BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion to Consider the Ratemaking and Other Implications of a Proposed Plan for Resolution of Voluntary Case filed by Pacific Gas & Electric Company (PG&E) Pursuant to Chapter 11 of the Bankruptcy Code, in the United States Bankruptcy Court, Northern District of California, San Francisco Division, In re Pacific Gas and Electric Corporation And Pacific Gas and Electric Company, Case No. 19-30088	I.19-09-016 (Filed September 26, 2019)

ALLIANCE FOR NUCLEAR RESPONSIBILITY'S OPENING COMMENTS ON ADMINISTRATIVE LAW JUDGE'S PROPOSED DECISION

JOHN L. GEESMAN

DICKSON GEESMAN LLP
P.O. Box 177
Bodega, CA 94922
Telephone: (510) 919-4220
E-Mail: john@dicksongeesman.com

Date: May 11, 2020

Attorney for
ALLIANCE FOR NUCLEAR RESPONSIBILITY

SUBJECT INDEX

TABLE OF AUTHORITIES

STATUTES

CPUC DECISIONS

CPUC RULES

I. Introduction.

Pursuant to Rule 14.3 of the California Public Utilities Commission ("Commission" or "CPUC") Rules of Practice and Procedure, the Alliance for Nuclear Responsibility ("A4NR") respectfully submits its comments on the Proposed Decision ("PD") of Administrative Law Judge Peter V. Allen in the Commission's Investigation of the ratemaking and other implications of the Pacific Gas and Electric Company ("PG&E") Plan of Reorganization ("PoR") proposed by PG&E to resolve its Chapter 11 voluntary bankruptcy, Case No. 19-30088 filed in the United States Bankruptcy Court, Northern District of California, San Francisco Division. As required by Rule 14.3(c), these comments focus on what A4NR considers to be factual, legal, or technical error in the PD.

II. PD Section 5.2.1: Neutral, on Average, to Ratepayers.

A primary underpinning of the PG&E PoR that is left unaddressed by the PD is the proper role to be played by wildfire claims-related Net Operating Losses ("NOLs"). PG&E asserts that the tax benefits stemming from its payment of 2017 – 2018 wildfire claims[1] are "a unique and valuable shareholder asset"[2] but the Commission has embraced a markedly different perspective – most recently at its May 7, 2020 meeting when it adopted the Decision Different in I.19-06-015.[3] Notably, PG&E's April 30, 2020 pre-adoption comments on the Decision Different endorsed the principle, regarding shareholder obligations for operating expenditures (like payments of wildfire claims), that "[a]ny tax savings (i.e., financial benefits)

[1] PG&E has indicated that these amounts include "a few hundred million" for the 2015 Butte fire. Transcript (PG&E-Wells), p. 631, lines 23 – 24, 28.
[2] PG&E Post-Hearing Brief, p. 33.
[3] When these Opening Comments were filed, the Commission had not yet assigned a number to this decision.

associated with the financial obligations in the settlement agreement … shall be returned for the benefit of ratepayers once PG&E has realized the savings."[4] A4NR believes this topic is best addressed as compensation for contributions to the PoR from ratepayers, and that the PD should be modified as discussed below (regarding PD Section 5.2.3) to be consistent with the ratepayer crediting mechanism described in the Decision Different.

To the extent that the PD remains unchanged, however, AB 1054's "neutral, on average, to ratepayers"[5] requirement is implicated because a Commission-recognized ratepayer benefit is being taken away. By securing the $1.35 billion deferred payment to the Fire Victim Trust, and the $6 billion in Temporary Utility Debt, with financial benefits of the same type as those the Commission has determined should be returned to ratepayers, PG&E's PoR cannot be characterized as "neutral, on average, to ratepayers." If the PoR cannot satisfy the "neutral, on average" test, the Commission cannot approve it.

