



FILED

05/03/21
04:59 PM

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

**REPLY OF THE UTILITY REFORM NETWORK
REGARDING PETITION FOR MODIFICATION
TO REQUIRE PACIFIC GAS AND ELECTRIC COMPANY TO PRESENT
AN INFLATION-CONSTRAINED ALTERNATIVE PROPOSAL
IN ITS UPCOMING GENERAL RATE CASE**



May 3, 2021

Thomas Long, Legal Director
Robert Finkelstein, General Counsel
Hayley Goodson, Staff Attorney

THE UTILITY REFORM NETWORK

785 Market Street, Suite 1400
San Francisco, CA 94103
Phone: (415) 929-8876
Email: bfinkelstein@turn.org

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	LIKE PG&E’S PREFERRED FORECASTS, THE CPI-CONSTRAINED SPENDING FIGURES WOULD ONLY BE ADOPTED TO THE EXTENT THE COMMISSION FINDS THEM REASONABLE.....	3
III.	A CPI-CONSTRAINED ALTERNATIVE WOULD STILL RESULT IN AN OVERALL INCREASE IN SPENDING IN 2023 AS COMPARED TO PREVIOUS YEARS.	6
IV.	TURN’S PETITION SEEKS INFORMATION CONSISTENT WITH THE UTILITY’S OWN FORECASTING AND BUDGETING EFFORTS, AND WITH THE COMMISSION’S REGULAR PRACTICE OF DIRECTING UTILITIES TO MAKE A SUPPLEMENTAL OR ADDITIONAL SHOWING IN APPLICATION PROCEEDINGS.	9
	A. The CPI-Constrained Showing Required Of PG&E Would Be Similar To Forecasting And Budgeting The Utility Performs In The Regular Course Of Preparing GRCs And Implementing Their Outcomes.	9
	B. The Commission Regularly Directs Utilities To Provide A Supplemental Showing Or To Address An Alternative Scenario In Order To Develop A Better Record.	10
V.	THE UTILITIES’ LEGAL ARGUMENTS ARE BOTH ERRONEOUS AND PREMATURE.	13
	A. PG&E’s Claimed Legal Mandate For Dollar-For-Dollar Recovery Of All GRC-Related Costs Is Not Only Wrong, But Inconsistent With PG&E’s Recent GRC Testimony.....	13
	B. The Fifth Amendment’s Taking Clause and the Regulatory Compact Are Not Implicated By A Requirement That The Utility Provide Additional Information.	14
	C. The First Amendment Is Not Implicated By A Commission Directive To The Utility To Provide Additional Information For Use In The Regulatory Process.	17
VI.	THE UPCOMING PG&E GRC PROVIDES THE COMMISSION A KEY OPPORTUNITY TO ADDRESS AFFORDABILITY CONCERNS IN A MANNER COMPLEMENTARY TO THE AFFORDABILITY OIR.....	18

VII.	WHERE THE PURPOSE IS TO OBTAIN PG&E’S BEST PROPOSAL FOR HOW IT WOULD ACHIEVE A CPI-CONSTRAINED LEVEL OF GRC SPENDING WHILE PROVIDING SAFE AND RELIABLE SERVICE, THE SHOWING MUST BE PG&E’S, AND MUST BE AT A GRANULAR LEVEL.....	20
VIII.	WHILE THE CPI IS AN APPROPRIATE MEASURE FOR AN INFLATION-CONSTRAINED ALTERNATIVE UNDER THE CIRCUMSTANCES HERE, THE COMMISSION COULD CONSIDER AN ALTERNATIVE SUCH AS GLOBAL INSIGHT ESCALATION FORECASTS FOR 2022-2025.....	23
IX.	THE COMMISSION MUST REJECT SCE’S ATTEMPT TO CONFUSE AN EARLIER TURN PROPOSAL MADE TO STREAMLINE THE GRC PROCESS WITH THE PROPOSAL HERE TO ACHIEVE A RECORD TO ENABLE A FULLER EXPLORATION OF AFFORDABILITY ISSUES.....	25
X.	TURN’S PETITION SATISFIES THE REQUIREMENTS OF RULE 16.4.	27
XI.	CONCLUSION	28

**REPLY OF THE UTILITY REFORM NETWORK
REGARDING PETITION FOR MODIFICATION
TO REQUIRE PACIFIC GAS AND ELECTRIC COMPANY TO PRESENT
AN INFLATION-CONSTRAINED ALTERNATIVE PROPOSAL
IN ITS UPCOMING GENERAL RATE CASE**

Pursuant to Rule 16.4(g) of the Commission’s Rules of Practice and Procedure, The Utility Reform Network (TURN) submits this reply regarding its Petition for Modification of Decision (D.) 20-12-005, seeking to require Pacific Gas and Electric Company (PG&E) to supplement its upcoming General Rate Case (GRC) proposal with an alternative proposal that limits the growth in spending by the rate of inflation.¹ Responses to TURN’s petition were filed by PG&E, Southern California Edison Company (SCE), Southern California Gas Company and San Diego Gas & Electric Company (referred to jointly as the Sempra Utilities), and the Coalition of California Utilities (CUE). This Reply specifically addresses the arguments raised in the utilities’ responses; to the extent CUE’s response made relevant arguments, they were not materially different than those raised by the utilities.

I. INTRODUCTION

A CPI-constrained alternative for PG&E, presented as part of its direct showing and with PG&E’s explanation of the choices and trade-offs the utility would make under those conditions, would provide important information to the test year 2023 GRC proceeding. How the

¹ Administrative Law Judge Rafael Lirag granted TURN permission to file this reply in an e-mail message of April 26, 2021.

information is then relied upon in ensuring the adopted test year 2023 and post-test year authorized amounts for PG&E are reasonable and do not make the current affordability challenge worse would be a matter of further consideration in the GRC. But having that information available in the GRC should ensure a more comprehensive array of options is available, certainly as compared to utility forecasts that are more in the nature of aspirational spending plans.

