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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE

STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Adoption of Electric Revenue Requirements and Rates Associated with its 2022 Energy Resource Recovery Account (ERRA) and Generation Non-Bypassable Charges Forecast and Greenhouse Gas Forecast Revenue Return and Reconciliation. (U 39 E)	**Application 21-06-001** **(Filed June 01, 2021)**

COMMENTS OF THE CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION AND THE AGRICULTURAL ENERGY CONSUMERS ASSOCIATION ON PROPOSED DECISION ADOPTING PACIFIC GAS AND ELECTRIC COMPANY'S 2022 ELECTRIC REVENUE REQUIREMENTS ASSOCIATED WITH ENERGY RESOURCE RECOVERY ACCOUNT FORECAST, GENERATION NON-BYPASSABLE CHARGES FORECAST, GREENHOUSE GAS REVENUE FORECAST, AND RELATED PROPOSALS

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January 31, 2022

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Pursuant to Rule 14.3(b) of the California Public Utilities Commission's Rules of Practice and Procedure, the California Large Energy Consumers Association (CLECA) and the Agricultural Energy Consumer Association (AECA) provide the following recommended changes in support of their Joint Opening Comments on the January 24, 2022, Proposed Decision.

CLECA and AECA address a single issue: the amortization period for the undercollection in the year-end 2021 Energy Resource Recovery Account (ERRA) main balancing account (ERRA-Main). The Proposed Decision contains reversible legal errors and fails to protect ratepayers from rate shock. CLECA and AECA therefore provide the following recommended changes.

- The Proposed Decision should direct that the year-end 2021 ERRA-Main undercollection should be amortized over 24 months. Currently, the Proposed Decision adopts PG&E's proposed amortization period of 12 months. Administrative Law Judge (ALJ) Lee proposed alternative periods of 18 months and 24 months in a December 17, 2021, ruling. PG&E expressly requested a 12-month amortization in its December 28, 2021, Fifth Supplemental Testimony.

- The Proposed Decision should find that PG&E has not satisfied its burden of proof, which requires that it establish by a preponderance of the evidence that a 12-month amortization period is just and reasonable. Under Commission precedent and California case law, all of PG&E's evidence in support of the 12-month amortization is uncorroborated hearsay and, as a matter of law, such hearsay cannot constitute substantial evidence to support a Commission grant of a utility's requested relief. Accordingly, PG&E has failed to show by a preponderance of the evidence that a 12-month amortization is just and reasonable.

- The Proposed Decision should find that PG&E introduced no competent evidence to support its request for a 12-month amortization and, furthermore, the Proposed Decision's current reasoning on this issue should be deleted. Although the Proposed Decision currently grants PG&E's requested 12-month amortization period, this result is unsupported by the record. Moreover, given that the Proposed Decision's reasoning relies entirely on novel arguments outside the record, there is no substantial evidence upon which the Commission can order a 12-month amortization. The Proposed Decision is likewise not supported by findings, as required under Public Utilities Code § 1705.

- The Proposed Decision should acknowledge that the proceeding denied CLECA, AECA, and other parties a meaningful opportunity to examine PG&E's evidence. The current Proposed Decision fails to proceed in the manner required by law by granting PG&E relief on an out-of-scope issue and by denying other parties an opportunity to test PG&E's evidence or cross-examine PG&E's witnesses. Specifically, PG&E's ERRA Application, filed June 1, 2021, forecasted a system average bundled rate of 2.4%. On August 25, 2021, PG&E revised the forecasted rate down to 1.6%. On October 11, 2021, all the parties joined to the proceeding as of that date elected to waive an evidentiary hearing. A month later, on November 8, PG&E submitted testimony that increased the system average bundled rate from 1.6% to 14.4%. This 9x increase was a "substantive change" to PG&E's Application for which Rule 1.12(a) required an amendment. Rule 13.8(b) similarly prohibits the admission of testimony that would "alter the substance" of a utility's prior testimony. On December 17, 2021, ALJ Lee proposed 18-month and 24-month amortization periods, ordered PG&E to analyze these alternatives, and directed the parties to meet and confer regarding them. Nonetheless, the Scoping Memo was not amended and only PG&E was permitted to introduce evidence on amortization.

- The Proposed Decision should find that the cumulative rate increase from PG&E's ERRA Application and PG&E's Annual Electric True-Up will exceed 20% for some customer classes.
- The Proposed Decision should find that CLECA and AECA's requested 24-month amortization period would protect ratepayers against rate shock, as a 24-month period would limit the system average bundled rate increase to 10.1%.
- The Proposed Decision should adopt the proposed changes to the Findings of Fact and Conclusions of Law listed in the appendix.

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The California Large Energy Consumers Association (CLECA)[1] and the Agricultural Energy Consumer Association (AECA)[2] submit these comments on the Proposed Decision of

[1] CLECA is an organization of large, high load factor industrial customers located throughout the state; the members are in the cement, steel, industrial gas, pipeline, beverage, cold storage, food packaging, and mining industries, and share the fact that electricity costs comprise a significant portion of their costs of production. Some members are bundled customers, others are Direct Access (DA) customers, and some are served by Community Choice Aggregators (CCAs); a few members have onsite renewable generation. CLECA has been an active participant in Commission regulatory proceedings since the mid-1980s, and all CLECA members engage in Demand Response (DR) programs to both promote grid reliability and help mitigate the impact of the high cost of electricity in California on the competitiveness of manufacturing. CLECA members have participated in the Base Interruptible Program (BIP) and its predecessor interruptible and non-firm programs since the early 1980s.

[2] AECA represents the collective interests of the state's leading agricultural associations, including California Citrus Mutual, Western Growers Association, California Grape and Tree Fruit League, Milk Producers Council, California Dairies, Inc., California Poultry Federation, Almond Hullers and Processors Association, California Grain and Feed Association, Agricultural Council, Western Agricultural Processors Association, and California Cotton Ginners and Growers Association. AECA also works on behalf of the combined interests of several county farm bureaus and more than forty agricultural water districts. AECA's membership is broad based, reflecting family farmers from Redding in the north to San Diego in the south, who grow crops ranging from alfalfa to walnuts. Through its members and membership

Administrative Law Judge (ALJ) Lee issued in the above-captioned proceeding on January 24, 2022, pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission).[3] Counsel to CLECA has been authorized to make this filing on behalf of AECA, and does so pursuant to Rule 1.8(d) of the Rules of Practice and Procedure.