III. PD Section 5.2.3: Contributions of Ratepayers.

The PD acknowledges the requirement in AB 1054 that PG&E's PoR "must recognize the contributions of ratepayers, if any, and compensate them accordingly"[6] but mistakenly concludes that, "(f)or the issues presented in this proceeding, the Commission does not find any contributions of ratepayers that must be compensated."[7] In two instances, one involving

[4] I.19-06-015, PG&E Comments Regarding Decision Different of Commissioner Clifford Rechstaffen, p. 1.
[5] Cal. Pub. Util. Code § 3292(b)(1)(D).
[6] PD, p. 77, citing Cal. Pub. Util. Code § 3292(b)(1)(E).
[7] *Id.,* p. 78.

the ratepayer interest in wildfire claims-related NOLs, and the other addressing ratepayer contributions to wildfire insurance proceeds, A4NR believes the PD's approach to be legal error.

A. Wildfire Claims-Related NOLs.

As discussed above regarding PD Section 5.2.1, some $7.35 billion of PG&E's PoR is secured by the same type of tax-derived financial benefits that the Commission recently determined in I.19-06-015 should be returned to ratepayers. Earlier, in D.19-06-027, the Commission adopted a similar rationale in modifying the staff-proposed stress test methodology contemplated by Cal. Pub. Util. Code § 451.2 to cap potential wildfire liabilities: "Our intent is that a utility should not capture any tax benefit."[8] As noted in D.19-06-027's Conclusion of Law #4: "The Commission maintains appropriate remedies to address and preserve for ratepayers (without duplication) any tax benefits associated with losses from events that give rise to the Stress Test application."

Cal. Pub. Util. Code § 3292(b)(1)(E) requires that any ratepayer contribution to PG&E's PoR, or other documents resolving the insolvency proceeding, be recognized and compensated accordingly. Aware that the dollar value and timing of PG&E's future tax savings from NOLs are inherently speculative, the Commission utilized in the Decision Different a recapture mechanism that is equally well-suited here:

> as PG&E realizes any tax savings associated with the shareholder obligations …, PG&E is directed to report these tax savings, with accompanying supporting testimony and underlying calculations, in its next General Rate Case (GRC) filing immediately following the realization of the savings. The amount of the tax savings shall be applied to wildfire mitigation expenses recorded in the WMPMA [Wildfire Mitigation Plan Memorandum

[8] D.19-06-027, p. 34.

> Account] or FRMMA [Fire Risk Mitigation Memorandum Account] that would otherwise have been recovered from ratepayers but for this decision… In the event that all of the reported tax savings cannot be applied to FRMMA or WMPMA expenses in the GRC in which PG&E reports the tax savings, the reported savings or portion thereof shall be applied to the subsequent GRC or stand-alone application in which PG&E seeks recovery of FRMMA or WMPMA expenses. In the event that neither the FRMMA or WMPMA are open at the time the tax savings are to be applied, the Commission will designate substitute recorded wildfire mitigation or resiliency-related expenses that would otherwise have been recovered from ratepayers to which these savings should be applied.[9]

There is no basis for distinguishing the ratepayer interest in tax benefits associated with wildfire liabilities in any of these three cases, and the Commission's articulated policy ("Our intent is that a utility should not capture any tax benefit."[10]) deserves faithful implementation here.

B. Wildfire Insurance Premiums.

While acknowledging that the PG&E PoR relies upon $2.2 billion of insurance proceeds to exit bankruptcy, and accepting that the associated insurance policies were obtained by ratepayer payment of some $500 million[11] of premiums for 2017 – 2018 wildfire coverage, the PD declines to find these premium payments a ratepayer contribution under AB 1054.[12] The reasoning provided in the PD: "the cost of insurance authorized for rate recovery is a legitimate cost incorporated in rates, regardless of whether a utility has declared bankruptcy …" A4NR does not dispute this observation, but AB 1054 does not limit compensable "contributions of ratepayers" to illegitimate costs PG&E is attempting to foist on ratepayers, or costs that have

[9] I.19-06-015, Decision Different adopted May 7, 2020, p. 46 (incorporating footnote 105).
[10] D.19-06-027, p. 34.
[11] TURN-EPUC-IS-01, p. 14, identifies a range of $484 – 510 million.
[12] PD, p. 78.

not been authorized for rate recovery. The PG&E PoR's refusal to credit the source of the $2.2 billion in insurance proceeds confers a windfall on PG&E shareholders, contrary to the Legislature's insistence that the PG&E PoR recognize and compensate ratepayers for their payment of premiums.

