



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

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Application of Pacific Gas and Electric  
Company (U 39 M) for Rehearing of  
Resolution G-3618.

Application No. 26-02-\_\_\_\_\_

**APPLICATION OF PACIFIC GAS AND ELECTRIC  
COMPANY (U 39 E) FOR REHEARING OF COMMISSION  
RESOLUTION G-3618**

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COMPANY (U 39 E) FOR REHEARING OF COMMISSION  
RESOLUTION G-3618**

**I. INTRODUCTION**

In its 2023 decision on PG&E’s general rate case (“GRC”), the California Public Utilities Commission (“Commission”) imposed on Pacific Gas and Electric Company (“PG&E”) a requirement to annually seek and obtain “pre-approval” of spending for its Gas Research and Development (“RD&D”) Program.<sup>1/</sup> That requirement was, in all material respects, indistinguishable from a pre-approval requirement the Commission imposed on Southern California Gas’s RD&D Program via that utility’s 2019 GRC. But, while Southern California Gas’s 2019 GRC decision applied to that company’s Gas RD&D Program spending beginning in calendar year 2021, the Commission now asserts, in a recently issued Resolution, that PG&E’s identical requirement, adopted in 2023, applies retroactively, beginning with calendar year 2023 spending.

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<sup>1/</sup> D.23-11-069, referred to hereafter as “the 2023 GRC decision.”

That conclusion is unlawful, and PG&E now files this Application for Rehearing pursuant to Sections 1731(b) and 1732 of the California Public Utilities Code (“Pub. Util. Code”), Rule 16.1 of the Commission’s Rules of Practice and Procedure (“Rules”), and General Order 96-B General Rule 8.1, to correct the error. This Application is timely because it is filed and served on February 23, 2026, within the 30-day limit the Rules prescribe.<sup>2/</sup>

## **II. FACTUAL BACKGROUND**

PG&E has maintained a Gas RD&D Program since 2012. The purpose of the Program is to detect, develop, test, and introduce new methods and technologies into PG&E’s Gas Distribution and Transmission operations to improve gas safety, reliability, and efficiency.<sup>3/</sup> PG&E’s Gas R&D team supports activities related to geohazard risk management, storage wells, methane leak detection, and developing technologies that would decarbonize the gas system (e.g., networked geothermal, deployment of hydrogen, and integrating cleaner fuels).<sup>4/</sup>

The projects and solutions developed through the program have improved safety and environmental outcomes for PG&E and California. Program successes include developing and introducing: the Explorer tool, a robotic in line inspection tool to inspect sections of pipelines that are not accessible to traditional pigging; the Mobile As-Built application, which allows crews to digitally capture in real-time the material characteristics and physical layout of new distribution assets; and the Super Emitter Program, which realized methane emission reductions of over 20 percent from PG&E’s distribution system at minimal cost. PG&E’s program is best-in-class; its success has been recognized throughout the industry, including by the American Gas Association, which awarded PG&E its John B. Mc Gowan Senior Research Award in 2018.<sup>5/</sup>

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<sup>2/</sup> See Pub. Util. Code, § 1731(b); Rules 16.1 and 1.15.

<sup>3/</sup> D.23-11-069, p. 216.

<sup>4/</sup> See also Pub. Util. Code, § 740.1 (establishing guidelines for the Commission in evaluating utility RD&D programs). The statute does not, however, require the Commission to pre-approve utility RD&D plans.

<sup>5/</sup> Application (A.) 21-06-021, Exhibit PG&E-3, Opening Testimony of PG&E, pp. 13-21.

The Gas RD&D Program has historically been funded via PG&E’s revenue requirement, with forecasted funding historically adopted for the program in two separate proceedings: PG&E’s Gas Transmission and Storage rate case proceeding (for gas transmission R&D spending) and PG&E’s GRC (for gas distribution R&D). The Gas Transmission and Storage rate case was combined into the GRC proceeding starting in 2023. Accordingly, PG&E requested funding for both gas distribution and gas transmission via a single Gas RD&D Program request in its 2023 GRC Application.

