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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 No. 18-12-009 (Filed December 13, 2018)

RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 M) TO THE MOTION OF THE CITY AND COUNTY OF SAN FRANCISCO TO ENTER INTO EVIDENCE THE DECLARATION OF DOUGLAS LIPPS

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TABLE OF CONTENTS

Page

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I. INTRODUCTION

Pursuant to Rule 11(f) of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission) and the ruling of Administrative Law Judge Lirag during the October 10, 2019 evidentiary hearings, Pacific Gas and Electric Company (PG&E) responds to the "Motion of The City And County Of San Francisco [CCSF] To Enter Into Evidence The Declaration Of Douglas Lipps In Response To PG&E's Testimony Related To Its Crossbore Work In San Francisco" (Motion).

The Commission should deny the Motion for three reasons.

First, submission of this evidence is too late. CCSF has been a party to this proceeding from the start and has had ample opportunity to timely respond to PG&E's testimony. CCSF knew or should have been aware for many months of issues affecting its interests, such as PG&E's cross bore inspection program. All other parties were expected to adhere to the same schedule for testimony. CCSF has shown no legitimate basis for an exception.

Second, submission of this late evidence is prejudicial to PG&E. Intervenor testimony was due on July 26, 2019. Submission of the declaration at the eleventh hour places PG&E at a disadvantage and constitutes the kind of prejudice that the Commission's procedural rules are designed to avoid.

Third, the Motion improperly tries to insert into this proceeding contractual matters between CCSF and PG&E that are outside the scope of the proceeding. These contractual matters are the subject of ongoing negotiations between CCSF and PG&E to establish a framework to resolve remaining cross bore inspections in San Francisco. Even if these contractual issue were timely raised, it is not appropriate for them to be included in the scope of a GRC proceeding, which addresses PG&E's forecast costs to provide service in 2020-2022.

II. THE MOTION IS UNTIMELY, PREJUDICIAL AND USES THE GRC FOR UNFAIR MEANS.

The Commission should deny the Motion for the reasons explained below.

A. CCSF Has Been a Party to This Proceeding From the Start and Provides No Credible Explanation for its Failure to Provide Timely Testimony.

CCSF states: "San Francisco has worked closely with PG&E for more than five years to facilitate prompt inspection and remediation of crossbore conditions that threaten public safety. San Francisco has been concerned for some time that PG&E was not addressing crossbore conditions expeditiously."[1/] Given the fact that CCSF "has been concerned for some time" about cross bore conditions in San Francisco, CCSF has no credible claim for providing untimely testimony, particularly at this late hour.

CCSF has been an active party since the start of this proceeding. CCSF has participated in multiple GRCs prior to this one. CCSF is hence familiar with Commission practice and procedure. Thus, when CCSF states that "it has not actively participated in evidentiary hearings,"[2/] this should be no excuse. It was CCSF's choice not to be more active.

CCSF should not be able to claim limited resources or surprise as an excuse for its late filing. Compared to many other parties in the proceeding, CCSF is very well equipped to represent its interests and, as it says in its Motion, it has been concerned about this issue "for some time." The chronology of events in this case reveal that there is no credible reason for CCSF's late participation.

1/ Motion, p. 1.
2/ Motion, p. 1.

CCSF received service of PG&E's December 13, 2018 opening testimony. This opening testimony includes PG&E's analysis and proposals regarding its cross bore program, including the issue of Unable To Access (UTA) cross bores in San Francisco.[3/] The testimony provided PG&E's forecast of the number of UTAs, including workpapers showing the derivation of this forecast, and information regarding the causes of UTAs and the difficulties associated with performing UTA inspections. The testimony explained:

> Starting in 2019, PG&E forecasts it will be performing inspections on approximately 21,000 UTA locations in San Francisco, where the condition or configuration of the sewer system prevents the inline camera inspections or have special requirements and permitting for performing the inline camera inspection. Common obstacles PG&E has encountered in its inspections include: buried p-traps; buried and sealed manholes; capped main; sewer collapses; roots; debris; sewer defects; and other conditions. Figures 4-5 through 4-10 show examples of such conditions. To inspect these locations, PG&E needs to perform work, including: excavation, clearing obstructions, or dewatering to obtain access to the sewer. These activities add additional cost over the cost associated with a routine inspection. This additional cost was not known or forecasted in the previous GRC. Of the forecasted 21,000 UTA units in San Francisco, 10,000 units are planned for 2019. The remaining 11,000 UTA locations in San Francisco are planned for 2020 and 2021.[4/]

CCSF filed a response to PG&E's application on January 17, 2019 that commented on the application and schedule and did not raise cross bores as an issue to be included in the scope of the proceeding.[5/] CCSF promulgated discovery on other issues in PG&E's GRC, but did not raise the issue of cross bores.

