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

Jeanne Wilson and Redbud Chapter - California
Native Plant Society (CNPS),

Complainant,

v.

Pacific Gas and Electric Company (U 39 E),

Defendant.

C. 24-03-005
(Filed March 3, 2023)

JOINT PREHEARING CONFERENCE STATEMENT

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JOINT PREHEARING CONFERENCE STATEMENT

Pursuant to the Administrative Law Judge’s Ruling Setting Prehearing Conference and Ordering Joint Prehearing Conference Statement dated July 8, 2024 (the “ALJ Ruling”), Defendant Pacific Gas and Electric Company (“PG&E”) and Complainants Jeanne M. Wilson and Redbud Chapter – California Native Plant Society (CNPS), (“Complainant”) (collectively, the “Parties”) hereby file this Joint Prehearing Conference Statement. As directed in the ALJ Ruling, Counsel for the Parties met and conferred regarding the topics identified in the ALJ Ruling on July 17, 2024.

On July 3, 2024, Complainant filed a Motion for Consolidation (the “Motion”) seeking to consolidate C.23-06-005 and C.24-03-005. As outlined in the Motion, the cases involve the same event, same alleged injury, and same alleged violations on behalf of PG&E. The Parties agree that this Motion should be granted in the interest of promoting judicial efficient and avoiding potentially inconsistent rulings and different factual accounts.

The Parties have made substantial and productive progress towards a settlement addressing both elements of Complainant’s requested relief. PG&E has provided, and Complainant is reviewing and working on revisions to, a comprehensive restoration plan of the area surrounding the I-194D Station on PG&E’s parcel at 11612 Rough and Ready Highway, at the corner of Adams Avenue in the City of Grass Valley (“Grass Valley”), Nevada County,

California (“Site”). Both parties are optimistic that an agreement can be reached as to this restoration plan after continued negotiation. Without conceding that acquisition and conservation of offsite property to mitigate purported impacts to non-endangered or -threatened plant species is appropriate; PG&E is continuing to work towards identifying a potential agreement for offsite mitigation.

Because of the productive settlement and the outstanding Motion, the Parties request that the Prehearing Conference currently set for July 23, 2024, service of final hearing materials no later than October 11, 2024, and Evidentiary Hearings no later than October 31, 2024, be continued until the ALJ rules on the Motion. The Parties propose to file a joint settlement status report on the progress of settlement on August 30, 2024.

As directed, the Parties’ agreed upon and disputed positions on the items identified in the ALJ Ruling are detailed below:

2.1. Scope of Proceeding

Discuss whether Sections 2.1.a through 2.1.c below represent all of the issues in dispute to be determined or otherwise considered in this proceeding, and if not, specifically identify and explain any other disputed issue(s) the Parties believe the California Public Utilities Commission (Commission) must consider within the scope of this proceeding:

- a. Whether Defendant violated Commission General Order (GO) 177, Section VII.B, consultation requirements in connection with its project to construct a new gas transmission station and associated appurtenances at its parcel of land located at the area known as Hell’s Half Acre.*
- b. Whether the Commission has authority to grant Complainant’s requested forms of relief.*
- c. Whether there exist any unresolved public health or safety issues related to this proceeding*

Complainant's Position

Complainant agrees that the listed issues above must be addressed. In addition, Complainant intends to consolidate this action with C.23-06-005 (discussed above), which adds the additional claims of whether Defendant violated Commission GO 177.

PG&E's Position

PG&E agrees that Sections 2.1.a through 2.1c represent all issues in dispute to be determined or otherwise considered in C.24-03-005. However, PG&E supports the consolidation of 23-06-005 and C.24-03-005 as outlined in the Motion.

2.2. Commission Authority to Award Relief

a. Complainant must identify (i) the specific relief or reliefs requested by Complainant and (ii) cite the legal authority of the Commission to grant each type of relief sought.

Wilson seeks equitable relief in the form of repairing, rehabilitating, or restoring the impacted resource, reducing or eliminating the impact through actions that preserve or maintain the resource, and by replacing or providing substitute resources or environmental conditions, including by permanently protecting resources through conservation easements. Equitable relief of this nature falls within the Commission's scope of authority. *See Lefebvre v. Southern California Edison* (2016) 244 Cal.App.4th 143, 157 ("PUC has the power to award reparations for rates that are unreasonable, excessive, or discriminatory, as well as to assess fines and penalties."); *Davis v. Southern California Edison Co.* (2015) 236 Cal.App.4th 619, 644 ("The PUC has extensive powers to award injunctive relief, reparations and penalties."); *Wise v. Pac. Gas & Elec. Co.* (1999) 77 Cal.App.4th 287, 300 ("PUC in the exercise of its equitable jurisdiction must be able to fashion a remedy in the event of fraud committed by a public utility during the ratemaking process.... the PUC is not an ordinary administrative agency, but a constitutional body with broad legislative and judicial powers.");

b. Defendant must identify its responsive position(s), including any contrary legal authorities on Complainant's position on Section 2.2.a.(i) and (ii).

