



AGENDA
COMMUNITY ADVISORY COMMITTEE MEETING
NOVEMBER 13, 2019
1:00 PM

50 Santa Rosa Avenue, Fifth Floor, Santa Rosa, California

I. CALL TO ORDER

II. PUBLIC COMMENT ON MATTERS NOT LISTED ON THE AGENDA

(Comments are restricted to matters within the Committee jurisdiction. The Committee will hear public comments at this time for up to thirty minutes. Please be brief and limit comments to three minutes.)

III. COMMUNITY ADVISORY COMMITTEE CONSENT CALENDAR

1. Approve September 17, 2019, Draft CAC Meeting Minutes (pg. 5)
2. Recommend that the Board Approve Amended and Restated Power Purchase Agreements with Bodega Energy West, LLC and Petaluma Energy East, LLC Under ProFIT Program (pg. 11)
3. Recommend that the Board Approve First Amendment with Sixth Dimension for Contract Management Services to Increase the Budget by \$74,849 for the Advanced Energy Center (pg. 15)
4. Recommend that the Board Approve First Amendment with Sixth Dimension for Contract Management Services to Increase the Budget by \$49,630 for the 431 E Street Headquarters Project (pg. 23)
5. Recommend Delegation to Negotiate, Execute and Amend a Professional Services Agreement with TerraVerde Energy, LLC to Validate Performance and Evaluate Energy Storage Feasibility of Municipally-owned Solar Facilities (pg. 29)

IV. COMMUNITY ADVISORY COMMITTEE REGULAR CALENDAR

6. Receive Operations Report and Provide Input as Appropriate (pg. 33)
7. Receive Legislative and Regulatory Updates and Provide Input as Appropriate (pg. 47)

8. Receive an Update on Advanced Energy Rebuild and Select an Option for an Advanced Energy Build Program in 2020 to Recommend to the Board for Approval (pg. 51)
9. Presentation and Discussion on PG&E Public Safety Power Shutoffs, Lack of Grid Reliability, Lack of Grid Safety, and Potential Actions by SCP in Response (pg.57)

V. COMMITTEE MEMBER ANNOUNCEMENTS

VI. ADJOURN

DISABLED ACCOMMODATION: If you have a disability which requires an accommodation, an alternative format, or requires another person to assist you while attending this meeting, please contact the Clerk of the Board at (707) 890-8491, as soon as possible to ensure arrangements for accommodation.

COMMONLY USED ACRONYMS AND TERMS

AER	Advanced Energy Rebuild (A program that helps homeowners affected by the October 2017 firestorms rebuild energy efficient, sustainable homes).
CAC	Community Advisory Committee
CAISO	California Independent Systems Operator
CAM	Cost Allocation Mechanism
CCA	Community Choice Aggregation
CEC	California Energy Commission
CleanStart	SCP's default service
CPUC	California Public Utility Commission
DER	Distributed Energy Resource
ERRA	Energy Resource Recovery Account
EverGreen	SCP's 100% renewable, 100% local energy service
Geothermal	A locally-available, low-carbon baseload renewable resource
GHG	Greenhouse gas
GRC	General Rate Case
IOU	Investor Owned Utility (e.g., PG&E)
IRP	Integrated Resource Plan
JPA	Joint Powers Authority
LSE	Load Serving Entity
MW	Megawatt (Power = how fast energy is being used at one moment)
MWh	Megawatt-hour (Energy = how much energy is used over time)
NEM	Net Energy Metering
NetGreen	SCP's net energy metering program
PCIA	Power Charge Indifference Adjustment (<i>This fee is intended to ensure that customers who switch to SCP pay for certain costs related to energy commitments made by PG&E prior to their switch.</i>)
ProFIT	SCP's "Feed in Tariff" program for larger local renewable energy producers
PV	Photovoltaics for making electric energy from sunlight
RA	Resource Adequacy – a required form of capacity for compliance
REC	Renewable Energy Credit – process used to track renewable energy for compliance in California.
SCP	Sonoma Clean Power
TOU	Time of Use, used to refer to rates that differ by time of day and by season

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**DRAFT MEETING MINUTES
COMMUNITY ADVISORY COMMITTEE MEETING
SEPTEMBER 17, 2019
1:00 P.M.**

50 Santa Rosa Avenue, Fifth Floor, Santa Rosa, California

I. CALL TO ORDER

Chair Dowd called the meeting to order at 1:01 p.m.

Committee Members Present: Chair Dowd, Vice Chair Mattinson, and Members Fenichel, Nicholls, Sizemore, Quinlan, and Wells

Staff Present: Geof Syphers, Chief Executive Officer; Michael Koszalka, Chief Operating Officer; Stephanie Reynolds, Director of Internal Operations; and Jessica Mullan, General Counsel

II. COMMUNITY ADVISORY COMMITTEE CONSENT CALENDAR

1. Approve July 23, 2019 minutes of the SCPA Community Advisory Committee meeting
2. Recommend that the Board Approve a New Commercial Rate Structure and Rates for the Remainder of the 2019/2020 Fiscal Year

Motion to approve the September 17, 2019 Consent Calendar by Committee Member Wells

Second: Committee Member Nicholls

Motion Approved: 7-0-0

III. COMMUNITY ADVISORY COMMITTEE REGULAR CALENDAR

3. Recommend that the Board Approve and Delegate Authority to the Chief Executive Officer to Execute a Contract with the Center for Sustainable Energy to Implement a Sonoma and Mendocino County CALeVIP Project in 2020

Programs Manager Nelson Lomeli detailed the partnership with the Bay Area Air Quality Management District, the Northern Sonoma County Air Pollution Control District, the Mendocino County Air Quality Management District, and the Regional Climate Protection Authority that led to the CALeVIP project. The program is an incentive program sponsored by the California Energy

Commission to provide financial incentives for the installation of electric vehicle charging infrastructure. He then detailed the funding request for the project and the agreement with the Center for Sustainable Energy ("CSE") to administer and implement the project. CEO Syphers noted his excitement for this project as it significantly leverages existing SCP Programs budget and will bring charging technology to underserved areas throughout Sonoma and Mendocino Counties.

Committee Member ("CM") Nicholls noted his support for the project and highlighted that many areas in SCP's service territory have limited broadband access, which may impact installation of charging stations due to project requirements that charging data be made available to CSE. CM Mattinson voiced his support on the condition that SCP lobbies for coastal zone access. CM Quinlan asked if the chargers will be smart chargers with load management capabilities (similar to SCP's GridSavvy program), and Programs Manager Lomeli stated that is the intent. CM Sizemore asked how participants will be selected; Programs Manager Lomeli stated that SCP will accept applications once the program is formally opened, then applications will be reviewed based on criteria such as location and proximity to other chargers. CM Mattinson asked about site locations and whether there are any restrictions. Programs Manager Lomeli stated that the project is open to many sites such as private property, workplaces, and local municipalities. Chair Dowd stated that SCP should push for ensuring that chargers are publicly accessible, especially in rural areas that may lack charging infrastructure. CM Sizemore asked if chargers can be installed on public rights of way like roadsides. Programs Manager Lomeli stated he would check with the California Energy Commission on that specific question. Vice Chair Mattinson asked about grid power requirements. CM Wells asked about locating chargers at publicly owned lands like parks; Programs Manager Lomeli noted that local government entities are eligible to participate in the program.

Public comment: none

Motion to Recommend that the Board Approve and Delegate Authority to the Chief Executive Officer to Execute a Contract with the Center for Sustainable Energy to Implement a Sonoma and Mendocino County CALeVIP Project in 2020 by CM Sizemore.

Second: CM Quinlan

Motion passed: 7-0-0

4. Receive Internal Operations and Monthly Financial Report and Provide Input as Appropriate

Director of Internal Operations, Stephanie Reynolds, announced SCP's recent designation as a "Best Place to Work" by the North Bay Business Journal. She then introduced new staff member Ryan Tracey who joined the Procurement team as an Energy Analyst. Director of Public Relations & Marketing, Kate Kelly, gave an update on recent SCP press coverage in print and broadcast media.

CEO Syphers recounted recent outreach to the County of Lake regarding their interest in community choice, and a prospective timeline for Lake County joining SCP should all parties ultimately determine to move forward in the process.

Chair Dowd asked about the public art requirement for the building headquarters and if Committee or Board members would have an opportunity to provide feedback on proposed projects; Director Reynolds detailed the public art review process, which was comprised of SCP staff and two consultants, and that the design has already been selected.

CM Wells asked about Lake County's load numbers, and COO Koszalka stated that the estimate of the Lake County load is approximately 10% of SCP's current load.

Director Reynolds described the ongoing recruitment for positions on the CAC, and the Board's ad hoc committee for this process. CM Mattinson asked about the potential for adding a youth member to the CAC and Director Reynolds stated that staff will be asking the Board to delegate that decision to the CAC.

Vice Chair Mattinson asked about the Municipal Storage Request for Qualifications ("RFQ") and whether the proposal calls for reviewing functionality of existing solar photovoltaic systems; Director of Programs Cordel Stillman stated that the RFQ does address Vice Chair Mattinson's question.

Director Reynolds noted that the Monthly Financials are in preliminary form as the end-of-year audit by SCP's outside auditor, Pisenti and Brinker, is currently underway.

Public comment: none

5. Discuss and Provide Input as Appropriate on the Proposed Successor Program to SCP's NetGreen Program

CEO Syphers introduced the item by giving background on the NetGreen program and subsequent changes in the energy market, particularly in the area of wholesale solar energy pricing, since the program's inception. Director of Customer Service, Erica Torgerson, followed by noting this is a preliminary discussion and she will bring this back to both the CAC and the Board. She then detailed the following staff recommendations for this item:

- Maintain the current NetGreen program net monthly billing process, but evolve the program's annual cash-out to a Net Surplus Compensation

(NSC) cash out process that pays customers a rate closer to wholesale prices when a customer over-generates on an annual basis, but still provides a financial benefit when compared to PG&E's net energy metering program; and

- Following the spring 2020 annual cash out, staff proposes to shift NEM customer to an NSC program for the annual cash out.

CM Wells asked for confirmation that the current program leads to a net loss in income, Director Torgerson confirmed it does. CM Quinlan noted his support for staff's recommendations and suggested that staff develop succinct and non-technical messaging for future presentations on this matter. Vice Chair Mattinson noted his support as well.

CEO Syphers asked the CAC if there were any objections with moving forward with the proposed NetGreen successor program and there were none stated. CM Nicholls requested an outreach plan and marketing plan for stakeholders that may be impacted by the successor program. Chair Dowd suggested that staff involve any affected customers in future discussions around this topic, and make sure that any information is clearly presented to minimize confusion around technically challenging subject matter.

Public Comment: Ben Peters, requested additional public forums given how challenging the subject matter is related to this item and questioned whether changing the program without grandfathering existing customers is legally permitted.

6. Recommend that the Board Adopt a Resolution to Award the Construction Contract for the Advanced Energy Center to the Low Bidder, Agbayani Construction Corporation and Waive Immaterial Bidding Irregularities; Reject Bid Protest from Arntz Builders, Inc.; and Make CEQA Exemption Findings

Programs Manager Chad Asay provided background on the CEC grant and the primary deliverable of building the Advanced Energy Center ("AEC"). He then detailed the scope of work for the construction contract, the bid process, the bid protest, staff's determination that the bid protest lacked merit as the bid irregularities were minor and did not afford a competitive advantage, and the subsequent notice of intent to award to Agbayani Construction.

Chair Dowd asked for additional legal analysis from General Counsel ("GC") Mullan regarding the bid protest, and GC Mullan noted her confidence in staff's recommendation following her review and that of additional outside legal counsel.

Public comment: none

Motion to recommend that the Board adopt a resolution to award the construction contract for the Advanced Energy Center to the low bidder, Agbayani Construction Corporation and waive immaterial bidding

irregularities; reject bid protest from Arntz Builders, Inc.; and make CEQA exemption findings by CM Nicholls

Second: CM Sizemore

Motion passed: 7-0-0

7. Receive Legislative and Regulatory Updates and Provide Input as Appropriate

Director of Regulatory Affairs Neal Reardon updated the Committee on Resource Adequacy proceedings at the CPUC, a proposed Integrated Resource Planning mandate by the CPUC, a recent CPUC decision which denied PG&E the right to charge CCA customers for a rate comparison tool that was not available to SCP customers, and updates to the Self Generation Incentive for vulnerable customers by the CPUC for battery storage and onsite generation for customers in fire-threatened areas.

CEO Syphers provided a legislative update for the session that ended on September 13th, and the status of bills that SCP opposed or supported.

Public comment: none

IV. PUBLIC COMMENT ON MATTERS NOT LISTED ON THE AGENDA

Public comment: none

V. COMMITTEE MEMBER ANNOUNCEMENTS

CM Mattinson announced he will be absent from the October and November meetings.

VI. ADJOURN

Chair Dowd adjourned the meeting at approximately 3:19 p.m.

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Staff Report - Item 02

To: Sonoma Clean Power Authority Community Advisory Committee

From: Rebecca Simonson, Power Services Manager

Issue: Recommend that the Board Approve Amended and Restated Power Purchase Agreements with Bodega Energy West, LLC and Petaluma Energy East, LLC under ProFIT Program

Date: November 13, 2019

Recommendation:

Staff ask the Community Advisory Committee to recommend that the Board:

1. Approve Amended and Restated Power Purchase Agreements ("PPAs") with Bodega Energy West, LLC and Petaluma Energy East, LLC under ProFIT Program to extend the Guaranteed Commercial Operation Dates for the Projects to April 30, 2020 and December 18, 2020 respectively due to permitting and interconnection delays, update and clarify the bonus payment structure under the PPAs and make other conforming changes; and
2. Delegate to the Chief Executive Officer or his designee the authority to execute on behalf of SCP the PPAs, and any other documents necessary to administer the PPAs, including any subsequent amendments that do not change the PPAs prices or terms, provided such documents are in a form approved by the General Counsel and are otherwise consistent with SCP's Joint Powers Agreement and Board-adopted policies.

A copy of the Amended and Restated PPAs are included with this Staff Report as Attachments 1 and 2.

Background:

Sonoma Clean Power ("SCP") entered into Feed-in-Tariff Program ("Pro-FIT") Power Purchase Agreements ("Original PPAs") with Bodega Energy West, LLC and Petaluma Energy East, LLC for two 999.9 kW solar projects located west of Petaluma, CA. These Projects are adjacent to each other and are being developed with the same developer. The Original PPAs were effective as of June 12, 2017.

The expected Commercial Operation Dates (CODs) in the Original PPAs were October 20, 2018 for Bodega Energy West and October 10, 2018 for Petaluma Energy East. The Original PPAs included provisions allowing for a 6-month extension due to unanticipated delays in permitting.

Discussion:

Bodega Energy West, LLC and Petaluma Energy East, LLC have taken commercially reasonable actions to obtain a Conditional Use Permit ("CUP") with the Sonoma County Permit & Resource Management Department ("PRMD"), however delays at PRMD meant that the CUP was not received until June 13, 2019, approximately 18 months past the milestone dates in the Original PPAs. The PG&E completion of interconnection facilities, distribution upgrades, and network upgrade facilities, inspections, and testing timelines have also been delayed from the anticipated timeline. Bodega Energy West, LLC and Petaluma Energy East, LLC have requested COD extensions due to these delays as follows:

- Bodega Energy West: April 30, 2020
- Petaluma Energy East: December 18, 2020

These Amended and Restated PPAs provide the extensions, with new guaranteed CODs listed above. In granting the extensions to Bodega Energy West, LLC and Petaluma Energy East, LLC, SCP has eliminated any additional 6-month extension in the Amended and Restated PPAs other than for reasons related to Force Majeure.

The Projects' developer is also in the process of negotiating financing for the Projects. In connection with such financing, SCP may be asked by the lender and developer to execute consents to collateral assignments. SCP is in the process of reviewing and negotiating the terms of the consent to collateral assignments, and if the CAC and

Board approve the delegation of authority to the CEO or his designee to execute documents necessary to administer the PPA as staff has recommended, the CEO or his designee would have authority to execute such consents on SCP's behalf where SCP reaches acceptable terms with the developer and its lender.

In addition to the specific changes noted above, these Amended & Restated PPAs also:

- Memorialize changes to financing of the project in the Recitals;
- Update project contacts;
- Clarify contract price and bonus payment structure; and
- Detail documentation required to receive bonus payment.

The changes in each of the Amended and Restated PPAs proposed by staff for Bodega Energy West and Petaluma Energy East are like those previously approved by the CAC/Board for the Cloverdale Solar and Malbec project ProFIT projects.

Next Steps

- (1) Secure Board Approval of Amended and Restated PPA for Bodega Energy West, LLC and Petaluma Energy East, LLC.
- (2) Secure Board Approval to delegate authority to the Chief Executive Officer or his designee to execute on behalf of SCP the PPAs, and any other documents necessary to administer the PPAs, including any subsequent amendments that do not change the PPAs prices or terms, provided such documents are in a form approved by the General Counsel and are otherwise consistent with SCP's Joint Powers Agreement and Board-adopted policies.

Fiscal Impact:

There are no fiscal impacts associated with the changes proposed in the Amended and Restated Agreements with Bodega Energy West or Petaluma Energy East, including the extension of the commercial operations dates.

Attachment(s):

- Attachment 1 - Amended and Restated PPA between SCP and Bodega Energy West, LLC.

[Attachments for this item can be accessed through this link or by request from the Clerk of the Board](#)

- Attachment 2- Amended and Restated PPA between SCP and Petaluma Energy East, LLC.

[Attachments for this item can be accessed through this link or by request from the Clerk of the Board](#)



Staff Report - Item 03

To: Sonoma Clean Power Authority Community Advisory Committee

From: Cordel Stillman, Director of Programs

Issue: Recommend that the Board Approve First Amendment with Sixth Dimension for Contract Management Services to Increase the Budget by \$74,849 for the Advanced Energy Center

Date: November 13, 2019

Recommendation:

Recommend approval of a first contract amendment to the professional services agreement with Sixth Dimension for contract management services during the construction of the Advanced Energy Center (AEC).

This First Amendment would add scope, increase the budget for Sixth Dimension by \$74,849 for a new not-to-exceed budget of \$253,584, and extend the term of the agreement from January 30, 2020 to June 30, 2020

Background:

On March 7, 2019, SCP and Sixth Dimension entered into a professional services agreement to provide construction management services during the construction of the Advanced Energy Center. The agreement provided a scope of work that covered the aspects of construction that were known at that time.

Discussion:

Since entering into the agreement, several aspects of constructing the improvements to the site have come to light that will require additional and specialized construction management services. These include:

- 1) The discovery of hazardous construction materials that will require remediation
- 2) The need for a CalGreen inspection to verify the energy efficiency of the improvements
- 3) The need for a commissioning agent to calibrate the building's electrical and mechanical systems
- 4) Materials testing of a specialized nature

Commissioning and specialized materials testing were included in Sixth Dimension's original proposal but were not negotiated at that time in order to determine the extent to which these services would be required. The extent of the need for these services was determined during the design process. The extent to which hazardous materials remediation was not known at the time of contract negotiation and was determined during the design process by means of a hazardous materials inspection. The need for a CalGreen inspection was realized during the building permit process.

Fiscal Impact:

Following the process outlined in the original agreement, Sixth Dimension provided a proposal in the amount of \$74,849 for a new not to exceed amount of \$253,584 for the additional scope of services which SCP staff have determined is reasonable. In addition, due to delays in the start of construction, we are also recommending an extension of contract time from January 31, 2020 to June 30, 2020.

Attachments:

- First Amendment with Sixth Dimension (AEC)

**FIRST AMENDMENT TO THE AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE SONOMA CLEAN POWER AUTHORITY
AND SIXTH DIMENSION, LLC - ADVANCED ENERGY CENTER**

This First Amendment ("First Amendment") to the Agreement for Professional Services (the "Agreement") is entered into between the Sonoma Clean Power Authority ("SCPA"), a California Joint Powers Authority, and Sixth Dimension, LLC, a California limited liability company ("Consultant") as of _____, 2019 ("First Amendment Effective Date"). SCPA and Consultant are, at times individually referred to herein as "Party" and collectively as "Parties".

WHEREAS, the Parties entered into the Agreement dated March 7, 2019 for Consultant to provide construction management services during the construction of SCPA's Advanced Energy Center Project; and

WHEREAS, SCPA now desires to expand and revise the Services provided by Consultant to include specialty materials testing, industrial hygienist services, Cal Green inspection services and Commissioning Services as Additional Services;

WHEREAS, SCPA now also desires to increase the total not-to-exceed amount under the Agreement by seventy four thousand, eight hundred and forty nine dollars (\$74,849), which increases the not-to-exceed amount under the Agreement from one hundred and seventy eight thousand, seven hundred and thirty five dollars (\$178,735) to two hundred and fifty three thousand, five hundred and eighty four dollars (\$253,584);

WHEREAS SCPA now also desires to extend the term of the Agreement from January 31, 2020 to June 30, 2020;

WHEREAS, SCPA now also desires to update Consultant's list of subconsultants under the Agreement; and

WHEREAS, in accordance with section 27 all changes to the Agreement must be in writing and signed by all Parties.