The utilities' responses fail to raise any meritorious challenge to the argument that a utility-developed set of CPI-constrained spending forecasts would improve the quality of the information for assessing affordability impacts in the GRC. Instead, they present arguments that presume the Commission is incapable of making good use of such information. To be clear, nothing in TURN's petition proposes that the Commission act in a manner that would undermine or compromise the ongoing efforts in the Affordability rulemaking proceeding. Similarly, TURN's petition does not seek a change to the Rate Case Plan. And when PG&E and the Sempra Utilities invoke the Takings Clause,² they effectively argue that the mere act of requiring the utility to provide information about the decisions and choices it would make were its GRC spending limited to CPI-based constraints would necessarily lead to an outcome contrary to its reasonable cost recovery expectations.

Nothing in TURN's petition seeks to preordain any outcome the Commission may adopt in PG&E's test year 2023 GRC. Instead, it is based on the premise that a PG&E-sponsored

² PG&E Response, pp. 6-7; Sempra Utilities Response, p. 5.

inflation-constrained alternative showing will bolster that GRC's record, particularly with regard to the affordability issues the Commission knows it will need to address as part of that GRC.³

The Commission should grant TURN's petition and make the requested modification to D.20-12-005.

II. LIKE PG&E'S PREFERRED FORECASTS, THE CPI-CONSTRAINED SPENDING FIGURES WOULD ONLY BE ADOPTED TO THE EXTENT THE COMMISSION FINDS THEM REASONABLE.

PG&E's response is premised on the unsupportable logic that, by even requiring the utility to make a showing on how it would operate within CPI-constrained spending authorization, the Commission would be on a path that can only lead to an outcome that provides the utility with inadequate cost recovery. PG&E characterizes a CPI-constrained showing as if it "would necessarily compromise the funding of critical safety work," leaving PG&E with only the choice of lowering its standards of safety and reliability, or foregoing recovery of costs of providing service.⁴ There is nothing in TURN's petition that suggests the Commission would (or should) view the requirement of a CPI-constrained alternative showing as a preordained determination that such an outcome would be adopted for any specific program or project. To be clear, for many programs and projects, TURN submits it could well be reasonable for the

³ The flaw in the utilities' arguments may be a product of their skewed view of their own role in a GRC. PG&E takes the position that only "the utility's view of how best to operate safely and reliably" should be taken into account. PG&E Response, p. 14. SCE would have the Commission limit its GRC review to only the utility's proposals, since "what is relevant in a GRC [is] the utilities' forecast cost of service." SCE Response, p. 7.

⁴ PG&E Response, p. 3.

Commission to authorize 2023 spending at a level that would provide no more than a CPI-constrained increase as compared to the amounts embedded in the authorized 2022 spending. However, just as is the case with the utility's preferred forecast that will accompany its application, whether or not the CPI-constrained forecast is adopted for any program or project would depend upon the Commission's ultimate determination of reasonableness, based on its review of a fully-developed GRC record. The purpose of TURN's petition is not to seek a preordained outcome on anything; rather, it is to ensure the GRC process and, ultimately, the Commission itself benefits from having more useful information about options that seek to better mitigate the affordability pressures inherent in a GRC.

Particularly inapposite is PG&E's attempt to label TURN's petition as representative of "the type of historical thinking that has brought us to the present situation."⁵ The history of GRCs before the Commission is one of the utility sponsoring its preferred forecasts at the start of the proceeding, largely free of any spending constraint other than whatever the utility chooses to impose upon itself. And the result of recent history is GRC outcomes that have contributed to an affordability challenge that warrants immediate and multi-faceted attention in order to prevent it from reaching the point of being an affordability crisis. While the GRC revenue requirements of the major energy utilities are not the sole cause of the need to refocus on achieving and maintaining affordability of essential utility services, they are certainly a major contributing factor. Thus, if there is "historical thinking" tied to the present situation, it is the continued

⁵ PG&E Response, p. 2.

reliance on the utility to have near-absolute discretion over the spending levels and associated forecasts to present as the starting point for consideration in a GRC proceeding. By adding a CPI-constrained alternative, TURN's petition seeks to break out of such historical thinking and, by doing so, give the Commission another set of tools that will be useful in mitigating the affordability impacts that otherwise come from the 2023 GRC.

Relatedly, the Commission should recognize that PG&E's arguments intimating that anything less than its preferred forecasts would be necessarily inadequate serve as further evidence of the "anchor bias" that results from having absolute control over the initial forecast for the GRC.⁶ The ongoing recitation of perceived threats to PG&E's ability to continue to pursue the programs and projects necessary to provide safe and reliable service and help implement the state's policy goals is merely an indirect attempt to have the Commission embrace the notion that only the utility's preferred forecasts would serve as a reasonable starting point for purposes of adopting a GRC revenue requirement. But the Commission has long recognized that it can adopt a GRC revenue requirement consistent with lower levels of spending than the utility has forecasted, while still requiring the utility to meet its statutory and regulatory obligations and commitments. Indeed, TURN is unaware of any instance in which the Commission has done otherwise in a GRC; the adopted outcome is always below the amounts the utility had forecasted, whether in its original testimony or as its final "litigation position" in the proceeding. Granting TURN's petition would serve to ensure a broader range of options is considered from the very

⁶ TURN Petition, pp. 10-11.

start of the GRC proceeding. The CPI-constrained option would provide the Commission with the means of comparing PG&E's request to an alternative more closely tied to affordability and, in this way, reduce the anchor bias influence of PG&E's preferred forecast.

