

Decision 23-09-005 September 21, 2023

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric
Company for Approval of its Electric
Vehicle Charge 2 Program. (U39E.)

Application 21-10-010

**DECISION GRANTING PACIFIC GAS AND ELECTRIC COMPANY'S
PETITION FOR MODIFICATION OF DECISION 22-12-054**

Summary

This decision grants the Petition for Modification (Petition) of Decision (D.) 22-12-054 filed by Pacific Gas and Electric Company (PG&E or Petitioner). In D.22-12-054, the California Public Utilities Commission approved \$52,248,000 in funding for PG&E to implement Phase 1 of its Electric Vehicle Charge 2 program and support the installation of approximately 2,822 Level 2 and Direct Current Fast Charger ports at multi-family housing, workplace, and public destination sites in PG&E's service territory. For the reasons set forth below, we grant PG&E's Petition of D.22-12-054.

Application 21-10-010 is closed.

1. Background

On October 26, 2021, Pacific Gas and Electric Company (PG&E or Petitioner) filed its Application (Application or A.) 21-10-010 for the Electric Vehicle Charge 2 (EVC 2) program. In its Application, Petitioner requested approval of the EVC 2 program, and authorization to increase electric rates and

charges to collect \$224.4 million between 2023 and 2030.¹ Petitioner stated that the rate increase and charges will support the installation of approximately 16,000 behind-the-meter electric vehicle charging ports at multi-family housing, workplace, and public destination sites in PG&E's service territory.²

On December 19, 2022, the Commission issued Decision (D.) 22-12-054. D.22-12-054 approved \$52,248,000 in funding for Petitioner to implement a limited Phase 1 of the EVC 2 program from January 1, 2023 to December 31, 2026.³ The approved infrastructure investments include installation of approximately 2,822 Level 2 and Direct Current Fast Charger (DCFC) ports at multi-family housing, workplace, and public destination sites within Petitioner's electric service territory.⁴ D.22-12-054 deferred consideration of a possible Phase 2 of the EVC 2 program until a later date.⁵

On January 31, 2023, Petitioner sent an email communication to the service list of A.21-10-010.⁶ Petitioner's communication notified the service list that Petitioner would neither seek to implement Phase 1 of the program nor seek review of a potential Phase 2 of the program due to its inability to implement the full directives of D.22-12-054.⁷ Petitioner also sought guidance on how to proceed.⁸

¹ PG&E, *Application of Pacific Gas and Electric Company (U 39 E) for Approval of the Electric Vehicle Charge 2 Program*, October 26, 2021, issued in A.21-10-010 at 1 and 6.

² *Id.*

³ D.22-12-054 at 1.

⁴ *Id.*

⁵ *Id.* at 19.

⁶ Petition at 2.

⁷ *Id.*

⁸ *Id.*

In response to PG&E's January 31, 2023, email communication to the service list of A.21-10-010, the assigned Administrative Law Judge (ALJ) issued a Ruling.⁹ The Ruling directed Petitioner to implement Phase 1 of the EVC 2 program unless Petitioner or another party requested that the Commission modify its order.¹⁰

On May 12, 2023, Petitioner filed its Petition seeking modification of D.22-12-054 to allow Petitioner the ability to not implement Phase 1 of EVC 2. We summarize the Petition, below.

1.1. Summary of Petition

The Petition makes two primary arguments for modification. The Petition asserts: (1) that implementation of the EVC 2 program within the confines of the approved budget is infeasible; and (2) that implementation of the EVC 2 program within the confines of the approved budget will result in reduced installation of Level 2 and DCFC Ports.¹¹ Petitioner states that it has assessed the feasibility of implementing the EVC 2 program and determined that the program is not tenable within the budget, timeline, and program metrics approved in D.22-12-054.¹² Petitioner also states that if D.22-12-054 is upheld and no budget modifications to the final \$52.2 million budget are made, Petitioner will have to reduce the number of ports it supports through the program by roughly 900 Level 2 ports, 120 DCFC ports, or a combination of the two.¹³

⁹ Email Ruling Regarding PG&E's Status Update on Phase 1 Implementation, issued on February 10, 2023.

¹⁰ *Id.*

¹¹ Petition at 3 and 12.

¹² *Id.* 2.

¹³ *Id.* at 12-13.

