

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



September 28, 2023

Sidney Bob Dietz II
Director, Regulatory Relations
c/o Megan Lawson
PGETariffs@pge.com

Subject: Disposition Rejecting without Prejudice Pacific Gas and Electric's Advice Letter 4685-G/6772-E for Notification of the Creation of a New Affiliate: Pacific Generation LLC

Dear Sidney Dietz and Meagan Lawson:

PG&E Advice Letter (AL) 4685-G/6772-E notifies the Commission of the creation of a new affiliate, Pacific Generation LLC. The Energy Division rejects this advice letter without prejudice, pursuant to General Order 96-B, General Rule 5.3. It is premature to declare that Pacific Generation is an affiliate because the requested relief is subject to consideration in Application (A.) 22-09-018.

PG&E AL 4685-G/6772-E was filed on November 23, 2022. On December 13, 2022, the California Community Choice Association (CalCCA) filed a protest letter. On December 30, 2022, PG&E filed a reply to CalCCA's protest. All comments and reply comments were timely filed.

Attachment 1 contains a discussion of the comments, replies to the comments, and the Energy Division's determination for rejecting the AL without prejudice.

Please contact Mary Taylor of the Energy Division staff (mary.taylor@cpuc.ca.gov) if you have any questions.

Sincerely,

Leuwam Tesfai
Deputy Executive Director for Energy and Climate Policy
California Public Utilities Commission

cc: Dina Mackin (Dina.Mackin@cpuc.ca.gov)
Mary Taylor (Mary.Taylor@cpuc.ca.gov)
Antonio Carrejo (Antonio.Carrejo@cpuc.ca.gov)

Attachment 1

Review and Analysis

I. Background

PG&E filed Application (A.) 22-09-018 on September 26, 2023, to transfer all non-nuclear generation assets to a new wholly owned subsidiary, Pacific Generation LLC (aka Pacific Generation). PG&E filed Advice Letter 4685-G/6772-E, *Notification of the Creation of a New Affiliate: Pacific Generation LLC*, on November 23, 2022. The advice letter addresses the creation of Pacific Generation as a new affiliate, pursuant to the Affiliate Transaction Rules established in D.97-12-088, in association with PG&E's request submitted in A.22-09-018.

In the Order Instituting Rulemaking to Adopt Reporting Requirements for Electric, Gas, and Telephone Utilities Regarding Their Affiliate Transactions, Decision (D.) 93-02-019 established the definition of an "Affiliate" as an company in which a utility, its controlling corporation, or any of the utility's affiliates directly or indirectly own, control, or hold with the right to vote a minimum of 5 percent of the company's outstanding securities, and also any company in which the utility, its controlling corporation, or any of the utility's affiliates exercise significant influence over company operations and/or indirectly have an equity stake. The decision defined "Subsidiary" as any company with 10 percent or more of the outstanding securities of which are directly or indirectly owned, controlled, or held with power to vote, by either a utility or a controlling corporation. "Regulated Subsidiaries" are as subsidiaries in which "the revenues, and expenses of which are subject to regulation by the Commission and are included by the Commission in establishing rates for the utility, are not included within the definition of affiliate. However, these Rules apply to all interactions any regulated subsidiary has with other affiliated entities covered by these rules."¹

In A.22-09-018, PG&E proposes that Pacific Generation would become a rate-regulated utility subject to cost-of-service regulation by the Commission and would not be an affiliate of PG&E. Pacific Generation is a member-managed LLC with no current operations and PG&E as its sole member. A.22-09-018 proposes a transaction to grant the following to PG&E and Pacific Generation:

1. Authority to transfer certain generation assets;
2. A certificate of public convenience and necessity;
3. Authority to file tariffs and to issue debt; and
4. Approval for related determinations.

PG&E submitted Advice Letter 4685-G/6772-E as *Notification of Creation of a New Affiliate* in accordance with Rule VI.B. In this letter, PG&E states that should the Commission approve A.22-09-018's proposed transaction, that Pacific Generation would become a regulated subsidiary of PG&E under the Affiliate Transaction Rules and subject to the Affiliate Transaction Rules in any interactions it would have with PG&E's affiliates. A.22-09-018's proposed transaction includes requests that the Commission confirm that Pacific Generation is a regulated subsidiary of PG&E.