The cases that Complainant identifies above concern ratemaking proceedings (See *Lefebvre v. Southern California Edison* (2016) 244 Cal.App.4th 143 and *Wise v. Pac. Gas & Elec. Co.* (1999) 77 Cal.App.4th 287) and interconnection agreements (See *Davis v. Southern California Edison Co.* (2015) 236 Cal.App.4th 619). These cases provide no authority to mitigate construction related environmental impacts for a project that required no Commission permit.

The Commission lacks authority to grant Complainant's request that PG&E be required to mitigate the alleged impacts of the Project by "providing "substitute resources or environmental conditions, including by obtaining a permanent conservation easement." Complaint at Section H Attachment, p. 7. The California Environmental Quality Act ("CEQA") requires a governmental agency making a discretionary decision to approve a project that could result in a physical change to the environment to identify and mitigate the significant environmental effects of the project. CEQA Guidelines Section 21002.1(b). In this case, however, the Commission has no role in approving the Project at issue. GO 177 governs when the Commission must approve or disapprove a gas construction project and makes clear that Commission approval was not required for this Project. GO 177, section IV.A.1GO 177. Absent any discretionary permit approval process and associated CEQA review, there is no basis for the Commission to impose mitigation for purported impacts.

To the extent Complainant asks the Commission to interpret and enforce other agencies' requirements, it lacks the authority to do so. Public Utilities Code section 2101 grants the Commission authority to enforce provisions of the Constitution and state statutes affecting public utilities "the enforcement of which is not specifically vested in some other office or tribunal." The protection of natural resources such as those mentioned in the Complaint are governed by a host of environmental laws administered by agencies with vast expertise on biological resources, water quality, and hazardous substances, including the California Department of Fish and Wildlife, the Regional Water Quality Control Board, Region Five, and the Department of Toxics

Substances Control and/or the local certified uniform program agency (“CUPA”). Those agencies have full authority to enforce any alleged violations of California environmental laws and the Commission should resist any invitation to step into their shoes in contravention of Public Utilities Code section 2101.

The Complainant’s final requested relief, to require PG&E to purchase property and place a conservation easement upon it, is disproportionate to the impacts to the parcel. See Complaint at Section H Attachment, p. 7. (“securing the remainder of the original wildflower preserve and reuniting it with that portion of the preserve now on PG&E property to create a viable and sustainable habitat protected by conservation easement.”). PG&E purchased the Site for \$2.4 million. The adjoining parcel which holds the “original wildflower preserve” has similar zoning, and the same seller. It’s unlikely that PG&E would be able to acquire this neighboring parcel for any less than the original selling price. It could then cost between \$500,000 and a million dollars to place a conservation easement on the parcel. This cost is disproportionate to the purported impacts to the parcel.

When the Bear Yuba Charter School, located across Adams Avenue from PG&E’s parcel, was developed and underwent CEQA review, the mitigated negative declaration developed for the project concluded that impacts to biological resources was less than significant with mitigation. This mitigation included transplantation, seed collection, and monitoring of certain rare plants, a replanting plan, and removal of invasive species. PG&E’s restoration plan will complete most, if not all, of these items. To mitigate for impacts to plant habitat, the school was required to place a fence and gate around the parcel across the street, which is now PG&E’s parcel, to block off road vehicle access, trash dumping, and camping. If the school couldn’t get permission from the then parcel owner to place this fence and gate, they were required to donate a fee equal to the amount needed to install the fence and gate to California Native Plant Society. If this project had triggered CEQA, it is likely that the CEQA analysis would result in a similar impact assessment and require similar mitigation. The costs of installing a fence and gate, which PG&E will be doing at the parcel, would be lower than the upwards of \$3 million that the

Complainant has asked PG&E to spend on mitigation. This disparity illustrates that the mitigation requested by the Complainant lacks the rough proportionality to the impact that is required when establishing mitigation measures as part of a CEQA review. See CEQA Guidelines § 15126.4, subd. (a)(4)(A)–(B), citing *Nollan v. Ca. Coastal Commission* (1987) 483 U.S. 825, *Dolan v. City of Tigard* (1994) 512 U.S. 374.

Finally, Complainant’s underlying claim that PG&E failed to consult with the County of Nevada on the now-completed Project has no likelihood of success on the merits, which severely undercuts any request for equitable relief. General Order 177, section VII.B requires that “...in locating [gas utility] projects, the public utilities shall consult with local agencies regarding land use matters....” However, PG&E did in fact consult with the County concerning land use matters beginning in December 2021 and continuing throughout the second half of 2022 and the beginning of 2023, prior to commencing construction activities at the Site. These consultations included multiple meetings and emails with County staff. Matters discussed included the proposed location and description of the gas transmission station Project, the equipment to be utilized and activities occurring at the Site, the presence of wildflower habitat at the Site, and the County’s concerns about the Project’s compatibility with local zoning. In February 2023, in response to jurisdictional questions raised by County staff during consultation, PG&E provided a written analysis of Commission preemption of local discretionary authority and zoning which also included a project description and a map of the proposed station. In addition to these staff-level consultations, a PG&E representative discussed the Project with three members of the Nevada County Board of Supervisors in January 2023, and offered to follow up with additional meetings, which were not requested. Finally, PG&E submitted applications for ministerial permits for construction of the Project *which the County subsequently granted or voluntarily voided.*

2.3. Need for Evidentiary Hearing

Discuss whether an evidentiary hearing (EH) and/or briefing are necessary to resolve material facts in dispute and identify (a) all witnesses to be offered and (b) the number of hearing hours necessary for each party to present its case.