The PD's approach would endorse this windfall by rewriting the statute to exempt from compensation those ratepayer-funded costs that are incorporated in rates, although the Legislature included no such carve-out (nor is one implied) in the plain language of AB 1054. The Commission is well aware that AB 1054's creation of the Wildfire Insurance Fund required lengthy extension of a ratepayer surcharge that was about to expire. To address widespread concern that such socialization of risk could devolve into a "bailout" of the already bankrupt PG&E, it was hardly illogical that the Legislature would demand reimbursement of any ratepayer contributions – whether ordinarily authorized for rate recovery or not – to PG&E's exit from bankruptcy. Significantly, this strict reimbursement requirement was made applicable only to electrical corporations that, as of June 30, 2020, had been subject to an insolvency proceeding or on criminal probation.[13]

The PD may have been swayed by the argument in PG&E's Post-Hearing Brief that insurance proceeds are "not allocated to customers in the normal course"[14]of utility regulation, but such an assertion is beside the point. AB 1054's allocation of various risks and obligations, especially those pertaining to PG&E, is anything but "normal course" utility regulation. Indeed, if the "normal course" had been perceived by the Legislature as an adequate response to the

[13] Cal. Pub. Util. Code § 3292(b)(1).
[14] PG&E Post-Hearing Brief, p. 65.

wildfire challenges confronting California, the need for a new statutory approach would not have arisen in the first place. The extraordinary requirements imposed on PG&E by AB 1054 reflect the extraordinary circumstances the Legislature felt compelled to address. The Commission should respect that.

The Commission should implement Cal. Pub. Util. Code § 3292(b)(1)(E) as it is written by creating an appropriate mechanism to compensate ratepayers for the $500 million contribution to PG&E's bankruptcy exit represented by ratepayer-funded insurance premiums.

III. PD Section 5.2.4: Financial Condition and Capital Structure.

A4NR has deep misgivings about the PD's passive acceptance of the overleveraged aspect of PG&E's financing plan, particularly the PD's five-year waiver of PG&E's authorized capital structure without a countervailing requirement that PG&E make full use of its existing $12 billion in equity backstop commitments if it cannot raise a comparable amount in the market on terms it considers satisfactory. The PD makes no effort to explain why it would allow $3 billion in equity commitments to go unutilized, or why the Commission would prefer to see this bird-in-hand equity replaced by $3 billion of sub-investment grade, speculative debt at the holding company. As the Commission observed in the most recent cost of capital proceeding, "Financial risk is tied to the utility's capital structure. The proportion of its debt to permanent capital determines the level of financial risk that a utility faces. As a utility's debt ratio increases, a higher ROE may be needed to compensate for that increased risk."[15]

[15] D.19-12-056, pp. 25 – 26.

But the utility cannot be insulated from risk by shrinking the holding company's equity buffer against financial uncertainty. PG&E only intends to rely on this overleveraged structure until it can pay down the holding company debt and restore some semblance of balance.[16] There can be no doubt that the Commission will face pressure to increase PG&E's authorized return on equity. The ostensible justification will be "to compensate for that increased risk" but the underlying purpose will be to augment utility earnings that can be used to pay down holding company debt – a necessary prerequisite to reinstatement of the common dividend that is a key milestone (now estimated by PG&E not to occur for three years[17]) in successful re-entry to the institutional investor market for new electric utility equity.

By the terms of PG&E's agreement with Governor Newsom filed March 20, 2020 in the U.S. Bankruptcy Court, a reduction in holding company debt during the dividend suspension period would translate into one dollar of additional capital investment for every dollar freed of the necessity of paying down debt.[18] The magnitude of PG&E's required infrastructure hardening in the aftermath of the 2017 – 2019 wildfires should emphasize the importance and timeliness of such a redirection. Adding such significant amounts to PG&E's capital budget through retained Non-GAAP Core Earnings, rather than a concomitant increase in current rates, would be sorely appreciated by ratepayers in the wake of the economic damage caused by the COVID-19 pandemic.

