



BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Investigation on the Commission's Own Motion to Consider the Ratemaking and Other Implications of a Proposed Plan for Resolution of Voluntary Case filed by Pacific Gas and Electric Company Pursuant to Chapter 11 of the Bankruptcy Code, in the United States Bankruptcy Court, Northern District of California, San Francisco Division, In re Pacific Gas and Electric Corporation and Pacific Gas and Electric Company, Case No. 19-30088.

Investigation 19-09-016
(Filed September 26, 2019)

**COMMENTS OF THE
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES
ON THE ASSIGNED COMMISSIONER PROPOSALS**

March 13, 2020

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The Center for Energy Efficiency and Renewable Technologies respectfully submits these Comments on the Assigned Commissioner Proposals attached to the Assigned Commissioner's Ruling issued in this proceeding on February 18, 2020 (February 18 ACR). These Comments are filed and served pursuant to the Commission's Rules of Practice and Procedure and the Administrative Law Judge's (ALJ's) Ruling Confirming Modification of Procedural Schedule issued in this proceeding on March 6, 2020 (March 6 Ruling).

**I.
COMMENTS ON ASSIGNED COMMISSIONER PROPOSALS**

A. Structure of Comments

By the March 6 Ruling, ALJ Allen directed that, by today (March 13, 2020), parties to this proceedings are to file one pleading with two sections: 1) opening brief on previously scoped issues; and 2) opening comments on ACR Proposals," which could "include party affidavits or

declarations to the extent a party seeks to raise factual issues.”¹ On March 11, 2020, in an email response to a procedural inquiry from Pacific Gas and Electric Company (PG&E) regarding a briefing outline that would address both the evidentiary record and ACR Proposals by issue, ALJ Allen stated that parties “may use either PG&E’s proposed briefing outline or an outline based on my March 6, 2020 Ruling,” advising that a clear and convenient structure of these pleadings would be the most “useful” in drafting the Proposed Decision.

By this single pleading, CEERT provides Comments only on the Assigned Commissioner Proposals. Where the Assigned Commissioner Proposals reference or rely on PG&E’s testimony, CEERT’s Comments will use citations based on exhibit numbers or transcript references from the evidentiary record, but, again, are limited to addressing the Assigned Commissioner Proposals only.

B. Background

On October 18, 2019, CEERT, with the Climate Center, filed a Joint Response to Order Instituting Investigation 19-09-016 (OII). By that Joint Response, as supported by participation at the Prehearing Conference (PHC) held subsequently on October 23, 2019, CEERT and the Climate Center moved for the consolidation of this OII with I.15-08-019, PG&E’s “Safety Culture Investigation.” As stated in that pleading and at the PHC, it was, and remains, CEERT’s position that the record in I.15-08-019 includes meaningful proposals for the restructuring of PG&E that are responsive to addressing and mitigating climate change risks, including wildfires; meet requirements established by Assembly Bill (AB) 1054 for PG&E to participate in the wildfire fund insurance established by that legislation (Public Utilities (PU) Code §3292); and

¹ March 6 Ruling, at p. 1.

could be adopted by the Commission as conditions on its approval of PG&E's plan of reorganization to emerge from bankruptcy.²

On November 14, 2019, an Assigned Commissioner's Scoping Memo and Ruling (Scoping Memo) was issued that denied CEERT's motion for consolidation of I.15-08-019 with I.19-09-016 and further determined that the "record of that proceeding will not be incorporated by reference in this proceeding."³ However, the Scoping Memo did provide that "[p]arties may cite to comments or other pleadings filed in the Safety Culture proceeding, but must attach the cited pleading to the pleading being filed in this proceeding."⁴

On February 18, 2020, the ACR to which the Assigned Commissioner Proposals were attached was issued (February 18 ACR). By that ACR, the Assigned Commissioner solicited "party responses on certain issues...to inform the Commission's regulatory review under [AB] 1054 regarding PG&E's reorganization plan and other documents resolving PG&E's insolvency proceeding,"⁵ including "determinations" on issues necessary for PG&E to participate in the wildfire insurance fund established by that legislation (PU Code §3292).⁶ To that end, the ACR attached Assigned Commissioner Proposals for party comment based on a review of "the record" as of February 18, "including PG&E's opening testimony."⁷

