

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



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Application of Pacific Gas and Electric Company (U 39 E) and Pacific Generation LLC for Approval to Transfer Certain Generation Assets, for a Certificate of Public Convenience and Necessity, for Authorization to File Tariffs and to Issue Debt, and for Related Determinations.

Application No. 22-09-018

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION  
REPLY COMMENTS ON PROPOSED DECISION**

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**TABLE OF CONTENTS**

I. PG&E’s Comments Fail To Identify Errors in the PD and Therefore Should Be Afforded No Weight..... 2

II. PG&E Improperly Relies on Extra-Record Assertions and Proposals to Support Its New Recommendation For a Phase 2 of This Proceeding. .... 2

III. The Commission Should Reject PG&E’s Request to Establish a New Phase of This Proceeding..... 3

IV. Conclusion ..... 5

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Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the California Community Choice Association<sup>1</sup> (CalCCA) hereby submits these Reply Comments in response to Pacific Gas and Electric Company’s (PG&E) Opening Comments<sup>2</sup> on the *Proposed Decision Denying Application* (Proposed Decision or PD).<sup>3</sup>

PG&E’s Opening Comments do not cite to errors of fact or law in the Proposed Decision. Instead, PG&E reiterates its arguments from briefing, and then presents an entirely new proposal for an extremely expedited “Phase 2” of this proceeding. Based on extra-record assertions and proposals introduced for the first time in PD comments, PG&E urges the Commission to grant the Applicants an opportunity to build a new record in this “Phase 2”—one that it asserts will address every hole in the record identified by the Proposed Decision. The Commission should decline this invitation to invest administrative resources in a rushed and procedurally deficient new process for an Application that has already been fully litigated and appropriately rejected.

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<sup>1</sup> California Community Choice Association represents the interests of 24 community choice electricity providers in California: Apple Valley Choice Energy, Ava Community Energy, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert 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.

<sup>2</sup> Application (A.) 22-09-018, *Opening Comments of PG&E and Pacific Generation LLC to the Proposed Decision* (Apr. 4, 2024) (PG&E Opening Comments).

<sup>3</sup> A.22-09-018, *Proposed Decision Denying Application* (Mar. 15, 2024) (Proposed Decision).

**I. PG&E’s Comments Fail To Identify Errors in the PD and Therefore Should Be Afforded No Weight.**

The Commission’s rules are clear that comments on a proposed decision “will be accorded no weight” if they fail to focus on “factual, legal or technical errors in the proposed . . . decision” demonstrated by “specific references to the record or applicable law.”<sup>4</sup> PG&E’s Opening Comments do not identify such errors. Instead, P&GE notes its disagreements with the PD’s findings and reiterates its arguments from briefing—primarily suggesting that it would have weighed the evidence on the record differently than the Commission ultimately did in the PD.<sup>5</sup> These kinds of arguments have no place in PD comments.

Aside from restating its positions from briefing, PG&E also used this comment opportunity to move for an additional phase of this proceeding that it asserts would address the Commission’s “remaining concerns.”<sup>6</sup> This kind of proposal cannot properly be introduced via PD comments. Instead of identifying factual or legal errors in the Proposed Decision, as required by Rule 14.3, PG&E improperly focused on a new advocacy proposal aimed at addressing the gaps in the record identified in the PD.

Under Rule 14.3, these comments should be afforded no weight. While PG&E is free to submit this kind of request via a motion or entirely new application, it cannot leverage PD comments to issue a new set of recommendations for a new procedural process within this docket.

**II. PG&E Improperly Relies on Extra-Record Assertions and Proposals to Support Its New Recommendation For a Phase 2 of This Proceeding.**

Not only is the focus of PG&E’s comments inappropriate, but the specific content PG&E uses to support its arguments is improper as well. PG&E relies on facts that are not on the record<sup>7</sup> and new proposals for the submission of additional evidence<sup>8</sup> to make the case that its requested second phase for this proceeding is justified. In support of this proposed Phase 2, PG&E recommends modifications to the findings of fact and conclusions of law that are packed with these

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<sup>4</sup> Commission Rules of Practice and Procedure, Rule 14.3(c).

<sup>5</sup> See PG&E Opening Comments, pp. 2, 4, 6, 7, 8, 9, 11, 12, 13, and 14.

<sup>6</sup> *Id.*, p. 7.

<sup>7</sup> *Id.*, pp. 4-5 (discussing developments since submission of the matter concerning credit ratings, cost of debt, and estimated customer savings).

<sup>8</sup> *Id.*, pp. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 (proposing new regulatory conditions to be introduced in Phase 2 as well as significant “Additional Information” to be introduced in Phase 2).

references to evidence to be introduced in Phase 2.<sup>9</sup> PD comments—and the Commission’s ultimate findings and conclusions in this case—must rely entirely on the record of this proceeding.<sup>10</sup> As such, the Commission should not afford any weight to PG&E’s recommended changes to the PD.

### **III. The Commission Should Reject PG&E’s Request to Establish a New Phase of This Proceeding.**

Even putting aside the fact that PG&E is improperly using PD comments to move for a new phase of the proceeding, and the fact that PG&E relies heavily on extra-record evidence to do so, PG&E’s proposal should be summarily rejected. The proposed scope and schedule for this requested Phase 2 is unacceptable, condensing parties’ review of what amounts to an entirely new application and testimony into a 45-day period. If the Commission reaches the merits of PG&E’s proposal for a new phase of this proceeding, it should deny it.