In the testimony accompanying its 2023 GRC Application, PG&E defined seven priorities for the Gas RD&D Program across this period: (1) extending the safe operational lifetime of PG&E’s pipelines; (2) understanding the condition of PG&E’s assets; (3) developing proactive, as opposed to reactive, operations; (4) reinventing leak management; (5) eliminating dig ins; (6) improving construction methods; and (7) decarbonizing the gas system. PG&E explained that, while these priorities would guide PG&E’s Gas RD&D Program over the years at issue, efforts undertaken on a year-to-year basis would vary based on risks to PG&E’s gas system and the collective needs of the gas research collaborations and consortia to which PG&E contributes.<sup>6/</sup>

As calendar year 2023 approached without a decision from the Commission on PG&E’s GRC, and there was thus uncertainty about 2023 Gas RD&D Program revenues, PG&E decided to reduce planned Gas RD&D Program spending. PG&E declined to fund new projects in its Gas RD&D Program, and instead only continued funding existing work. Accordingly, while PG&E included \$11 million in forecasted spending in 2023 for the Gas RD&D Program in PG&E’s 2023 GRC Application, actual spending in 2023 totaled only \$3.5 million.

In mid-September 2023, the Commission issued its 2023 GRC proposed decision (“PD”), in which it proposed to adopt \$7.414 million of expense in 2023 for the Gas RD&D Program.<sup>7/</sup>

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<sup>6/</sup> D.23-11-069, pp. 216-217.

<sup>7/</sup> PD, p. 217.

Unlike prior decisions, however, where PG&E could utilize the adopted funding to prudently implement and manage the Gas RD&D Program within the allowed spending, the PD imposed a new mechanism for cost recovery of the adopted amount. Under the PD, PG&E would no longer recover its Gas RD&D Program costs, even up to an adopted amount, until PG&E submitted, and the Commission reviewed and approved, an annual plan for PG&E’s RD&D spending, submitted via a Tier 3 Advice Letter.<sup>8/</sup>

Further, the PD also specified both the timing and contents of PG&E’s annual plan. The first Advice Letter was to be filed “by June 1, 2024,” and annually on June 1 thereafter.<sup>9/</sup> The annual plan would also have to demonstrate compliance with new requirements outlined by the Commission.<sup>10/</sup> These requirements provided, among other things, that PG&E’s annual plan: include detailed budgets broken down by research sub-program; include a proposed benefits analysis framework; demonstrate that its administrative costs were capped at 10 percent; and explain how certain aspects of its program support the State’s zero-carbon goals.<sup>11/</sup> Particularly relevant here, the 2023 GRC decision required that PG&E hold an annual workshop, at least 90 days before submitting a Gas RD&D Program annual plan, and incorporate stakeholder feedback into the final plan.<sup>12/</sup>

PG&E submitted comments on the PD in October 2023. Although PG&E’s comments on the 1,000-page PD were necessarily limited by CPUC Rule 14.3, PG&E nonetheless believed it sufficiently important to apprise the Commission of its concerns with the new Tier 3 Advice

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<sup>8/</sup> Specifically, the Commission subjected the adopted funding to recovery via a balancing account, and prohibited PG&E from recording any Gas R&D and Deployment program expenses in a one-way balancing account until an annual Tier 3 Advice Letter outlining its Gas RD&D budget plan was approved. PD, pp. 217-218.

<sup>9/</sup> PD, p. 218; p. 881, Ordering Paragraph (“OP”) 15.

<sup>10/</sup> Id., pp. 218-221.

<sup>11/</sup> Id., pp. 218-220.

<sup>12/</sup> Id., p. 220.

Letter process, as applied to calendar years 2023 (which was already almost over) and 2024 (which was about to get underway).<sup>13/</sup>

On November 17, 2023, with less than 50 calendar days left in 2023, the Commission issued the final 2023 GRC decision. The Commission did not make any changes to the PD's treatment of the Gas RD&D Program.

