

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company Proposing Cost of Service and Rates for Gas Transmission and Storage Services for the Period 2015-2017 (U39G).

Application 13-12-012  
(Filed December 19, 2013)

Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Services and Facilities of Pacific Gas and Electric Company.

Investigation 04-06-016  
(Filed June 26, 2014)

**RESPONSE OF THE OFFICE OF RATEPAYER ADVOCATES IN  
OPPOSITION TO PACIFIC GAS AND ELECTRIC COMPANY'S  
MOTION TO STRIKE PORTIONS OF TURN'S TESTIMONY AND TO  
PRECLUDE TURN FROM INTRODUCING IN BRIEFS REVENUE  
REQUIREMENT RECOMMENDATIONS NOT MADE IN TESTIMONY**

**I. INTRODUCTION**

Pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure, and the schedule established by the August 22, 2014 Email Ruling Regarding Request for Order Shortening Time to Respond of the Presiding Administrative Law Judge ("ALJ"), the Office of Ratepayer Advocates ("ORA") submits this timely Response in Opposition to the Motion of Pacific Gas and Electric Company ("PG&E") to Strike Portions of TURN's Testimony and to Preclude TURN From Introducing in Briefs Revenue Requirement Recommendations Not Made In Testimony; Request For an Order Shortening Time To Respond ("Motion").

**II. ARGUMENT**

The Commission must deny PG&E's Motion as both not based on any violation of any Commission Rule of Practice and Procedure, and requesting premature relief from an

alleged injury that it has not yet suffered, which would also have the chilling effect of precluding parties from making arguments in briefs based on record evidence developed at hearings and/or by other parties in violation of due process. Nowhere in its Motion does PG&E even acknowledge the due process violation implications raised by its premature request to limit the ability of a party to make an argument based on record evidence introduced by other parties even before the evidentiary hearing has been held and the record evidence of a proceeding completed and submitted. Moreover, even assuming arguendo that TURN does introduce evidence in its brief outside of the record, as PG&E does in its motion, PG&E then retains the remedy of then filing a Motion to Strike such evidence at that point. Because TURN's testimony discusses a proper and allowable approach to putting on evidence, PG&E's Motion to Strike testimony must also be denied.

PG&E's Motion never discusses, and its requested relief contradicts, Commission Rule of Practice and Procedure 13.11 on Closing Briefs, which states that "[f]actual statements must be supported by identified evidence of record," without a limitation that a party must have disclosed its recommendations in testimony before the close of the evidentiary record, or a limitation that a party cannot cite evidence provided by other parties. PG&E cites no Commission rule requiring that a party not be allowed to make arguments in its brief based on any record evidence about any aspect of a proceeding just because the party did not make a specific recommendation in testimony and is relying upon the evidence provided by other parties, nor any special Commission rule requiring parties to make revenue requirement recommendations in a General Rate Case in testimony only. Instead, PG&E maintains, without citation and without explicitly stating that it is a requirement, that "parties state any recommended reductions to the applicant's requested revenue requirement in their testimony,"<sup>1</sup> and that "[a]s a long-term and active participant in CPUC rate cases, TURN is well aware of this practice."<sup>2</sup>

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<sup>1</sup> Motion, p. 2.

<sup>2</sup> Motion, p. 2 fn. 1.

Just because in past proceedings TURN has made specific revenue requirement recommendations on issues in testimony, as it does in this case on many items, about which it subsequently argues in briefs, is not a mandate that TURN must make a specific recommendation on a specific revenue requirement recommendation in testimony in order to brief such items at the close of hearings. Parties are free to make strategic decisions in each separate proceeding based on what they believe is best for their client, and are not constrained by past “practice” to making such arguments in the same way in every proceeding, including General Rate Cases. Parties are also free to change recommendations initially made in testimony based on evidence provided in the evidentiary hearings.

PG&E’s motion is also improperly premature as to the injury it potentially could suffer if TURN somehow proffers a recommendation in brief, based on record evidence introduced by ORA and other parties,<sup>3</sup> that prejudices PG&E’s ability to “rebut with evidence and explore with cross-examination”<sup>4</sup> such a recommendation. Indeed, PG&E’s own examples of injury acknowledge that PG&E has not suffered an injury yet and cannot know it advance, citing two possible arguments that TURN “might” recommend on brief that PG&E asserts would prejudice PG&E.<sup>5</sup> But until TURN makes those arguments in brief, PG&E’s claim that it has suffered an injury is premature, and its requested relief inequitable. PG&E complains that it “cannot possibly anticipate every possible recommendation TURN might make and preemptively rebut them all,”<sup>6</sup> but the same observation holds true for the recommendations in briefs of parties who did make recommendations in testimony but exercised their right to modify such recommendations based on the complete evidentiary record, including the transcript of evidentiary record. TURN and all parties must make such recommendations only based on record evidence, as does PG&E. But parties are not limited to filing the same recommendations as they

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<sup>3</sup> See, Motion, p. 6, *citing* TURN Witness Long Testimony, p. 21.

<sup>4</sup> Motion, pp. 5-6.

<sup>5</sup> See Motion, pp. 5, 6.

<sup>6</sup> Motion, p. 6.

did in testimony, if subsequent evidence is elicited on rebuttal or in hearings. PG&E is trying to presumptively limit the right of parties to make arguments based on record evidence, and its motion must be denied.

### III. CONCLUSION

For the aforementioned reasons, ORA respectfully recommends that the Commission deny PG&E's Motion.

Respectfully submitted,

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TRACI BONE

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