I. INTRODUCTION

CLECA moved for party status in this proceeding on December 16, 2021 pursuant to Rule 1.4(a)(4) of the Commission Rules of Practice and Procedure because of the significant forecast rate impacts in Pacific Gas & Electric Company's updated testimony and workpapers. PG&E's initial proposed ERRA increases were low (~2.4% system average bundled rate increase), but the subsequent November and later updates have been significantly higher. Per the Assigned Commissioner's Scoping Memo and Ruling, dated August 11, 2021, the Commission is examining whether PG&E's requests in the forecast ERRA "are reasonable and should be adopted".[4] Large power and agricultural bundled ratepayers will bear the brunt of the proposed rate increases, and the Commission must ensure that the rates approved here for all customer classes are just and reasonable, and do not induce rate shock.

associations, AECA represents in excess of 40,000 California agricultural producers. Many of our members are vertically integrated and as a result, AECA also represents the interests of numerous food and fiber processing operations located throughout California.

[3] All citations to a "Rule" or "Rules" refer to the Rules of Practice and Procedure unless provided otherwise.

[4] Assigned Commissioner's Scoping Memo and Ruling at 3.

II. COMMENTS

A. The Proposed Decision Errs in Adopting PG&E's 12-Month Amortization because PG&E Has Not Met Its Burden of Proof

The PD adopts PG&E's proposed 12-month amortization; this is an error in law because PG&E has not met its burden of proof.

1. PG&E's burden of proof is a preponderance of the evidence.

PG&E, as the applicant, has the burden of affirmatively establishing that all aspects of its requested relief are just and reasonable under § 451.[5] The standard of proof is a preponderance of the evidence.[6] Such evidence must be substantial,[7] and it must be responsive to the precise issue in controversy.[8] It cannot be of a "generalized or theoretical nature."[9] Hearsay materials, while admissible, "do not constitute substantial evidence to support the Commission's decision" *unless* they are "*corroborated by other competent evidence*."[10] Even sworn testimony before a sister agency or testimony under cross-examination in another Commission proceeding is hearsay.[11] Likewise, "[d]ocumentary evidence that is introduced for

[5] *See, e.g.*, D.12-12-030 at 42 (Dec. 20, 2012).
[6] *See, e.g.*, D.14-08-032 at 9, 394 (Aug. 14, 2014).
[7] *See, e.g.*, *The Utility Reform Network v. Cal. Pub. Utils. Comm'n*, 223 Cal. App. 4th 945, 963 (2014) (*TURN II*); *cf. Ames v. Cal. Pub. Utils. Comm'n*, 197 Cal. App. 4th 1411 (2011).
[8] D.16-05-007 at 41 (May 12, 2016) (holding "the failure to produce responsive testimony equates to a determination that Joint Applicants have not met the requirements"); *see also* Cal. Evid. Code § 766 ("A witness must give responsive answers to questions, and answers that are not responsive shall be stricken on motion of any party.").
[9] *Ponderosa Tel. Co. v. Cal. Pub. Utils. Comm'n*, 36 Cal. App. 5th 999, 1018 (2019) (*Ponderosa*) (rejecting evidence "of a generalized or theoretical nature").
[10] *TURN II*, *supra* note 7, at 952 (emphasis added).
[11] *Id*. at 966.

the purpose of proving the matter stated in the writing is hearsay per se because the document is not a statement by a person testifying at the hearing."[12]

2. PG&E's testimony and exhibits do not constitute substantial evidence.

The courts have clearly set forth what constitutes substantial evidence. In *TURN I*, the Commission interpreted a PG&E petition for modification as an application for a new powerplant, which it then approved.[13] The Commission held that the benefits of the powerplant justified the procedural irregularities and denied applications for rehearing filed by ratepayer intervenors.[14] The Court of Appeal reversed. Regardless of the benefits of approval, the Commission's departure from its own rules of practice and procedure constituted a "failure to proceed in the manner required by law" and "prejudiced the parties to the proceeding."[15]

In *TURN II*, PG&E, chastened by the reversal in *TURN I*, now filed a formal application for the same powerplant. Its prepared testimony included a copy of "a petition the CAISO had filed with the Federal Energy Regulatory Commission (FERC) seeking a waiver to prevent the retirement of [a similar] powerplant."[16] In addition to the CAISO petition, PG&E submitted CAISO's sworn "testimony [to FERC] describing CAISO studies that had identified a need for new flexible generation capacity resources," such as PG&E's proposed project.[17] PG&E also entered into the record a CAISO declaration stating that "CAISO's analysis had concluded 'there will be a

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[12] *Re Pacific Gas and Electric Company*, D.86-12-101, 23 CPUC 2d 352, 354 (1986).
[13] *The Utility Reform Network v. Cal. Pub. Utils. Comm'n* (Mar. 16, 2012, A132439) (nonpub. opn.) (*TURN I*).
[14] *TURN II*, *supra* note 7, at 950-51 *citing* D.10-12-050 at 6-8 (Dec. 16, 2010) *and* D.11-05-049 (May 26, 2011).
[15] *Id.* at 951 (*quoting TURN I*).
[16] *Id.*
[17] *Id*. (internal punctuation omitted); *see also id.* at 953 ("After submission of PG&E's prepared testimony, the parties conducted discovery and responded with their own prepared testimony. PG&E, in turn, submitted rebuttal testimony that included a copy of the entire Sutter Waiver Petition.").

shortage or gap of 3,570 MW for meeting system-wide capacity needs . . . [which] will pose significant challenges to the reliable operation of the [CAISO] grid.'"[18] The Commission granted PG&E's application based on the CAISO petition and the CAISO declaration, which it acknowledged was hearsay.[19] *TURN II* held that "uncorroborated hearsay cannot constitute substantial evidence."[20] Accordingly, the Commission needed "other competent, substantial evidence" to grant PG&E's requested relief.[21] The Commission's other evidence included: California Energy Commission and Bay Area Air Quality Management District decisions granting permits for the project;[22] a PG&E witness who testified that the project *could* support reliability if such a need existed;[23] a data response from PG&E concerning the project's effect on the retirement of other powerplants;[24] and a statement by CAISO's chief executive officer.[25] None was substantial evidence. They were speculative expressions of "*fears* that reliability needs *may occur*"[26] or generalized possibilities, such as the "*potential* for a significant reliability *risk*."[27] Such proffers were not responsive to the precise issue before the Commission: Had PG&E shown a need for its project *specifically*?[28]

