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Ratesetting

TO PARTIES OF RECORD IN APPLICATION 15-02-009:

This is the proposed decision of Administrative Law Judge Darwin E. Farrar. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's December 15, 2016 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Upon the request of any Commissioner, a Ratesetting Deliberative Meeting (RDM) may be held. If that occurs, the Commission will prepare and publish an agenda for the RDM 10 days beforehand. When the RDM is held, there is a related ex parte communications prohibition period. (See Rule 8.3(c)(4).)

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC:ek4
Attachment

Decision **PROPOSED DECISION OF ALJ FARRAR** (Mailed 11/14/2016)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Gas and Electric Company for Approval of its Electric Vehicle Infrastructure and Education Program (U39E).

Application 15-02-009
(Filed February 9, 2015)

**DECISION DIRECTING PACIFIC GAS AND ELECTRIC COMPANY TO
ESTABLISH AN ELECTRIC VEHICLE INFRASTRUCTURE AND
EDUCATION PROGRAM**

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DECISION DIRECTING PACIFIC GAS AND ELECTRIC COMPANY TO ESTABLISH AN ELECTRIC VEHICLE INFRASTRUCTURE AND EDUCATION PROGRAM**Summary**

Today's decision provides guidance and direction to Pacific Gas and Electric Company (PG&E), for its Electric Vehicle (EV) infrastructure and education program. Today's decision provides for:

- PG&E ownership of EV supply infrastructure ("make-ready" infrastructure) to support up to 7,500 EV charging ports in multi-unit dwellings, disadvantaged communities and workplaces;
- PG&E ownership in multi-unit dwellings and disadvantaged communities of up to 2,625 EV charging ports;
- Expenditure of up to a total \$130 million in Phase 1 of PG&E's Electric Vehicle Program;
- Rate recovery by PG&E;
- Varying levels of site host participation payments rebates; and
- A Program Advisory Council.

This decision closes the proceeding.

1. Background

Executive Order B-16-2012, signed by California Governor Brown on March 23, 2012, directed the California Public Utilities Commission (Commission) and other state agencies to establish benchmarks to help achieve the build-out of Zero Emission Vehicle (ZEV) infrastructure capable of supporting up to one million vehicles, and to integrate Plug-in Electric Vehicle (PEV) charging into the state's electricity grid by 2020. Executive Order B-16-2012 further directs the state agencies to establish benchmarks to help achieve the goal of having over

1.5 million ZEVs on California's roads by 2025.¹ These goals are also set forth in the Governor's Executive Order, and in various California statutes.²

On February 9, 2015, Pacific Gas and Electric Company (PG&E) filed Application (A.) 15-02-009, seeking approval of its proposed Electric Vehicle Infrastructure and Education Program (EV Program) proposing to deploy, own, and manage approximately 25 percent of the charging stations it deems necessary to support its share of the Executive Order B-16-2012 goals.³ Responses and protests were filed on March 11, 12, and 13, 2015. On May 5, 2015, the assigned Commissioner held an all-party meeting in this and two related proceedings. Motions filed across the various proceedings and the merits of consolidating the proceedings were discussed at the all-party meeting. On June 12, 2015, the assigned Administrative Law Judge (ALJ) held a prehearing conference (PHC) to discuss the parties, issues, schedule, and other procedural matters. At the PHC, parties were asked to consider phasing PG&E's proposed EV Program, and by ruling dated June 16, 2015, the assigned ALJ requested formal comments on phasing PG&E's proposed EV Program. Parties

¹ The Governor's Executive Order subsequently became the focus of the Governor's Interagency Working Group on Zero-Emission Vehicles, which issued a report entitled the "2013 ZEV Action Plan" in February 2013. The 2013 ZEV Action Plan identified specific strategies and actions that various state agencies would take to meet the milestones set forth in the Executive Order.

² See for example, Public Utilities Code Sections (Pub. Util. Code) 399.11, 740.2, 740.3, and 740.8; Health & Safety (H&S) Code §§ 38501, 38550, 38551; Public Resources Code Section 25740; and Stats. of 2013, Ch. 418, § 1. On January 14 and 28, 2016, the Commission issued decisions approving modified EV program proposals for the Southern California Edison Company (SCE) and the San Diego Gas and Electric Company (SDG&E) (*see* Decision (D.) 16-01-023 and D.16-01-045 respectively).

³ A.15-02-009; Exh. 1.

filed comments on this issue on July 2 and 3, 2015, and reply comments on July 10, 2015.

On September 4, 2015, the assigned Commissioner and assigned ALJ issued a Scoping Memo and Ruling (Scoping Ruling) requiring, among other things, that PG&E file and serve a supplement to its application no later than October 12, 2015 that included: 1) an initial phase of electric charging station deployment, limited to a maximum of 2,510 charging stations, to be deployed over no more than 24 months; 2) a transition plan that provides at least 18 months of data for evaluation by the Commission, and that identifies steps to minimize market uncertainty and discontinuity during the regulatory review period; and 3) responses to specific questions described in the Scoping Ruling.

On October 12, 2015, PG&E served supplemental testimony and responses to the questions in the Scoping Ruling.⁴ PG&E's supplemental testimony included both the requested Compliant Proposal and an Enhanced Proposal. PG&E's Compliant Proposal limited Phase 1 to 2,510 charging stations (10 percent of PG&E's Original Proposal) to be deployed over a 24-month period (from the date of first construction), provides for 18 months of data collection, and includes a plan for transitioning from Phase 1 to Phase 2. PG&E's Compliant Proposal totals \$70 million in capital costs and \$17 million in expense amounts. PG&E's Enhanced Proposal provides for deployment of a maximum of 7,530 EV charging stations over no more than 36 months from the date of first

⁴ Exh. 3.

construction. The Enhanced Proposal requires a total of \$187 million in capital costs and \$35 million in expenses, with deployment over a 36-month timeframe.⁵

On October 23, 2015, The Utility Reform Network (TURN), Office of Ratepayer Advocates (ORA), and Marin Clean Energy (MCE) moved to strike portions of PG&E's supplemental testimony on claims that the testimony was outside the scope of this proceeding because it presents not only a phased program limited to 10 percent of the total number of charging stations proposed by PG&E in its application, but also an "enhanced" phased proposal that consists of approximately 30 percent of the total charging stations proposed in its application. (TURN, et al. Motion at 4- 5.) On November 2, 2015, Green Power Institute (GPI), The Joint Minority Parties, and ChargePoint filed responses supporting the October 23, 2015 motion, while PG&E filed a response opposing the motion.

On November 30, 2015, 14 parties served testimony responding to PG&E's supplemental testimony.⁶ None of these parties expressed unequivocal support for the Enhanced Proposal PG&E proposed in its supplemental testimony. On December 21, 2015, PG&E served rebuttal testimony responding to the intervenor testimony.⁷

⁵ Exh. 3 at 1 (Corey).

⁶ These parties included Joint Minority Parties (JMP), ORA, TURN, ChargePoint, Vote Solar, the Electric Vehicle Charging Association (EVCA), TechNet, GPI, American Honda Motor Co., the Coalition of California Utility Employees (CUE), General Motors LLC, The Greenlining Institute (Greenlining), Marin Clean Energy, Natural Resources Defense Council (NRDC), Plug In America, the Sierra Club, the Alliance of Automobile Manufacturers, Greenlots, the Center for Sustainable Energy, Marin Clean Energy, and Sonoma Clean Power.

⁷ Exh. 2.

On March 21, 2016, PG&E, American Honda Motor Co., CUE, General Motors LLC, Greenlining, Marin Clean Energy, NRDC, Plug In America, the Sierra Club, the Alliance of Automobile Manufacturers, Greenlots, the Center for Sustainable Energy, and Sonoma Clean Power (collectively, the Settling Parties) executed the Settlement Agreement and filed their “Joint Motion for Adoption of Charge Smart and Save Proposal.”⁸ On March 29, 2016, the ALJ issued his Ruling Setting Hearing Schedule and Directing the Joint Settling Parties to Respond to Various Questions. On April 12, 2016, Settling Parties filed their responses to the ALJ’s questions.⁹ Also on April 12, 2016, TURN, ORA, ChargePoint, EVCA, TechNet, Consumer Federation of America, JMP, GPI, filed comments on the Settlement Agreement. On April 18, 2016, the 13 Settling Parties filed Reply Comments in response to the April 12, 2015 Opening Comments on the Settlement Agreement.

Between April 25-28, 2016, parties participated in hearings on the Settlement Agreement and other EV charging proposals put forth by PG&E. On June 17, 2016, parties filed opening briefs. While JMP, ORA, TURN, ChargePoint, Vote Solar, EVCA, TechNet, and GPI did not submit a joint proposal to the Commission, their individual briefs contained several shared recommendations.¹⁰ On July 12, 2016, parties filed reply briefs.

By Ruling dated July 7, 2016, the assigned ALJ reopened the record of the proceeding and directed PG&E and the Joint Settling Parties to respond to a

⁸ The Settlement Agreement is attached to the Joint Motion.

⁹ See Joint Response by Settling Parties to Administrative Law Judge’s Ruling Directing Joint Settling Parties to Respond to Various Questions, April 12, 2016.

¹⁰ Some of these parties’ briefs contained additional recommendations that while generally consistent with, go beyond the shared points of agreement.

series of questions attached to the Ruling. The proceeding was deemed submitted on August 1, 2016, when the Non-Settling Parties provided replies to the responses provided by PG&E and the Joint Settling Parties.

2. Summary of EV Charging Program Proposals

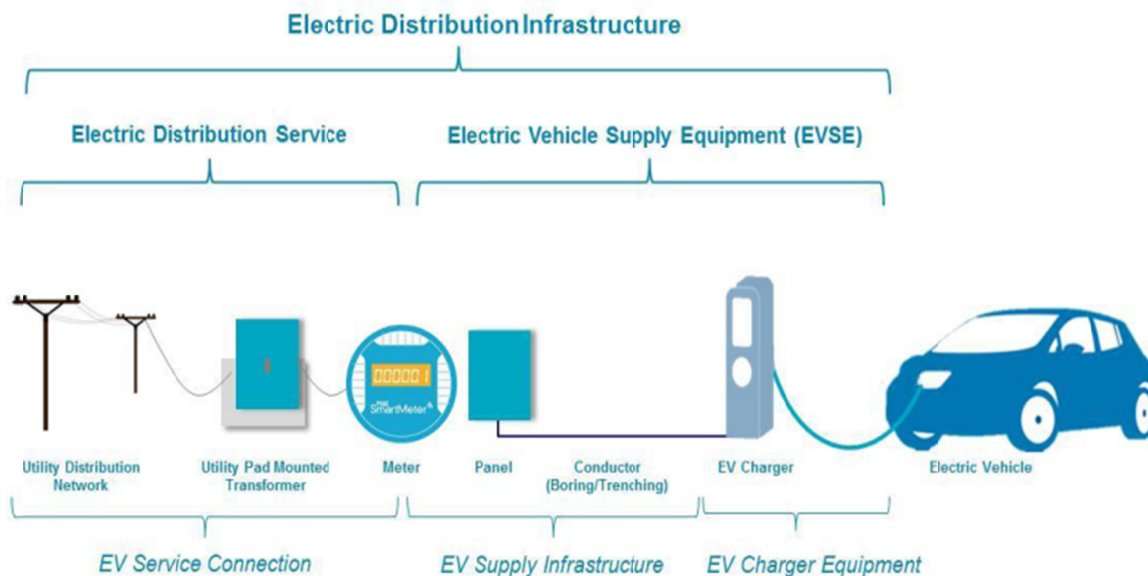
Over the course of this proceeding, parties have submitted what we construe as a total of five different EV charging proposals. These proposals differ in terms of size, cost, duration, target segments, load management strategies, and other factors. Following a brief overview of the salient features of each proposal,¹¹ we consider the parties' arguments in support of each of the defining characteristic of the proposals.

2.1. PG&E's Original Proposal

PG&E originally proposed to deploy, own and maintain approximately 25,000 Level 2 EV charging stations and approximately 100 Direct Current Fast Chargers (DCFCs) and supporting infrastructure.¹² The infrastructure needed for EV charging is described by PG&E in their prepared testimony using Figure 1.

¹¹ This and other pertinent program information is set forth in summary form in Table 1 below.

¹² Level 2 charging offers charging through 240 V or 208 V electrical service and typically adds about 10 to 20 miles of driving range per hour of charging time. Since most homes have 240 V service available and Level 2 chargers can charge a typical EV battery overnight, they will commonly be installed at EV owners' homes. DCFCs enable rapid charging along heavy traffic corridors and at public stations. DCFCs typically add about 50 to 70 miles of driving range per 20 minutes of charging time. *See* http://www.afdc.energy.gov/fuels/electricity_infrastructure.html.

Figure 1. EV Charging Infrastructure¹³

PG&E’s original proposal targeted public facilities, workplaces and multi-unit dwellings and with a goal of installing approximately 10 percent of the charging infrastructure in disadvantaged communities. This proposal used time-variant pricing and offered education and outreach materials to drive EV adoption. PG&E’s Original Proposal provided for a minimum of 10 percent deployment in disadvantaged communities plus \$5 million for related programs in these communities. PG&E requested \$551,151,000 in capital costs and \$102,695,000 in expense costs, for a total of \$653,846,000, to fund the EV program it originally proposed. PG&E argued that a program of this magnitude was

¹³ Exh. PG&E-2, Chapter 1, Figure 1-1. For purposes of this decision, Electric Vehicle Service Equipment, or EVSE, is defined as the EV charger equipment as opposed to the supply infrastructure, which we refer to as the make-ready infrastructure. In addition, the term “EV charging port” refers to the number of plugs per EVSE (e.g., there could be one or multiple “ports” per EVSE.)

necessary to achieve its share of the build-out of ZEV infrastructure called for in Executive Order B-16-2012.

The Scoping Ruling found that a more measured approach to utility ownership was warranted and, in directing PG&E to supplement its original application and set forth a more phased deployment approach, effectively rejected PG&E's original proposal.¹⁴

2.2. PG&E's "Compliant Proposal"

In response to the September 4, 2015 Scoping Ruling, on October 12, 2015, PG&E submitted its "Compliant Proposal." As directed by the Scoping Ruling, PG&E's Compliant Proposal provides for an initial deployment of 2,510 charging stations, "10 percent of the total originally proposed number of charging stations."¹⁵ Rather than reduce its proposal to 10 percent for each type of charger across the board, PG&E's Compliant Proposal reduces the number of Level 2 charging stations to 9.8 percent, from 25,000 to 2,460, and the number of DCFCs by only 50 percent, from 100 to 50 for a reduction in the total number of chargers to 10 percent. Similar to PG&E's Original Proposal, the Compliant Proposal provides for PG&E's ownership of all the Level 2 and DCFCs it proposes to build, with a minimum of 10 percent deployment in disadvantaged communities, plus \$3.3 million for related programs in these communities. The Compliant Proposal provides for a program advisory council similar to those adopted for SCE and SDG&E in D.16-01-023 and D.16-01-045 (respectively). PG&E estimates the cost of its Compliant Proposal at \$87 million.

¹⁴ Scoping Ruling at 7.

¹⁵ Scoping Ruling at 7.

While some parties argue that this proposal should be rejected on claims that PG&E failed to comply with the Scoping Ruling's directive to provide for an initial phase deployment of "10 percent of the total originally proposed number of charging stations," more pressing issues raised about this proposal include whether and why PG&E should own the assets, how the number of DCFCs provided for in the proposal was determined, and whether each charger should have one or two ports.