PG&E is essentially asking the Commission for a redo: the opportunity to submit an entirely new filing and supporting testimony to address all the shortcomings identified in the PD. The “Additional Information” that it asserts will justify the Proposed Transaction in this new phase would include “final transaction documents, the identity of the Minority Investor, and proposed regulatory conditions to address concerns raised in the PD” as well as “other information.”<sup>11</sup> PG&E requests that the Commission not base its decision on the record that has been fully litigated, but instead trust that this huge amount of “Additional Information” will establish all the major points PG&E failed to prove throughout the course of this proceeding.<sup>12</sup>

Given the deficiencies in the current record documented throughout the Proposed Decision, the scope of this “Additional Information” to be vetted in Phase 2 would be incredibly broad, and would include:<sup>13</sup>

- New evidence to support PG&E’s conclusions regarding cost of debt impacts.

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<sup>9</sup> *Id.*, Appendix, Findings of Fact 4, 15, 16, 24, 26, 28, 31, 32, 33, 34, 43, 44, 45, 46, 47, 53, 56, 58, and 59; *id.*, Appendix, Conclusions of Law 17 and 19.

<sup>10</sup> Commission Rules of Practice and Procedure, Rule 14.3(c); Cal. Pub. Util. Code § 1757.

<sup>11</sup> PG&E Opening Comments, p. 3.

<sup>12</sup> *Id.* (“The Additional Information will establish that the Proposed Transaction price is superior to a stock issuance, that the Minority Investor is committing to support the State’s energy transition goals, that the transaction documents preserve PG&E’s control, and that the Proposed Transaction will benefit customers in many ways.”).

<sup>13</sup> Unless otherwise noted, the items in this bulleted list are drawn from PG&E Opening Comments, pp. iii-iv.

- New evidence to support PG&E’s conclusions regarding credit rating impacts.
- A new regulatory condition that Pacific Generation must seek advance approval to terminate PG&E as its service provider.
- A new proposal to “promote independent safety oversight.”
- A new proposal that approval of the Application be conditioned on PG&E’s agreement not to contest the Commission’s authority to impose a penalty on PG&E for any violations resulting from PG&E’s operation of Pacific Generation assets.
- All final transaction documents.
- New evidence comparing the Proposed Transaction to alternatives.
- New evidence regarding the terms of future contributions from the Minority Investor.
- New evidence of customer benefits of the Proposed Transaction.
- A new proposal that approval of the Application be conditioned on Pacific Generation’s commitment to not make any filings before FERC that seek to change its status as a public utility under California law.
- A new regulatory condition that, in the 2027 general rate case, any incremental administrative costs would be recoverable only if the Commission finds that such costs are outweighed by the benefits of the Proposed Transaction.<sup>14</sup>
- A new proposal for an “internal conflicts and confidentiality standard calibrated specifically for the relationship between PG&E and Pacific Generation.”<sup>15</sup>
- New information regarding (i) the identity of and background information on the Minority Investor, including relevant utility industry-adjacent holdings; (ii) a finalized version of the code of conduct; and (iii) a finalized version of the schedule of prohibited persons, together with the criteria PG&E used to develop that schedule.<sup>16</sup>
- A new proposal for a shareholder-funded user fee to defray the cost of additional Commission resources.<sup>17</sup>

This “Additional Information” is substantial, and essentially amounts to an entirely new application—not just supplemental testimony on a narrow set of issues. Based on PG&E’s

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<sup>14</sup> PG&E Opening Comments, p. 5.

<sup>15</sup> *Id.*, p. 7.

<sup>16</sup> *Id.*, p. 10.

<sup>17</sup> *Id.*, p. 12.

descriptions, this Additional Information would implicate nearly all, if not all, of the 19 issues within the scope of this proceeding.<sup>18</sup>

Such a filing cannot be adequately reviewed on the expedited schedule PG&E proposes. While the Commission granted intervenors *over eight months* to respond to PG&E's original Application and testimony in this proceeding,<sup>19</sup> PG&E is now asking the Commission to allow intervenors *only 45 days* to issue discovery and develop testimony on this new filing of similar scope.<sup>20</sup> This timeline simply would not be sufficient for parties to vet all these new materials. Notably, a process this rushed and out-of-step with the Commission's standard practice for litigating applications could even raise due process concerns.<sup>21</sup>

#### IV. Conclusion

The Proposed Decision carefully considers the record in this proceeding, and based on that record, correctly concludes that PG&E has not met its burden in this case. The Commission should not be swayed by PG&E's attempts to supplement the record at this time. CalCCA strongly supports the Proposed Decision and urges the Commission to adopt it without modification.

Respectfully submitted,

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April 9, 2024

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<sup>18</sup> A.22-09-018, *Assigned Commissioner's Scoping Memo and Ruling*, pp. 2-4 (Jan. 20, 2023) (Scoping Ruling).

<sup>19</sup> See generally A.22-09-018, *ALJ's Ruling Modifying Schedule* (Mar. 30, 2023); Scoping Ruling.  
<sup>20</sup> PG&E Opening Comments, p. 15.

<sup>21</sup> See *People v. Western Air Lines, Inc.*, 42 Cal. 2d 621, 632 (1954). A fundamental requirement of due process is "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Pacific Gas & Electric Co. v. Pub. Util. Comm'n*, 237 Cal. App. 4th 812, 859-60 (2015) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). The California Supreme Court has ruled on the application of this standard in the context of the Commission, finding, "[d]ue process as to the commission's initial action is provided by the requirement of adequate notice to a party affected and an opportunity to be heard before a valid order can be made." *People v. Western Air Lines, Inc.*, 42 Cal. 2d 621, 632 (1954).