CCSF later received service of PG&E's September 4, 2019 rebuttal testimony, which included more information on cross bore issues.[6/] In responses to data requests from TURN,[7/] and in its September 4 rebuttal testimony, PG&E clarified the scope of the cross bore program:

3/ Hearing Exhibit (HE) 10: Exhibit (PG&E-3), pp. 4-21 to 4-24.

4/ HE 10: Exhibit (PG&E-3), p. 4-23, lines 7–24. See also HE 12: Exhibit (PG&E-3), Table 4-11, p. WP 4-15 (Showing derivation of cross bore forecast including UTAs).

5/ *See* "Response Of The City And County Of San Francisco" (Jan. 17, 2019).

6/ HE 15: Exhibit (PG&E-17); HE 6: Exhibit (PG&E-16).

7/ PG&E's response to Data Request TURN_031-Q04, attached to HE 15: Exhibit (PG&E-17), Appendix A, pp. AppA-16 to AppA-17.

> [T]he UTA and non-UTA mix of work in 2020 and beyond will vary given the uncertainty regarding how many UTAs PG&E will be able to complete. The 2020 cross bore inspection forecast in PG&E's testimony included 10,000 UTAs. However, performing UTA inspections has proved to be challenging in 2019. To complete UTA cross bores necessitates PG&E's engagement with and support from other external parties which has been slower than anticipated. PG&E does not know how long these challenges will persist. While PG&E will make reasonable efforts to access the UTA locations and perform the forecast UTA cross bore inspections, it is possible that PG&E will complete very few, if any, of the UTA units in the 2020 GRC period. However, PG&E is not changing its 2020 forecast of $29.9 million for the Cross Bore Program. Throughout the 2020 GRC period, PG&E intends to target the highest inspection units reasonably possible with the adopted funding. To the extent that PG&E performs fewer than the forecast inspections of UTAs, PG&E will use the overall program funding to perform additional non-UTA inspections instead.[8/]

Given this extensive testimony, it is simply not credible for CCSF to claim in its motion "San Francisco became aware that PG&E had made representations about its cross bore work in the City only a few days before the September 25 hearing."[9/]

For the last 10 months, CCSF has had access to substantial information on PG&E's cross bore proposals. CCSF failed to show any interest in the issue. There is no excuse for this failure. Parties are expected to actively participate in Commission matters. CCSF has not done so.

All other parties have been expected to follow the schedule adopted for submission of testimony. To allow CCSF to follow a separate path would be unfair to the other parties and, as explained below, prejudicial to PG&E. It would also set a terrible precedent if each time a party learned something new during cross-examination they were allowed to file testimony in response.

8/ HE 15: Exhibit (PG&E-17), p. 4-9, line 26 to p. 4-10, line 10.
9/ Motion, pp. 1-2.

B. To Accept CCSF's Late Submitted Evidence is Prejudicial to PG&E and Does Not Clarify the Record.

CCSF states: "Admitting this declaration would not unfairly prejudice any party. The declaration is short and limited to one issue. The evidentiary record is still open, and hearings are still underway, so there is time for any additional procedures that the Administrative Law Judges deem appropriate before admitting this evidence."[10/] These claims are without basis.

PG&E is seeing CCSF's evidence for the first time and has had no opportunity to respond or rebut the assertions in the declaration. Parties' opening testimony was due on July 26, 2019. This evidence, such as it is, is two and a half months late. Accordingly, there is no time left for PG&E to ask discovery, provide responsive testimony and cross-examine CCSF on its material. If the declaration is admitted, PG&E will be denied its due process in responding. CCSF's surprise filing runs counter to the purposes of the Commission's rules of practice and procedure and the schedule adopted in this proceeding.

CCSF also declares: "The admission of this declaration would serve the public interest and assist the Commission by clarifying the evidentiary record on a critical issue of public safety."[11/] The opposite is true. Trying to submit evidence at the last minute without following the Commission's rules and denying PG&E due process serves to confuse the record, not help it.