1.2. Response to Petition

On June 12, 2023, four parties filed their responses to the Petition. First, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) supports PG&E's request to not implement the EVC 2 program for an array of reasons.¹⁴ Cal Advocates asserts that the EVC 2 program is not warranted because: (1) there are ample ratepayer funds approved for transportation electrification infrastructure that remain unspent;¹⁵ (2) the state-wide transportation electrification rebate program approved in D.22-11-040 provides adequate funding to support the build out of electric vehicle infrastructure without creating a separate and, possibly, duplicative program that is also funded by ratepayers;¹⁶ (3) there are billions of dollars of non-ratepayer funds available to support the growth of electric vehicles and electric vehicle supply equipment markets;¹⁷ and (4) additional ratepayer funding for transportation electrification infrastructure will place an unnecessary and unreasonable burden on PG&E ratepayers.¹⁸

Second, ChargePoint, Inc. (ChargePoint) argues that the Commission should either reject the Petition or adjust the approved budget for the EVC 2 program. ChargePoint asserts that the Petition should be rejected because the EVC 2 program provides benefits toward widespread electric vehicle adoption.¹⁹ In the alternative, ChargePoint argues that the Commission should modify the

¹⁴ Cal Advocates Response at 1.

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 5-6.

¹⁷ *Id.* at 7.

¹⁸ *Id.* at 9-11.

¹⁹ ChargePoint Response at 3-7.

EVC 2 program's budget and/or consider reallocating resources from other programs to supplement any budget shortfalls.²⁰

Third, SBUA asserts that the Petition lacks evidentiary support required by Rule 16.4 and attempts to relitigate arguments already fully addressed in evidentiary hearings and filings that were considered by the Commission before issuing D.22-12-054."²¹ SBUA also argues that the Commission should reject the Petition and direct PG&E to move forward with the EVC 2 program.²²

Finally, the California Large Energy Consumers Association (CLECA) supports the Petition.²³ CLECA argues that the EVC 2 program would contribute to an already "crushing" level of rate increases for PG&E's ratepayers.²⁴ CLECA asserts that the "fact that the program is infeasible (due to insufficient funding) and is incapable of fulfilling vital goals, further supports discontinuing the program in order to protect ratepayer interests."²⁵

PG&E did not file a reply to the parties' responses to its Petition.

1.3. Submission Date

This matter was submitted on June 12, 2023, upon submittal of the parties' responses to the Petition.

²⁰ *Id.* at 7-9.

²¹ SBUA Response at 2-3.

²² SBUA Response at 6.

²³ CLECA Response at 4.

²⁴ *Id.*

²⁵ *Id.*

2. Standard of Review

Public Utilities Code Section 1708²⁶ provides that the Commission, after appropriate notice, may alter one of its prior decisions:

The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

Under the Commission's Rules of Practice and Procedure (Rules), Rule 16.4 governs petitions for modification. Rule 16.4(d) states in part:

(d) Except as provided in this subsection, a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition.

Rule 16.4 also requires:

(b) A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

Timeliness Test: As stated above under Rule 16.4(d), a petition for modification must be filed and served within one year of the effective date of

²⁶ Public Utilities (Pub. Util.) Code Section 701. All references to "Sections" herein are to the California Public Utilities Code unless otherwise noted.

the decision proposed to be modified. This Petition complies with Rule 16.4(d), as it has been filed within a year of D.22-12-054's issuance date of December 19, 2022.

Persuasiveness Test: Under Rule 16.4(b) if more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition. Here, the persuasiveness test does not apply because the Petition was timely filed.

Rule 16.4(b) Test: Next, in addressing this request, we consider whether PG&E has met its burden, pursuant to Rule 16.4(b) of the Rules, to demonstrate that the Commission should exercise its discretion to modify D.22-12-054 because the Petition states with specificity the justification for the requested relief. The Commission has discretion when ruling on a petition for modification.²⁷ In considering whether to exercise such discretion, we consider whether allowing PG&E to not implement the EVC 2 program favors both the interests of ratepayers and the state of California's transportation electrification policies. We discuss the application of our rules as they relate to the Petition and the responses to the Petition, below.

3. Grant of Petition

The Commission, having taken the matter under submission, grants the Petition's request to modify D.22-12-054 to allow Petitioner not to implement the EVC 2 program. Petitioner lays out two primary arguments for modification:

²⁷ Rules of Practice and Procedure, Rule 16.4; *see also* PG&E Corp. v. Public Utilities Com. (2004) 118 Cal.App.4th 1174, 1215 [California Public Utilities Code Section 1708, which authorizes the Commission to "rescind, alter, or amend any order or decision made by it," is permissive].

