

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE

STATE OF CALIFORNIA



FILED

09/27/24

04:59 PM

A2408004

**Application of Pacific Gas and Electric
Company for a Limited Capital Structure
Adjustment. (U39M),**

Application 24-08-004

(Filed August 05, 2024)

**ENERGY PRODUCERS AND USERS COALITION,
INDICATED SHIPPERS, AND THE UTILITY REFORM NETWORK
MOTION TO DISMISS**

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September 27, 2024

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I. INTRODUCTION

The Energy Producers and Users Coalition (EPUC),¹ the Indicated Shippers,² and The Utility Reform Network (TURN)³ (collectively, EPUC/IS/TURN) respectfully move to dismiss the *Application of Pacific Gas and Electric Company for a Limited Capital Structure Adjustment* (Application) pursuant to Rules 11.1 and 11.2 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure.⁴

II. SUMMARY AND BACKGROUND

On August 5, 2024, Pacific Gas & Electric Company (PG&E) filed its Application seeking Commission authorization to exclude certain charges that reduce equity and certain categories

¹ EPUC represents the electricity end-use interests of the following companies in this proceeding: California Resources Corp., Chevron U.S.A. Inc., PBF Holding Company, Phillips 66 Company, and Tesoro Refining & Marketing Company LLC.

² The Indicated Shippers represent the natural gas non-core customer interests of the following companies in this proceeding: California Resources Corp., Chevron U.S.A. Inc., PBF Holding Company, Phillips 66 Company, and Marathon Petroleum Company LP.

³ TURN is a non-profit consumer advocacy organization and has a long history of representing the interests of residential customers of California's utility companies before this Commission. TURN's articles of incorporation specifically authorize its representation of the interests of residential customers.

⁴ Pursuant to Rule 1.8(d), counsel for EPUC and the Indicated Shippers confirms that it has been authorized to file and serve this motion on behalf of TURN.

of long-term debt from its Rule IX-B capital structure calculation requirements.⁵ Specifically, PG&E seeks to exclude \$2.8 billion in equity charges and long-term debt liabilities as follows:

1. An estimated total of \$542 million in net after-tax charges to equity for the Kincadee wildfire event;
2. An estimated total of at least \$902 million in long-term debt (inclusive of the accrual for future claims) equivalent to the total amount of current and expected future Kincadee and Dixie wildfire claims and related costs not covered by insurance, FERC transmission formula rates, or Wildfire Fund recovery; and
3. An interest-free loan of up to an aggregate total of \$1.4 billion from the California Department of Water Resources (DWR), provided in connection with a United States Department of Energy (DOE) Civil Nuclear Credit Program award (DOE Award), to support PG&E's license extension and continued operation of Diablo Canyon Nuclear Power Plant (Diablo Canyon) beyond 2025.⁶

PG&E seeks to have these proposed new adjustments (New Waiver Request) remain in place for at least four years, through the end of 2028, and possibly longer.⁷

The Application should be dismissed, as it would be inappropriate and inefficient to consider the New Waiver Request while PG&E's existing five-year capital structure waiver, approved as part of PG&E's Plan of Reorganization (POR Waiver), remains in effect. The POR Waiver was approved in Decision (D.) 20-05-053, and granted PG&E a five-year waiver from

⁵ Application at p. 1.

⁶ *Id.* at pp. 1, 8.

⁷ *Pacific Gas and Electric Company Limited Capital Structure Adjustment Prepared Testimony*, Aug. 5, 2024 (Prepared Testimony) at pp. 1-1:14-16.