NOW, THEREFORE, the Parties agree as follows:

1. Section 4 (Not to Exceed Amount) of the Agreement is hereby superseded and replaced as follows:
 4. **NOT TO EXCEED AMOUNT.** IN NO EVENT SHALL THE AMOUNT PAYABLE FOR SERVICES PERFORMED DURING THE TERM OF THIS AGREEMENT EXCEED Two Hundred Fifty-Three Thousand, Five Hundred Eighty-Four dollars (\$253,584). This dollar amount is not a guarantee

that SCPA will pay that full amount to Consultant, but is merely a limit of potential SCPA expenditures under the Agreement.

2. Section 5 (Term of the Agreement) of the Agreement is hereby superseded and replaced as follows:

“5. **Term of the Agreement.** The initial term of this Agreement shall be from the Effective Date to June 30, 2020, unless terminated pursuant to Section 6 or amended by a written, executed amendment to the Agreement. Consultant understands and agrees that funding for costs under this Agreement after the end of the current fiscal year is subject to approval by SCPA’s Board of Directors of a budget including such funding, and that SCPA may terminate this Agreement pursuant to Section 6 below if such funding is not approved.”

3. Article 2.2.2 of the Agreement for Professional Services shall be amended as follows:

“2.2.2 Consultant’s subconsultants, Subcontractors (collectively referred to as Subconsultants): Saylor Consulting, Integral Group, Consolidated/ATI, Sensible Environmental Solutions, Gilleran Energy Management.”

4. Exhibit A-1 (Additional Services) attached to this First Amendment is hereby added to the Agreement immediately following section 7.3 in Exhibit A (Scope of Services), and incorporated as part of that Exhibit A.

5. Except as set forth above, all terms and conditions of the Agreement remain in full force and effect.

By signing below, the signatories warrant that each has authority to execute this First Amendment on behalf of their respective Parties, and that this Agreement is effective as of the First Amendment Effective Date.

[SIGNATURES TO APPEAR ON FOLLOWING PAGE]

///

**SONOMA CLEAN POWER
AUTHORITY**

SIXTH DIMENSION, LLC

BY: _____
Geof Syphers
Chief Executive Officer

DATE: _____

APPROVED AS TO FORM

BY: _____
General Counsel

DATE: _____

BY: _____

TITLE
: _____

DATE
: _____

**EXHIBIT A-1
(ADDITIONAL SERVICES)**

- 1** Commissioning and Pre-Construction Services provided by Integral Group:
 - 1.1** Constructability Review: Provide MEP Constructability review as part of preconstruction services of design drawings and specifications.
 - 1.2** Mechanical Equipment and Controls to include the following; 5 packaged RTU Heat Pumps, 1 energy recovery wheel, 2 exhaust fans, 3 split systems, VAV Diffusers, Pressure Independent Modules for VAV diffusers; Building Management System; Indoor Lighting Systems and Controls; Plumbing Equipment and Controls to include the following; Water Heaters, Recirculation Pump
 - 1.3** Provide Commissioning Specifications
 - 1.4** Review:
 - 1.4.1** Control Sequence of Operation
 - 1.4.2** Pre-Functional Testing Plan
 - 1.4.3** Complete Pre-Functional Testing Plan
 - 1.5** Site visits for installation verification
 - 1.6** Create functional performance tests
 - 1.7** Onsite witnessing of functional performance tests
 - 1.8** Commissioning Report
- 2** Materials Testing provided by Consolidated Engineering Laboratories:
 - 2.1** Structural Steel:
 - 2.1.1** Shop Inspection
 - 2.1.2** Field Inspection
 - 2.1.3** Metal Deck/Shear Studs visual inspections
 - 2.1.4** High Strength Bolting pre installation verification
 - 2.2** Epoxy Dowels and Anchors:
 - 2.2.1** Examination of dowel/anchor placement and provide proofload testing
- 3** Industrial Hygienist Services provided by Sensible Environmental Solutions:
 - 3.1** Pre-Construction Services
 - 3.1.1** Site Survey of Existing Hazardous Materials conditions
 - 3.1.2** Samples and tests taken of existing Hazardous Materials that are identified via survey
 - 3.1.3** Provide Hazardous Materials Specifications needed as a result of original site survey
 - 3.2** Meetings:

- 3.2.1 Three budgeted
 - 3.3 Contractor Submittal Review
 - 3.4 Construction Monitoring:
 - 3.4.1 Twelve (12), eight (8) hour shifts budgeted for two mobilizations
 - 3.4.2 Provide Hazardous Materials Management Services and on site inspector.
 - 3.4.3 Pre-start visual inspections, document contractor work procedures and collect daily submittals
 - 3.4.4 Collect daily air samples for asbestos or lead outside of work areas
 - 3.4.5 Final visual clearance inspection for asbestos and lead at completion of abatement operations
 - 3.5 Final Report:
 - 3.5.1 One electronic copy of the Final Hazardous Management Report will be provided
- 4 CALGreen Inspection provided by Gilleran Energy Group:
 - 4.1 Project Coordination
 - 4.2 Construction Phase:
 - 4.2.1 Preconstruction Meeting
 - 4.2.2 Site visit with General Contractor for verification of client's participation in CALGreen program. Documentation used to document the rating for the CALGreen program
 - 4.2.3 Final verification site visit
 - 4.2.4 Track field verification implementation of CALGreen measures
 - 4.2.5 Provide written report to contractor after field visits noting any identified issues discovered during site visits
 - 4.2.6 Review General Contractor provided documentation for each measure
 - 4.2.7 Assemble Contractor and Gilleran Energy documentation and complete a final CALGreen report and "Local Jurisdiction Implementation Verification" form. Provide copies to client and local jurisdiction as appropriate.

END OF EXHIBIT A

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Staff Report - Item 04

To: Sonoma Clean Power Authority Community Advisory Committee

From: Cordel Stillman, Director of Programs

Issue: Recommend that the Board Approve First Amendment with Sixth Dimension for Contract Management Services to Increase the Budget by \$49,630 for the 431 E Street Headquarters Project

Date: November 13, 2019

Recommendation:

Recommend approval of a first contract amendment to the professional services agreement with Sixth Dimension for contract management services during the construction of the Sonoma Clean Power Headquarters Project (431 E Street).

This First Amendment would add scope, increase the budget for Sixth Dimension by \$49,630 for a total not-to-exceed budget of \$597,113, and extend the term of the agreement from September 30, 2020 to March 31, 2021.

Background:

On December 6, 2018 SCP and Sixth Dimension entered into a professional services agreement to provide construction management services during the construction of 431 E Street. The agreement provided a scope of work that covered the aspects of construction that were known at that time.

Discussion:

Since entering into the agreement, several aspects of constructing the improvements to the site have come to light that will require additional and specialized construction management services. These include:

- 1) The discovery of hazardous construction materials that will require remediation
- 2) The need for a CalGreen inspection to verify the energy efficiency of the improvements
- 3) The need for a commissioning agent to calibrate the building's electrical and mechanical systems
- 4) Materials testing of a specialized nature

Commissioning and specialized materials testing were included in Sixth Dimension's original proposal but were not negotiated at that time in order to determine the extent to which these services would be required. The extent of the need for these services was determined during the design process. The extent to which hazardous materials remediation was not known at the time of contract negotiation and was determined during the design process by means of a hazardous materials inspection. The need for a CalGreen inspection was realized during the building permit process.

Fiscal Impact:

Following the process outlined in the original agreement, Sixth Dimension provided a proposal in the amount of \$49,630 for a new not-to-exceed amount of \$597,113 for the additional scope of services which SCP staff have determined is reasonable. In addition, due to delays in the start of construction, staff is also recommending an extension of contract time from September 30, 2020 to March 31, 2021.

Attachment(s):

- First Amendment with Sixth Dimension (SCP Headquarters Project)

**FIRST AMENDMENT TO THE AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE SONOMA CLEAN POWER AUTHORITY
AND SIXTH DIMENSION, LLC - SCP HEADQUARTERS PROJECT**

This First Amendment ("First Amendment") to the Professional Services Agreement (the "Agreement") is entered into between the Sonoma Clean Power Authority ("SCPA"), a California Joint Powers Authority, and Sixth Dimension, LLC a California limited liability company ("Consultant") as of _____, 2019 ("First Amendment Effective Date"). SCPA and Consultant are, at times individually referred to herein as "Party" and collectively as "Parties".

WHEREAS, the Parties entered into the Agreement dated December 6, 2018 for Consultant to provide project management services during the construction of SCPA's Headquarters Project; and

WHEREAS, SCPA now desires to expand and revise the Services provided by Consultant to include specialty materials testing, industrial hygienist services, Cal Green inspection services and Commissioning Services as Additional Services;

WHEREAS, SCPA now also desires to increase the total not-to-exceed amount under the Agreement by forty-nine thousand, six hundred and thirty dollars (\$49,630), which increases the not-to-exceed amount under the Agreement from five hundred and forty-seven thousand, four hundred and eighty-three dollars (\$547,483) to five hundred and ninety-seven thousand, one hundred and thirteen dollars (\$597,113);

WHEREAS SCPA now also desires to extend the term of the Agreement from September 30, 2020 to March 31, 2021;

WHEREAS, SCPA now also desires to update Consultant's list of subconsultants under the Agreement.

WHEREAS, in accordance with section 26 all changes to the Agreement must be in writing and signed by all Parties.

NOW, THEREFORE, the Parties agree as follows:

1. Section 4 (Not to Exceed Amount) of the Agreement is hereby superseded and replaced as follows:

"4. NOT TO EXCEED AMOUNT. IN NO EVENT SHALL THE AMOUNT PAYABLE FOR SERVICES PERFORMED DURING THE TERM OF THIS AGREEMENT EXCEED FIVE HUNDRED NINETY SEVEN THOUSAND, ONE HUNDRED AND THIRTEEN DOLLARS (\$597,113). This dollar amount is not a guarantee that SCPA will pay that full amount to Consultant, but is merely a limit of potential SCPA expenditures under the Agreement."

2. Section 5 (Term of the Agreement) of the Agreement is hereby superseded and replaced as follows:

"5. Term of the Agreement. The initial term of this Agreement shall be from the Effective Date to March 31, 2021, unless terminated pursuant to Section 6 or amended by a written, executed amendment to the Agreement.

Consultant understands and agrees that funding for costs under this Agreement after the end of the current fiscal year is subject to approval by SCPA's Board of Directors of a budget including such funding, and that SCPA may terminate this Agreement pursuant to Section 6 below if such funding is not approved."

3. Article 2.2.2 of the Agreement for Professional Services shall be amended as follows:

"2.2.2 Consultant's subconsultants, Subcontractors (collectively referred to as Subconsultants): Saylor Consulting, Integral Group, Consolidated/ATI, Sensible Environmental Solutions, Gilleran Energy Management."

4. Exhibit A-1 (Additional Services) attached to this First Amendment is hereby added to the Agreement immediately following section 7.3 in Exhibit A (Scope of Services), and incorporated as part of that Exhibit A.

5. Except as set forth above, all terms and conditions of the Agreement remain in full force and effect.

By signing below, the signatories warrant that each has authority to execute this First Amendment on behalf of their respective Parties, and that this Agreement is effective as of the First Amendment Effective Date.

SONOMA CLEAN POWER AUTHORITY

SIXTH DIMENSION, LLC

BY: _____
Geof Syphers
Chief Executive Officer

BY: _____

TITLE: _____

DATE: _____

DATE: _____

APPROVED AS TO FORM

BY: _____
General Counsel

DATE: _____

**EXHIBIT A-1
(ADDITIONAL SERVICES)**

- 1** Commissioning and Pre-Construction Services provided by Integral Group:
 - 1.1** Constructability Review: Provide MEP Constructability review as part of preconstruction services of design drawings and specifications.
 - 1.2** Mechanical Equipment and Controls to include the following; 5 packaged RTU Heat Pumps, 1 energy recovery wheel, 2 exhaust fans, 3 split systems, VAV Diffusers, Pressure Independent Modules for VAV diffusers; Building Management System; Indoor Lighting Systems and Controls; Plumbing Equipment and Controls to include the following; Water Heaters, Recirculation Pump
 - 1.3** Provide Commissioning Specifications
 - 1.4** Review:
 - 1.4.1** Control Sequence of Operation
 - 1.4.2** Pre-Functional Testing Plan
 - 1.4.3** Complete Pre-Functional Testing Plan
 - 1.5** Site visits for installation verification
 - 1.6** Create functional performance tests
 - 1.7** Onsite witnessing of functional performance tests
 - 1.8** Commissioning Report
- 2** Materials Testing provided by Consolidated Engineering Laboratories:
 - 2.1** Drilled Concrete Piers:
 - 2.1.1** Mix Design Review
 - 2.1.2** Pier Holes inspection prior to steel placement
 - 2.1.3** Reinforcing Steel Placement
 - 2.1.4** Concrete Placement
 - 2.1.5** Compression Testing
 - 2.2** Reinforced Concrete:
 - 2.2.1** Mix Design Review
 - 2.2.2** Reinforcing Steel Placement
 - 2.2.3** Concrete Placement and Sampling
 - 2.2.4** Concrete Compression Testing
 - 2.3** Structural Steel:
 - 2.3.1** Shop Inspection
 - 2.3.2** Field Inspection
 - 2.3.3** Metal Deck/Shear Studs visual inspections
 - 2.3.4** High Strength Bolting pre installation verification
 - 2.4** Epoxy Dowels and Anchors:
 - 2.4.1** Examination of dowel/anchor placement and provide proofload testing
 - 2.5** Non -Shrink Grout:
 - 2.5.1** Non-Shrink Grout Placement
 - 2.5.2** Compression Testing
 - 2.6** Structural Wood Seismic-Force-Resisting System (SFRS):
 - 2.6.1** Continuous Inspection
- 3** Industrial Hygienist Services provided by Sensible Environmental Solutions:

- 3.1** Meetings:
 - 3.1.1** Three budgeted
 - 3.2** Contractor Submittal Review
 - 3.3** Construction Monitoring:
 - 3.3.1** Seven, eight (8) hour shifts budgeted for two mobilizations
 - 3.3.2** Provide Hazardous Materials Management Services and on site inspector.
 - 3.3.3** Pre-start visual inspections, document contractor work procedures and collect daily submittals
 - 3.3.4** Collect daily air samples for asbestos or lead outside of work areas
 - 3.3.5** Final visual clearance inspection for asbestos and lead at completion of abatement operations
 - 3.4** Final Report:
 - 3.4.1** One electronic copy of the Final Hazardous Management Report will be provided
- 4** CALGreen Inspection provided by Gilleran Energy Group:
- 4.1** Project Coordination
 - 4.2** Construction Phase:
 - 4.2.1** Preconstruction Meeting
 - 4.2.2** Site visit with General Contractor for verification of client's participation in CALGreen program. Documentation used to document the rating for the CALGreen program
 - 4.2.3** Final verification site visit
 - 4.2.4** Track field verification implementation of CALGreen measures
 - 4.2.5** Provide written report to contractor after field visits noting any identified issues discovered during site visits
 - 4.2.6** Review General Contractor provided documentation for each measure
 - 4.2.7** Assemble Contractor and Gilleran Energy documentation and complete a final CALGreen report and "Local Jurisdiction Implementation Verification" form. Provide copies to client and local jurisdiction as appropriate.

END OF EXHIBIT A



Staff Report - Item 05

To: Sonoma Clean Power Authority Community Advisory Committee

From: Cordel Stillman, Director of Programs
Nelson Lomeli, Programs Manager

Issue: Recommend Delegation to Negotiate, Execute and Amend a Professional Services Agreement with TerraVerde Energy, LLC to Validate Performance and Evaluate Energy Storage Feasibility of Municipally-owned Solar Facilities

Date: November 13, 2019

Recommendation:

- Recommend the Sonoma Clean Power Authority Board of Directors to Delegate Authority to the Chief Executive Officer or his designee to negotiate, execute, and amend a Professional Services Agreement ("PSA") with TerraVerde Energy, LLC ("TerraVerde Energy") using SCP's standard form PSA with the attached scope of work (Exhibit A) and Fee Schedule (Exhibit B),

The scope of work is to analyze and validate performance of municipally-owned solar facilities and conduct a technical feasibility analysis of adding energy storage to the sites. The contract is for \$241,209, with a term of eight months. The Chief Executive Officer or his designee may amend the agreement and increase the not-to-exceed budget by up to \$50,000, if needed.

Background:

At the encouragement of the Board of Directors to engage with SCP's member agencies on solar and resiliency topics, Staff in July 2019 issued a Request for Qualifications ("RFQ") for Consultant Services for Technical Analysis of Municipal Solar and Energy Storage. The RFQ sought qualified consultants to conduct a

technical analysis of existing solar facilities owned by our member municipalities to maximize their value, determine feasibility of adding battery energy storage systems, and identify the requirements and cost to disconnect from the grid during emergency events.

The RFQ drew considerable interest, with seventeen (17) respondents submitting a Statement of Qualifications ("SOQ"). Staff reviewed the SOQs and invited three firms for in-person interviews. From the interviews, Staff engaged with TerraVerde Energy to finalize a scope of work and enter into contract negotiations.

Discussion:

Under the attached scope of work, SCP and TerraVerde Energy is to conduct a technical and feasibility analysis of existing municipally-owned solar facilities in order to:

- verify system performance,
- assess proper and cost-effective tariff (rate) enrollment to maximize value,
- assess in detail the financial and resiliency value of adding a battery energy storage system;
- analyze the infrastructure investments and potential upgrades needed to support a battery energy storage system, and provide an estimate of costs;
- analyze the feasibility for the solar system and the battery to disconnect from the grid (i.e. island) and provide the facility with power during outages;
- analyze the feasibility of utilizing the battery for grid resources when not in resiliency operation;
- recommend charging policies for the battery to maximize value and minimize charging cost; and
- identify the financial tools available to the municipalities to reduce the cost of installing a battery energy storage system, including methods for monetizing the Federal Tax Credit, participating in the Self-Generation Incentive Program (SGIP), and a potential incentive from SCP.

TerraVerde Energy will deliver three reports to each participating municipality that describes the performance and appropriate tariff enrollment of existing solar systems, describes the financial benefits, infrastructure implications, and

considerations of coupling their existing solar system with added energy storage, and identifies all the potential funding sources to install an energy storage system available to municipalities.

Staff's request is that the Community Advisory Committee recommend the Board delegate authority to the CEO or his designee to negotiate and execute a professional services agreement with TerraVerde using the attached Scope of Services (Exhibit A) and Budget & Fee Schedule (Exhibit B).

Fiscal Impact:

The aggregate not-to-exceed amount under this time and materials agreement is \$241,209. Staff has identified 36 sites with existing solar and will verify performance for those sites. However, only 25 of the sites will be analyzed for the addition of a BESS due to factors such as; location, infrastructure, usability, and costs. Table 1 below shows the budget for this agreement by task.

Table 1. Budget by Task

TASK	HRS	SUBTOTAL
Task 1. Collect data for the sites	36	\$6,380
Task 2. Analyze existing municipal solar photovoltaic systems/facilities	786	\$131,033
<i>Task 2 Subtotal Per Site:</i>	21	\$3,541
Task 3. Analyze the addition of energy storage (solar + battery) at NTE 25 Sites	575	\$93,700
<i>Task 3 Subtotal Per Site:</i>	23	\$3,748
Task 4. Financial Tools and Programs to Add Energy Storage	45	\$7,096
Travel and Material Expenses	-	\$3,000
TOTAL NTE		\$241,209

This agreement will be paid from the FY19-20 Programs Budget, under the "Miscellaneous Contracts" category. Staff anticipates the work to be completed in 2020 before the end of the current fiscal year.

Attachments:

- Attachment A – Scope of Services for Professional Services Agreement with TerraVerde Energy, LLC for Municipal Solar + Storage Technical Analysis

[Attachments for this item can be accessed through this link or by request from the Clerk of the Board](#)

- Attachment B – Budget & Fee Schedule for Professional Services Agreement with TerraVerde Energy, LLC for Municipal Solar + Storage Technical Analysis

[Attachments for this item can be accessed through this link or by request from the Clerk of the Board](#)



Staff Report - Item 06

To: Sonoma Clean Power Authority Community Advisory Committee

**From: Stephanie Reynolds, Director of Internal Operations
Geof Syphers, CEO**

Issue: Receive Internal Operations Report and Provide Input as Appropriate

Date: November 13, 2019

RECOMMENDATION:

Informational report only, no action is required.

