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**FILED**

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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company (U39E) and Pacific Generation LLC for Approval to Transfer Certain Generation Assets, for a Certificate of Public Convenience and Necessity, for Authorization to File Tariffs and to Issue Debt, and for Related Determinations.

Application 22-09-018

**ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING**

This scoping memo and ruling sets forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding pursuant to Public Utilities Code Section 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure (Rules).

**1. Procedural Background**

On September 28, 2022, Pacific Gas and Electric Company (PG&E) and Pacific Generation LLC (Pacific Generation) filed an application requesting the Commission authorize PG&E to transfer substantially all of its non-nuclear generation assets to Pacific Generation, a new PG&E subsidiary; issue a Certificate of Public Convenience and Necessity (CPCN) for Pacific Generation to operate as a utility subject to the Commission's jurisdiction; authorize Pacific Generation to issue long-term and short-term debt secured by utility property; and make other authorizations and determinations.

The following entities timely filed a protest or response to the application and were granted party status: the Energy Producers and Users Coalition

(EPUC), Placer County Water Agency (PCWA), The Utility Reform Network (TURN), California Community Choice Association (CalCCA), City of Santa Clara (dba Silicon Valley Power), Nevada Irrigation District (NID), the Coalition of California Utility Employees, and the Northern California Power Agency.

The following entities filed motions for party status and were granted party status: the Public Advocates Office, the Western Canal Water District, the California Hydropower Reform Coalition, American Whitewater, California Outdoors, California Sportfishing Protection Alliance, California Trout, Inc., Foothill Conservancy, Friends of the River, South Yuba River Citizens League, and Trout Unlimited.

A prehearing conference (PHC) was held on December 2, 2022 to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary. After considering the pleadings and discussion at the PHC, I have determined the issues and initial schedule of the proceeding to be set forth in this scoping memo.

## **2. Issues**

The issues to be determined or otherwise considered are whether the Commission should approve applicants' requests set forth in Section XIV of the application, which include requests for authorization for PG&E to transfer its right, title, and interest in substantially all of PG&E's non-nuclear generation assets as specified in the application; issuance of a CPCN to Pacific Generation as an electrical corporation; and authorization for Pacific Generation to issue short-term and long-term debt securities.

Issues that are relevant to the Commission's consideration of the applicants' requests include but are not limited to:

1. Whether the requests comply with applicable statutes, Commission decisions, and other legal requirements;
2. Whether the requests are adequately justified, reasonable, and in the public interest;
3. Whether there are alternative sources of funding available to PG&E to address its capital needs and the relative merits of such alternative sources of equity capital;
4. Potential impacts on ratepayers and rates over time, including potential revenue requirement impacts;
5. Potential impacts on any future claimants, including for example, future wildfire victims;
6. Whether the resulting tax structure and recoverability of taxes or changes in the basis, and resulting impacts on the Customer Credit Trust, are reasonable;
7. Whether the proposed transaction will result in dyssynergies and increases in billing, service, and other costs, and if so, who should bear responsibility for the increased costs;
8. The transaction costs and fees that will be incurred in connection with the proposed transaction and who should bear responsibility for such transaction costs and fees;
9. The estimated amount of benefits associated with the proposed transaction, the circumstances under which such benefits would no longer be realized (*e.g.*, low sale price or higher share price), and whether any of the benefits should be shared with ratepayers;
10. Impacts of the proposed transaction on the future financial condition of PG&E and Pacific Generation, including any potential impacts on the aggregate amount of debt associated with the assets, credit metrics of each utility, risk profile of each utility, and cost of debt and cost of equity of each utility;
11. Whether there are adequate minority investor governance controls to protect against conflicts of interest and undue control, and whether there should be conditions or

- limitations placed on such controls (*e.g.*, establishing a lower maximum percentage of Pacific Generation that should be available to be sold);
12. Potential impacts on the Commission's jurisdiction and existing regulatory proceedings, processes, and requirements;
  13. Whether the proposed uses of transaction proceeds are appropriate and if there should be any conditions or restrictions on how proceeds from the proposed transaction are used;
  14. Whether the proposed transaction will enable PG&E and Pacific Generation to operate and maintain utility assets safely and reliably;
  15. Potential impacts on system reliability;
  16. Potential implications for California energy and capacity markets and market structure;
  17. Whether the proposed multi-stage regulatory approval process, including the use of Advice Letters to fully implement the proposed transaction and associated ratemaking and tariff changes, is reasonable;
  18. Applicability of and compliance with the Commission's Tribal Land Transfer Policy; and
  19. Whether the requests impact environmental and social justice communities and achievement of any of the nine goals of the Commission's Environmental and Social Justice Action Plan.

