



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

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Application of Pacific Gas and Electric Company (U 39 E) 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 No. 22-09-018
(Filed September 28, 2022)

**REPLY COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) AND
PACIFIC GENERATION LLC ON THE PROPOSED DECISION**

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I. INTRODUCTION

Pursuant to Rule 14.3(d) of the California Public Utilities Commission’s (Commission) Rules of Practice and Procedure (Rules), Pacific Gas and Electric Company (PG&E) and Pacific Generation LLC (Pacific Generation and together, the Applicants) provide Reply Comments on the March 15, 2024 Proposed Decision of ALJ Park Denying the Application (PD).

**II. INTERVENORS’ COMMENTS CONFIRM THE NECESSITY OF AN
ADDITIONAL PHASE**

Several intervenors’ comments are supportive of the PD and its findings that Applicants have failed to meet the burden of proof that the Proposed Transaction will result in customer benefits or address other potential concerns.¹ Importantly, the PD does not adopt the concerns raised by intervenors to find that the Proposed Transaction can never be in the public interest; rather, the PD finds that Applicants have not met their burden of proof based on the current record, which does not contain details of the final agreements. Given the significant benefits of the Proposed Transaction for customers, for PG&E and for the State’s clean energy and reliability

¹ For example, the Energy Producers and Users Coalition (EPUC) emphasizes its agreement with the PD’s focus on “the lack of information supporting Applicants’ claims” that the Proposed Transaction is superior to alternatives and argues that Applicants “failed to provide adequate support for the majority of purported benefits” including whether the Proposed Transaction would generate proceeds at a better valuation than a stock issuance. EPUC Opening Comments (Apr. 4, 2024) at 2. Similarly, California Hydropower Reform Coalition (CHRC) and other intervenors focus on “factual deficiencies in the Applicants’ proposal and supporting documentation” in their support for the PD. CHRC *et al.* Comments in Support of Proposed Decision Denying Application (Apr. 4, 2024) at 1.

goals, Applicants should be given a chance to address the PD’s concerns and questions through the provision of Additional Information in a second phase of this proceeding.

As explained in Opening Comments, in a second phase of the proceeding, Applicants will provide the fully executed Minority Sale Agreement (including the negotiated forms of the LLC Agreement, Separation Agreement, and Intercompany Agreements), indicative credit ratings for Pacific Generation and PG&E, information on the Minority Investor, and pro forma tariffs and joint tariffs for Pacific Generation and PG&E implementing the Proposed Transaction.² This Additional Information will allow the Commission to confirm, among other things, that Pacific Generation will have a higher credit rating, which will result in a lower cost of debt and generate significant customer savings, that the transaction price will yield more efficient capital for infrastructure investments than an equity issuance by PG&E’s parent, that the terms and conditions of the implementing agreements ensure that PG&E will maintain control of operations and investment planning for the generation assets, and that the Minority Investor supports California’s energy vision and brings significant long-term capital resources for investment in critical generation enhancements that PG&E is not otherwise in a position to prioritize. Indeed, Applicants believe this additional source of capital from the Minority Investor will enhance the safe and reliable operation of the generation facilities. The significant benefits of the Proposed Transaction—benefits that will not be achieved without it—support further process to consider the Additional Information and facilitate further engagement regarding potential commitments and conditions.

Applicants propose to further demonstrate these benefits through a robust and transparent process that includes opportunity for intervenor discovery and intervenor testimony.³ The benefits of the Proposed Transaction for customers and the State merit such an evaluation.

III. THE SECOND PHASE WOULD INCLUDE A PROCESS FOR EVALUATING POTENTIAL REGULATORY CONDITIONS AND COMMITMENTS TO ADDRESS CONCERNS RAISED IN THE PD

In Opening Comments, Applicants identified a number of regulatory conditions and commitments that Applicants will propose in the second phase. These will include: (i) promoting independent safety oversight by expanding the role of the Independent Safety Monitor, or another

² See Opening Comments of PG&E and Pacific Generation to the Proposed Decision (Apr. 4, 2024) at 15 (Applicants’ Opening Comments).