### **III. PROCEDURAL BACKGROUND**

As required by the 2023 GRC decision, on July 1, 2024, PG&E submitted a Tier 3 Advice Letter requesting the Commission's approval of its calendar year 2025 Gas RD&D Program.<sup>14/</sup> As a separate request within the same Advice Letter, PG&E also requested that the Commission allow it to recover its expenses of about \$7.2 million<sup>15/</sup> for spending on the Gas RD&D Program for calendar years 2023 and 2024.<sup>16/</sup> No party protested PG&E's Advice Letter.

The Commission issued a Draft Resolution addressing PG&E's Advice Letter on December 12, 2025. As relevant here, the Draft Resolution proposed to fully deny recovery for all 2023 and 2024 Gas RD&D Program expenditures. Although PG&E's spending for each year was well below the authorized amount in the 2023 GRC, the Resolution proposed to deny recovery for these years because PG&E had not conformed its 2023 and 2024 spending to the new "pre-approval" requirement outlined in the 2023 GRC decision. Stated otherwise, the Commission denied recovery for these costs not because PG&E spent an unreasonable amount or conducted its work imprudently, but because PG&E had not held a workshop covering its 2023 or 2024 Gas RD&D Program spending nor submitted a Tier 3 Advice Letter seeking pre-

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<sup>13/</sup> A.21-06-021, Opening Comments of PG&E on Proposed Decisions (Oct. 3, 2023), p. 27.

<sup>14/</sup> Advice Letter 4931-G, originally submitted July 1, 2024, was updated and resubmitted as Advice Letter 5077-G on June 25, 2025.

<sup>15/</sup> Specifically, PG&E requested recovery of \$3.53 million for expenses incurred in 2023, and \$3.67 for expenses incurred in 2024.

<sup>16/</sup> See Advice Letter 5077-G, p. 2; Id., Attachment 1, p. 61. PG&E later withdrew AL 4931-G on May 12, 2025, after consultation with CPUC staff. PG&E resubmitted its 2024 Plan (AL 5077-G) on June 25, 2025, and subsequently submitted its modified 2024 Plan via supplemental AL 5077-G-A on August 18, 2025. The 2023 and 2024 spending requests, however, remained the same across each iteration of this Advice Letter.

approval of its planned spending for these years. The Draft Resolution did not address the chronological impossibility of performing these functions for the 2023 or 2024 Gas RD&D Program beyond invoking the alleged requirement that PG&E was required to, but had not, submitted a Tier 3 Advice Letter covering spending for 2023 and 2024.<sup>17/</sup> It also did not explain why the Commission was treating PG&E differently than Southern California Gas, which had a virtually identical “pre-approval” requirement that applied on a prospective basis.

PG&E protested the Draft Resolution. As relevant here, PG&E echoed what it had said in its 2023 comments on the 2023 GRC PD that, “[g]iven the timing of PG&E’s 2023 GRC decision, it was not possible to submit the annual plans for 2023 and 2024 RD&D spending, and it is not lawful to deny funding on this basis.”<sup>18/</sup> PG&E emphasized that the Proposed Resolution arbitrarily “applies the annual plan requirements to spending (or planned spending) that occurred before the Commission’s decision was issued, and as a practical matter compliance was not possible.”<sup>19/</sup> PG&E further elaborated that its spending in 2023, before the GRC decision, was done “in good faith” and that denial of recovery for that spending “violates fundamental principles of law and equity.”<sup>20/</sup>

The Commission addressed PG&E’s comments in a redlined version of the draft resolution on January 13, 2026, which the Commission ultimately adopted as Resolution G-2618 on January 15, 2026. In response to PG&E’s comment that submitting a 2023 plan was impossible, given the timing of the 2023 GRC decision, the Resolution reiterated the 2023 GRC decision’s requirement and asserted that PG&E had been on notice of the requirement as early as September 2023, when the Commission issued the 2023 GRC PD.<sup>21/</sup>

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<sup>17/</sup> Draft Resolution G-3618, p. 15 ¶ 1 and p. 26, Finding and Conclusion 2.