The Commission's consideration of the applicants' requests includes consideration of whether the following decisions should be modified:

Ordering Paragraph 8 of Decision (D.) 99-04-068; Ordering Paragraph 1 of

D.22-04-041; Ordering Paragraph 1 of D.20-12-005, and potentially Ordering Paragraph 6 of D.03-12-035.<sup>1</sup>

In their protests, the City of Santa Clara, PCWA, and NID raise concerns about the impact of the proposed transaction on their contractual and operational interests related to various hydroelectric projects owned and operated by PG&E.<sup>2</sup> Issues regarding parties' contractual rights and remedies are deemed to be outside the scope of this proceeding.<sup>3</sup> However, issues related to parties' contractual and operational interests are within the scope of this proceeding to the extent they are relevant to the Commission's broader consideration of the issues noted above, including whether the applicants' requests are in the public interest. With the exception of issues regarding parties' contractual rights and remedies, I find the issues raised in the protests and responses to the application to be relevant to the Commission's consideration of the applicants' requests and appropriately within the scope of this proceeding.

### **3. Need for Evidentiary Hearing**

Many of the identified issues involve contested, material issues of fact. Accordingly, parties will be allowed to present evidence on these issues and evidentiary hearings are needed.

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<sup>1</sup> Statement of PG&E and Pacific Generation Regarding Decisions Potentially Modified by a Decision in this Proceeding, filed December 9, 2022, at 2-4. Applicants served their December 9, 2022 statement on the service lists for Application (A.) 21-03-008 (in which D.22-04-041 was issued), A.18-12-009 (in which D.20-12-005 was issued), Investigation 02-04-026 (in which D.03-12-035 was issued), and A.95-10-024 (in which D.99-04-068 was issued). (*Id.* at 1, fn. 1.) This scoping memo shall also be served on these service lists.

<sup>2</sup> City of Santa Clara Limited Protest at 5, NID Protest at 4; PCWA Protest at 3.

<sup>3</sup> See D.01-03-050 at 5; D.02-10-052 at 4-5. At the PHC, parties stated they were not seeking remedies for breach of contract in this proceeding. (Reporter's Transcript, Vol. 1 at 35-36, 45.)

#### **4. Schedule**

The applicants request that this application be resolved on an expedited schedule pursuant to Rule 2.9. Rule 2.9(c) requires a request for expedited schedule to demonstrate specific facts that constitute either a threat to public safety or the need to resolve a financial matter expeditiously to avoid ratepayer harm. The other parties who commented on the schedule oppose the applicants' request.<sup>4</sup>

The applicants' request for an expedited schedule pursuant to Rule 2.9 is denied. The applicants generally assert the transaction proposed in the application must close by the end of 2023 to avoid ratepayer harm but do not set forth any specific facts supporting this assertion. The question of whether ratepayers will benefit from the proposed transaction is being actively disputed by other parties. Intervenors argue there are potentially significant risks or harm to ratepayers in granting the application.<sup>5</sup> Moreover, even assuming ratepayers would ultimately benefit from the proposed transaction, the applicants do not point to any exigent circumstances that would require the proposed transaction to close by the end of 2023. Given the breadth of the requests and issues raised in the application and other pleadings, the schedule should allow sufficient time for intervenors and the Commission to review and consider applicants' requests. Although applicants' request for an expedited schedule is not granted, the adopted schedule should allow for completion of the proceeding within the applicable statutory deadline for ratesetting proceedings.

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<sup>4</sup> EPUC Protest at 7-8; TURN Protest at 6-7; CalCCA Protest at 16-17; PCWA Protest at 6-7.

<sup>5</sup> EPUC Protest at 2; TURN Protest at 6; CalCCA Protest at 3.

The following schedule is adopted here and may be modified by the Administrative Law Judge (ALJ) as required to promote the efficient and fair resolution of the application:

Event	Date
Intervenors' prepared direct testimony served	May 16, 2023
Prepared rebuttal testimony served	June 6, 2023
Evidentiary hearing	July 17-21, 2023
Opening briefs filed and served	August 11, 2023
Reply briefs filed and served (matter submitted)	August 28, 2023
Proposed decision issued	Within 90 days after submission.
Commission decision issued	No sooner than 30 days after proposed decision.