compliance with its authorized capital structure through June 2025, subject to the condition that PG&E expeditiously regain closer alignment with its authorized capital structure.⁸ As a result of the POR Waiver, PG&E enjoys earning a return as if it had reached its authorized capital structure; while in reality, its equity ratio is well below the 52% weight used to set rates. This benefit obtained by PG&E shareholders has resulted in significantly increased costs for PG&E ratepayers to support hypothetical amounts of equity capital.⁹ The Application provides no definitive statements regarding PG&E's progress in satisfying the conditions of the POR Waiver, nor does it definitively indicate whether PG&E will seek to extend the POR Waiver beyond the June 2025 expiration date.¹⁰ Until PG&E can unequivocally demonstrate that it has either returned its actual equity ratio to align with its authorized equity ratio, or that it will not seek to extend the POR Waiver, its request for a second, separate capital structure waiver should be dismissed. The existing POR Waiver should not become a sleeve through which PG&E can extend its practice of setting rates using a hypothetical equity capital ratio over the proposed new 4-year New Waiver Request period.

III. LEGAL STANDARD

In deciding whether to grant a motion to dismiss an application, the Commission assumes that the facts alleged in the application are true, with the exception of “ultimate facts,

⁸ D.20-05-053, *Decision Approving Reorganization Plan*, I.19-06-016, Jun. 1, 2020 at pp. 84-85.

⁹ *Protest of the Utility Reform Network*, A.24-08-004, Sep. 6, 2024 at pp. 4-5; *Joint Protest of the Energy Producers and Users Coalition and the Indicated Shippers*, A.24-08-004, Sep. 6, 2024 at p. 7.

¹⁰ See D.20-05-005 at p. 85 (“In the event PG&E requires an ongoing capital structure waiver beyond the five years granted in this decision, it is directed to file an application that shall include a deleveraging proposal to reduce non-traditional utility debt over time. The application shall include proposals to offset ratepayer impacts associated with an overleveraged capital structure.”).

or conclusions.”¹¹ After accepting the facts as stated, the Commission then applies the alleged facts “to its own law and policy” to determine whether to proceed with considering the application.¹² “The question becomes whether the Commission and the parties would be squandering their resources by proceeding to an evidentiary hearing when the outcome is a foregone conclusion under the current law and policy of the Commission.”¹³ Under this standard, the Commission has dismissed applications “on policy grounds, to husband limited resources, to avoid conflict with statutory policy, to avoid inefficiency, ‘and many other reasons.’”¹⁴

IV. DISCUSSION

Based on the factual allegations in the Application, taken as true for purposes of this motion, the Commission should find that PG&E failed to provide the Commission with the information necessary to evaluate whether the Application is just and reasonable. The Application is based on the unsubstantiated premise that, absent the New Waiver Request, PG&E might be forced to issue offsetting equity that could be deemed “unnecessary” in the future.¹⁵ However, PG&E fails to reconcile this New Waiver Request with the fact that it is currently operating at an actual equity ratio that is lower than the ratemaking equity ratio used to set rates, which increases cost to customers and enhances the profits to PG&E’s

¹¹ D.23-04-005, *Decision Granting The Public Advocates Office Of The California Public Utilities Commission Motion To Dismiss Sunnova Community Microgrids California, LLC’s Application*, A.22-09-002, Apr. 10, 2023 at pp. 14-15 (“However, the Commission does ‘not accept as true the ultimate facts, or conclusions, that Applicant alleges, for instance, that granting the [application] would be in the public interest’”) (quoting D.99-11-023, 1999 Cal. PUC LEXIS 856, 10-11).

¹² D.23-04-005 at p. 15.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Application at p. 6.

shareholders. PG&E was expected to work expeditiously towards restoring its financial health and aligning its actual equity ratio with its 52% authorized equity ratio under its existing POR Waiver. The Commission should assess PG&E's progress toward the POR Waiver's objectives before considering a new capital structure waiver. In this Application, PG&E has offered no facts demonstrating its progress in restoring its actual capital structure to comport with its authorized capital structure, and to restoring its financial integrity. Accordingly, PG&E's requested adjustments in the New Waiver Request do not align with Commission law and policy, and the Application should be dismissed.