<sup>18/</sup> Comments of PG&E On Draft Resolution G-3618 (Jan. 2, 2026), p. 1; see also *id.*, pp. 17-18.

<sup>19/</sup> *Id.*, p. 17 (emphasis in original).

<sup>20/</sup> *Id.*, p. 17.

<sup>21/</sup> Redline edits to Draft Resolution G-3618, p. 28.

The Resolution did not explain how PG&E was to address costs incurred *prior* to September 2023, or whether PG&E was expected to hold a workshop in the last three months of the year covering its 2023 or 2024 spending. Nor did the Resolution provide PG&E with any other pathway for PG&E to recover its 2023 and 2024 Gas RD&D Program spending.

#### **IV. STANDARD OF REVIEW**

“The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously.”<sup>22/</sup> Applications for rehearing must “set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous, and must make specific references to the record or law.”<sup>23/</sup>

The Commission commits reversible legal error when it “has not proceeded in a manner required by law.”<sup>24/</sup> The Commission does not proceed in a manner required by law where it modifies a binding Commission decision via resolution; modifying a binding Commission decision may only be done via a formal proceeding.<sup>25/</sup> A Commission order or decision is also unlawful where the Commission has abused its discretion in issuing the order or decision.<sup>26/</sup> The Commission abuses its discretion when it makes a decision that is “arbitrary, capricious, or entirely lacking in evidentiary support,”<sup>27/</sup> or otherwise “exceed[s] the bounds of reason.”<sup>28/</sup>

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<sup>22/</sup> Rule 16.1(c).

<sup>23/</sup> Rule 16.1(c); accord Pub. Util. Code, § 1732.

<sup>24/</sup> Pub. Util. Code, § 1757(a)(2).

<sup>25/</sup> See, e.g., General Order 96-B § 5.2 (noting that the Commission may not, by Resolution, modify an existing decision); id. § 7.4.2(5) (permitting protest of an advice letter where the relief requested in the advice letter requires consideration in a formal hearing).

<sup>26/</sup> Pub. Util. Code, § 1757(a)(5).

<sup>27/</sup> *Cal. Comm. Choice Ass'n v. PUC*, 103 Cal.App.5th 845, 861 (2024).

<sup>28/</sup> *The Ponderosa Tele. Co. v. PUC*, 36 Cal.App.5th 999, 1019 (2019).

## V. ARGUMENT

### A. **The Resolution does not proceed in a manner required by law because it improperly modifies D.23-11-069 outside of a formal proceeding.**

On its face, and consistent with the 2019 Southern California Gas (“SoCalGas”) GRC decision, the 2023 GRC decision requires PG&E to seek pre-approval for Gas RD&D Program spending beginning June 1, 2024, *for calendar year 2025 spending*. Yet the Resolution misread the 2023 GRC decision as applying to spending beginning in 2023, and denied PG&E’s request to recover 2023 and 2024 recorded costs on this basis.<sup>29/</sup> This incorrect interpretation of the 2023 GRC decision should be corrected.<sup>30/</sup>

It is evident from the plain language of the 2023 GRC decision itself that the pre-approval requirement was intended to apply to PG&E Gas RD&D Program spending beginning with calendar year 2025 spending. The 2023 GRC decision directs PG&E to submit a plan by “June 1, 2024.”<sup>31/</sup> As a matter of logic, a pre-approval requirement with a deadline of mid-year 2024 indicates that the pre-approval requirement applies beginning in 2025. Put differently, the 2023 GRC Decision requires PG&E to spend early 2024 developing a plan for calendar year 2025 spending (including holding the required workshop in beginning of 2024), and to submit that plan mid-year 2024, to allow time for the Commission to review (and, as necessary, request modification of) the 2025 plan *before* 2025 spending was incurred. Indeed, PG&E’s comments on the 2023 GRC PD and its 2025 Advice Letter conveyed, the company reasonably understood the decision to require PG&E to submit, by June 1, 2024, a Gas RD&D Program Plan for approval for calendar year 2025 and then continue to do so on an annual basis thereafter.<sup>32/</sup>

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<sup>29/</sup> Resolution G-3618, p. 15.