Parties' Position

The Parties agree that the determination of the need for evidentiary hearings and/or briefing, witness identification, and necessary hearing hours should be deferred pending filing of the updated Joint Settlement Status Report no later than August 30, 2024.

2.4. Proceeding Schedule

Discuss any modification to the proposed proceeding schedule below and the justification for any proposed modification:

Parties' Position

The Parties agree that finalization of the proceeding schedule should be deferred pending filing of the updated Joint Settlement Status Report no later than August 30, 2024.

2.5. Joint Discovery Plan

Discuss whether the Parties will engage in the process of disclosure and exchange of information and evidence, known as "discovery." If so, the parties shall propose a Joint Discovery Plan and Schedule. That discovery plan shall clearly identify the issues and scope of discovery; the agreed discovery end date; handling of confidential information; any identified discovery disputes, and all other anticipated discovery issues.

Parties' Position

The Parties agree that the determination of whether discovery is necessary and, if so, preparation of a Joint Discovery Plan and Schedule should be deferred pending filing of the updated Joint Settlement Status Report no later than August 30, 2024.

2.6. Anticipated Motions

Identify anticipated motions and other issues requiring early resolution, including any motion for consolidation of this proceeding, C.24-03-005, with C.23-06-005 and/or any other proceeding.

Parties' Position

The Parties support the granting of Complainant's Motion to Consolidate C.24-03-005 with C.23-06-005.

PG&E's Position

If the parties are unable to reach a negotiated settlement, PG&E anticipates filing a motion for summary judgment.

Complainant's Position

If the parties are unable to reach a negotiated settlement, Complainant anticipate filing a motion to consolidate this proceeding with C.23-12-020 filed by the County of Nevada on December 12, 2023.

2.7. Environmental and Social Justice Issues

Identify anticipated environmental and social justice issues involved in this proceeding.

PG&E's Position

PG&E does not anticipate any environmental and social justice issues being involved in this proceeding.

Complainant's Position

The environmental impacts of PG&E's construction of the I-194D Station on the Hell's Half Acre site will be part of this proceeding if it goes forward.

2.8. Related Cases

Identify the subject and status of any related cases or proceedings pending before the Commission, a court, or administrative body, including but not limited to C.23-06-005, and the relationship to the issues to be decided in this proceeding.

The parties must also provide a brief discussion of their respective positions on whether they consent to or oppose consolidation of this proceeding with C.23-06-005, as requested by the motion of complainant Jeanne Wilson in that proceeding.

Parties' Positions

On June 6, 2023, Jeanne Wilson filed C.23-06-005, a complaint which concerned PG&E's construction of the I-194D Station at the Site. The Complainant have filed a Motion to Consolidate C.23-06-005 with C.24-03-005, which PG&E supports.

December 12, 2023, the County of Nevada filed C.23-12-020, a complaint also concerning PG&E's construction of the I-194D Station at the Site. C.23-12-020 is running on a separate procedural path and is currently continued to allow time to negotiate a settlement.

The Parties jointly consent to the consolidation of this proceeding, C.24-03-005, with C.23-06-005.

The Parties agree that the identification of any related cases or proceedings, other than C.23-12-020 and C. 23-06-005, and the relationship to the issues to be decided in this proceeding should be deferred pending filing of the updated Joint Settlement Status Report no later than August 30, 2024.

PG&E's Position

PG&E believes that C.23-12-020 should be allowed to proceed on its separate procedural path and does not support consolidation of C. 23-12-020 with C.23-06-005 with C.24-03-005.

Complainant's Position

If this case goes forward, Complainants believe this case should be consolidated with C.23-12-020 as well as C.23-06-005.

2.9. Settlement Status

The Parties must address the following in their Joint Prehearing Conference Statement:

a. the status of settlement discussions,

- b. *whether and why the Parties believe additional negotiations and/or referral to the Commission's Alternative Dispute Resolution (ADR) program may lead to an efficient resolution of the case, and*
- c. *other relevant matters the Parties believe necessary to facilitate a just, fair, and efficient resolution of this proceeding that is reasonable, consistent with law, and in the short-term and long-term public interest.*

Parties' Position

The Parties have been working on reaching a settlement which would address the Complainants requested relief in C.24-03-005. These conversations have been productive, and Parties agree that there is a reasonable possibility that that settlement can be achieved. The Parties wish to spend their near-term time and resources on these settlement negotiations, which would serve to settle both C.23-06-005 and C.24-03-005. Referral to the Commission's ADR program is not necessary, at this time. Parties are aware of no other matters relevant to resolution of the proceeding.

2.10. Other Topics

Identify any other topics as the interest of justice and efficient case management require.

Parties' Position

None.

Respectfully Submitted,

PACIFIC GAS AND ELECTRIC COMPANY

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