III. A CPI-CONSTRAINED ALTERNATIVE WOULD STILL RESULT IN AN OVERALL INCREASE IN SPENDING IN 2023 AS COMPARED TO PREVIOUS YEARS.

Resolving TURN's petition does not require the Commission to address PG&E's off-base claims that inflation-constrained GRC spending would be insufficient to achieve safe and reliable service. However, in the event the Commission views PG&E's argument as relevant in any way, it should be aware of the problems with PG&E's contention.

A CPI-constrained alternative would provide PG&E with increased funding for O&M and capital expenditures in the 2023 test year as compared to the spending levels reflected in the authorized revenue requirement for 2022. And the same is true for each year that follows within the upcoming GRC cycle, as the funding for expenditures would continue to increase on a year-to-year basis. In assessing TURN's proposal, the Commission must keep in mind this salient characteristic, rather than ignore it as PG&E did in its response. Similarly, the Commission cannot permit PG&E to rely on unsupported assertions that, for example, a CPI-constrained alternative would "necessarily compromise the funding of critical safety work" or "lower standards of safety and reliability."⁷ Instead, the Commission needs to strip away the hyperbole

⁷ PG&E Response, p. 3.

and recognize that the spending forecasts required to achieve a CPI-constrained alternative should be reasonably expected to provide the utility with funding at a sufficient level to allow a competently-managed enterprise to provide safe and reliable service.

PG&E's repeated tales of the doom and gloom that would necessarily result under a CPI-constrained spending forecast fail to acknowledge the fact that, even with such a constraint, in every year PG&E's spending could be at higher level than it was the year before. The Commission should presume that the spending levels embedded in the authorized GRC revenue requirement for 2022 will prove sufficient to ensure the utility has sufficient funds to provide safe and reliable service in that year; certainly PG&E's response gives the agency no reason to conclude otherwise. The CPI-constrained spending forecast called for in TURN's petition would use the 2022 spending levels as the starting point, with a CPI-based increase for the 2023 test year. The notion that such an increase for 2023 (and in each year thereafter during the upcoming GRC cycle) would leave PG&E no options other than to reduce infrastructure investments, and jeopardize customer safety and grid reliability,⁸ is simply not credible. If PG&E anticipates being able to make necessary investments and achieve required levels of safe and reliable service at the spending levels anticipated for 2022, there is no reason to expect the utility would find itself unable to continue to do so in 2023.

PG&E characterizes TURN's position on the utility's ability to operate in 2023 while limiting its incurred costs to 2022 levels increased by an inflation-based escalator as one that

⁸ PG&E Response, pp. 10-11.

“deliberately ignores the cost increases outlined in the White Paper.” The utility attempts to bolster its point by citing the fact that its 2020 GRC application was prepared prior to the utility’s submission of a 2020 and 2021 Wildfire Mitigation Plan.⁹ PG&E’s argument might make sense if its test year 2020 GRC forecasts and the adopted funding levels contained only minimal amounts for wildfire mitigation activities. To the contrary, PG&E’s GRC showing included a “Community Wildfire Safety Program” (CWSP) and “enhanced” vegetation management, both of which include programs and activities aimed at reducing wildfire risk. The GRC decision authorized wildfire prevention and mitigation O&M costs of approximately \$431.5 million for 2020, with additional increases of \$54 million in 2021 and \$61 million in 2022 for “enhanced” vegetation management.¹⁰ The authorized capital expenditures for the CWSP program alone amount to \$603 million in 2020, \$931 million in 2021, and \$1.15 billion in 2022.¹¹ In short, PG&E will have been undertaking a very substantial level of GRC-funded wildfire mitigation activities in 2020, 2021 and 2022; an inflation-constrained estimate that is based on the authorized funding for 2022 is not “ignoring” the cost increases in recent years, but recognizing and accommodating them.

⁹ PG&E Response, p. 9.

¹⁰ D.20-12-005, pp. 56 and 74.

¹¹ D.20-12-005, p. 119.

IV. TURN'S PETITION SEEKS INFORMATION CONSISTENT WITH THE UTILITY'S OWN FORECASTING AND BUDGETING EFFORTS, AND WITH THE COMMISSION'S REGULAR PRACTICE OF DIRECTING UTILITIES TO MAKE A SUPPLEMENTAL OR ADDITIONAL SHOWING IN APPLICATION PROCEEDINGS.

A. The CPI-Constrained Showing Required Of PG&E Would Be Similar To Forecasting And Budgeting The Utility Performs In The Regular Course Of Preparing GRCs And Implementing Their Outcomes.

PG&E asks the Commission to treat preparation of forecasts consistent with a CPI-constrained outcome as if it were an exercise that is entirely alien to the utility, even going so far as asserting that its witnesses would be unable to sponsor the results of the effort.¹² The Commission should reject such assertions, as they are inconsistent with the reality of PG&E decision-making at each stage of recent GRCs. For example, in its direct testimony in the test year 2020 GRC, PG&E explained that it was forecasting a reduction in proactive reliability work and associated spending during the GRC cycle in order to make more significant investment in wildfire mitigation initiatives.¹³ That is, faced with a choice between seeking an even greater increase to its cumulative authorized spending, or mitigating the overall increase by scaling back the forecasted spending in one area of GRC work, PG&E chose the latter. It makes no sense for

¹² PG&E Response, p. 18.