A. PG&E Failed to Demonstrate that It Satisfied the Conditions of D.20-05-053

PG&E's argument that the Application would not adversely affect customers is wholly unpersuasive when considered in the context of PG&E's existing POR Waiver. The Commission granted PG&E's POR Waiver in D.20-05-053 to support PG&E's efforts to restore its financial health in the wake of PG&E's second bankruptcy.¹⁶ In granting that waiver, the Commission in D.20-05-053 stated:

In response to EPUC/IS, PG&E states it "has every intention of doing its best to meet or exceed these projections. Yet future performance ultimately will depend on a variety of factors, including many that are outside PG&E's control."

The parties' concerns regarding PG&E's future financial health are not baseless, and this Commission does not have a crystal ball to predict the future.

At this time we cannot say with certainty that PG&E's projections for the future will prove to be correct or how they may prove to be incorrect, and what Commission response may be most

¹⁶ D.20-05-053 at p. 81. ("According to PG&E, the plan, by resolving PG&E's major prepetition liabilities and refinancing high coupon prepetition debt, will restore PG&E to a position of financial health. PG&E states that it is 'confident' that as it emerges from bankruptcy it will be able to attract capital and maintain access to capital markets to meet its ongoing operational needs.") (Citations omitted.)

appropriate. The resolution of PG&E's application for securitization may also affect PG&E's credit ratings and the amount of time it may need for an ongoing capital structure waiver. Given this inherent uncertainty, **the Commission must keep a close watch on PG&E's financial condition, given its importance for both PG&E and its customers.** While we do not adopt the specific proposal of EPUC/IS at this time, **there is merit to the underlying idea of the Commission closely monitoring PG&E's actual financial metrics and imposing conditions to ensure PG&E pursues a path to regain its authorized capital structure and reduce its debt burden over time.**¹⁷

That was the Commission's clear intention, stated over four years ago. Since then, all PG&E ratepayers have had a vested interest in PG&E satisfying the conditions of the POR Waiver and restoring its actual equity ratio to align with the 52% equity ratio used to set rates as quickly as possible. Restoring this alignment will help PG&E to restore its credit rating and financial integrity to the levels that existed before its wildfire-damages-induced bankruptcy filing. PG&E ratepayers have been paying higher rates due to the use of a ratemaking equity ratio under the POR Waiver that exceeds PG&E's actual equity ratio, which enhances shareholder profits. PG&E's shareholders further benefit under the POR Waiver because it allows PG&E to gradually increase its actual equity ratio via reinvestment of utility earnings generated over time, and also allows them to avoid the stock dilution that would result from the issuance of additional common stock to the public. Thus, the Application's proposed \$2.8 billion capital structure adjustments risk unduly prolonging the POR Waiver's objective of restoring PG&E's financial health, and the associated ratepayer protections provided by PG&E paying only a return on actual common equity capital that is invested in utility rate base infrastructure assets.

¹⁷ *Id.* at pp. 83-84 (citations omitted) (emphasis added).

The context for considering the Application would be very different had PG&E sufficiently demonstrated clear progress to restoring its financial health, such that an extension of the POR Waiver would be unnecessary. Though the Application states that PG&E has deleveraged its balance sheet, it provides no accounting detail regarding PG&E's actual capital structure relative to its authorized structure.¹⁸ The Application also fails to definitively indicate that PG&E will not be seeking an extension of the POR Waiver by the June 2025 expiration. Without these key facts, the Commission lacks the information needed to assess whether the New Waiver Request would be a "waiver inside of a waiver," and risk unduly prolonging the ratepayer burden associated with PG&E's existing reduced equity ratio under the POR Waiver. Thus, the Commission must reject PG&E's attempt to avoid issuing additional equity while the status of its actual capital structure, and the need for continuation of the POR Waiver, remains an open question.