CURRENT PARTICIPATION RATES:

	10/4/2019		
	Participation %	Opt Out %	Participation % Change
CLOVERDALE INC	83.9%	16.1%	0.0%
COTATI INC	90.7%	9.3%	0.0%
FORT BRAGG INC	82.6%	17.4%	0.0%
PETALUMA INC	89.0%	11.0%	0.0%
POINT ARENA INC	86.0%	14.0%	-0.2%
ROHNERT PARK INC	88.5%	11.5%	0.0%
SANTA ROSA INC	88.8%	11.2%	0.0%
SEBASTOPOL INC	91.0%	9.0%	0.1%
SONOMA INC	86.9%	13.1%	0.0%
UNINC MENDOCINO CO	78.8%	21.2%	0.0%
UNINC SONOMA CO	87.1%	12.9%	0.0%
WILLITS INC	80.7%	19.3%	-0.2%
WINDSOR INC	87.7%	12.3%	0.1%
Grand Total	86.8%	13.2%	0.0%

SCP TEAM ADDS NEW MEMBERS

Since the last CAC meeting, SCP has added two new members to our team. Our newest Programs Manager, Scott Salyer, is busy working with Advanced Energy Rebuild applicants and becoming familiar with our multiple programs. Commercial Accounts Specialist, Scott Lawrence, just joined SCP mid-October and will be part of our Customer Service Team, focusing on commercial customers.

PROGRAMS UPDATES:

Transit Electrification Study

The study is currently underway with the Cadmus Group and the four transit agencies – Santa Rosa CityBus, Petaluma Transit, Sonoma County Transit, and Mendocino County Transit. Staff have reviewed and provided feedback on the early working drafts of the reports. Work is anticipated to wrap up by the end of the year.

CALeVIP

The CALeVIP contract between SCPA and CSE was approved by the Board of Directors at their October 3, 2019 meeting. Staff will now be engaged with CSE and the partnership to finalize program design, and start working on marketing, outreach, and educational strategies. The program is estimated to launch in 2020. Staff encourages property owners and those interested in charging stations to send an email to programs@sonomacleanpower.org for more information on the program.

Lead Locally (CEC Grant)

SCP staff held a preconstruction meeting to schedule and begin preparations for the first phase of construction at the Advance Energy Center, consisting of limited demolition. This demolition will begin in November.

The Lead Locally Research Team is recruiting commercial properties for the Phase 2 Technology Demonstration study on market ready technologies such as; daylighting retrofits, induction cooktops, heat recovery system for dish machines, and phase change materials. The Team has completed the pre-monitoring stage for Phase 1 residential technologies and is now installing those new measures and will begin to study the energy savings at those residential homes.

An open recruitment and application for manufacturers and distributors to display and deploy emerging technologies at the Advanced Energy Center is publicly available until the opening of the Center. This application can be found on the SCP website.

Advanced Energy Rebuild (AER)

The CPUC recently commissioned a study on AER. Under the key takeaways, the report states, "Sonoma Clean Power's Advanced Energy Rebuild program represents an innovative example of how community choice aggregators, utilities, and other interested stakeholders can work together to create meaningful programs that promote energy efficient and zero net energy homes." We are very proud of all of the ingenuity and hard work that is making this program a success and one to be duplicated in other areas following natural disasters. The full case study is included as an attachment to this staff report.

Currently, 272 homes have applied for Advanced Energy Rebuild, about one third of which have chosen to rebuild all-electric homes. Staff is continuing work with PG&E to outline the framework for a 2020 program offering.

Low Carbon Reach Codes

On October 16th, Windsor became the first town in Sonoma County to vote to require new homes built in their jurisdiction to use high efficiency electric equipment, reducing the greenhouse gas emissions of new homes by more than two thirds. Santa Rosa, Petaluma, Cloverdale, and Healdsburg continue to evaluate options for all-electric reach codes as well. The City of Santa Rosa decided to delay a vote citing the planned public safety power shutoff and noting that some additional time would be helpful.

Induction Cooktop Checkout

The induction cooktop program continues to be popular with steady check outs of the devices. To date, 155 cooktops have been checked out by customers. The induction cooktops are available for customers to check out from the Daily Acts offices in Petaluma, as well as the SCP offices. Program Staff is searching for the right partner to make the induction cooktops available throughout our service territory, including a partner in Mendocino County.

DIY Energy & Water Savings Toolkits

Due to an announcement in the annual Power Content Label that was mailed to all our customers, there was a significant increase in demand for the DIY Energy & Water Savings Toolkits. The libraries are reporting they have a waitlist of 10-15 people! To

help alleviate the demand, Staff is adding two kits to both Sonoma and Mendocino County. This brings us to 32 kits in circulation in Sonoma County and 13 kits in circulation in Mendocino County. Since late 2016, the kits have been checked out 730 times. As the temperature starts to drop and lights turn on earlier and stay on longer, the kits provide options to be more efficient while staying comfortable.

COMMUNITY ADVISORY COMMITTEE RECRUITMENT

The ad hoc committee of the Board of Directors met and reviewed the applications SCP had received to date. The original deadline for applications was October 14th and the ad hoc committee extended that period until November 1st to allow for a larger pool of applicants. The first round of interviews has been scheduled. The ad hoc also changed the date for recommending applicants to the Board of Directors to December 5th.

BACKUP POWER SYSTEMS FOR PUBLIC SAFETY POWER SHUTOFFS

Staff have anecdotally learned of many new installations of back-up power systems to keep the lights on in homes during PG&E shutoffs. To date, it appears that most of these systems are portable gasoline or diesel generators of the type sold in hardware stores, or natural gas generators for whole-house systems. Staff wish to encourage all SCP customers to consider using solar photovoltaics with batteries instead, and at least to get price information for this option. In addition, we ask people to encourage their families, friends and neighbors to please read and follow all safety instructions for operating generators.

MONTHLY COMPILED FINANCIAL STATEMENTS FOR JULY, 2019

July marks the first month of the 2019/20 fiscal year. The year-to-date growth in net position is slightly above projections due primarily to higher than anticipated electricity sales. Year-to-date electricity sales reached \$16,355,000.

SCP maintains a balanced portfolio by procuring electricity from multiple sources. Net position reached a positive \$93,260,000, which indicates healthy growth as SCP continues to make progress towards its reserve goals. Of this net position, approximately \$61,601,000 is set aside for reserves (Operating Reserve: \$51,206,000; Program Reserve: \$9,240,000; and Collateral Reserve: \$1,154,000). Additional

contributions to these reserve accounts relating to fiscal year 2018/19 surpluses will be made after the completion of the audit for that year.

Overall, other operating expenses continued near or slightly below planned levels for the year.

BUDGETARY COMPARISON SCHEDULE FOR JULY, 2019

The accompanying budgetary comparison includes the 2019/20 budget approved by the Board of Directors in June 2019.

The budget is formatted to make comparisons for both the annual and the year-to-date perspective. The first column, 2019/20 YTD Budget, allocates the Board approved annual budget at expected levels throughout the year with consideration for the timing of additional customers, usage volumes, staffing needs etc.

Revenue from electricity sales to customers is greater than the year-to-date budget by approximately 3%.

The cost of electricity is approximately 6% less than the budget-to-date. Variation in this account is typically due to fluctuating market cost of energy on open position purchases, and is expected to decline as more months of the fiscal year are reported.

Major operating categories of Data Management fees and PG&E Service fees are based on the customer account totals and are closely aligned to budget.

In addition to the items mentioned above, SCP continues its trend of remaining near or under budget for most of its operating expenses.

ATTACHMENTS:

July, 2019 Financial Statement and Budgetary Comparison

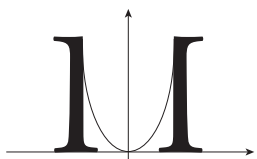
UPCOMING MEETINGS:

Board of Directors Meeting - Thursday, November 14, 2019 at 8:45 AM (Off regular schedule)

CAC - Friday, November 22, 2019 at 1:00 PM

Board of Directors Meeting - Thursday, December 5, 2019 at 8:45 AM

CAC - Wednesday, December 18, 2019 at 1:00 PM



ACCOUNTANTS' COMPILATION REPORT

Board of Directors
Sonoma Clean Power Authority

Management is responsible for the accompanying special purpose statement of Sonoma Clean Power Authority (a California Joint Powers Authority) which comprise the budgetary comparison schedule for the period ended July 31, 2019, and for determining that the budgetary basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statement nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, a conclusion, nor provide any assurance on this special purpose budgetary comparison statement.

The special purpose statement is prepared in accordance with the budgetary basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. This report is intended for the information of the Board of Directors of Sonoma Clean Power Authority.

Management has elected to omit substantially all of the note disclosures required by accounting principles generally accepted in the United States of America in these interim financial statements. Sonoma Clean Power Authority's annual audited financial statements include the note disclosures omitted from these interim statements. If the omitted disclosures were included in these financial statements, they might influence the user's conclusions about the Authority's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

Maher Accountancy

San Rafael, CA
September 18, 2019



SONOMA CLEAN POWER AUTHORITY
OPERATING FUND
BUDGETARY COMPARISON SCHEDULE
July 1, 2019 through July 31, 2019

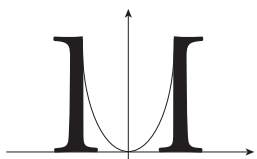
	2019/20 YTD Budget	2019/20 YTD Actual	2019/20 YTD Budget Variance (Under) Over	2019/20 YTD Actual/ Budget %	2019/20 Budget	2019/20 Budget Remaining
REVENUE AND OTHER SOURCES:						
Electricity (net of allowance) *	\$ 15,837,104	\$ 16,318,927	\$ 481,823	103%	\$ 187,866,000	\$ 171,547,073
Evergreen Premium (net of allowance)	38,019	36,381	(1,638)	96%	451,000	414,619
CEC Grant	396,667	26,927	(369,740)	7%	4,760,000	4,733,073
BAAQMD grant	8,333	-	(8,333)	0%	100,000	100,000
Interest income	84,250	110,088	25,838	131%	1,011,000	900,912
Total revenue and other sources	16,364,373	16,492,323	127,950	101%	194,188,000	177,695,677
EXPENDITURES AND OTHER USES:						
CURRENT EXPENDITURES						
Cost of energy and scheduling	15,001,649	14,127,317	(874,332)	94%	152,301,000	138,173,683
Data management	263,167	265,268	2,101	101%	3,158,000	2,892,732
Service fees- PG&E	80,083	79,916	(167)	100%	961,000	881,084
Personnel	360,833	292,989	(67,844)	81%	4,330,000	4,037,011
Outreach and communications	90,000	60,057	(29,943)	67%	960,000	899,943
Customer service	30,583	26,471	(4,112)	87%	367,000	340,529
General and administration	97,083	92,049	(5,034)	95%	505,000	412,951
Legal, regulatory and compliance	77,167	114,489	37,322	148%	926,000	811,511
Accounting	17,583	9,672	(7,911)	55%	211,000	201,328
Legislative	6,500	6,500	-	100%	78,000	71,500
Other consultants	13,333	12,240	(1,093)	92%	160,000	147,760
CalCCA Trade Association	36,667	27,500	(9,167)	75%	440,000	412,500
Program implementation	283,333	3,926	(279,407)	1%	3,400,000	3,396,074
Program - CEC grant	746,667	144,489	(602,178)	19%	8,960,000	8,815,511
Program development and evaluation	4,167	-	(4,167)	0%	50,000	50,000
Total current expenditures	17,108,815	15,262,883	(1,845,932)	89%	176,807,000	161,544,117
OTHER USES						
Capital outlay	725,000	30,012	(694,988)	4%	8,700,000	8,669,988
Total expenditures, Other Uses and Debt Service	17,833,815	15,292,895	(2,540,920)	86%	185,507,000	170,214,105
Net increase (decrease) in available fund balance	\$ (1,469,442)	\$ 1,199,428	\$ 2,668,870	-82%	\$ 8,681,000	\$ 7,481,572

* Represents sales of approximately 206,000 MWh for 2019/20 YTD actual.

	Current Balance	% of FY Target	FY Target Balance
RESERVES			
Operating Cash Reserve	\$ 51,205,860	55%	\$ 92,753,500
Program Cash Reserve	9,240,437	50%	18,550,700
Collateral Cash Reserve	1,154,381	8%	15,230,100
	\$ 61,600,678	49%	\$ 126,534,300

SONOMA CLEAN POWER AUTHORITY
OPERATING FUND
BUDGET RECONCILIATION TO STATEMENT OF
REVENUES, EXPENSES AND CHANGES IN NET POSITION
July 1, 2019 through July 31, 2019

Net increase (decrease) in available fund balance per budgetary comparison schedule:	\$ 1,199,428
Adjustments needed to reconcile to the changes in net position in the Statement of Revenues, Expenses and Changes in Net Position:	
Subtract depreciation expense	(5,374)
Add back capital asset acquisitions	<u>147,574</u>
Change in net position	<u>\$ 1,341,628</u>



ACCOUNTANTS' COMPILATION REPORT

Management

Sonoma Clean Power Authority

Management is responsible for the accompanying financial statements of Sonoma Clean Power Authority (a California Joint Powers Authority) which comprise the statement of net position as of July 31, 2019, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

Management has elected to omit substantially all of the note disclosures required by accounting principles generally accepted in the United States of America in these interim financial statements. Sonoma Clean Power Authority's annual audited financial statements include the note disclosures omitted from these interim statements. If the omitted disclosures were included in these financial statements, they might influence the user's conclusions about the Authority's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

Maher Accountancy

San Rafael, CA

September 18, 2019



SONOMA CLEAN POWER AUTHORITY

STATEMENT OF NET POSITION

As of July 31, 2019

ASSETS

Current assets

Cash and cash equivalents	\$ 44,895,482
Investment in Sonoma County Investment Pool	15,489,074
Accounts receivable, net of allowance	17,860,966
Other receivables	435,914
Accrued revenue	9,546,802
Prepaid expenses	1,600,333
Deposits	332,079
Investments	10,231,562
Total current assets	<u>100,392,212</u>

Noncurrent assets

Land	860,520
Capital assets, net of depreciation	4,266,410
Deposits	5,459,242
Total noncurrent assets	<u>10,586,172</u>
Total assets	<u>110,978,384</u>

LIABILITIES

Current liabilities

Accounts payable	1,475,414
Accrued cost of electricity	14,816,555
Advanced from grantors	444,625
Other accrued liabilities	552,468
User taxes and energy surcharges due to other governments	429,137
Total current liabilities	<u>17,718,199</u>

NET POSITION

Investment in capital assets	5,126,930
Unrestricted	<u>88,133,255</u>
Total net position	<u>\$ 93,260,185</u>

SONOMA CLEAN POWER AUTHORITY
STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
July 1, 2019 through July 31, 2019

OPERATING REVENUES

Electricity sales, net	\$ 16,318,927
Evergreen electricity premium	36,381
Grant revenue	26,927
Total operating revenues	<u>16,382,235</u>

OPERATING EXPENSES

Cost of electricity	14,127,317
Staff compensation	313,801
Data manager	265,268
Service fees - PG&E	79,916
Consultants and other professional fees	37,633
Legal	114,489
Communications	86,528
General and administration	120,369
Depreciation	5,374
Total operating expenses	<u>15,150,695</u>
Operating income	<u>1,231,540</u>

NONOPERATING REVENUES (EXPENSES)

Interest income	<u>110,088</u>
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CHANGE IN NET POSITION

	1,341,628
Net position at beginning of period	<u>91,918,557</u>
Net position at end of period	<u>\$ 93,260,185</u>

SONOMA CLEAN POWER AUTHORITY

STATEMENT OF CASH FLOWS

July 1, 2019 through July 31, 2019

CASH FLOWS FROM OPERATING ACTIVITIES

Receipts from electricity sales	\$ 16,609,551
Receipts from grantors	402,734
Tax and surcharge receipts from customers	213,506
Payments to purchase electricity	(12,555,820)
Payments for staff compensation	(435,848)
Payments for contract services	(896,913)
Payments for communications	(147,397)
Payments for general and administration	(156,100)
Return of security deposits to suppliers	(14,600)
Tax and surcharge payments to other governments	(286,651)
Net cash provided (used) by operating activities	<u>2,732,462</u>

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

Acquisition of capital assets	<u>(81,162)</u>
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CASH FLOWS FROM INVESTING ACTIVITIES

Interest income received	<u>142,817</u>
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Net change in cash and cash equivalents (including County Investment Pool)	2,794,117
Cash and cash equivalents at beginning of year	<u>57,590,439</u>
Cash and cash equivalents at end of year	<u>\$ 60,384,556</u>

Reconciliation to the Statement of Net Position

Cash and cash equivalents	\$ 44,895,482
Investment in Sonoma County Investment Pool	<u>15,489,074</u>
Cash and cash equivalents	<u>\$ 60,384,556</u>

SONOMA CLEAN POWER AUTHORITY
STATEMENT OF CASH FLOWS (continued)
July 1, 2019 through July 31, 2019

**RECONCILIATION OF OPERATING INCOME TO NET
CASH PROVIDED BY OPERATING ACTIVITIES**

Operating income	\$ 1,231,540
Adjustments to reconcile operating income to net cash provided (used) by operating activities	
Depreciation expense	5,374
Revenue reduced for uncollectible accounts	125,254
(Increase) decrease in net accounts receivable	(737,310)
(Increase) decrease in other receivables	643,977
(Increase) decrease in accrued revenue	862,349
(Increase) decrease in prepaid expenses	16,803
Increase (decrease) in accounts payable	(396,857)
Increase (decrease) in accrued cost of electricity	376,847
Increase (decrease) in accrued liabilities	688,280
Increase (decrease) in user taxes and energy surcharges due to other governments	(69,195)
Increase (decrease) in supplier security deposits	(14,600)
Net cash provided (used) by operating activities	<u>\$ 2,732,462</u>

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Staff Report - Item 07

To: Sonoma Clean Power Authority Community Advisory Committee
From: Neal Reardon, Director of Regulatory Affairs
Issue: Receive Regulatory and Legislative Updates and Provide Input as Appropriate
Date: November 13, 2019

Requested Committee Action:

Receive Legislative and Regulatory Updates and Provide Input as Appropriate

REGULATORY REPORT

PG&E Energy Resource Recovery Account (ERRA)

PG&E submitted an Application for approval of 2020 ERRA revenue requirements in June. This Application proposes to raise the PCIA charged to departing customers significantly (SCP's 2014 vintage residential customers would pay 60% more in PCIA than they do today). SCP and a coalition of Northern California CCAs are heavily engaged in this proceeding and have retained external consultants who can review PG&E's confidential work papers to assist us in our defense. We have already identified a significant amount of areas where the Application deviates from required practice and previous precedent.

A pre-hearing conference was held on August 15th. Testimony was submitted on September 10th, with PG&E's Rebuttal served on September 24th. Evidentiary Hearings to address disputed issues of fact and law were held from September 30th to October 2nd. Most notably, PG&E conceded under cross examination that a credit to customers for Resource Adequacy should be \$220 million more than they originally calculated. This credit would be shared by all customers.

Opening and reply briefs will be due October 21st and 31st. The Commission intends to resolve and implement rates by January 1st of 2020.

Resource Adequacy (RA)

A Motion for Approval of a Settlement was filed with the CPUC by a diverse group of stakeholders, including CalCCA, SDG&E, Shell Energy, and Calpine. This Settlement outlines the terms by which a Central Procurement Entity ("CPE") would purchase RA on behalf of LSEs which did not do so on their own accord. It is in direct response to a proposal denied by the Commission earlier this year to implement a central buyer for all RA, regardless of LSEs' desire to enter into their own contracts. Following that vote, the Commission directed stakeholders develop their own version of a central buyer framework for RA.

Comments on the Central Buyer Settlement were submitted on September 30th, with replies due October 15th. Following that stakeholder feedback, the Commission may modify, adopt, or deny the settlement proposal. It should be noted that the Settlement does not propose which entity should function as the CPE (e.g. an IOU, a new or existing State agency), but details the responsibility, function, and timing of actions. As proposed, the Central Procurement Entity would assume responsibility in 2021 for the 2022 Resource Adequacy year.

In addition to the discussion of a central buyer, the Commission issued a Proposed Decision modifying the rules governing RA imported from out-of-state resources. This proposal would only deem import RA eligible if the resources under contract were delivering energy during times of peak need. Thus it would blend a capacity product with an energy one. In addition to nullifying the value of existing contracts for import RA, this proposal raises issues around Interstate Commerce laws and may provoke FERC intervention. SCP worked through CalCCA to file comments.

Integrated Resource Planning (IRP)

On July 22nd, 44 stakeholders submitted over 700 pages of comments on a CPUC Ruling initiating a procurement track and seeking comment on potential reliability issues. The Ruling described a near-term need for 2,000 MW of capacity to ensure reliability, and proposed – as a partial solution – to direct SCE to procure 500 MW of capacity in the near term. The ruling posed a series of questions to parties intended

to answer this central question of whether a need exists, when it will materialize, and appropriate measures to mitigate it.