[16] PG&E-13, p. 8 shows a reduction in the amount of holding company debt outstanding of $1.25 billion in 2021, $400 million in 2022, $200 million in 2023, and $650 million in 2024.
[17] PG&E Motion for Official Notice of Documents, Exhibit 1, p. 18 of 29.
[18] *Id.*

The PD's acquiescence in efforts by current shareholders[19] to avoid dilution cannot be reconciled with the Newsom Principle ("To achieve safe and reliable service and make critical safety and infrastructure investments, the emerging company's capital structure must be stable, flexible, and position the company to attract long-term capital."[20]). Nor is it consistent with AB 1054's requirement that the Commission determine PG&E's reorganization plan and other documents resolving the insolvency proceeding "acceptable in light of … factors deemed relevant by the (C)omission."[21] Having identified just five months ago in D. 19-12-056 the intrinsic relationship between an increased debt ratio, financial risk, and a higher ROE, the Commission cannot credibly ignore its relevance now.

The Commission should condition approval of the PoR on utilization of up to the full $12 billion in PG&E's equity backstop commitments, to the extent PG&E is unable to raise $12 billion of equity in the market on terms it finds satisfactory.

IV. Conclusion.

For the reasons stated herein, Sections 5.2.3, and 5.2.4 of the PD should be modified as described above. If the Commission does not establish a mechanism to credit ratepayers with any financial benefits derived from the tax deductibility of PG&E's payment of wildfire claims,

[19] As PG&E Corporation CEO William Johnson acknowledged: "our largest investors are not the typical utility investors," but instead "tend to be distressed asset investors, hedge funds that are in this space." Transcript (PG&E – Johnson), p. 211, lines 9 – 14. "I would expect, after we exit and refinance, that most of them would exit the stock." Transcript (PG&E – Johnson), p. 211, lines 14 – 16. "In the first year they [current shareholders] would exit and we would be heavily looking for the traditional utility investor." Transcript (PG&E – Johnson), p. 212, lines 13 – 15.

[20] Abrams-X-05, December 13, 2019 letter from Governor Gavin Newsom to PG&E Corporation CEO William D. Johnson.

[21] Cal. Pub. Util. Code § 3292(b)(1)(C).

as discussed above under PD Section 5.2.3, then PD Section 5.2.1 needs to be modified to reflect a failure of AB 1054's "neutral, on average, to ratepayers" requirement. Pursuant to Rule 14.3(b), an Appendix is attached setting forth proposed changes in findings of fact and conclusions of law.

Respectfully submitted,

By: /s/ John L. Geesman

JOHN L. GEESMAN
DICKSON GEESMAN LLP

Date: May 11, 2020

Attorney for
ALLIANCE FOR NUCLEAR RESPONSIBILITY

APPENDIX

Proposed Changes to PD's Findings of Fact and Conclusions of Law

Findings of Fact

3. PG&E's reorganization plan and other documents resolving the insolvency proceeding, including PG&E's resulting governance structure, ~~are~~ require $12 billion in new equity capital in order to be acceptable in light of PG&E's recent financial condition.

3a. PG&E has entered into equity backstop commitments for $12 billion.

7. The Commission has determined that the reorganization plan and other documents resolving the insolvency proceeding will not adequately recognize and compensate the contributions of ratepayers~~, if any~~ unless ratepayers are credited with any financial benefits derived from the tax deductibility of PG&E's payment of wildfire claims.

8. The Commission has determined that the reorganization plan and other documents resolving the insolvency proceeding will not adequately recognize and compensate the contributions of ratepayers unless ratepayers are reimbursed for their payments of the insurance premiums that enabled PG&E to utilize $2.2 billion of insurance proceeds to exit bankruptcy.

Conclusions of Law

1. As modified by this decision, PG&E's reorganization plan and other documents resolving the insolvency proceeding, including PG&E's resulting governance structure, comply with the requirements of Public Utilities Code Section 3292(b)(1).

2. It is reasonable to require PG&E to raise $12 billion of equity capital as a condition of approval of the reorganization plan and other documents resolving the insolvency proceeding.

3. It is reasonable to require PG&E to credit ratepayers with any financial benefits derived from the tax deductibility of PG&E's payment of wildfire claims.

4. It is reasonable to require PG&E to reimburse ratepayers $500 million for past payments of insurance premiums as a condition of approval of the reorganization plan and other documents resolving the insolvency proceeding.