¹³ Ex. PG&E-4, Vol. 1, p. 1-7 in A.18-12-009 (PG&E test year 2020 GRC):

Because of the need for significant investment in CWSP initiatives, PG&E is forecasting an overall reduction in proactive reliability work and associated spending for the 2020 GRC cycle. This reduction may cause some near-term decrease in reliability, but PG&E does not believe the decrease will be significant.

the utility to now posture as if it is incapable of recognizing the need for such tradeoffs, or developing spending alternatives where they are needed.

At the other end of the GRC process, where the final Commission decision addresses the utility's request on the merits, the authorized test year and post-test year revenue requirements are nearly always below the level sought in the utility's final litigation position. And when that happens, the utility is required to determine how it will make the necessary investments and expenditures to provide safe and reliable service, while working within the newly adopted funding constraints. Making such adjustments in order to achieve forecasts consistent with a CPI-constrained increase may require PG&E to take on the task more seriously than it has in the past, and earlier in the GRC process. However, the utility must not be permitted to complain that making adjustments consistent with a CPI-constrained increase is a wholly alien process unlike anything it regularly goes through for operations covered by its GRC funding.

B. The Commission Regularly Directs Utilities To Provide A Supplemental Showing Or To Address An Alternative Scenario In Order To Develop A Better Record.

TURN's petition asks the Commission to require PG&E to provide a supplemental showing in its direct testimony for its test year 2023 GRC that addresses the alternative scenario of an inflation-constrained outcome. Such an outcome is not materially different from a number of prior Commission proceedings and decisions where the utility was directed to make an additional showing to provide the agency with information necessary to fully analyze alternatives to the utility's preferred proposal.

In some instances, the supplemental showing is directed in the earliest stages of the proceeding. For example, in A.15-02-009 (PG&E application for Electric Vehicle Infrastructure Program), the Assigned Commissioner and ALJ determined that PG&E’s proposal was of such a scale that the utility should present a supplement to its application that proposed a more phased deployment approach.¹⁴ The Scoping Memo expressed concern that the scale of PG&E’s proposal did not provide the Commission with the type of information and review opportunities “necessary when considering a program of such magnitude.” Therefore, the Scoping Memo required PG&E (over the utility’s objection) to supplement its application to present a more phased deployment approach. It also directed the utility to respond to a series of specific questions.¹⁵ Similarly, in A.15-09-013 (the Sempra Utilities application seeking a Certificate of Public Convenience and Necessity (CPCN) for the “Pipeline Safety & Reliability Project”), an Assigned Commissioner’s Ruling issued in the early stages of the proceeding directed the utilities to file and serve an amended application to address a number of deficiencies identified in the application as originally submitted.¹⁶

In other instances, the requirement for a supplemental showing arrives much later in the proceeding, with the supplemental showing to be reviewed in that same proceeding. For

¹⁴ A.15-02-009, September 4, 2015 Joint Assigned Commissioner and ALJ Scoping Memo and Ruling, pp. 7-9.

¹⁵ *Id.*, pp. 7-9 and 15 (Ruling Paragraph 1).

¹⁶ A.15-09-013, January 22, 2016 Joint Assigned Commissioner and ALJ Ruling (<https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M157/K873/157873839.PDF>).

example, in D.18-08-026 (regarding, in part, SCE's application for a CPCN for the Alberhill subtransmission project), the Commission directed SCE to supplement the existing record with additional analyses of alternatives that might achieve the underlying benefits through a project of a different scope. To that end, the Commission specified nine specific elements of the required additional analyses.¹⁷

And GRC decisions regularly direct the utility to make a supplemental or additional showing in its next GRC. In D.14-08-032 (issued in PG&E's test year 2014 GRC), the Commission directed the utility to present in its next GRC showing a different break-out of cost information for distribution planning areas, and indicated that the Commission planned to adopt a changed approach in its review of such costs.¹⁸ And in D.15-11-021 (issued in SCE's test year 2015 GRC), the Commission directed the utility to present its analysis of additional options for remediation of overloaded poles, with several such options specified.¹⁹

Thus, the Commission should reject the utilities' arguments that suggest TURN's petition seeks an extraordinary outcome or is an attempt to inappropriately shift to the utility work or analysis that should fall on TURN as an intervenor in a GRC. The Commission should recognize that the inflation-constrained showing called for in the petition would serve to develop the record in a manner that will enable the agency to better achieve a GRC outcome that best

¹⁷ D.18-08-026, pp. 32-34 and Ordering Paragraph 4.

¹⁸ D.14-08-032, Ordering Paragraph 16.

¹⁹ D.15-11-021, Ordering Paragraph 9.b. This was one of a number of requirements the Commission laid out for SCE's showing in its next GRC.

balances “affordability” with the other important goals in a GRC proceeding. And, in this way, the Commission would not be taking an action “on TURN’s behalf,”²⁰ or “shifting ... TURN’s own oppositional evidentiary burden to PG&E.”²¹ Rather, the Commission would be acting in a manner consistent with its prior decisions and rulings that had identified a need for additional information in its efforts to best balance the numerous legitimate goals of the regulatory process, then directed the utility to provide the information necessary to address that need.

V. THE UTILITIES’ LEGAL ARGUMENTS ARE BOTH ERRONEOUS AND PREMATURE.

A. PG&E’s Claimed Legal Mandate For Dollar-For-Dollar Recovery Of All GRC-Related Costs Is Not Only Wrong, But Inconsistent With PG&E’s Recent GRC Testimony.

