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 – 17 (U39G).	Application 13-12-012 (Filed December 19, 2013)
And Related Matter	Investigation 14-06-016 (Issued July 2, 2014)

RESPONSE OF THE UTILITY REFORM NETWORK 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

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August 26, 2014

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Pursuant to Rule 11.1(e) of the Commission's Rules for Practice and Procedure and the shortened response time ordered by Administrative Law Judge Wong, The Utility Reform Network (TURN) responds to PG&E's motion to not only strike portions of TURN's testimony, but for a ruling that would forbid TURN from speaking again in this proceeding of the topics covered in those portions of its testimony. The Commission should deny the motion in its entirety due to its lack of merit.

I. Introduction

TURN's prepared testimony, sponsored by four witnesses, addresses an array of issues within the scope of PG&E's application and the companion investigation. On some of the issues addressed in that testimony, TURN presented a specific recommendation based on what it knew at the time the testimony was served. But for other issues, TURN's testimony does not set forth a specific recommendation in terms of an outcome the Commission should adopt as a direct result of that testimony. And for some of the issues lacking a recommendation, TURN brought that fact to the reader's attention and indicated its intention to present a specific ultimate recommendation on that issue in its opening brief.

This is not some nefarious plot to outmaneuver the utility or foil the development of a full evidentiary record. Rather, it is merely TURN acknowledging the fact that its ultimate recommendations will appear in its post-hearing briefs, with citations to the supporting statutes, Commission decisions, and record evidence. The specific

recommendations set forth in TURN's prepared testimony may well change based on how the record evolves, as further supporting evidence or contrary evidence is adduced and factored into the ultimate recommendation. Those changes will be reflected in TURN's post-hearing briefs. TURN further expects that its briefs will also present ultimate recommendations on other topics covered in TURN's prepared testimony but for which a specific recommendation was not put forward, including the two that TURN called out in that prepared testimony. And TURN's post-hearing briefs may well present TURN's ultimate recommendation on topics not addressed at all in TURN's prepared testimony. As described more fully below, this is entirely consistent with rate case practice before the Commission.

PG&E's motion, on the other hand, relies on a flawed premise. In PG&E's view, an intervenor's prepared testimony is a "speak now or forever hold your peace" moment with regard to the ultimate recommendations the intervenor will make in the proceeding. That is, failure to set out an intended recommendation on any topic at the time prepared testimony is served would preclude presenting a recommendation on that topic when it comes time to file a post-hearing brief. As TURN describes more fully below, rate case practice at the Commission has long permitted parties to present recommendations for the first time in post-hearing briefs, whether the recommendation is entirely new or a revision of a recommendation set forth earlier in prepared testimony. PG&E has presented no reason to change this practice.

II. PG&E's Arguments Confuse "Evidence" With "Recommendations."

TURN's prepared testimony lays out important elements of the evidence upon which TURN expects to rely when it presents its ultimate recommendations in this

proceeding. But it was never intended to be the exclusive source of such evidence. TURN anticipates that its recommendations will also rely on evidence presented in other parties' testimony, as well as material added to the record during the evidentiary hearings.

PG&E claims that TURN has inappropriately withheld evidence by failing to set out in full in its prepared testimony the range of ultimate recommendations it intends to make regarding revenue requirement adjustments.[1] This is incorrect, in part because PG&E conflates "evidence" with "recommendations" when those two elements of a party's showing are actually distinct. While all of TURN's recommendations that rely on factual assertions will need to be supported by record evidence, this does not mean that the recommendations themselves are necessarily "evidence." The "recommendation" can be and often is an amalgam of policy, law and fact that TURN will support by citing the California Public Utilities Code, Commission decisions, and the evidentiary record developed in the proceeding.

III. PG&E's Arguments Rely On An Incorrect Characterization Of Rate Case Practice.

The Commission should reject as wholly unfounded PG&E's assertion that rate case practice requires parties to "state any recommended reductions to the applicant's requested revenue requirement in their testimony."[2] This simply ignores the number of instances in which a party's recommended reduction can and does appear for the first time in that party's opening brief.

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[1] PG&E Motion to Strike, pp. 2-3.

[2] PG&E Motion to Strike, p. 2.

For starters, parties often participate in rate case proceedings by filing an opening brief without ever serving prepared testimony. By definition, the ultimate recommendation for such a party will appear for the first time in that party's opening brief. Any recommendation put forward by such a party will need to address issues identified as being within the scope of the proceeding and, to the extent it relies on factual assertions, be supported with cites to the evidentiary record to support those assertions. But there can be no doubt that parties can present recommendations without sponsoring testimony at all, contrary to PG&E's claimed practice.

Similarly, even for parties that serve prepared testimony in a rate case, it is not uncommon for them to use their opening briefs to address issues not covered in that prepared testimony. This can happen in one of several ways. An intervenor might identify an issue not captured in its prepared testimony, and take steps to create record support for a recommendation presented for the first time in its opening brief.[3] Or an intervenor might use its opening brief to support the position of another party in the proceeding, and perhaps even amplify that recommendation by citing additional record evidence that the original sponsoring party had overlooked. This would be a recommendation omitted from the party's prepared testimony, yet parties can and do make such recommendations, again contrary to PG&E's claimed practice.

