

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application of Pacific Gas & Electric Company for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 2011. (U 39 M)

Application No. 09-12-020
(Filed December 21, 2009)

**MOTION TO STRIKE
A PORTION OF PACIFIC GAS & ELECTRIC'S
REBUTTAL TESTIMONY**

I. INTRODUCTION

Pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure, and the Assigned Commissioner's Ruling and Scoping Memo, the Division of Ratepayer Advocates (DRA) submits this Motion to Strike Portions of Pacific Gas & Electric's (PG&E) Rebuttal Testimony.

II. DISCUSSION

The Commission has held that a utility is not permitted to withhold salient information until submission of rebuttal. PG&E failed to provide DRA with salient information sought by DRA in data requests. Moreover, in response to DRA's critique of PG&E's showing, PG&E in its rebuttal testimony tried to answer DRA's critique by referring to information provided to The Utility Reform Network (TURN). In addition, PG&E improperly provided, in its rebuttal testimony, additional support for some of its capital projects.¹

¹ See, PG&E 13-75:21-21 and PG&E 18-12:15-29. None of this information was provided prior to rebuttal and should thus be stricken.

A. New information regarding the consolidation project should be stricken.

On July 20, 2009, PG&E tendered its Notice of Intent (NOI) and filed its test year (TY) 2011 general rate case (GRC) application on December 21, 2009. Along with its Application, PG&E submitted approximately 11 volumes of testimony and 2 boxes of supporting workpapers. In response, DRA issued numerous data requests (DRs) including DRA_078-11-TLG², which was sent to PG&E on November 19, 2009. The DR asked PG&E to provide the cost benefit analysis performed by PG&E management as well as the step by step approach management took in approving the consolidation of its electric distribution centers from 17 to 4.

On December 21, 2009, PG&E responded that it *would* create *new* documents for management approval of the consolidation project in 2010. In addition, PG&E was *confident* that the project is a viable project and to the extent that it would result in cost savings, PG&E would reflect such in a future GRC filing.³

Based on this response, DRA submitted its testimony in May 2010 and recommended against fully funding PG&E's consolidation project. DRA stated that PG&E had failed to provide a cost benefit analysis for the consolidation project and did not provide any calculated and identifiable savings and benefits for ratepayers.⁴

On June 4, 2010, PG&E sent out copies of its Rebuttal Testimony including PG&E-18, Volume 3B, Chapter 23 at page 23-12, in which PG&E stated that "PG&E provided the business case, financial benefits and facility costs in its supplemental responses to TURN-031, Question 8 and DRA-078 Question 11."⁵

This testimony and the supplement (or any reference to the supplement) to DRA-078⁶ should be stricken. "[I]t is not permissible for utilities to hold back on the

² PG&E-18, Volume 3B, Chapter 23, p. 23E-2 (original filing).

³ *Id.*

⁴ DRA-5, p. 76-77.

⁵ PG&E-18, Volume 3B, Chapter 23, p. 23-12:17-19 and TR 14, 1547:20-24

⁶ PG&E-18, Volume 3B, Chapter 23, p. 23E-2. On the witness stand, the PG&E witness stated that he had also included additional financial benefits in the errata to his rebuttal testimony. (PG&E 19-61). This

presentation of salient information until the submission of rebuttal testimony.”⁷ In addition, the Assigned Commissioner’s Ruling and Scoping Memo makes it crystal clear that it is “inappropriate, and a potential grounds for striking, for any party to withhold direct presentations for introduction in rebuttal testimony.”⁸

At no point was DRA given an opportunity to review the information included in PG&E’s rebuttal. Moreover, in numerous places in its rebuttal testimony,⁹ PG&E implies that it provided DRA with the appropriate justification for the consolidation project and yet, PG&E did nothing of the sort. Instead, PG&E allegedly provided TURN with this information. In response to DRA’s oral motion to strike the above mentioned portions of PG&E’s rebuttal testimony, PG&E made the assertion that “all data request responses are available on the Web to all parties. So all parties have notice of any data request response that’s served.”¹⁰ PG&E’s argument beggars belief and would make the dusty remains of Alfred Jarry sit up and clap.¹¹ Moreover, PG&E’s contention that DRA should have looked through other parties’ DRs and PG&E’s responses thereto, as this was the purpose of the web-based DR repository is false,¹² and ludicrously impracticable. PG&E’s contention would require that DRA (or any other party) sift through the approximately 7,000 discovery requests and responses in order to try and glean whether PG&E had answered DRA’s DR in a response to a different party. While this may come

information should also be stricken.