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[18] *Id*. at 952.
[19] *Id*. at 959 *citing* Cal. Evid. Code § 1200(a) (defining hearsay evidence); *Re Communication TeleSystems International*, D.95-05-050 at 3 n.8, 66 CPUC 2d 286, 292 n.8 (1996).
[20] *TURN II*, *supra* note 7, at 962.
[21] *Id*. at 960, 963.
[22] *Id*. at 952, 964-965.
[23] *Id*. at 965.
[24] *Id*. at 966.
[25] *Id*. at 955, 963.
[26] *Id*. at 965 (emphasis added).
[27] *Id*. at 955, 963 (emphasis added).
[28] *Id*. at 965 (PG&E's testimony and the evidence upon which the Commission relied "ma[de] no definitive statement that there will be reliability needs" met by the project).

3. PG&E failed to show by a preponderance of evidence that a 12-month amortization period is just and reasonable.

Here, the amortization of the ERRA-Main undercollection became a disputed issue when a December 17, 2021 ALJ ruling directed PG&E to produce two new analyses: an "18 Month Amortization Scenario" which would analyze the "rate impacts and bill impacts for amortizing the forecast end-of-year ERRA-Main balance . . . over an 18-month period," and a "24 Month Amortization Scenario" that performed the same analysis for a 24-month period.[29] PG&E's response, timely filed on December 28, 2021, became its Fifth Supplemental Testimony.[30]

PG&E's Application, even as supplemented by multiple rounds of testimony, does not provide sufficient evidence to carry its burden regarding the amortization period.[31]

PG&E's principal argument in favor of a 12-month amortization consists of its own conjecture and hearsay from the three major corporate credit rating agencies, Standard & Poor's (S&P), Moody's, and Fitch.[32] Amortization for any period longer than 12 months, PG&E stresses, would delay cost recovery and thus "have negative credit implications," particularly the "risk of a potential Standard & Poor's Inc. (S&P) downgrade."[33] PG&E points to credit rating agencies materials to aver that the methodologies used to evaluate PG&E's creditworthiness attach a great significance to timely cost recovery.[34] According to PG&E, "regulatory risk," which apparently includes cost recovery in some unspecified way, "comprises 50 percent of the Moody's rating methodology."[35] PG&E also quotes a December 2021 Moody's credit opinion.

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[29] E-Mail Ruling Ordering Additional ERRA-Main Data, A.21-06-001 (Dec. 17, 2021).
[30] Ex. PG&E-9 (Fifth Supplemental Testimony).
[31] *See, e.g.*, D.18-01-009 at 9-10 (Jan. 11, 2018); D.15-07-044 at 29 (July 23, 2015).
[32] Ex. PG&E-9 at 11-13.
[33] *Id*. at 11:10, 13:4-6.
[34] *Id*. at 11:10-11.
[35] *Id*. at 11:12.

While the quoted language is redacted, PG&E alleges that the Moody's opinion "highlight[s] the negative credit implications of cost recovery delays, specifically for California utilities."[36] An S&P report from 2013 says that a utility's "regulatory framework . . . is of critical importance."[37] Consequently, S&P's methodology assesses a regulatory framework's "*relative credit supportiveness*" based on how well its various parts "*protect a utility's credit quality and its ability to recover its costs*."[38] PG&E also quotes a "recent" S&P report, which PG&E describes as "highlight[ing] financials metrics as a key driver" for S&P's negative outlook on PG&E's bonds.[39] The entire quote is redacted and no citation is provided. PG&E also relies on a Fitch report from 2014, which states that "mechanisms that allow utilities to recover costs in a manner that limits regulatory lag are favorable to their risk profile."[40]

Neither the quoted materials nor PG&E's assertions constitute substantial evidence. All of the credit rating agency reports are "hearsay *per se* because [each] document is not a statement by a person testifying at the hearing."[41] Moreover, even if these reports were entered into the record and sponsored by witnesses subject to cross-examination, they could not serve as competent evidence to support a Commission decision. They are too "generalized or theoretical" to answer the issue at hand: why, *precisely*, would a 24-month amortization period for 2021 ERRA-Main account cause the Moody's, S&P, and Fitch credit rating methodologies to materially downgrade PG&E's creditworthiness?[42]

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[36] *Id*. at 12:4-9.
[37] *Id*. at 11:19 & n.14.
[38] Ex. PG&E-9 at 11:22-26 (PG&E's emphasis).
[39] *Id*. at 12:16-18.
[40] *Id*. at 11:13-16 & n.13.
[41] *Re Pacific Gas and Electric Company*, D.86-12-101, 23 CPUC 2d 352, 354 (1986) (emphasis added).
[42] *Ponderosa*, *supra* note 9, at 1018 (rejecting evidence "largely of a generalized or theoretical nature").

The Moody's and Fitch methodologies apply to the entire utilities industry (respectively, "The Regulated Utilities Industry" and "U.S. Utilities") and date from late 2013 and early 2014.[43] They are statements of general principles and far less specific than the CAISO petition, testimony, and declaration regarding California electric reliability needs that were all rejected as hearsay in *TURN II*. The redacted Moody's credit opinion fares no better. It concerns "*California* utilities," not PG&E specifically, and while the quoted text is redacted in PG&E's Fifth Supplemental Testimony, Moody's website provides this summary of the credit opinion:

> Our credit view of PCG reflects its utility subsidiary's exposure to **wildfire risk** while operating in a relatively **credit supportive regulatory environment** prone to elevated political risk.[44]

It appears that the Moody's credit opinion more likely concerns cost recovery for *wildfires*, which are a concern for all "California utilities."[45] It also attests, despite PG&E's doomsaying, that PG&E operates in a "*credit supportive*" regulatory environment. Moreover, it does not answer how a 24-month amortization of ERRA-Main would change Moody's metrics regarding PG&E's creditworthiness, and even if it did, the credit opinion is unambiguously hearsay and "do[es] not constitute substantial evidence to support the Commission's decision."[46]