2.3. PG&E's Enhanced Proposal

The PG&E Enhanced Proposal provides for a substantial build-out over the Compliant Proposal. In addition to almost triple the number of Level 2 chargers (7,430), and twice as many DCFCs (100), the Enhanced Proposal provides for an additional \$0.5 million for programs related to the 10 percent deployment in disadvantaged communities, compared to the Compliant Proposal. Like the Compliant Proposal, the Enhanced Proposal provides for a Program Advisory Council. PG&E estimates the costs of the Enhanced Proposal at \$222 million.

In addition to the foundational question of whether consideration of this proposal violates our rules of practice and procedure and/or parties' due process rights, other issues that have been raised about this proposal include: what appear to be higher per charger costs; how the number of DCFCs provided for in the proposal was determined; what, if any justification exists for utility ownership; the appropriateness of the definition of Disadvantaged Community (DAC) used; site host rate-plan flexibility, and; whether each charger should have one or two ports.

2.4. The Settlement Agreement

The Settlement Agreement provides for the installation of 7,500 Level 2 ports and 100 DCFCs at an estimated cost of \$160 million in Phase 1 which will

run for three years after construction of the first installation. In addition to being estimated to cost \$62 million dollars less than PG&E's comparable (in terms of number of chargers built) Enhanced Proposal, the Settlement Agreement also provides for load management through Time of Use (TOU) rates, site selection, and the capacity to integrate Distribution Resource Plan (DRP) Integration Capacity Analysis. The Settlement Agreement also provides for greater site host involvement. In addition to allowing site hosts to choose between TOU Rate-to-Driver and Rate-to-Host options, the Settlement Agreement allows a site host the choice of charging technology, and provides for differing participation payments (10 percent for Multi-Unit Dwellings (MUDs), 20 percent for private entities, and waivers for DACs, non-profits, and government entities). Also, the Settlement Agreement provides for a 15 percent minimum in DACs, plus an additional 5 percent stretch goal for deployment of infrastructure in disadvantaged/California Alternative Rates for Energy (CARE) communities, plus \$5 million for additional programs (DCFC stations outside of DACs will count towards this target if they demonstrate co-benefits). Finally, the Settlement Agreement provides specific segment target goals of 20 percent for MUDs, with a 50 percent stretch goal, and a program advisory council such as was established in D.16-01-045.

2.5. Non-Settling Parties' Recommendations

The Opening Briefs filed by JMP, ORA, TURN, ChargePoint, Vote Solar, EVCA, TechNet, and GPI contain several common proposed modifications to the PG&E Compliant Proposal. For example, the Non-Settling Parties propose a budget of \$87 million with Phase 1 up and running for three years after initial

construction. From this starting point, the Non-Settling Parties provide for 2,500 Level 2 Chargers¹⁶ each with two ports for a total of 5,000 ports, along with 10 DCFCs,¹⁷ and propose load management through the DRP Integration Capacity Analysis (ICA). The Non-Settling Parties also provide for greater site host involvement. In addition to allowing site hosts to determine the rates and structure of driver charging rates,¹⁸ the Non-Settling Parties would allow the site host to choose equipment and network services, and identify the site host as the customer of record.¹⁹ The Non-Settling Parties' recommendations also appear to encourage participation in traditionally challenging markets by waiving the participation payment for MUD site hosts that are in DACs, and establishing a 50 percent minimum target for this segment.²⁰ Finally, the Non-Settling Parties propose that PG&E be allowed to ratebase the make-ready, but not Electric Vehicle Supply Equipment (EVSE) portion of the sites, and that any PG&E ownership be limited to sites in MUDs and/or DACs.²¹ In their reply briefs, the Settling Parties take issue with the proposals made by the Non-Settling Parties.

2.6. Conclusion

A summary of each proposal is presented below in Table A. No proposal is supported by all parties, and no party supports all of the proposals made. While, at least in theory, each proposal has particular strengths, certain

¹⁶ TURN, one of the Non-Settling Parties, suggests these may be Level 1 or Level 2 chargers.

¹⁷ GPI suggests up to 300 DCFC.

¹⁸ TechNet and GPI do not comment on this aspect of the proposal.

¹⁹ TURN, EVCA, and GPI do not comment on customer of record.

²⁰ For the most part, the Non-Settling Parties define a DAC as the top quartile in the CalEnviroScreen. TechNet and GPI do not comment on this aspect of the proposal.

²¹ GPI suggests there is no need for PG&E ownership since SDG&E is testing this approach.

weaknesses can also be attributed to each proposal. Rather than approve any one of the proposals as presented, we will adopt an EV program, drawing from elements of all proposals that is more consistent with the proceeding record and the public interest.

Table A: Comparison of Proposals in A.15-02-009

	PG&E Original Proposal (February 9, 2015)	PG&E Enhanced Proposal (October 12, 2015)	PG&E Compliant Proposal (October 12, 2015)	Charge Smart and Save (March 21, 2016)	Non-Settling Parties (June 17, 2016 Briefs) ²²
Size	25,000 L2; 100 DCFC	7,430 L2; 100 DCFC	2,460 L2; 50 DCFC	7,500 L2 ports; 100 DCFC (Phase 1)	2,500 L2 chargers (5,000 ports); ²³ 10 DCFC ²⁴
Cost	\$654 million	\$222 million	\$87 million	\$160 million (Phase 1)	\$87 million
Duration	7 years	3 years after initial construction	2 years after initial construction	3 years after initial construction (Phase 1)	2 years after initial construction
Ownership	PG&E	PG&E	PG&E	PG&E	PG&E can ratebase make-ready, not EVSE; limit PG&E ownership to MUDs and/or DACs ²⁵
Segment Targets	None. Will serve MUDs, workplaces, fleets, public	None	None	20% at MUDs with 50% MUD stretch goal. 15% at DACs with 20% stretch goal.	50% minimum at MUDs ²⁶

²² JMP, ORA, TURN, ChargePoint, Vote Solar, EVCA, TechNet, and GPI did not submit a joint proposal to the Commission, but their individual briefs supported several consistent recommendations, which are identified in this table. Some of these parties' briefs contained additional recommendations in addition to what was commonly agreed upon and are not included in this table.

²³ TURN suggests these may be Level 1 or Level 2.

²⁴ GPI suggests up to 300 DCFCs.

²⁵ GPI suggests there is no need for PG&E ownership since SDG&E is testing this.

²⁶ GPI does not comment on the 50 percent MUD minimum.

	PG&E Original Proposal (February 9, 2015)	PG&E Enhanced Proposal (October 12, 2015)	PG&E Compliant Proposal (October 12, 2015)	Charge Smart and Save (March 21, 2016)	Non-Settling Parties (June 17, 2016 Briefs) ²²
	Facilities				
Load Management	TOU Rates	TOU Rates	TOU Rates	TOU Rates and Load Management Plans; site selection uses DRP Integration Capacity Analysis	Load management plan; ²⁷ use DRP ICA ²⁸
Site Host Flexibility in Rate Plans	No	No	No	Yes, may choose rate to host or rate to driver	Site host determines rate structure and driver charge ²⁹
Site Host Participation Payments	No	No	No	Yes, 10% for MUDs, 20% for private entities; waived for DACs, non-profits, government, DCFC	MUDs in DACs receive full payment waiver ³⁰
Site Host Choice of Charging Technology	No	No	No	Yes, consistent with D.16-01-045	Yes, site host chooses equipment and network services. Site host is customer of record. ³¹
Disadvantaged Communities Deployment and Support	10%, plus \$5 million for additional programs	10%, plus \$3.8 million for additional programs	10%, plus \$3.3 million for additional programs	15% minimum, plus additional 5% stretch goal in disadvantaged/CARE communities, plus \$5 million for additional programs; DCFC stations outside of DACs will count towards target if they	Define as top quartile in CalEnviroScreen ³²

²⁷ TechNet and GPI do not comment on this.

²⁸ GPI does not comment on this.

²⁹ TechNet and GPI do not comment on this.

³⁰ GPI does not comment on this.

³¹ TURN, EVCA, and GPI do not comment on customer of record.

³² TechNet and GPI do not comment on this.

	PG&E Original Proposal (February 9, 2015)	PG&E Enhanced Proposal (October 12, 2015)	PG&E Compliant Proposal (October 12, 2015)	Charge Smart and Save (March 21, 2016)	Non-Settling Parties (June 17, 2016 Briefs) ²²
				demonstrate co-benefits	
Program Advisory Council	No	Yes, similar to SCE and SDG&E	Yes, similar to SCE and SDG&E	Yes, consistent with D.16-01-045	Yes, reps from govt, industry, labor, ratepayer, environmental, DAC ³³

3. Burden of Proof and Legal Standards

At least three different legal standards are relevant to this discussion.

First, consistent with § 451,³⁴ the Commission is charged with ensuring that all rates demanded or received by a public utility are just and reasonable.³⁵ Various parties argue, and PG&E appears to agree, that PG&E has the burden of proving that it is entitled to the relief sought in this proceeding, and affirmatively establishing the reasonableness of all aspects of its application.

In particular, PG&E is obliged to affirmatively establish that its proposal meets all of the requirements set forth § 740.3. Second, proponents of utility ownership of EV charging infrastructure must affirmatively establish that this approach satisfies the test established in D.11-07-029 and reaffirmed in D.14-12-079, wherein the benefits of utility ownership of EV charging infrastructure is balanced against the competitive limitation that may result from

³³ EVCA and GPI do not comment on this.

³⁴ Unless otherwise noted, all statutory references are to the Pub. Util. Code.

³⁵ Cal. Const., art. XII, § 6; also *see*, *Monterey Peninsula Water Management Dist. v. Public Utilities Com.* (2016) 62 Cal. 4th 693, 700.

that ownership (balancing test).³⁶ Finally, because a settlement is at issue, we must consider whether the settlement is reasonable, consistent with law, and in the public interest.³⁷

In addition to these Rule 12.1(d), requirements, in reviewing the settlement, our analysis must also take into account that although several, but by no means all, of the parties have joined the settlement, the settlement is contested. In prior proceedings wherein a settlement affecting all PG&E customers was proffered, the Commission has stated that the factors used by the courts in approving class action settlements provide the appropriate criteria.³⁸ In order to determine whether a settlement is fair, adequate, and reasonable, the court balances factors such as risk, expense, the ability of opposing parties to gauge the strength and weakness of all parties, and the presence of a governmental participant.³⁹ In addition, other factors to consider are whether the settlement negotiations were at arm's length and without collusion; whether the major issues are addressed in the settlement; whether segments of the class are treated differently in the settlement; and the adequacy of representation.⁴⁰ Central to our analysis here, where the proposed settlement is contested, is the relevant objections or concerns of opposing parties and the question of whether the settlement agreement provides a negotiated resolution of all the disputed issues.

³⁶ ChargePoint Opening Brief at 8, citing *Application of San Diego Gas & Electric Co. for Approval of its Electric Vehicle-Grid Integration Pilot Program*, D.14-12-079 at 5.

³⁷ Rule 12.1(d) of the Commission's Rules of Practice and Procedure.

³⁸ See D.09-12-045 at 33.

³⁹ D.09-12-045 at 33-35.

⁴⁰ D.09-12-045 at 33-35, citing *Diablo Canyon*, 30 CPUC2d, 189, 222.

4. Review of the Settlement Agreement

As discussed above, the Scoping Ruling found that a more measured approach to utility investment in charging infrastructure than what was included in PG&E's Original Proposal was warranted. While the Scoping Ruling required PG&E to submit a program at 10 percent the size of the original application, it did not state that would be the upper limit of a program authorized by the Commission. Rather, it clearly referred to program phasing, which implies the Commission's intent to consider PG&E investment in this space above 10 percent of the original application.

The Settlement Agreement constitutes the Applicant's most recent program proposal, and is preferred by the Applicant and other Settling Parties to the Compliant and Enhanced Proposals. Therefore, we will first discuss whether the Settlement Agreement meets the aforementioned legal standards.

4.1. Ratepayer Interests – Generally

Consistent with D.14-12-079, ChargePoint argues that the Settling Parties have an obligation under § 740.3(c) to establish that the Settlement Agreement is "in the ratepayers' interest."⁴¹ Ratepayers' interest is defined in § 740.8 as follows:

As used in Section 740.3 or 740.12, "interests" of ratepayers, short- or long-term, mean direct benefits that are specific to ratepayers, consistent with both of the following:

(a) Safer, more reliable, or less costly gas or electrical service, consistent with Section 451, including electrical service that is safer, more reliable, or less costly due to either improved use of the electric system or improved integration of renewable energy generation.

⁴¹ Opening Brief of ChargePoint, Inc. at 7.

(b) Any one of the following:

- (1) Improvement in energy efficiency of travel.
- (2) Reduction of health and environmental impacts from air pollution.
- (3) Reduction of greenhouse gas emissions related to electricity and natural gas production and use.
- (4) Increased use of alternative fuels.
- (5) Creating high-quality jobs or other economic benefits, including in disadvantaged communities identified pursuant to Section 39711 of the Health and Safety Code.

The Settling Parties propose the Settlement Agreement is in the interest of ratepayers, as defined by § 740.8, because it will provide:⁴²

- Safer electrical service because “all of the construction and installation of the EV charging infrastructure will be performed safely, and to code, by licensed electrical contractors with EV infrastructure training certification;”
- More reliable electrical service by using time-of-use price signals and other load management strategies that shift EV load to hours of the day when there is spare capacity in the grid;
- More reliable electrical service by leveraging PG&E’s Distributed Resource Plan Integration Capacity Analysis to improve site selection;

⁴² Note that while Charge Smart and Save is designed to provide all of these enumerated benefits, § 740.8(a) only requires a showing of one of these benefits.

- Less costly electrical service due to improved integration of renewable generation that will result from using time-of-use rates as a foundation for load management upon which more sophisticated forms of load will be evaluated to identify an “Advanced EV Grid Support” program to be deployed in Phase 2;
- Less costly electrical service due to the improved use of the electric system that will result from time-of-use price signals and other load management strategies that shift EV load to hours of the day when there is spare capacity in the grid; and
- Less costly electrical service due to the improved use of the electric system that will result from leveraging PG&E’s Distributed Resource Plan Integration Capacity Analysis to improve site selection.

The Settling Parties go on to argue that, consistent with D.16-01-045, the Settlement Agreement will, under § 740.8(b):

- Promote the accelerated adoption of EVs which will promote the efficiency of travel;
- Reduce the health and environmental impacts from air pollution because vehicle electrification results in “over 85 percent fewer ozone-forming air pollutants emitted;”
- For every mile driven on electricity in a typical EV, reduce emissions of greenhouse gases by a factor of four relative to the average new conventional vehicle in PG&E service territory;
- Deploy EV charging stations that will increase the use of an alternative fuel; and
- Create high-quality jobs or other economic benefits, including in disadvantaged communities, by using union labor and deploying in disadvantaged communities.

We find these contentions to be both true and sufficient to support a preliminary finding that the Settlement Agreement provides benefits that are in the public interest.⁴³

4.2. Utility Ownership

4.2.1. Balancing Test

With the exception of the recommendations put forth by the Non-Settling Parties, all the proposals in this proceeding provide for ownership of the EV infrastructure by PG&E. As proposed by the Settling Parties:

PG&E will purchase and install equipment procured from the competitive marketplace, and own the infrastructure, including the service connection, supply infrastructure and charging equipment.⁴⁴

Consistent with this statement, under the Enhanced Proposal and Settlement Agreement PG&E would deploy and own 7,400 – 7,500 EV charging stations (respectively) in northern California, while under the Compliant Proposal PG&E would own 2,460 EV charging stations in northern California. These proposals appear to reflect our having provided for ownership of charging stations by SDG&E in its territory in D.16-01-045.

