

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

10/23/23

04:59 PM

Application 23-02-018^{A2302018}

Application of Pacific Gas and Electric Company for Compliance Review of Utility Owned Generation Operations, Portfolio Allocation Balancing Account Entries, Energy Resource Recovery Account Entries, Contract Administration, Economic Dispatch of Electric Resources, Utility Owned Generation Fuel Procurement, and Other Activities for the Record Period January 1 through December 31, 2022

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**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S
RESPONSE TO PACIFIC GAS AND ELECTRIC COMPANY'S
MOTION TO STRIKE**

Evelyn Kahl
General Counsel and Director of Policy
CALIFORNIA COMMUNITY CHOICE
ASSOCIATION
One Concord Center
2300 Clayton Road, Suite 1150
Concord, CA 94520
Telephone: (510) 980-9459
E-mail: regulatory@cal-cca.org

Tim Lindl
Nikhil Vijaykar
KEYES & FOX LLP
580 California Street, 12th Floor
San Francisco, CA 94104
Telephone: (510) 314-8385
E-mail: tlindl@keyesfox.com
nvijaykar@keyesfox.com

Counsel to
CALIFORNIA COMMUNITY CHOICE
ASSOCIATION

October 23, 2023

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Pursuant to Rule 11.1(e) of the California Public Utilities Commission's Rules of Practice and Procedure, California Community Choice Association¹ (CalCCA) hereby submits this response to Pacific Gas and Electric Company's (PG&E) *Motion to Strike Portions of the Prepared Testimony of Brian Shuey on behalf of the California Community Choice Association* (Motion) in the above-captioned proceeding.

During the summer of 2022, PG&E transferred nearly a gigawatt of excess resource adequacy (RA) capacity from its Power Charge Indifference Adjustment (PCIA) resource portfolio to the System Reliability Incremental Procurement subaccount of its New System Generation Balancing Account (NSGBA).² PG&E's prepared testimony identifies and discusses that excess

¹ California Community Choice Association represents the interests of 24 community choice electricity providers in California: Apple Valley Choice Energy, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, East Bay Community Energy, Energy for Palmdale's Independent Choice, Lancaster Energy, Marin Clean Energy, Orange County Power Authority, Peninsula Clean Energy, Pico Rivera Innovative Municipal Energy, Pioneer Community Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, San José Clean Energy, Santa Barbara Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy.

² PG&E Prepared Testimony at 12-15.

RA capacity³ and CalCCA witness Shuey's prepared testimony probes that excess RA capacity.⁴ In so doing, witness Shuey identifies a substantial and troubling gulf between the excess RA capacity PG&E identifies in its testimony, and PG&E's 2022 RA position reports.⁵ As witness Shuey explains, that gulf suggests that while PG&E may technically be releasing RA solicitations consistent with Appendix S of its Bundled Procurement Plan (BPP), it is doing so before it identifies excess RA, which means load serving entities may not have had a reasonable opportunity to purchase PG&E's excess RA during the summer of 2022.⁶ That practice violates the Commission's directive that PG&E make reasonable attempts to sell its excess capacity,⁷ and may have had important implications for all LSEs, who pay fines if they fail to meet RA compliance requirements.

Based on those observations, witness Shuey recommends the Commission update processes to scrutinize PG&E's RA sales practices, among other recommendations.⁸ Far from being outside the bounds of this proceeding, Mr. Shuey's testimony *must be submitted* in this proceeding—there simply is no other proceeding in which the Commission might scrutinize whether PG&E's inadequate attempts to sell its excess RA capacity, during a time of significant capacity scarcity, harmed ratepayers.

PG&E's Motion seeks to prevent that scrutiny, based largely on PG&E's legal position that the Commission's review of its RA practices in this proceeding is limited to an evaluation of PG&E's compliance with Appendix S. The Commission should deny the Motion because it takes an unduly narrow view of the scope of this proceeding, PG&E's obligations, and the Commission's

³ *Id.*

⁴ *See generally* Prepared Direct Testimony of Brian Shuey on behalf of CalCCA.

⁵ *Id.* at 5-7.

⁶ *Id.* at 7-11.

⁷ D.21-12-015 at 183-184.

⁸ Prepared Direct Testimony of Brian Shuey on behalf of CalCCA at 18.

authority. Moreover, the Motion is premature, because CalCCA has not yet offered any testimony or accompanying exhibits in evidence. Further, the Commission need not and should not curtail parties' efforts to develop the record based on PG&E's procedural motion; PG&E will have the opportunity to make arguments opposing CalCCA witness Shuey's recommendations in legal briefing following the close of the evidentiary record.