C. CCSF Is Attempting to Insert Issues into the GRC that are the Subject of Ongoing Negotiations Between CCSF and PG&E.

PG&E and CCSF are currently negotiating the terms of an amendment to the existing 2014 cross bore agreement that would establish the terms and conditions and a timeline under which PG&E will complete the remaining cross bore inspections in San Francisco. One of the open issues in this negotiation is how to resolve UTAs.

The current draft of the amendment, attached to the declaration, says "this Amendment results from good faith negotiations regarding PG&E's request for a time extension to complete

10/ Motion, p. 2.
11/ Motion, p. 1.

its inspections and repairs of existing cross bores[¶]. . . .[¶] PG&E is committed by the completion of its inspection program to have identified for the City for further review all 'unable to access' ('UTA') sewer asset locations."[12/] These issues are distinct from the cross bore issues in the GRC and out of scope of the GRC.

The GRC concerns the reasonableness of PG&E's 2020 forecast for performing cross bore inspections in San Francisco and other locations. PG&E has proposed in its testimony a way for its forecast of cross bore inspection units to account for the uncertainty of performing UTAs. By contrast, the declaration – and the issues in the contractual negotiation with CCSF -- revolve around defining and identifying UTAs and the procedures that PG&E and CCSF will follow to ensure efficient completion of these inspections.[13/]

By attempting to insert into this proceeding these contractual issues, CCSF is subverting the purpose of the GRC. As the Scoping Memo indicates, PG&E's forecast for 2020-2022 is at issue in the proceeding. The declaration, does not address PG&E's forecasts and instead primarily addresses a contract dispute between CCSF and PG&E. None of these contract issues should be resolved by the Commission.

In Southern California Edison Company's (SCE's) 2012 GRC, the Commission rejected a similar effort by a city to litigate issues that were out of the scope of SCE's GRC. There, the City of Long Beach raised issues on behalf of the Port of Long Beach (Port) regarding additional facilities and infrastructure needed by the Port, concluding that the Commission should revise certain Electric Rules to enable additional facilities to be constructed at the Port. The Commission rejected Long Beach's attempt to litigate the dispute between the Port and SCE in SCE's GRC.[14/]

12/ Motion, Exhibit 2, p. 1.

13/ The declaration addresses numerous contractual issues such as the meaning of the parties' 2014 cross bore agreement, whether it remains in effect, whether the "partially executed" second amendment is effective, the reasons it was not signed by CCSF, and ongoing negotiations to replace the "partially executed" second amendment.

14/ D.12-11-051, p. 102.

The Court of Appeal has also required the Commission to follow its own procedures, and limit decisions in proceedings to matters that were timely included in the Scoping Memo. In *Southern California Edison Company v. Public Utilities Commission* 140 Cal.App.4th 1085 (2006), the Commission issued a scoping memo in a rulemaking regarding "bid shopping." The Scoping Memo listed the topics at issue in the proceeding and included a proceeding schedule. As here, a party later sought to address an issue that was not included in the Scoping Memo, by serving comments many months after the scoping memo was issued and the comments were due. The assigned Administrative Law Judge attempted to amend the scoping memo and provided the parties only three business days to respond to the proposals.[15/] The Court of Appeal found this process to be unlawful:

> The PUC's failure to comply with its own rules concerning the scope of issues to be addressed in the proceeding therefore was prejudicial.
>
> In summary, the prevailing wage proposal was beyond the scope of issues identified in the scoping memo, the PUC violated its own rules by considering the new issue, and three business days was insufficient time for the parties to respond to the new proposals. We therefore conclude that the PUC failed to proceed in the manner required by law Pub.Util.Code, § 1757.1, subd. (a)) and that the failure was prejudicial.[16/]

In this case, the Commission should not similarly err by addressing newly-raised issues outside the scope of the proceeding at this late stage. PG&E is working with CCSF, in good faith, to establish a workable framework for resolving remaining cross bore inspections in San Francisco. CCSF can seek a resolution of the contractual issues it raises outside of this proceeding if the parties do not reach a resolution.

15/ 140 Cal. App. 4th at 1106.
16/ *Ibid.*

III. CONCLUSION

For all the foregoing reasons, the Commission should deny CCSF's motion.

Respectfully Submitted,

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