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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Wildfire Mitigation and Catastrophic Events Interim Rates	A. 20-02-003 (Filed February 7, 2020)

WILD TREE FOUNDATION PROTEST TO APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY FOR WILDFIRE MITIGATION AND CATASTROPHIC EVENTS INTERIM RATES

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Dated: March 12, 2020

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Pursuant to Rule 2.6 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, Wild Tree Foundation submits the following protest to the *Application of Pacific Gas and Electric Company for Wildfire Mitigation and Catastrophic Events Interim Rates* ("Application").

Wild Tree Foundation ("Wild Tree") is a 501(c)(3) non-profit organization dedicated to the protection of our environment, climate, and wildlife. Wild Tree advocates for transparency, public participation, and compliance with the Rule of Law in government decision-making and against corruption by government agencies and officials and regulated entities.

PROTEST

Wild Tree strenuously objects to PG&E's application to utilize ratepayers as their personal piggy bank. It would be unconscionable and illegal for the Commission to approve PG&E's application and increase PG&E electric rates that are already some of the highest in the country with no reasonableness review, no hearings, and no record upon which to base a decision. PG&E would also have the Commission rewrite the basic tenants of ratemaking and permit standardized interim rate increases based solely upon the word of the utility that it has incurred costs that it deems eligible for interim rate increase. Both schemes are illegal and unconscionable and should be denied at the outset. This application is, frankly, a waste of the Commission's time and should progress no further.

I. Ratepayers Will Be Harmed

PG&E makes the outrageous claim that customers will not be harmed by rate increase because PG&E will return any overcollection of costs to customers with interest. Ratepayers are harmed by an increase in rates even when such increase has been ruled reasonable by the Commission. In this case, PG&E would have rates increased without any reasonableness review, only based upon its word, which is of little value. PG&E states that average residential customers will have a 5% increase just from this application but CCA customers would suffer a 6.8% increase. PG&E ratepayers already pay double the average United States electric rate.[1]

[1] U.S. Energy Information Administration, *Table 5.6.A. Average Price of Electricity to Ultimate Customers by End-Use Sector*, available at https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=epmt_5_6_a (as of March 12, 2020); see also Cal Matters, *How much could PG&E's rates rise? What you need to know* (August 22, 2019), available at: https://calmatters.org/economy/2019/08/pges-rate-increases-what-you-need-to-know/.

PG&E electric rates have increased 37% over the past decade, well outpacing inflation.[2] And, PG&E ratepayers are already face large increases in rates due to various efforts by PG&E to recovery rates for costs incurred as result of PG&E mismanagement, negligence, and recklessness including costs associated with its voluntary bankruptcy, wildfire mitigation efforts, and for increased insurance premiums due to the fact that PG&E filed claims after it started dozens of fires in the past few years. Here, PG&E seeks to recover unproven costs and expenses without a hearing and with no record upon which to base such a decision.

Ratepayers for which their PG&E electric bill is already a financial burden will be especially hurt by an increase in rates and some sort of later repayment does not alleviate this harm. Furthermore, the proposal that PG&E has put forth, that customers would be reimbursed based upon three month commercial paper rates is unreasonable given the current instability of the economy. Commercial paper rates are based on the status of the economy in general and the rates are currently, as a result of coronavirus panic, tanking. The commercial paper rate for March 11, 2020 was .87%.[3] Based upon the commercial paper rate, PG&E would be setting itself up for an essentially free loan from lenders - the ratepayers - that will have no say in whether or not the loan is granted or under what terms.

Furthermore, this application is just one of many efforts by PG&E to piece together a ratepayer-funded loan through an astounding amount of interim rate increases of greater than $1.4 billion: the Commission approved $373 million in interim rate increases from PG&E in

[2] California Public Advocates Office, *Rate Trends 2009-2019* (April 24, 2019) available at: https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/News_Room/NewsUpdates/2019/Cal%20Advocates%20Rate%20Trend%20Presentation%20-%20April%2024th%202019.pdf.

[3] United States Federal Reserve, *Commercial Paper Rates and Outstanding Summary - AA Financial 90 day commercial paper rate*, available at: https://www.federalreserve.gov/releases/cp/rates.htm [as of March 12, 2020.]

