

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED

05/11/20
04:10 PM

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)

**OPENING COMMENTS OF THE
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES
ON THE PROPOSED DECISION APPROVING REORGANIZATION PLAN**

May 11, 2020

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The Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submits these Opening Comments on the Proposed Decision Approving Reorganization Plan (Proposed Decision) mailed in this proceeding on April 20, 2020. These Opening Comments are timely filed and served pursuant to Rules 1.15 and 14.3 of the Commission's Rules of Practice and Procedure and the instructions accompanying the Proposed Decision.¹

**I.
THE PROPOSED DECISION APPROPRIATELY RECOGNIZES THE NEED FOR
FURTHER COMMISSION DIRECTION REGARDING PG&E'S STRUCTURE AND
GOVERNANCE, BUT MUST BE MODIFIED TO MAKE CLEAR THAT COMMISSION
APPROVAL OF PG&E'S REORGANIZATION PLAN AND ANY ACR PROPOSAL,
INCLUDING REGIONAL RESTRUCTURING, DOES NOT CREATE A MORATORIUM
ON CONSIDERING SUCH CHANGES IN PENDING OR FUTURE PROCEEDINGS.**

CEERT appreciates the work required by Commissioner Batjer and Administrative Law Judge (ALJ) Allen to issue a Proposed Decision that provides a path forward for Pacific Gas and

¹ By Rule 1.15, because the due date for Comments fell on a Sunday (May 10, 2020) "when the Commission offices are closed," the time limit is extended to include the first day thereafter" when the Commission offices are open, which is today, Monday, May 11, 2020.

Electric Company (PG&E) to exit bankruptcy in a manner that will allow PG&E to participate in the “Wildfire Fund designed to pay eligible claims to victims of wildfires caused by utility infrastructure” pursuant to Assembly Bill (AB) 1054 within its “short deadline” of June 30, 2020.² The Proposed Decision notes that this deadline required an “aggressive schedule” that only permitted the Commission to resolve issues “as completely as possible in the limited time available.”³ As such, the Proposed Decision confirms that it represents the Commission’s “initial steps...to begin the necessary work and provide direction and guidance, but more work will remain to be done after this decision.”⁴

In doing so, the Proposed Decision makes the following critical observations and findings:

- PG&E’s reorganization plan is approved with “conditions and modifications,” “will need to be [subject to] further adjustments and refinements in the course charted by this decision,” and, in “a number of areas,” will “need further analysis and development in order to be fully implemented” that “will be addressed in this or other Commission proceedings.”⁵
- The need for ongoing Commission regulation and oversight is of particular importance where “PG&E seems reluctant to take ownership of its own safety history and acknowledged its failings,” despite both being “documented elsewhere, including Commission decisions and other parties’ testimony and pleadings”⁶ and where PG&E has “repeatedly sought to shift the focus back onto what ... PG&E [is] doing now.”⁷

In these circumstances, as an example, the Proposed Decision confirms that “[f]urther clarification and refinement of the roles” and “reporting requirements” of identified PG&E

² Proposed Decision, at pp. 3-4.

³ *Id.*, at pp. 4, 11.

⁴ *Id.*, at p. 11.

⁵ *Id.*, at p. 2.

⁶ *Id.*, at p. 16.

⁷ *Id.*, at p. 17.

“safety officers” will be necessary and will be addressed in the “PG&E Safety Culture Investigation (I.15-08-019) or other appropriate proceeding.”⁸ Similarly, the Proposed Decision leaves open looking “again” at PG&E’s existing holding company structure, “taking into consideration PG&E’s subsequent safety record,” in I.15-08-019.⁹ Critically, both in its discussion and Ordering Paragraph 2, the Proposed Decision states that PG&E “is directed to ensure that its plan makes clear that ‘neither confirmation nor consummation of the plan shall affect any pending or future Commission proceeding or investigation, including any adjudication or disposition thereof, ...’”¹⁰

CEERT appreciates these general directions by the Proposed Decision, and certainly encourages the Commission to continue to address and complete the work started and pending in I.15-08-019 on further restructuring of PG&E needed not only to improve safety, but ensure “progress toward climate goals,” a stated aim of the Assigned Commissioner Proposals in the Assigned Commissioner’s Ruling (ACR) of February 18, 2020.¹¹ However, CEERT remains concerned regarding express language in PG&E’s amended and current reorganization plan (Section 1.38)¹² and as specific to PG&E’s “regional restructuring” proposal, embraced by the Assigned Commissioner’s Proposals and now the Proposed Decision,¹³ that would serve to limit the Commission’s authority to continue to address and require those changes by imposing “a

⁸ Proposed Decision, at p. 19.