Following responses to this Ruling, the Commission recently issued a Proposed Decision which would extend the planned retirement dates of Once-through-cooling facilities for up to three years. In addition, it would order all LSEs in Southern California Edison territory to procure 2,500 MW of qualifying capacity - 60% of this by August of 2021, 80% by Aug. of 2022, and the remainder by Aug. of 2023. CalCCA is submitted a response to this proposal recommending a slower pace of procurement (20% in 2021 as opposed to 60%) among other changes.

LEGISLATIVE REPORT

Nothing to report.

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Staff Report - Item 08

To: Sonoma Clean Power Authority Community Advisory Committee

**From: Cordel Stillman, Director of Programs
Scott Salyer, Programs Manager**

**Issue: Receive an Update on Advanced Energy Rebuild and Select an Option
for an Advanced Energy Build Program in 2020 to Recommend to the
Board for Approval**

Date: November 13, 2019

Recommendation:

- Receive an update on Advanced Energy Rebuild
- Select an Option to Recommend for Board Approval for an Advanced Energy Build Program in 2020, available for residential new construction decarbonization and battery storage and based on the current Advanced Energy Rebuild program:
 - Option 1: Maximum Budget Amount of \$1,200,400 for 200 homes; or
 - Option 2: Maximum Budget Amount of \$2,816,500 for 500 homes.

Background:

Advanced Energy Rebuild (AER) Update:

In late 2017, local architects, fire survivors, environmental activists and politicians approached SCP staff to ask for financial assistance to help rebuild low carbon, sustainable homes. Based on those conversations, SCP engaged the Bay Area Air Quality Management District (BAAQMD), and PG&E to develop the Advanced Energy Rebuild Program for victims of the October 2017 fires.

As currently structured, the AER program offers two incentive levels--\$7,500 for homeowners rebuilding with natural gas or propane and \$12,500 for homeowners rebuilding all-electric homes. The program also offers a \$5,000 bonus incentive for any homeowners that install solar panels plus battery storage.

To date, the program has achieved 180 applications (7% of permitted projects), 31% of which are all-electric, and reserved \$1,5912,250 of incentive dollars. The projects include 180 electric vehicle charging stations, 332 kW of solar PV, and 342 kWh of battery storage. An average home participating in Advanced Energy Rebuild is estimated to be 26% more efficient than a standard home, saving \$650 on electricity bills, offsetting 14 metric tons of CO₂. Based on the success of the AER program, Advanced Energy Rebuild is now also being offered by PG&E and SCE for all areas in their service jurisdictions affected by wildfires.

In February 2018, SCP's Board committed six million dollars to fund Advanced Energy Rebuild, to be spent over three years. This is supplemented by approximately 30 million dollars in funding from PG&E and 2 million dollars in funding from BAAQMD. Through the end of 2019, Staff expects about two million dollars of the Board-approved SCP allocation to be spent.

Discussion:

Proposed Advanced Energy Build Program:

With PG&E committing to fund Sonoma and Mendocino county projects at the same level that they are funding their remaining jurisdictions, SCP has the opportunity to

re-allocate our portion of funds that were previously earmarked for Advanced Energy Rebuild incentives to expand this program model to our larger service territory.

More broadly, with California's goal of having all new residential construction be zero net energy (ZNE) by 2020, there is a strong need for supporting residents in meeting these objectives. At the same time, the overproduction of solar in the middle of the day means that energy storage will need to play a larger role. Moreover, as residents prepare for potential power shutdowns, this program will encourage them to build resilient homes that use clean battery power rather than air-polluting generators. California has also set a goal of five million zero energy vehicles and 250,000 charging stations by 2030. The home-based charging stations encouraged by Advanced Energy Build will help meet these goals.

The Advanced Energy Build program is proposed to have an incentive structure with the incentive options outlined below, and would be available to new residential construction, ADUs (at half the below incentive levels), and multifamily units (at half the below incentive levels) in Sonoma and Mendocino counties. The program would strive to go beyond typical energy efficiency program requirements to be inclusive of battery storage, EV charging, and electrification and act as a one-stop-shop for incentives in the SCP service territory. Staff will be able to leverage the processes that have been established and lessons learned during implementation of Advanced Energy Rebuild to accelerate SCP's launch of the Advanced Energy Build program and, if granted approval by the Board, could launch the Advanced Energy Build Program as early as the First Quarter of 2020. As contemplated, the program would have a one year term, with applications needing to be submitted by December 31st, 2020.

<u>Program Incentive Option</u>	<u>Requirements</u>	<u>Total Incentive to Customer (Single Family Home)</u>	<u>Total Incentive to Customer (Multifamily or ADU)</u>
Advanced Energy Home (Home using Natural Gas or Propane)	Delta EDR of 1.0, Pre-wiring for future electrification, EV charger	\$1,000.00	\$500.00
All Electric Home	Delta EDR of 1.0, EV Charger	\$3,500.00	\$1,750.00
Kicker for Renewable Energy	7.5 kWh battery storage	\$1,000.00	\$500.00

Based on the success of the Advanced Energy Rebuild program, staff is proposing the creation of the Advanced Energy Build Program utilizing a portion of the unspent Advanced Energy Rebuild program funds (unspent AER funds anticipated at approximately 4 million dollars).

SCPA Staffing Impact:

As with AER, staff will need to negotiate a contract with a vendor to administer the program and any program partners, to among other tasks, manage program invoicing and project tracking, provide reporting support and participate in meetings, as needed, lead project enrollment and review processes and conduct outreach and marketing activities, upon request

Staff expects to serve a similar role for the Advanced Energy Build program as they are currently serving for the Advanced Energy Rebuild program. This includes initial meetings with interested customers, initial technical assistance for interested customers and/or developers, program management, and program marketing via events, social media, and e-mail campaigns.

This program is anticipated to involve the following SCPA departments: Programs, Customer Service, and Marketing. The Programs team staff time commitment will vary based on the volume of participating customers, but Staff anticipates approximately 1-3 hours per workday of staff time will be needed for this program. The Customer Service and Marketing teams will be leveraged as needed to help

facilitate the program's success (anticipated 4-5 hours of monthly staff time for these departments).

Fiscal Impact:

Staff has included total projected yearly budget for Advanced Energy Build in the below chart, with staff's recommended option funding 500 participating residences through the program. An alternative, with only 200 participating residences is also included.

<u>Homes Included in Budget</u>	<u>Budget for Program Management</u>	<u>Budget for Incentives</u>	<u>Total Budget</u>	<u>Projected GHG Reduction (not including battery storage)</u>
Option #1 200	\$300,400	\$900,000	\$1,200,400	2541.33 MT CO ₂ e
Option #2 500	\$566,500	\$2,250,000	\$2,816,500	6353.33 MT CO ₂ e

The aggregate not-to-exceed amount for the Program \$2,816,500 for a 500-home program, with the break down in program management and incentive budgets as broken down in the chart above. For Alternative #1, the not-to-exceed program budget is \$1,200,400 for a 200-homes.

Staff has currently budgeted \$1,000,000 (with the option of pulling an additional \$1,000,000 in funds from the program reserves) in the current FY19-20 programs budget and \$2,000,000 in the FY20-21 budget towards Advanced Energy Rebuild. As it is anticipated that \$4 million of the \$6 million allocated by the board will remain unspent, staff suggests the board re-allocate a portion of these unspent Advanced Energy Rebuild funds towards the Advanced Energy Build budget.

Environmental Review: Board Approval a 2020 Advanced Energy Build Program does not require California Environmental Quality Act review, because the plan does not meet the definition of a project under Public Resources Code Section 21065 and CEQA Guidelines Section 15378(b)(5), as an administrative governmental activity which will not cause a direct or indirect physical change in the environment.

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Staff Report - 09

To: Sonoma Clean Power Authority Community Advisory Committee

From: Geof Syphers, CEO

Issue: Presentation and Discussion on PG&E Public Safety Power Shutoffs, Lack of Grid Reliability, Lack of Grid Safety, and Potential Actions by SCP in Response

Date: November 13, 2019

Requested Committee Action

Receive a presentation on public safety power shutoff impacts, preliminary information about the Kincade Fire and related evacuations and gas shutoffs, information about grid safety and reliability, and potential options for a response from SCP. Discuss and provide input to staff.

Introduction

This item raises questions about SCP's potential future role in a world where there is growing doubt that PG&E – as it is currently organized – will exist in the near future or is capable of providing safe and reliable electric delivery service. Staff requests Committee input into this question in the context of:

- Lack of Grid Safety. PG&E's transmission and distribution grid infrastructure has not been maintained or upgraded to be capable of operating in modern weather. The result has been a significant increase in fires during high wind events and associated large-scale evacuations and firefighting efforts.
- Lack of Grid Reliability. PG&E's current response to a lack of grid safety is Public Safety Power Shutoffs events, which create widespread economic harm, health and safety risks, potential new fire risks from improperly operated generators, and are expected to be frequent over at least the next ten or more years.

- Questionable Ability to Resolve Grid Problems. PG&E's history of safety violations over the past few decades combined with an extremely high cost of capital raises doubt the company is capable of bringing its grid up to modern standards or whether it can do so without unreasonable rate increases.

This staff report provides a few basic points of information and invites a discussion.

After receipt of Committee and Board input, staff contemplates follow-up both at Committee and Board levels for additional feedback and approvals. At such time, subsequent staff reports will address in more detail the cost implications and policy trade-offs associated with various staff proposals, including, as appropriate identification and assessment of any critical procedural matters and/or legal or regulatory constraints, requirements or other considerations associated with a recommended course of action.

What can/should SCP do to support customers now that PG&E's grid is no longer reliable or safe?

The range of responses is large, from focusing on supporting battery incentives and clean back-up power options to supporting policy for a transition to a customer-owned electric co-op across all of PG&E's territory. Because of the large range of potential responses, staff also ask for input on:

What responses should staff research or consider implementing first?

What is Driving this Discussion?

The new context Sonoma Clean Power finds itself in is one in which there is a real possibility that PG&E will not be our electric distribution company in the near future. The current outlook is uncertain, for instance one of the two hedge fund groups battling for ownership in bankruptcy court may prevail by June 2020, or some form of public ownership may be implemented by Governor Newsom, among other possibilities.

Even in the case where PG&E's current shareholders prevail, things could still change in big ways. Lawmakers and the CPUC have stated they intend on making major structural changes to PG&E's operations and leadership, while a majority of the current shareholders are now speculative hedge funds which hold a very high expectation for profit. Such an expectation could compete with efforts to invest in safety.

In addition to changes in the entity providing electric distribution services, the machine we refer to as "the grid" will present challenges related to resolution of fire liability and safety to whoever operates it.

Lack of Grid Safety

PG&E's grid is increasingly proving to be unsafe. SCP's customers have experienced the Kincade Fire this year in addition to the devastating complex of fires in 2017. Fire risks are also high throughout much of PG&E's territory, with new fires in 2019 and significant property loss, despite an extraordinary response from hundreds of fire departments and CalFire.

Thankfully, the Kincade Fire resulted in zero casualties compared the Wine Country fires of 2017 which left 44 people dead. The Kincade fire, which started on October 23, 2019, required the evacuation of Geyserville, Healdsburg, Windsor, northern Santa Rosa, and all of West County. According to the Press Democrat, over 190,000 people were evacuated. Although, approximately 28,000 SCP accounts had been proactively shutoff by PG&E during a Public Safety Power Shutoff, a high voltage line, that may have sparked the fire, was reportedly not de-energized by PG&E. See PG&E's summary of the Electric Incident Report¹ filed with the PUC.

"At approximately 2120 hours on October 23, 2019, PG&E became aware of a Transmission level outage on the Geysers #9 Lakeville 230kV line when the line relayed and did not reclose. At approximately 0730 hours on October 24, 2019, a responding PG&E Troubleman patrolling the Geysers #9 Lakeville 230 kV line observed that CAL FIRE had taped off the area around the base of transmission tower 001/006. On site CAL FIRE personnel brought to the Troubleman's attention what appeared to be a broken jumper on the same tower. PG&E is reporting this incident under the Media Criterion. This information is preliminary."

Although the fire spared lives, preliminary reports from CalFire show 374 structures destroyed, 60 structures damaged, and 78,000 acres burned. This fire created a significant financial and mental hardship for our community.

In response to these new fires, on November 1, 2019, the New York Times reported²:

"For decades, PG&E failed to prioritize public safety," Mr. Newsom said Friday. "Their lack of safety investments left PG&E – and nearly half of Californians – with an antiquated electrical system that is vulnerable to weather events and not at all prepared for the more extreme weather associated with the climate change that has been predicted for the past several decades and is now here."

¹ California Public Utilities Commission.

https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/News_Room/NewsUpdates/2019/IR.pdf

² *California Governor Moves to Reshape PG&E*. Penn, Ivan and Eavis, Peter. New York Times, November 1, 2019

Lack of Grid Reliability

According to PG&E briefing calls, during a PSPS event customers outside the weather impact zone may be included in de-energization to keep the grid in a stable state and balance electric load. For PG&E's October 9th PPS event this included parts of Humboldt where nearly 100,000 customers were de-energized due to transmission line stability issues. Per PG&E, this outage was caused in part by a transmission line down due to pre-planned maintenance. PG&E stated it intends to no longer take lines out of service during "PSPS season" to prevent these type of stability issues, however, PG&E did note that the window to perform maintenance on its lines is shrinking as all lines are needed during summer months and it's hard to perform maintenance during the winter months.

Similarly, during the October 26th event the scale of customer impacts increased significantly due to transmission impacts. Significant grid stability issues led PG&E to reduce load and take transmission lines offline to stabilize the grid. These impacts primarily affected North Bay counties.

During re-energization for the October 29th event, approximately 2,400 customers in Fort Bragg had a brief restoration in power before an additional outage due to voltage challenges and a lack of generation sources connecting Williams to Fort Bragg.

Summary of PPS events in SCP territory for 2019.

PG&E notified SCP that a PPS event and de-energization was initiated for parts of SCP's territory to reduce the risk of wildfire during extreme weather conditions between 2:30 am and 4:30 am on Wednesday, September 25th. Windy conditions were expected to last until 12:00 pm on Wednesday, September 25th. Approximately 711 customers within Santa Rosa were impacted. At approximately 3:00 PM on Wednesday, September 25th PG&E has determined the weather conditions had improved and had given the "all clear" to begin inspecting equipment to determine how quickly they can safely restore service. All customers were re-energized by the end of the day on the 25th.

Two weeks later, PG&E initiated de-energization for parts of SCP's territory to reduce the risk of wildfire during extreme weather conditions beginning at midnight on October 9th with windy weather expected to last until noon on Thursday, October 10th. Approximately 62,000 SCP customers were de-energized throughout 22 cities within Sonoma County, 9 cities in Mendocino County, and throughout portions of unincorporated Sonoma and Mendocino counties. At 2:30 PM on October 10th SCP territory was given the all-clear based on weather conditions to have line inspections begin. All customers were re-energized by the end of the day on Saturday, October 12th. PG&E noted 23 instances (territory wide) of damage to the system, most common was vegetation across lines, down line, or broken transformer arm.

On Wednesday, October 23rd at 3:00 PM, PG&E initiated another de-energization for parts of SCP's territory to reduce the risk of wildfire during extreme weather conditions. Windy conditions were anticipated to last until Thursday, October 24th. Approximately 24,000 SCP customers were de-energized for 14 cities within Sonoma County, 3 cities in Mendocino County, and throughout portions of unincorporated Sonoma and Mendocino counties. At 12:30 PM on Thursday, October 24th SCP's service territory was cleared to begin line inspections and potential re-energization with the caveat that a second PSPS event may occur a few days later for a weather event on Saturday, October 26th. PG&E anticipated full restoration of power by 7:00 PM on Friday but restoration for Sonoma County remained uncertain due to the Kincade Fire. As of 7:30 AM on Saturday, October 26th all customers had been restored except approximately 600 customers in Sonoma County due to the Kincade Fire.

De-energization began at 4:00 PM on Saturday, October 26th for parts of SCP's territory to reduce the risk of wildfire during extreme weather conditions with weather conditions expected to last between 8:00 PM on Saturday the 26th and 11:00 AM on Monday, October 28th. Approximately 114,000 SCP customers were de-energized. An additional 96,000 customer (PG&E territory wide) were impacted due to damage to the system. At 5:30 PM on Sunday, October 27th PG&E announced the potential for another event on Tuesday, October 29th. As of 7:30 AM on Sunday, October 27th all counties had an all clear to begin line inspections. PG&E made attempts to restore power prior to the October 29th event, however, only about 12,000 customers SCP's territory were re-energized prior to the October 29th event.

A wind event beginning on Tuesday, October 29th initiated the fourth PSPS event for October. De-energization began at 7:00 AM on Tuesday, October 29th for Sonoma and Mendocino Counties. Approximately 106,000 SCP customers were impacted by the outage including all customers in Mendocino County. The all-clear for line inspections occurred by 12:30 PM on Wednesday, October 30th. All customers were fully restored by the end of the day on Thursday, October 31st except for approximately 2,000 customers in the active Kincade Fire perimeter.

Such shutoffs disrupt normal life and likely create new risks and costs such as difficulty evacuating elevator buildings, traffic accidents from a lack of power to traffic signals, health risks due to a lack of normal operation of medical devices and medical services, unfunded disruption to schools and businesses, and more. Media has reported that the scale and duration of the PSPS events are unprecedented in the United States—affecting millions people, and PG&E has commented that PSPS events will last another 10 years before the company can bring its grid up to standards that work in today's climate. PG&E later revised that time estimate in the CPUC's emergency meeting on October 18 to 12-14 years.

On an important but technical level, the CPUC has focused the majority of its power reliability work in recent years on requiring a growing amount of capacity or "resource adequacy." These investments in large central power plants have taken a

growing share of ratepayer money, as the cost of energy falls due to the declining price of solar and wind. In contrast, the cost of resource adequacy has risen by over 150% in the past three years and is forecast to exceed \$20 million for SCP in the current fiscal year. It is useful then to reflect that none of these investments in large central facilities help with the new grid reliability problem. This doesn't mean that resource adequacy shouldn't be addressed, but it does mean that it should be prioritized correctly by regulators relative to addressing PSPS events.

PG&E's new grid reliability problem will be addressed only through local actions and investments, significantly by PG&E in bringing its grid up to standards which can operate through modern weather patterns. But customers are not waiting for PG&E to take the next 10-14 years to complete this work. Many are buying hardware store generators or installing natural gas backup power systems. A few are installing solar with batteries. Many more are looking for options and trying to learn about how have reliable access to heat, hot water, internet, lights and everything electricity provides.

Questionable Ability to Solve Grid Problems

For the first time, the Governor and moderate lawmakers are openly questioning PG&E's ability to resolve the major grid safety and reliability problems. The cost of repairing or replacing PG&E's grid is also concerning, particularly if done entirely at PG&E's high cost of equity.

The questions about PG&E's capability appear to arise from the growing record introduced into the bankruptcy and criminal courts and in regulatory venues of an unusual number of safety violations and convictions over decades. As part of PG&E's bankruptcy reorganization process and separately as part of PG&E's criminal probation process, hundreds of documents have been filed describing safety violations and convictions relating to falsifying safety records and concealing evidence. In one class action filing on behalf of pension fund investors³, a 216-page document details evidence that PG&E knowingly and repeatedly violated safety regulations even after being convicted, and that the pattern of those violations led to wildfires in SCP's territory in 2017, the Camp Fire in 2018, and further that those safety violations continued after the 2017 fires. This document goes on to describe how PG&E's tree trimming efforts following the 2017 fires did "not come close to doubling [as was ordered]," and that "After the North Bay fires, PG&E started reporting inflated numbers for tree removal."

Such problems with PG&E are not new. In 2016, the Los Angeles Times reflected back on PG&E's safety record⁴:

³ Third Amended Consolidated Class Action Complaint for violation of the Federal Securities Laws. Civil Action No. 3:18-cv-03509-EJD. For the Lead Plaintiff the Public Employees Retirement Association of New Mexico, May 28, 2019.

⁴ Column: How the criminal conviction of PG&E lets the real wrongdoers go free. August 10, 2016.

"The verdict [six criminal convictions] relates to the 2010 explosion of a PG&E gas pipeline, which leveled a neighborhood in San Bruno and killed eight people. Evidence presented by prosecutors indicated that the utility deliberately misclassified the pipeline, violated safety regulations and misled federal officials about its activities.

[...] PG&E squandered \$46 million on an unsuccessful 2010 campaign to write a regional monopoly for itself into the state Constitution, via the ballot measure Proposition 16; engaged in allegedly illegal back-channel contacts with former Public Utilities Commission President Michael Peevey and other PUC officials, compromising the commission's regulatory work; and diverted some of the \$5 million in ratepayer funds earmarked in 2007 for gas infrastructure upgrades into pay raises for top executives instead. The work was never performed, and subsequently, the gas line under San Bruno blew up."