³ See *id.*

means acceptable to the Commission, to review Pacific Generation’s investment plans and evaluate whether they include sufficient investment to meet safety and reliability goals: (ii) ensuring PG&E employees will continue to operate the generation assets under the operations and services agreement, which could not be terminated without Commission approval; (iii) confirming Applicants’ commitment to apply FERC’s hold harmless policy regarding non-recovery of transaction and transition costs in future rates; (iv) confirming that in the 2027 GRC Applicants would identify all incremental administrative costs in the areas identified in the PD—costs that Applicants will carefully manage and seek to minimize—and that such costs would be recoverable in the 2027 GRC only to the extent such costs are outweighed by the benefits of the Proposed Transaction; (v) an agreement that Pacific Generation will not make any filings before FERC that seek to change its status as a public utility under California law and subject to the Commission’s jurisdiction; and (vi) Pacific Generation’s agreement to provide reasonable shareholder-funded user fees to defray the cost of additional Commission resources. This is an opening list of proposals to address concerns raised in the PD. Applicants are open to considering additional regulatory commitments as part of a second phase.

In addition, Applicants and the Minority Investor are also open to discussing ways to increase customer benefits and address affordability, such as a donation to the Relief for Energy Assistance through Community Help (REACH) program,⁴ improved coordination and consultation with tribal representatives and other stakeholders on our operations, and adoption of steps we can take to advance the State’s energy goals. In the second phase, Applicants and the Minority Investor would be willing to engage in discussions with stakeholders on these topics with the goal of increasing the impact of and benefits from the Proposed Transaction.

IV. THE PCWA/NID COMMENTS ARE NOT JUSTIFIED BY, AND ARE INCONSISTENT WITH, THE RECORD

The PCWA/NID Comments ask the Commission to modify the PD to include findings that would support the claim that they have contractual and legal rights to water supply.⁵ These issues

⁴ See <https://www.pge.com/en/account/billing-and-assistance/financial-assistance/relief-for-energy-assistance-through-community-help.html>

⁵ Joint Opening Comments of Placer County Water Agency and Nevada Irrigation District On The Proposed Decision Denying Application (Apr. 4, 2024) at iii, 4–10, A-1 (PCWA/NID Comments).

are beyond the scope of this proceeding.⁶ There is no basis to include the additional PD findings requested by PCWA/NID, particularly as the PD makes no findings regarding PCWA/NID's purported contractual and legal rights. PCWA/NID do not explain why the findings they request are germane to the PD or to the Commission's regulation more generally. It appears that the only reason PCWA/NID request such findings is to support their position in ongoing litigation regarding their water delivery contracts.⁷ The Commission does not regulate the parties' respective water delivery contracts or associated water rights, and the Commission should not make findings on that subject, especially in the context of denying an application.⁸ There is no basis, for example, for the Commission to grant PCWA/NID additional rights, including a right to purchase Drum-Spaulding, despite the absence of any contractual or other legal basis to do so.⁹ In addition, the exact nature of and limitations on their alleged non-contractual water interests was not developed in the record.

The issues raised by PCWA/NID also are unrelated to the Proposed Transaction. The alleged shortcomings in PG&E's performance pre-date and are unrelated to the Proposed Transaction.¹⁰ As the undisputed record shows, neither PCWA/NID's contractual rights nor water rights are impaired in any way by the Proposed Transaction.¹¹ In addition to Pacific Generation assuming the contractual obligations, PG&E will retain liability under those contracts, and PCWA/NID will maintain whatever water rights they would have absent the Proposed Transaction.

Moreover, the same PG&E personnel will continue to operate the generation assets and provide all the services under the contracts with PCWA/NID.¹² Thus, the suggestion that Pacific

⁶ See Scoping Memo at 5 (“Issues regarding parties’ contractual rights and remedies are deemed to be outside the scope” except “to the extent they are relevant to the Commission’s broader consideration of the [scoped] issues . . . including whether the applicants’ requests are in the public interest.”)