<sup>30/</sup> Because PG&E adhered to this reasonable interpretation of D.23-11-069, PG&E did not believe a petition for modification was necessary. Clarification only became necessary in light of the Commission’s adoption of the Resolution. Because PG&E maintains that the Resolution misreads D.23-11-069, it continues to believe the appropriate vehicle to address that legal error is an Application for Rehearing. As explained below, *infra* V.C., however, PG&E does not object to the Commission construing this Application as a petition for modification to clarify that the balancing account and Tier 3 Advice Letter requirements do not apply until calendar year 2025.

<sup>31/</sup> D.23-11-069, p. 218.

<sup>32/</sup> D.23-11-069, p. 220.

That the Commission intended its pre-approval requirement to be prospective beginning with 2025 Gas RD&D Program spending is also supported by the 2023 GRC decision’s explicit reference to D.19-09-051. That 2019 decision, approving SoCalGas’s General Rate Case, imposed a virtually identical pre-approval requirement with respect to SoCalGas’s Gas RD&D Program, subjecting SoCalGas to a virtually identical workshop and pre-approval framework.<sup>33/</sup> But, critically, the 2019 SoCalGas GRC decision only applied those new requirements *prospectively* beginning in 2021.<sup>34/</sup> As that September 2019 decision explained, SoCalGas was to hold a workshop in the second quarter of 2020 regarding spending for the “following calendar year,” i.e., 2021.<sup>35/</sup> The Commission’s explicit reference to D.19-09-051—and the virtually identical pre-approval requirements applied to both companies—indicates that the Commission intended to impose an identical requirement on PG&E.

But if there were any doubt about whether the pre-approval requirement was intended to apply to Gas RD&D Program spending beginning in 2025, it must be interpreted that way to avoid absurdity. As both courts and the Commission have recognized, interpretations of law that lead to absurd results are disfavored.<sup>36/</sup> “It is a settled principle of statutory interpretation that language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the legislature did not intend. Thus, the intent prevails over the letter, and the letter will, if possible, be so read to conform to the spirit of the act.”<sup>37/</sup> To be sure, “[t]he absurdity doctrine will override the literal terms of a statute only under rare and exceptional

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<sup>33/</sup> D.19-09-051, pp. 377-379.

<sup>34/</sup> Id., p. 378 (requiring a workshop in the second quarters of 2020 and 2021 to present the previous year’s RD&D program and obtain input regarded intended spending for the “following calendar year”); see also id., p. 769, Conclusion of Law (“COL”) 67; id., p. 783, OP 30.

<sup>35/</sup> Id.

<sup>36/</sup> See, e.g., D.07-01-039; *Flannery v. Prentice*, 26 Cal.4th 572, 578 (2001) (“We avoid any construction [of a statute] that would produce absurd consequences.”).

<sup>37/</sup> *Horwich v. Superior Court*, 21 Cal.4th 272, 276 (1999) (quotation omitted).

circumstances.”<sup>38/</sup> But where an interpretation is not merely harsh but *irrational*, it is appropriate to apply the canon against absurdity.<sup>39/</sup>

Reading the 2023 GRC decision to apply a pre-approval requirement to 2023 spending—as the Resolution does—is irrational. It blinks reality to assert, as the Resolution does, that the Commission intended to require PG&E to submit a proposal for calendar year 2023 *six months after the year had ended and long after the Gas RD&D Program money had already been spent*. Such a post-hoc exercise would be explicitly contrary to the purpose of the program to pre-approve spending. It would have been both logically and physically impossible for PG&E to have obtained *pre-approval* for spending that occurred in 2023, much less to hold a workshop 90 days before spending occurred. Similarly, it is impracticable to obtain pre-approval beginning June 1, 2024, for plan year 2024 spending, where spending for that year would have been well underway.

