

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

Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.

R.12-03-014
(Filed March 22, 2012)

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E) RESPONSE TO THE
APPLICATION BY SIERRA CLUB CALIFORNIA FOR REHEARING OF
DECISION 14-02-040**

CHARLES R. MIDDLEKAUFF
MARK R. HUFFMAN

Pacific Gas and Electric Company
77 Beale Street
San Francisco, CA 94105
Telephone: (415) 973-6971
Facsimile: (415) 973-0516
E-Mail: crmd@pge.com

Dated: April 18, 2014

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

Pursuant to the Rule 16.1(d) of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E) respectfully submits its response to the *Application by Sierra Club California for Rehearing of Decision 14-02-0040 Modifying Long-Term Procurement Planning Rules* (Sierra Club Application for Rehearing).

In its Application for Rehearing Sierra Club California (Sierra Club) asserts that D.14-02-040 is unlawful because it fails to ensure that the Procurement Review Group (PRG) meetings comply with the Bagley-Keene Act.^{1/}

The Sierra Club is wrong, and therefore its Application for Rehearing should be denied. PRG meetings do not violate the Bagley-Keene Act. Contrary to the claims that the Sierra Club makes in its pleadings, the Commission is not “ignoring a statutory mandate that requires public access to PRG activities. . . .”^{2/} As explained in more detail below, the Bagley-Keene act does not require PRG activities to be held open to the general public.

I. THE PRG IS NOT A “STATE BODY” UNDER THE BAGLEY-KEENE ACT, AND SO IT DOES NOT REQUIRE THAT PRG ACTIVITIES MUST BE HELD OPEN TO THE GENERAL PUBLIC

The Sierra Club argues that “[e]ach PRG fits the definition of a ‘state body’ pursuant to Gov. Code Section 11121 subsections (b), (c) and (d)”,^{3/} and that therefore the PRGs can only conduct closed sessions in a method similar to the Commission, which is a state body under the Bagley-Keene Act.^{4/}

The Sierra Club is wrong. The PRG does not fit the definition of a “state body” under any of subsections (b), (c) and (d) of Gov. Code Section 11121. Therefore, the Sierra Club Application for Rehearing should be denied, because it does not demonstrate legal error in D.14-02-0140.

1/ Gov. Code sections 11120 *et seq.*

2/ Sierra Club Application for Rehearing, p. 2.

3/ Sierra Club Application for Rehearing, p. 3.

4/ Sierra Club Application for Rehearing, p. 2.

A. The PRG Is Not A “State Body” Pursuant To Gov. Code Section 11121(b)

Gov. Code section 11121(b) defines a “state body” to be a board, commission, committee or similar multimember body that exercises any authority of a state body delegated to it by that state body. Here, the only state body that would potentially be delegating authority to the PRG is the Commission. However, the Commission has not delegated any authority to the PRG. Therefore, the PRG is not itself a state body under Gov Code Section 11121(b).

The Sierra Club asserts that the Commission has delegated its authority under Public Utilities Code Section 454.5 to the PRG. This is not the case. As the Sierra Club acknowledges, each investor-owned utility’s (IOU) PRG is an advisory group to the IOU, not to the Commission.^{5/}

The Commission has described the PRG role, stating

The Commission has consistently acknowledged the value of PRGs by ordering their continued use, *so they continue to advise IOUs on their procurement activities.*^{6/}

The Sierra Club argues that the Commission has delegated the Commission’s authority to review procurement contracts. It has not. The PRG reviews information presented by the IOUs, and may comment in the PRG forum on the information presented. The Commission has authorized, indeed encouraged, that sharing of information and views. That is a far different thing, however, than delegating review *authority* to the PRG. The Commission has delegated none of its authority to the PRG. As the Commission explains, “PRG recommendations are advisory and non-binding, and no participants in the PRG process give up any rights associated with future litigation of issues addressed in PRG meetings.”^{7/}

As the Sierra Club notes, the PRG may provide an effective vehicle for IOU discussion with Commission staff.^{8/} However, as the language quoted by the Sierra Club states, the

5/ D.07-12-052, p. 119; Sierra Club Application for Rehearing, p. 5.

6/ D.07-12-052, p. 119 (emphasis added, footnote omitted).

7/ D.07-12-052, p. 119.

8/ Sierra Club Application for Rehearing, p. 6.

discussions are “consultative and informal advisory.”^{9/} The Commission’s enablement of these “consultative and informal advisory” communications does not constitute a delegation of the Commission’s authority to the PRG.

As the Sierra Club acknowledges, no PRG has authority to approve or reject any procurement activity.^{10/} In fact, the PRG does not provide any reports or recommendation to the Commission.

In sum, The PRG enables consultative and informal advisory discussions between the IOUs and the PRG. But the PRG has no ability to exercise Commission authority. The Commission has not delegated any portion of its authority to the PRG. Therefore, the IOUs’ PRGs are not “state bodies” pursuant to Gov. Code section 11121(b).

B. The PRG Is Not A “State Body” Pursuant To Gov. Code Section 11121(c)

Gov. Code section 11121(c) defines a “state body” to be an advisory board, commission, committee, subcommittee or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.

For the same reasons discussed in the preceding section, the PRG is not a “state body” pursuant to Gov. Code Section 11121(c). Specifically, PRGs do not advise the Commission. As the Commission stated in D.07-12-052, the PRGs advise the IOUs on their procurement activities.^{11/} The PRGs do not provide any reports or recommendations to the Commission.

In short, the PRGs do not advise the Commission. Therefore, the PRG is not an advisory body under Gov Code Section 11121(c), and so not a “state body” under that subsection of the Government Code.

C. The PRG Is Not A “State Body” Pursuant To Gov. Code Section 11121(d)

Gov. Code section 11121(d) defines a “state body” to be a board, commission,

9/ Sierra Club Application for Rehearing, p. 6, quoting D.03-12-062, p. 46.

10/ Sierra Club Application for Rehearing, p. 5.

11/ D.07-12-052, p. 119.

committee, or similar multimember body on which a member of a body that is a state body serves in his or her official capacity as a representative of that state body, and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

Here the state body being discussed is the Commission. The members of the state body are the Commissioners. Therefore, Gov. Code section 11121(d) is only applicable if one or more Commissioners are on the PRG. But no Commissioner is a member of any PRG. The Sierra Club errs by reading this requirement out of the statute.^{12/}

Since no Commissioner is a member of a PRG, the PRG is not a multimember body under Gov Code Section 11121(d), and so not a “state body” under that subsection of the Government Code.

II. CONCLUSION

PG&E respectfully requests that the Sierra Club’s Application for Rehearing of D.14-02-040 be denied. The Sierra Club has not demonstrated any legal error in D.14-02-040. Contrary to the Sierra Club’s assertions, the PRGs are not “state bodies” pursuant to the Bagley-Keene Act, and so the Bagley-Keene Act is not applicable to PRG activities.

Respectfully Submitted,
CHARLES R. MIDDLEKAUFF
MARK R. HUFFMAN

By: /s/ Mark R. Huffman

MARK R. HUFFMAN

Pacific Gas and Electric Company

77 Beale Street

San Francisco, CA 94105

Telephone: (415) 973-6971

Facsimile: (415) 973-0516

E-Mail: crmd@pge.com

Attorneys for

PACIFIC GAS AND ELECTRIC COMPANY

Dated: April 18, 2014

^{12/} See, Sierra Club Application for Rehearing, p. 6.