Similarly, the quoted 2013 S&P report states that its credit rating methodology gives "critical importance" to the "credit supportiveness" of a utility's regulatory environment.[47] The summary of the December 2021 Moody's credit opinion states that PG&E's environment is

[43] Ex. PG&E-9 at 11 nn. 13-14.
[44] Moody's, "Pacific Gas and Electric Company, Update to Credit Analysis," Dec. 22, 2021, accessible at https://www.moodys.com/credit-ratings/Pacific-Gas-Electric-Company-credit-rating-585000
[45] Ex. PG&E-9 at 12:4-9.
[46] *TURN II*, *supra* note 7, at 952.
[47] Ex. PG&E-9 at 11:19 & n.14.

credit supportive. So, while CLECA and AECA cannot locate the redacted S&P report (again, because PG&E did not provide a citation), it is a fair inference that S&P, like Moody's, deems PG&E's regulatory environment to be at least relatively supportive.

PG&E's own assertions about the negative credit risks of a 24-month amortization are wholly unsubstantiated. PG&E provided no workpapers or quantitative analysis. It has furnished no basis for other parties—or, presumably, the Commission—to test its claims.[48] It is, at best, a *he said*, *she said*. Even if the PG&E witness who sponsored the Fifth Supplemental Testimony were cross-examined, such general claims regarding credit ratings could not constitute substantial evidence under California law.[49] PG&E, as the applicant—and having failed to introduce competent evidence despite being the sole party with the opportunity to do so—cannot show by a preponderance that a 12-month amortization for the year-end 2021 ERRA-Main undercollection would be just and reasonable.[50]

B. The Proposed Decision Is Not Supported by Substantial Evidence

Commission decisions must be supported by substantial evidence.[51] The Proposed Decision improperly grants PG&E's requested relief, even though PG&E failed to carry its

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[48] *See Re So. Cal. Edison*, D.91-05-028, 40 CPUC 2d 159 (May 8, 1991).

[49] *TURN II*, *supra* note 7, at 965; *Re So. Cal. Edison*, D.83-05-036, 11 CPUC 2d 474, 475 (May 4, 1983) ("Of course the burden of proof is on the utility applicant to establish the reasonableness . . . We expect a substantial affirmative showing by each utility with percipient witnesses in support of all elements of its application.").

[50] PG&E's remaining arguments in favor of a 12-month amortization period consist of its bare assertions of the harms that an 18- or 24-month amortization would inflict on ratepayers. In contrast to its credit rating arguments, here PG&E does not speak in hypotheticals. It asserts that customers "would face higher costs" and "must pay interest." Ex. PG&E-09 at 12:30-31, 13:6. Yet, PG&E produced no workpapers or other quantitative proof. Neither did it offer an example of how longer amortization would affect its liquidity facilities. Nor did PG&E even bother to estimate the interest that would accrue on the ERRA-Main balance amortized longer than 12 months. Such arguments are wholly uncorroborated and, given that no other party had an opportunity to meaningfully respond, carry no weight.

[51] *City of Vernon v. Cal. Pub. Utils. Comm'n*, 88 Cal. App. 4th 672 (2001); *Ames, supra* note 7.

burden.

The Proposed Decision states that the Commission will "*adopt* PG&E's December Update filed on December 17, 2021 amortized over a 12-month period."[52] The December 17 filing, otherwise known as PG&E's Fourth Supplemental Testimony, did not consider the 18-month and 24-month amortization scenarios. These alternatives were proposed by the ALJ in her December 17, 2021, ruling. PG&E rebuffs the ALJ in its Fifth Supplemental Testimony, filed December 28, 2021, which "introduces [PG&E witness] Vice President and Treasurer Margaret Becker to present testimony on *the importance of maintaining a 12-month amortization schedule*."[53] PG&E's ratesetting request is stated explicitly in its January 6, 2022, meet-and-confer statement:

> PG&E respectfully *requests* that the Commission issue a Proposed Decision authorizing a *12-month amortization* of the forecast year-end 2021 balance.[54]

The January 6 statement then reiterates PG&E's arguments from its Fifth Supplemental Testimony and "urges" the adoption of the 12-month amortization:

> Timely cost recovery of PG&E's incurred procurement costs is an important credit rating consideration. A longer amortization period . . . would have negative credit implications for PG&E. . . . PG&E *urges* the Commission to maintain timely cost recovery based on 12-months.[55]

A Commission decision to "adopt" PG&E's 12-month amortization request would be reversible error. It is axiomatic that a utility has the burden of proving that "*each* of its

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[52] PD at 17 (emphasis added).
[53] Ex. PG&E-09 at 1:18-22 (emphasis added).
[54] Pacific Gas and Electric Company (U-39 E), The Direct Access Customer Coalition, Joint CCAs and The California Community Choice Association, and The Public Advocates Office Party Statements Concerning Additional ERRA-Main Data, A.21-06-001, at 3 (Jan. 6, 2022) (PG&E Joint Statement) (emphasis added).
[55] PG&E Joint Statement, *supra* note 54, at 3-4 (emphasis added).

proposals is reasonable."[56] "To meet the standard of proof, PG&E must present more evidence that supports the requested result *than would support an alternative outcome*."[57] Thus, where a utility provides no evidence, its request must be denied.[58] PG&E concurs. In its response to CLECA and AECA, PG&E insists that a recommendation that with "no basis in the evidentiary record" must be "summarily rejected because the Commission is obligated to issue a Decision based upon substantial record evidence."[59]

Nor is it the Commission's task to carry PG&E's burden for it. The Commission's duty is to "weigh the arguments presented."[60]

As PG&E has failed to carry its burden, the Commission should deny the 12-month amortization period it expressly requested in its January 6, 2022, statement. The Commission should adopt the ALJ's proposed alternatives of a 24-month amortization for the reasons stated below or, at a minimum, the ALJ's other proposal of an 18-month period.