PG&E’s response includes the remarkable claim, “The Commission is legally mandated to approve in GRC proceedings a revenue requirement sufficient for PG&E to recover its costs ‘on a dollar-for-dollar basis’ plus a reasonable rate of return.”²² The claim is baseless, as PG&E should well know. The 1978 decision PG&E relies upon addressed a “fuel adjustment clause” that the Commission had authorized to remove certain costs from the forecast ratemaking applicable to GRCs, and to address circumstances “intended to contain no element of profit whatsoever.”²³ And in D.20-12-005, the Commission adopted the PG&E-supported settlement

²⁰ Sempra Utilities Response, pp. 9, 14, 15, and 16.

²¹ Sempra Utilities Response, p. 13.

²² PG&E Response, p. 6, citing *Southern Cal. Edison Co. v. PUC* (1978) 20 Cal. 3d 813, 819.

²³ *Southern Cal. Edison Co. v. PUC* (1978) 20 Cal. 3d 813, 817-818.

for the test year 2020 GRC, which included six principles that will be applicable in the utility's next GRC and Gas Transmission and Storage (GT&S) application.²⁴ The second principle states, "PG&E is responsible for providing safe and reliable customer service whether or not its overall spending matches funding levels authorized or imputed in rates."²⁵ And in its direct testimony in the 2020 GRC, PG&E stated that it "understands this principle to mean that PG&E's responsibility to provide safe and reliable service is independent of PG&E's overall spending level."²⁶ The utility's statement in its response to TURN's petition is fundamentally inconsistent with its prior statements, is simply incorrect, and the arguments that rely on the statement should be disregarded.

B. The Fifth Amendment's Taking Clause and the Regulatory Compact Are Not Implicated By A Requirement That The Utility Provide Additional Information.

The Sempra Utilities present a mirror image to PG&E's "legal right to recovery" argument, contending that any outcome that fails to provide sufficient assurance of cost recovery would constitute an impermissible "taking" under the U.S. Constitution. The utilities' responses make arguments based on the "regulatory compact"²⁷ and the Takings Clause of the Fifth

²⁴ D.20-12-005, pp. 324-326.

²⁵ *Id.*, at 325. *See also*, GRC Settlement Agreement, Section 5.2.

²⁶ Ex. 2 (PG&E-2 – Direct Testimony of PG&E on Safety, Risk, and Integrated Planning), p. 2-12. The utility's direct testimony addressed its compliance with the similar principle adopted in its test year 2017 GRC.

²⁷ PG&E Response, pp. 6-7.

Amendment,²⁸ suggesting the Commission is effectively barred from even considering any of the information that might be contained in such a supplemental showing, lest PG&E face an outcome under which it may not achieve full cost recovery.

The Commission should reject the utilities' arguments for several reasons. First, it is premature to raise such arguments at this stage of the regulatory process. Again, TURN's petition asks the Commission to direct PG&E to make a supplemental showing in the earliest stages of the case; it does not seek any predetermination of the outcome that the Commission may adopt based on the full evidentiary record, including that supplemental showing. The determination of whether an adopted outcome constitutes is "just and reasonable" (and, therefore, not a taking by definition) is based on the "result reached and not the method employed."²⁹ The utilities cannot presume to know the outcome the Commission would reach in the upcoming GRC, and have no basis upon which to even suggest that the additional information TURN seeks would lead to a takings violation in the final decision.

Second, the underlying contention that any outcome that fails to permit the utility "to recover both its reasonable operating costs and expenses, as well as a reasonable rate of return on the value of the property devoted to its public use" would represent a "taking" ignores the U.S. Supreme Court jurisprudence since 1923, and the Commission's decisions directly addressing

²⁸ Sempra Utilities Response, pp. 4-5.

²⁹ D.04-12-018 (SCE Catalina Gas GRC), pp. 21-22, quoting the U.S. Supreme Court's "seminal *Hope Natural Gas* decision."

such topics.³⁰ The Commission recently rejected similar arguments that were based on an assumption that a utility is guaranteed rate recovery for any costs that it incurs. Instead, the Commission noted that the determination of whether an outcome constitutes a “taking” depends on whether the regulation or rate is unjust or unreasonable, which itself “depends on balancing of the interests of the regulated entity and the interests of its ratepayers.”³¹ The Commission explained further:

Utilities are not entitled to any particular rate recovery. “That a particular rate may not cover the costs of a particular good or service does not work confiscation in and of itself.” [quoting *20th Century Insurance*] Similarly, a regulated [firm] does not have a constitutional right to a profit or any right against a loss. [citing *20th Century*] As long as the regulation or rates “‘as a whole afford [the regulated firm] just compensation for [its] over-all services to the public,’ they are not confiscatory. (Citation omitted.)”³²

The Commission has similarly recognized that “a just and reasonable rate which results from balancing consumer and investor interests might not provide ‘enough revenue not only for operating expenses but also for the capital costs of the business ... includ[ing] service on the debt and dividends on the stock.’”³³

³⁰ Sempra Utilities Response, p. 5, citing *Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm’n*, 262 U.S. 679 (1923).

³¹ D.18-07-025 (denying SDG&E application for rehearing of WEMA decision), p. 31, citing *Duquesne Light Co. v. Barasch* (1989) 488 U.S. 299; *20th Century Insurance Co. v. Garamendi* (1994) 8 Cal 4th 216; and *Federal Power Commission v. Hope Natural Gas Company* (1943) 320 U.S. 591.

³² *Id.*, p. 31, citing and quoting from *20th Century Insurance Co. v. Garamendi* (1994) 8 Cal 4th 216.

³³ D.10-10-036 (Calaveras Telephone Co., et al. Application re: Dissolution of Rural Telephone Bank), p. 6, fn. 5 (citing *Hope*).