⁷ (See Application of Southern California Edison Company (2004) D.04-07-022, mimeo, p. 153)

⁸ Assigned Commissioner’s Ruling and Scoping Memo, Appendix D.

⁹ See PG&E 23-10 through 23-14 (Q&A 36, 38, 41, 42, 43, 44, 46).

¹⁰ TR V14, p. 1548:28 through 1549:1-2.

¹¹ Alfred Jarry coined the term and concept ‘Pataphysics, which is the science of imaginary solutions, and he mandated the inclusion of the apostrophe in the orthography to avoid a simple pun. (For more on Mr. Jarry and ‘Pataphysics please see <http://en.wikipedia.org/wiki/Pataphysics>).

¹² At the prehearing conference, PG&E made it perfectly clear while parties, if they chose to use PG&E’s web-based system, could “see every discovery request anybody has ever asked [PG&E]. [The web-based system] is just something that we’re suggesting is available, but we’re not suggesting parties should be directed to use it”. (See, PHC TR p.36:24-26). There was no intent that parties review each and every DR requested and responded to. See also, Assigned Commissioner’s Ruling and Scoping Memo, Appendix C. In addition, contrary to PG&E’s contention, DRA was not cc’d when PG&E filed its response to TURN’s DR. (See, TR V14, p. 1549:12-15).

as a shock to the parties in this proceeding, DRA does not have the budget for a crystal ball; though perhaps in the future PG&E would be so kind as to provide DRA with theirs. Furthermore, PG&E's logic dictates that it would be sufficient for DRA to serve this very motion on Southern California Edison (or any lucky party other than PG&E) as long as DRA also posted it on the DRA's website. This logic cannot stand.¹³

B. New information regarding capital projects should be stricken.

In its application, PG&E requested \$4 million for the Oakland D-4 switch gear replacement project. In its workpapers, PG&E stated under the heading "JUSTIFICATION" that the "condition of the equipment in these stations is evaluated yearly and re-prioritized for replacement if necessary."¹⁴ Based on this, DRA recommended that the project be postponed. In its rebuttal testimony, PG&E stated that equipment has been identified as being in "poor/deteriorated condition" and has a "high risk of failure".¹⁵ Due to the improper inclusion of these new justifications in PG&E's rebuttal testimony, neither DRA nor any other party was given the opportunity to test this new information. Any and all mention of "poor condition and "high risk of failure" and "deteriorated condition" should be stricken.

¹³ DRA notes that (1) PG&E apologized to DRA for PG&E's failure to provide a supplemental response to DRA and (2) PG&E allegedly called DRA to let DRA know that PG&E was changing its consolidation plan and would provide said update in its rebuttal testimony. While DRA appreciates PG&E's apology, neither the apology nor the alleged phone call to DRA suffice.

¹⁴ See, PG&E WP 8-22, attached as Appendix A.

¹⁵ PG&E 18, Volume 3A, Chapter 12, p.12:15-29.

III. CONCLUSION

For the foregoing reasons, DRA asks that the above listed portions of PG&E's Rebuttal Testimony identified above be stricken.

Respectfully submitted,

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July 22, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day *served* a copy of the foregoing document **MOTION TO STRIKE A PORTION OF TESTIMONY IN PACIFIC GAS & ELECTRIC'S REBUTTAL TESTIMONY** in **A.09-12-020**.

A copy was served as follows:

BY E-MAIL: I sent a true copy via e-mail to all known parties of record who have provided e-mail addresses.

BY MAIL: I sent a true copy via first-class mail to all known parties of record.

Executed in San Francisco, California, on the **22nd** day of **July, 2010**.

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