The utility ownership provided for in D.16-01-045 was permitted because the Commission recently overturned the broad prohibition against utility EV infrastructure ownership in D.14-12-079. However, rather than give the utilities blanket authority to own EV infrastructure, D.14-12-079 also reaffirmed the balancing test applied in D.11-07-029, which requires the “[ratepayer]

⁴³ Identical arguments were made and are equally applicable to the Compliant and Enhanced Proposals. *See* PG&E October 12, 2016 Supplement at 16-21.

⁴⁴ *See* Exh. PG&E-3 at 17.

benefits” of utility ownership of EV charging infrastructure to be balanced against the competitive limitation(s) that may result from that ownership.⁴⁵

The balancing test set forth in D.11-07-029, and reaffirmed in D.14-12-079 and subsequent related decisions, establishes that our review of the public interest must include an analysis of the impact of such ownership on competition where the proposals call for utility ownership of EV charging infrastructure.⁴⁶ Under these circumstances we must “take a more detailed, tailored approach to assessing any proposed utility program based upon the facts of specific requests, the likely competitive impact on the market segment targeted, and whether any anticompetitive impacts can be prevented or adequately mitigated through the exercise of existing rules and conditions.”⁴⁷ At a minimum, this factual inquiry will include an examination of:

1. The nature of the proposed utility program and its elements; for example, whether the utility proposes to own or provide charging infrastructure, billing services, metering, or customer information and education;
2. Examination of the degree to which the market into which the utility program would enter is competitive, and in what level of concentration;
3. Identification of potential unfair utility advantages, if any; and

⁴⁵ D.14-12-079 at 5-7.

⁴⁶ D.14-12-079, Conclusion of Law 3.

⁴⁷ D.14-12-079 at 8.

4. If the potential for the utility to unfairly compete is identified, the commission will determine if rules, conditions or regulatory protections are needed to effectively mitigate the anticompetitive impacts or unfair advantages held by the utility.⁴⁸

The Settling Parties acknowledge the import and applicability of the balancing test set forth in D.14-12-079. Among other things, the Settling Parties state:

To evaluate whether a utility should be permitted to own [EV supply equipment (EVSE)], the Commission in D.14-12-079 determined that this should be decided on a case specific approach, and that a balancing test weighing the benefits of electric utility ownership of EVSE against the potential competitive limitation that may result from that ownership, should be used.⁴⁹

However, contrary to the acknowledged need for a case specific approach, in Briefs the Settling Parties repeatedly argue that the Settlement Agreement should be deemed to satisfy the anticompetitive inquiry of D.14-12-079's balancing test because it contains many if not all of the same elements found and approved of in pilot programs for SDG&E and SCE (D.16-01-045 and D.16-01-023, respectively). For example, after asserting that the "Charge Smart and Save program incorporates every element upon which the Commission relied in declaring that both the \$103 million settlement proposed in the SDG&E proceeding and the scaled down version of the SDG&E program adopted by the Commission passed the balancing test established by D.14-12-079 and

⁴⁸ D.14-12-079 at 8-9.

⁴⁹ Settling Parties' Opening Brief at 22-23 (emphasis and footnote added).

appropriately mitigated any potential competitive impacts” the Settling Parties note that the Settlement Agreement:

- Adopts language from D.16-01-045 (with “VGI” replaced with “TOU”) that allows site hosts or their designees, to choose the TOU Rate- to-Host option, which allows site hosts to offer a similar TOU rate or other pricing option to EV charging customers.
- Like D.16-01-045, allows the site host or its designee to select the EVSE and related EV charging services from preapproved vendors, which allows third party providers to offer competing EVSE and EV charging services.
- Like D.16-01-045, allows the site host to pay a participation fee which will help offset a portion of EV charging infrastructure costs.
- Consistent with D.16-01-045, uses revenue from the participation payment to defray operation and maintenance expenses.
- Provides for PG&E ownership that compares favorably to the market concentration criteria presented in the record of the SDG&E proceeding.⁵⁰

This approach is fundamentally flawed. First and foremost, while D.16-01-045 correctly determined that certain factors (i.e., market saturation rates, allowing site host a choice among EVSE and EV charging services providers, and TOU pricing options) are important and have been found to reduce anticompetitive impacts, there is nothing in D.16-01-045 or any other decision identified by the Settling Parties that suggest such factors obviate the

⁵⁰ Settling Parties Opening Brief at 27, citing D.16-01-045 at 109; Exh. JOINT SETTling PARTIES-1, Charge Smart and Save Settlement Agreement, Section 6 at 9- 10.

need for anti-competitive mitigation measures.⁵¹ Second, and more generally, claims that the Settlement Agreement should be adopted because it incorporates elements found in the SCE and SDG&E EVSE decisions (D.16-01-023 and D.16-01-045, respectively) fail to account for significant and highly relevant differences between the PG&E proposal and the programs adopted in those decisions such as, among other things, economic drivers, market composition, and number of customers. Indeed, we find the crafting of the Settlement Agreement in this “me too” manner is misleading because the Settlement Agreement significantly differs from the settlement reached in D.16-01-045. For example, the Settlement Agreement includes deploying fast charging infrastructure, and does not include the Vehicle-Grid Integration (VGI) rate structure found in D.16-01-045. Below, we further describe PG&E’s proposals, including the Settlement Agreement, and address issues of competition pursuant to the balancing test.

4.2.2. Nature of the Proposed Utility Program

Parties agree that the Compliant Proposal, Enhanced Proposal, and Settlement Agreement provide for PG&E to deploy, own and manage new electric distribution infrastructure in its service area consisting of EV service connection, EV supply infrastructure and EV charging station equipment.⁵² ChargePoint provides additional detail on these issues where, among other things, it notes:

⁵¹ D.16-01-045, Finding of Fact 84, at 169-170.

⁵² See PG&E’s Electric Vehicle Infrastructure and Education Program Application at 3; PG&E’s Supplement to Application Pursuant to Joint Assigned Commissioner and Administrative Law Judge’s Scoping Memo and Ruling at 16-17; Joint Motion for Adoption of Settlement Agreement at 3.

The cost of the EVSE and network services, including a rate of return on capital investment, would be entirely paid for by PG&E's ratepayers. Site hosts at certain MUD and commercial sites would pay a nominal "participation payment" of 10-20 percent of the EVSE base cost. All other site hosts would pay nothing for the EVSE, network services, installation and [Operation and Maintenance] O&M.⁵³

The Settling Parties note that the Settlement Agreement allows the site host or its designee to select the EVSE and related EV charging services from preapproved vendors, and argue that this allows third party providers to offer competing EVSE and EV charging services to offset the potentially anticompetitive impacts of PG&E's ownership.⁵⁴ ChargePoint disputes this contention and notes that PG&E's proposing to purchase EVSE and contract for services instead of providing them itself ... does not change the fact that PG&E is directly participating in a competitive market, and marketing goods and services that it will own and operate to site hosts in direct competition with third party non-utility businesses.⁵⁵ In particular, ChargePoint argues that allowing third party providers to offer competing EVSE and EV charging services will do little to offset the anticompetitive aspect of PG&E's ownership on claims that "PG&E's apparent plans to apply an unexplained weighting system to pick winners and losers in the [Request for Proposal] RFP will determine what equipment and services PG&E will choose for its program."⁵⁶ Finally, ChargePoint notes that "PG&E's own/operate proposal will also have anticompetitive impacts on the

⁵³ ChargePoint Opening Brief at 16, citing Exh.1, Settlement at 6.

⁵⁴ In addition, the Settlement Proposal also provides for Load Management Plans and site selection using DRP Integration Capacity Analysis. See Settling Parties Opening Brief at 16.

⁵⁵ ChargePoint Opening Brief at 19.

⁵⁶ ChargePoint Opening Brief at 24, citing Exh. 63 at 12-13.

separate competitive markets for demand response (“DR”) and other load management services provided through EVSE and managed EV charging.”⁵⁷

We agree that the Settlement Agreement does not provide a fully-detailed RFP process, however, we find that PG&E should develop this detailed process in consultation with its Program Advisory Council, incorporating any lessons learned to date from the SDG&E Power Your Drive pilot or the SCE Charge Ready pilot.⁵⁸ Also, the Settlement Agreement states that the “RFP and qualification process will occur annually to allow for and encourage participation from new providers over time.” Given the short duration of this pilot program, we do not believe an annual qualification process is frequent enough to qualify new vendors and models to ensure that customers have the best available EVSE choices. The qualification process should remain open on a rolling basis and the qualification should be completed at least semi-annually and more frequently if possible. PG&E should not restrict the number of vendors or models that may be qualified through the RFP process. Finally, the Settlement Agreement intends to develop an “Advanced EV Grid Support Program” to facilitate the integration of variable renewables and support the electric distribution system. The Settlement Agreement proposes that PG&E would develop the program during Phase 1 of the pilot and deploy it during Phase 2.⁵⁹ PG&E should include specifications in its RFP to ensure that it selects EVSE equipment that is demand response-capable or can otherwise participate in the Advanced EV Grid Support Program.

⁵⁷ ChargePoint Opening Brief at 25.

⁵⁸ PG&E should establish a “base cost” for the Level 1 and 2 EVSE, based on the price of the lowest cost EVSE model qualified through the RFP process. The base cost will be used to determine the rebate or participation payments amount as further described below.

⁵⁹ See Joint Motion for Adoption of Settlement, Section 6 at 13.

4.2.3. Market Competition and Concentration

The Settling Parties contend that utility ownership as provided for in the Settlement Agreement will not adversely impact the developing EV charging market. First, according to the Settling Parties, the number of PG&E-owned chargers (7,500 Level 2 charging ports) provided for under the Settlement Agreement is only 3 percent of the infrastructure required to meet California's 2025 transportation electrification goals. Second, the Settling Parties assert "PG&E's ownership of EV charging stations is more likely than not to actually reduce market concentration in EV charging station markets in PG&E's service area, thus improving competition."⁶⁰

Rather than address anticompetitive impacts on the developing EV charging market, the Settling Parties' first argument references anticompetitive impacts in the market as it might exist almost ten years from now. We can neither now determine the exact number of EV charging stations that will exist ten years from now, nor ignore how a system in place three years from now will impact the development of the market we would like to have in place ten years from now. Particularly where utility entry and ownership into nascent markets is at issue, as is the case here, our concern with anticompetitive effects must focus on the impacts PG&E's entry and ownership will have on the nascent market as well as the market we hope to develop.

In the context of the nascent EV charging market, the Settling Parties' second argument appears to conflate improved competition and reduced market concentration with less anticompetitive behavior. Notably, while reduced market concentration and improved competition may weigh heavily where the

⁶⁰ PG&E Opening Brief at 28, citing Exh. 3 at 24- 25, Table 7.

market contains equally desirable (or profitable) potential locations, such has not been shown to be the case for EV charging in PG&E's territory. This future-cast glosses over, or at a minimum downplays, the impacts of PG&E ownership on the nascent EV charging market.

Here, where we seek to support the development of a now nascent market, our inquiry into the anticompetitive effects of utility ownership must take into account both actual and potential effects. Among other things, we must examine the opportunity costs of utility ownership and in particular, the potential impacts of utility ownership on the development of the market and the potential for utility ownership to displace or preempt market competitors that occupy those areas of the market that have lower barriers to entry and/or are more profitable.

In this context, we initially note that the Settlement Agreement provides for PG&E's entry into the competitive market for EV equipment sales and services in northern California.⁶¹ This very specific geographic market in northern California is the relevant market. ChargePoint and TechNet speak directly to the potential impacts PG&E's entry and ownership will have on the nascent and developing market in this area.⁶² Among other things, ChargePoint and/or TechNet assert:

⁶¹ In contrast, PG&E's testimony erroneously identifies the relevant geographic market as "at least national and probably global." *See* Exh. 62 at 29.

⁶² In contrast, the "quantitative market concentration analysis" upon which the Settling Parties substantially rely appears based on the national market. (*See* Settling Parties' Reply Brief at 18-19.)

- “PG&E’s entry into the market will push out competitors that cannot compete or adapt to PG&E’s takeover of a large sector of the workplace, commercial, public and MUD market sectors.”⁶³
- “Competition would likely cease within PG&E’s target geographical and target product markets, and competitive firms with marketing and technological expertise and an appetite to innovate and compete would be pushed aside or simply not enter PG&E’s exclusive market area.”⁶⁴
- “Barriers to entry will form within the relevant geographical and product markets because no competitive business could enter and compete against PG&E’s zero priced EV charging stations, which come with subsidized or freely provided “make ready” facilities at hosts’ sites.”⁶⁵
- “PG&E’s proposal will affect market forces that would otherwise support innovation and market entry.”⁶⁶

Notably, neither D.16-01-023 nor D.16-01-045 conclude that there are no anticompetitive impacts associated with utility ownership of EVSE and charging services. Rather, D.16-01-045 concluded that, after various subsequent modifications, utility “ownership would be in the ratepayers’ interests and outweigh the disadvantages that could result from a lack of competition.”⁶⁷ Based on the record now before us, consistent with D.16-01-045 and

⁶³ ChargePoint Opening Brief at 23, citing Exh. 63 at 33-34.

⁶⁴ ChargePoint Opening Brief at 24, citing Exh. 63 at 35-36. See also Exh. 21 at 3:3 – 3:5.

⁶⁵ *Id.*

⁶⁶ TechNet Opening Brief at 10; ChargePoint Opening Brief at 24.

⁶⁷ D.16-01-045, Conclusion of Law 15.

D.14-12-079,⁶⁸ and our earlier finding that development of the EVSE and EV charging services market is in ratepayers' interest, we find that there are potential anticompetitive impacts associated with the Settlement Agreement.

4.3. The Settlement Agreement is Contested

On April 5, 2015, ORA, TURN, EVCA, TechNet, ChargePoint, Inc., JMP and Vote Solar (collectively, the Non-Settling Parties) filed a response to the motion for adoption of the Settlement Agreement. Among other things, the Non-Settling Parties argue that the Settlement Agreement cannot be considered reasonable, consistent with law, and in the public interest both because it does not resolve significant contested issues in this case, and because the Settlement Agreement's recommended disposition of disputed issues does not reflect a compromise between opposing parties or arms-length negotiations.

In this regard, the Non-Settling Parties first note that PG&E's claim that NRDC, Greenlining Institute, CUE, and Plug-In America did not unqualifiedly support the Enhanced Proposal misrepresents these parties' statements.⁶⁹ The Non-Settling Parties point out that with one very limited exception the Settling Parties supported the Enhanced Proposal.⁷⁰ The Non-Settling Parties further

⁶⁸ D.14-12-079 at 8.

⁶⁹ Rather than criticize the Enhanced Proposal these parties stated that they would support a larger version of the Enhanced Proposal.

⁷⁰ According to the Non-Settling Parties, MCE was the only one of the 14 Settling Parties that submitted testimony contesting any aspect of earlier PG&E proposal. MCE recommends the Commission to direct PG&E to provide greater details on its treatment of Community Choice Aggregators (CCAs) and jurisdictions actively pursuing CCAs during its deployment and recommended that the Commission direct PG&E to revise its full utility ownership model of EVSEs to a make-ready model that is similar to the SCE Phase 1 Settlement in order to minimize the risks imposed on ratepayer funds. Notably, PG&E's December 21, 2015 rebuttal testimony clarified its position that customers operating and maintain charging stations may choose

Footnote continued on next page

note that five of the Settling Parties (Alliance of Auto Manufacturers, Greenlots, Sierra Club, Center for Sustainable Energy, and Sonoma Clean Energy) did not file any intervenor testimony, while the seven members of the Settling Parties (American Honda Motor Co., CUE, General Motors LLC, The Greenlining Institute, Marin Clean Energy, NRDC, and Plug In America) that did file intervenor testimony merely urged the Commission to act expeditiously on PG&E's "EV Infrastructure and Education Program" application.⁷¹ The Non-Settling Parties claim that rather than resolve disputed issues, the Settlement Agreement represents a consolidation of comparable interests and positions, and is not the result of arms-length negotiations. In this regard, the Non-Settling Parties assert the following:

PG&E's proposed Settlement in this case does not meet this foundational [arms-length] requirement, because the Settlement's recommended disposition of disputed issues does not reflect negotiation or compromise between opposing parties. PG&E's so-called negotiated agreement between itself and parties that have supported its application throughout this proceeding is not at "arms-length," and for that matter cannot be called a "negotiated agreement" except with respect to that part of the Settlement involving MCE.⁷²

service from "eligible suppliers" including CCAs, and agreed with MCE that PG&E should collaborate with CCAs in marketing, education and outreach.