⁷ See *Placer County Water Agency v. Pacific Gas and Electric Company* (Sacramento Super. Ct., No. 34-2023-00332647-CU-BCGDS). On November 16, 2023, the Court denied PCWA’s motion for preliminary injunction, and stated that “PCWA has not shown that it currently possesses any actual ownership interest in the Project and the Agreement does not provide PCWA with any right of first offer or first refusal, nor does the Agreement otherwise obligate PG&E to sell any or all of the Project to PCWA.” *Id.* at 9. The Court further stated: “PCWA was interested in discussing its acquisition of the Project facilities” but “PG&E determined that it did not want to pursue this It seems the discussions were unsuccessful because PCWA’s focus was on something PG&E was neither interested in pursuing nor required to pursue under the Agreement.” *Id.* at 7.

⁸ See PG&E and Pacific Generation’s Reply Brief (Oct. 5, 2023) at 46–47 (Applicants’ RB).

⁹ Compare PCWA/NID Comments at 8-9, with Applicants’ RB at 45–47 (explaining that requests by PCWA/NID for greater rights than they currently have are unjustified).

¹⁰ See PCWA/NID Comments at 5–7.

¹¹ See Applicants’ RB at 40–44, 46–47.

¹² *Id.* at 43.

Generation lacks an operational track record is without merit. Moreover, PG&E and Pacific Generation both have, and will continue to have, obligations to operate and maintain the generation assets for the benefit of their customers. Indeed, the presence of the Minority Investor should actually enhance the safe and reliable operation of the generation facilities by providing an additional source of capital for investments in the facilities.

V. THE COUNTY OF LAKE CONCERNS ARE MISTAKEN AND OUT OF SCOPE

The County of Lake Comments address an ongoing FERC decommissioning proceeding for the Scott Dam and, in particular, the County's concerns with PG&E's proposed decommissioning plan and responsiveness to the County's positions.¹³ There is no record in this proceeding about the Scott Dam decommissioning issues, and issues in the FERC proceeding are very early in the process and are outside the scope of this proceeding in any event.¹⁴

The County asserts that the Proposed Transaction is being used "to avoid liability under [PG&E's] FERC decommissioning plan" while PG&E is seeking rates to cover the decommissioning in a proceeding before this Commission.¹⁵ To the contrary, under the Proposed Transaction, the revenue requirement for future decommissioning costs will be transferred to Pacific Generation for future collection in its rates subject to Commission review and approval;¹⁶ accordingly, the financial obligation associated with hydroelectric decommissioning is not being evaded but rather is being funded through Pacific Generation, which would undertake the continuing decommissioning effort as the new owner.

VI. CONCLUSION

Applicants request that the record be reopened to permit the submission of the Additional Information in a second phase of this proceeding. Such a reopening also will enable the Applicants, the Minority Investor, and stakeholders to engage in further discussions regarding potential commitments and conditions related to the Proposed Transaction.

¹³ Comments of the County of Lake in Support of Proposed Decision Denying Application (Apr. 3, 2024) at 2-4 (County Comments).

¹⁴ The County of Lake was granted party status predicated expressly on "the County's representation that its participation will not delay the schedule or broaden the scope of issues in the proceeding." Email Ruling Granting Motion for Party Status of the County of Lake (Oct. 3, 2023) at 3.

¹⁵ County Comments at 2. The County also asserts that ratepayers should not pay for decommissioning (*id.* at 3); but it provides no rationale for that assertion. In any case, that claim is outside the scope of this proceeding.

¹⁶ PG&E and Pacific Generation's Opening Brief (Sept. 18, 2023) at 64 (discussing Pacific Generation revenue requirement generally); PGE-09-E at 9-2 to 9-6, & 9-8.

Respectfully Submitted,

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