1. The Proposed Decision's rationale has no basis in the evidentiary record or any legal authority.

The Proposed Decision makes quick work of the amortization issue. It observes that CLECA and AECA argue that the magnitude of the combined ERRA and AET rate increases—which will produce a cumulative rate increase greater than 20%—is a prima facie example of rate shock and, more troublingly, the Commission's failure to mitigate such an increase would

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[56] D.09-03-025 at 8 (Mar. 12, 2009) (emphasis added).
[57] D.12-12-030 at 42.
[58] *See, e.g.*, D.09-03-025 at 150 ("SCE provides no evidence on the costs . . . Therefore, SCE's request for additional amounts is denied.").
[59] Pacific Gas and Electric Company (U-39 E) Reply Comments to December 20, 2021 Comments to Fourth Supplemental Testimony, Ex. PG&E-07, A.21-06-001 (Dec. 30, 2021).
[60] D.20-10-026 at 24 (Oct. 22, 2020).

be unprecedented.[61] However, the Proposed Decision never addresses the propriety of a cumulative rate increase greater than 20%, nor does it acknowledge the very real economic harms for ratepayers. Nor does it examine the authorities cited in CLECA and AECA's January 6 meet-and-confer statement, which cites to prior examples of extended amortization to limit rate shock.[62] The Proposed Decision's full rationale is brief:

> One goal in setting rates is to send timely price signals by accurately reflecting the actual cost of providing service in any given time period in the rates charged in that period or as soon as practicable. Long delays in recovering costs can result in both poor price signals to customers and cause intergenerational misallocations. We find that amortizing the current PG&E undercollection over an expanded period of time may artificially reduce rates in the near-term and cause a larger increase in the future to compensate for delayed cost recovery.[63]

"Price signals" and "intergenerational misallocations," though they are the lynchpins of the Proposed Decision's reasoning, are found nowhere in the record. Even when definitions from prior Commission decisions are imported, the invocation of "price signals" and "intergenerational misallocations" remains inscrutable. In the Commission's view, only "amortization over 10 to 20 years"—an *order of magnitude* longer than 12 or 24 months—"would contribute to intergenerational inequity by requiring future ratepayers to pay past costs."[64] Intergenerational issues are clearly irrelevant to the amortization of the year-end 2021 ERRA-Main balance over a 24 month period. Price signals, meanwhile, enable customers to make better informed decisions—high time-of-use rates, for example, discourage high load at

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[61] *See* Joint statement of California Large Energy Consumers Association, Agricultural Energy Consumers Association, and California Farm Bureau Federation Regarding Amortization of the ERRA-Main Balance, A.21-06-001 (Jan. 6, 2022).
[62] *See, e.g.*, D.21-02-014 (amortizing an ERRA balance over 22 months to reduce rates by 2.23%).
[63] PD at 16.
[64] D.16-12-003 at 25 (Dec. 1, 2016).

those times.[65] But nothing in the Proposed Decision indicates that the amortized balance would be structured in a way to preserve price signals, timely or not. Price signals are also irrelevant.

More confusingly, the Proposed Decision declares at the outset that price signals are but "*[o]ne* goal in setting ratings." Yet, no other goals are mentioned. The Proposed Decision never explains *why* price signals should prevail over the immediate impacts on ratepayers' wallets. Moreover, this myopic focus on price signals is contrary to the Commission's historical custom and legal mandate to focus on the "total effect" on ratepayers,[66] which it has interpreted to mean that rates must be just and reasonable.[67]

The Proposed Decision frets that a 24-month amortization "may artificially reduce rates in the near-term" but consequently "cause a larger increase in the future."[68] But this rationale is merely a restatement of the definition of amortization: the spreading of costs over multiple periods, i.e., reducing near-term costs at the expense of higher future costs. If this rationale were sincere, then why would the Commission ever permit amortization? Indeed, why would the Proposed Decision permit part of the ERRA balance to be amortized over *36 months*?[69] Conversely, if the Proposed Decision's concern about an "increase in the future" refers to the interest that would accrue on the portion of the ERRA-Main balance amortized longer than 12 months, either PG&E or the Commission could have provided a numerical estimate of the accrued interest rather than invoking an "increase" as some sort of fiscal ghoul.

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[65] D.05-01-056 at 6 (Jan. 27, 2005) ("Every rate schedule provides a price signal that causes a customer to place load on the system consistent with that signal.").
[66] D.21-03-049 at 3 (Mar. 18, 2021) *quoting Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944) ("It is not theory but the impact of the rate order which counts."); *Ponderosa*, *supra* note 9, at 1016 ("It is not theory but the impact of the rate order which counts.").
[67] D.03-05-037 (May 8, 2003).
[68] PD at 16.
[69] *See, e.g.*, PD at 26 *citing* D.20-12-038.

The Proposed Decision's reasoning regarding the 12-month amortization does not contain a single citation to either the record or to any legal authority.[70] This flaw is legal error.

2. The Proposed Decision appears to have adopted PG&E's rationale without due inquiry

The Proposed Decision bears striking similarities to PG&E's argument without ever acknowledging it. PG&E's Fifth Supplemental Testimony repeatedly intones about the grave importance of "timely cost recovery."[71] The Proposed Decision begins by underscoring the need for "timely price signals."[72] PG&E sounds the alarm against "delays in cost recovery" and the dreaded "delay in recovering PG&E's ERRA-Main undercollection."[73] "Long delays in recovering costs" similarly preoccupy the Proposed Decision. Both PG&E and the Proposed Decision warn of higher costs for ratepayers in the indefinite future.[74]

For the same reasons, the Proposed Decision is not supported by findings, as required under Public Utilities Code § 1705.[75]

C. The Proposed Decision Fails to Proceed in the Manner Required by Law

The Proposed Decision fails to proceed in the manner required by law, by granting PG&E relief on an out-of-scope issue and by denying other parties an opportunity to test PG&E's evidence or cross-examine PG&E's witnesses.[76] Specifically, PG&E's ERRA Application, filed

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[70] The PD on pages 16 and 17 cites only to party filings for the purpose of summarizing party positions.
[71] Ex. PG&E-09 at 11:1, 11:11, 11:17; 12:1, 12:9, 12:13, 13:10.
[72] PD at 16.
[73] Ex. PG&E-09 at 11:4, 12:2, 12:6, 12:10, 13:1.
[74] PD at 16-17 ("amortizing the current PG&E undercollection . . . may artificially reduce rates in the near-term and cause a larger increase in the future to compensate for delayed cost recovery."); Ex. PG&E-09 at 13:6-7 ("Customers would face higher costs if a longer amortization period for the ERRA-Main balance adopted by the Commission").
[75] *See, e.g.*, *Cal. Motor Transport Co. v. Cal. Pub. Utils. Comm'n*, 59 Cal. 2d 270 (1963).
[76] *See, e.g.*, *TURN II*, *supra* note 7; *City of Huntington Beach v. Cal. Pub. Utils. Comm'n*, 214 Cal. App.4th 566 (2013); *So. Cal. Edison Co. v. Cal. Pub. Utils. Comm'n*, 140 Cal. App. 4th 1085 (2006).