⁷¹ Response of the Non-Settling Parties to the Motion for Adoption of Settlement Agreement at 8, citing NRDC/CCUE/Greenlining/Plug In America Testimony at 21, and Honda/GM Testimony at 3.

⁷² Response of the Non-Settling Parties to the Motion for Adoption of Settlement Agreement at 14 (citation omitted).

The Non-Settling Parties next allege that the Settlement Agreement fails to resolve the significant issues previously identified in the proceeding.⁷³ The Non-Settling Parties identify the following unresolved issues:

- Cost and size of program;
- Number of DCFC proposed;
- Competitive impact of PG&E ownership of Charging Stations;
- Ratepayer funding for charging stations and proposed utility ownership model;
- Amount & Structure of participation payment;
- Exclusion of Level 1 Chargers from program design
- The “Bridge” funding mechanism;
- Program duration;
- Limits on-site host control over choice of EVSE, services, and pricing;
- Potential impacts on innovation;
- Finally, the Non-Settling Parties note that the Settlement; and
- Agreement is not endorsed by any governmental or ratepayer advocacy group.

While we encourage parties to pursue settlement as a potential alternative to protracted disputes, we find that the outcome of this settlement process did not produce a genuine resolution of the issues. Rather than being the product of an arms-length process, the Settlement Agreement appears to represent a consensus among like-minded thinkers. Indeed, we are hard pressed to find any

⁷³ Many of these issues were raised in regard to the Enhanced Proposal and are carried over into the Settlement Agreement with little modification or resolution.

concessions given up in exchange for the settlement terms by any signatory to the agreement. This is particularly problematic where, as is the case here, the Settlement Agreement sponsors do not represent all affected interests, and the Settlement Agreement lacks the support of any of the parties that are ratepayer advocates. We therefore conclude that the Settlement Agreement does not meet the standard for contested settlements set forth in D.09-12-045.

4.4. Conclusion

Consistent with Rule 12.4 we can and will treat the Settlement Agreement as joint testimony.⁷⁴ In subsequent sections we will review the parties' contentions as they relate to the terms of the Settlement Agreement and prior PG&E proposals and in particular, the Enhanced Proposal. We will adopt those terms that are necessary and appropriate to establish an EV Program that are consistent with the proceeding record and the public interest.

5. Review of Necessary Program Elements

5.1. Market Segment Targets

The Settlement Agreement provides for PG&E to deploy 20 percent of the charging infrastructure to serve MUDs (with a non-binding target of 50 percent for MUDs),⁷⁵ and for PG&E to increase the targeted share of charging stations deployed in Disadvantaged Communities to 15 percent (with a stretch goal of

⁷⁴ In relevant part, Rule 12.4 provides that: The Commission may reject a proposed settlement whenever it determines that the settlement is not in the public interest. Upon rejection of the settlement, the Commission may take various steps, including the following: (a) hold hearings on the underlying issues, in which case the parties to the settlement may either withdraw it or offer it as joint testimony, (b) allow the parties time to renegotiate the settlement, (c) propose alternative terms to the parties to the settlement which are acceptable to the Commission and allow the parties reasonable time within which to elect to accept such terms or to request other relief.

⁷⁵ See Joint Motion for Adoption of Settlement, § 5, at 9.

20 percent for disadvantaged and low-income communities).⁷⁶ While several of the Non-Settling Parties argue for substantially greater deployment targets in these segments, we find little in the proceeding record to support this argument. We will adopt the deployment targets provided for these segments as proposed in the Settlement Agreement.⁷⁷

5.2. Utility Ownership

The express terms of the Settlement Agreement provide for PG&E's "ownership of EV Facilities and EVSE."⁷⁸ Thus, aside from target goals for the MUD and DAC segments, the terms of the Settlement Agreement provide PG&E unfettered authority to own EV supply infrastructure (i.e., the make-ready infrastructure) and the EVSE anywhere in its territory.⁷⁹

A fundamental concern among most parties that object to PG&E's ownership of EVSE is the possibility, if not likelihood that the utility will locate its facilities in areas where private parties are already competing to provide EVSE and EVSE services. JMP captures this line of thinking where they note:

[T]argeting market segments where there is already demand will only supplant existing third-party providers who could have met that demand. It makes more sense to target the underserved segments that would adopt greater number of EVs, but for the availability of inexpensive EVSE.

⁷⁶ See Joint Motion for Adoption of Settlement, § 1, at 3.

⁷⁷ The Settlement Agreement provides an expanded definition of DACs which includes communities with high concentrations of California Alternate Rates for Energy (CARE) households for the purposes of the 20% DAC stretch goal. We will approve this expansion in this specific and non-binding goal.

⁷⁸ Joint Motion to Adopt Settlement Agreement, § 4, at 4.

⁷⁹ The Settlement Agreement provides for a specific segment target goal of 20 percent for MUDs, with a 50 percent stretch goal.

On claims that “[t]here is no need to test a utility-ownership model for EV chargers in this pilot because that approach has already been approved and will be tested in SDG&E’s similar EV pilot,”⁸⁰ GPI and other parties argue against utility ownership in general. Vote Solar captures this line of thinking where it argues:

[A]pproving the Settlement Agreement would give PG&E an unfair advantage by allowing it to cherry-pick the most profitable charging opportunities within its region, all while being backed by ratepayer recovery options that are not available to private competitors.⁸¹

We find this logic compelling and share this concern.

While we share the concerns expressed by many parties regarding utility ownership of charging equipment in the PG&E territory, we decline to adopt the approach of prohibiting all PG&E ownership, as it is at odds with our earlier determination that potential anticompetitive impacts associated with the Settlement Agreement can be prevented or adequately mitigated through the exercise of existing rules and subject to certain conditions and modifications. However, we agree that unrestricted ownership of EVSE by PG&E will likely have anti-competitive effects. We will therefore limit PG&E’s EVSE ownership as set forth below.

Some of the Non-Settling Parties contend that utility ownership of the EV supply infrastructure and EVSE should be limited to the MUD and DAC segments. For example, JMP argues that the EV program in the PG&E territory should focus on the underserved customer segments of MUDs and

⁸⁰ GPI Opening Brief at 4.

⁸¹ Vote Solar, Opening Brief at 9.

disadvantaged communities.⁸² Similarly, Vote Solar concedes that “[i]f the Commission deems utility ownership of EVSE is necessary, then it should be limited to the underserved markets of MUDs and low-income communities.”⁸³

Citing D.16-01-045, the Settling Parties counter that “the Commission already has rejected requests to restrict workplace charging, and should do so here.”⁸⁴ The Settling Parties go on to assert that the Commission in the other EV proceedings has found as a matter of fact that workplace charging needs are underserved and therefore utility EV programs should target workplaces.⁸⁵ This argument misrepresents both our prior decision and the issue at hand. As an initial matter, rather than addressing limits on utility ownership, the provisions of D.16-01-045 identified by the Settling Parties discuss the appropriate level of the participation payments and requests to increase education and outreach funding to encourage property owners of MUDs and workplaces to sign up for the utility program. Second, contrary to the Settling Parties’ intimations, there is nothing in the record of this proceeding which suggests that limiting utility ownership to MUDs and DACs will adversely impact EV adoption in workplaces.

Certain market segments have proven more difficult for private sector providers to penetrate. As noted by JMP, the MUD market segment is the most

⁸² See ChargePoint Opening Brief at 13, 65- 70; ORA Opening Brief at 9, 27- 28; TURN Opening Brief at 11, 54- 59; and JMP Reply Brief at 5.

⁸³ Vote Solar Opening Brief at 6.

⁸⁴ Settling Parties Reply Brief at 32, citing D.16-01-045 at 133.

⁸⁵ *Id.*

difficult for EVSE and EV service providers to penetrate.⁸⁶ This contention was validated by the Settling Parties during hearings where, among other things, it was stated:

- The MUD market is not very well served with EVSE equipment right now, because there are tenant/landlord issues that make it extremely difficult to bring charging infrastructure to those marketplaces.⁸⁷
- The difficulties associated with deploying MUDs are well known and well documented.⁸⁸
- Residential charging is a virtual necessity. You can't buy a plug-in car if you can't plug in at home... customers that live in MUDs are effectively blocked out of the market.⁸⁹

JMP and other Non-Settling party members identify DACs as another hard to reach market where utility ownership is more appropriate.⁹⁰ According to ChargePoint, "PG&E can and should help address obstacles currently preventing wider deployment of EV charging infrastructure, especially at MUD locations and disadvantaged communities."⁹¹

We find merit in the Non-Settling Parties arguments and will adopt limits on PG&E's ownership as a means to both avoid anticompetitive market impacts and to facilitate penetration of charging infrastructure in the more difficult MUD

⁸⁶ JMP Opening Brief at 24.

⁸⁷ Corey, Tr. 2:36:14-19.

⁸⁸ Tr. 2:37:7-8.

⁸⁹ Tr. 2:123:10-16.

⁹⁰ JMP Opening Brief at 10.

⁹¹ ChargePoint Opening Brief at 27, citing Exh. 64 at 6-8.

and DAC markets. Specifically, for non-MUD/non-DAC segments we limit PG&E's ownership to the make-ready infrastructure only.

In the DAC and MUD market segments which have traditionally proven more difficult to penetrate, we wish to ensure that PG&E has both the program latitude and incentives to achieve success. With this in mind, we will approve a program that allows PG&E to own EVSE only in the MUD or DAC segments. PG&E may own up to 35 percent of total EVSE ports projected to be installed through the pilot. PG&E will own up to and include the make-ready infrastructure regardless of who owns the EVSE. For sites where PG&E owns the make-ready infrastructure and EVSE, the site host shall pay a participation payment as described below. For the remainder of the sites, where PG&E owns only the make-ready, the site host will purchase and own the EVSE and receive a rebate as described below. PG&E must present all site hosts with the option to own the EVSE. To clarify, only where the site host chooses not to own the EVSE, is PG&E allowed ownership and only then, up to 35 percent of the total projected deployment of EVSE ports. Furthermore, site hosts should not be prohibited from allowing third-party ownership of the EVSE on their property, and passing through the rebate to that third party, as further described later in this decision. PG&E shall track EVSE ownership and rebates in its quarterly reports as specified in this decision.

5.3. Customer of Record

The term "Customer of Record" is described in § 6 of the Settlement Agreement.⁹² § 6 of the Settlement Agreement provides:

⁹² Settlement Agreement, Section 6, at 9-10.

The EVSP will be served at an applicable, commercial, time-of-use rate, such as Schedule A-6 (if less than 75 kilowatt), Schedule A-10 or Schedule E-19 (voluntary service), **as PG&E's customer of record. The Provider** will then deliver energy to drivers at the price per kWh reflected in the selected rate at that time. (Emphasis added.)

Though frequently mentioned in the document, EVSP is not defined anywhere in the Settlement Agreement. However, in as much as § 3 of the Settlement Agreement provides that "Provider" means a third-party EV services or equipment provider, § 3 arguably suggest that a third-party EV services or equipment provider, could be served as PG&E's customer of record for electricity service. PG&E has not provided sufficient justification for why a third-party service provider should become the PG&E customer of record on the site host's property. As ChargePoint notes, one particularly concerning result of this approach is that the site host will not have any control of the EVSE on their property.⁹³ This limits the site host's ability to create an effective load management strategy, since they would not receive the price signal or be responsible for the electricity usage. With this in mind, we will adopt the simpler rule that in all instances the site host shall be PG&E's customer of record.

5.4. Scale of EV Deployment

As noted above, both the number and type of EVSE and EVSE ports provided for in the various proposals varies significantly. At the low end we have the Compliant Proposal and Non-Settling Parties recommendations which provide for a total of 2,510 EVSE. In terms of charger numbers, these two proposals can be distinguished by the ratio of Level 2 to DCFCs they provide for

⁹³ ChargePoint Opening Brief at 41.

(2,460/50 versus 2,500/10, respectively), and the fact that the Non-Settling Parties generally specify that all Level 2 chargers should be dual port chargers.⁹⁴ At the high end we have the Enhanced Proposal and Settlement Agreement which call for 7,430 and 7,500 Level 2 charging ports respectively. Both proposals call for 100 DCFCs.

5.4.1. Level 2 Chargers

No party contends that the number of Level 2 chargers provided for at the lower end (2460-2500) is excessive.⁹⁵ Rather, the dispute among the parties goes to whether the higher number of EVSE ports called for in the Enhanced Proposal and Settlement Agreement is necessary and appropriate. Arguments against the higher numbers of EVSE ports called for in the Enhanced Proposal and Settlement Agreement are primarily procedural.⁹⁶ Parties including TURN, ChargePoint, ORA, and others assert that it is improper for the Commission to consider the Enhanced Proposal as PG&E was specifically directed to submit a smaller proposal. For example, citing the Scoping Ruling ChargePoint argues:

⁹⁴ Among the Non-Settling Parties, TURN and JMP suggest the chargers may be Level 1 or Level 2, and GPI suggests that up to 300 DCFCs be provided for.

⁹⁵ As previously noted, PG&E does assert that the 2460 chargers provided for in the Compliant Proposal is not sufficient to allow it to reach its share of the 1.5 million ZEVs called for by the Governor by 2025.

⁹⁶ Substantive arguments going to the potential anticompetitive impacts associated with the larger number of EVSE called for in the Enhanced Proposal and Settlement Agreement are addressed above and need no further consideration here.

The Commission clearly instructed PG&E to file a Phase 1 program that is ‘limited to a maximum of 10 percent of the total originally-proposed number of charging stations, to be deployed over no more than 24 months.’ Since PG&E’s “originally-proposed number of charging stations” was 25,000 Level 2 EVSE and 100 DCFC, a compliant Phase 1 proposal would permit PG&E to deploy only 2,500 Level 2 charging stations and 10 DC fast chargers over a 24-month period.⁹⁷

ORA addresses this same issue where it contends that the larger number of PG&E-owned EVSE provided for in the Enhanced Proposal was not considered in the Scoping Ruling and asserts that the Commission may not consider issues beyond those set forth in the scoping memo.⁹⁸ We disagree with the contention that the Enhanced Proposal is beyond the scope of the proceeding.

Rather than the broad interpretation ORA provides, *Southern California Edison v. P.U.C.*, stands for the more limited proposition that the Commission is constrained in its ability to bring issues into a proceeding by the due process requirement that parties be provided adequate time to prepare responses to such issues.⁹⁹ In contrast to *Southern California Edison v. P.U.C.*, where the court concluded that parties had less than two weeks to prepare a response to multiple issues spanning hundreds of pages of testimony, the parties here had time to conduct additional discovery, provide written responses, and conduct cross-examination related to the Enhanced Proposal. Keeping in mind that parties have also had time to conduct additional discovery, provide written responses, and conduct cross-examination on the Settlement Agreement, no

⁹⁷ ChargePoint Opening Brief at 15, citing Scoping Ruling at 7.

⁹⁸ *Southern California Edison v. P.U.C.* (2006) 140 Cal.App.4th 1085, 2006 Cal. PUC LEXIS 948.

