



PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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Ratesetting

TO PARTIES OF RECORD IN APPLICATION 18-11-001:

This is the proposed decision of Commissioner Michael Picker. 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 January 28, 2019 emergency meeting.

Parties of record may file comments on the proposed decision no later than January 25, 2019 at 5:00 p.m.

/s/ ANNE E. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:avs

Attachment

Decision **PROPOSED DECISION OF COMMISSIONER PICKER**
(Mailed 1/24/2019)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of PACIFIC GAS AND ELECTRIC COMPANY to issue, sell, and deliver one or more series of Debt Securities and to guarantee the obligations of others in respect of the issuance of Debt Securities, the total aggregate principal amount of such long-term indebtedness and guarantees not to exceed \$6.1 billion; to execute and deliver one or more indentures; to sell, lease, assign, mortgage, or otherwise dispose of or encumber utility property; to issue, sell and deliver in one or more series, cumulative Preferred Stock -- \$25 Par Value, Preferred Stock -- \$100 Par Value, Preference Stock or any combination thereof; to utilize various debt enhancement features; and enter into interest rate hedges. (U39M).

Application 18-11-001

**DECISION GRANTING PACIFIC GAS AND ELECTRIC COMPANY AN
EXEMPTION FROM PUBLIC UTILITIES CODE SECTIONS 817, 818, AND 851
FOR THE LIMITED PURPOSE OF DEBTOR-IN-POSSESSION FINANCING****Summary**

This decision grants, with conditions, Pacific Gas and Electric Company's (PG&E's) request for an order pursuant to Public Utilities Code §§ 829(c) and 853(b)¹ exempting PG&E's debtor-in-possession (DIP) financing in conjunction

¹ All subsequent section references are to the Public Utilities Code unless otherwise specified.

with PG&E's decision to file for Chapter 11 bankruptcy on, or about January 29, 2019, from §§ 817, 818, and 851. PG&E's decision whether to file for bankruptcy is solely its decision and the Commission's grant of the requested exemption is not an explicit or implicit approval of that decision. However, if such a Chapter 11 filing is to occur, the Commission's immediate responsibility is to ensure the continuation of safe and reliable service by PG&E during the pendency of its Chapter 11 case. The exemption granted in this decision is narrow and only provides PG&E the limited exemption from §§ 817, 818, and 851 for purposes of pursuing DIP financing, as described below, and is conditioned on PG&E making a compliance filing setting forth the terms of the DIP financing. This proceeding is closed.

1. Factual Background

On November 1, 2018, PG&E filed an application to:

- (1) issue, sell and deliver from time to time one or more series of long-term debt securities, such as first and refunding mortgage bonds, debentures, notes, overseas indebtedness, foreign currency denominated securities, medium-term notes, preferred securities, other floating or variable rate debt, credit or loan agreements, Preferred Stock -- \$25 Par Value, Preferred Stock - \$100 Par Value, Preference Stock or any combination thereof, as authorized in PG&E's Articles of Incorporation (preferred stock), and other evidences of indebtedness (debt securities) in an aggregate principal amount not to exceed \$6.1 billion, with all such issuances to take place at any time from the date of authorization thereof until the aggregate principal amount authorized has been fully utilized and
- (2) enter into interest rate hedges as described herein.

Pacific Gas and Electric Company (PG&E) also seeks authorization, in connection with the issuance of debt securities, to:

- (1) guarantee the securities of regulated direct or indirect subsidiaries or affiliates of PG&E or of governmental entities that issue securities on behalf of PG&E;
- (2) execute and deliver one or more indentures or supplemental indentures;
- (3) sell, lease, assign, mortgage, or otherwise dispose of or encumber utility property; and
- (4) pledge or otherwise dispose of or encumber accounts receivable in connection with the issuance and sale of Debt Securities.

Lastly, PG&E seeks authorization in connection with the issuance of preferred stock to guarantee the securities or obligations of affiliates, as defined above.

On January 18, 2019, PG&E filed a Motion for an Expedited Procedural Schedule (PG&E Expedited Schedule Motion) and a Motion for Exemption from Public Utilities Code §§ 817, 818, and 851² (PG&E Exemption Motion). PG&E filed similar motions its other application for financing authority, Application (A.) 18-10-003, which addresses short-term debt authorization. On the same day, the Commission noticed a Prehearing Conference to consider the motions for both proceedings on January 23, 2019. The Prehearing Conference (PHC) provided parties notice and opportunity to comment on both of PG&E's motions. PG&E, Coalition of California Utility Employees (CUE), Center for Energy Efficiency and Renewable Technologies (CEERT), The Utility Reform Network (TURN), Independent Energy Producers Association (IEPA), Public Advocates Office (Cal Advocates), NextEra Energy Resources, East Bay Community Energy, Monterey Bay Community Power, and Sonoma Clean Power appeared at the

² All subsequent section references are to the Public Utilities Code unless otherwise specified.