June 1, 2021, forecasted a system average bundled rate of 2.4%. On August 25, 2021, PG&E revised the forecasted rate down to 1.6%. On October 11, 2021, all the parties joined to the proceeding as of that date elected to waive an evidentiary hearing. A month later, on November 8, PG&E submitted testimony that increased the system average bundled rate from 1.6% to 14.4%. This 9x increase was a "substantive change" to PG&E's Application for which Rule 1.12(a) required an amendment. Rule 13.8(b) similarly prohibits the admission of testimony that would "alter the substance" of a utility's prior testimony. On December 17, 2021, ALJ Lee proposed 18-month and 24-month amortization periods, ordered PG&E to analyze these alternatives, and directed the parties to meet and confer regarding them. Nonetheless, the Scoping Memo was not amended and only PG&E was permitted to introduce evidence on amortization.

III. CONCLUSION

The legal flaws in the Proposed Decision must be corrected prior to its adoption. It should be revised as recommended herein.

Respectfully submitted,
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Counsel for the California Large Energy Consumers Association and on behalf of Agricultural Energy Consumers Association

CLECA CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION

January 31, 2022

Appendix with Proposed Changes to Findings of Fact and Conclusions of Law

For the reasons set forth in the foregoing comments on the Proposed Decision, CLECA and AECA respectfully request the following changes be made to the Findings and Conclusions.

As the Findings of Fact in the Proposed Decision are only partially enumerated, brackets with the relevant Proposed Decision page and paragraph number have been substituted. Proposed new Findings of Fact are preceded by [*]. The Conclusions of Law, however, are fully enumerated in the Proposed Decision. Additions are indicated by blue underlining, deletions by ~~red strikethrough~~.

Findings of Fact

[45 at ¶ 1] ~~Upon stipulation of the parties, evidentiary hearings were not necessary.~~

[45 at ¶ 2] On June 1, 2021, PG&E filed Application 21-06-001 and prepared testimony. In A.21-06-001, PG&E requests, pursuant to its Application, and Update: 1) Adoption of its 2022 electric procurement revenue requirement forecast to become effective in rates on January 1, 2022; 2) adoption of its forecasted electric sales for 2020, and 3) adoption of its forecast of GHG revenues, revenue return, and administrative and customer outreach costs for 2022 and approval of PG&E's 2020 GHG administrative and customer outreach costs as reasonable.

[*] PG&E's Application forecasted an increase in system average bundled rates of 2.4%.

[*] PG&E's Application did not mention undercollection, amortization, or ERRA-Main account.

[*] On July 6, Joint CCAs and Public Advocates Office timely filed protests, and DACC filed a response. No party mentioned the system average bundled rate or amortization.

[*] On August 11, 2021, the Assigned Commissioner issued the Scoping Memo and Ruling. The Scoping Memo did not mention the system average bundled rate or amortization.

[*] On August 25, 2021, PG&E filed its revised prepared testimony, which reduced the forecasted change in the system average bundled rate from 2.4% down to 1.6%.

[*] On September 2, 2021, PG&E filed its supplemental testimony. PG&E's supplemental testimony did not mention the systemwide average bundled rate.

[*] On September 22, 2021, the Joint CCAs filed the only intervenor prepared testimony. The Joint CCAs' testimony did not mention the forecasted system average bundled rate.

[*] On October 6, 2021, PG&E filed its rebuttal testimony. PG&E's rebuttal testimony did not mention the system average bundled rate.

[*] On October 8, 2021, all parties joined to the proceeding at that time attended a status conference and concurred there were no issues in dispute except for a narrow issue regarding

the Joint CCAs data requests to PG&E. Four of the six then-joined parties—Direct Access Customer Coalition, Public Advocates Office, Agricultural Energy Consumer Coalition, and PG&E—waived evidentiary hearings. An ALJ email ruling later that day directed PG&E to notify the service list no later than October 11, 2021, as to whether an evidentiary hearing would be needed.

[*] On October 11, 2021, PG&E notified the service list by email that evidentiary hearings would not be needed.

[*] On November 8, 2021, PG&E submitted its Update to Prepared Testimony (November Update). The November Update revised the forecasted increase in the system average bundled rate from 1.6% to 14.4%.

[*] On November 10, 2021, the Joint CCAs submitted data requests to PG&E regarding the November Update. Upon review, PG&E discovered multiple errors in the November Update.

[*] On November 17, 2021, PG&E submitted its Third Supplemental Testimony to correct errors in its November Update. The Third Supplemental Testimony revised the forecasted increase in the system average bundled rate to 13.8%.

[*] On November 24, 2021, the ALJ issued a ruling directing PG&E to produce, as its Fourth Supplemental Testimony, estimated "rate and bill impacts" based on both forecast and actual costs. The ruling set PG&E's deadline as December 14, 2021, and permitted other parties to file "reply comments" by December 20, 2021. The ruling directed that PG&E's testimony, but not the reply comments, be marked as exhibits.

[*] On December 14, 2021, PG&E submitted its Fourth Supplemental Testimony containing the October Update (based on data through September 30, 2021) and December Update (based on data through November 30, 2021). The Updates increased the system average bundled rate by, respectively, 9.2% and 12.6%.

[*] On December 17, 2021, the ALJ issued a ruling directing PG&E to produce a Fifth Supplemental Testimony due on December 28, 2021. It was to provide two new analyses: The "18 Month Amortization Scenario," which would analyze the "rate impacts and bill impacts for amortizing the forecast end-of-year ERRA-Main balance . . . requested to be transferred to the 2021 PABA subaccount over an 18-month period." The second analysis, a "24 Month Amortization Scenario," would similarly evaluate impacts for amortization over 24 months.