⁹⁹ *Southern California Edison v. P.U.C.* (2006) 140 Cal.App.4th 1085, 2006 Cal. PUC LEXIS 948.

party has identified a Commission rule that prohibits our consideration of the number of EVSE ports called for in the Settlement Agreement. Ultimately, the fact that we are lawfully considering the Settlement Agreement's request for up to 7,500 Level 2 chargers, renders challenges to our consideration of the 7,430 Level 2 chargers called for in the Enhanced Proposal moot.

While we have expressed concerns about how PG&E's ownership of EVSE may limit competition, the modifications made herein to the level of utility ownership, establishment of the customer of record, and other provisions of the Settlement Agreement, address many of the anti-competitive concerns and make the proposed deployment scale of chargers requested by the Settling Parties reasonable. Therefore, we will allow PG&E to deploy and own make-ready infrastructure to support up to 7,500 Level 2 charging ports and to own up to 35 percent of the EVSE proposed for deployment in the MUD and DAC market segments under the conditions set forth in this decision.

5.4.2. Number of DC Fast Charging Stations

Where the Enhanced Proposal and Settlement Agreement provide for PG&E to be allowed to own 100 DCFC, the Compliant Proposal calls for half as many (50), and the Non-Settling Parties argue that PG&E should only be allowed to own ten. Arguments going to the appropriate number and type of charger are three-fold. First parties such as EVCA argue that DCFCs have more limited utility and, in particular, provide little if any advantages at locations where cars are typically parked for longer periods of time, such as MUDs.¹⁰⁰ Second, and relatedly, some parties note that the benefits of DCFC are overly speculative in

¹⁰⁰ EVCA Opening Brief at 9-10.

nature.¹⁰¹ In addition to the claims of limited usefulness made above, these arguments call into question both the need for utility ownership of faster charging provided by DCFC, and the likelihood that DCFC will soon be replaced by a faster and/or more innovative approach to charging.¹⁰² Finally, parties such as JMP argue that DCFC is overly costly compared to Level 1 and 2 chargers.

According to JMP:

DC Fast Chargers make up a significant portion of the costs of PG&E's proposals, and on a per unit basis cost over 10 times as much as Level 2 chargers. In the compliant proposal, the requested 50 DCFC account for \$12.4 million in capital and expense costs, which comes to 14 percent of the overall budget, and \$248,000 per charger.¹⁰³

Parties advocating a low number of DCFCs cite the above data and recommend that PG&E ownership of DCFCs should be limited as it carries a greater risk of significant stranded costs.¹⁰⁴

According to the Settling Parties, reducing the number of DCFCs PG&E can own as urged by TURN and other parties "is not only inconsistent with the precedent set by the SDG&E decision, but also would result in a program that is simply too small for PG&E's vast service territory and too small to meaningfully contribute toward the goals established by the Commission, Governor Brown, and the California Legislature."¹⁰⁵ This argument misunderstands the purpose of

¹⁰¹ For example, parties question whether DCFC is beneficial in MUD locations where individuals routinely park for long periods of time and often overnight.

¹⁰² See EVCA Opening Brief at 9-10.

¹⁰³ JMP Opening Brief at 15, citing Exh. 3 at 9.

¹⁰⁴ See TURN Opening Brief at 28 for additional factors that may lead to stranded costs.

¹⁰⁵ Settling Parties Reply Brief at 8.

these pilot programs as claims of binding precedent are, in general, antithetical to pilot programs and our use of pilot programs here reflects our interest in innovation rather than replication. Indeed, contrary to the Settling Parties claim that “[c]apping the deployment of DCFC to a mere 10 stations would render that portion of the program almost meaningless and contradicts the Commission’s goal to test different models in different service territories,”¹⁰⁶ we note that it is neither necessary nor practical to adopt every element in a proposed pilot program based on the fact that the element is currently not being tested in another pilot program.

The Settling Parties take issue with the cost arguments made by TURN and other parties. While the Settling Parties persuasively argue that DCFC cost in the Settlement Agreement compare favorably to those found in benchmarks such as the California Energy Commission’s grants for DCFCs,¹⁰⁷ they do little to address the contention that DCFC costs are high compared to Level 1 or Level 2 Chargers as ChargePoint, TURN, and others allege.

Finally, the Settling Parties challenge claims that the DCFCs called for in the Settlement Agreement carry a significant risk of stranded assets, and assert that the following four features offset the likelihood of stranded costs:

- The size and duration of Charge Smart and Save have been reduced significantly from PG&E’s original proposal, with a more specific focus on leveraging PG&E’s utility and community skill sets to reach market segments (MUDs, workplaces and Disadvantaged Communities) that are

¹⁰⁶ Settling Parties Reply Brief at 12, citing Tr.Vol.4, April 27, 2016, 459:14 (Honda/Harty).

¹⁰⁷ Settling Parties Reply Brief, at 23.

underserved and most likely to be able to make use of new EV infrastructure and accelerate EV adoption.

- The duration of Charge Smart and Save is only three years, which provides a “hard stop” on siting and installation of EV infrastructure until the Commission has an opportunity to review and evaluate the initial results.
- Unlike the “make ready” model Charge Smart and Save provides that EV infrastructure, including charging stations, is subject to utility easements or licenses that allow successor site hosts and EV drivers to access EV charging facilities even if the original site host and/or EV drivers/tenants change, making it less likely that changes in site ownership or site hosts will lead to premature stranding of useful, operable EV assets.
- Unlike the “make ready” model, Charge Smart and Save requires the utility, under the direct regulation and oversight of the Commission, to maintain and keep the EV charging facilities operable and available, in accordance with utility safety and O&M standards.

These arguments go to the general structure of the overall program and have little to do with stranded costs associated with just DCFC. Furthermore, settling parties provided no specific estimates of the ratepayer value from DCFC deployment. Nor did they provide detailed discussion on the siting criteria for DCFC and how this may differ from Level 2 charging. Finally, PG&E and settling parties did not thoroughly address the market concentration for DCFC specifically and the specific limits on competition for this type of technology compared to Level 2 charging. Only somewhat persuasive is the Settling Parties’ contention that the potential for stranded costs will be further reduced because, rather than proprietary DCFC, the Settlement Agreement provides for “open

source” equipment that will be capable of serving any DCFC-capable vehicle on the market.

In addition to questions that persist related to the higher costs of DCFC and its limited utility in MUDs, we decline to allow PG&E to own DCFC in its service territory as part of this pilot. That said, we are not prejudging future applications if PG&E or another utility can present a more compelling proposal for utility involvement in the DCFC market.

5.4.3. Single versus Multi-Port Chargers

TURN recommends the use of multi-port rather than single port chargers in all instances where Level 2 chargers are installed as a cost saving/efficiency measure. As noted by TURN, the Settlement Agreement “achieves the significant cost reductions by providing for the use of multi-port [Level] L2 and DC chargers.”¹⁰⁸ In reply, the Settling Parties note that after considering this approach they determined:

[I]n many commercial and MUD locations, there may not be sufficient space or demand at a site. To address this mix of customer and EV driver needs, it is more realistic to assume a mix of multi-port and single port stations.

While we acknowledge that not all sites will be able to physically accommodate multi-port chargers, PG&E’s claim that there may not be sufficient demand at a site lacks detail and seems counter to our underlying objectives. We will therefore direct PG&E to provide for dual ports or multi-ports on its Level 2 chargers wherever space is not a limitation.

¹⁰⁸ TURN Opening Brief at 19.

5.5. Participation Payment

The Settlement Agreement provides for all DCFC customers, all customers within disadvantaged communities, and all customers at “sites owned or leased by school districts, government agencies or non-profit entities” to receive 100 percent subsidized make-ready infrastructure, EVSE, services, and maintenance. For MUDs not located in disadvantaged communities, a participation payment of 10 percent of the base cost of the EVSE would be charged by PG&E and paid by the site host, and private for-profit entities would be charged a participation payment of 20 percent of the base cost of the EVSE. The Non-Settling Parties generally call for DACs and MUDs in DACs to receive a full payment waiver. Unlike the proposals put forth by the Settling and Non-Settling Parties, the Original, Compliant, and Enhanced proposals do not provide for participation payments by site hosts.

Parties opposing the participation payment provisions in the Settlement Agreement challenge both the scope of the waivers provided, and amount of the participation payment required.

5.5.1. Scope of Exemptions from Participation Payment

TURN, ORA, and ChargePoint maintain that the waiver categories are overly broad, asserting that the Settlement Agreement provides for participation payment waivers beyond sites located in disadvantaged communities. After noting that in addition to DACs, the Settlement Agreement provides waiver exemptions for all non-profit organizations, government agencies, and sites owned or leased by school districts, such that these entities would pay nothing for charging stations installed at their properties, TURN asserts that because these categories are broadly defined, ratepayers are likely to end up subsidizing 100 percent of profitable private entities’ costs. By way of example, TURN notes

that the National Football League and Kaiser Permanente are non-profit entities (with revenues of \$7 billion and \$25 billion respectively), that would qualify for exemptions to the participation payment requirement under the Settlement Agreement.¹⁰⁹ Additionally, TURN notes that PG&E has no idea how many sites in its territory will qualify for the waiver and that it is possible that the entire program could be comprised of site hosts who do not contribute anything to participate in the program. TURN also questions the appropriateness of ratepayers subsidizing government agencies. Finally, TURN notes that neither D.16-01-023 nor D.16-01-045, which approved utility EV charging infrastructure programs for SCE and SDG&E, included a participation payment waiver for sites beyond DACs. In this regard, TURN notes that D.16-01-045 “does not include a single mention of waiving the participation payment for any location besides those in DACs and Finding of Fact #20 provides clear direction that the participation payment waiver only applies to sites in DACs.”¹¹⁰

ORA and JMP agree with TURN that the Settlement Agreement can lead to problematic outcomes. Where JMP suggests alternatives to address this problem such as basing waiver eligibility on energy consumption, ORA suggests that disadvantaged communities should be defined as the top quartile of “Disadvantaged Communities” identified by CalEnviroScreen 2.0 on a PG&E service territory basis and, for locations within eligible disadvantaged communities, only MUD should be provided a full waiver of customer contribution to costs.

¹⁰⁹ TURN Opening Brief at 47, citing Tr. Vol. 2, 6:1-28.

¹¹⁰ TURN Opening Brief at 48.

Finally, several of the Non-Settling Parties take issue with Settlement Agreement provisions that waive participation fees for DCFC across all market segments. For example, ChargePoint asserts that the Settlement Agreement approach is unreasonable in this regard because customers are willing to contribute a portion of the cost in exchange for receiving a subsidy for installing DCFC.¹¹¹ Both EVCA and ORA agree with ChargePoint's argument in this regard.¹¹² Indeed, even in the context of the smaller Compliant Proposal, JMP suggests the Commission address waivers for DCFC "by simply striking the entire portion of the compliant proposal that deals with DCFC, and reduce the overall budget by the \$12.4 million forecasted cost."¹¹³

In contrast, the Settling Parties do little to explain the scope of the participation payment exemptions they provide. For example, while the Settling Parties acknowledge that under the Settlement Agreement well-funded nonprofit entities outside of DACs will qualify for exemptions from the participation payment,¹¹⁴ they fail to explain why this feature is essential to their proposal or of value to ratepayers.¹¹⁵

The Settling Parties also fail to explain the basis for their extension of the participation payment exemption to schools, government entities, and DCFC installations. As the Settling Parties fail to provide a justification for these exemptions, they should be denied. We will instead adopt ORA's suggestion

¹¹¹ ChargePoint Opening Brief at 45.

¹¹² EVCA Opening Brief at 10; ORA Opening Brief at 18.

¹¹³ JMP Opening Brief at 15, citing Exh. 3 at 9.

¹¹⁴ TURN Opening Brief at 47, citing Tr. Vol. 2, 6:1-28.

¹¹⁵ Such an explanation would seem to be in order if only to avoid the appearance of self-dealing as some signatories will likely qualify for the exemption provided.

and direct that the exemption only be applied to the top quartile of “Disadvantaged Communities” as identified by CalEnviroScreen 2.0 on a PG&E service territory basis, for Level 2 charging locations, and only MUDs in these communities will be provided a waiver of the participation payment.

5.5.2. Amount of Participation Payment

As noted above, the Settlement Agreement provides for all DCFC customers, all customers within disadvantaged communities, and all customers at “sites owned or leased by school districts, government agencies or non-profit entities” to receive a 100 percent subsidized make-ready, EVSE, services, and maintenance, MUDs (not located in disadvantaged communities) would pay a participation payment of 10 percent of the base cost of the EVSE, and private for-profit entities would be charged a participation payment of 20 percent of the base cost of the EVSE. As a general matter, the Non-Settling Parties favor a more substantial participation payment for segments other than DACs and view the participation payments called for in the Settlement Agreement as both nominal and unlikely to produce any of the intended benefits.

Where several of the Non-Settling Parties generally argue that a more substantial participation payment is necessary,¹¹⁶ TURN provides a detailed analysis of this issue. Citing testimony by the Settling Parties, TURN first notes that the participation payment is based on the cost of the EV charger only (exclusive of the supporting infrastructure), and then apportioned by 10 percent or 20 percent.¹¹⁷ Based on filings and calculations performed on the substantially

¹¹⁶ See e.g., ChargePoint Opening Brief at 45; EVCA Opening Brief at 10; and ORA Opening Brief at 18.

¹¹⁷ TURN Opening Brief at 45, citing Exh. 1 at 10-11.

similar SDG&E proposal, TURN estimates that the 10 percent and 20 percent participation payments will amount to only \$180 and \$360 (respectively) in per charger port costs. While it acknowledges that the actual costs will vary slightly, TURN asserts that its estimate demonstrates that “site hosts will pay virtually nothing in monetary terms and as a percentage of the total costs of installation under the Settlement Agreement.”¹¹⁸ TURN argues that a more substantial participation payment can help allocate investment where it is most likely to influence EV adoption and mitigate “free-ridership” and concludes that a meaningful participation payment is especially important for the workplace market segment because PG&E does not have a strategy for distinguishing between site hosts who would have installed the charging stations regardless of participation in the program.

The Settling Parties identify participation payments as an issue of continuing debate in all three utility EV proceedings, but urge that the question of whether site-host participation payments are too low or too high to help avoid stranded costs and off-set potential anticompetitive consequences of utility ownership be resolved in favor of the interests of program design. According to the Settling Parties:

The goal of utility EV infrastructure programs is to promote and implement EV infrastructure where needed to incent and support EVs and clean transportation electrification in parallel with other non-utility programs.¹¹⁹

¹¹⁸ TURN Opening Brief at 46. TURN goes on to argue that the costs that PG&E earns a rate of return on will not be reduced by the participation payment (since the Settlement Agreement provides for revenue from the participation to be credited against O&M costs rather than used to offset ratebase), so ratepayers will receive even less value.

¹¹⁹ Settling Parties Reply Brief at 27-28.

The Settling Parties argue that the higher participation payments urged by TURN and others, are not consistent with the overall purpose of utility EV programs. While the Settling Parties acknowledge that participation payments can play a role in ensuring that site hosts are committed to the goals of the EV program, i.e. “have skin in the game,”¹²⁰ they contend that such payments are not primarily intended to offset the costs of the programs or to discriminate against site hosts based on ability to pay.¹²¹

While we agree that site host participation payments should strike a reasonable balance between site host “skin in the game,” and avoiding unnecessarily high payments that damage the program design and deter site-host participation, we do not agree that the approach to participation payments provided for in the Settlement Agreement achieves this balance just because it is “virtually identical” to that approved in D.16-01-045. Among other things, rather than adopt the specific numbers now advocated by the Settling Parties (or any other particular numbers), D.16-01-045 largely deferred this determination to the program advisory council established therein. That SDG&E subsequently filed an Advice Letter seeking approval of participant payment numbers comparable to those now proffered by the Settling Parties cannot be construed as equivalent to prior Commission approval especially since Advice

¹²⁰ The Settling Parties further contend that the site hosts will already be making a significant contribution to the success of the program by voluntarily providing their in-kind support – which will be substantial – for siting of EV infrastructure and an ongoing partnership with the utility and the EVSE providers for promotion and education on the benefits of EV use.