C. Assigned Commissioner Proposals

The Assigned Commissioner Proposals begin by reciting the portion of AB 1054 that directs the Commission to determine whether PG&E's reorganization plan resolving the

² I.19-09-016 (PG&E Reorganization Plan), CEERT-Center Joint Response to OII (October 18, 2019), at pp. 1 – 21 and Appendix A. Reporter's Transcript (RT) (October 23, 2019) at 45-48. CEERT notes that this Joint Response is already part of the formal record of this proceeding and cites to it accordingly.

³ Scoping Memo, at p. 8; emphasis original.

⁴ *Id.*, at p. 9. *See*, n. 2, *supra*, where the CEERT-Center Joint Response that references I.15-08-019 is already part of the formal record in this proceeding.

⁵ February 18 ACR, at p. 1.

⁶ *Id.*, at pp. 1-2.

⁷ *Id.*, at p. 2.

insolvency proceeding, including PG&E’s ““resulting governance structure”” are ““acceptable in light of”” PG&E’s ““safety history, criminal probation, recent financial condition and other factors deemed relevant by the commission.””⁸ In turn, the Assigned Commissioner Proposals state that, in doing so, “the Commission is guided by the imperative to ensure that PG&E is operationally and financially stable and can provide customers with safe, reliable, affordable and clean energy” and recognizes that “the reorganized companies, both the utility and holding company, must be fundamentally changed after their restructuring and the governance and operational changes we may impose pursuant to our statutory authority under AB 1054.”⁹

The issue posed for party comment by the Assigned Commissioner Proposals is “whether the Commission should condition its approval of PG&E’s Plan” resolving the insolvency proceeding on “PG&E’s implementation of any or all of these proposals for governance and operational reforms, as well as any substantive recommendations on the concepts,” with recognition that “additional actions, such as CPUC regulatory approvals,” on which parties were invited to comment on the “appropriate procedures” and “timelines.”¹⁰ The Assigned Commissioner Proposals are then offered on 10 topic areas.

In commenting on the Assigned Commissioner Proposals, CEERT first restates several points made in its Joint Response with the Center filed in this OII on October 18, 2019. Because this Joint Response is already part of the formal file in this proceeding and offered positions to which the parties could respond and were discussed at the Prehearing Conference held on October 23, 2019, CEERT believes it is both unnecessary and inefficient to attach them again here, unless directed to resubmit them by the Commission.

⁸ February 18 ACR, Appendix A (Assigned Commissioner Proposals), at p. 1, citing to PU Code Section 3292(b)(1)(c).

⁹ February 18 ACR, Appendix A, at p. 1.

¹⁰ *Id.*, at pp. 1-2.

In this regard, the CEERT-Center Joint Response to this OII stated the following:

“In its Comments on the December 21, 2018 Amended Scoping Memo in that proceeding, CEERT noted the Commission’s own recognition of the link between Climate Change and the ‘catastrophic’ wildfires that have imperiled PG&E’s customers and posed financial challenges for the utility and, in turn, the need to consider alternative corporate structures that will address ‘the ability of the state to implement its energy policies, including the need to reduce greenhouse gas (GHG) emissions and local criteria pollutants in both the utility sector and the economy as a whole.’ [Footnote 2.] In response, CEERT recommended that, for PG&E to provide electric service going forward, the Commission must ensure a corporate structure that will advance and preserve reliance on zero carbon resources to meet customer needs in order to ‘combat Climate Change [that is] the root cause of PG&E’s current financial difficulties.’” [Footnote 3.]¹¹

CEERT’s position regarding the necessity of a corporate structure for PG&E that will advance and preserve reliance on zero carbon resources remains unchanged. In fact, CEERT considers these objectives to have even greater urgency where recent Commission decisions raise questions regarding the Commission’s commitment to carbon free resources.¹² CEERT strongly believes that, to meet its obligations to ensure the safety of PG&E’s customers, the Commission must adopt outcomes that promote a corporate structure and governance for PG&E that can and will place PG&E in a position to “‘combat Climate change [that is] the root cause of PG&E’s current financial difficulties.’”¹³