[*] The December 17, 2021, ALJ ruling also directed the parties to meet and confer "to consider this additional data [the Fifth Supplemental Testimony] and the possibility of amortization" and then "file a joint statement summarizing any proposals for amortization" or else file separate statements "if the parties are unable to reach sufficient consensus."

[*] On December 20, 2021, CLECA and AECA filed "reply comments" on PG&E's Fourth Supplemental Testimony.

[*] On December 28, 2021, PG&E submitted its Fifth Supplemental Testimony to "compl[y] with the ALJ Ruling to provide the . . . two variations for amortizing the ERRA-Main year-end balance portion of the 2022 revenue requirement."

[*] PG&E's Fifth Supplemental Testimony states that under the 18-month amortization scenario, the system average bundled rate would increase 10.9%. Under the 24-month scenario, it would increase 10.1%.

[*] PG&E's Fifth Supplemental Testimony, in addition to the analyses ordered by the ALJ, also "introduces [PG&E witness] Vice President and Treasurer Margaret Becker to present testimony on the importance of maintaining a 12-month amortization schedule for the ERRA-Main balance, and on the potential cost to customers of a longer amortization period."

[*] On December 29, 2021, the ALJ granted PG&E's December 27, 2021, motion for leave to respond to CLECA and AECA's comments on PG&E's Fourth Supplemental Testimony. The ruling directed that PG&E's response be marked as an exhibit.

[*] On December 30, 2021, PG&E filed its response to CLECA and AECA's comments.

[*] On January 6, 2022, PG&E moved to admit into the record its Fifth Supplemental Testimony and its response CLECA and AECA.

[*] On January 7, 2022, the record closed pursuant to the amended schedule set out in a December 22, 2021, ALJ ruling. That same day, the ALJ emailed a procedural communication to the parties for them to stipulate to a shortened comment period on the Proposed Decision.

[*] On January 14, 2022, the ALJ issued a ruling to amend the schedule to delay the Proposed Decision but left the record closed.

[*] On January 26, 2022, the ALJ issued a ruling admitting into the record all outstanding exhibits—including PG&E's Fourth Supplemental Testimony, Fifth Supplemental Testimony, and PG&E's response to CLECA and AECA—and ordering that confidential material, including the redacted portions of PG&E's Fifth Supplemental Testimony, be sealed.

[45 at ¶ 3] The 2022 Forecast Revenue Requirements continued to undergo updates as various input assumptions changed, including gas, electric and GHG forward price curves, sales forecasts and other projected operations.

[45 at ¶ 4] The 2021 ERRA-Main balance undercollections continued to increase, which PG&E asserts is due primarily due to an increase in unexpected CAISO energy costs.

[45 at ¶ 5] A.21-06-001, filed on June 1, 2021, forecast a 2.4% increase in system average bundled rates. The November Update and subsequent Errata, filed on November 17, 2021, proposed a 13.8% increase to system average bundled rates based on energy market prices ending October 31, 2021. An October Update and a December Update were ordered to determine if the rate increase was a trend.

[45 at ¶ 6] The December Update included accounting close balances up to and including November 30, 2021, plus a December 2021 forecast using the November 30, 2021 forward electricity and natural gas price forecasts.

[45 at ¶ 7] The December Update provided more accurate information than the October Update and the November Update since it included more actual costs incurred by PG&E throughout 2021.

[45 at ¶ 8] As of the mailing of this Decision, PG&E has the actual recorded year-end account balance for the ERRA-main balancing account.

[46 at ¶ 1] As of the December Update, PG&E forecasts and requests approval for 2022 procurement revenue requirements as set forth below: [table omitted]

[46 at ¶ 2] As of the December Update, PG&E forecasts and requests approval for 2022 Greenhouse Gas revenue return, costs and set-asides as set forth below: [table omitted]

[47 at ¶ 1] PG&E over-enrolled its subscription to the Solar Choice Program, Green Tariff schedule, or Tariff E-GT. D.21-12-036 allows PG&E, on a temporary basis, to use other renewables portfolio sources to meet the E-GT over-subscription.

[47 at ¶ 2] The Joint Community Choice Aggregators (CCAs) filed a PFM to D.15-01-051 to request that PG&E's calculation to the RA component in the GTSR program be amended to be consistent with D.19-10-001. The Joint CCA's request was granted in D.21-12-036.

[47 at ¶ 3] PG&E's Application proposes to transfer the disposition of the year-end 2021 ERRA balance to the 2021 Vintage subaccount of PABA, to continue Commission approval of such in D.~~21~~20-12-038. The year-end balance does not include the ERRA-PFS since the ERRA-PFS forecast 2021 year-end balance is the remainder of 2020 balances that will be amortized over 2022 and 2023 rates, as approved in D.~~21~~20-12-038.

[48 at ¶ 1] Based on its 2022 electric sales forecast, requested 2022 ERRA forecast revenue requirements, and the December Update, PG&E forecasts that the total average rates for bundled customers will increase by 12.6 percent or 26.2 cents per kilowatt hours in 2022, and total average rates for unbundled customers will decrease by 15.9 percent or 13.1 cents per kilowatt hours in 2022.

[*] PG&E filed its 2022 Annual Electric True-Up, Advice Letter 6408-E, on November 15, 2021. It filed Supplemental Advice Letters 6408-E-A on December 16, 2021, and 6408-E-B on December 30, 2021.

[*] PG&E's system average bundle rate will increase 7.5%, exclusive of any ERRA increase, as proposed in the AET.

[*] The cumulative rate impact of PG&E's ERRA and AET is an increase in the system average bundled rate greater than 20%.

[48 at ¶ 5] ~~As~~ All parties to the proceeding, including the Joint CCAs, require access to the workpapers to the prior year's PCIA proceeding in order to accurately evaluate the validity of PG&E's ERRA forecast application.

[*] PG&E, in its Fifth Supplemental Testimony, urges the Commission to use a 12-month amortization for the 2021 end-of-year ERRA-Main balances.

Conclusions of Law

1. PG&E, as the applicant, has the burden of affirmatively establishing that all aspects of its relief are just and reasonable under § 451.