It appears that PG&E's troubling operational patterns are leading to a new dialog about whether PG&E can or should be the entity to repair the grid. However, there is another dimension to the dialog involving a recognition that past reforms and penalties have failed to cause PG&E to fix its safety record and corporate culture. In July 2019, the Public Advocates Office at the CPUC called on the CPUC to make fundamental changes to PG&E, noting⁵:

Investigations, penalties, convictions, fines, and probations have not worked. Executive shuffling hasn't worked. Reorganizations haven't worked. Replacing and overpaying board members won't work. PG&E is a reactor not a creator. "Driven by immediate needs," it reacts to its failures instead of creating a "comprehensive enterprisewide approach." PG&E's problems are— "not just one-off situations or bad luck," but problems that are "deeper and more systemic"—problems that remain unsolved. PG&E's problems come from its culture. Because its misbehaviors go beyond safety, its safety culture problem is but a symptom of a broader culture problem. PG&E has a culture of entitlement.

The PAO's statements are certainly an inditement of PG&E, but they are also are strongly critical of the CPUC and our legislature for not tackling deeper structural issues before now. The PAO's statement goes on to recommend a serious exploration of four paths:

Path 1: PG&E emerges as franchisee, unconditionally [status quo]

⁵ Motion to Amend June 18, 2019 Assigned Commissioner and Administrative Law Judge's Ruling to Align it with the Scope of the Proceeding, Investigation 15-08-019. Farrar, Darwin. Public Advocates Office, CPUC, July 1, 2019.

- Path 2: PG&E emerges as franchisee, subject to Commission probation
- Path 3: One or more non-PG&E franchisees replaces PG&E, in whole or in part [includes a sale or for-profit takeover and also a public option]
- Path 4: PG&E emerges from bankruptcy with a temporary franchise, with PG&E to be replaced as franchisee after a defined period.

Example Responses by Other CCAs

In response to these circumstances, other local governments, including operating through community choice programs in PG&E's territory are beginning to study their options for contributing to protecting the public from unsafe conditions and for supporting more reliable electricity service. A few have already taken actions or made announcements about upcoming actions:

- San Francisco – The City and County of San Francisco in partnership with CleanPowerSF have offered to purchase PG&E's distribution grid assets within their jurisdiction and municipalize electric service.
- The Mayor of San Jose has issued a letter signed by a number of elected officials around Northern California, calling for the CPUC to explore the formation of a customer-owned electric co-op to replace PG&E.
- Peninsula Clean Energy has announced a \$10 million microgrid program it will launch in the near future to aid in creating improved electric reliability in its territory.
- Yolo County in partnership with Valley Clean Energy has offered to purchase the distribution grid assets in its jurisdiction and municipalize.

Actions SCP is Already Taking

- 1) Assistance to Commercial Customers: Customer Service reported receiving calls from some of our Commercial and Industrial (C&I) customers seeking assistance in preparing for PSPS events. In response, staff are negotiating a small contract with the Center for Sustainable Energy to provide electrical engineering services to C&I customers. These services could take the form of audits to identify critical electric loads and advice on the most economical way to provide back-up power. This contract will be entered into under the CEO's signing authority (under \$100,000). If the program is popular, at a later date, we would consider bringing a more robust program to the Committee and Board for consideration.
- 2) Municipal Solar and Storage: As was previously reported to the Board, staff negotiated a contract with Terraverde Consulting (on this meeting's consent

calendar) to analyze existing municipal solar systems to determine their capability to accept battery storage as an add-on.

- 3) Request for Information for Battery Suppliers: Staff have issued a Request for Information to battery suppliers that will give SCP information about the state of the battery industry and their ability to participate in future programs.
- 4) Residential Battery Program: SCP staff intend to develop a residential battery incentive program to be launched at the beginning of the next fiscal year. The RFI outlined above will be used in the development process. What form the incentive will take (direct to customer, upstream to distributor/manufacturer, lease to customer, etc.) has yet to be determined. Staff will bring back a recommended program in the spring.
- 5) On-Bill Financing: Staff are developing an on-bill financing program which will come to the Board for approval in the first half of 2020. This will allow SCP customers to finance energy upgrades to their homes (including batteries) and pay back the principal on their monthly power bills. This will be started as a pilot program, and depending on participation and success, could be expanded.
- 6) Microgrids: SCP has been receiving calls for assistance with the development of microgrids. Staff are responding as best we can given our limited knowledge of the technical aspects of microgrids. SCP management is considering several paths forward, including hiring technical expertise in the form of new staff and/or consultants.

Potential Additional Responses for SCP

To seed the discussion about potential responses by SCP, staff offer the following ideas for consideration, discussion and input to staff. This list is not intended to be complete, nor do staff recommend trying to pursue any particular action, or all of these actions at this time.

1. Conduct further research and report in detail on all available options. A number of public agencies are tasking staff with reaching out across agencies to coordinate and learn about the various options available, provide information about value and cost, and develop staff proposals for action.
2. Increase our advocacy for standards, laws and regulations that reduce the scale and/or duration of shutoffs where possible, improve customer noticing and access to information, and which support repairing PG&E's grid infrastructure in a cost-effective manner.

3. Design programs that support clean power back-up systems, such as marketing or incentivizing battery storage paired with solar and automatic transfer switches.
4. Information, training, materials or staff level support to customers wishing to create larger-scale back-up power systems and microgrids.
5. Full microgrid assistance, potentially including design support, permitting and code support, funding assistance, etc. This could include hiring an expert in microgrid design and implementation.
6. Officially advocate for the exploration of municipalization, co-op or other form of customer ownership of distribution grid infrastructure, either locally or across all of PG&E's territory.
7. Changes in regulations and laws that make local solutions more affordable, quicker to implement, and more likely to occur (e.g., changes to accelerate the interconnection process.)

Discussion:

Staff asks the Committee to discuss and provide input to staff into whether SCP should further explore and develop options as an agency to change how we serve customers in response to PSPS events, increased fire risk, and the rapidly-changing situation for PG&E. Are any of the actions in the previous section worth exploring in depth? What actions might be most likely to succeed quickly? What actions might have the highest value?

Environmental Review:

Receiving a presentation and providing preliminary input to staff as contemplated by this item is not a project that requires review under the California Environmental Quality Act (CEQA) at this time; however, staff implementation and/or any Committee and Board adoption of subsequent actions may require CEQA review.

Attachment(s):

Attachment 1 - Letter and press release from San Jose Mayor Sam Liccardo

Attachment 2 - Public Advisor's Office brief on pathways for PG&E's future

Attachment 3- New York Times story on restructuring PG&E

Attachment 4- Mother Jones story on shutoffs and microgrids

Attachment 1

November 4, 2019

Hon. Marybel Batjer, President
Hon. Martha Guzman Aceves
Hon. Liane M. Randolph
Hon. Clifford Rechtschaffen
Hon. Genevieve Shiroma

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

President Batjer and Commissioners:

RE: Critical Matters Related to the PG&E Bankruptcy

As local leaders across Northern and Central California, collectively representing more than 5 million residents, we write to you about a matter vital to the safety and quality of life of the communities we serve. While our immediate attention focuses on the recovery of our neighbors and communities from recent tragic fires and power shut-offs, we have serious concerns about whatever emerges from the bankruptcy of Pacific Gas and Electric Company and its parent, PG&E Corporation. We write in our individual capacities as elected and appointed leaders, but as our coalition of local leaders grows in the weeks ahead, we will advocate these positions with our boards and councils as well, and seek their support.

Both the federal bankruptcy code and state law invest the California Public Utilities Commission with a responsibility for approving any Plan of Reorganization for those entities. The Bankruptcy Court may not confirm such a Plan if it involves any rate change (as is the likely case) without this Commission's assent, while recently-enacted state law establishes your approval as a necessary predicate for the emergent entity to have access to the Wildfire Fund. The Commission now plays an essential part in the restoration of Northern California's incumbent utility to a position where it can provide safe, reliable, and affordable power to our citizens.

At present, the Commission is considering the scope of its review. It is focusing primarily on the two plans before it, developed in the Chapter 11 proceeding by competing financial interests. One, from the companies themselves, reflects the current driving forces that govern PG&E, namely financial entities that purchased controlling equity interests as the crisis unfolded. The other is the product of distressed asset bondholders. Both vie for ultimate control, and both reflect a short-term desire to maximize financial gain for their proponents. Neither plan addresses the three key matters that we believe are of utmost importance. They are:

First, the discussions so far have been almost entirely devoid of any consideration of whether PG&E can emerge under either plan as a viable, credit-worthy entity. The bankruptcy code requires that the reorganized PG&E to be a feasible, financially stable enterprise, able to perform its functions for the long term. Under Section 1129 (a)(11) of the Bankruptcy Code, the Court

may not confirm a Plan that does not meet this standard. Even without that mandate, as a matter of public policy, this should be a primary consideration. Rather, the proceedings appear dominated so far by a pitched battle between Wall Street titans for control of the bankruptcy process, control of the company, and the ability to control exit financing. This is merely spectacle, without regard for what will be left behind when the financial players inevitably leave the scene.

Second, the scope of review must include consideration of whether the reorganization plans before you address any of the organic operational issues that have plagued this company to the great detriment of its customers. The public interest cannot be swept aside in the name of merely addressing the bankruptcy exit. The Plan of Reorganization must substantially improve the company's operational footing — boosting its capacity to deliver electricity and gas that meets its customers' reasonable expectations for reliable service, while remaining solvent. This requires aligning the financial interest of the company with the public interest — for focused investment in safe, resilient, well-maintained, and sustainable infrastructure.

So far, neither Plan before you posits a vision for a reorganized PG&E that will address those operational issues.

Third, the Commission has indicated that as part of its review, it will examine “structural” issues involving PG&E's governance. We urge you to embrace this aspect of your review broadly and incisively.

Recently, Governor Newsom declared that “when they come out of bankruptcy, [PG&E] has to be a completely re-imagined company.” We agree. That reimagining must begin now, as part of your review.

In a growing coalition of local community leaders, we are developing a proposed structural change for PG&E that addresses all three of these key elements. Based on a foundation currently in the Public Utilities Code, we will propose transforming PG&E into a mutual benefit corporation – in essence, a cooperative owned by its customers.

We propose a customer-owned utility for three primary reasons. The most compelling rationale is that PG&E correctly estimates it must invest tens of billions of dollars over the next decade for system hardening, wildfire protection and cyber-security. A mutualized PG&E can raise capital from a broad pool of debt financing in amounts substantially greater than can an investor-owned PG&E, and at much lower cost. A customer-owned utility can operate without the burdens of paying dividends to shareholders, and exempt from federal taxation. As a result, a cooperative financial structure will save ratepayers many billions of dollars in financing costs over this next decade. A customer-owned PG&E will better focus its scarce dollars on long-neglected maintenance, repairs, and capital upgrade, and mitigating some part of the substantial upward pressure on rates.

Next, a customer-owned utility structure can be accomplished through a Chapter 11 Plan, with results far superior to those that would be seen from the two plans currently under consideration.

Finally, the customer-owned utility structure would allow PG&E to begin the process of restoring public confidence, in part by allowing the public to have greater role in determining decisions that increasingly have come to define matters of life and death. To the extent that the public continues to believe that a profit motive has dominated PG&E's decision making, the enterprise will never regain the trust of its customers, its regulators, and public policy-makers. It is time to pass control of the company from geographically distant investors to its customers.

Although recent actions bring the urgency of change into sharp relief, we do not pursue this option out of mere anger or angst. Rather, the moment compels PG&E's transformation. AB 1054 was a response to the realization that customers will be called upon to bear billions of dollars of costs associated with wildfire recovery and payment of claims. We face the need for a completely re-engineered and reconstructed system to adapt to the realities of climate change and poorly maintained infrastructure. PG&E cannot meet these challenges if it stumbles out of bankruptcy, barely able to raise capital, and suffering prohibitive costs.

There is a better way, and we want you to consider it. Your proceeding is that opportunity. We urge that it not be a cramped or limited exercise, focused solely on getting through the current Chapter 11 case.

We stand ready to participate in these proceedings, and to work with you. However, we again urge that the scope of your inquiry must address these broader and compelling matters that go well beyond the immediate desire to simply get through the bankruptcy proceeding. The Commission must do more than approve a Plan – any Plan – merely so that the bankruptcy can be concluded. This situation requires a full and comprehensive effort to chart a sustainable course for the future of PG&E, one that will serve the interests of its customers, and position the company to meet the challenges we will face from a changing climate.

Signed:

Mayor Sam Liccardo, City of San José
Mayor Darryl Steinberg, City of Sacramento
Mayor Libby Schaaf, City of Oakland
Mayor Michael Tubbs, City of Stockton
Mayor Ted Brandvold, City of Modesto
Mayor Steve Ly, City of Elk Grove
Mayor Barbara Halliday, City of Hayward
Mayor Larry Klein, City of Sunnyvale
Mayor Jesse Arreguin, City of Berkeley
Mayor Tom Butt, City of Richmond
Mayor Drew Bessinger, City of Clovis
Mayor Randall Stone, City of Chico
Mayor Julie Winter, City of Redding
Mayor Ian Bain, City of Redwood City
Mayor Brett Lee, City of Davis
Mayor Martine Watkins, City of Santa Cruz

President Carole Groom, San Mateo County
Board of Supervisors
Chair Ryan Coonerty, Santa Cruz County
Board of Supervisors
Chair Kate Sears, Marin County Board of
Supervisors
Chair Don Saylor, Yolo County Board of
Supervisors
Chair Mark Medina, San Benito County Board
of Supervisors

Mayor Teresa Barrett, City of Petaluma
Mayor Heidi Harmon, City of San Luis Obispo
Mayor Dominic Foppoli, City of Windsor
Mayor Jack Dilles, City of Scotts Valley
Mayor Amy Harrington, City of Sonoma
Mayor John Dell'Osso, City of Cotati

cc:

Hon. Gavin Newsom, Governor
Hon. Toni G. Atkins, President Pro Tem, California State Senate
Hon. Anthony Rendon, Speaker of the California Assembly
Hon. Ben Hueso, Chair Senate Committee on Energy, Utilities & Communications
Hon. John M.W. Moorlach, Vice Chair Senate Committee on Energy, Utilities &
Communications
Hon. Chris R. Holden, Chair Assembly Committee on Utilities & Energy
Hon. Jim Patterson, Vice Chair Assembly Committee on Utilities & Energy
Administrative Law Judge Peter Allen
Service List I.19-09-016

Note: San José Mayor Sam Liccardo will hold a media availability at 12:15 p.m. at San José City Hall. Please contact Rachel (408-712-9149) if you would like to attend.

FOR IMMEDIATE RELEASE

Media Contact:

Jim Reed, Office of Mayor Sam Liccardo (831) 707-4993, jim.reed@sanjoseca.gov

Rachel Davis, Office of Mayor Sam Liccardo (408) 712-9149, rachel.davis@sanjoseca.gov

Leaders Representing Over 5 Million Californians Call on CPUC to Make PG&E Customer-Owned

Leaders write State's Public Utilities Commission urging to restructure PG&E into a customer-owned utility — aligning PG&E with customer interests instead of investors

San José, Calif. (November 5, 2019) – A coalition of leaders from many of the largest California cities served by Pacific Gas and Electric (PG&E) sent a letter to the California Public Utilities Commission (CPUC), urging exploration of restructuring the investor-owned utility into one owned by California customers. The coalition is led by San José Mayor Sam Liccardo, whose city is the largest in California that is served by PG&E.

The leaders endorsed a proposal for a customer-owned utility ahead of a CPUC review of proposed plans for PG&E's reorganization under consideration in bankruptcy court. Federal bankruptcy code and state law require the CPUC to approve any such Plan of Reorganization for PG&E. The leaders argue that neither of the two plans currently proposed concretely address a vision for a reorganized PG&E that will adequately protect the public's interest and ensure safety, reliability, and affordability over the long-term.

Together, the Mayors and Supervisors write, "what has dominated the proceedings so far is simply a battle being waged between Wall Street titans for control of the bankruptcy process, control of the company, and the ability to control exit financing. This is merely spectacle, without regard for what will be left behind when the financial players inevitably leave the scene."

"This situation requires a full and comprehensive effort to chart a sustainable course for the future of PG&E, one that will serve the interests of its customers, and position the company to meet the challenges we will face from a changing climate."

Collectively representing over 5 million Californians, the leaders are proposing a not-for-profit, customer-owned utility for the following reasons:

1. PG&E correctly estimates it must invest tens of billions of dollars over the next decade -- assets they do not have -- for system hardening, wildfire protection and cyber-security:
 - a. A customer-owned PG&E can raise capital from a broad pool of debt financing at a much lower cost than a private investor-owned company.
 - b. A customer-owned utility can operate without the burdens of paying dividends to shareholders, and is exempt from federal taxation. As a result, a customer-owned financial structure will save ratepayers many billions of dollars in financing costs over this next decade.
 - c. A customer-owned PG&E will better focus its scarce dollars on long-neglected maintenance, repairs, and capital upgrade, and mitigating some part of the substantial upward pressure on utility rates.
2. On Friday, Governor Newsom called for a quick resolution to PG&E's bankruptcy process. Transforming PG&E's structure to a customer-owned utility can be accomplished now, while they are still bankruptcy, with results far superior to those that would be seen from the two plans currently under consideration.
3. The customer-owned structure would allow PG&E to begin the process of restoring public confidence, in part by allowing the public to have a greater role in determining decisions that increasingly have come to define matters of life and death. To the extent that the public continues to believe that that an investor profit motive has dominated PG&E's decision making, the enterprise will never regain the trust of its customers, its regulators, and public policy-makers. It is time to pass control of the company from geographically distant investors to its California customers.

The signatories of the letter are:

- Mayor Sam Liccardo, City of San José
- Mayor Darryl Steinberg, City of Sacramento
- Mayor Libby Schaaf, City of Oakland
- Mayor Michael Tubbs, City of Stockton
- Mayor Ted Brandvold, City of Modesto
- Mayor Steve Ly, City of Elk Grove
- Mayor Barbara Halliday, City of Hayward
- Mayor Larry Klein, City of Sunnyvale
- Mayor Jesse Arreguin, City of Berkeley
- Mayor Tom Butt, City of Richmond
- Mayor Drew Bessinger, City of Clovis
- Mayor Randall Stone, City of Chico
- Mayor Julie Winter, City of Redding
- Mayor Ian Bain, City of Redwood City
- Mayor Brett Lee, City of Davis
- Mayor Martine Watkins, City of Santa Cruz

- President Carole Groom, San Mateo County Board of Supervisors
- Chair Ryan Coonerty, Santa Cruz County Board of Supervisors
- Chair Kate Sears, Marin County Board of Supervisors
- Chair Don Saylor, Yolo County Board of Supervisors
- Chair Mark Medina, San Benito County Board of Supervisors
- Mayor Teresa Barrett, City of Petaluma
- Mayor Heidi Harmon, City of San Luis Obispo
- Mayor Dominic Foppoli, City of Windsor
- Mayor Jack Dilles, City of Scotts Valley
- Mayor Amy Harrington, City of Sonoma
- Mayor John Dell'Osso, City of Cotati

The full letter can be found [here](#).

Mayor Liccardo, San José

“With a customer-owned PG&E, we can align the company’s financial interests with the public interest, and restore reliable, safe utility service for our residents and businesses. I stand with local leaders representing more than 5 million Californians urging the company’s transformation, to put PG&E’s days of underinvestment, mismanagement, and negligence behind us.”

Mayor Libby Schaaf, Oakland

“Every resident in California deserves a reliable utility to deliver power safely and consistently. It’s time to remove PG&E’s investors from our process and take back control for us, the customers. Rather than reorganizing a failed company, I support exploring a new customer-owned utility, that prioritizes people over profits and creates a safe, consistent, power supply for all residents.”

Mayor Darrell Steinberg, Sacramento

"It is important to consider all options as we seek to balance the need to keep Californians safe while avoiding unacceptable mass disruptions in power," said Mayor Darrell Steinberg. "Public ownership is an option worth seriously examining."

Mayor Steve Ly, Elk Grove

“The proposal’s intent is to allow the public to have a greater role in decisions that have come to define matters of life and death. Additionally, this structure will provide an opportunity for PG&E to begin the restoration of public trust. The time has come to pass control of the company from remote investors to its local customers.”

Mayor Tom Butt, Richmond

“The current model for providing gas and especially electric services is simply not working. We need to explore alternatives. Many critical services, such as water, wastewater, fire, police, and transportation are successfully provided by public agencies or public-private partnerships.”

Mayor Michael Tubbs, Stockton

“With continued blackouts, this literally dark period is an opportunity to restructure PG&E by placing control of our power grid into the hands of our residents. Creating a customer-owned entity allows us to put people ahead of profits, safety ahead of dividends and local control ahead of corporate rule.”

