

**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)

**MOTION OF THE UTILITY REFORM NETWORK
FOR MODIFICATION OF THE SCHEDULE TO ACCOMMODATE
MATERIAL EVENTS IN PACIFIC GAS AND ELECTRIC COMPANY'S
CHAPTER 11 BANKRUPTCY CASE**

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I. INTRODUCTION

Pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure, The Utility Reform Network (TURN) respectfully submits this motion for modification of the schedule adopted in the *Assigned Commissioner's Scoping Memo and Ruling*, issued on March 8, 2019. TURN requests that the Commission provide the following relief:

- (1) Direct Pacific Gas and Electric Company (PG&E) to serve its Chapter 11 reorganization plan on the parties to this proceeding no later than the first business day after PG&E files its plan in the Bankruptcy Court; and
- (2) Schedule a prehearing conference (PHC) as soon as practicable following service of PG&E's reorganization plan to discuss the procedural and substantive implications of the plan.

As explained more fully below, these procedural steps are necessary and appropriate to permit the Commission and parties to expeditiously assess the impact of PG&E's forthcoming Chapter 11 proposed plan of reorganization on this proceeding. To the extent that PG&E's reorganization plan would significantly impact the utility's spending plans for the test year and attrition years, the Commission should consider this information in determining the appropriate revenue requirements for PG&E's test year 2020 General Rate Case (GRC) cycle.

II. BASIS FOR REQUESTED RELIEF

A. PG&E's Bankruptcy May Have a Material Impact on Its GRC Operations and Associated Funding During this GRC Cycle.

The Commission's primary task in a GRC is "to forecast the utility's revenue requirements for the test period, i.e., the just and reasonable amount of revenues needed by PG&E to provide adequate public utility service and earn a reasonable rate of return for [the test year]."¹ As the Commission recounted in D.04-07-022, "A central feature of conventional cost-of-service method of ratemaking is forecasting future test year costs using historical cost information as well as current information regarding the utility's operational and investment plans."² The Commission strives to develop cost forecasts that "are reasonable to both ratepayers and the Applicant[, and are as accurate as they can be within [the Commission's] GRC ratemaking framework."³

Determining a reasonably accurate cost forecast for period covered by this test year 2020 GRC is made much more difficult by PG&E's decision to file a voluntary petition for relief under Chapter 11 of the Federal Bankruptcy Code on January 29, 2019, six weeks after filing its GRC application on December 13, 2018. This timing puts the Commission in the awkward position of needing to process PG&E's GRC request based on the record developed here, while knowing that PG&E's future plan of reorganization may significantly impact the utility's spending plans for the test year and attrition years for GRC-covered operations and programs.⁴ The Commission recognized this potential

¹ D.00-02-046 (PG&E TY 1999 GRC) 4 CPUC 3d 315, 338-339.

² D.04-07-022 (SCE TY 2003 GRC), p. 14.

³ D.13-05-010, p. 20.

⁴ These circumstances are quite different than those presented by PG&E's last bankruptcy and its impact on the utility's Test Year 2003 GRC, A.02-11-017 et al. PG&E filed that GRC

impact in the *Assigned Commissioner's Scoping Memo and Ruling*, issued on March 8, 2019:

At the PHC, PG&E says that it will be filing its proposed plan of reorganization, which is subject to the approval of the bankruptcy court, but PG&E does not know at this time what elements will be included in the plan. Because PG&E's chapter 11 case may affect PG&E's requests in this GRC, PG&E is directed to timely serve to parties in this proceeding any developments in the chapter 11 case that would affect its requests in this proceeding. If deemed appropriate, the ALJs may direct PG&E to file some or all of the information.⁵