May of 2019[4], PG&E is requesting $899 million in interim rate increases in this application, and PG&E is also requesting $135.4 million n interim rate increases through a motion in A.19-09-012.[5]

II. Approval Of The Application Would Be In Violation Of Due Process And The Public Utilities Code

PG&E would have the Commission approve an increase in rates without having made a determination that such increase would be just and reasonable, without a hearing, and without development of a record in violation of United States and Californian Constitutional due process rights and the Public Utilities Code. Even worse, PG&E would have the Commission establish this as a regular process

Pursuant to Public Utilities Code Section 451, which has not been amended for over 40, all charges, service, and rules must be just and reasonable.[6] "The basic principle [of ratemaking] is to establish a rate which will permit the utility to recover its cost and expenses *plus* a reasonable return on the value of property devoted to public use.'"[7]

The United State Supreme Court has long held that due process in ratemaking proceedings by the Commission requires a fair hearing. In *Railroad Com. of California v.*

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[4] D.19-04-039.
[5] A.19-09-012, *Motion of Pacific Gas and Electric Company for Interim Rate Relief* (March 10, 2020).
[6] Pub. Util. Code, § 451. ("All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful. Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.")
[7] *SFPP, LP v. Public Utilities Commission* (2013) 217 Cal. App. 4th 784, 790 *quoting Southern Cal. Gas Co. v. Public Utilities Com.* (1979) 23 Cal.3d 470, 476.

Pacific Gas & Electric Co., the Court explained that the requirements of procedural due process are met only where "the rate-making agency of the State gives a fair hearing, receives and considers the competent evidence that is offered, affords opportunity through evidence and argument to challenge the result, and makes its determination upon evidence and not arbitrarily."[8]

Due process also calls for a decision to be based on a record. "[T]he decisionmaker's conclusion . . . must rest solely on the legal rules and evidence adduced at the hearing. To demonstrate compliance with this elementary requirement, the decisionmaker should state the reasons for his determination and indicate the evidence he relied on, though his statement need not amount to a full opinion or even formal findings of fact and conclusions of law."[9] Commission decisions must go further: Commission decisions "shall contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision."[10] "Every issue that must be resolved to reach that ultimate finding is 'material to the order or decision,' and findings are required of the basic facts upon which the ultimate finding is based. . .[S]uch findings afford a rational basis for judicial review and assist the reviewing court to ascertain the principles relied upon by the [PUC] and to determine whether it acted arbitrarily, as well as assist parties to know why the case was lost and to prepare for rehearing or review, assist others planning activities involving similar questions, and serve to help the [PUC] avoid careless or arbitrary action."[11]

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[8] *Railroad Com. of California v. Pacific Gas & Electric Co.* (1938) 302 U.S. 388, 393-394.
[9] *Goldberg v. Kelly* (1970) 397 U.S. 254.
[10] Pub. Util. Code, § 1705; See also *Clean Energy Fuels Corp. v. Public Utilities Com.* (2014) 227 Cal. App. 4th 641.
[11] *Clean Energy Fuels Corp. v. Public Utilities Com.* (2014) 227 Cal. App. 4th 641 quoting *Greyhound Lines, Inc. v. Public Utilities Com.* (1967) 65 Cal.2d 811 (citation omitted.)

In this application, PG&E seeks to rewrite the process for rate recovery in such a way that ignores the legal structure described above where rates increases are approved for incurred costs and expenses only where the Commission has determined with a hearing and based upon a record of substantial evidence that the increase would be just and reasonable.

PG&E's description of the memorandum account process omits the critical fact that just because a utility records a cost in a memorandum account, the utility has no special right to ratepayer recovery for any amount in that account. Recovery of rates for costs in a memorandum account must still be applied for and are only recoverable upon a Commission decision that the increase would be just and reasonable. The most on point example is, of course, SDG&E's attempt to recovery costs for settling with fire victims it had recorded in its Wildfire Expense Memorandum Account that were incurred after SDG&E was responsible for igniting multiple fires in 2007. The Commission correctly denied the application in its entirety. SDG&E attempts to appeal that decision all the way up to the United States Supreme Court failed and the decision stands as sound and controlling precedent.

PG&E's application is based entirely upon a single page of analysis in an interim decision D.19-04-039. It is unlikely that D.19-04-039, for which no legal authority is provided, would have withstood legal challenge in the courts. This application is even less defensible.

The standard relied upon in D.19-04-039 "is a showing that fairness to both the public and the utility require immediate action."[12] PG&E cannot make such a showing here. First, fairness to the utility is not at issue here and interim rate increase would be unfair to the public. The vast majority of the costs in this application are for efforts to reduce wildfire risk that PG&E should have been undertaking throughout the past decades but did not due to its own

[12] D.19-04-039 at p. 6.

mismanagement and disregard for public safety. This is a problem of PG&E's own making that ratepayers are already paying for too high a price for.