As noted earlier, the utilities cannot know at this juncture whether the adopted revenue requirement for PG&E's test year 2023 GRC will even arguably unduly limit PG&E's recovery of costs of providing services subject to the GRC revenue requirement. But even if they believe this to be the case when a final decision issues, their arguments claiming an entitlement to cost recovery and asserting that falling short of that standard would necessarily constitute a "taking" are simply wrong, as the Commission has made clear.

C. The First Amendment Is Not Implicated By A Commission Directive To The Utility To Provide Additional Information For Use In The Regulatory Process.

TURN's petition seeks to have the Commission direct PG&E to provide additional PG&E-produced information into the record so that the administrative decision-making process would benefit therefrom. According to the Sempra Utilities, granting the petition would violate PG&E's First Amendment rights under the U.S. Constitution, by compelling PG&E "to provide for views other than its own," and creating a "forced association with potentially hostile views" that "risks forcing [PG&E] to speak where it would prefer to remain silent."³⁴ But the circumstances are entirely different. The Supreme Court decision underlying the Sempra Utilities' argument is the "bill stuffer" case, where the Commission had determined that TURN would have access to PG&E's billing envelope four times each year, with no limits on what the TURN-authored bill insert might say other than a disclaimer to make clear that the message was

³⁴ Sempra Utilities Response, pp. 9-10, quoting *PG&E v. CPUC*, 475 U.S. 1 (1979).

not from PG&E.³⁵ Here, the information in question would be prepared by the utility, and not submitted directly to its customers as a billing insert, but to the Commission as part of the regulatory process. As noted above, it is not materially different than other information the Commission regularly requires a regulated utility to submit in an application proceeding in order to supplement the utility's original showing, including setting forth alternatives that, left to its own devices, the utility would have chosen to not present. There is no First Amendment-protected right of PG&E that is implicated by the Commission directing the utility to expand and improve the evidentiary record through provision of additional testimony, even if it is testimony the utility would prefer not to present.

VI. THE UPCOMING PG&E GRC PROVIDES THE COMMISSION A KEY OPPORTUNITY TO ADDRESS AFFORDABILITY CONCERNS IN A MANNER COMPLEMENTARY TO THE AFFORDABILITY OIR.

The utilities' responses suggest they view affordability as an issue to be primarily if not exclusively considered and addressed through the rulemaking opened several years ago on this topic. PG&E urges the Commission to address such matters only on a state-wide basis, and characterizes TURN's proposal as an effort to "leap to a different, more dangerous solution"³⁶ than will be achieved through the OIR. The Sempra Utilities describe the petition as an "end-run around the Affordability Rulemaking's important work."³⁷

³⁵ *PG&E v. CPUC*, 475 U.S. 1, 6 (1979).

³⁶ PG&E Response, pp. 9-10 and 13.

³⁷ Sempra Utilities Response, p. 3.

The Commission should reject PG&E's position. Addressing affordability of the rates the regulated utilities charge for essential services is not appropriately treated with such an "either/or" approach, with the Commission's venue for review and action limited to one proceeding or another. Indeed, given the magnitude of the affordability challenge, the Commission should be looking for opportunities to more meaningfully assess and address affordability issues in every ratesetting docket, particularly those that have very significant rate and bill implications. PG&E's test year 2023 GRC application docket is clearly one such opportunity.

The Commission has long demonstrated its ability to simultaneously pursue parallel but complementary paths to address significant challenges, and the challenge of affordability should be no different in this regard. TURN agrees that affordability is a state-wide issue, and is an active participant in the rulemaking proceeding devoted to affordability (R.18-07-006). But as the Commission has demonstrated since opening the rulemaking, affordability is a large enough and important enough challenge that it merits identifying and addressing potential mitigation measures not just in the rulemaking, but in every proceeding likely to have a substantial revenue requirement impact.

As noted earlier, PG&E's upcoming GRC is an obvious opportunity to address affordability, given the range of utility activities with budgets impacted by the GRC outcome, and the magnitude of the utility-requested increases in recent years. The recent experience with the test year 2020 GRC confirms as much. The Commission "determined it appropriate to consider the impacts that any revenue requirement increase from this application would have on

customer affordability.”³⁸ And both the proposed settlement that was largely adopted by the Commission, as well as the Commission’s decision itself contain numerous references to affordability as a factor influencing the outcome.³⁹ TURN’s proposal for a CPI-constrained alternative showing is an effort to achieve a record that enables a more thorough review of options to improve upon the manner that affordability issues are addressed in the upcoming 2023 GRC. And PG&E cannot be taken seriously when it suggests that affordability issues should be addressed only in the Affordability OIR, and not in the 2023 GRC.

VII. WHERE THE PURPOSE IS TO OBTAIN PG&E’S BEST PROPOSAL FOR HOW IT WOULD ACHIEVE A CPI-CONSTRAINED LEVEL OF GRC SPENDING WHILE PROVIDING SAFE AND RELIABLE SERVICE, THE SHOWING MUST BE PG&E’S, AND MUST BE AT A GRANULAR LEVEL.

PG&E suggests that the Commission should rely on TURN to make the showing on what it would take for the utility to achieve specific program and project spending forecasts that, on balance, would achieve a CPI-constrained overall increase.⁴⁰ As TURN’s petition explained, the point is to learn what choices PG&E would make to meet an inflation constraint. With the

³⁸ D.20-12-005, p. 190.