(1) that implementation of the EVC 2 program within the confines of the approved budget is infeasible; and (2) that implementation of the EVC 2 program within the confines of the approved budget will result in reduced installation of Level 2 and DCFC Ports.²⁸ These reasons, combined with the arguments presented by Cal Advocates and CLECA in support of Petitioner's request for relief, lead us to conclude that modifying D.22-12-054 to allow Petitioner not to implement the EVC 2 program is reasonable. Granting the Petitioner's request favors the interest of ratepayers because ample funding for transportation electrification remains available. Furthermore, granting the Petition does not adversely affect the advancement of the state of California's transportation electrification policies and goals. We discuss our reasoning further, below.

3.1. Much of the Approved \$1.8 Billion in Transportation Electrification Infrastructure Funding Remains Unspent, and with the Passage of Senate Bill 101, the EVC 2 Program is Duplicative and Unnecessary

According to Rule 16.5, a petition must "concisely state with specificity the justification for the requested relief." Petitioner, as well as Cal Advocates and CLECA, ask the Commission to grant Petitioner's request to not implement the EVC 2 program. The Petitioner and these respondents make an array of arguments in support of not implementing the EVC 2 program. Collectively, they assert that the program is unworkable,²⁹ and that significant ratepayer funds remain unspent for customer-owned electric vehicle charging infrastructure³⁰ making the EVC 2 program unnecessary and/or duplicative at a

²⁸ Petition at 3 and 12.

²⁹ Petition at 12.

³⁰ Cal Advocates Response at 4-5 and 5-8; *see also* CLECA Response at 4-5.

time when ratepayers are burdened with high rates. The Petitioner, along with Cal Advocates and CLECA, satisfy the requirement for specific justification for petitions for modification.

For example, Petitioner states that the program is infeasible to implement under the approved budget; and in the alternative, if the EVC 2 program was implemented, it would result in a severe reduction in the total ports installed.³¹ Petitioner states that to meet D.22-12-054's port deployment goals, Petitioner would be "forced to focus on low-hanging fruit: customers that are more ready to electrify or have fewer barriers to electrification."³² This programmatic approach is, as Petitioner observes, incongruent with D.22-12-054's holding that at least 65 percent of the EVC 2 program's investment occur in prioritized communities.³³ In D.22-12-054, we reasoned that the EVC 2 program funds should be spent in prioritized communities in order to promote electric vehicle charger deployment in communities most in need. While we recognize the benefits of D.22-12-054's intent, we must weigh such perceived benefits against the realities of implementation and the offsetting of regulatory risks for unintended consequences as well as obtaining the maximum value for each ratepayer dollar spent. We are not persuaded that the EVC 2 program accurately reflects the current market conditions and costs to ratepayers.

For its part, Cal Advocates argues the EVC 2 program is unnecessary because the Commission has already approved more than \$1.8 billion in ratepayer funds for transportation electrification programs.³⁴ Cal Advocates also

³¹ Petition at 3.

³² *Id.* at 7.

³³ D.22-12-054, Ordering Paragraph 9 at 74.

³⁴ Cal Advocates Response at 4-5.

states that only 17.5 percent of the \$1.8 billion for transportation electrification programs have been utilized, leaving “abundant” resources available to cover transportation electrification needs of the investor-owned utilities, including Petitioner.³⁵ As CLECA makes clear,³⁶ rate affordability is of critical concern; and increasing electricity costs to pay for an unworkable or unsuccessful program that is targeted toward the wrong constituency will only burden ratepayers. Cal Advocates also asserts that the California Energy Commission has non-ratepayer funding available, including the \$20 million in funding for the Reliable, Equity, and Accessible Charging for Multi-family Housing 2.0 program.³⁷ Despite the arguments presented by ChargePoint and SBUA, we are not persuaded that the implementation of the EVC 2 program provides sufficient basis of operationalization for the EVC 2 program.

Additionally, on June 27, 2023, Governor Gavin Newsom signed Senate Bill (SB) 101 into law. We take official notice of SB 101 pursuant to Rule 13.9 because it offers resources, outside of ratepayer funds, to the communities that are targeted in the EVC 2 program. Specifically, of the many provisions included in the Budget Act of 2023, is the maintenance of the Equitable At-Home Charging program. The program includes funding over four years for a variety of electric vehicle chargers; including Level 2 chargers at multi-family housing, one of the market segments targeted by Phase 1 of the EVC 2 program. In short, there is a substantial amount of unused authorized spending as well as ongoing, non-ratepayer funded sources from which to draw upon for transportation electrification programs. On these bases, we see good reason to modify D.22-12-

³⁵ *Id.*

³⁶ CLECA Response at 5.

³⁷ Cal Advocates Response at 8.

054 to allow Petitioner not to implement D.22-12-054. We grant Petition's request for relief.