In the Advice Letter, PG&E requests that if Commission determines that Pacific Generation is an affiliate of PG&E, that it exercise its discretion to exempt Pacific Generation from the definition

¹ D.93-02-019, 48 CPUC2d 163, 173, Appendix A

of “affiliate” and to refrain from applying the Affiliate Transaction Rules to its relationships with PG&E and PG&E Corporation.²

If Pacific Generation becomes a regulated subsidiary, PG&E plans to provide updated notifications when deemed appropriate by the Commission’s direction and submit a supplemental advice letter upon finalization of officer and board appointments. PG&E states that Pacific Generation is not a Rule II.B affiliate, no unusual or unique circumstances exist which require special implementation measures of the Rules, and that it will apply the provisions of its 2022 Affiliate Transactions Compliance plan,³ to all affiliate transactions. Pacific Generation will be subject to any changes or provisions to this plan, including Rules related changes or updates required by Commission action or guidance in A.22-09-018. Finally, PG&E notes announcement of the formation of Pacific Generation to Commission staff on September 29, 2022, and posted notice to its Affiliate Transactions webpage.⁴

II. Party Protests, Comments, and Reply Comments

The California Community Choice Association (CalCCA) filed a protest letter on December 13, 2022. CalCCA’s analysis of AL 4685-G/6772-E concludes that while PG&E provides 60 days’ notice to the Commission as required by Rule VI.B, its representations about Pacific Generation are premature and therefore make it unable to comply with Rule II.B. CalCCA’s position is that even if AL 4685-G/6772-E states an expected purpose for Pacific Generation and concludes that it is not an affiliate under Rule II.B, these are not settled matters until A.22-09-018’s final decision.

CalCCA argues that PG&E’s representations of Pacific Generation are also premature when a Scoping Ruling has not been issued and that the question of its status as an affiliate under Rule II.B will likely be litigated within A.22-09-018. PG&E has requested relief from the Commission to provide confirmation that that Pacific Generation will be treated as a regulated subsidiary for the purposes of the Affiliate Transaction Rules, and that that minority investors will not be PG&E or Pacific Generation affiliates under the Rules. Regarding minority investors, CalCCA points out that because PG&E has stated that because the identities of these investors will not be known until after the Commission’s disposition of A.22.09-018, this uncertainty further justifies suspension of AL 4685-G/6772-E.

PG&E filed its reply to CalCCA’s protest on December 30, 2022. PG&E counters that its submission of AL 4685-G/6772-E was pursuant to Rule VI.B of the Rules by providing the Commission with required notification about Pacific Generation’s creation as a new affiliate and setting forth a compliance plan. PG&E reiterates Pacific Generation’s status as a new affiliate that has no operations and does not engage in the provision of products or services that use electricity or natural gas.

² A.22.09-018, footnote 28 (p. 37), “While the Applicants believe it is clear that Pacific Generation would not be an “affiliate,” in the event the Commission concludes otherwise, Applicants request that the Commission exercise its discretion to exempt Pacific Generation from the definition of “affiliate” and to refrain from applying the affiliate transaction rules to the relationship between Pacific Generation (and any wholly-owned subsidiaries) and PG&E and PG&E Corporation. *See* ATR II.D (ATRs apply to transactions between a Commission-regulated utility and another affiliated utility, unless specifically modified by the Commission in addressing a separate application to merge or otherwise conduct joint ventures related to regulated service); D.98-03-073, 79 CPUC 2d 343, 1998 WL 211974 (Cal.P.U.C.), (SDG&E-SoCalGas decision).”

³ Filed June 17, 2022, as Advice Letter 4619G/6620E

⁴ [PG&E.com: Affiliate Transactions](#). Posted September 29, 2022

PG&E characterizes CalCCA's concerns about approval of AL 4685-G/6772-E in restricting its future ability to litigate issues related to Pacific Generation's status in connection with A.22-09-018 as being misguided. PG&E argues that AL 4685-G/6772-E does not make assumptions about A.22-09-018's outcome other than acknowledging that Pacific Generation's status may change based on the Application's outcome and affirming that PG&E will make any required changes or updates with respect to the Rules. In closing, PG&E disputes CalCCA's characterization of AL 4685-G/6772-E as being premature and reiterates that it is a faithful representation of Pacific Generation's current status.