I. COMPLIANCE WITH APPENDIX S DOES NOT EXCUSE PG&E FROM COMPLIANCE WITH COMMISSION DECISIONS

The thrust of PG&E's Motion is its legal position that Appendix S is an "upfront reasonableness standard," compliance with which excuses PG&E from complying with the Commission's directive in D.21-12-015 that PG&E make reasonable attempts to sell its excess capacity prior to using that capacity for summer reliability purposes.⁹ PG&E asserts "D.21-12-015 does not create a separate or additional requirement beyond Appendix S",¹⁰ and in support of its position, cites the Commission's disposition of PG&E's Advice Letters (AL) 6306-E and 6306-E-A (Appendix S Justification ALs).

PG&E overstates the effect of the Commission's disposition of the Appendix S Justification ALs. The Commission's disposition did not conclude that compliance with Appendix S *supplants* or *is equivalent* to compliance with the Commission directives in D.21-12-015. Rather, the disposition concluded that as a general matter, PG&E's efforts to sell excess RA to the market, prior to using that excess capacity to meet its minimum effective planning reserve margin (PRM), were consistent with the requirements in D.21-03-056 (the Phase 1 Emergency Reliability OIR decision).¹¹

⁹ D.21-12-015 at 183-184.

¹⁰ Motion at 4.

¹¹ Disposition of Advice Letters 6306-E and 6306-E-A at 4-5.

In this case, however, the Commission is faced with a different set of facts. PG&E reports 923 MW of excess RA capacity during the summer of 2022, and CalCCA witness Shuey’s testimony demonstrates LSEs did not have a reasonable opportunity to purchase that capacity in 2022, notwithstanding the RA solicitations PG&E released. Based on the set of facts presented in this proceeding—including the specific facts surrounding the timing of PG&E’s solicitations, developed through testimony, discovery, and cross examination—the Commission may find that PG&E did not comply with the directives in D.21-12-015 (notwithstanding its compliance with Appendix S). Nothing in the Commission’s disposition of the Appendix S Justification ALs would preclude that result.

II. PG&E’S COMPLIANCE WITH D.21-12-015 IS WITHIN THE SCOPE OF THIS PROCEEDING

PG&E notes Scoping Issue 5 in the Assigned Commissioner’s Scoping Memo and Ruling asks “Whether PG&E administered resource adequacy and sales consistent with its Bundled Procurement Plan.”¹² On that basis, PG&E suggests any review of PG&E’s RA practices beyond the utility’s compliance with Appendix S, including whether PG&E made reasonable attempts to sell its excess RA in compliance with D.21-12-015, is outside the scope of this proceeding.¹³

PG&E takes an unreasonably narrow view of this proceeding’s scope. While CalCCA does not dispute that one of the purposes of this proceeding is to review whether PG&E’s RA procurement and sales practices during the record period were consistent with its BPP, Scoping Issue 5 does not establish the outer bounds of the Commission’s review of PG&E’s RA practices in this proceeding. Indeed, the reasonableness of PG&E’s attempts to sell excess RA during the

¹² Motion at 3 (citing *Assigned Commissioner’s Scoping Memo and Ruling* at 3 (Jun. 2, 2023)).

¹³ *Id.* at 4 (stating “the relevant inquiry within the scope of this proceeding with respect to RA is “Whether PG&E administered resource adequacy procurement and sales consistent with its Bundled Procurement Plan,” not whether PG&E complied with D.21-12-015.” (citations omitted)).

summer of 2022—notwithstanding the utility’s compliance with Appendix S—is well-within the scope of this proceeding because that issue ultimately impacts the entries PG&E made to its balancing accounts, including the Portfolio Allocation Balancing Account (PABA) during the 2022 record period. Scoping Issue 3 concerns the reasonableness and appropriateness of those entries, giving the Commission broad latitude to consider, in this proceeding, PG&E’s activities impacting those entries.

III. THE COMMISSION CAN, IN THIS PROCEEDING, ORDER FURTHER INVESTIGATION INTO PG&E’S BUNDLED PROCUREMENT PLAN IN OTHER PROCEEDINGS

PG&E argues certain sections of witness Shuey’s testimony must be stricken because they seek to “amend or relitigate the BPP[.]”¹⁴ PG&E asserts the structure of the BPP can and should be litigated in the Integrated Resources Plan (IRP) proceeding, or in the investor-owned utilities’ BPP-related advice letter filings.¹⁵

CalCCA agrees that ERRA Compliance proceedings are not aimed at rewriting the structure of the BPP. However, again, PG&E takes an unduly restrictive view of the potential outcomes of this proceeding. For instance, should the Commission determine that PG&E’s RA-related actions warrant further scrutiny, it might direct or suggest—in this proceeding—further investigation into the BPP to occur in a separate proceeding (which is the type of determination the Commission frequently makes in ERRA proceedings).¹⁶ The Administrative Law Judge should not close that door by granting PG&E’s Motion.

¹⁴ *Id.* at 7-8.

¹⁵ *Id.* at 7.