Finally, as demonstrated above, a unique set of factors appeared after the underlying decision was issued which obviated the need for the program. Therefore, the Commission's approval of the Petition should not be viewed as precedential or a common vehicle to eliminate disfavored programs.

4. Summary of Public Comment

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the "Public Comment" tab of the online Docket Card for that proceeding on the Commission's website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding.

A range of public comments from PG&E ratepayers support the Petition's request for relief. Generally, these ratepayers express concern that the EVC 2 program will adversely impact their rates further. These PG&E ratepayers ask the Commission modify D.22-12-054 so that the EVC 2 program is vacated.

5. Conclusion

This decision approves the Petition of D.22-12-054 filed by PG&E. For the reasons set forth above, we grant PG&E's Petition of D.22-12-054. A.21-10-010 is closed.

6. Comments on Proposed Decision

The proposed decision of ALJ Colin Rizzo in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Opening Comments were filed on August 25, 2023, and September 5, 2023, by: (1) Green Power Institute (GPI); (2) Pacific Gas and Electric Company

(PG&E); (3) Public Advocates Office (Cal Advocates); (4) Small Business Utility Advocates (SBUA); and (5) The Utility Reform Network (TURN). Reply Comments were filed on September 11, 2023, by: (1) GPI; and (2) SBUA.

We have considered the suggested changes proposed by parties in their Comments and Reply Comments to this Decision. We take a moment to address the parties' positions below.

PG&E supports the outcome of Decision.³⁸ Cal Advocates also supports the outcome of the Decision and, also offers a clarifying recommendation.³⁹ We have incorporated Cal Advocates' recommendation. TURN also supports the outcome of the Decision.⁴⁰

GPI does not support the outcome of this Decision. GPI argues that the Commission should reconsider its previous decision, D.22-12-054, to bifurcate the EVC 2 program because of the dramatic increase electric vehicle sales.⁴¹ We decline to adopt GPI's recommendation for the reasons discussed throughout this Decision.

Finally, SBUA asks that the Commission modify the Decision to add additional language regarding its position to the Petition.⁴² We have incorporated SBUA's request in the body of the Decision. SBUA also recommends that the Decision should be revised to acknowledge deficiencies in

³⁸ PG&E Opening Comments at 2.

³⁹ Cal Advocates Opening Comments at 6.

⁴⁰ TURN Opening Comments at 2.

⁴¹ GPI Opening Comments at 4.

⁴² SBUA Opening Comments at 5.

the Petition.⁴³ We decline to adopt this recommendation for the reasons discussed throughout this Decision.

7. Assignment of Proceeding

John Reynolds is the assigned Commissioner and Colin Rizzo is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The Petition was timely filed on May 12, 2023, which is within a year of D.22-12-054's issuance date of December 19, 2022.
2. The petition states with specificity the justification for the requested relief.
3. A significant portion of the authorized \$1.8 billion in ratepayer funds remain unspent for customer-owned electric vehicle charging infrastructure, thus making the EVC 2 program unnecessary and/or duplicative.
4. SB 101 provides for non-ratepayer funding for equitable at-home charging over a span of four years, also making the EVC 2 program unnecessary and/or duplicative.
5. The EVC 2 program's aim is frustrated if it is implemented as approved because it will result in a severe reduction of total ports installed or focus on customers that are more ready to electrify or have fewer barriers to electrification, rather than customers most in need.

Conclusions of Law

1. The petition should be granted because it was timely filed within one year of D.22-12-054.
2. The petition should be granted because it states with specificity the justification for the requested relief.

⁴³ SBUA Opening Comments at 6.

3. The petition should be granted because a unique set of factors appeared after D.22-12-054 was issued which obviated the need for the EVC 2 program, including: (a) only 17.5 percent of the \$1.8 billion in authorized ratepayer funds has been used for customer-owned electric vehicle charging infrastructure; and (b) SB 101 was signed into law, providing funding over four years for an array of electric vehicle chargers including Level 2 chargers at multi-family housing, which was one of the market segments targeted by the EVC 2 program.

4. The Commission's approval of the petition should not be viewed as precedential or a common vehicle to eliminate disfavored programs.

O R D E R

IT IS ORDERED that:

1. The May 12, 2023, Petition for Modification of Decision 22-12-054 filed by Pacific Gas and Electric Company is granted.
2. Pacific Gas and Electric Company shall not implement the Electric Vehicle Charge 2 Program.
3. Application 21-10-010 is closed.

This order is effective today.

Dated September 21, 2023, at Sacramento, California.

ALICE REYNOLDS
President
GENEVIEVE SHIROMA
DARCIE L. HOUCK
JOHN REYNOLDS
KAREN DOUGLAS
Commissioners