³⁹ The Joint Motion of the Settling Parties in A.18-12-009 argued that the overall agreement should be found to be in the public interest due in part to its achievement of a “fair balance between safety, reliability and affordability.” (Joint Motion, p. 15.) It also includes numerous references to specific adjustments to the adopted forecasts made in the interest of promoting “customer affordability.” (The motion is accessible at <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M324/K449/324449702.PDF>). In D.20-12-005, the decision adopting (with modifications) the proposed settlement in PG&E’s test year 2020 GRC, the Commission similarly included numerous references to the specific spending forecast adjustments made in the interest of customer affordability. *See, for example*, D.20-12-005, pp. 128, 144, 150-151, 189-194, and 223.

⁴⁰ PG&E Response, pp. 16-17.

utility's "obvious information advantage" regarding its own systems and operations, only PG&E is in a position to provide such a showing regarding its own decision-making to achieve CPI-constrained outcomes.⁴¹ PG&E agrees that it has an obvious information advantage, yet still seeks to outsource the showing to TURN or other intervenors, limited to whatever information the utility chooses to provide through discovery.⁴²

PG&E's proposal seeks to further entrench the "historical thinking that has brought us to the present situation,"⁴³ by having the Commission rely exclusively on its historical practice of permitting the utility to present only its preferred forecast, and leaving it to intervenors to devise any alternative. But what the Commission would be seeking through TURN's proposed process is a sense of how PG&E would achieve a CPI-constrained outcome overall, and the specific programs and projects for which the utility would make adjustments as compared to its preferred forecast in order to achieve a CPI-constrained outcome overall. PG&E cannot seriously believe that any amount of discovery would provide TURN, Cal Advocates or any other intervenor the information that would be needed to demonstrate how PG&E would respond to such a constraint. This is especially so where the utility agrees that it has the obvious information advantage with regard to such proposals. While PG&E may not want to provide such information, the Commission can have no doubt that the showing must be made by PG&E.

⁴¹ TURN Petition, p. 10.

⁴² PG&E Response, p. 17.

⁴³ *Id.*, p. 2.

The Commission should also reject PG&E's notion (echoed by SCE) that a single CPI-constrained adjustment to overall spending levels should suffice to achieve the intended purpose here.⁴⁴ The Commission and parties need to know how PG&E would meet such a constraint -- at the program level. TURN's petition recognized that different areas of PG&E's GRC-funded programs and projects will have different changes in the funding needed for 2023. By calling for the information to be broken out by each area of PG&E's GRC request, at the Major Work Category (MWC) and Administrative and General (A&G) expense level, TURN's approach provides the utility an opportunity to include greater increases in some areas, so long as they are offset by smaller increases or decreases in other areas.⁴⁵ PG&E could arguably present a CPI-constrained forecast for 2023 by making across-the-board increases of equal percentage amounts for all areas of its operations that are subject to the GRC. However, TURN submits the quality of the information and its usefulness to the Commission's decision-making process will be far greater to the extent the utility identifies and explains the specific tradeoffs it would make at a more granular level under such circumstances.

⁴⁴ PG&E Response, p. 15; SCE Response, p. 8. SCE's argument is a near-verbatim cut and paste of an argument that appeared in PG&E's response filed in A.20-06-012.

⁴⁵ TURN Petition, p. 6.

VIII. WHILE THE CPI IS AN APPROPRIATE MEASURE FOR AN INFLATION-CONSTRAINED ALTERNATIVE UNDER THE CIRCUMSTANCES HERE, THE COMMISSION COULD CONSIDER AN ALTERNATIVE SUCH AS GLOBAL INSIGHT ESCALATION FORECASTS FOR 2022-2025.

PG&E's response argues that the Consumer Price Index (CPI) is not an appropriate measure of inflation for an inflation-constrained alternative showing from the utility's perspective.⁴⁶ The Commission should reject this position for two reasons. First, affordability is a determination that must be made from the perspective of PG&E's customers, and the CPI is an appropriate measure for that purpose. PG&E makes no attempt to argue otherwise.

Second, TURN's petition seeks to obtain from PG&E a showing on how the utility's decision-making process and resulting recommendations would change if the utility were required to present inflation-constrained spending forecasts for the upcoming GRC. While PG&E clearly objects to using the CPI for that limited purpose, the utility makes no attempt to offer an alternative measure. If PG&E were interested in developing the type of information that would better support the Commission's GRC decision-making process, it would reasonably be expected to propose an alternative. Instead, PG&E makes clear that it is only interested in avoiding being required to make an inflation-constrained showing of any sort.

If the Commission saw fit to rely instead on a utility-focused inflation measure, it could choose to rely on a different source, such as the IHS Markit Global Insight (Global Insight) forecast figures. In SDG&E and SoCalGas test year 2019 GRC, the Commission is presently

⁴⁶ PG&E Response, pp. 7-8.

considering a Proposed Decision that relies in part on this source. The forecasts from the firm's 2nd Quarter 2020 forecast were submitted as an attachment to the utilities' brief in that proceeding.⁴⁷ For electric distribution plant construction costs, Global Insight forecasts an escalation rate of 2.6% in 2022 and 2.7% in 2023 for utilities in the Pacific Region.⁴⁸ For gas utility construction generally, Global Insight forecasts escalation rates that are generally in the range of 1.5% to 3.0% for 2022 and 2023.⁴⁹ For O&M expense associated with electric distribution operations, Global Insight's forecasts escalation rates of 0.1% and 1.9% for 2022 and 2023; the O&M and A&G expense escalation for those years are also generally in the range of 1.5% to 3.0%.⁵⁰

While TURN continues to believe that the CPI is the appropriate index for purposes of developing an inflation-constrained alternative showing for PG&E's GRC purpose, the Commission could instead direct PG&E to rely on the escalation rates for 2022, 2023, 2024 and 2025 as set forth in the most recent Global Insight forecast report.