⁹ *Id.*, at p. 37.

¹⁰ *Id.*, at p. 45; Ordering Paragraph 2, at p. 103.

¹¹ Assigned Commissioner Proposals, at p. 4; *see also*, Abrams Opening Brief, at p. 8; Small Business Utility Advocates (SBUA) Opening Brief, at pp. 20-21.

¹² PG&E Amended Plan of Reorganization (March 11, 2020), Exhibit A (Plan), Section 1.38, at p. 6.

¹³ Proposed Decision, at pp. 45-51.

moratorium on considering” other structural alternatives, including those proposed in I.15-08-019 (PG&E Safety Culture), for five (5) years.¹⁴

The issue of the “moratorium” that PG&E’s reorganization plan effectively creates by Section 1.38 (previously Section 1.37) is addressed by the Proposed Decision relative to reviewing PG&E’s continued eligibility for a Certificate of Public Convenience and Necessity (CPCN).¹⁵ But, as to that issue, the Proposed Decision does not discredit a moratorium generally, but instead states that “the concept of a moratorium is not applicable” to “the Enhanced Oversight and Enforcement Process proposal,” as it “supersedes” the proposal for periodic reviews of PG&E’ CPCN that was raised in I.15-08-019.¹⁶

The “moratorium” was also addressed as to other “proposals” made in I.15-08-019, but only as specific to the issues of the separation of PG&E into separate gas and electric utilities or the sale of gas assets, modification of PG&E’s holding company structure, and linking PG&E’s rate of return or return on equity to safety metrics.¹⁷ The Proposed Decision concludes, but, again, only with reference to those proposals that “this Commission declines to place a moratorium on the exercise of its own authority to regulate PG&E.”¹⁸

The problem is that PG&E’s “moratorium” proposal did not just relate to the above subjects, but was also part and parcel of PG&E’s *separate* “regional restructuring” plan that the Proposed Decision adopts without greater clarity or limitation than as PG&E proposed. In this regard, it was, in fact, PG&E’s CEO Johnson’s testimony that the “proposed initial time period

¹⁴ Exhibit (Ex.) PG&E-1, at p. 1-10 (PG&E (Johnson)); Reporter’s Transcript (RT) at 83-84 (PG&E (Johnson)); CEERT Opening Comments on ACR Proposals, at p. 8.

¹⁵ Proposed Decision, at p. 58.

¹⁶ *Id.*, at p. 59.

¹⁷ *Id.*, at p. 97.

¹⁸ *Id.*, at p. 99.

for the Regional Restructuring Plan,” preferable a period of 5 years, would serve as a moratorium on the Commission considering ““other structural alternatives”” for PG&E.¹⁹

Again, while the Proposed Decision discusses the moratorium specific to 4 proposals made in I.15-08-019, stated above, it does not address the effect of PG&E’s “Regional Restructuring Plan” proposal, which it adopts, on the ongoing status of I.15-08-019 and other CPUC proceedings now and in the future on changes to PG&E’s corporate structure. Clearly, a moratorium on any required Commission regulation would be devastating to the ongoing need to direct and incentivize PG&E “to do better tomorrow.”²⁰ It is, therefore, critical for the Commission to modify the Proposed Decision to make clear that its adoption of PG&E’s Regional Restructuring Plan does *not* result in a moratorium on *any* of the proposed changes to PG&E’s safety and governance structure that are still pending in I.15-08-019 and may be broader in scope, including on the issue of climate change, but equally as necessary as, those named in the Proposed Decision.

As CEERT stated in its Reply Comments on the ACR Proposals, with support and reference to positions of other parties:

“It is...clearly problematic for the Commission to adopt a proposal that would have that affect [a moratorium] where ‘regional restructuring is a complex effort that will likely take years to fully implement.’ [Footnote 8.] As the City and County of San Francisco correctly concludes in its Opening Brief, PG&E’s Plan ‘does not ensure that PG&E’s safety culture will be transformed’ nor has this proceeding ‘considered all the potential mechanisms for making PG&E a safer company,’ [Footnote 9] issues that are being considered and can continue to be considered in I.15-08-019.”²¹

¹⁹ Ex. PG&E-1, at p. 1-10 (PG&E (Johnson)); RT at 83-84 (PG&E (Johnson)); CEERT Opening Comments on ACR Proposals, at p. 7. This language is even recited in the Proposed Decision at page 59.

