

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



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Order Instituting Rulemaking to Implement
Portions of AB 117 Concerning Community
Choice Aggregation

Rulemaking 03-10-003
(Filed October 2, 2003)

**RESPONSE OF THE UTILITY REFORM NETWORK
IN SUPPORT OF
THE PETITION OF THE CITY AND COUNTY OF SAN FRANCISCO
TO MODIFY DECISION 05-12-041**

February 10, 2010

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**RESPONSE OF TURN IN SUPPORT OF
THE PETITION OF THE CITY AND COUNTY OF SAN FRANCISCO
TO MODIFY DECISION 05-12-041**

Pursuant to Rule 16.4(f) of the Commission’s Rules of Practice and Procedure, The Utility Reform Network (TURN) submits this response to the Petition of the City and County of San Francisco to Modify Decision 05-12-041 and Request for Expedited Consideration (CCSF Petition). TURN fully supports the CCSF Petition and urges the Commission to act on it as expeditiously as practicable.

I. Introduction and Overview

Regulated utilities have become more refined and politically savvy over the years, so much so that it is rare to see a brazen flexing of monopoly muscle any more. So rare, in fact, that TURN is concerned that the Commission might fail to recognize PG&E’s recent actions for what they are and therefore might not respond with sufficient dispatch.

California state law enables community choice aggregation. California law also directs the “electrical corporations” that are the state’s regulated investor-owned utilities to “cooperate fully with any community choice aggregators.”¹ And in absolute disregard of those state laws, Pacific Gas and Electric Company (PG&E) is actively engaged in various campaigns and other efforts to subvert community choice aggregation (CCA). The Commission needs to rapidly and forcefully shut down PG&E’s efforts in this regard.

There is no need for TURN to repeat or attempt to amplify any of the arguments presented in the well-argued and well-supported CCSF Petition. Instead, TURN uses this response to explain why the Commission should recognize that PG&E’s CCA efforts are

¹ Public Utilities Code §366.2(c)(9). All statutory references are to the Public Utilities Code.

rate-funded, and why the relief sought in the CCSF Petition is appropriate whether the CCA efforts are attributed to PG&E, its holding company, or some non-utility subsidiary thereof.

II. PG&E’s Campaign Against Community Aggregation Is Funded By CPUC-Authorized Rates and Revenues Collected from Ratepayers.

PG&E the utility is a subsidiary of PG&E Corporation, a holding company. Questions may be raised about whether funds spent in the PG&E campaign against community choice aggregation should be viewed differently depending on whether the source of the funds is the utility or the holding company. The Commission needs to understand that in recent years this is a false distinction for PG&E and PG&E Corp. Whether deemed PG&E funds (above- or below-the-line) or funds controlled by the holding company, all of the funds come from the revenues collected through regulated rates.

The Commission should look to PG&E’s most recent Annual Report to its shareholders (and to the Securities Exchange Commission). A table entitled “Selected Financial Data” compares the operating revenues of PG&E Corp with those of PG&E for 2004-2008, inclusive.² The figures are identical in each of the five years:

(in billions)	2008	2007	2006	2005	2004
PG&E Corp.	\$14.628	\$13.237	\$12.539	\$11.703	\$11.080
PG&E	\$14.628	\$13.237	\$12.539	\$11.704	\$11.080

In other words, PG&E’s SEC filing indicates that every dollar of operating revenues for the holding company came from utility-collected operating revenue. And as the

² A copy of this page of the 2008 Annual Report is attached to this response as Attachment A.

Commission well knows, virtually all of the utility's operating revenues derive from regulated rates charged to customers taking utility service within the service territory for which PG&E holds the monopoly franchise. Any contention that the funds underwriting PG&E's anti-aggregation efforts come from PG&E Corp. or represent amounts subject to "below-the-line" treatment must not be permitted to mask this fundamental element – it's all coming from the utility's ratepayers.

III. Under The Indifference Standard Adopted In The Commission's Holding Company Decisions, PG&E's Campaign Against Community Aggregation Must Stop Whether Pursued Through The Regulated Utility Or PG&E Corp.

When the Commission granted PG&E permission to create a holding company in 1996, it adopted "a standard of ratepayer indifference to the effects of a holding company reorganization."³ A few years later, the Commission issued D.02-01-039 and further explained that the standard was intended to reflect the agency's intention that "conditions we imposed left ratepayers indifferent to whether the utilities continued to be stand-alone companies, or whether they were reorganized under a holding company structure."⁴ In a decision denying rehearing of D.02-01-039, the Commission amplified the point:

The only way for ratepayers to be indifferent to whether the utilities continue to be stand-alone companies, or whether they are reorganized under a holding company structure, is for them to remain no worse or better off under either structure.⁵

The CCSF Petition makes very clear why the Commission should modify D.05-12-041 to specifically prohibit a utility from marketing to retail customers related to CCA programs, soliciting opt-out requests (except when requested to do so by a CCA program)

³ D.96-11-017, issued in A.95-10-024 [1996 Cal. PUC LEXIS 1141, *28].

⁴ D.02-01-039, issued in I.01-04-002, *et al.*, p. 28 [cite omitted]. *See also* Finding of Fact 16 ["The first priority condition ... was necessary to protect the public interest and maintain ratepayer indifference."]