As foreshadowed by PG&E at the prehearing conference on February 11, 2019, PG&E modified its GRC request in late March because of its Chapter 11 filing and related financial condition.⁶ PG&E reduced its Corporate Real Estate capital spending plans for 2019-2022 by \$512 million, including a test year capital reduction of \$211 million.⁷ PG&E explained that these updates resulted from its determination that, "while these projects were important, given the current circumstances many projects could be deferred to the 2023 GRC while still prioritizing the most critical portions for safety and reliability."⁸

application on November 8, 2002, eighteen months after filing for Chapter 11 bankruptcy protection on April 6, 2001. PG&E emerged from bankruptcy on April 12, 2004, a month before the Commission issued its decision on PG&E's 2003 GRC, D.04-05-055. *See* D.04-05-055, Section 3 (pp. 12-14 per table of contents – discussion pages are un-numbered), and Section 10.3.3.2, fn. 61 (p. 119). In that GRC, the lag between the bankruptcy filing and PG&E's service of the GRC application meant that, while the bankruptcy overlay was certainly disruptive of the usual GRC process, at the time the application was served there was less uncertainty regarding PG&E's financial condition going forward, its operational obligations, the magnitude of costs attributable to the bankruptcy, and the extent of its ability to finance its proposed GRC activities than there is today with regard to the 2020 test year and the 2021-2022 attrition years..

⁵ *Assigned Commissioner's Scoping Memo and Ruling*, p. 6.

⁶ *Assigned Commissioner's Scoping Memo and Ruling*, p. 4.

⁷ *Compare* PG&E-7, Chapter 5, Table 5-14 (as originally filed) *with* PG&E-7, Chapter 5, Figure 5-2 (as revised on Mar. 25, 2019).

⁸ PG&E-7, Revised Mar. 25, 2019, p. 5-2. Interestingly, these revisions actually result in an

To date, PG&E has not officially modified any other aspect of its GRC request because of its financial condition. However, PG&E has acknowledged in discovery that its “Chapter 11 filing on January 29, 2019 impacts how PG&E will approach cost management and affordability” more broadly.⁹ According to Bloomberg, PG&E is planning to raise capital for its reorganization by securitizing “\$500 million in cost cuts,” such as “asset sales, management reductions and office closures.”¹⁰ Furthermore, recently enacted Assembly Bill (AB) 1054 (Holden, 2019) requires PG&E to emerge from bankruptcy and deal with pre-bankruptcy wildfire claims by June 30, 2020, in a manner that is “neutral, on average” to electric ratepayers, in order to be eligible to participate in the new Wildfire Fund to be created pursuant to AB 1054.¹¹

How PG&E will emerge from bankruptcy, and do so in a manner that preserves ratepayer neutrality as required by the new legislation, is yet to be seen. At this juncture, it is impossible to accurately predict what PG&E will propose when it files its restructuring plan (presumably in the next month or two). Nor can intervenors predict the contents of the plan that will ultimately be approved by the Bankruptcy Court, and more

increase in PG&E’s test year revenue requirement request “primarily due to the acceleration of the operative dates for certain capital projects.” PG&E-14 (Errata), p. iii, fn. 2.

⁹ PG&E Response to TURN-PG&E-004, Q01.

¹⁰ Scott Deveau & Mark Chediak, *PG&E to Float \$31 Billion Bankruptcy Restructuring Plan*, BLOOMBERG (June 21, 2019), available at <https://www.bloomberg.com/news/articles/2019-06-21/pg-e-is-said-to-float-31-billion-bankruptcy-restructuring-plan>; Scott Deveau, Mark Chediak & Jeffrey Taylor, *PG&E Is Pushing Tax-Exempt Bond Bill for Fire Claims*, BLOOMBERG (July 11, 2019), available at <https://www.bloomberg.com/news/articles/2019-07-11/pg-e-is-said-to-push-tax-exempt-bond-bill-for-wildfire-claims>.

¹¹ AB 1054, Chapter 3 (“Operation of the Fund”) (adding Sections 3291(b)(1)(D) and 3292(b)(1)(D) to the California Public Utilities Code).

specifically, how that plan will impact PG&E's operations in the 2020 GRC cycle.¹² Yet it is reasonable to contemplate that PG&E will need to reduce spending, as Bloomberg predicts, and an obvious source of funds is the GRC revenue requirement, given the breadth of functions it covers.

