirmed the principle of cost causation.

The principle of cost causation also applies in the instant application. PG&E is responsible for the wildfires, and thus should be responsible for the incremental CWSP costs.

B. Federal Monitor's Report

The SA states that "PG&E shall serve any publicly-available Federal Monitor report on the 2020 GRC service list if the federal court orders the report to be issued to the public." (SA, Section 2.3.2.3.3, p. 7) Thus, if a party wishes to review a Federal Monitor's report, it must file as a party before the Federal Court and request that the court order PG&E to serve the report to the GRC service list. Such a process is both burdensome and expensive for many intervenors; and is inconsistent with the intent of the Bagley-Keene Open Meeting Act.

The Bagley Keene Open Meeting Act states that: (Government Code Section 11120)

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

Reid testified that: (Exh. 56 13:9-21)

The CPUC has stated that “Strong enforcement is critical to ensuring that the CPUC's statutory mandates are carried out and that ratepayers and the public are protected from safety, reliability, service quality, and other violations.” (See <https://www.cpuc.ca.gov/enforcement/>)

Strong enforcement cannot occur unless the Commission has adequate information concerning the status of PG&E's wildfire mitigation and wildfire safety work.

Therefore, I recommend that the Commission order PG&E to file and serve any publicly available Federal Monitor report on the 2020 GRC service list, thereby making the report available to the public.

C. Vegetation Management Balancing Account

The SA adopts the forecast in Table 3 of the SA and states that:

If PG&E's actual total costs exceed 120% of the total amounts in Table 3 above during the Review Period, PG&E is required to establish the reasonableness of the amount of its actual costs incurred during the Review Period that exceed 120% in the Tier 3 advice letter (SA, Section 2.3.4.2.1, p. 9)

Thus, the SA allows PG&E to incur cost overruns of 20% with no reasonableness review or explanation by PG&E. If the Commission approves this portion of the SA, PG&E will be allowed to spend an additional \$362.785 million on Vegetation Management (VM), for a total VM expenditure of approximately \$2.176 billion.

Public Utilities Code Section (PUC §) 451 states that:

All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.

Rates are not just and reasonable unless the underlying costs are just and reasonable. In this case, there must be a showing that all additional expenditures above the forecast are cost-effective for ratepayers. The settling parties have not required PG&E to make such a showing of cost effectiveness.

Therefore, I recommend that Sections 2.3.4.2.1 and Sections 2.3.4.2.2 be rejected by the Commission.

D. Customer Service Offices

PG&E initially proposed to close 17 Customer Service Offices (CSOs). Reid testified that:

PG&E's proposal is inconsistent with Commission policy and should be rejected by the Commission. These CSOs disproportionately serve disadvantaged communities, who are low income, older, more Hispanic/Latino, and more inclined to be disabled. (Exh. 56 8:19-22)

...

PG&E conducted 1,305 in-person customer surveys at 18 CSOs during high-usage periods, 17 of which PG&E seeks Commission authority to close. PG&E states that it "learned from the surveys that 62 percent of customers visiting the 18 CSOs reported having annual incomes lower than \$50,000, 38 percent were Hispanic/Latino, 30 percent were 65 years of age or older, and 22 percent self-identified as having a disability (9% reported having a mobility disability)." (Exhibit 56, 9:1-7)

When PG&E provides services, it has a legal obligation to ensure that all customers are treated fairly in the process. PUC § 453(a) requires that "No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage."

Reid testified that “the closure of the 17 CSOs would not be consistent with PUC § 453(a) because it would disproportionately impact customers who are low-income, elderly, Hispanic/Latino, and more inclined to be disabled.” (Exh. 56 9:16-18)

The SA states that: (SA, Section 2.5.6, p. 21)

The Settling Parties agree that PG&E may, following the approval of this Agreement, close up to ten of the requested 17 CSOs. The ten CSOs will be selected by PG&E from the list of 17 proposed for closure, within PG&E's sole discretion. PG&E will notify the CPUC which offices will be closed with a Tier 1 advice letter.

The settling parties are asking the Commission to approve the closure of ten CSOs without knowing which offices will be closed, the demographic characteristics of the people who currently use those offices, or whether the closures are consistent with PUC § 453(a). In this instance, the demographic characteristics include the percent of customers:

- With annual incomes lower than \$50,000
- Who are Hispanic/Latino
- Over 65 years of age
- Who have a disability
- Who have a mobility disability

The settling parties apparently do not know this demographic information because they do not know which offices will be closed. Therefore, the Commission should reject Section 2.5.6 of the SA and prohibit PG&E from closing any of the CSOs at this time.

VI. Conclusion

The Commission should adopt Reid's recommendations for the reasons given herein.

* * *

Dated January 21, 2020, at Santa Cruz, California.

/s/

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VERIFICATION

I, L. Jan Reid, make this verification on my behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters that are stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Dated January 21, 2020, at Santa Cruz, California.

/s/

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