⁵ D.02-07-043, issued in I.01-04-002, *et al.*, pp. 23-24.

or otherwise engaging in conduct designed to thwart CCA programs. TURN raises the ratepayer indifference standard from the holding company cases to counter any sense the Commission might have that a different outcome could be warranted if PG&E was pursuing its anti-CCA campaign through either the holding company or some non-utility subsidiary of the holding company. Under Section 366.2(a)(1), ratepayers are entitled to aggregate their electric loads as members of their local community. In this instance, achieving “ratepayer indifference” requires the Commission to thwart any attempt to undermine this statutory entitlement, whether the attempt is coming directly from the utility or is characterized as the action of some other entity within the holding company structure.

IV. Conclusion

The latest news from the front PG&E has opened against CCA is that the utility is now threatening to refuse to provide distribution service to customers of the newly-formed Marin Energy Authority.⁶ Just when it seems that the utility has taken its failure to cooperate as far as it can go, PG&E proves its willingness to take the campaign one step further. The Commission needs to step in and require the utility to halt the campaign and to act in a manner consistent with the statutory language calling for utility cooperation with CCA efforts. Granting the relief sought in CCSF’s petition would be a welcome start in that direction.

⁶ According to an article dated February 2, 2010 in the Contra Costa Times, “Marin County Counsel told [Marin County] supervisors ... that PG&E chief counsel Christopher Warner warned him that PG&E will refuse to sign an agreement with the Marin Energy Authority to distribute electricity to the authority’s new customers.” The article may be found at http://www.contracostatimes.com/news/ci_14320235.

ATTACHMENT A

“Selected Financial Data”

PG&E Corporation Annual Report for 2008

SELECTED FINANCIAL DATA

(in millions, except per share amounts)	2008	2007	2006	2005	2004 ⁽¹⁾
PG&E Corporation⁽²⁾					
For the Year					
Operating revenues	\$14,628	\$13,237	\$12,539	\$11,703	\$11,080
Operating income	2,261	2,114	2,108	1,970	7,118
Income from continuing operations	1,184	1,006	991	904	3,820
Earnings per common share from continuing operations, basic	3.23	2.79	2.78	2.37	9.16
Earnings per common share from continuing operations, diluted	3.22	2.78	2.76	2.34	8.97
Dividends declared per common share ⁽³⁾	1.56	1.44	1.32	1.23	—
At Year-End					
Book value per common share ⁽⁴⁾	\$ 24.64	\$ 22.91	\$ 21.24	\$ 19.94	\$ 20.90
Common stock price per share	38.71	43.09	47.33	37.12	33.28
Total assets	40,860	36,632	34,803	34,074	34,540
Long-term debt (excluding current portion)	9,321	8,171	6,697	6,976	7,323
Rate reduction bonds (excluding current portion)	—	—	—	290	580
Energy recovery bonds (excluding current portion)	1,213	1,582	1,936	2,276	—
Preferred stock of subsidiary with mandatory redemption provisions	—	—	—	—	122
Pacific Gas and Electric Company					
For the Year					
Operating revenues	\$14,628	\$13,238	\$12,539	\$11,704	\$11,080
Operating income	2,266	2,125	2,115	1,970	7,144
Income available for common stock	1,185	1,010	971	918	3,961
At Year-End					
Total assets	\$40,537	\$36,310	\$34,371	\$33,783	\$34,302
Long-term debt (excluding current portion)	9,041	7,891	6,697	6,696	7,043
Rate reduction bonds (excluding current portion)	—	—	—	290	580
Energy recovery bonds (excluding current portion)	1,213	1,582	1,936	2,276	—
Preferred stock with mandatory redemption provisions	—	—	—	—	122

(1) Financial data reflects the recognition of regulatory assets provided under the December 19, 2003 settlement agreement entered into among PG&E Corporation, Pacific Gas and Electric Company, and the California Public Utilities Commission to resolve Pacific Gas and Electric Company's proceeding under Chapter 11 of the U.S. Bankruptcy Code. Pacific Gas and Electric Company's reorganization under Chapter 11 became effective on April 12, 2004.

(2) Matters relating to discontinued operations are discussed in the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and in Note 6 of the Notes to the Consolidated Financial Statements.

(3) The Board of Directors of PG&E Corporation declared a cash dividend of \$0.30 per share for the first three quarters of 2005. In the fourth quarter of 2005, the Board of Directors increased the quarterly cash dividend to \$0.33 per share. Beginning in the first quarter of 2007, the Board of Directors increased the quarterly cash dividend to \$0.36 per share. Beginning in the first quarter of 2008, the Board of Directors increased the quarterly cash dividend to \$0.39 per share. The Utility paid quarterly dividends on common stock held by PG&E Corporation and a wholly owned subsidiary aggregating to \$589 million in 2008 and \$547 million in 2007. See Note 7 of the Notes to the Consolidated Financial Statements.

(4) Book value per common share includes the effect of participating securities. The dilutive effect of outstanding stock options and restricted stock is further disclosed in Note 9 of the Notes to the Consolidated Financial Statements.

CERTIFICATE OF SERVICE

I, Larry Wong, certify under penalty of perjury under the laws of the State of California that the following is true and correct:

On February 10, 2010 I served the attached:

RESPONSE OF THE UTILITY REFORM NETWORK

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on all eligible parties on the attached lists **R.03-10-003** by sending said document by electronic mail to each of the parties via electronic mail, as reflected on the attached Service List.

Executed this February 10, 2010, at San Francisco, California.

/S/
Larry Wong

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