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VIA EMAIL

Commissioner Committee on Policy and Governance
PolicyandGovernance@cpuc.ca.gov

**Re: Pacific Gas and Electric Company Comments on the Proposed Revisions of
the Rules of Practice and Procedure**

To the Commissioner Committee on Policy and Governance:

As suggested in the public workshop on April 22, 2020, Pacific Gas and Electric Company (PG&E) provides the following comments and suggestions on the draft Revisions for Discussion. PG&E understands, and supports, the goal of Commission's proposed changes, which is to seek greater transparency, accessibility, and efficiency in Commission proceedings. PG&E's comments below seek to further this goal while ensuring that the Commission's decisions continue to be based on substantial evidence as required by the Public Utilities Code.

A. Rule 1.5- Public Participation in Proceedings

PG&E supports the Commission's goal of encouraging public participation. However, this rule, as proposed does not clarify the weight the Commission will provide to public comments in its decision-making process. Because public comment is not is not corroborated or subject to cross-examination, PG&E proposes that the public comment be included in an appendix to a decision rather than cited in the decision.

PG&E proposes to amend proposed Rule 1.5(a)(2) to state:

“Relevant and material written comment submitted in a ratesetting or quasi-legislative proceeding will be summarized as appropriate in the appendix in the body of the final decision issued in that proceeding.”

By changing the location of the summary to the appendix of the final decision and clarifying that comments will be summarized “as appropriate,” it will provide the Commission with greater flexibility in addressing, and providing the appropriate weight, to public comments.

PG&E also proposes that Rule 1.5(a)(3) substitutes the word “may” with “may, but are not required, to.”

“Parties may, but are not required to, respond to, and cite to, any public comment submitted in a ratesetting or quasi-legislative proceeding in their submissions to the Commission in that proceeding.”

This change addresses important burden and resource issues. While PG&E remains committed to responding to the public, where appropriate, the administrative proceeding briefs and testimony process may not be the appropriate place to resolve or address public comment. PG&E is concerned that the use of the word “may” suggests the default expectation is that parties will respond to the comments through proceeding submissions, which may be quite substantial.¹ PG&E’s proposed language properly captures a more efficient and simple process for addressing comments.

PG&E suggests that Rule 1.5(a)(4) include greater detail regarding the parties’ opportunity to respond if the assigned Commissioner or Administrative Law Judge seeks to rely on a comment. For example, the draft language can include an opportunity for response.

“The Assigned Commissioner and Administrative Law Judge may invite parties to a proceeding to comment on any matter identified in public comment filed in that ratesetting or quasi-legislative proceeding. If the Assigned Commissioner or Administrative Law Judge seek to rely or act upon a public comment, then the Assigned Commissioner or Administrative Law Judge will establish a process for parties to file comments in response to the issues raised in that public comment.”

In conclusion, PG&E is seeking a simple, functional standard to ensure that admission of public comments does not deny the parties the opportunity to test the truthfulness of the statement. PG&E is concerned that by forgoing cross-examination on public comment, the Commission may inadvertently lead to a process that emphasizes public comment over admitted evidence.

¹ As of the date of this letter, Southern California Edison Company’s Application for Authority to Increase its Authorized Revenues for Electric Service in 2021 (Proceeding Number A1908013) received 915 individual comments.

B. Rule 2.9- Requests for Expedited Schedule

PG&E prefers Option B because this option provides more flexibility as to the timing of the determination.

C. Rule 3.6- Tribal Lands Policy

PG&E seeks to honor the spirit and intent of the Tribal Lands Transfer Policy adopted on December 5, 2019 (Policy). The draft implementation guidelines for the Policy are presently receiving comments. The Commission has communicated that it will issue a draft resolution to codify the Policy, for which PG&E expects to provide comments. PG&E proposes edits to the proposed new Section 3.6(i) to encompass any subsequent iterations of the guidelines or policy. PG&E believes this will allow interested parties to concentrate their efforts in their comments on the draft guidelines.

PG&E's suggested changes are in redline:

“Consistent with the Guidelines to the Tribal Lands Transfer Policy, applications to sell real property under Section 851 the Public Utilities Code that is within a California Native American Tribe’s ancestral territories, as recognized by the Native American Heritage Commission (NAHC), shall include:

- (1) A copy of the applicant’s written request to the NAHC to identify Tribes with ancestral territories in the area of the real property.
- (2) A copy of the applicant’s written notice to each identified Tribe’s Tribal Chairman of the applicant’s intent to sell the real property and request to consult with the Tribe regarding the Tribe’s interest in acquiring the real property.
- (3) Documentation of communication between the applicant and each identified Tribe regarding the Tribe’s interest in acquiring the real property, **if any.**”

D. Rule 10.1- Discovery from Parties

As drafted, Rule 10.1 refers to discovery being provided to other parties “subject to privilege.” PG&E suggests a clarifying revision that addresses confidentiality concerns.

“Where it would aid in efficiency and transparency, parties may request that the assigned Administrative Law Judge establish a process whereby discovery requests

and non-confidential discovery responses from parties, subject to privilege, are appropriately distributed to other parties in the proceeding.”

E. Rule 12.1- Proposal of Settlements

PG&E recommends removing the language “all information potentially relevant to the Commission’s evaluation of the settlement” and “any” in both Rule 12.1(a) and 12.1(d) because it is overly broad.

As drafted, these statements could include information regarding confidential settlement negotiations. PG&E supports providing relevant information about settlements that are outside a CPUC proceeding while maintaining protections for confidential settlement information. PG&E suggests the revised rule state:

“ (a) The motion shall contain a statement of the factual and legal considerations adequate to advise the Commission of the scope of the settlement, ~~all information potentially relevant to the Commission’s evaluation of the settlement, including any separate arrangements between parties outside the scope of the proposed settlement but~~ related to issues in the proposed settlement, and of the grounds on which adoption is urged. Resolution shall be limited to the issues in that proceeding and shall not extend to substantive issues which may come before the Commission in other or future proceedings.

(d) ~~The Commission may reject any proposed settlement for failure to disclose all information potentially relevant to the settlement pursuant to section (a).~~ The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.”

These changes will adequately capture the intent of including any agreements reached outside settlements that may impact the Commission’s consideration of a proposed settlement.

F. Rule 13.6- Evidence

PG&E understands that the Commission seeks to clarify and provide guidance on the application of the rules of evidence to improve transparency about the treatment of evidence. However, instead of providing sample guidance, the proposed Rule 13.6 appears to remove all evidentiary standards. PG&E urges the Commission consider

striking the highlighted language because it has the potential to create substantial confusion by removing all consideration of evidentiary rules and standards:

“a) In hearings before the Commission, ~~Although~~ technical rules of evidence, whether statutory, common law, or adopted by court, ~~ordinarily~~ need not be applied. ~~Although evidence need not be excluded merely by application of rules governing admissibility, competency weight, or foundation in the record,~~ †The substantial rights of the parties to fundamental due process and public policy protections shall be preserved.”

PG&E encourages the Commission add protections for evidentiary standards to prevent the creation of a problematic administrative hearing record. Appropriate application of the theories of evidence law can reduce the potential for unfair results. The standards of relevance, credibility, and fairness are important in the adversarial process. There must be standards for what gets admitted into the record. PG&E believes that adding the language “public policy protections” may not be enough to clearly outline the rights of an Administrative Law Judge to create a solid evidentiary record. In addition, PG&E is concerned that the admission of all evidence, regardless of its quality, may create confusion and burden the adjudicative process.

Thank you for your consideration of these comments.

Sincerely,

Ali Ward

Attorney for
PACIFIC GAS AND ELECTRIC COMPANY