The schedule does not provide for an assigned Commissioner's Ruling as requested by the applicants. Although not included in the schedule, the assigned Commissioner and ALJ have the authority to issue a ruling at any time requiring additional evidence or argument if additional record development is needed.

The proceeding will stand submitted upon the filing of reply briefs, unless the assigned Commissioner or ALJ requires further evidence or argument. Based on this schedule, the proceeding will be resolved within 18 months as required by Public Utilities (Pub. Util.) Code Section 1701.5.

## **5. Alternative Dispute Resolution (ADR) Program and Settlements**

The Commission's Alternative Dispute Resolution (ADR) program offers mediation, early neutral evaluation, and facilitation services, and uses ALJs who

have been trained as neutrals. At the parties' request, the assigned ALJ can refer this proceeding to the Commission's ADR Coordinator. Additional ADR information is available on the Commission's website.

Any settlement between parties, whether regarding all or some of the issues, shall comply with Article 12 of the Rules of Practice and Procedure and shall be served in writing. Such settlements shall include a complete explanation of the settlement and a complete explanation of why it is reasonable in light of the whole record, consistent with the law, and in the public interest. The proposing parties bear the burden of proof as to whether the settlement should be adopted by the Commission.

#### **6. Category of Proceeding and Ex Parte Restrictions**

This ruling confirms the Commission's preliminary determination<sup>6</sup> that this is a ratesetting proceeding. Accordingly, ex parte communications are restricted and must be reported pursuant to Article 8 of the Rules.

#### **7. Public Outreach**

Pursuant to Pub. Util. Code Section 1711(a), I hereby report that the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission's monthly newsletter that is served on communities and businesses that subscribe to it and posted on the Commission's website.

#### **8. Intervenor Compensation**

Pursuant to Pub. Util. Code Section 1804(a)(1), a customer who intends to seek an award of compensation was required to file and serve a notice of intent to claim compensation by January 3, 2023, 30 days after the PHC.

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<sup>6</sup> Resolution ALJ 176-3516.

## **9. Response to Public Comments**

Parties may, but are not required to, respond to written comments received from the public. Parties may do so by posting such response using the “Add Public Comment” button on the “Public Comment” tab of the online docket card for the proceeding.

## **10. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission’s procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission’s Public Advisor at 866-849-8390 or 866-836-7825 (TTY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

## **11. Filing, Service, and Service List**

The official service list has been created and is on the Commission’s website. Parties should confirm that their information on the service list is correct and serve notice of any errors on the Commission’s Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.<sup>7</sup>

When serving any document, each party must ensure that it is using the current official service list on the Commission’s website.

This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Notwithstanding Rule 1.10(d), parties

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<sup>7</sup> The form to request additions and changes to the Service list may be found at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/administrative-law-judge-division/documents/additiontoservicelisttranscriptordercompliant.pdf>

are not required to serve a paper copy of filed or served documents on the assigned ALJ unless specifically instructed to do so.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at [process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov) to request addition to the “Information Only” category of the official service list pursuant to Rule 1.9(f).

The Commission encourages those who seek information-only status on the service list to consider the Commission’s subscription service as an alternative. The subscription service sends individual notifications to each subscriber of formal e-filings tendered and accepted by the Commission. Notices sent through subscription service are less likely to be flagged by spam or other filters. Notifications can be for a specific proceeding, a range of documents, and daily or weekly digests.

## **12. Receiving Electronic Service from the Commission**

Parties and other persons on the service list are advised that it is the responsibility of each person or entity on the service list for Commission proceedings to ensure their ability to receive emails from the Commission. Please add “@cpuc.ca.gov” to your e-mail safe sender list and update your e-mail screening practices, settings, and filters to ensure receipt of emails from the Commission.

**13. Assignment of Proceeding**

Alice Reynolds is the assigned Commissioner and Sophia J. Park is the assigned ALJ and presiding officer for the proceeding.

**IT IS RULED** that:

1. The scope of this proceeding is described above and is adopted.
2. The schedule of this proceeding is set forth above and is adopted.
3. Evidentiary hearing is needed.
4. The presiding officer is Administrative Law Judge Sophia J. Park.
5. The category of the proceeding is ratesetting.

This order is effective today.

Dated January 20, 2023, at San Francisco, California.

/s/ ALICE REYNOLDS

Alice Reynolds  
Assigned Commissioner