²⁰ Proposed Decision, at p. 51.

²¹ CEERT Reply Comments on ACR Proposals, at p. 3, with citation in Footnote 8 to The Utility Reform Network (TURN) Opening Brief, at p. 36, n. 98, 84-86; *see also*, California Large Energy Consumers Association (CLECA) Opening Brief with Comments, at pp. 26-27; and citation in Footnote 9 to CCSF Opening Brief, at p. 18; *see also*, Proposed Decision, at pp. 46-49.

The Commission must, therefore, make clear that its approval of PG&E’s “ill-defined” Regional Restructuring Plan does not “preclude or preempt” consideration of proposed changes to PG&E’s safety and governance structure, especially where it has recognized that a “process” adopted in this case cannot “limit the Commission’s authority to take actions to ensure safe and reliable gas and electric service.”²²

To that end, CEERT has proposed modifications to the Proposed Decision’s Findings of Fact, Conclusions of Law, and Ordering Paragraphs in Appendix A to confirm that adoption of PG&E’s “regional restricting plan” does not limit or create a moratorium, by time or issue, on matters appropriately being considered in I.15-09-019 or other proceedings. With those changes, CEERT is confident that the Commission, as it has committed in the Proposed Decision, will be on course to ensure that PG&E’s “tomorrow” will be a better place for its customers and the environment.

II. CONCLUSION

CEERT believe that modification of the Proposed Decision is required for the reasons stated above. Those needed modifications to the Proposed Decision are included in Appendix A (Proposed Modifications to Findings of Fact, Conclusion of Law, and Ordering Paragraph) attached and incorporated by reference hereto.

Respectfully submitted,

May 11, 2020

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²² Proposed Decision, at p. 60.

APPENDIX A

CEERT PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS FOR THE PROPOSED DECISION APPROVING REORGANIZATION PLAN

The Center for Energy Efficiency and Renewable Technologies (CEERT) proposes the following modifications to the Findings of Fact, Conclusions of Law, and Ordering Paragraphs in the Proposed Decision Approving Reorganization Plan mailed in I.19-09-016 on April 20, 2020 (Proposed Decision).

Please note the following:

- A page citation to the Proposed Decision is provided in brackets for each Finding of Fact, Conclusion of Law, or Ordering Paragraphs for which a modification is proposed.
- Added language is indicated by **bold type**; removed language is indicated by **bold strike-through**.
- A new or added Finding of Fact, Conclusion of Law, or Ordering Paragraph is labeled as “NEW” in **bold underscored** capital letters.

PROPOSED FINDINGS OF FACT:

9. [101] **PG&E does not have the authority to impose a “moratorium” or seek to limit the Commission’s authority to take actions to ensure safe and reliable gas and electric service and to require issues to be addressed that have not been resolved here or by its plan that are currently pending and can be ~~Some issues raised in this proceeding are more~~ appropriately addressed by the Commission** in I.15-08-019 or other proceedings.

12. [101] Regional restructuring of PG&E has the potential to improve safety and responsiveness to local communities, **but requires PG&E to file an application for its review and approval, which application will not impact or delay consideration of issues pending in I.15-08-019 or other proceedings related to its structure, governance, and safety record.**

PROPOSED CONCLUSIONS OF LAW:

3. [102] Investigation 15-08-019 should remain open **and is not subject to any moratorium or delay in the Commission's consideration of issues within its scope by approval of PG&E's reorganization plan here.**

5. [102] Regional restructuring of PG&E should be initiated **by the filing of an application by June 30, 2020, but that application will not serve to create a moratorium on or delay Commission consideration of the issues pending in I.15-08-019 or other Commission investigations and proceedings.**

PROPOSED ORDERING PARAGRAPHS:

3. [103] Pacific Gas and Electric Company is ordered to implement regional restructuring consistent with this decision **and in compliance with Ordering Paragraph 2, whereby that implementation will not create a moratorium on or otherwise delay any pending or future Commission proceeding, including I.15-08-019.**