2. The standard of proof that PG&E must meet is a preponderance of the evidence.

~~1~~3. PG&E's forecasted 2022 procurement-related revenue requirements set forth below are reasonable and should be adopted. [table omitted]

~~2~~4. The Commission should adopt PG&E's 2021 GHG allowance revenue return forecast, clean energy program set-asides, and related costs as set forth below. [table omitted]

~~3~~5. PG&E's recorded administrative and outreach expenses related to the 2020 GHG revenue return of $598,000 were reasonable and should be adopted.

~~4~~6. PG&E's rate design proposals associated with PG&E's proposed electric-procurement related revenue requirements, including its 2022 Green Tariff Shared Renewables and Enhanced Community Renewables rate proposal, are reasonable and should be adopted.

~~5~~7. PG&E's proposal to transfer certain year-end 2021 ERRA balances, excluding deferred revenue resulting from capped vintage 2020 PCIA rates, to the latest vintage of the PABA is reasonable but shall be amortized over 24 months.

8. The increase in the system average bundled rate from 2.4% to 13.8% was a material alteration to PG&E's Application and occurred after the parties joined to the proceeding had already waived evidentiary hearings and filed briefs.

9. The length of the amortization period for the 2021 ERRA-Main balance was made a disputed issue when an ALJ ruling ordered, sua sponte, that PG&E submit analyses of the "rate impacts and bill impacts" of amortization over an 18- or 24-month period and further ordered the parties to meet and confer regarding that issue.

10. The length of the amortization period for the 2021 ERRA-Main balance was a material issue that was not included in the Scoping Memo.

11. "Reply comments" to direct testimony is not a substitute for a meaningful opportunity to examine PG&E's witness and submit rebuttal testimony.

12. Amortization of the transferred 2021 ERRA balances over 24 months mitigates the harm of rapid rate increases to ratepayers and also mitigates the prejudicial failure to provide ratepayer intervenors with an opportunity to test PG&E's evidence and examine its witnesses.

13. A statement made other than by a witness while testifying at an evidentiary hearing and offered to prove the truth of the matter stated is hearsay and generally inadmissible in court.

14. While hearsay is not inadmissible in administrative proceedings before the Commission, PG&E cannot carry its burden, and the Commission cannot award relief, on the basis of hearsay that is not corroborated by competent, substantial evidence.

15. PG&E's principal arguments in favor of a 12-month amortization period rely on generalized statements by credit rating agencies that are neither parties, nor provided written testimony, nor sponsored witnesses, and such statements have been offered to prove the truth of the matter stated. The credit rating agency statements relied upon by PG&E are hearsay.

16. PG&E failed to introduce workpapers or other proof to corroborate the statements of the credit rating agencies.

17. PG&E's other arguments in favor of a 12-month amortization period consist of its own assertions that an 18- or 24-month amortization period could increase the risk of a credit rating downgrade or otherwise increase future costs to ratepayers. These assertions were not substantiated with a quantitative showing of how the credit rating agencies' methodologies would use the amortized ERRA-Main balance as an input and why those methodologies would increase the risk of a credit downgrade. Neither did PG&E provide a quantitative example of how a longer amortization would affect its liquidity facilities. Nor did PG&E even calculate the interest that would accrue on the portion of the ERRA-Main balance amortized past 12 months. Moreover, PG&E's assertions were uncorroborated by workpapers or other proof, and even if they were, other parties did not have a meaningful opportunity to test PG&E's assertions or examine its witness.

~~15~~18. Allowing parties to independently evaluate the validity of the utility's projections is necessary for ensuring that ERRA forecast proceedings result in just and reasonable rates.

19. PG&E's testimony regarding the amortization of the 2021 ERRA-Main balance was filed and served 11 days before the record closed. months after most parties waived evidentiary hearings. Other parties were not provided an opportunity to test PG&E's evidence and examine its witness. The Commission cannot accord PG&E's testimony any weight.

20. PG&E has failed to carry its burden of proof with respect to the amortization period for the year-end 2021 ERRA-Main balance.

21. Adoption of a 24-month amortization period for the year-end 2021 ERRA-Main balance is within the Commission's established authority to ensure just and reasonable rates and consistent with its prior decisions.

22. A 24-month amortization period for the year-end 2021 ERRA-Main balance promotes the welfare of ratepayers and limits rate shock during a period recognized by the Commission as a time of rising energy costs and mounting affordability concerns for ratepayers.

23. A 24-month amortization period does not alter PG&E's revenue requirement.

~~6~~24. Transferring the actual year-end 2021 ERRA balances promotes customer indifference and is reasonable.

~~7~~25. Transferring the ERRA-PFS credit for 2022 to the 2020 PABA vintage subaccount promotes indifference to bundled customers and is just and reasonable.

~~8~~26. PG&E's proposal to transfer public-policy related procurement costs from the non-vintage PABA sub-account to the Public Policy Charge Balancing Account, for recovery of such public policy-related procurement from all customers through the Public Purpose Program Charge on a going forward basis is reasonable and should be adopted.

~~9~~27. PG&E's proposal to recover costs associated with the under 20 MW QF contracts through the PPP Charge is reasonable and should be adopted on a going forward basis.

~~10~~28. PG&E's proposal to retire the non-vintage PCIA subaccount created in D.20-05-006 by transferring the accumulated balances to a newly created subaccount in the Public Policy Charge Balancing Account is reasonable and should be adopted.

~~11~~29. PG&E's proposal that the PPP is the appropriate rate component for costs associated with D.20-05-006 generation costs is reasonable and should be adopted.

~~12~~30. PG&E's 2022 forecast of electric sales is reasonable and should be adopted.

~~13~~31. PG&E's requests to correct an error related to the 2021 Community Green Solar Tariff program set aside amount in Decision 20-12-038 in this proceeding is reasonable and should be granted.

~~14~~32. This decision should be reflected in rates on January 1, 2022, or as soon thereafter as reasonably practicable.

~~15~~33. Allowing parties to independently evaluate the validity of the utility's projections is necessary for ensuring that ERRA forecast proceedings result in just and reasonable rates.

~~16~~34. PG&E's proposal to remove the zero-price floor on its Solar Value Adjustment Time-of-