The Resolution never adequately grapples with the timing requirements included in the 2023 GRC decision, the prospective nature of the 2019 SoCalGas decision, or the absurdity of its interpretation of the 2023 GRC decision. Instead, the Resolution’s purported rationale for applying the 2023 GRC decision to calendar year 2023 and 2024 spending is that PG&E was on notice in September 2023 of the possibility the Commission would impose this requirement. That is incorrect as both a matter of law and fact.

First, as to law: a proposed decision does not put a utility on notice, because a proposed decision is just that—*proposed*. The Commission is entitled to (and often does) alter a proposed decision, either due to challenge from a utility or other parties to the proceeding, due to a need for clarification, or simply because the Commission changes its mind.

But even assuming that a proposed decision in a proceeding in which PG&E is a party could have put PG&E on notice in *some* circumstances, the Resolution is incorrect that PG&E

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<sup>38/</sup> *United States v. Lucero*, 989 F.3d 1088, 1098 (9th Cir. 2021) (citing *Crooks v. Henderson*, 282 U.S. 55, 60 (1930)).

<sup>39/</sup> *United States v. Paulson*, 68 F.4th 528, 544 (9th Cir. 2023).

here had actual or constructive notice that it had to obtain pre-approval of its 2023 and 2024 spending. PG&E reasonably understood the 2023 GRC decision to apply prospectively, for all the reasons stated above—and that was as true of the September 2023 PD as it was of the November 2023 final decision. Thus, to the extent PG&E was on “notice,” it was only on notice that it should pre-submit for approval its 2025 Gas RD&D Program spending in mid-2024. Neither the 2023 PD nor the 2023 GRC decision provided notice that spending in 2023 or 2024 would be subject to the same pre-approval requirements.

In short, the Resolution misreads D.23-11-069’s pre-approval requirement as applying to calendar year 2023 and 2024 Gas RD&D expenditures, when in fact that decision applies to calendar year 2025 spending. As a functional matter, this is an improper modification of D.23-11-069, which may only be done via a formal Commission proceeding, not by resolution. Rehearing should be granted to correct this error and approve PG&E’s request to record 2023 and 2024 recorded costs in the balancing account.

**B. The Commission’s denial of cost recovery for PG&E’s 2023 and 2024 Gas RD&D program constitutes an abuse of discretion.**

Assuming that the Resolution properly interprets D.23-11-069—which it does not, for the reasons explained above—it is still unlawful, because enforcing that requirement now is so arbitrary as to exceed the bounds of reason.

**1. The Resolution treats similarly situated cases differently without any justification.**

If the decision did impose a requirement that PG&E submit a calendar years 2023 and 2024 plans “by June 1, 2024,” the Resolution still constitutes an abuse of discretion because it has offered no reason why the Commission has treated PG&E differently than SoCalGas, a similarly situated utility.

As explained above, in the 2019 SoCalGas GRC decision, the Commission applied a balancing account and pre-approval process for that utility’s Gas RD&D Program. The Commission also imposed an annual workshop requirement, beginning in the subsequent

calendar year for spending “for the following calendar year.”<sup>40/</sup> Thus, SoCalGas was subject to a materially indistinguishable Gas RD&D Program pre-approval requirement—as the Resolution itself appears to acknowledge<sup>41/</sup>—but the SoCalGas decision applies that requirement prospectively to spending for calendar years 2021 and beyond.

There is no conceivable explanation for the Commission’s differential treatment of SoCalGas and PG&E, and the Resolution does not purport to offer one. Both decisions concerned Gas RD&D Programs. Both decisions found a need for more stringent oversight of Gas RD&D Program spending. Both determined that this oversight should come in the form of a new balancing account and advice letter process. Both decisions required the utilities to hold annual workshops on their RD&D plans for the forthcoming plan years. Both decisions were issued late in the test year (although, notably, the Commission issued PG&E’s final 2023 GRC decision in November, while SoCalGas’s final GRC decision was issued in September). The only material difference is that the Commission applied the 2019 decision’s new requirements prospectively beginning to plan year 2021, while (at least by the Resolution’s logic) applying PG&E’s 2023 GRC decision retrospectively, beginning with plan year 2023.