B. PG&E's Request Is Not Supported by Prior Commission Decisions or Rule IX-B Commission Law and Policy

In light of the POR Waiver, PG&E's strained attempt to justify the request based on prior capital structure waiver decisions is implausible. Specifically, the Application references two prior decisions approving PG&E and Southern California Edison's (SCE) waiver requests in connection with non-cash net charges associated with 2017 and 2018 wildfire events.¹⁹ However, neither PG&E nor SCE were under a Commission order to actively regain alignment with their authorized capital structures at the time of those applications. In fact, D.20-05-005 approved PG&E's waiver "until such time as the Commission decides in I.19-09-016 how and

¹⁸ Application at pp. 4-5.

¹⁹ Application at pp. 14-16.

when PG&E's equity percentage will return to 52 percent."²⁰ And, unlike PG&E, SCE was not in bankruptcy workout at the time. Further, 52% equity ratio is a minimum,²¹ not a cap, and PG&E has provided no facts in its Application demonstrating where its current capital structure stands in relation to that minimum standard. The situation here is distinguishable and not supported by D.20-05-005.

PG&E's appeal to the underlying rationale of Rule IX-B is similarly unpersuasive. As PG&E acknowledges, the Rule IX-B capital structure requirement is intended to protect the utilities' financial integrity.²² The authorized capital structure is the litigated outcome of a Cost of Capital Proceeding and may reflect market conditions, as well as broader regulatory policy intentions.²³ The authorized equity structure indicates the level of financial risk that the Commission, as the regulator, believes is appropriate for each of the investor-owned utilities while balancing risk with the cost to ratepayers.²⁴ The Application risks weakening this critical function by exempting PG&E from the issuance of additional equity that would help accelerate PG&E's realignment with its authorized capital structure. Thus, contrary to PG&E's misguided assertions, the Application does not align with Rule IX-B, and should therefore be dismissed.

²⁰ D.20-05-005, *Decision Approving Applications Of Southern California Edison Company And Pacific Gas And Electric Company For Waiver Of The Capital Structure Condition*, A.19-02-016/017, May 12, 2020 at p. 14 and Finding of Fact 10.

²¹ PG&E Prepared Testimony at pp. 1-2, 19:21.

²² Application at p. 2.

²³ See D.22-12-031, *Decision Addressing Test Year 2023 Cost Of Capital For Pacific Gas And Electric Company, Southern California Edison, Southern California Gas Company, And San Diego Gas & Electric Company*, A.22-04-008 et al., Dec. 19, 2022 at p. 4.

²⁴ D.22-12-031 at p. 4 ("Because the level of financial risk that the utilities face is determined in part by the proportion of their debt to permanent capital, or leverage, we must ensure that the utilities' adopted equity ratios are sufficient to maintain reasonable credit ratings and attract capital while also ensuring there are adequate ratepayer protections regarding the costs of the components of capitalization.").

C. Consideration of PG&E's Request in a Standalone Proceeding Would Be an Inefficient Use of Commission and Party Resources

In addition to its misalignment with Commission law and policy, the Application's dismissal is also justified by its proximity to PG&E's 2026 Test Year Cost of Capital application, anticipated in March 2025.²⁵ If the Application is dismissed, PG&E would still have the opportunity to include sufficient information to support this or a similar request in that proceeding. Addressing PG&E's capital structure in the 2026 Test Year Cost of Capital application would reduce inefficiencies associated with addressing related issues in two separate proceedings; it would also allow for a more holistic examination of the broader implications for PG&E's financial recovery from the requested exclusions in the New Waiver Request. In light of the above, until PG&E can demonstrate that it has satisfied the conditions imposed under the POR Waiver, or that it will not seek an extension of the POR Waiver, consideration of the requested adjustments in the New Waiver Request would be an inefficient use of scarce Commission and intervenor resources.

²⁵ See [Proposed] *Phase 2 Decision*, A.22-04-008 et al., Sep. 10, 2024 at Ordering Paragraph 1.

V. CONCLUSION

The Energy Producers and Users Coalition, the Indicated Shippers, and The Utility Reform Network respectfully request that the Commission expeditiously approve this motion and dismiss the Application.

Respectfully submitted,

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By:



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September 27, 2024