¹²¹ Settling Parties Reply Brief at 27-28.

Letter 2886-E that was filed is the subject of protest by one or more parties to D.16-01-045.¹²²

Given the barriers to adoption we have identified in DACs, all sites in DACs in which PG&E owns the EVSE will have a minimal participation payment. DAC site hosts will pay only the differential in price between the actual cost of the EVSE they selected for their site and the EVSE base cost. In the case the site host chooses an EVSE model whose price is equal to the base cost, the participation payment will be \$0. For MUDs, the participation payment will be 50% of the EVSE base cost plus the differential in price between the actual cost of the EVSE they selected for their site and the EVSE base cost.¹²³ We include in the calculations the price differential between the chosen EVSE model and the base cost in order to make the participation payment equivalent to a rebate in terms of a site host's out-of-pocket costs.

The participation payment does not apply to workplaces and other locations that are not in DACs, as the site host will always own the EVSE in this case. Table B summarizes the participation payment information.

5.6. EVSE Rebate

Because it proposed full PG&E ownership of all equipment and infrastructure, the Settlement Agreement did not contemplate a rebate. As detailed above, we will only allow the utility to own up to 35 percent of the EVSE in the MUD and DAC market segments. At sites where PG&E is only installing and owning the make-ready infrastructure, we will direct PG&E to provide a

¹²² Based on the protest to the Advice Letter filed by this advisory board, it appears the parties to D.16-01-045 continue to disagree about the appropriate participation payment.

¹²³ In formula form this equates to $.5 (\text{base cost}) + \text{differential}$.

rebate to the site host for the base costs of the EVSE. In these instances, in conjunction with the Program Advisory Council, PG&E shall conduct a Request for Proposals (RFP) to determine the base costs which will be used to determine the rebate amounts. The base cost for the Level 2 EVSE should be based on the price of the lowest cost EVSE model qualified through the RFP process.

In DACs (defined as the top quartile of “Disadvantaged Communities” as identified by CalEnviroScreen 2.0 on a PG&E service territory basis) the rebate should be 100% of the EVSE base cost. In MUDs that are not in DACs, the rebate should be 50% of the EVSE base cost. In workplaces and other sites that are not in DACs, the rebate should be 25% of the base cost.

Table B below shows the rebate level for each market segment in comparison to the participation payment for the same segment.

Table B: Summary of Participation Payment and Rebates

Segment	EVSE Ownership	Participation Payment by Customer	Rebate to Customer
DAC (MUD or Workplace)	PG&E	differential between actual cost of EVSE selected by customer and base cost	
	Site Host		100% of EVSE base cost
MUD	PG&E	50% of EVSE base cost plus differential between actual cost of EVSE selected by customer and base cost	
	Site Host		50% of EVSE base cost
Workplace	Site Host		25% of EVSE base cost

Also, to better support innovative business models and provide increased levels of customer choice, we make clear that site hosts may enter into

agreements with outside parties that allow for ownership, maintenance, and/or operation of EVSE where PG&E does not own the EVSE. Just as a utility may be able to simplify the EVSE installation process for customers, we believe that third parties can develop products and services to fill this role as well. A third party may also complete PG&E's program application on behalf of the site host, and may be designated to receive the rebate if the site host so chooses.

PG&E has stated that it "will be responsible for the operations and maintenance of the charging equipment, through contracts with equipment and service providers as partners in the program delivery and ongoing operations." However, because we allow PG&E to own EVSE at some, but not all locations, clarification of operations and maintenance (O&M) costs is in order. While PG&E should be responsible for all O&M of equipment it owns, site hosts that own the EVSE under the PG&E program should be responsible for the O&M of their EVSE. PG&E will select O&M vendors through the RFP Process as described below. PG&E shall make this list of approved O&M vendors available to all site hosts. For site hosts where PG&E owns the EVSE, the site host will choose the O&M vendor, but PG&E will pay the O&M costs. For site hosts that own their EVSE, the site host will choose the O&M vendor and be responsible for the O&M costs.

5.7. TOU Rates and Load Management

Under the Settlement Agreement, where the program site host opts to receive the TOU Rate (i.e., the Rate-to-Host pricing plan), the site host, or its selected vendor, will be required to submit to PG&E the load management tactics it will implement at its EV charging station, including the prices or fees that it intends to levy on EV drivers, and any communication methods to be used to implement the load management tactics. However, the Settlement Agreement

also provides that, “[s]ite hosts that do not submit load management plans consistent with the Guiding Principles will be asked by PG&E to revise accordingly and will be ineligible to participate in the Program until PG&E determines that the load management plan is consistent with the Guiding Principles.”¹²⁴

While TURN finds value in exploring the question of whether the Settlement Agreement’s TOU pricing option will result in system benefits, TURN argues that:

[T]here is absolutely no basis to conclude *a priori* that the “TOU Rate-to-Driver” will promote the twin goals of 1) encouraging EV adoption, and 2) promoting beneficial rather than harmful charging patterns.¹²⁵

According to TURN, whether the TOU tariff called for in the Settlement Agreement provides a benefit for reliability or costs depends on its influence both on EV adoption and charging behavior.¹²⁶

In contrast, ChargePoint takes issue with the approach to load management provided for in the Settlement Agreement and argues that “it is a waste of time and a waste of ratepayer money to implement a Phase 1 program design that replaces site host control over pricing using load management capabilities of the EVSE with a flat TOU rate pass through.”¹²⁷ In addition to

¹²⁴ Joint Motion for Adoption of Settlement at 10.

¹²⁵ TURN Opening Brief at 50.

¹²⁶ TURN asserts that there are at least two dimensions to the problem of “less costly service” due to EV charging and concludes that ensuring that EV charging occurs “off-peak” would not necessarily result in net ratepayer benefits, if such a rate negatively impacts the demand for EVs or EVSEs. TURN Opening Brief at 51.

¹²⁷ ChargePoint Opening Brief at 10.

arguing that the Settlement Agreement provision allowing for the review and revision of load management plans is overly vague and provides PG&E carte blanche review, such that site hosts only have the illusion of load management choice,¹²⁸ ChargePoint argues that the approach in the Settlement Agreement approach lacks sufficient definition. According to ChargePoint, among other things, the Settlement Agreement fails to explain:

- Which customer segments would be on which TOU rates. PG&E offered no information regarding the applicable TOU periods;
- How the TOU time periods relate to the times that drivers are likely to charge EVs within different customer segments (MUD, commercial, workplace, DCFC, public buildings, etc.);
- What the average driver at these various locations would pay for a typical charging event, or how the TOU rates would affect drivers that are only able to access the EVSE during peak hours;
- How demand charges (which are calculated monthly, retroactively) can be reflected in rates to drivers;
- How demand charges and other non-volumetric charges would influence the TOU pricing signal; and
- How driver cost under the mandatory TOU rates compares to what drivers at various types of location typically pay when site hosts control pricing.

ChargePoint goes on to argue that the PG&E Phase 1 program should “allow each site host to take advantage of all of the functionality of smart EVSE and network services – for the benefit of the site host, the driver and the

¹²⁸ ChargePoint Opening Brief at 50-51.

grid – rather than dictating the default pass through of TOU rates and control of the EVSE by a third-party “customer of record.”¹²⁹ Specifically, ChargePoint recommends that:

- The Commission allow site hosts to determine whether and how to charge drivers for EV charging, as long as the site host follows a reasonable load management plan;¹³⁰
- The Commission require each site host to participate directly or through a third-party aggregator in available DR programs; and
- Every participating site host be required to provide a load management plan.

While ChargePoint makes valid arguments, we believe there is confusion on what is being proposed under the Settlement Agreement. The Settlement Agreement states that under the TOU Rate-to-Driver option, “PG&E will serve electricity to service providers who will then pass the TOU price signals directly to EV drivers to ensure that drivers who charge in a manner that supports the grid Principles.”¹³¹ As stated earlier in this decision, the customer of record under the program shall be the site host, not the service provider. Therefore, in the program we adopt, when the site host prefers the TOU Rate-to-Driver option,

¹²⁹ ChargePoint Opening Brief at 47. ChargePoint also correctly notes that the settlement states that PG&E will, at some undefined point in the future, “evaluate potential DCFC load management strategies,” but does not explain what these “potential” strategies might be, or how or when they would be “evaluated.” (ChargePoint Opening Brief at 49.)

¹³⁰ In as much as it fails to define what constitutes a “reasonable load management plan,” ChargePoint’s proposal suffers from the same flaw of vagueness that ChargePoint attributed to PG&E’s approach.

¹³¹ Joint Motion to Adopt Settlement Agreement, Attachment 1, at 6.

PG&E should work with the site host to determine the appropriate mechanism to directly bill the EV drivers.

However, under the TOU Rate-to-Host option, the Settlement Agreement is clear that “Site Hosts will receive the TOU price signals, and will be able to propose alternative pricing and load management tactics consistent with Program Guiding Principles.”¹³² This is a reasonable approach to allowing the site host flexibility to receive the offered rate from the utility and make a decision, based on their unique site, as to whether or how to pass that rate onto drivers or to modify the rate to drivers in a way that best meets their site’s energy management plan.

In regards to the reasonableness of the site’s energy management plans, we will leave the development of planning standards and reasonableness reviews to the advisory board provided for in the Settlement Agreement.

5.8. Program Costs

Our efforts to promote EVs and EV charging infrastructure must be balanced with the statutory requirement that rates be just and reasonable. We focus on the cost of the Settlement and the Non-Settling Parties proposals because, as bookends to the program we adopt herein they provide useful insight into our cost considerations. Where the Settling Parties agree that the cost of Charge Smart and Save should be substantially reduced from PG&E’s \$222 million “Enhanced Proposal,” to a cost cap of no more than \$160 million, the Non-Settling Parties argue that the total budget should not exceed the \$87.4 million cost of PG&E’s Compliant Proposal, and some parties suggest that

¹³² *Ibid.*

specific cost disallowances could reduce this amount even more. While much of the difference between the two cost estimates can be attributed to size differences between the two proposals and the modifications adopted herein, utility ownership and capital costs must also be considered when determining the appropriate funding for the proposal we adopt today.

5.8.1. Potential Cost Savings Based Adopted Program

We adopt a program that provides for a total of 7,500 Level 2 EVSE ports, the use of multi-port chargers where appropriate, a more substantial participation payment, and the potential ownership by PG&E of EVSE in MUDs and DACs only. Several of the adopted features can be expected to reduce program costs compared to other proposals. Among other things, denying deployment of DCFC in the program may reduce costs by more than \$25 million,¹³³ and the appropriate use of dual port chargers may reduce program cost by as much as \$15 million.¹³⁴ We anticipate additional program costs reductions as a result of the reduced ownership role we provide PG&E. As TURN notes, PG&E's proposed ownership of all of the equipment is a significant cost since the utility proposes to ratebase all capital expenditures and earn an 8.06 percent rate of return over the life of the equipment.¹³⁵

5.8.2. Other Potential Savings

TURN identifies several other provisions of the Settlement Agreement where it believes costs reductions may be possible. Among other things, TURN notes that contingencies account for 10 percent of the Settlement Agreement's

¹³³ See JMP Opening Brief at 16-17.

¹³⁴ See JMP Opening Brief at 15.

¹³⁵ TURN Opening Brief at 43, citing Exh. 58, at 1-4.

total costs. In particular, according to TURN, PG&E assumes a capital “contingency” of \$9.7 million for Level 2 Chargers, a capital “contingency” of \$4.8 million for DCFC, and an expense “contingency” of \$2.1 million for Level 2 and DCFC combined. While we note that a 10 percent contingency is not itself excessive,¹³⁶ we expect reductions in the contingency amounts associated with DCFC; this reduction is included in the \$25 million DCFC cost reduction described in the preceding section.

TURN also notes that the Settlement Agreement budgets \$1.2 million in capital costs to build an “EV Cost of Ownership Tool” and \$1 million in capital costs to build a “Site Host Online Application Portal.” TURN questions the more than \$1.1 million in capital contingency costs and almost \$2 million in expenses and O&M contingency costs provided for this aspect of the proposal. We agree with TURN that, at 50 percent and near 100 percent (respectively), these capital contingency and O&M costs are excessive, and will reduce them to 10 percent and 50 percent (respectively) for a cost reduction of almost \$2 million. Finally, we note our agreement with TURN’s assertion that PG&E’s assumption that all Level 2 charging occurs “on-peak” is unrealistic and has likely inflated PG&E’s estimates for transformer upgrades and other cost inputs.

Section 15 of the Settlement Agreement provides a \$5 million set-aside for equity programs supporting Disadvantaged Communities. The Settlement Agreement states that PG&E will “consult with the Program Advisory Council to identify priority areas” and “advance strategies to increase access to EVs in low and moderate income communities.” We find this proposal overly broad; it has

¹³⁶ In D.16-01-023, SCE included a 35 percent contingency adder in its cost estimates. See Finding of Fact 17, at 47.

no stated objectives or specifications of program requirements. Given this limited record, we are not able to assess whether the set aside would yield any ratepayer benefits. We reject the \$5 million set-aside for equity programs.

5.8.3. Conclusion

While we anticipate substantial savings as a result of the features of the adopted program, we acknowledge that we are unlikely to see 100 percent of these savings. Because any remaining funds will be used as bridge funding and to support Phase 2 of this program, if a Phase 2 program is warranted and proposed, we will err on the side of more rather than less funding of the Phase 1 program. Consistent with this approach, we adopt a budget that reflects the proposed Settlement Agreement budget of \$160 million less \$25 million for DCFC capital and expenses and less the \$5 million set aside for equity programs. The adopted budget is \$130 million.

5.9. Cost Recovery

In general, a utility's ratebase represents the value of its property that is used and useful in rendering utility public service. Because ratebase is the foundation upon which the company's earnings, or rate of return, is based, elements included in the ratebase are of special concern in the ratemaking process and subject to additional scrutiny by regulatory authorities. Including only utility property prudently incurred and devoted to providing utility service ensures that present utility customers pay only for the costs associated with the benefits received and prevents current ratepayers from subsidizing service to future customers. Operating expenses are generally the ordinary non-capital expenses that are reasonable and necessary for the utility's operation.

PG&E proposed in its initial application the creation of a new one-way balancing account, the Electric Vehicle Program Balancing Account, to recover

the revenue requirement associated with the new pilot. The program costs recorded in the balancing account are proposed to be “incremental capital and expenses related to distribution investments and the associated operations and maintenance (O&M) costs, program management organization (PMO) costs, as well as EV Program education and outreach costs.”¹³⁷ PG&E’s initial application also proposed that starting with PG&E’s 2020 General Rate Case (GRC), “PG&E would request that ongoing O&M costs relating to EV capital infrastructure installed or forecast to be installed prior to 2020 be recovered in the 2020 GRC authorized electric distribution revenue requirements.”¹³⁸ The initial application proposes including in distribution rates the forecast revenue requirement associated with this new balancing account.¹³⁹ On an annual basis, the revenue requirement recorded in the new balancing account would be trued-up by transferring its balance to the Distribution Revenue Adjustment Mechanism as part of the Annual Electric True-up process at the end of the year for rates effective January 1 of the following year.¹⁴⁰ PG&E’s initial application requests that actual costs recorded in the balancing account be found reasonable as long as they are below the pilot program cost cap.