It is axiomatic that an agency’s failure to treat like cases alike is arbitrary and capricious under federal law.<sup>42/</sup> The arbitrary and capricious standard, while not directly incorporated into California law, is a similar standard to the “abuse of discretion” standard within Public Utilities Code Section 1757(a)(5). The Resolution’s disparate treatment of factually indistinguishable

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<sup>40/</sup> D.19-09-051, p. 378.

<sup>41/</sup> Resolution G-3618, p. 28.

<sup>42/</sup> See, e.g., *Indep. Petroleum Ass’n v. Babbitt*, 92 F.2d 1248, 1260 (D.C. Cir. 1996) (“The treatment of cases A and B, where the two cases are functionally indistinguishable, must be consistent. That is the very meaning of the arbitrary and capricious standard.”); accord *Nat’l Weather Serv. Emps. Org. v. Fed. Labor Relations Auth.*, 966 F.3d 875, 883 (D.C. Cir. 2020) (“A fundamental norm of administrative procedure requires an agency to treat like cases alike.”) (quoting *Westar Energy v. FERC*, 473 F.3d 1239, 1241 (D.C. Cir. 2007)); see also *id.* (collecting cases).

circumstances is arbitrary and, as such, constitutes an abuse of discretion.<sup>43/</sup> Rehearing should be granted on this basis.

## 2. The Resolution requires PG&E to perform an impossible task.

If the Commission did intend the 2023 GRC decision to impose a requirement that PG&E submit a calendar year 2023 plan “by June 1, 2024,” the decision imposes a requirement that is impossible to comply with. In November 2023, when the 2023 GRC decision was issued, nearly 11 months of spending of 2023 Gas RD&D Program spending had *already* occurred, making it impossible to obtain pre-approval for these expenditures. It was likewise impossible to obtain pre-approval of the remainder of calendar year 2023 spending, as PG&E could not, within calendar year 2023, hold the required workshop at least 90 days before submitting a plan. Put differently, the fact that time is linear renders it impossible for PG&E to have obtained pre-approval for its 2023 spending consistent with the 2023 GRC decision requirements. It was similarly impossible to comply with the pre-approval requirement for at least part of 2024, given that PG&E could not compile a plan, hold a workshop, and obtain pre-approval for spending in the six weeks between the 2023 GRC decision and the beginning of calendar year 2024.

Denying cost recovery on the grounds that PG&E did not perform a physically impossible task constitutes an abuse of discretion, as multiple courts have found in analogous contexts.<sup>44/</sup> Similarly, the Commission itself has also long recognized that it should not impose

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<sup>43/</sup> For the same reason, the Resolution also violates PG&E’s rights under the California and U.S. Constitutions’ Equal Protection Clauses. *See, e.g., People v. Health Laboratories of N. America, Inc.*, 87 Cal.App.4th 442, 447-448 (Cal. Ct. App. 2001) (explaining that California and U.S. constitutions ensure similarly situated persons should be treated alike); *accord Kasler v. Lockyer*, 23 Cal.4th 472, 513 (2000) (Kennard, J., concurring) (quoting *Vacco v. Quill*, 521 U.S. 793, 799 (1997)). This is an independent ground for reversal. *See* Pub. Util. Code, § 1757(a)(6).