Mayor Martine Watkins, Santa Cruz

“As our cities suffer under PG&E’s mismanagement, and California burns, it’s high time we pave a different path. I join my colleagues across northern California in urging the CPUC to transform PG&E into a customer-owned utility.”

Chair Ryan Coonerty, Santa Cruz County Board of Supervisors

“PG&E's focus needs to be on the health and vitality of Californians, not corporate profits. The people of California need to come first and that will never happen if PG&E is captured by hedge funds and investors. A customer-owned utility will properly align values and investment for the good of our communities.”

Mark Landman, Cotati Councilmember

“It’s time to stop paying credit card rates on fixing the grid. A customer-owned utility will help us afford to repair PG&E’s decades of neglect.”

#

Attachment 2

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the
Commission's Own Motion to Determine
Whether Pacific Gas and Electric Company
and PG&E Corporation's Organizational
Culture and Governance Prioritize Safety.

Investigation 15-08-019

**MOTION TO AMEND JUNE 18, 2019 ASSIGNED COMMISSIONER AND
ADMINISTRATIVE LAW JUDGE'S RULING TO ALIGN IT WITH THE SCOPE
OF THE PROCEEDING**

DARWIN FARRAR
Chief Counsel

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July 1, 2019

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the
Commission's Own Motion to Determine
Whether Pacific Gas and Electric Company
and PG&E Corporation's Organizational
Culture and Governance Prioritize Safety.

Investigation 15-08-019
(Filed August 27, 2015)

**MOTION TO AMEND JUNE 18, 2019 ASSIGNED COMMISSIONER AND
ADMINISTRATIVE LAW JUDGE'S RULING TO ALIGN IT WITH
THE SCOPE OF THE PROCEEDING**

I. INTRODUCTION

The California Public Utilities Commission (Commission) initiated this proceeding in August of 2015 in the wake of the Pacific Gas and Electric Company and PG&E Corporation (jointly, PG&E) 2010 gas transmission pipeline explosion in San Bruno, California. The first phase of this proceeding served to evaluate PG&E's organizational culture, governance, policies, practices, and accountability metrics in relation to PG&E's record of operations, including its record of safety incidents. Phase one determined that since PG&E's 2010 San Bruno pipeline explosion, PG&E has repeatedly stated its intention to change its safety culture. The Commission noted that PG&E has made some fragmented progress in developing a safety culture but that PG&E's overall progress is uneven across its gas and electric lines of business, and that while there are many programs underway, they do not yet add up to a consistent, robust, and accountable corporate-wide safety program.¹

On December 21, 2018, the Assigned Commissioner and Administrative Law Judge issued a ruling (Scoping Ruling) identifying the issues to be addressed in the next phase of this proceeding. After setting forth a lengthy but non-exhaustive list of structural, organizational, and

¹ May 8, 2017 Scoping Memo and Ruling of Assigned Commissioner at 1-2.

managerial safety issues, the Scoping Ruling specifically notes that in order to achieve its safety and performance objectives, “the proceeding will also consider all necessary measures, including, but not limited to, a reduction of PG&E’s return on equity until any recommendations adopted by the Commission are implemented.”²

On January 29, 2019, PG&E filed for Chapter 11 bankruptcy protection. On June 18, 2019, the Assigned Commissioner and Administrative Law Judge in this proceeding issued a ruling (June 18, 2019 Ruling) that “establishes a process for parties to comment on proposals that may improve the safety culture of Pacific Gas and Electric Company and PG&E Corporation (PG&E).”³ The June 18, 2019 Ruling solicits comments on four proposals:

- 1) Separating PG&E into separate gas and electric utilities or selling the gas assets;
- 2) Establishing periodic review of PG&E’s Certificate of Public Convenience and Necessity (CPCN);
- 3) Modifying or eliminating PG&E Corp.’s holding company structure; and
- 4) Linking PG&E’s rate of return or return on equity to safety performance metrics.

The Public Advocates Office at the California Public Utilities Commission (Cal Advocates) applauds this step by the Assigned Commissioner and Administrative Law Judge. The ruling acknowledges that the Commission has the authority to both grant and rescind the CPCN pursuant to which a utility such as PG&E is issued a franchise to serve California customers. However, the June 18, 2019 Ruling does not go far enough. In order to achieve the best result for California’s customers, all options must be on the table.

By this motion, Cal Advocates urges the Commission to take two key steps. First, the Commission should establish minimum safety and performance prerequisites for post-bankruptcy franchisees, whether or not PG&E. By establishing those prerequisites—in terms of types of companies, ownership structure, corporate governance, and performance culture, the

² December 21, 2018 Scoping Memo and Ruling of Assigned Commissioner at 9.

³ Joint Assigned Commissioner’s and Administrative Law Judge’s Ruling on Proposal to Improve the Safety Culture of Pacific Gas and Electric Company and PG&E Corporation, issued on June 18, 2019 (June 18, 2019 Ruling) at 1.

Commission will bring consumers the value they pay for. Second, the Commission should make its interest in alternatives to PG&E clear. As discussed more fully below, the June 18, 2019 Ruling’s proposals on CPCN review are more meaningful if there are other potential entities who are interested in and capable of serving California customers. Treating PG&E as the “only game in town,” validates its culture of entitlement. Californians deserve better. In regulation as in life, alternatives yield strength. The Commission must make its interest in considering options to best serve California’s utility consumers clear.

II. BACKGROUND

Time is of the essence. If the Commission does not act now, there are only two likely outcomes. One outcome: PG&E and its creditors will produce a plan that leaves PG&E in place, unreformed, with ratepayers paying what the creditors want. The other outcome: PG&E will sell out to an acquirer, chosen solely for how much it will pay to creditors and shareholders rather than how well it will serve PG&E’s customers and protect the public. Either outcome forces the Commission into a take-it-or-leave-it choice, where it is pressured by “Wall Street” to “take it” rather than foster a third way. Either approach could win approval from a bankruptcy tribunal whose legal authority does not include considering anything about PG&E’s electricity and gas performance, including the safety of its operations and honesty flaws.

These two outcomes are the natural result of PG&E, its creditors, and prospective acquirers pursuing their legitimate self-interests—but without the discipline, public mindedness, and emphasis on safety, honesty, and performance that PG&E’s customers deserve and that Commission action would bring. The better approach—the only approach that considers customers’ interests—is for the Commission to 1) indicate now that it will decide what minimum criteria the post-bankruptcy entity—whether PG&E or a successor—must satisfy and 2) start the process of attracting alternatives to PG&E

This motion is timely and time sensitive. PG&E has already declared itself the emergent bankruptcy entity and is negotiating deals that may not take into account customer interests.

After September 26, 2019, when PG&E’s exclusivity period ends,⁴ any number of self-interested

⁴ The exclusivity period is the period, determined by the bankruptcy court, during which PG&E has the exclusive right to present a plan. That period is currently scheduled to last until September 26, 2019. If PG&E files a plan by

creditors, acquirers, or creditor-acquirer pairs can get the bankruptcy court's permission to offer their own plans. Those plans need clear and transparent Commission guidance, based on a public record, if they are to reflect California's priorities for service that is safe, affordable, reliable, and consistent with the state's environmental goals.

This type of Commission guidance will not interfere with the bankruptcy proceeding. While the bankruptcy court and the Commission drive in different lanes they can drive toward a common destination: a post-bankruptcy utility that provides customers with gas and electric service that is safe, affordable, reliable, and consistent with the state's environmental goals. Nothing in either bankruptcy law or public utility law puts that destination beyond our reach. No one should misunderstand, or mischaracterize this Motion as an attempt to use state law to avoid the realities of bankruptcy law. Whatever transaction is finally approved by the bankruptcy court, the associated debt will travel to whatever company or companies, PG&E or a non-PG&E entity, will serve California's customers. Because the Commission, and only the Commission, can grant to a company the right to serve California's customers, the Commission will assist, not impede, the bankruptcy process by declaring upfront the requirements that whatever franchisees emerges from bankruptcy must meet.

Ratepayers need utility investors as much as utility investors need ratepayers. This Motion signals no intent to penalize or discourage investors. Rather, it seeks to do what bankruptcy law and utility law both need to do: Give California customers the best possible performance, and provide the best performers, the compensation they deserve.

that date, they have an additional 60-day exclusivity period to attempt to seek confirmation of that plan, unless extended for cause by the bankruptcy court. However, at any time, a party can file a motion asking for termination of exclusivity such as the recent motion filed by the Ad Hoc Committee of Senior Unsecured Noteholders. That Motion appends as an exhibit a detailed term sheet for a proposed plan of reorganization from parties other than PG&E. *See Motion of the Ad Hoc Committee of Senior Unsecured Noteholders to Terminate the Debtors' Exclusive Periods Pursuant to Section 1121(d)(1) of the Bankruptcy Code*, filed June 25, 2019 in Bankr. Case No. 19-30088 (DM) [DE# 2741], In re PG&E Corporation and Pacific Gas and Electric Company, Bankr. N.D.Cal. San Francisco Division.

III. DISCUSSION

A. The CPCN: A privilege conditioned on performance

The franchise granted by a CPCN is a government-granted privilege: the privilege to provide, free from competition, a service essential to life, at prices that provide shareholders a fair opportunity to earn a fair return on prudent, used-and-useful investments. This privilege comes with a catch. The utility must satisfy the regulator's standards for performance—at “lowest feasible cost,”⁵ using “all available cost savings opportunities.”⁶ The utility must pursue its public duties free of conflicting private interests.

The franchise’s marriage of privilege and duty transcends any particular utility. The incumbent is but a temporary grantee; its position depends on performance. That performance has many elements: rates, reliability, quality, safety (for workers, residents, customers, and contractors), innovation, customer responsiveness, legal compliance, respect for the regulatory process, accountability, acceptance of responsibility, and honesty.

B. PG&E's Performance - Unsafe and Dishonest

Over this past decade, PG&E has failed to provide safe and reliable service. Not only has it caused death and destruction; it has dealt with the Commission dishonestly. Consider the following non exhaustive list of PG&E’s actions:⁷

The San Bruno Explosion (2010): Eight deaths, 58 injuries, 38 homes and structures destroyed. PG&E was convicted of multiple federal crimes, including willfully failing to address known recordkeeping deficiencies, and willfully failing to identify and address threats to its pipelines. PG&E also was penalized for violating state regulations. Still on probation for its federal crimes, PG&E’s recent wildfire behavior is under investigation by a federal judge.

⁵ *Potomac Electric Power Co. v. Public Service Commission*, 661 A.2d 131, 137 (D.C. 1995).

⁶ *Midwestern Gas Transmission Co. v. East. Tenn. Natural Gas Co.*, 36 FPC 61, 28 (1966), *aff’d sub nom. Midwestern Gas Transmission Co. v. Federal Power Commission*, 388 F.2d 444 (7th Cir. 1968).

⁷ This list does not include, for example, the ongoing Order Instituting Investigation (18-12-007) into PG&E’s locate and mark practices, which may identify safety problems such as if there were dig-ins associated with late marked facilities.

The Kern Power Plant Demolition (2012-2013): One death, five injuries, \$5.5 million in penalties. PG&E must carry out a company-wide Corrective Action plan that included a Contractor Safety Program and an Enterprise Causal Evaluation Standard.⁸

Gas Distribution Problems (2010-2014): For multiple separate safety incidents, the Commission penalized PG&E over \$36 million. The specific failures included failure to maintain proper records, failure to take corrective actions, and not being responsive to local officials.⁹

The Butte Fire (2015): Two deaths, one injury, 549 homes and 372 other structures destroyed, 70,868 acres burned. The Commission's Safety and Enforcement Division (SED) fined PG&E \$8 million for failing to maintain its 12 kilovolt (kV) overhead conductors safely and properly.¹⁰

The Atlas Fire (2017): Six deaths, 783 homes or other structures destroyed, 51,624 acres burned. Alleging violations of state law, the California Department of Forestry and Fire Protection (CAL FIRE) has referred its investigation to the District Attorney's office.^{11, 12}

The Central LNU Complex Fires (2017):¹³ Three deaths, 1,355 homes or structures destroyed, 56,556 acres burned. CAL FIRE referred four of its fire investigations (Norrbon, Partrick, Pythian, and Adobe) to the appropriate local District Attorneys' offices for review "due to evidence of alleged violations of state law."¹⁴ CAL

⁸ D.15-07-014.

⁹ D.16-08-020 at 2-4, 10, 51, 59-61.

¹⁰ D.16-09-055.

¹¹ See

<https://calfire.ca.gov/communications/downloads/newsreleases/2018/2017_WildfireSiege_Cause.pdf>.

¹² On June 27, 2019, the Commission opened I. 19-06-015, the Order Institution Investigation on the Commission's Own Motion into the Maintenance, Operations, and Practices of Pacific Gas and Electric Company (U39E) with Respect to its Electric Facilities; and Order to Show Cause Why the Commission Should not Impose Penalties and/or Other Remedies for the Role PG&E's Electrical Facilities had in Igniting Fires in its Service Territory in 2017. See

<<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M303/K773/303773212.PDF>>

¹³ *Id.*

¹⁴ *Id.*

FIRE did not refer the Nuns fire investigation to the local District Attorney's office.

The Camp Fire (2018): 85 deaths, 18,804 homes or other structures destroyed, 153,336 acres burned. CAL FIRE forwarded its investigative report to the Butte County District Attorney's Office.¹⁵

In addition to safety, there is honesty and the public trust. PG&E has committed a series of secular sins against transparency and truth. Specifically, it has been shown, and PG&E has admitted, that it engaged in:

Obstructing Investigations: After the San Bruno disaster, PG&E attempted to mislead investigators from the National Transportation Safety Board, leading to PG&E's conviction, in addition to its substantive violations, for "intentionally and corruptly tr[ying] to influence, obstruct, or impede the Board's investigation."¹⁶

Falsifying Evidence: The Commission has gathered evidence of PG&E routinely (thousands of times) falsifying records on locate-and-mark practices.¹⁷

Lobbying in Secret: PG&E has long tried to influence Commission decisions secretly—and illegally. Due to PG&E's 2007 violations of *ex parte* communications rules,¹⁸ the Commission in 2008 required PG&E to "develop written best practices to document, control, and report on *ex parte* contacts."¹⁹ In 2015, the Commission identified improper *ex parte* communications as early as June 19, 2009, disappointingly soon after the Commission had directed PG&E to develop written best practices on *ex parte* contacts.²⁰ These contacts continued over at least a five year period from mid-2009 through mid-2014.

¹⁵ See <http://calfire.ca.gov/communications/downloads/newsreleases/2019/CampFire_Cause.pdf>

¹⁶ See <<https://www.justice.gov/usao-ndca/pr/pge-ordered-develop-compliance-and-ethics-program-part-its-sentence-engaging-criminal>>.

¹⁷ Order Instituting Investigation (I.) 18-12-007.

¹⁸ The *ex parte* communications rules determine if and how parties (such as PG&E or Cal Advocates) can communicate with decision-makers at the Commission during a formal proceeding. Decision makers include the Commissioners, their advisors, and the Administrative Law Judges. The purpose of these rules is to prevent secret communications that can affect case outcomes.

¹⁹ I. 15-11-015, Finding of Fact #1, p. 38.

²⁰ I. 15-11-015, p. 3.

PG&E's presidents, a senior vice president, two vice presidents, and at least one consultant were either violators or benefited from the violations.²¹

These facts form the foundation of the Commission's Safety Culture and Governance investigation.

Californians deserve a utility that serves competently, lawfully, and honestly. Convicted of breaking laws and obstructing justice, found at fault for death and destruction across its service territory, and now under investigation for false filings and improper communications with regulators, PG&E has not been that utility.

C. PG&E's Culture of Entitlement

Investigations, penalties, convictions, fines, and probations have not worked.²² Executive shuffling hasn't worked.²³ Reorganizations haven't worked.²⁴ Replacing and overpaying board members²⁵ won't work. PG&E is a reactor not a creator. "Driven by immediate needs," it reacts to its failures instead of creating a "comprehensive enterprise-wide approach."²⁶ PG&E's problems are— "not just one-off situations or bad luck," but problems that are "deeper and more systemic"—problems that remain unsolved.²⁷ PG&E's problems come from its culture. Because its misbehaviors go beyond safety, its safety culture problem is but a symptom of a broader culture problem. PG&E has a culture of entitlement.

²¹ I. 15-11-015, Phase 2 Joint Evidentiary Record, dated May 15, 2019, pp. I-1 to I-2.

²² Scoping Order at 5-6 (stating that "imposing penalties on PG&E did not seem to change the situation").

²³ Since 2010, PG&E has replaced four presidents (Darbee, Johns, Stavropoulos, Williams); three senior vice presidents (Botorff, Soto, Hogan); and five vice presidents (Cherry, Horner, Franke, Dasso, Lemier).

²⁴ August 22, 2018 PG&E Announces Interim Organization Structure While Conducting COO Search <<http://investor.pgecorp.com/news-events/press-releases/press-release-details/2018/PGE-Announces-Interim-Organization-Structure-While-Conducting-COO-Search/default.aspx>>.

²⁵ In 2018, the average compensation for PG&E's board members was \$257,000 per year for part-time work. PG&E Corp, *Joint Notice of 2019 Annual Meetings, Proxy Statement* at 46 (June 21, 2019).

²⁶ Scoping Order at 6, quoting Northstar Report at I-1.

²⁷ Scoping Order at 5.

A culture of entitlement cannot be solved with investigations, penalties, convictions, fines, probations, personnel changes, or press releases. These actions miss the main cause of PG&Es' entitlement culture - our policy on franchises. The utilities assume their monopoly franchises exempt them from competition in perpetuity. As decades go by, costs rise, performance slips, patterns of rule violations and lax compliance emerge and a culture of entitlement is established. The utility expects to remain the monopoly franchisee indefinitely, no matter how many felonies it commits, how many rules it breaks, or how unsafe its practices. No amount of investigations, penalties, convictions, probations, personnel changes and board replacements can fix a company with a culture of entitlement. Instead of punishing behaviors that derive from entitlement, we must change the expectations that cause the entitlement. Instead of punishing the results of failure, we must create the conditions for success.

In a competitive market, a company with PG&E's record would be long gone, left behind by workers, investors, and customers, all seeking safer, more honest places to work, invest, and buy. Treating PG&E as our only option and its CPCN granted franchise as its permanent right, validates PG&E's culture of entitlement. The Commission must make its willingness to consider alternatives clear and public.

D. Bankruptcy's outcomes: Four possible paths

A bankruptcy proceeding typically produces a plan of reorganization. Per the bankruptcy court's ruling, through September 26 of this year the exclusive proposer of a plan is PG&E. Beginning September 27, others permitted by the court may submit a plan.²⁸ At some point, a plan will gain sufficient support among creditors to receive the court's tentative approval. Where the bankrupt company is a utility, the court may grant final approval only if the plan's rate path has received Commission approval.²⁹

²⁸ See "Order Pursuant to 11 U.S.C. § 1121(d) Extending Exclusive Periods." Bankruptcy Case No. 19-30088, Docket Entry 2226 (May 23, 2019).

²⁹ See 11 U.S.C. § 1129(a)(6).

1. Path 1: PG&E emerges as franchisee, unconditionally

During or after the present period of exclusivity, PG&E could reach agreements with its creditors, present to the Court a plan with a rate path, get the bankruptcy court's conditional approval of the plan (other than the rate path), get the Commission to approve that rate path, then get the bankruptcy court's final approval. There would be no necessary change in PG&E's operational performance. Commission investigations into gas safety, wildfire performance, honesty in reporting, and other matters would continue as before.

2. Path 2: PG&E emerges as franchisee, subject to Commission probation

This path is like Path 1, but with a key difference: The Commission would require, as a condition of approving the rate path, PG&E's compliance with specific performance metrics (such as for safety and honesty), the breach of which would cause the Commission to consider penalties including revocation of PG&E's franchise—subject to the Commission selecting one or more replacement franchisees competitively.

3. Path 3: One or more non-PG&E franchisees replaces PG&E, in whole or in part

A plan may include the sale of all or a portion of PG&E. If the Commission establishes minimum prerequisites for all potential post-bankruptcy franchisees (as recommended under Action #1 above), then whatever bidder(s) emerge(s) with the bankruptcy court's approval will necessarily satisfy those prerequisites, because the bankruptcy court will not likely approve an acquirer that the Commission would reject. Only the Commission, not the bankruptcy court, can award franchises or approve transfer of control of a California utility's assets or control.

4. Path 4: PG&E emerges from bankruptcy with a temporary franchise, with PG&E to be replaced as franchisee after a defined period

This path is like Path 3, but separates the bankruptcy decision-making from the franchise decision-making. That way, the State can take the time it needs to (1) determine minimum franchise prerequisites (including defining the different services that will be subject to the franchise), and (2) run the competition to select new franchisees. The time period necessary

might not mesh well with the bankruptcy court's wish to complete its work expeditiously. But for PG&E to keep its franchise by default—merely because the Commission has insufficient time to complete its own work—would ill serve the public. At the same time, PG&E's creditors deserve to know PG&E's future. So the Commission could declare, after making the necessary legal findings, that (a) PG&E's role as franchisee will end no later than, say, two years after it emerges from bankruptcy; and (b) the Commission during that two-year period will select one or more replacements for all or part of PG&E's utility activities. The Commission would issue its decision about PG&E in time for participants in the bankruptcy process to take it into account. PG&E then would emerge from bankruptcy with a franchise that everyone understood to be temporary. Participants who wanted a chance to acquire or replace PG&E would make their bids before the Commission rather than before the bankruptcy court.