Nor is it uncommon for an intervenor to serve prepared testimony that lays out a very specific recommendation, only to later modify that position in the post-hearing

[3] A very recent example of this practice appears in PG&E's just-concluded general rate case regarding an adjustment of $2.672 million to the utility's other operating revenue (OOR). "Although TURN did not address this issue [in] its own prepared testimony, TURN did enter into evidence a cross exhibit [supporting its recommendation]." D.14-08-032, pp. 608-609.

briefs. Such modifications are often made to better reflect the additional evidence presented in other intervenors' prepared testimony, utility rebuttal testimony, and testimony and exhibits presented during evidentiary hearings. In such cases, the applicant learns of the intervenor's ultimate recommendation upon receipt of the opening brief. And again, so long as that ultimate recommendation is based on record evidence and otherwise appropriately supported, the rate case practice has been for the Commission to fully consider such recommendations.

In sum, the rate case practice that PG&E cites as support for its position simply does not exist. Under any number of circumstances, PG&E would reasonably expect to learn for the first time of a party's ultimate recommendation when PG&E reads that party's opening brief, even where that party had sponsored direct testimony on the very topic that is the subject of that ultimate recommendation. The Commission should reject PG&E's claims that rate case practices or procedures support its request here.

IV. PG&E's Motion Is Premised On The Notion That TURN Should Be Left Worse Off Because It Identified Issue Areas Subject To Recommendations Presented In Post-Hearing Briefs.

If further illustration of the absence of support for PG&E's motion is necessary, the Commission should consider the likely course of events had TURN's prepared testimony of witnesses Long and Jones said nothing about the expectation that the ultimate recommendation that would appear in TURN's opening brief. TURN would have then been in the same position noted above, where an intervenor chooses to make a recommendation not set forth in its prepared testimony. In other words, TURN and all other parties would have been in the same position when it came time to file and respond to that brief.

- TURN would have presented an ultimate recommendation for the first time in our opening brief.
- To the extent that recommendation relies on factual assertions, it would be supported by citations to the full evidentiary record, including other intervenors' testimony and evidence elicited at hearing.
- And PG&E would have the opportunity in its reply brief to respond to that recommendation.

And it is reasonable to predict a similar pattern had TURN's direct testimony presented a recommendation to PG&E' satisfaction on these points, but TURN later chose to make a different ultimate recommendation in its opening brief, based on the fully-developed evidentiary record. PG&E's reply brief would serve as the utility's opportunity to respond to TURN's ultimate recommendation under those circumstances.

PG&E's motion seeks a dramatically different outcome based on nothing other than the fact that TURN's prepared testimony forewarned that there would be additional recommendations appearing in the brief. TURN submits such an outcome makes no sense.

V. PG&E's Opportunity To Rebut or Counter TURN's Ultimate Recommendation Is No Different Than The Utility's Opportunity With Regard to Any Recommendation Presented For The First Time In Opening Briefs.

PG&E argues that by presenting ultimate recommendations for the first time in TURN's opening brief, the utility has no opportunity to rebut that recommendation through countervailing evidence or cross-examination.[4] These arguments do not warrant granting the motion to strike.

PG&E's self-declared limited ability to effectively rebut or cross-examine regarding a recommendation presented for the first time in opening briefs applies across-

[4] PG&E Motion to Strike, pp. 5-6.

the-board to any recommendation that is different from the recommendations laid out in prepared testimony, whether it is a material change from an earlier-stated recommendation, or a wholly new recommendation. To TURN's knowledge, the Commission has never permitted this to be used as a reason to restrict an intervenor's ability to present record-supported recommendations, even if that recommendation is appearing for the first time in a brief. Any recommendation appearing for the first time in a party's opening brief, whether a wholly new recommendation or a materially-modified version of a recommendation that had appeared in prepared testimony, will need to be within the scope and based on the evidentiary record of the proceeding. And any party opposing such a recommendation, whether PG&E or an intervenor, will need to marshal its best argument based on that same record.

VI. TURN's Ultimate Recommendations Will Address Matters Within The Scope Of The Proceeding and Rely On The Established Evidentiary Record.

PG&E's motion makes a number of claims that are really no more than histrionics, including allegations that TURN intends to "provide additional testimony on revenue requirement adjustments or disallowances in briefing,"[5] and that TURN is acting in a manner inconsistent with the Scoping Memo.[6] As described above, TURN's approach with regard to the two recommendations in question is entirely appropriate and consistent with rate case practice. And consistent with TURN's own long-standing practice before this Commission, each ultimate recommendation presented in our post-hearing briefs will be within the scope of the proceeding and, to the extent the

[5] PG&E Motion to Strike, p. 5.

[6] *Id.*, pp. 3-4.

recommendation is fact-based, "supported by identified evidence of record."[7] PG&E's allegations to the contrary should be ignored.

VII. Conclusion

For the above-stated reasons, TURN requests the Commission deny PG&E's motion to strike in its entirety.

August 26, 2014

Respectfully submitted,

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[7] Commission Rules of Practice and Procedure, Rule 13.11.