In PG&E's 2017 GRC, the Commission grappled with a somewhat similar situation. PG&E announced in January 2017 that it was implementing "new, streamlined management structures and a series of efficiency measures" intended to reduce costs by approximately \$300 million annually.¹³ This announcement came five months after PG&E and other parties filed a proposed settlement agreement and before the Commission issued its decision. In D.17-05-013, which adopted the settlement agreement with modifications, the Commission bemoaned the "bind in which PG&E has placed us."¹⁴ The Commission expressed concern that authorizing the revenue requirement supported by the record as created before the announcement of expected streamlining, fearing that it would allow PG&E to collect funding for employees and operations rendered unnecessary by the \$300 million in spending cuts, and then use the entire amount rendered unnecessary by the cost cuts "solely to augment its authorized

¹² Thus far, it appears that restructuring plans may be filed by several entities, including but not necessarily limited to PG&E, the "Ad Hoc Committee of Senior Unsecured Noteholders" that prepared the "Bondholder Plan," and the "Ad Hoc Subrogation Group" that prepared the "Subrogation Plan." *See, e.g.* "Motion of the Ad Hoc Group of Subrogation Claim Holders to Terminate the Debtors' Exclusive Periods Pursuant to Section 1121(d)(1) of the Bankruptcy Code," filed on Jul. 23, 2019, in *In re: PG&E Corporation, and Pacific Gas and Electric Company, Debtors*, Chapter 11 Bankr. Case No. 19-30088.

¹³ D.17-05-013 (PG&E 2017 GRC), pp. 124-145.

¹⁴ D.17-05-013, p. 129.

rate of return.”¹⁵ The Commission made clear that it “should not allow PG&E to collect this no-longer-needed funding from customers, only to spend it for some other unspecified purpose.”¹⁶ To avoid this outcome, the Commission ordered PG&E to “submit positive proof” in an advice letter that the authorized revenue requirement would not enable PG&E to “collect in rates any funds rendered unnecessary” by the announced spending cuts.¹⁷ The Commission addressed PG&E’s “positive proof” in its disposition of Advice Letter 3982-G-A/5306-E-A on September 24, 2018, ordering PG&E to reduce its 2017 revenue requirement by \$21.279 million to account for \$18 million in depreciation expense and \$3.279 million for executive compensation that were no longer needed as a result of the cost reductions announced on January 11, 2017.¹⁸

TURN recommends that the Commission avoid a similar, and potentially larger, bind in this GRC by anticipating earlier in the process the potential need to protect ratepayers from material changes in PG&E’s operational and investment plans as a result of emerging from bankruptcy. Such changes could manifest in the test year, if PG&E meets the AB 1054 deadline for emerging from bankruptcy of June 30, 2020, or in the attrition years. By all means, the Commission must avoid providing PG&E with the equivalent of a “slush fund” consisting of amounts included in the GRC request that, due

¹⁵ D.17-05-013, p. 129.

¹⁶ D.17-05-013, p. 128.

¹⁷ D.17-05-013, pp. 129-130. The Commission addressed PG&E’s “positive proof” in its disposition of Advice Letter 3982-G-A/5306-E-A on September 24, 2018, ordering PG&E to reduce its 2017 revenue requirement by \$21.279 million to account for \$18 million in depreciation expense and \$3.279 million for executive compensation that were no longer needed as a result of the cost reductions announced on January 11, 2017.

¹⁸ Energy Division Disposition of PG&E Advice Letter 3982-G-A/5306-E-A, issued Sept. 24, 2018, p. 4, available at https://www.pge.com/tariffs/assets/pdf/adviceletter/GAS_3982-G-A.pdf.

to bankruptcy developments, has become “no-longer-needed funding” that would now support emergence from bankruptcy instead of the activities presented in PG&E’s showing in support of its GRC request. The procedural relief requested by TURN serves this end.

B. The Commission Should Assess the Need to Adopt Measures In this Proceeding to Protect Ratepayers From Paying Rates Premised On GRC-Requested Amounts Rendered Unnecessary By PG&E’s Restructuring Plan.

The Commission should modify the schedule in this proceeding to incorporate two procedural steps: directing PG&E to promptly serve its Chapter 11 proposed plan of reorganization, and setting a PHC shortly thereafter. These steps will permit the Commission and parties to expeditiously assess the impact of PG&E’s forthcoming reorganization plan on this proceeding. Depending on the contents of PG&E’s plan, additional steps may be necessary to ensure that the Commission has a complete record upon which to render its decision in this proceeding.

1. The Commission Should Direct PG&E to Promptly Serve Its Reorganization Plan on the Commission and Parties to this Proceeding.