¹⁶ *See, e.g.,* D.21-07-013, *Decision Resolving Phase One of Pacific Gas and Electric Company’s ERRA Compliance Application for the 2019 Record Year*, A.20-02-009 (July 15, 2021), at 21 (emphasis added) (stating “The Commission’s currently open proceeding, Order Instituting Rulemaking to Review, Revise, and Consider Alternatives to the Power Charge Indifference Adjustment, R.17-06-026, is more appropriate for considering how the Commission should address contract vintages for the utilities in the future, **and we intend to explore these matters in that proceeding.**”); D.20-12-028 at Ordering Paragraphs

IV. NOTHING IN WITNESS SHUEY'S TESTIMONY IS UNFAIRLY PREJUDICIAL

According to PG&E, Section V of CalCCA witness Shuey's testimony "impl[ies] that PG&E is responsible for 'substantial fines' incurred by Load Serving Entities", and asserts that testimony is "unfairly prejudicial to PG&E because it incorrectly implies that PG&E is a contributing cause to the LSE's RA compliance fines."¹⁷ PG&E misrepresents Mr. Shuey's testimony. In the first sentence in Section V of his testimony, Mr. Shuey asserts that PG&E's unreasonable attempts at selling its excess RA capacity "cannibalize[] an already constrained RA market and increase costs to all customers."¹⁸ In the remaining portion of Section V, Mr. Shuey presents a series of facts illustrating RA market constraints.¹⁹

PG&E read into Mr. Shuey's testimony an implication that PG&E caused LSEs' RA compliance fines, but Mr. Shuey's testimony does not actually make that allegation. Moreover, to the extent Mr. Shuey's testimony *implies* a relationship between PG&E's RA practices and fines paid by LSEs, PG&E fails to explain why that implication would be "unfairly prejudicial" to PG&E, beyond its bare assertion that such an implication is "incorrect." To the extent PG&E disagrees with Mr. Shuey's testimony, it has the opportunity to respond to that testimony in rebuttal, and the Commission will have the opportunity to resolve that disagreement via its final decision—in other words, the regulatory process would work as intended.

4, 22 ("We recognize the importance of approving a consistent method for returning balances to customers but will not adopt PG&E's going-forward proposal at this time. We will consider a long-term solution when we address PCIA framework issues in the appropriate proceeding."); D.20-02-047 at 13-16 (resolving PG&E's 2020 ERRA Forecast case and stating "A tracking framework within PABA and mechanisms to value banked RECs at the end of the compliance period may help resolve these issues. These issues are however, more appropriately addressed by the Commission in the PCIA proceeding."); D.22-12-044 at 22; and D.22-12-012 at 61-62 (stating "... the current scope of the PCIA proceeding includes consideration of whether to modify or clarify the calculation of the PCIA for VAMO transactions, so we do not address SoCal CCAs' request here.").

¹⁷ Motion at 8.

¹⁸ Prepared Direct Testimony of Brian Shuey on behalf of CalCCA at 11.

¹⁹ *Id.* at 11-14.

V. PG&E’S MOTION IS PREMATURE BECAUSE CALCCA HAS NOT OFFERED ANY TESTIMONY OR ACCOMPANYING EXHIBITS INTO EVIDENCE

CalCCA filed Mr. Shuey’s prepared testimony and accompanying exhibits (including a series of PG&E’s responses to CalCCA discovery requests) on September 22, 2023 consistent with the procedural schedule established in the Scoping Memo.²⁰ CalCCA has not yet, however, offered its prepared testimony or accompanying exhibits in evidence pursuant to Rule 13.8 of the Commission’s Rules of Practice and Procedure. To the extent CalCCA seeks to offer in evidence any or all of its prepared testimony and exhibits, it would so do by making a motion prior to or during the evidentiary hearing consistent with Commission Rules 11.1 and 13.8. PG&E would have an opportunity to object to CalCCA’s motion at that time, including by lodging objections to the admission of certain (or all) of PG&E’s discovery responses. The Motion, therefore, is premature, and the Commission may reject it on that basis alone.

PG&E takes particular umbrage to the discovery responses attached to Mr. Shuey’s testimony because PG&E asserted an objection to the underlying discovery requests and provided a response subject to and without waiving that objection.²¹ PG&E asserts “[i]nclusion of data request responses in testimony when an objection has been lodged does not comport with the CPUC’s general discovery customs and practice.”²² PG&E is incorrect. It is common practice for parties to attach discovery responses to their testimony, even where the responding party lodged an objection to the underlying discovery request. Moreover, nothing in the Commission’s discovery rules prohibits such practice. As discussed above, PG&E would have an opportunity to renew its objection if and when CalCCA offers the relevant discovery response into evidence.

²⁰ Scoping Memo at 4.

²¹ Motion at 9.

²² *Id.*

VI. CONCLUSION

For the foregoing reasons, the Commission should reject the Motion.

Respectfully submitted,



Nikhil Vijaykar
KEYES & FOX LLP
580 California Street, 12th Floor
San Francisco, CA 94104
Telephone: (408) 621-3256
E-mail: nvijaykar@keyesfox.com

Counsel to
CALIFORNIA COMMUNITY CHOICE
ASSOCIATION

Dated: October 23, 2023