Prehearing Conference. The assigned Commissioner issued his Scoping Memo on January 23, 2019.

PG&E filed a series of 8-K Forms at the United States Securities Exchange Commission (SEC) on January 14, 22, and 23, 2019, which detail its intention to seek Chapter 11 bankruptcy on or about January 29, 2019.³

2. Jurisdiction

A regulated utility must seek Commission approval to issue debt pursuant to §§ 817, 818, and 851. The Commission may exempt the regulated utility from these provisions pursuant to §§ 853(b) and 829(c).

3. Issues Before the Commission

The issue before the Commission is whether it is in the public interest for the Commission to exempt the Debtor-in-Possession (DIP) financing transaction(s) described in PG&E's Section 8-K filing from §§ 817, 818, and 851? Secondly, should any conditions adhere to such exemption, if granted?

4. Discussion and Analysis

"The Commission grants exemptions under § 853(b) only in extraordinary situations."⁴ PG&E, CUE and IEPA support the grant of an exemption. CEERT only supports the exemption with certain conditions attached, while TURN and Cal Advocates request more information before taking a position, as well as suggesting conditions. We find the public interest is served by providing PG&E a narrow and limited exemption in this matter, because of the unique circumstances of this application. This exemption is not applicable beyond the

³ PG&E Exemption Motion, Exhibit A, Section 8-K Filing, dated January 14, 2019. (See also PG&E's Motion for Official Notice, dated January 23, 2019.) PG&E's SEC filings are also available at: http://investor.pgecorp.com/m/#/SEC_Filings.

⁴ D.03-11-015, at 7.

DIP financing at issue in this proceeding and is subject to the conditions identified in the ordering paragraphs.

PG&E has filed a series of 8-K Forms at the SEC, which describes its intention to pursue Chapter 11 bankruptcy on or about January 29, 2019, and the associated DIP financing.⁵ The 8-K Forms detail that PG&E has obtained a commitment letter from lenders and general description of the DIP financing. The DIP financing will include a revolving credit facility of \$3.5 billion and a term loan of \$1.5 billion.⁶ PG&E requests an exemption from the requirements of Commission approval to issue DIP financing in conjunction with its planned Chapter 11 bankruptcy filing. Section 853(b) provides “[t]he commission may...exempt any public utility or class of public utility from this article if it finds that the application thereof with respect to the public utility...is not necessary in the public interest.” Sections 817, 818, and 851 require a regulated utility to obtain Commission approval, prior to issuance of debt unless the regulated authority receives an exemption per §§ 853(b) and 829(c).

PG&E asserts the “exemptions sought by PG&E are warranted because the application of §§ 817, 818, and 851 to the DIP financing are not necessary in the public interest.”⁷ PG&E continues that “the DIP financing would provide the liquidity PG&E needs to continue operations through the bankruptcy process.”⁸ Lastly, PG&E states “DIP financing will provide PG&E with access to the capital needed to support ongoing operations and enable the company to continue

⁵ See PG&E’s 8-K filings dated January 14, 2019; January 22, 2019; and January 23, 2019. These documents have been filed and served in this proceeding by PG&E.

⁶ PG&E 8-K, dated January 22, 2019.

⁷ PG&E Exemption Motion, at 2.

⁸ PG&E Exemption Motion, at 2.

investing in its systems, infrastructure and wildfire mitigation initiatives.”⁹

PG&E has also asserted that there is no alternative to DIP financing.¹⁰

At the PHC held on January 23, 2019, TURN and Cal Advocates raised the threshold issue of whether it is prudent for PG&E to file for Chapter 11 bankruptcy at this point and asks the Commission to obtain information regarding that decision.¹¹ The wisdom of PG&E’s decision to file for Chapter 11 bankruptcy is not within the scope of this proceeding. The Commission’s obligations and responsibilities under Article 12 of the California Constitution and the provisions of the Public Utilities Code are numerous, but in the event of a Chapter 11 filing by a regulated utility, can generally be distilled to be a responsibility to ensure that affected customers continue to receive safe and reliable service at just and reasonable rates.¹² To execute this responsibility, the Commission must monitor many programs and public interests. The financial wherewithal of PG&E underlies most, if not all, areas of public concerns, and in particular the safety and reliability of the gas and electric systems and continued service to the public. Absent timely procurement of DIP financing, this Commission faces a substantial risk that the public health and safety of California will be severely impaired with potentially catastrophic results, if the provision of safe and reliable gas and electric service to the public, including but not limited to Californian’s homes, hospitals and public facilities is compromised. Through its 8-K filings at the SEC and by its motions and

⁹ PG&E Exemption Motion, at 2.