The Settlement Agreement states that the “costs of Charge Smart and Save will be recovered in accordance with the cost recovery and rate design proposal in Chapter 7 of PG&E’s February 9, 2015, prepared testimony,”¹⁴¹ which is

¹³⁷ Application at 7.

¹³⁸ Application at 7.

¹³⁹ Application at 8.

¹⁴⁰ PG&E February 9, 2015, Testimony at 7-3 to 7-4.

¹⁴¹ Settlement Agreement Section 4 at 9.

summarized above. Additionally, the revenue collected from the participation payments will be credited against O&M costs, consistent with D.16-01-045.

No parties take issue with PG&E's creation of a balancing account or inclusion of incremental costs related to electric distribution infrastructure and make-ready infrastructure in the balancing account. We therefore authorize PG&E to establish a one-way balancing account as proposed in the Settlement Agreement, with the clarifications described below. PG&E should file an advice letter within 60 days of this decision to create the new program balancing account.

The majority of the Non-Settling Parties suggest that PG&E should be able to ratebase infrastructure up to the make ready, but not the EVSE.¹⁴² However, these parties do not provide any justification as to why PG&E-owned EVSE should not be included in PG&E's ratebase. We find it appropriate for PG&E to include the EVSE it owns in its ratebase, because it will be utility property that is used and useful in rendering utility service.

Because the Settlement Agreement did not contemplate an EVSE rebate, parties did not provide specific suggestions of how the rebates should be treated for ratemaking purposes. Therefore, we will adopt a ratemaking treatment consistent with SCE's Charge Ready Program in which all site hosts own the EVSE and receive a rebate from SCE.¹⁴³ PG&E should treat the rebates as expenses in accordance with Generally Accepted Accounting Principles, the costs

¹⁴² ChargePoint Opening Brief at 14, EVCA Opening Brief at 7, JMP Opening Brief at 11, ORA Opening Brief at 10, TechNet Opening Brief at 7, TURN Opening Brief at 12, and Vote Solar Opening Brief at 6.

¹⁴³ D.16-01-023 at 18-20, Findings of Fact 15-16, and Conclusion of Law 12.

of which are recovered from customers in the year the expense is incurred. The costs of the rebates should not be treated as a regulatory asset that is included in ratebase.

As TURN identifies, under the Settlement Agreement, any participation payments would be credited against O&M costs, rather than offsetting capital costs that are included in ratebase. TURN is concerned that this treatment of the participation payment provides less value for ratepayers because it does not reduce the portion of pilot costs on which PG&E earns a rate of return.¹⁴⁴ While we share TURN's concern, we want to ensure comparable treatment of the rebate expense and participation payment. Therefore, consistent with the ratemaking treatment prescribed in the SDG&E Power Your Drive Program,¹⁴⁵ PG&E should use the participation payments it receives from the pilot program to offset the O&M costs incurred. PG&E should file a Tier 1 advice letter within 60 days of this decision to track its O&M costs, and apply the participation payments it receives from the site host, as an offset to the O&M costs.

5.10. Program Advisory Council

Other than the Original Proposal submitted by PG&E, each of the proposals submitted in this proceeding provide for the establishment of a Program Advisory Council. The Program Advisory Council provided for in Settlement Agreement is similar to the Program Advisory Councils provided for in D.16-01-023 and D.16-01-045 in that it provides:

¹⁴⁴ TURN Opening Brief at 46.

¹⁴⁵ D.16-01-045 at 128, 148, Conclusion of Law 32.

- PG&E's procurement of EV charging equipment and services to be subject to advisory review by non-market participant members of the Program Advisory Council. (Joint Motion to Adopt Settlement, at 14.)
- PG&E to solicit the participation of a broad and diverse stakeholder advisory group in planning and implementing the Charge Smart and Save Program, including reviewing progress reports by PG&E on actual costs and deployment under Charge Smart and Save, and opportunities to improve the cost effectiveness of the program and increase access to EV charging.¹⁴⁶
- PG&E, after consulting with the Program Advisory Council, to use Tier 2 advice letters for mid-course program modifications that require Commission authorization.¹⁴⁷
- PG&E, after consultation with the Program Advisory Council, to be able to file for modification of the participation payment by way of a Tier 2 advice letter, subject to protest by any party.¹⁴⁸
- The Program Advisory Council to monitor and provide recommendations to contractors or subcontractors associated with the increase of hiring from Disadvantaged Communities, including best practices for hiring in Disadvantaged Communities.¹⁴⁹

¹⁴⁶ Joint Motion to Adopt Settlement at 6.

¹⁴⁷ Joint Motion to Adopt Settlement at 6.

¹⁴⁸ Joint Motion to Adopt Settlement at 6.

¹⁴⁹ Joint Motion to Adopt Settlement at 13.

More generally, the Settlement Agreement calls for PG&E to solicit, form, and support a Program Advisory Council under the same terms, conditions and responsibilities as adopted by the Commission for the SDG&E Program Advisory Council in D.16-01-045, Attachment 2, Appendix A.¹⁵⁰

While several of the Non-Settling Parties support the proposal to create the Program Advisory Council, most of these parties find fault with the specific proposal. For example, ChargePoint supports the creation of a Program Advisory Council but argues that, in addition to representatives from the Commission Energy Division, CCAs should be allowed to serve on the Program Advisory Council.¹⁵¹ ChargePoint also takes issue with PG&E's formation of a Non-Market subgroup on claims that PG&E has made clear who would be excluded from the group.¹⁵² ORA appears to share this concern where it questions provisions establishing that the "procurement of EV charging equipment and services will be subject to advisory review by non-market participant members of the Charge/Save proposal Advisory Council."¹⁵³

Also, on claims that the Settlement Agreement does not provide site selection criteria, ORA expresses concern about using the Program Advisory Council to develop siting criteria. With this in mind, we establish the following

¹⁵⁰ Joint Motion to Adopt Settlement at 6.

¹⁵¹ See ChargePoint Opening Brief at 73, and Settling Parties Reply Brief, at 26 wherein the Settling Parties challenge ChargePoint's request that EVSE vendors like itself take part in the review and evaluation of EVSE procurement process.

¹⁵² ChargePoint makes additional arguments in this regard but in doing so goes beyond the page limitation established for Opening Briefs. In fairness to the other parties, these additional arguments will not be considered.

¹⁵³ ORA Opening Brief at 10.

baseline criteria¹⁵⁴ for site selection and direct PG&E to finalize site selection criteria with the Program Advisory Council:

- Date of indicated interest (first-in-line priority);
- Current and expected volume of EV drivers;
- Number of charging stations desired;
- Segment (MUD, workplace, disadvantaged community);
- Nearby transformer available capacity;
- Distance between transformer and new service point;
- Site conditions related to construction feasibility (i.e., trenching surface, EVSE mounting surface, condition of facility);
- Land and property ownership;
- If leasing, term and conditions of lease;
- Existing/available Americans with Disabilities Act accessible parking and compliance; and
- Distribution Resources Plan Integration Capacity Analysis.

Additionally, recognizing that CalEnviroScreen 2.0 is not a perfect tool to identify a disadvantaged community or site, PG&E should identify sites that not only meet the CalEnviroScreen 2.0 definition of “disadvantaged,” but are also in the spirit of the definition.

ORA also expresses the more general concern that “[t]oo many important elements of the Charge/Save proposal have been left to an undefined Program Advisory Council to determine”¹⁵⁵ TURN’s endorsement of the Program Advisory Council idea is more guarded. According to TURN, “[t]he proposed Program Advisory Council lacks any real oversight authority and is not a

¹⁵⁴ These site selection criteria are based upon those approved for SDG&E’s VGI Pilot in D.16-01-045.

¹⁵⁵ ORA Opening Brief at 8.

sufficient substitute for a phased approach.” In particular, TURN notes that the stated role and purpose of the Program Advisory Council will be to “provide input to PG&E for programmatic changes as needed during the course of the PG&E Program” as evidence that: 1) “the [Program Advisory Council] PAC does not have formal decision-making authority,” and 2) the Program Advisory Council lacks the ability to suggest program modifications directly to the Commission.¹⁵⁶

While we find merit in the Non-Settling Parties concerns, particularly those expressed by TURN, we note that rather than substitute for a phased approach, the Program Advisory Council at issue here is the first part of the phased approach we have demanded. To the extent that parties and/or Program Advisory Council members subsequently find that the Program Advisory Council lacks the expertise to address certain issues or is unable to bring ideas before the Commission, they should develop proposals that address these issues for consideration as part of our Phase 2 preparations.

For the time being, we will adopt the Program Advisory Council proposal submitted by the Settling Parties, with the following modifications. First, rather than PG&E, the Program Advisory Council shall have the final say over whether the load management plans of site hosts (in DACs, MUDs, and non-DAC workplaces) are reasonable.¹⁵⁷ Second, the Program Advisory Council may request that PG&E modify its data collection parameters as it sees reasonable.

¹⁵⁶ TURN Opening Brief at 62.

¹⁵⁷ This directive does not bar PG&E from acting as an initial screener of the load management proposals, nor prohibit any entity from proposing appropriate load management criteria for PAC consideration.

In the event that PG&E in any way fails to timely comply with such a request, PG&E will forward the request and a statement of the rationale for its refusal to timely comply with the request to the Program Advisory Council and the Commission's Energy Division. Third, the Program Advisory Council should meet at least quarterly instead of semi-annually and two of the meetings should be held in person in San Francisco.

5.11. Education and Outreach

In addition to arguing that the education and outreach (E&O) program provided for in the Settlement Agreement is exorbitantly priced, TURN notes that many of the activities and tools provided for in the program appear to be duplicative of existing statewide, regional, and federal EV E&O efforts. For its part, ChargePoint urges the Commission to ensure that all E&O activities conform to the guidelines established in D.11-07-029, and add a "market neutral customer engagement" requirement to the guiding principles. While we believe E&O has the potential to significantly advance the program objectives and EV adoption in general, we also believe the concerns identified above to be valid. Unfortunately, the proceeding record related to the proposed E&O activities is insufficient to allow us to meaningfully assess the proposed program costs. We therefore direct PG&E to make outreach proposals to the Program Advisory Council and, based on Program Advisory Council feedback, to file a new E&O proposal via Tier 2 Advice Letter with specific cost line items, within six months of the issuance of this decision.

Additionally, PG&E should develop a geographical information system (GIS) tool to track the locations of infrastructure installations, consistent with requirements adopted in the SDG&E and SCE infrastructure pilots.

5.12. Reporting

The Settlement Agreement provides for PG&E to file quarterly progress reports with the Commission, and the Program Advisory Council, and to serve the reports on all parties to D.16-01-023 and D.16-01-045.¹⁵⁸ Like ChargePoint, we see no need for PG&E to file these reports on parties to the two prior decisions but will otherwise adopt the Settlement Agreement approach.

5.13. Pilot Program Duration

As noted above, where the Compliant Proposal and Non-Settling Parties call for the duration of the approved pilot program to be limited to two years after initial construction, the Enhanced Proposal and Settlement Agreement provide for the approved pilot program to have a three-year duration. Keeping in mind that parties that urged the shorter time-frame did so in conjunction with their advocating for a substantially smaller program, given the record before us and the terms we adopt above, we approve a pilot program with a three-year duration.

5.14. Program Bridge Funding

The Settlement Agreement states that PG&E will enroll customers for three years from the beginning of construction, and any remaining funds after the three-year period can be used to extend the site host and EVSE supplier sign up periods. The Settling Parties contend that bridge funding is necessary to “prevent economic harm to contractors and disruption to program implementation.”¹⁵⁹ We agree. However, given the program adopted above, it is reasonable to anticipate that some of the savings projected by the Non-Settling

¹⁵⁸ Exh. 01, Settlement at 14.

¹⁵⁹ Exh. 01 at 16-17.

Parties will occur. Several parties opine about how these savings should be handled. For example, the Settling Parties provide that any cost savings on site-specific deployment costs will be used for additional deployment not to exceed the cost cap. The Settlement Agreement also states that if PG&E has not received a decision on Phase 2 of the pilot, it will file a Tier 2 Advice Letter to authorize bridge funding to extend the program. TURN cautions that this Tier 2 Advice Letter filing is a “back door,” and PG&E needs to stop implementing at some point to allow the Commission and parties to assess the success of Phase 1.

In general, the Non-Settling Parties, such as ChargePoint, TechNet, and ORA suggests “PG&E may use any cost savings (budget remaining after deployment of the maximum number of EVSE) for additional deployment consistent with these recommendations and, if relevant, for continued deployment during the transition period.”¹⁶⁰ TURN and JMP appear to echo this sentiment and suggest cost savings be put toward the bridge period and reinvested in future phases.¹⁶¹ As the additional deployment provided for by the Non-Settling Parties was in reference to a total deployment of 2,500 chargers, rather than the 7,500 chargers we authorize today, it is not reasonable to conclude that these parties would now agree that cost savings should be used to fund deployment of chargers beyond those provided for herein. We therefore adopt the more limited recommendation that cost savings associated with this first phase of deployment may be used to fund the bridge period (if one is necessary). If PG&E chooses to file an application for a second phase of

¹⁶⁰ See ChargePoint Opening Brief at 13; TechNet Opening Brief at 7; VoteSolar Opening Brief at 8; and ORA Opening Brief at 9-10.

¹⁶¹ See TURN Opening Brief at 11; and JMP Opening Brief at 15.

deployment of this program, subject to the 7,500 cap above, PG&E may continue expending any remaining Phase 1 funds while the Commission is considering Phase 2, until its authorized Phase 1 budget has been expended. If PG&E does not file for a second phase, it shall file an Advice Letter specifying the ratemaking treatment of any unspent funds.

5.15. Data Collection

On October 12, 2015, PG&E served its supplemental testimony and responses to the questions in the Scoping Ruling stating that PG&E's compliant proposal would include 18 months of data collection and PG&E's enhanced proposal would collect and report 30 full months of information from deployed EV stations. Appendix B of the Settlement Agreement specifies "the collection and reporting of data and metrics comparable to the data and metrics required by the Commission for the SDG&E [D.16-01-023] and SCE [D.16-01-045] programs."

While TURN considers the directives in Appendix B of the Settlement Agreement to be a good start, it voices two significant concerns. First, according to TURN, the Settlement Agreement neglects "two critical areas of data: 1) EV Adoption attributable to PG&E's program, and 2) the impact of the program on the private market and EV infrastructure development outside of the program." Second, while Appendix B of the Settlement Agreement states that "The [Program Advisory Council] PAC will have the flexibility to determine if additional data collection and reporting objectives are of interest and will help to inform Commission policy" TURN strongly urges the Commission be as specific as possible regarding data collection requirements because, the Program

Advisory Council as proposed, will have no formal authority to make revisions to PG&E's data collection efforts.¹⁶² As we have addressed these concerns above, we need take no further action here and will adopt the Settlement Agreement's data collection provisions.

6. Safety Considerations

The safety-related considerations for the program we adopt are ensuring that the EV site installation and the associated EVSE infrastructure are installed safely and in accordance with applicable codes and regulations, and that the electricity dispensed from the EV charging stations is safely delivered.

These safety-related considerations are addressed in the Settlement Agreement, and should be incorporated into the adopted program terms. In particular, contractors who construct, install, and maintain the EV site installations and charging stations will be required to have Electric Vehicle Infrastructure Training Program (EVITP) certification.¹⁶³ The EVITP provides training and certification to licensed electricians who plan to install EVSE.

In addition, the Settlement Agreement provides that:

PG&E will require that all construction, installation and maintenance of EV Facilities that is not performed by employees of PG&E shall be performed by contractors signatory to the IBEW who hold a valid C-10 contractor's license, as defined in the governing labor agreement between PG&E and the IBEW.¹⁶⁴

¹⁶² TURN Opening Brief at 61, citing Exh. 01, at 21.