In this regard, CEERT is clearly mindful of the looming deadline imposed by AB 1054 for PG&E to participate in the wildfire insurance fund (June 30, 2020). In that regard, CEERT is supportive of the commitment made by PG&E in its Plan to assume all “renewable energy power

¹¹ CEERT-Center Joint Response to I.19-09-016 (OII), at p. 2; Footnote 2 (citation to I.15-08-019 (PG&E Safety Culture) Amended Scoping Memo (December 21, 2018), at p. 2; A.18-10-003 (PG&E Short Term Borrowing), Reporter’s Transcript (‘RT’) at 36 (Commissioner Picker (‘I think everybody is thinking a lot about climate change, fires and the impact that they are having on our utilities already. We are hearing people compare the incident case of PG&E as being one of the first major business failures due to *climate change*.’ (Emphasis added.)); Footnote 3 (I.15-08-019 (PG&E Safety Culture) CEERT Comments on December 21, 2018 Scoping Memo (February 13, 2019), at p. 7).

¹² See, e.g., D.19-11-016, at pp. 1-2 (extending operation and dependence on fossil resources).

¹³ *Id.*

purchase agreements,” as part of meeting the requirement of PU Code Section 3292(b)(1)(D) that its plan is “consistent with the state’s climate goals as required pursuant to the California Renewables Portfolio Standard Program.”¹⁴

Unfortunately, the Assigned Commissioners Proposals do not offer changes in PG&E’s corporate structure that ensure that PG&E will be in a better position than it is today to make “continued progress toward”¹⁵ California’s climate goals, especially as needed to mitigate the risk of future wildfires. While the ACR references the need for PG&E to “achiev[e] climate change goals,”¹⁶ the Assigned Commissioner Proposals provide only one recommendation that has anything to do with climate change. Namely, Proposal 4 “Board of Directors” states that the “board structure” of PG&E should be designed to ensure “continued progress toward climate goals,” but the only mechanism provided to that end is that “candidates for the boards of directors” should be evaluated on criteria that include “commitment to California’s climate change goals.”¹⁷ Even as to climate change specific to the commitment to renewable energy power purchase agreements, the Assigned Commissioner Proposals do not include any proposal for ensuring that even this commitment is enforceable upon approval of PG&E’s Plan.

In the CEERT-Center Joint Response to the OII, CEERT supported the Center’s proposal in I.15-08-019 (addressed and appended to the Joint Response) for an alternative structure for PG&E’s electric distribution function to “separate and clarify the distinct roles and responsibilities of PG&E’s distribution service and its retail energy function” that would address “near-term concerns about safety and reliability in the face of more extreme and unpredictable disruptions” and to ensure “PG&E will be able to most effectively fulfill its roles and

¹⁴ Exhibit (Ex.) PG&E-1, at p. 1-7 (PG&E (Johnson)); and p. 9-10 (PG&E (Wyspianski)).

¹⁵ Assigned Commissioner Proposals, at p. 4.

¹⁶ ACR, at p. 2.

¹⁷ Assigned Commissioner Proposals, at pp. 4-5.

responsibilities in achieving California’s decarbonized future.”¹⁸ That proposal was to restructure PG&E’s distribution service as an Open Access Distribution System Operator (OA-DSO), which is described in detail in the CEERT-Center Joint Response to this OII.¹⁹

None of the Assigned Commissioner Proposals provide for any restructuring of PG&E’s operating functions in this manner. While CEERT was first hopeful that Proposal 6 entitled “Regional Restructuring” could touch on such changes, both the Assigned Commissioner Proposals and PG&E’s testimony, for which details on this proposal are limited, confirm that this measure is only a change in personnel placement to permit “regional officers” to be put in place to “manage each region” for the purpose of “bring[ing] management closer to the customers they serve.”²⁰