PG&E argues that the Global Insight escalation rates would suffer the same flaw as the CPI-derived rates, in that they do not "take the place of a fresh examination of the utility's costs

⁴⁷ Joint Opening Brief of Southern California Gas Company and San Diego Gas & Electric Company in A.17-10-007/A.17-10-008, filed September 21, 2020; Appendix B (<https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M347/K250/347250569.PDF>).

⁴⁸ *Id.*, Appendix B, p. 36.

⁴⁹ *Id.*, p. 43.

⁵⁰ *Id.*, pp. 47 and 49.

based on actual data.”⁵¹ TURN is not proposing the use of either the CPI or the Global Insight rates as something that would “take the place” of anything in PG&E’s upcoming GRC. Rather, as TURN’s petition explains, the goal is to provide additional information that would improve the quality of the Commission’s decision-making record.⁵²

IX. THE COMMISSION MUST REJECT SCE’S ATTEMPT TO CONFUSE AN EARLIER TURN PROPOSAL MADE TO STREAMLINE THE GRC PROCESS WITH THE PROPOSAL HERE TO ACHIEVE A RECORD TO ENABLE A FULLER EXPLORATION OF AFFORDABILITY ISSUES

SCE argues that the Commission’s treatment of a proposal TURN has put forward in the Rate Case Plan (RCP) rulemaking should convince the Commission that TURN’s proposal here is inconsistent with the RCP process.⁵³ The utility fails to acknowledge the very different elements of the proposal made in the RCP rulemaking and TURN’s proposal here. And it misstates the Commission-adopted outcome, to boot.

In D.20-01-002, the Commission addressed a number of topics that it understood were not being resolved in that decision, but rather would be the subject of further informal efforts. One category of such topics included whether “rebuttable presumptions” should be considered in a future workshop. As described in the underlying Staff Report, TURN’s suggestion would have the Commission adopt certain expenses under “rebuttable presumptions to reduce the amount of

⁵¹ PG&E Response, p. 9.

⁵² TURN Petition, pp. 8-11.

⁵³ SCE Response, pp. 4-6.

litigated issues in a GRC.”⁵⁴ The Commission agreed with TURN that the streamlining recommendation, as an approach that could reduce the number of litigated issues in a GRC, should be the subject of a workshop as soon as possible.⁵⁵

SCE now describes this as TURN having “effectively urged the Commission to adopt a variation of the proposal it makes now through this PFM,” and asserts that the Commission “did *not* adopt” that proposal in its final decision.⁵⁶ These assertions are grossly inaccurate. First, TURN’s proposal in the RCP is materially different in substance and purpose. TURN’s RCP proposal seeks to achieve a more efficient GRC process, whereas the current petition is focused on enabling the Commission to have information that will assist it in achieving an authorized revenue requirement that better meets affordability goals. Second, the Commission did not in any way address the merits of TURN’s streamlining proposal, but rather assigned it for further exploration in the ongoing workshop process. SCE’s repeated characterization of the decision’s resolution of this matter as the Commission “did not adopt” TURN’s proposal is misleading, at best.⁵⁷ SCE’s arguments based on its attempt to equate the two should be ignored in recognition of the fact that the two are very different.

⁵⁴ D.20-01-002, p. 62, quoting Staff Report at 19.

⁵⁵ *Id.*, pp. 63-64.

⁵⁶ SCE Response, pp. 5 and 11.

⁵⁷ *Id.*

X. TURN’S PETITION SATISFIES THE REQUIREMENTS OF RULE 16.4.

TURN’s petition for modification explains that it meets all applicable requirements of Rule 16.4 of the Commission’s Rules of Practice and Procedure.⁵⁸ Each of the utilities contends that the petition fails to satisfy the rule’s requirements because it does not allege or seek to demonstrate “new or changed facts” and does not include a supporting declaration or affidavit in support of such new or changed facts.⁵⁹ The utilities’ arguments are based on a misreading of the rule to mean that a petition for modification is only appropriate where the petition relies on factual changes as the basis for the requested relief.

Rule 16.4(a) provides, “A petition for modification asks the Commission to make changes to an issued decision.” TURN has asked the Commission to make changes to D.20-12-005. Rule 16.4(b) begins by stating, “A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision.” No party contends TURN’s petition fails to comply with this portion of Rule 16.4(b). The remainder of Rule 16.4(b) applies where a petition for modification relies on factual changes as the basis for seeking relief.⁶⁰ But the rule cannot be fairly read to mean that a petition for modification may only be pursued based on

⁵⁸ TURN Petition, p. 12.

⁵⁹ PG&E Response, p. 15, Sempra Utilities Response, pp. 2 and 14, SCE Response, p. 14.

⁶⁰ Where the petition is relying on factual allegations, they must be supported with “specific citations to the record or to matters that may be officially noticed.” If there are allegations of new or changed facts, such allegations “must be supported by an appropriate declaration or affidavit.” Rule 16.4(b).

allegations of new or changed facts. The Commission should conclude that TURN's petition complies with both the letter and spirit of Rule 16.4.

XI. CONCLUSION

For the reasons set forth in TURN's petition, as amplified by the arguments presented here, the Administrative Law Judge or Assigned Commissioner should modify D.20-12-005 to direct PG&E to submit testimony in its upcoming GRC proceeding that presents an alternative GRC proposal in which total GRC expenditures increase by no more than the rate of inflation.

Dated: May 3, 2021

Respectfully submitted,

By: _____/s/_____
Robert Finkelstein

Robert Finkelstein, General Counsel
THE UTILITY REFORM NETWORK
785 Market Street, Suite 1400
San Francisco, CA 94103
Phone: (425) 929-8876
Email: bfinkelstein@turn.org