¹⁰ PHC, January 23, 2019, at 52:15.

¹¹ PHC, January 23, 2019, at 62:10-17.

¹² See §451.

appearances in this proceeding, PG&E has communicated it intends to file for Chapter 11 bankruptcy. The Commission must prepare for contingencies, including ensuring PG&E can continue to provide service during the pendency of its Chapter 11 case. We agree with TURN however, that a condition requiring reporting is an appropriate exercise of our oversight jurisdiction.¹³

It is clear the parties are grappling with the ramifications of a Chapter 11 filing. Many of the parties' broader concerns regarding the Chapter 11 filing were raised at the PHC. Some of these concerns were addressed by PG&E, some of these concerns are outside of the scope of this proceeding, and other concerns are addressed by conditions identified in the ordering paragraphs of this decision.

TURN and Cal Advocates raised concerns regarding the scope of the proposed exemption. In response, PG&E provided additional specificity regarding the scope of the proposed exemption. PG&E noted that although PG&E is seeking an exemption to obtain secured DIP financing, it is not seeking an exemption to the application of § 851 in the event PG&E defaults with regards to the DIP financing. In such an event, PG&E asserts the Commission review of the sale or transfer of ownership of a utility asset would still be subject to § 851. This clarification of the scope of the exemption is adopted in the ordering paragraph of this decision. We conclude that this also adequately responds to TURN's request that if the exemption is granted, that the utility assets remain in service in the event of a forfeiture.¹⁴

¹³ We disagree with TURN's characterization that we risk treating bankruptcy court review as a substitute for our own. (TURN Response to PG&E Exemption Motion at 8.) We are exercising our authority as set forth in the Public Utilities Code, reviewing PG&E's proposal, and determining that a conditioned exemption is in the public interest at this point.

¹⁴ PHC, January 23, 2019, at 68:1.

TURN and Cal Advocates also raised the concern that the terms and conditions of the DIP financing have not been reviewed at a granular level. PG&E responded by citing the January 21 and 23, 2019 8-K filings of PG&E which contain more information regarding the DIP financing. Moreover, in typical financing applications, the Commission sets parameters for a regulated entity to obtain financing and does not review the granular terms of a utility's specific financing. We do not find there is reason to depart from this practice in this circumstance, however, the Ordering Paragraphs adopt a cap on PG&E's DIP financing amount as a limiting parameter.

Cal Advocates also raised the concern that DIP financing would be used to provide incentive bonuses to executives. PG&E responded that such payments would not be normal business decisions and thus already would require the approval of the bankruptcy court. Cal Advocates correctly noted as well that PG&E's recovery of compensation, including bonuses, to employees is subject to the Commission's reasonableness review. At this time, PG&E is not seeking a determination of reasonableness with regard to the DIP loan.¹⁵ Such a reasonableness review is not in the scope of this proceeding. This decision is not a substitute for such a reasonableness review.

Cal Advocates also requests that the DIP financing only be used to support utility operations and not the holding company.¹⁶ PG&E responded in a filing subsequent to the PHC that the holding company "is not a borrower under the

¹⁵ PHC, January 23, 2019, at 54:5-9.

¹⁶ PHC, January 23, 2019, at 64:17-23.

DIP loan, but would be a guarantor. All DIP loan proceeds would be paid by the lenders solely to PG&E.”¹⁷

Cal Advocates also requests that PG&E agree to a Ratepayer Committee in the Chapter 11 bankruptcy proceeding.¹⁸ PG&E responded that this proposal should not be made into a mandatory requirement by this Commission. We find that consideration of such a condition is beyond the scope of this proceeding.

Cal Advocates also requests that if an exemption is provided, then it be limited and not ongoing.¹⁹ The conditions we attach today to the exemption limit the exemption so it is not open ended.