<sup>44/</sup> *See, e.g., State v. Wicklund*, 2012 WL 9490842 (Id. Ct. App. 2012) (setting an impossible condition of prohibition is an abuse of discretion); *Sana Healthcare Carrollton v. HHS*, 2025 WL 2403023, at \*8 (E.D. Tex. 2025) (where regulatory agency sets requirement by which compliance is impossible, the agency action is arbitrary and capricious); *Bari v. Continental Cas. Co.*, 2004 WL 1124685, at \*12 (S.D.N.Y. 2004) (scheduling mutually incompatible appointments, such that attending both was impossible, is arbitrary and capricious only if it the cause of Plaintiff’s harm); *Buker v. Alkosser*, 2006 WL 2900144 (Cal. Ct. App. 2006) (failure to recognize impossibility of compliance with statutory deadline was abuse of discretion).

compliance obligations that are genuinely impossible for regulated parties to meet. In *In re Local Exchange Service*, for instance, a group of telephone companies alleged in an application for rehearing that a condition of a Commission decision related to area codes was a mathematical impossibility.<sup>45/</sup> The Commission agreed, and accordingly amended the applicable requirement.<sup>46/</sup> In other instances, the Commission has granted rehearing to permit parties to substantiate impossibility claims, further underscoring that it recognizes that an impossible order is unlawful.<sup>47/</sup> Finally, the Commission has also granted extensions where a deadline was impossible to meet.<sup>48/</sup> These decisions underscore the Resolution's error here.

In sum, the Resolution constitutes a departure from the well-established principle that a regulator may not impose a compliance obligation that is impossible. Rehearing is warranted to correct this error.

**C. In the alternative, the Commission should construe this Application for Rehearing as a Petition for Modification and Modify D.23-11-069.**

As PG&E has explained, *see supra* n.30 and n.46, PG&E believes that the Commission has committed legal errors and that an Application for Rehearing is the appropriate vehicle to correct those errors. If the Commission believes, however, that the Resolution properly

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<sup>45/</sup> D.97-08-065.

<sup>46/</sup> In that case, the Commission alleged that Petitioners had not identified any legal errors and thus treated the identified impossibility as a petition to modify and modified the offending decision. PG&E maintains that the Resolution misinterprets D.23-11-069 and its logic constitutes an abuse of discretion. Rehearing is therefore warranted. PG&E would not, however, oppose the treatment of this Application of as a petition to modify, if the modification makes clear that the requirements of D.23-11-069 does not apply to calendar year 2023.

<sup>47/</sup> See, e.g., D.21-12-066; D.81745. In each case, the Commission granted rehearing to allow the appealing party to substantiate its claim of impossibility. See also D.89-02-032, p. 72, COL 21(1) (allowing deviations where a party can demonstrate compliance is physically impossible).

<sup>48/</sup> See, e.g., D.93639 (granting extensions of time to comply with a Commission order where the timelines were alleged to be impossible to meet). Here, PG&E was not required to submit a request for extension under CPUC Rule 16.6. Such an extension would have solved nothing, as an extension would not have undone PG&E's past spending.

interprets D.23-11-069, the Commission may construe this Application for Rehearing as a Petition for Modification of D.23-11-069.<sup>49/</sup>

If the Commission were to find that D.23-11-069, properly read, applies to spending in calendar years 2023 and 2024, a petition for modification may be granted because the original 2023 GRC decision would be arbitrary and otherwise unlawful for the reasons outlined in Section V.B., *supra*. Further, such petition could not have been filed and served within one year of the effective date because, as explained above, PG&E was not aware that the Commission would interpret the 2023 GRC decision as barring recovery for calendar year 2023 and 2024 Gas RD&D Program spending.<sup>50/</sup>

If the Commission construes this Application for Rehearing as a Petition for Modification, the Commission should amend D.23-11-069 to provide that the balancing account and Tier 3 Advice Letter process requirements apply beginning with expenses incurred in calendar year 2025 and clarify that PG&E may recover the authorized amounts for its Gas RD&D Program for 2023 and 2024.

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<sup>49/</sup> The Commission has previously construed applications for rehearing as petitions for modification. See, e.g., *In re AT&T Comms. of Cal.*, D.97-09-119; *In re Local Exchange Service*, D.97-08-065.

<sup>50/</sup> Rule 16.4(d).