The Commission should direct PG&E to serve its reorganization plan on the Commission and parties to this proceeding no later than the first business day after PG&E files its plan in the Bankruptcy Court. This is in keeping with the spirit of the provision in the *Assigned Commissioner’s Scoping Memo and Ruling*, as discussed above. However, as written, that ruling could be interpreted to leave the matter in PG&E’s discretion, as it directs the utility to serve “any developments in the chapter 11 case that

would affect its requests in this proceeding.”¹⁹ Parties and the Commission should be afforded an equal opportunity to assess impact on the GRC. Directing PG&E to serve its reorganization plan in this proceeding will enable such an opportunity.

2. The Commission Should Schedule a Prehearing Conference Shortly After PG&E Serves Its Reorganization Plan to Initiate the Process of Determining What Additional Actions Are Implicated by the Plan.

The Commission should schedule a prehearing conference (PHC) as soon as practicable following PG&E’s reorganization plan to discuss the procedural and substantive implications of the plan.²⁰ At the PHC, parties could address the need for additional testimony and alternative ways to further develop the record on the impact of PG&E’s reorganization plan on its GRC operations and funding requests during the 2020 GRC cycle. As one example, the Commission could consider whether to direct PG&E to expand the scope of its update testimony, presently due on November 1, 2019, to address bankruptcy-related updates, as warranted under the circumstances. Such a change might necessitate other changes in the schedule.

Alternatively, the Commission might decide to adopt an approach similar to the one employed in PG&E’s 2017 GRC, where the Commission processed the GRC based

¹⁹ *Assigned Commissioner’s Scoping Memo and Ruling*, p. 6. In other words, PG&E could convince itself that the reorganization plan would not affect its requests in this proceeding.

²⁰ Depending on the timing of PG&E’s plan, the Commission could hold the prehearing conference at the start of evidentiary hearings, which are scheduled to take place from September 23 through October 18, 2019. Currently, PG&E’s period of exclusivity to file its reorganization plan expires on September 29, 2019. That could change, given the pending requests of various creditor committees to terminate PG&E’s exclusivity period early. Scott Deveau, *PG&E Creditors Push to Wrench Control From Bankrupt Utility*, BLOOMBERG (July 23, 2019), available at <https://www.bloomberg.com/news/articles/2019-07-23/pg-e-creditors-push-to-wrench-control-from-bankrupt-utility>. In any case, PG&E could file its plan before then, which might warrant an earlier PHC.

on the record as it existed before the utility's announcement, but directed PG&E to show that it was "still planning to spend, on a forecast basis, the 2017 revenue requirement authorized in this decision, or some other specified amount."²¹ Other approaches to protecting ratepayers could also be considered at the PHC, such as an automatic adjustment mechanism tied to actual spending relative to authorized spending that could be implemented during the attrition years.

Without seeing PG&E's restructuring plan, TURN cannot offer any concrete recommendations for how the Commission should ensure it authorizes only the just and reasonable amount of revenues needed by PG&E for the GRC-funded operations during the 2020 GRC cycle. Instead, we offer these preliminary suggestions to ensure that the Commission expressly creates a sufficient opportunity to do so when the time is right. As was made abundantly clear in PG&E's last GRC, the Commission should not allow PG&E to collect funding from customers for GRC purposes no longer planned.²² To the extent that the Commission can establish that some extent of GRC funding will be rendered unnecessary for GRC activities, on an updated forecast basis, because of PG&E's plan for emerging from bankruptcy, the Commission should reduce PG&E's GRC revenue requirement accordingly.

III. CONCLUSION

For the foregoing reasons, TURN requests that the Commission provide the following relief:

- (1) Direct Pacific Gas and Electric Company (PG&E) to serve its

²¹ D.17-05-013, Ordering Paragraph 6.

²² See D.17-05-013, pp. 128-129.

Chapter 11 reorganization plan on the Commission and parties to this proceeding no later than the first business day after PG&E files its plan in the Bankruptcy Court; and

- (2) Schedule a prehearing conference (PHC) as soon as practicable following PG&E's reorganization plan to discuss the procedural and substantive implications of the plan.

As explained above, these additions to the schedule are appropriate to facilitate the Commission's consideration of whether PG&E's restructuring plan impacts the level of revenue requirements PG&E will need for GRC-funded operations during the test year 2020 GRC cycle.

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