We do not yet recommend any of these paths; we describe them here to emphasize the Commission's options. As the Governor's Strike Force emphasized, all options must be on the table.³⁰ And while bankruptcy does have some potentially preemptive effects, those effects do not reach the options discussed here. For an explanation, see the Appendix I: "Bankruptcy Law Does not Preempt the Commission's Decisions on Franchisee Qualifications."

E. Necessary Actions

Action 1 - Establish performance prerequisites for post-bankruptcy franchisees, including PG&E

The franchise created by a CPCN is a privilege granted by the government, not an asset owned by the utility.³¹ As this Commission stated, in opening this investigation into PG&E's culture:

³⁰ Governor Newsom's Strike Force, Wildfires and Climate Change: California's Energy Future, Executive Summary at 4.

³¹ See *New Orleans Gas Co. v. Louisiana. Light Co.*, 115 U.S. 650, 669 (1885) (franchise "belong[s] to the government, to be granted, for the accomplishment of public objects, to whomsoever, and upon what terms it pleases"); *Bank of Augusta v. Earle*, 38 U.S. (13 Pet.) 519, 595 (1839) (franchises are "special privileges conferred by government upon individuals, and which do not belong to the citizens of the country generally of common right").

The Commission, invested by the California Constitution and the Public Utilities Code with police power to regulate public utilities, among other actions sets rates, authorizes capital investments and operating budgets, and awards franchises to companies such as PG&E. A ‘franchise to operate a public utility ... is a special privilege which ... may be granted or withheld at the pleasure of the State.’ Holding that franchise, PG&E must ‘comply with the comprehensive regulation of its rates, services, and facilities as specified in the Public Utilities Code.’ And the Commission must actively, not passively, supervise and regulate public utilities.³²

This authority underlies the June 18, 2019 Ruling’s consideration of a periodic review of a utility’s CPCN as a means to provide “additional incentive for the utility to do a good job.”³³ In California, a utility receives its franchise “in return for” its performance.³⁴ The franchise thus is conditioned on meeting the Commission’s, customers’ and the public’s expectations.³⁵ While the June 18, 2019 Ruling’s questions about a periodic review of a utility’s CPCN are consistent with the authority identified above, the Ruling does nothing to identify potential replacements for PG&E, without which a CPCN review will be limited at best. The Commission must take full advantage of its authority to issue and rescind franchises in order to address PG&E’s culture of entitlement.

If the Commission wishes to provide “additional incentive for the utility to do a good job,”³⁶ it must disabuse PG&E of the notion that it is entitled to continue to operate as a franchise under its CPCN in perpetuity. For the Commission to break the culture of

³² “Order Instituting Investigation on the Commission's Own Motion to Determine Whether Pacific Gas and Electric Company and PG&E Corporation's Organizational Culture and Governance Prioritize Safety,” Investigation 15-08-019, 2015 Cal. PUC LEXIS 539 at § 3.4 (citations omitted).

³³ June 18, 2019 Ruling at 3.

³⁴ “In return for safe and reliable natural gas service, the Commission provides a relatively exclusive *franchise*, recovery of all just and reasonable costs to serve customers, and a very low-risk and ample rate of return.” “Order Instituting Investigation on the Commission's own Motion into the Operations and Practices of Pacific Gas and Electric Company to Determine Violations of Public Utilities Code Section 451, General Order 112, and Other Applicable Standards, Laws, Rules and Regulations in Connection with the San Bruno Explosion and Fire on September 9, 2010,” 2012 Cal. PUC LEXIS 39.

³⁵ *Id.* at § 3.5 (“This investigation should begin with what the Commission, customers, and the public should expect from PG&E when the State awarded PG&E its franchise and approved PG&E's rates.”).

³⁶ June 18, 2019 Ruling at 3.

entitlement, it must also consider alternatives to PG&E by defining the performance customers deserve, then finding the best performers. In the current context, the Commission must establish priorities that any post-bankruptcy franchisee must satisfy. Then to make those priorities realities, it must seek non-PG&E alternatives whose reorganization plans will align with those priorities. Amending the June 18, 2019 Ruling to solicit comments that will assist the Commission in establishing criteria that any post-bankruptcy franchisee must satisfy will give PG&E and other potential franchisees fair notice of what the Commission requires. As discussed below, these criteria include services and quality, and company characteristics (i.e. ownership structure, corporate governance, attitude toward quality, and attitude toward regulation and regulators).

1. Services and quality

Energy service today takes multiple forms: generation, procurement, transmission, distribution, demand aggregation, distributed energy resources, conservation services, microgrids, storage, electric vehicle infrastructure. An investor-owned utility is either the primary operator or provider of these services or has some role in administering programs that provide these services. As such, it is important that the utility's work to provide these services includes ensuring safety, reducing emissions, lowering costs, and maintaining reliability. What are a utility's standards of performance in the provision of these services?

2. Company characteristics

A provider's characteristics affect its performance. And those characteristics can complicate, or simplify, regulators' efforts to induce performance. So we must ask: What kind of companies will best provide the necessary services, cost-effectively and safely? The relevant company characteristics fall into four main categories.

- **Ownership Structure** - The Scoping Order refers to “publicly owned utility, cooperative, community choice aggregation or other models.”³⁷ There are, of course, more categories and multiple variations within those categories: government ownership (municipal, regional, state); private ownership (non-profit, for-profit, and semi-profit); publicly traded and privately traded; holding company-owned and retail shareholder-owned.

³⁷ “Assigned Commissioner’s Scoping Memo and Ruling,” I. 15-08-019 at 12 (Dec. 21, 2018).

Different business forms bring different strengths and weaknesses. All must satisfy these minimums: (i) no conflict between earning profit and pursuing the public interest in safety and cost, (ii) commitment to transparency, (iii) commitment to the state's clean energy goals, and (iv) respect for workers and their unions.

- ***Corporate Governance*** - Governance affects accountability; accountability affects performance. Who controls which decisions? Who is accountable to whom, for what types of performance? How does the company pay its people? Do compensation methods create conflicts between profit and performance, between executives' interest and customers' interest? Do the boardroom and the workforce reflect the communities the company serves?
- ***Attitude Toward Quality*** - Does the company aspire to excellence or does it rest on its government-protected laurels? Does it look ahead for hazards to prevent and create plans to prevent them—or does it wait for disasters to happen, then seek full credit for its response and full payment for its costs?
- ***Attitude Toward Regulation and Regulators*** - Each company views regulation self-interestedly. Everyone wants regulation when it protects; but not when it constrains. Does the company respect the regulatory process—especially its key features of transparency, facts, logic, and law—or does the company rely on non-factual forms of persuasion, and use non-transparent paths to persuade?

Why do these company characteristics matter? A prospective franchisee's business mix will determine whether it has internal conflicts between the utility's public service obligation and its holding company's private business priorities. Companies that mix utility and non-utility businesses have an internal conflict over scarce capital. Companies that compensate their executives based on share price or earnings have an internal conflict between shareholder interest and ratepayer interest. Companies with internal conflicts require more regulatory effort than companies without those conflicts. And regulatory efforts do not always succeed.³⁸

³⁸ See, e.g., this Commission's Decision No. 91-05-028, supra at 277 (“[I]f Edison's past violations of the regulatory compacts set forth in our ... decision [authorizing SCE's holding company] are any indication of what will transpire in the future, it will be increasingly difficult to ensure that inappropriate costs are not passed on to ratepayers. . . . Edison has attempted to use [that decision] to shield its activities rather than open the Commission's access to expeditious and thorough review. Such contentiousness produces increased burdens on the Commission. . . .”).

Action 2 - Foster the development of non-PG&E alternatives whose reorganization plans align with Commission priorities

As noted above, if we treat PG&E as our only alternative and treat its CPCN granted franchise as its permanent right, we validate PG&E's culture of entitlement. Californians deserve better. The Commission must make its willingness to consider alternatives clear and foster the development of non-PG&E alternatives if it intends to improve utility safety and service.

3. Finding the candidates, causing them to compete

Since 1985, dozens of electric utilities have been acquired, most at substantial premiums.³⁹ From this simple fact, we know that owning a utility, or controlling a utility monopoly franchise is desirable. If California opens its doors to prospective franchisees, the competition for the customers' favor will be vigorous.⁴⁰

How do businesses find employees and manufacturers find suppliers? They search for the best, then choose the best. Rather than awarding a franchisee non-competitively or threatening to review a CPCN in the absence of any viable alternatives, California's decision-makers should do what everyone else does: Create a competition—here, a competition for the privilege of being a monopoly. “[T]he public has an obvious interest in competition, 'even

³⁹ For a list of those acquisitions through 2017, and an analysis of their regulatory approvals, *see* Scott Hempling, “Inconsistent with the Public Interest: FERC’s Three Decades of Deference to Electricity Consolidation,” *Energy Law Journal* (Fall 2018), available at <[https://www.eba-net.org/assets/1/6/15-233-312-Hempling_\[FINAL\]1.pling_%5bFINAL%5d1.pdf](https://www.eba-net.org/assets/1/6/15-233-312-Hempling_[FINAL]1.pling_%5bFINAL%5d1.pdf)>.

⁴⁰ Another example comes from South Carolina, where a special legislative committee in late 2018 issued a request for expressions of interest and indicative offers to acquire the state-owned utility, Santee Cooper. According to the committee’s then-consultant ICF, which ran the process, the request attracted 15 “strong and diverse” proposals: seven full purchase proposals and eight others: long-term asset management agreements, long-term power supply arrangements, and partial acquisitions. *See* ICF’s evaluation of February 2019, available at <<https://governor.sc.gov/sites/default/files/Documents/newsroom/ICF%20Evaluation%20of%20EOI%20Responses%20for%20Santee%20Cooper.pdf>>.

In May 2019, the South Carolina Legislature enacted legislation directing the state’s Department of Administration to conduct a full-fledged competition for acquirers and managers of Santee Cooper, as well as an evaluation of the utility’s standalone plans.

though that competition be an elimination bout.”⁴¹ Using competition to find the best performers, and having replacements ready to replace those performers, is challenging but it is the path to real performance. Granting someone a permanent monopoly, then fining, penalizing, and "incentivizing" them to improve, or juggling board membership and serially replacing executives, does not work.

The following is an illustrative six-step process to create competition for new franchisees.

Step 1. Issue Order starting the process: The Commission issues an Order announcing it will hold a competitive process for choosing one or more franchisees to serve in PG&E's territory. The Order should describe the end goal: to have Californians served by the most cost-effective, customer-responsive, safe, environmentally responsible, innovative and reliable provider or providers. The Order also should describe the steps that will follow and pose a series of questions that invite creative ideas from stakeholders and prospective bidders.

Step 2. Spread the word: The Commission, likely through an agent, creates interest in the marketplace by spreading the word about the Commission's goals, and informally contacting entities that might have an interest in serving. This outreach serves multiple purposes: stimulating interest, identifying new firms or organizations, and identifying any concerns about regulatory uncertainties that might discourage bidders from competing. Some prospective competitors might want to buy the entire company, others only some of the assets; some might want to serve the entire service territory; others only parts. Some might want to provide only monopoly services; others might want to provide both monopoly and competitive services.

Step 3. Hold a technical workshop: The Commission would hold one or more technical workshops. Using materials from stakeholder submissions and intelligence gathered through the market conversations, the Commission staff would have a dialogue with stakeholders (about what services they want from a franchisee) and prospective bidders (about what clarity they need on regulatory policy). At the technical workshop, people could ask questions of PG&E as well as Commission staff.

Step 4. Establish threshold criteria: The Commission would establish threshold criteria for eligibility to compete. Examples of requirements for eligibility (illustrative only):

- a. The company has a minimum number of years of experience providing safe, affordable, reliable energy utility services consistent with the state's environmental goals in rural and urban areas.

⁴¹ *Hecht v. Pro-Football, Inc.*, 570 F.2d 982, 991 (D.C. Cir. 1977).

- b. Demonstrated ability in meeting or exceeding the minimum federal, state, and local safety requirements.
- c. The company has a demonstrated commitment and ability to carry out the state's clean energy goals.
- d. The company has a demonstrated commitment to integrity, transparency, and honesty in its relations with the public, regulators and other stakeholders.
- e. The company has a demonstrated respect for workers and their unions.
- f. If the competitor is part of a holding company system, that holding company system is not complex, overly leveraged, or invested in businesses whose risks or strategies conflict with a utility's obligation to serve.
- g. The company satisfies Commission criteria designed to reduce the risk of horizontal or vertical market power.
- h. The company has the financial capability both to execute the purchase (paying the shareholders and paying off or taking on the debt) and to operate successfully.

Step 5. Issue formal requests for proposals: The Commission would design a formal Request for Proposals for the particular services that franchisees would provide. Competitors including PG&E could offer the entire package or a subset (although the Commission will likely want to place appropriate limits on what types of geographic areas would be carved out to avoid cherry-picking).

Step 6. Choose the franchisees: The Commission then would apply its evaluative criteria and choose the winning franchisees. Evaluative criteria could include: experience, record of customer responsiveness, record of regulatory relationships, operational record, employee relations, ethical character, creativity in developing resource plans, likely rate path, price offered, non-quantifiable benefits offered.

4. Avoiding negative outcomes

While we seek positive outcomes, we must avoid potential negative outcomes or gaming. While three such potential outcomes come to mind, more may arise in response to questions posed herein.

- a. Cherry-picking: PG&E's service territory covers diverse geographic areas and diverse members of the population. Despite this diversity, all customers within a rate class face the same electric and gas rates, just as all individuals face the same tax rates. The Commission must discourage proposals that cherry-pick lower-cost and lower-risk subregions, leaving the higher cost and higher risk ones behind. A utility's obligation to serve—the very foundation

of an exclusive franchise—exists to prevent precisely this type of redlining. The Commission must make clear that the franchisee is a privilege that includes this obligation; it is not some acquisition opportunity to be carved, shaped and resold for maximum profit. That is not to say that PG&E’s entire, vast service territory must remain whole, especially if the Commission were to find that economies of scale no longer favored (if they ever did) a region this large. A useful principle: Ensure that if portions of the current service territory are sold to different acquirers, no customer is made worse off.

- b. ***A bailout without accountability:*** Allowing PG&E to emerge with reduced debt but an unchanged culture of entitlement—is dangerous for California's consumers and businesses. This path presents a risk to customers: that PG&E, unguided by Commission prerequisites, will work with creditors to pour concrete around a plan that maximizes creditors' return, then pressure the Commission to raise rates to implement it. Additional pressure would come from the financial community (that is, the portion of the financial community connected to PG&E—not the portion wishing to invest in alternatives to PG&E)—all arguing the customary platitudes: PG&E is too big to fail, uncertainty raises costs for all. But because the bankruptcy court has no statutory power to improve PG&E's performance, this path has the customers protecting the creditors from their losses but getting left with an unreformed PG&E. The best protection against this path is for the Commission to start developing alternatives.
- c. ***Investor expectation that PG&E's franchise will remain uncontested:*** California has never subjected its major utility franchises to competition—even after multiple occasions of franchise-breaching conduct. If the Commission says nothing now, and PG&E emerges from bankruptcy under Path 1, its investors could reasonably conclude that PG&E's future will be like its past—that it can commit any manner of crimes and violations, at no risk of losing its privileged position. While the Commission's silence would not create a constitutionally protected expectation of future franchise permanence, any later Commission effort to question PG&E's franchise would likely provoke the type of vocal outrage disappointed people use, strategically, to cause those lacking alternatives to fear developing alternatives.

F. The Consequences of Inaction: The Bankruptcy Court Displaces the Commission and Price Displaces Performance

We have explained how the Commission can establish prerequisites for post-bankruptcy franchisees, and seek non-PG&E alternatives whose reorganization plans align with Commission

priorities, without impeding the bankruptcy court's jurisdiction. If the Commission fails to take those two steps? The bankruptcy process can, in practice if not in law, diminish the Commission's powers. This concern has at least three bases.

- ***The bankruptcy court has no duty to produce cost-effective utility performance.***

Bankruptcy courts focus on approving a plan that satisfies the creditors' legitimate interests while preserving, if possible, the debtor's business. The bankruptcy court has no legal power to make a utility's performance safer, to address its honesty issues, or to fix its culture of entitlement. So if PG&E and its creditors agree on a plan to sell the company, the utility will be sold to the highest bidder, not to the best performer, with the ratepayers covering the cost—unless the Commission specifies its prerequisites for PG&E's purchaser. Bankruptcy law does not preempt the Commission's state law power to approve or disapprove an acquisition of PG&E or its assets. But if the Commission does not state its requirements in advance of the Bankruptcy court's actions, it will be stuck with the bare, suboptimal choice of Yes or No to a proposal not of its own making. Or the Commission will end up negotiating in private with PG&E and its prospective acquirers, then hand intervenors in the Commission approval proceeding a single take-it-or-leave-it plan—with no opportunities for intervenors to reshape the result because the plan's sponsors will claim it rests on agreements "too fragile," too "painstakingly negotiated," to be changed.

- ***PG&E's motivations conflict with the public's interest in performance.***

In the bankruptcy proceeding, PG&E's goals are self-interested: Emerge with lighter debt and maintain control of the monopoly franchise; or, get the highest price possible for its shareholders, paid for by ratepayers. In the bankruptcy proceeding, PG&E has no obligation to improve performance or changes in its culture. So in terms of performance and culture, post-bankruptcy PG&E could be the same as pre-bankruptcy PG&E—or worse.

- ***The creditors' goals conflict with the public's interest in performance.***

The creditors' goal is to be paid. While those who continue to hold bonds will not be indifferent to the utility's future performance (since penalties and fines hurt the bottom line), their priority is payment, not performance.

These three factors all point in one direction: The bankruptcy process will emphasize payments over performance. However, readers should not take this point separate from its context. Cal Advocates respects creditors' legitimate claims. But ratepayers also have material and substantive rights—to performance commensurate with the rates they pay. The best solution—one that marries bankruptcy's priorities with the Commission's obligations—is what

this Motion urges: that the Commission set standards that bring competitors who can perform with excellence and get the creditors paid. But to make this marriage work, the Commission needs to act, and act now. Relying solely on its legal ability to block a plan later based on its rate path⁴² will not get California the best performance it needs. The Commission needs to make clear to the bankruptcy court that it will approve a post-bankruptcy PG&E, or new owner of PG&E, or a new successor to PG&E, or a rate path for PG&E or its successor, only if that entity, among all possible entities, best meets the Commission's criteria for performance. Only by acting now to influence to-be-filed plans or sale proposals brought in bankruptcy court, not by reacting to filed plans or sale motions, can the Commission's priorities prevail.

IV. CONCLUSION

The clock is ticking: The Commission must establish its priorities before non-PG&E acquirers appear.

The Commission must take action. It must define the features of, and expectations for, the franchisee's performance. Then to ensure that customers receive that performance the Commission must find the best performers.

These Commission actions must happen soon. On September 26, 2019, PG&E's current exclusivity period ends. Absent Commission-set prerequisites, either creditors will accept a PG&E proposal or, starting September 27, 2019 other entities will offer plans that serve their interests. Unless it declares its criteria, the Commission will be a bystander and reactor. It is only by acting now that the Commission can produce a result that satisfies creditors' legitimate needs, while also ensuring that California's ratepayers are served by the best performer.

The Public Advocates Office urges the Commission to amend its June 18, 2019 Ruling to align with the broader goals of this proceeding by adding the questions in Appendix II, which address the prerequisites necessary to ensure Californians are provided the service they deserve and to begin laying the framework for seeking alternative providers.

⁴² Under 11 U.S.C. § 1129(a)(6).

Respectfully submitted,

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July 1, 2019

Appendix I

Bankruptcy Law Does not Preempt the Commission's Decisions on Franchisee Qualifications

The filing of a bankruptcy petition triggers, under Section 362 of the Bankruptcy Code, an “automatic stay.” The stay prevents litigation against the debtor that attempts to enforce or collect on financial claims that pre-dated the petition.

The automatic stay does not apply, however, to “the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's or organization's police and regulatory power, . . .” Bankruptcy Code § 362(b)(4). Applying this language, courts have developed two tests: the pecuniary purpose test and the public policy test. The pecuniary purpose test asks whether the government action relates primarily to the protection of the government's pecuniary interest in the debtor's property or to matters of public safety or welfare. If the former, the police-and-regulatory power exception is unavailable; the automatic stay applies. But if regulatory action carries out public policy, it is exempted from the stay.