More troubling is that PG&E’s testimony, on which this Assigned Commissioners Proposal 6 is based, asks that its “Regional Restructuring Plan” should operate to forestall consideration of any of the proposals for changes to PG&E’s corporate structure in I.15-08-019.²¹ Thus, PG&E asks that approval of its “regional restructuring” plan by the Commission include “put[ting] a moratorium on considering those other structural alternatives for at least the proposed initial time period for the Regional Restructuring Plan.”²² PG&E’s CEO Johnson testified that this initial period should last five (5) years, while admitting that PG&E has provided little detail on that plan.²³

¹⁸ CEERT-Center Joint Response to I.19-09-016 (OII), at p. 3.

¹⁹ CEERT-Center Joint Response to I.19-09-016 (OII), at pp. 9-13; Appendix A.

²⁰ Assigned Commissioner Proposal, at p. 7; Ex. PG&E-1, at pp. 1-12 and 1-16 (PG&E (Johnson)); Ex. PG&E-1, at pp. 5-35 – 5-36 (PG&E (Vesey) (testifying that the plan is to be developed for its “business lines to create local operating regions that place leadership and operations closer to their customers.”).

²¹ Ex. PG&E-1, at pp. 1-9 to 1-10 (PG&E (Johnson)).

²² Ex. PG&E-1, at p. 1-10 (PG&E (Johnson)).

²³ RT at 83-84 (PG&E (Johnson)).

The only addition made by the Assigned Commissioner Proposal 6 to PG&E’s testimony on this plan is a direction for PG&E to “file an application for approval of a proposed regional restructuring plan” on June 30, 2020, and to take certain “interim steps” toward regional restructuring that, again, focus merely on personnel placement.²⁴ But, as confirmed by PG&E itself, this “regional restructuring plan” is limited to changing management locations to establish a closer relationship to customers, but has nothing to do with the types of much needed changes in PG&E’s corporate structure, especially to address climate change, that parties have proposed in I.15-08-019.

Clearly, PG&E should not be able to use its ill-defined “regional restructuring plan” to block out other meaningful and needed changes to its operations and management currently being considered in I.15-08-019, including the OA-DOS proposal. Further, for the Commission to eliminate consideration of such proposals made in I.15-08-019 for any time period by adoption of PG&E’s “regional restructuring plan” in this OII would be completely inappropriate where the Commission has provided no notice or opportunity to be heard by parties in I.15-08-019 on such an outcome.

Assigned Commissioner Proposal 6 should, therefore, not be adopted unless revised to clearly state that the Application to be filed by PG&E on June 30, 2020, *should not* and *must not have any effect* on I.15-08-019. To that end, at the very least, the Commission must amend Proposal 6 to confirm that this will not occur by adding the following paragraph:

“To the extent that the Commission conditions approval of PG&E’s Plan of Reorganization on PG&E creating local operating regions to bring management closer to their customers and filing an application for approval of a proposed regional restructuring plan to that end on June 30, 2020, those directives will not impact and will not create any moratorium on the Commission’s consideration of

²⁴ Assigned Commissioner Proposal, at p. 7.

proposals for changes to PG&E corporate and governance structure currently being addressed and pending in I.15-08-019.”

This determination is imperative to preserve a record of proposals in I.15-08-019 that will do far more than those that will be achieved by PG&E’s Plan of Reorganization or the Assigned Commissioners Proposals, especially where both do little to address changes in corporate structure and governance, outside of Board member qualifications, to ensure “progress toward climate goals.”²⁵ From CEERT’s perspective, the need to meet the AB 1054 June 30 deadline for approval of PG&E’s Plan of Reorganization is significant to the preservation of renewable energy power purchase agreements, especially in furtherance of those goals and to the extent that the Commission makes that commitment enforceable. However, the Commission should and can also make clear that approving PG&E’s Plan does not rule out consideration of further corporate changes to meet both safety and climate change objectives in I.15-08-019.

Respectfully submitted,

March 13, 2020

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²⁵ Assigned Commissioner Proposal, at p. 4.