PG&E also noted that it acts as a billing agent on behalf of Community Choice Aggregators (CCA) in its service territory and the revenue it collects is not part of the assets secured by the DIP financing. The Commission expects PG&E to continue its obligation to act as a billing agent for CCAs consistent with the statements of PG&E at the PHC.

Although the tragic circumstances of the wildfires are unprecedented, the Commission’s providing of exemptions to §§ 817, 818, and 851 is not. In the past we have granted exemptions in extraordinary circumstances, based on the totality of the facts presented. The main consideration is the public interest, but we have also taken into account pragmatic concerns. (*See* D.02-01-055, 2002 Cal. PUC Lexis 3, at 7-8.) Similar considerations apply when we grant exemptions pursuant to § 829. Our action today is not inconsistent with this past practice. The exemption provided is narrow, limited, and requires additional reporting to the Commission. Ensuring PG&E’s continued ability to operate and

¹⁷ PG&E Supplemental Statement, January 23, 2019, at 1.

¹⁸ PHC, January 23, 2019, at 64:27-65:8.

¹⁹ PHC, January 23, 2019, at 65:9-17.

provide safe and reliable service in the event of the bankruptcy clearly is in the public interest.

5. Categorization and Need for Hearing

This proceeding is categorized as ratesetting. The January 23, 2019 Scoping Memo established a ban on *ex parte* communications.

6. Other Administrative Matters

This decision affirms all rulings previously made and denies as moot any motions not yet ruled on.

7. Comments on Proposed Decision

The proposed decision was mailed on January 24, 2019. Pursuant to Rule 14.6(c)(10), a shortened comment period on the proposed decision was established. Comments were due on January 25, 2019 and no reply comments were allowed. Comments were received from _____.

8. Assignment of Proceeding

Michael Picker is the assigned Commissioner and Brian Stevens is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In pleadings filed with this Commission and by statements of counsel at the combined prehearing conference, PG&E represents that it intends to file for Chapter 11 bankruptcy on or about January 29, 2019.

2. There is a very high likelihood that PG&E will make the bankruptcy filing described in its pleadings and by counsel at the prehearing conference.

3. Absent timely procurement of DIP financing, this Commission faces a substantial risk that the public health and safety of California will be severely impaired with potentially catastrophic results, if the provision of safe and reliable gas and electric service to the public, including but not limited to Californian's homes, hospitals and public facilities is compromised.

4. In the specific circumstances present here, it is in the public interest for PG&E to have authority pursuant to the Public Utilities Code to obtain DIP financing.

5. Authority to obtain DIP financing can best be provided in a timely manner by granting the exemptions requested.

6. The limitations and conditions set forth in Ordering Paragraphs 2-5 are reasonable.

Conclusions of Law

1. Pursuant to §§ 829(c) and 853(b), this Commission may exempt PG&E from §§ 817, 818, and 851 if we find that the application thereof with respect to PG&E's DIP financing is not necessary in the public interest. The Commission grants such exemptions only in extraordinary situations.

2. Application of §§ 817, 818, and 851 to PG&E's DIP financing is not necessary when the public interest supports granting an exemption. Exemptions normally are granted by this Commission under specific circumstances.

3. The limitations and conditions set forth in Ordering Paragraphs 2-5 should be adopted to address the circumstances present here.

O R D E R

IT IS ORDERED that:

1. This decision grants Pacific Gas and Electric Company an exemption pursuant to Public Utilities Code §§ 829(c) and 853(b) from the requirement of prior Commission approval under §§ 817, 818, and 851 for Debtor-in-Possession financing undertaken in conjunction with its planned Chapter 11 Bankruptcy.

2. This exemption does not extend to the transfer of ownership of any utility asset which is secured as part of the Debtor-in-Possession financing. In the event of Pacific Gas and Electric Company's default under the identified

Debtor-in-Possession financing, Pacific Gas and Electric Company must seek Commission approval to execute such a transfer under Public Utilities Code § 851.

3. Within three days of filing for Chapter 11 bankruptcy, Pacific Gas and Electric Company shall file and serve a compliance filing in this proceeding notifying the Commission of its filing and setting forth the terms of any Debtor-in-Possession financing.

4. Within three days of exercising any option in the Debtor-in-Possession financing, Pacific Gas and Electric Company shall file and serve a compliance filing in this proceeding notifying the Commission of the terms of the exercised option.

5. Pacific Gas and Electric Company shall not incur more than \$10 billion in Debtor-in-Possession financing without further Commission authorization.

6. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.