Even if the regulatory action affects the debtor economically, if its purpose is public policy the stay does not apply.⁴³ PG&E's last bankruptcy case illustrates the point. Before PG&E filed its bankruptcy petition, the Commission required it to transfer negative balances to a Transition Cost Balancing Account. After filing for bankruptcy, PG&E argued that the Commission's effort to enforce that decision violated the stay. Judge Montali (the bankruptcy Judge then and now) disagreed. He held the Commission's primary purpose was public policy. That the result may be a negative economic impact on PG&E, and a positive impact on PG&E's customers, does not change the fact that the Commission's ratemaking implements public policy. PG&E also argued that the Commission's decision adjudicated private rights (a sign of pecuniary

⁴³ See generally *MLRD v. Continental Hagen Corp.*, 932 F.2d 828, 833 (9th Cir. 1991).

purpose, which cannot avoid the stay), by favoring consumers at PG&E's expense. The court again disagreed concluding that the Commission's action was "more legislative in character"; and, that the regulating of utilities, wrote the court, "is one of the most important of the functions traditionally associated with the police power of the states."⁴⁴

In particular, the bankruptcy court's approval of an acquirer does not force a state to grant that acquirer control of the franchise. We know this from the Texas experience. The retail utility Oncor was owned 80 percent by Energy Future Holdings Corp ("EFHC"). EFHC went bankrupt. The federal bankruptcy court approved Oncor's acquisition by NextEra (the holding company for Florida Power & Light). But the Texas Commission rejected NextEra because NextEra wanted control of Oncor's utility cash flow to pay off NextEra's high acquisition debt. The court then approved a bid from Sempra (the holding company for San Diego Gas & Electric Company)—again subject to the Commission's approval, which was granted. Both times, no one argued preemption.⁴⁵

Caution: *This Commission should not follow Texas's approach of waiting for the bankruptcy court outcome before disapproving the result.* Doing so makes a Commission a spectator rather than a decision maker. The Commission should make clear, now, that it will approve only the best performer, not the highest bidder.

⁴⁴ PG&E's previous bankruptcy was addressed in *In re Pac. Gas & Elec. Co.*, 263 B.R. 306 (Bankr. N.D. Cal. 2001). The passages quoted here appear at *id.* at 318-20 (citing *Ark. Elec. Coop. Corp. v. Ark. Pub. Serv. Comm'n*, 461 U.S. 375, 377 (1983)).

⁴⁵ On Oncor, see *Joint Report and Application of Oncor Electric Delivery Company LLC and NextEra Energy*, Docket No. 46238, Tex. Pub. Util. Comm'n, (Apr. 13, 2017). On Sempra, see *Joint Report and Application of Oncor Electric Delivery Company and Sempra Energy for Regulatory Approvals*, Docket No. 47675 (Mar. 8, 2018). While bankruptcy litigants behave as if the state commission is not preempted from rejecting a bankruptcy-approved acquirer, that specific question has not been litigated. The Ninth Circuit has held that a court-approved bankruptcy reorganization plan is preemptive of state regulation "relating to financial condition" under 11 U.S.C. § 1142(a). See *Pacific Gas and Electric Co., et al. v. People of the State of California*, 350 F.3d 932, 937, 948 (9th Cir. 2003). While the appeal was pending the bankruptcy judge terminated debtor's exclusivity, the Commission filed its own competing plan, leading to the confirmation of an entirely different plan. As a result, there has been no judicial determination whether Commission regulation of corporate ownership structure is regulation "relating to financial condition."

Appendix II

Amendments to the June 18, 2019 Ruling - Additional Questions for Parties

ADD new section 2.5 to the June 18, 2019 Ruling:

2.5 Minimum requirements for Serving PG&E's Ratepayers in the Post-Bankruptcy Era

This question begins the process of developing the minimum criteria the Commission should require of a post-bankruptcy franchisee.

What are the minimum criteria the Commission should require of a post-bankruptcy franchisee, whether PG&E or another entity? Consider for example:

- d. The company has a minimum number of years of experience providing safe, affordable, reliable energy utility services in rural and urban areas consistent with the state's environmental goals.
- e. Demonstrated ability in meeting or exceeding the minimum federal, state, and local safety requirements.
- f. The company has a demonstrated commitment and ability to carry out the state's clean energy goals.
- g. The company has a demonstrated commitment to integrity, transparency, and honesty in its relations with the public, regulators and other stakeholders.
- h. The company has a demonstrated respect for workers and their unions.
- i. If the competitor is part of a holding company system, that holding company system is not complex, overly leveraged, or invested in businesses whose risks or strategies conflict with a utility's obligation to serve.
- j. The company satisfies Commission criteria designed to reduce the risk of horizontal or vertical market power.
- k. The company has the financial capability both to execute the purchase (paying the shareholders and paying off or taking on the debt) and to operate successfully.

ADD new section 2.6 to the June 18, 2019 Ruling:

2.6 Possible Requirements of Bidders and Bids

These questions help begin defining the procedure by which the Commission can attract prospective franchisees.

- A. By what procedures might the Commission use to (a) collect expressions of interest, and then (b) conduct a competitive bidding process? Are there analogies from government procurement processes that would be helpful?
- B. How can the Commission ensure that prospective bidders for portions of PG&E's system do not cherry-pick parts of the system, or avoid their appropriate share of costs associated with existing debt, public purpose programs, or long-term contracts?
- C. How can the Commission avoid a situation in which bidders offer an acquisition premium for PG&E's stock and then seek recovery of the premium in rates?

California Governor Moves to Reshape PG&E After Fires and Blackouts

By Ivan Penn and Peter Eavis

Nov. 1, 2019

California's governor said Friday that the state was determined to reshape its largest utility — even if it meant a public takeover — after a series of wildfires linked to the company's equipment and a furor over its handling of blackouts.

Gov. Gavin Newsom said his goal was to transform the company, Pacific Gas & Electric, into “one that better reflects our California values and will advance massive safety transformations beginning before next fire season.”

As a first step, he said he was appointing an “energy czar” to help guide PG&E out of bankruptcy. If an agreement on the company's future does not emerge in the courtroom, “the state will prepare itself as backup for a scenario where we do that job,” Mr. Newsom told reporters. “We are gaming a state plan to address the scale of this moment.”

The governor said his cabinet secretary, Ana Matosantos, would lead an administration policy team on utility and energy matters. He said he was summoning PG&E executives, shareholders, wildfire victims and other creditors to Sacramento next week to try to hasten an agreement.

In response, PG&E said it aimed to reach a fair resolution to wildfire claims and exit bankruptcy “as quickly as possible.”

“We share the governor's focus on reducing wildfire risk across California and understand that PG&E must play a role in these efforts,” James Noonan, a PG&E spokesman, said in an email. “PG&E is committed to working with all stakeholders to make the necessary changes moving forward to be the company our customers and communities want and deserve.”

Mr. Newsom has been a vocal critic of PG&E's management, accusing it of years of neglect in maintaining its power lines and towers and in keeping trees and brush clear of them. The company imposed power shut-offs across vast areas in recent weeks as high winds elevated the fire hazard in the parched state. Despite the blackouts, which left as many as three million people in the dark, PG&E informed regulators that its equipment might have caused a handful of fires.

“For decades, PG&E failed to prioritize public safety,” Mr. Newsom said Friday. “Their lack of safety investments left PG&E — and nearly half of Californians — with an antiquated electrical system that is vulnerable to weather events and not at all prepared for the more extreme weather associated with the climate change that has been predicted for the past several decades and is now here.”

PG&E, facing an estimated \$30 billion or more of liabilities from wildfires attributed to its equipment, filed for bankruptcy protection in January. So far, two competing groups, each dominated by hedge funds that own PG&E securities, have presented plans for putting the company back on its feet. One group is backing PG&E's management; the other is aligned with wildfire victims.

Neither plan envisions a radical overhaul of PG&E. That has left the door open for proposals that could take the utility out of private ownership altogether.

A sticking point in the bankruptcy is how much to pay wildfire victims who have claims against the company. To speed up the proceedings, the federal judge overseeing the case appointed a mediator this week to try to get PG&E and the victims to agree to a settlement.

A deadline looms: PG&E must emerge from bankruptcy by June to take part in a state fund set up this year to help big utilities pay wildfire claims.

Mr. Newsom said that over the next three to nine months, he wanted to develop plans to ensure that the lights stay on during the next wildfire season while limiting the number of fires caused by utility equipment.

In the long term, the governor said, the entire electrical system needs an overhaul. He called for safety measures like putting transmission lines underground, increasing the use of battery storage for backup use, and developing technologies like microgrids that enable the power supply to be managed on a more localized basis.

Mr. Newsom said his new energy team would review proposals from cities including San Francisco and San Jose that involve changing PG&E from an investor-owned utility to a publicly owned operation, run by municipalities or even by the state. He said that he wanted to ensure the state general fund was not hurt by any takeover plan but that he was entertaining all options.

A growing number of state and federal lawmakers have called for turning PG&E into a public operation. But Mr. Newsom acknowledged that the mechanics of such a change would require careful study because of the utility's extensive infrastructure and territory, with millions of customers throughout Northern and Central California.

If the state took over PG&E, the governor would effectively assume responsibility for the utility and would be a target of criticism when blackouts and fires occurred.

Representative Ro Khanna, Democrat of California, said in an interview before Governor Newsom's announcement Friday that the state should nonetheless consider a takeover. "This is a case where public ownership would be much better," he said.

ENERGY OCTOBER 16, 2019

Grids and Greed: An Expert Breaks Down Where PG&E Went Wrong and What It—and California—Needs to Do Now

“The problem is much more ingrained in the way this company has developed and continues to operate than it is something as simple as just trying to make more money.”

MARISA ENDICOTT



A PG&E truck drives past a hot spot in Paradise, CA, during the 2018 Camp Fire. **Hector Amezcua/Sacramento Bee via Zuma Wire**

In the wake of PG&E's decision to cut power to over one million people in California last week, there has been a torrent of frustration, outrage, and suspicion—about who should be held accountable, what their motivations are, and whether there is a way to keep blackouts from becoming the new normal. California Gov. Gavin Newsom notably took an already damaged PG&E to task on Thursday, saying the utility company's “greed and mismanagement over the course of decades” was to blame for the state's aging and poorly maintained electric grid, not simply climate change. (Last year's Camp Fire in Northern California, sparked by a PG&E power line, was the state's deadliest on record, claiming 86 lives and the town of Paradise; the company has since filed for bankruptcy.) Then this week, state officials called for the company to issue customer rebates, which would cost it millions, and demanded PG&E executives report to an emergency regulatory meeting planned for Friday.

Beyond blame, the dark days have also set Californians searching for new solutions—from a heavier reliance on renewable energy sources to municipal power distribution to microgrids, or local community-operated energy grids that can operate and be controlled autonomously. Still, even these alternatives come with questions about feasibility, equity, and who can afford to benefit from them.

Clean energy and utility policy expert Steven Weissman, for one, thinks these blackouts are bound to continue no matter what we do in the short term—though he argues not all is lost. In a *New York Times* op-ed Monday, he called the experience of utilities purposefully

shutting off power “the new reliability” rather than “the new normal,” but says that if that “means less certainty from traditional grid-based power sources, then it also provides an opportunity beyond the old approach.” Weissman previously served as an administrative law judge at the California Public Utilities Commission, which regulates privately-owned public utilities in the state, before he started the Energy Law program at the University of California, Berkeley.

Is the fact that they had to shut down so much of their system an indication of a failure? I think the answer is yes—clearly, yes.

asking more of a long-term question: Did we have to get to this point where we’re having these massive shut offs? I think the answer is mostly no. Is the fact that they had to shut down so much of their system an indication of a failure? I think the answer is yes—clearly, yes. This is a company that has a very challenging system. It covers a tremendous territory. There’s 16 different climate zones. The system has a tremendous amount of complexity that’s kind of grown organically over more than a century. And all of those things are challenges for the company to be able to maintain its system safely.

You would have liked to have seen this company step back decades ago and recognize that all the things I just mentioned were the circumstances it was facing. Imagine how the story would be different if PG&E was now saying, “We’ve been worried about what’s going on now for the last 20 years, and we’ve been addressing the problem in the following comprehensive way. We created this new office, which was designed to look at these problems. We’ve hired the best experts from around the world to come in and work with us. We’ve used state-of-the-art technology.” First of all, maybe we wouldn’t have had all these cut offs. But if we did, at least we could say that this is a company that has done everything it can to wrap its arms around the challenges it faces. But we can’t tell this story.

What do you think of the talking point that’s emerged from PG&E’s critics, including Gov. Gavin Newsom, that the company has put profits above people with this shutdown and the decisions leading to it?

It’s an easy thing to say, but it’s really too simplistic. There are two ways that a utility can make money: First is by continuing to invest in new capital projects. The other way is by spending less money than it’s given. What that means is that the regulatory structure gives the utility an incentive to over-invest in facilities and to underspend on operation and maintenance. With hindsight, it’s very easy to look and say the tower that sparked the Camp Fire, if you had put a little more money in operation and maintenance, you could have either strengthened that tower or you could have replaced it, and you didn’t do that. And so therefore, you’re putting profits ahead of safety.

But I think that the problem is much more ingrained in the way this company has developed and continues to operate than it is something as simple as just trying to make more money. Certainly, that incentive is there, and it probably has had an impact over time and resulted in less money being spent on keeping the system in good shape than it should have—maybe a lot less money than it should have. But focusing on that alone does not get to the fundamental underlying problem, which is a company that has not recognized the growing complexity of its system and hasn’t put processes in place to overcome that.

What should PG&E do now to deal with those issues?

I want to see the company openly acknowledge that it doesn’t have the right systems in place. I don’t see that yet. What it seems to be doing is saying, “We have to get a lot better in terms of maintaining our system, and so we’re trimming more trees and we’re doing more inspections.” That’s all great, but those are really fixes that don’t create assurance that operations will continue to be safe in the future. Because if you don’t change the way questions are asked, if you don’t change the accountability of people in different departments, if you don’t add in the right kind of experts, then you’re much more likely in the future to slip back into the same pattern, which is overspending

I recently spoke with Weissman, now a public policy lecturer at the university, about the internal workings of PG&E that led us here, what’s a fair or unfair critique of the utility, and what actually needs to happen to get everyone out of this mess. Below is an edited and condensed version of our conversation.

Was PG&E’s power shutdown really the only option?

Well, when are you asking that question? Because if Tuesday morning you look at the weather forecast, and it looks like there are going to be red flag conditions, and you might have the potential for catastrophic fire, is the shut off the only solution? The answer, then, is probably yes. But if you’re

on infrastructure, maybe building more transmission lines than you need, and not spending as much money on maintaining those lines as you should.

The problem is much more ingrained in the way this company has developed and continues to operate than it is something as simple as just trying to make more money.

Is there a good possibility that we'll see more of these kinds of extended power shut offs?

Clearly, PG&E is going to try to find ways to fine tune its strategy for invoking these power shut offs, but there's no reason at this point to believe that they won't continue to happen. We're going to continue to see these shut offs into the indefinite future.

Short-term, PG&E can take steps like hardening and maintaining its infrastructure, but what other steps does it need to take to reduce long-term wildfire risk?

Well, I don't think that's a short-term fix. It's going to take many years to

take a system of that size and be able to improve the nature of all the equipment—many years and lots of billions of dollars.

But there are other elements here. One is they need to be more aggressive about placing lines in vulnerable areas underground. And part of that involves taking the underground budgets that they have—because they do have some money to spend every year on putting overhead lines underground—and prioritize that money only for safety issues. Traditionally, the money would be spent on putting lines underground at places where there may be some sort of view or it's a pretty neighborhood or it's a commercial district that's trying to attract customers. That's really not the priority now. The priority has to be safety. And so the question is where are the most vulnerable places? Spend the money there.

Another thing is a much more enthusiastic embrace of microgrids. If microgrids are installed well and involve underground circuits connecting people, then you have a system that can operate more safely year-round. They can help provide power when these outages do occur because you can isolate those microgrids and use the power there. More battery storage strategically located through communities at both the utility side of the meter and the customer side of the meter can be an important part of this. More self-generation can be a good thing as well as long as it's managed properly.

These are all things that make it less burdensome when these outages do occur, but also might enable more power to be delivered safely. I think there's going to be a natural response now on the part of a lot of commercial industrial customers and some communities that say, "If we're going to have these shut offs, then we're going to have our own backup power."

That's fine, but this is an opportunity to make sure that whatever backup power provided is renewable and relies on battery storage rather than using diesel generators. I've been in conversations with people at the East Bay Municipal Utility District (EBMUD). When PG&E announced the shut off program, EBMUD went out and acquired a large number of diesel backup generators to put in its pumping stations. That's a rational short-term response, but now the question is, will EBMUD undertake a program designed to rely on renewables and batteries and eliminate its reliance on diesel generators that are contributing in the long run to the overall problem?

I think there's going to be a natural response now on the part of a lot of commercial industrial customers and some communities that say, "If we're going to have these shut offs,

Microgrids and local distribution seem to make a lot of sense, so what's stopped them from being used more broadly?

The single biggest obstacle is that the utilities are not enthusiastic supporters of microgrids. The way that plays out is that state law gives the utilities exclusive monopoly service territories for being the distribution and transmission companies. There are some exceptions to that, and one exception is something in the law which people call the "over-the-fence rule." What that says is if I'm generating, let's say, solar power at my house, I can share it with my next door neighbors on either side of me, but I can't, for instance, share it with a neighbor across the street, and I can't share it

then we're going to have our own backup power."

with more than two other people. Until that provision in the law is changed to say that microgrids are always allowed, I think the utilities are going to continue to be able to basically put the brakes on any microgrid they're not enthusiastic about.

The city of Berkeley wanted to put a microgrid in when it built this enormous new civic garage downtown. It wanted to put solar on the roof and batteries in the basement and then interconnect all the government buildings in the area so they could have reliable power even when there are other outages or other emergencies, and PG&E wouldn't get behind it, and it didn't happen. It's sort of a schizophrenia here because the legislature has passed some bills that seem to be supportive of having a greater reliance on microgrids. But there's a lot of resistance, and that resistance is coming from the utilities and probably on top of that the utility workers. Microgrids are supposed to operate in a way where people that are on a microgrid continue to get power off the greater grid unless there's an outage, but I am suspecting some of the utilities are worried that if communities start out by being able to give themselves their own backup power, maybe eventually they'll be given the permission to totally disconnect from the greater grid, and utilities do not want to lose customers.

One of the arguments against microgrids is that they are expensive, but with the economic burden brought on by wildfires, power shut downs, and the potential increase in energy costs as a result, do microgrids end up making more financial sense?

It's hard to make a broad statement about every microgrid, but I'll say this: I think what is happening now is we're realizing that there's a lot more cost involved in having distribution and transmission systems than we thought, both in terms of the losses when you don't have reliable service, but also the liabilities from the wildfires. If building a line costs you a billion dollars, but eventually could expose you to a \$15-billion liability if you cause a wildfire on that line, then maybe that line is more expensive than we thought it was. And if that's the case, if we really built in the true cost of these things before deciding to have the utilities go build them, maybe other things would start looking better. Maybe rooftop solar, which some economists criticize as being a bad investment because it's more expensive on a per-watt basis starts looking more cost effective. And maybe batteries don't seem like such an expensive investment anymore. The whole formula and the whole set of expectations may change.

The community-level values that are placed on something like safety and reliability can become much higher priorities for people running the system because of that local accountability.

If cities took control of local power distribution—as San Francisco has been exploring—would that change things at all? [Ed note: PG&E rejected San Francisco's \$2.5 billion offer to buy the company's local power lines last week.]

It provides an opportunity to change things because when you bring the control down to a local level, then you have a much more direct line of accountability. So if you've got San Francisco Public Utilities Commission as an elected board, and they screw up, then you answer to the voters. And because you're a local official, and you live locally, you run into constituents in the street, and you go to meetings and you talk to people. The community-level values that are placed on something like safety and reliability can become much higher priorities for people running the system because of that local accountability.

Speculation has been popping up—even from some public officials—that basically PG&E could be extending shut offs unnecessarily in order to pressure the legislature into changing the inverse condemnation law, which holds California utilities responsible for wildfire damage caused by their equipment, regardless of negligence. Thoughts?

That's an interesting one. I want to start this by saying that I think that the utilities have more urgent issues to deal with because regardless of how we want to demonize this company, no one wants to destroy communities, and no one wants to kill people. This is not an evil enterprise. It's made up of lots of really good decent people. But as a whole the company just doesn't seem to be as good as the people working there. But nonetheless, here you're a utility and you're going to the legislature and saying, "inverse condemnation is a terrible thing, and it shouldn't apply to us, and if we're not going to have a guarantee that the customers will reimburse us for any liabilities, then you need to eliminate it, and not have it applied to us." One of the less-than-top priority, but nonetheless existing messages that comes out

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