¹⁶³ Joint Motion for Adoption of Settlement, Attachment 1, at 6 and 12.

¹⁶⁴ According to the Contractors State License Board of the California Department of Consumer Affairs, a C-10 contractor's license allows an electrical contractor to place, install, erect or connect any electrical wires, fixtures, appliances, apparatus, raceways, conduits, solar

Footnote continued on next page

Also, as part of its planning for each EV site installation, we will require PG&E to prepare an engineering design and electrical load calculations, and submit that to the local permitting agencies to obtain the necessary permits. Lastly, as part of the RFI and RFP processes, PG&E needs to consider and ensure that the metering data, and other data, transmitted from the EVSE is secure.

7. Comments on Proposed Decision

The proposed decision of ALJ Darwin E. Farrar in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

8. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Darwin E. Farrar is the assigned ALJ in this proceeding.

Findings of Fact

1. Executive Order B-16-2012 directed the Commission and other state agencies to establish benchmarks to help achieve the build-out of ZEV infrastructure capable of supporting up to one million vehicles, and to integrate PEV charging into the state's electricity grid, by 2020 and 1.5 million ZEVs by 2025.
2. On February 9, 2015, PG&E filed A.15-02-009, seeking approval of its proposed Electric Vehicle Infrastructure and Education Program.

photovoltaic cells or any part thereof, which generate, transmit, transform or utilize electrical energy in any form or for any purpose.

3. On September 4, 2015, the assigned Commissioner and assigned Administrative Law Judge issued a Scoping Ruling requiring PG&E to submit a program at 10 percent the size of the original application, but did not state that would be the upper limit of a program authorized by the Commission.

4. On October 12, 2015, PG&E served supplemental testimony and responses to the questions in the Scoping Ruling and included both a “Compliant Proposal” and an “Enhanced Proposal.”

5. A Joint Motion for Adoption of the Settlement Agreement was filed on March 21, 2016.

6. The Settlement Agreement constitutes the Applicant’s final program proposal, and is preferred by the Applicant and other Settling Parties to the Original, Compliant, and Enhanced Proposals.

7. On April 25-28, 2016, parties participated in hearings on the Settlement Agreement, the Compliant Proposal, and the Enhanced Proposal.

8. The Opening Briefs filed by JMP, ORA, TURN, ChargePoint, Vote Solar, EVCA, TechNet, and GPI contain several common proposed modifications to the PG&E Compliant Proposal.

9. The Settlement Agreement represents a consolidation of comparable interests and positions, lacks the support of any ratepayer advocates, does not represent all affected interests, is contested, and is not the result of arms-length negotiations.

10. The express terms of the Settlement Agreement provide for PG&E to own EV supply infrastructure and EVSE.

11. The Settlement Agreement provides for PG&E to commit to deploying 20% of the approved charging infrastructure to serve MUDs and provides a non-binding target of 50 percent for MUDs.

12. The Settlement Agreement provides for PG&E to increase the targeted share of charging stations deployed in Disadvantaged Communities to 15 percent and provides a stretch goal of 20 percent for disadvantaged and low-income communities.

13. The Settlement Agreement does not provide a fully-detailed RFP process to identify O&M vendors or determine the price of the lowest cost EVSE model.

14. Aside from target goals for the MUD and DAC segments, the terms of the Settlement Agreement provide PG&E authority to own EV supply infrastructure and EVSE anywhere in its territory.

15. The Settlement Agreement significantly differs from the program adopted in D.16-01-045 for SDG&E.

16. There are potential significant anticompetitive impacts associated with PG&E's ownership of EV supply infrastructure and EVSE.

17. The Settlement Agreement would allow PG&E to pick the most profitable charging opportunities within its region.

18. There is nothing in the record of this proceeding which suggests that limiting utility ownership to MUDs and DACs will adversely impact EV adoption in workplaces.

19. D.16-01-045 determined that certain factors (i.e. market saturation rates, allowing site host a choice among EVSE and providers, and rate options) are important factors that can reduce anticompetitive impacts.

20. There is nothing in D.16-01-045 suggesting that factors such as market saturation rates, site host choice among EVSE and EV charging services providers, and/or rate options obviate the need for anti-competitive mitigation measures.

21. Where PG&E owns only the make-ready infrastructure, the site host will receive a rebate for its purchase of EVSE.

22. The DAC and MUD market segments have traditionally proven more difficult for electric vehicle charging to penetrate.

23. For the purposes of this proceeding, “Disadvantaged Communities” are those communities identified by CalEnviroScreen 2.0.

24. Neither D.16-01-023 nor D.16-01-045, which approved utility EV charging infrastructure programs for SCE and SDG&E, included a full participation payment waiver for sites outside of DACs.

25. Third-party ownership of EVSE where PG&E does not own the EVSE could support innovative business models and provides increased levels of customer choice.

26. Our limitation on the level of utility ownership, determination of the customer of record, and modifications to other provisions of the Settlement Agreement, make the proposed deployment scale of electric vehicle charging stations requested by the Settling Parties reasonable.

27. Adopting pilot programs reflects our interest in innovation rather than replication.

28. DCFCs make up a significant portion of the costs of the Settlement Agreement.

29. DCFC unit costs are high compared to Level 2 Chargers.

30. Including DCFCs in the PG&E pilot is inappropriate at this time.

31. Participation payments can play a role in ensuring that site hosts are committed to the goals of the EV program.

32. Site host participation payments should strike a reasonable balance between site host having a stake in the program, and avoiding unnecessarily high payments that damage the program design and deter site-host participation.

33. The Settling Parties fail to explain the basis for their extension of the participation payment exemption to schools, government entities, and DCFC installations.

34. Reducing the number of DCFCs in the program may reduce costs by approximately \$25 million.

35. The appropriate use of dual port chargers may reduce program cost by as much as \$15 million.

36. PG&E assumes a capital contingency of \$9.7 million for Level 2 Chargers, a capital “contingency” of \$4.8 million for DCFC, and an expense “contingency” of \$2.1 million for Level 2 and DCFC combined.

37. The contingency budget will decrease as a result of the reduced use of DCFC and Level 2 Chargers adopted herein.

38. The Settlement Agreement’s \$5 million set aside for equity programs supporting Disadvantaged Communities is overly broad, with no stated objectives or specifications of program requirements.

39. The Program Advisory Council provided for in the Settlement Agreement is similar to the Program Advisory Councils adopted in D.16-01-023 and D.16-01-045.

40. Bridge funding can provide predictability and stability to prevent economic harm to contractors and avoid program disruption.

41. PG&E’s assumption that all Level 2 charging occurs “on-peak” is unrealistic and has likely inflated PG&E’s estimates for transformer upgrades and other cost inputs.

42. The requirements in Attachment 1 of the Joint Motion of Adoption of the Settlement Agreement, will ensure that the construction, installation, and operation of the EV site installations and charging stations comply with all applicable safety regulations and codes.

Conclusions of Law

1. PG&E has the burden of proving that it is entitled to the relief sought in this proceeding, and affirmatively establishing the reasonableness of all aspects of its application.

2. PG&E is obliged to affirmatively establish that its proposal meets all of the requirements set forth in Pub. Util. Code § 740.8.

3. Proponents of utility ownership of EV charging infrastructure must affirmatively establish that the benefits of utility ownership of EV charging infrastructure are balanced against the competitive limitation that may result from that ownership.

4. Where a settlement affecting all PG&E customers is proffered, the factors used by the courts in approving class action settlements provide the appropriate criteria.

5. Rule 12.4 allows settlement proposals to be treated as joint testimony.

6. The Commission encourages parties to pursue settlement as a potential alternative to protracted disputes.

7. Neither D.16-01-023 nor D.16-01-045 conclude that utility ownership of EVCS is without anticompetitive impacts.

8. The Settlement Agreement provides benefits that are in the public interest.

9. The potential anticompetitive impacts associated with PG&E's ownership of EV infrastructure and EVSE can be prevented or adequately mitigated through

the exercise of existing rules and the imposition of certain conditions and modifications.

10. Parties to this proceeding have had ample time to conduct additional discovery, provide and review written responses, and conduct cross-examination on the Settlement Agreement.

11. The Scoping Ruling in no way prohibited PG&E from filing additional proposals that did not comply with the requirement to file a smaller program, thus the Enhanced Proposal is not beyond the scope of the proceeding.

12. Claims of binding precedent are, in general, antithetical to the purpose of pilot programs.

13. The balancing test set forth in D.11-07-029 (and reaffirmed in D.14-12-079 and subsequent related decisions), establishes that our review of the public interest must include an analysis of the impact of utility ownership on competition where proposals call for utility ownership of PEV charging infrastructure.

14. D.14-12-079 also reaffirmed the balancing test applied in D.11-07-029, which requires the ratepayer benefits of utility ownership of PEV charging infrastructure to be balanced against the competitive limitation(s) that may result from that ownership.

15. The Commission overturned the broad prohibition against utility EV infrastructure ownership in D.14-12-079.

16. The Settlement Agreement does not meet the standard for contested settlements set forth in D.09-12-045.

17. Consistent with Rule 12.4 we can and will treat the Settlement Agreement as joint testimony.

18. A 10 percent contingency is not excessive.

19. Our efforts to promote EVs and EV charging infrastructure must be balanced with the statutory requirement that rates be just and reasonable.

20. The adopted EV Program will reduce the costs of the program as compared to the Settlement Agreement.

21. At more than 50 percent and almost 100 percent (respectively), the \$1.1 million in capital contingency costs and almost \$2 million in expenses and O&M costs provided in the Settlement are excessive. Given the adopted features of the PG&E EV program, it is reasonable to anticipate that some of the savings projected by the Non-Settling Parties will occur.

22. PG&E should establish a one-way balancing account.

23. PG&E should file a Tier 1 advice letter within 60 days of this decision to track its O&M costs, and apply the participation payments it receives from the site host, as an offset to the O&M costs.

24. Hearings were required in this proceeding.

25. This proceeding should be closed.

ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) shall implement a three-year Electric Vehicle Program that contains the following features:

- PG&E may deploy the service connection and supply infrastructure (make-ready infrastructure) to support up to 7,500 Electric Vehicle Level 2 charging ports;
- Total program cost shall not exceed \$130 million;
- PG&E may own up to 35 percent of total Electric Vehicle Supply Equipment (EVSE) ports projected to be installed through the pilot;

- PG&E shall not own EVSEs installed in workplaces in the non-Disadvantaged Communities segments;
- Where PG&E owns the make-ready infrastructure and EVSE, the site host shall pay a participation payment as described below;
- PG&E shall own the make-ready infrastructure regardless of who owns the EVSE; and
- PG&E shall present all customers with the option to own the EVSE.

2. Pacific Gas and Electric Company must work with the Program Advisory Council to establish the “base cost” for the Level 2 Electric Vehicle Supply Equipment, based on the price of the lowest cost Electric Vehicle Supply Equipment model qualified through the Request for Proposal process and the resultant base cost must be used to determine rebate and participation payment amounts.

3. Consistent with the Southern California Edison Company Charge Ready Program, Pacific Gas and Electric Company must treat the program rebates as expenses, the costs of which are recovered from customers in the year the expense is incurred.

4. Pacific Gas and Electric Company is authorized to recover the revenue requirements associated with up to \$130 million of capital and operations and maintenance expenditures for implementation of Phase 1 of its Charge Smart and Save Program.

5. Pacific Gas and Electric Company must select Operations and Maintenance vendors through the Request for Proposal process in conjunction with the Program Advisory Group, and make the list of approved Operations and Maintenance vendors available to all site hosts.

6. For site hosts where Pacific Gas and Electric Company (PG&E) owns the Electric Vehicle Supply Equipment, the site host will choose the Operations and Maintenance vendor, and PG&E will pay the Operations and Maintenance costs.

7. For site hosts that own their Electric Vehicle Supply Equipment, the site host will choose the Operations and Maintenance vendor and pay the Operations and Maintenance costs.

8. In all instances, the site host must be Pacific Gas and Electric Company's customer of record and not the service provider.

9. Pacific Gas and Electric Company shall provide for dual ports on its Level 2 chargers wherever feasible.

10. Pacific Gas and Electric Company (PG&E) will provide a 50 percent rebate to the site host for the base costs of the Electric Vehicle Supply Equipment (EVSE) at Multiple Unit Dwelling sites that are not in Disadvantaged Communities where PG&E is installing and owning the make-ready infrastructure but does not own the EVSE.

11. Pacific Gas and Electric Company (PG&E) will provide a 100 percent rebate to the site host for the base costs of the Electric Vehicle Supply Equipment (EVSE) at Multiple Unit Dwelling sites that are Disadvantaged Communities where PG&E is installing and owning the make-ready infrastructure but does not own the EVSE.

12. Pacific Gas and Electric Company (PG&E) will provide a 25 percent rebate to the site host for the base costs of the Electric Vehicle Supply Equipment at Workplace sites that are not in Disadvantaged Communities where PG&E is installing and owning the make-ready infrastructure but does not own the EVSE.

13. Pacific Gas and Electric (PG&E) shall offer site hosts a choice between the Time of Use (TOU) Rate-to-Host option as well as the TOU Rate-to-Driver option:

- Under the “TOU Rate-to-Driver” option, PG&E will serve electricity to the site host or their service provider who will then pass the TOU price signals directly to Electric Vehicle drivers to ensure that drivers who charge in a manner that supports the Program Guiding Principles.
- Under the “TOU Rate-to-Host” option, the Site Hosts will receive the TOU signals and will be able to propose alternative pricing and load management tactics consistent with Program Guiding Principles.

14. Pacific Gas and Electric Company must file a Tier 1 advice letter within 60 days of the effective date of this decision to track its Operation and Maintenance costs, and apply the participation payments it receives from the site host as an offset to the Operation and Maintenance costs, and to establish a one-way balancing account.

15. The Program Advisory Council provided for in the Settlement Agreement shall develop planning standards and reasonableness reviews for site host energy management plans.

16. The Program Advisory Council proposal submitted by the Settling Parties is adopted with the following modifications:

- Rather than Pacific Gas and Electric Company (PG&E), the Program Advisory Council shall have the final say over whether site host’s load management plans are reasonable.
- The Program Advisory Council may request that PG&E modify its data collection parameters as it sees reasonable.

- The Program Advisory Council's role shall include consulting with PG&E on the development of site selection criteria (based on the site selection criteria developed for San Diego Gas & Electric Company in D.16-01-045).
- The Program Advisory Council shall meet at least quarterly and at least two of the Program Advisory Council quarterly meetings shall be in person in San Francisco, others may be by telephone and/or in alternate locations.

17. Within 60 days of the effective date of this decision Pacific Gas and Electric Company must file a Tier 1 Advice Letter that:

- Sets forth a new Education and Outreach proposal with specific cost line items and a \$5 million cap;
- Sets forth provisions for a geographic information system map to track the development of infrastructure, consistent with California Public Utilities Code section 740.2 and Decision 16-01-045; and
- Summarizes the approved program, in the same level of detail as in the Settlement agreement, but incorporate all aspects of the program as modified and approved in the decision.

18. Pacific Gas and Electric Company must file and serve quarterly reports with the Commission and the Program Advisory Council documenting progress on all aspects of the program approved herein.

19. Cost savings associated with Phase 1 shall be used to fund the bridge period (if necessary) and reinvested in future phases.

20. Data and metrics shall be collected and reported by Pacific Gas and Electric Company in the manner set forth in Appendix B to the Settlement filed on March 21, 2016.

21. All motions not previously granted are deemed denied.

22. Application 15-02-009 is closed.

This order is effective today.

Dated _____, at San Francisco, California.