As described above, utilizing ratepayers as unwitting lenders and increasing rates by upwards of 6% is not fair to the public. There is no evidence that approval of this application would serve to "avoid a potentially far larger increase on customers after the reasonableness review."[13] PG&E would have rate increase begin near or at the same time that rate increases from the bankruptcy are likely to begin as well as rate increases due to implementation of AB 1054. This will hardly serve to "smooth rate impacts on customers"[14] but will instead exacerbate the problem of the multiple rate increases PG&E ratepayers face in the coming years. The Commission continues to operate on an ad hoc basis in regards to the impact that the various PG&E efforts to increase rates is going to have on ratepayers. Wild Tree and other have requested for the past year in numerous forums (i.e. R.19-07-017) that the Commission conduct an analysis of the actual cumulative impact that the various rate increase will have on PG&E ratepayers but this analysis has not been done.

Secondly, the majority of the costs requested in this application were foreseeable and should have been planned for and, thus, do not require immediate action. PG&E claims that the costs in this application could not be addressed through general rate making or a rate increase application because wildfire mitigation work is somehow unpredictable and irregular. PG&E claims that these costs could not be subject to regular ratemaking procedures because "it does not work well for forecasting costs that are unpredictable or irregular in nature. For this reason, the Commission has used ratemaking mechanisms outside the GRC for catastrophic events and

[13] *Ibid.*
[14] *Ibid.*

emerging risks that are hard to forecast."[15] Vegetation management and other wildfire mitigation costs are not unpredictable, irregular, or in any other way necessitating interim rate increase. In fact, in the application PG&E filed in A.18-03-015 March 30, 2018, it requested $554,696,000 in "forecasted" costs for vegetation management for 2018-2019. That forecast was within the range of what PG&E says it spent on vegetation management 2018-2019 in this application. PG&E does not explain how exactly it was able to forecast vegetation management costs two years ago that it now claims it could not have forecasted.

The fact is, much of the costs in this application were for measures that should have been taken decades ago by PG&E. PG&E cannot blame climate change or weather for the fires it caused - Santa Ana and Diablo winds are not new or unknown phenomena, the climate has been steadily warming since before PG&E was founded, utility-caused power line fires have been a serious public safety risk since power lines were first installed, and so on. These is all known and expected changes that PG&E has refused to adapt to because it has consistently prioritized profits over public safety.

PG&E claims, "PG&E undertook proactive measures to reduce the likelihood of fire started by or threatening utility facilities . . ."[16] PG&E has never done anything proactive to reduce the likelihood of fires and most certainly not in regards to vegetation management. PG&E neglected to properly construct, maintain, repair, replace, upgrade, and otherwise keep safe its electric infrastructure for decades, including failing to comply with vegetation management requirements. PG&E was, for example, cited *over twenty years ago* for failing to comply with vegetation clearance standards and continued thereafter to not comply with these

[15] Application at p. 4.
[16] *Id.* at p. 6.

very same standards.[17] All California utilities were put on notice that wildfire posed a significant public safety and financial risk in 2007 with the series of catastrophic fires ignited by SDG&E equipment. Unlike SDG&E, PG&E refused to make investment at that time or any time over the next decade in cameras, weather stations, inspections, technology, and other methods to decrease fire risk from power lines. PG&E started the catastrophic Butte Fire in 2015 and still refused to make the investments necessary to protect the public from its old and unmaintained equipment. Even after it was responsible for dozens of deaths in 2017 from fires it ignited, PG&E did not undertake the steps necessary to prevent the Camp Fire, the most deadly and destructive fire in California history that could have been entirely prevented had PG&E properly constructed, maintained, repaired, and replaced its facilities.

PG&E is right about one thing: "PG&E has incurred the applicable costs not on its own discretion, but rather as a result of legislative and regulatory."[18] That is true because PG&E, when left to its own devices, did nothing and caused entirely preventable deaths and destruction. This fact is hardly a justification to turn ratepayers into unwitting lenders through manipulative use of "interim" rate increases.

III. The Application Conflicts with the Amended Settlement Agreement

PG&E claims, "In calculating the costs to be recovered in interim rates pursuant to this application, PG&E ensured that all costs for the activities identified in and excluded from cost recovery by the pending settlement agreement in the Wildfires Order Instituting Investigation

[17] D.99-07-029.
[18] Application at p. 12.

(I.19-06-015) ("Wildfire OII") were removed."[19] The settlement was approved only as amended and the amendments increased the amount of costs excluded from ratepayer recovery by $198 million and also increased wildfire mitigation initiatives by $64 million.[20] PG&E's statement is no longer true and the application should be denied as it conflicts with the settlement agreement.

Respectfully submitted,

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[19] Application at pp. 6-7.
[20] I.19-06-015, *Presiding Officer's Decision Approving Proposed Settlement Agreement with Modifications* (February 27, 2020.)