III. Discussion

Energy Division rejects this advice letter without prejudice. While Affiliate Transaction Rule IIB requires that utilities notify the Commission within 60 days of the creation of a new affiliate,⁵ we find that AL 4685-G/6772-E is premature.

The issue central to this advice letter, Pacific Generation's status as an affiliate or as a regulated subsidiary of PG&E, is being litigated in the proceeding, A.22-09-018. In its application, PG&E takes the position that Pacific Generation is a regulated subsidiary and not an affiliate subject to the Affiliate Transaction Rules (ATR). In the alternative, PG&E requests that the Commission exempt Pacific Generation from being defined as an affiliate or otherwise grant a waiver of the Affiliate Transaction Rules to the extent they apply to the relationship between PG&E and Pacific Generation. Pacific Generation's relation to PG&E, either as a regulated subsidiary or as an affiliate subject to the Affiliate Transaction Rules, will be determined by A.22-09-018. Any subsequent advice letter submission must be consistent with the Commission's decision in A. 22-09-018.

⁵ D.06-12-029, Appendix A-3, Rule VI.B; *New Affiliate Compliance Plans*

November 23, 2022

Advice 4685-G/6772-E

(Pacific Gas and Electric Company U 39 M)

Public Utilities Commission of the State of California

Subject: Notification of the Creation of a New Affiliate: Pacific Generation LLC

Purpose

In accordance with the California Public Utilities Commission (the CPUC or Commission) Decision (D.) 97-12-088, Appendix A, Rule VI.B, as modified by D.98-08-035 and D.06-12-029 (the Decisions), Pacific Gas and Electric Company (PG&E) is required to notify the Commission of the creation of any affiliate covered by the Commission's Affiliate Transaction Rules (Rules) as described in the Decisions. Accordingly, PG&E hereby notifies the Commission of the creation of a new affiliate entitled Pacific Generation LLC.

Rule VI. B. pertains to compliance plans for new affiliates subject to the rules:

Upon the creation of a new affiliate the utility shall immediately notify the Commission of the creation of the new affiliate, as well as posting notice on its electronic bulletin board. No later than 60 days after the creation of this affiliate, the utility shall file an advice letter with the Energy Division of the Commission. The advice letter shall state the affiliate's purpose or activities, whether the utility claims that Rule II B makes these Rules applicable to the affiliate, and shall include a demonstration to the Commission that there are adequate procedures in place that will ensure compliance with these Rules. (Appendix A-3, D.06-12-029)

Background

Pacific Generation LLC (Pacific Generation) was formed on September 26, 2022. Pacific Generation was formed in connection with the proposed transaction contemplated in Application (A.) 22-09-018 (application of PG&E and Pacific Generation for approval to transfer certain generation assets, for a certificate of public convenience and necessity, for authorization to file tariffs and to issue debt, and for related determinations). Pacific Generation is currently a member-managed LLC with no operations, and PG&E is the sole member. In the event the proposed transaction is approved by the Commission,

upon the closing of the transaction, Pacific Generation would become a rate-regulated generation utility subject to cost-of-service regulation by the Commission, defined as a “regulated subsidiary” of PG&E under the Rules. Regulated subsidiaries are not included within the definition of “affiliate,” but the Rules apply to interactions between regulated subsidiaries and other affiliates covered by the Rules. If the Commission confirms Pacific Generation’s status as a regulated subsidiary of PG&E in A.22-09-018, PG&E would provide an updated notification as appropriate and as directed by the Commission. PG&E will also submit a supplemental advice letter with the Commission once all officer and board appointments are finalized.

Additional Information

Pacific Generation is not a Rule II.B affiliate.

At present, no unusual or unique circumstances exist that would require special Affiliate Transactions Rule implementation measures. Therefore, PG&E will apply the provisions of its 2022 Affiliate Transaction Rules Compliance Plan, submitted on June 17, 2022, via Advice 6620-E, to all transactions with this affiliate. If the Commission modifies or requires amendment of PG&E’s current and prevailing compliance plan, or, in the event that PG&E submits a periodic update to its compliance plan, PG&E will apply all such changes or the provisions of such amended plans to this affiliate. PG&E will also apply any changes or updates determined to be necessary with respect to Rules implementation measures based on action by or guidance from the Commission in A.22-09-018.

Pacific Gas and Electric Company has previously notified Commission staff on September 29, 2022, and posted notice of the formation of Pacific Generation on its affiliate transaction World Wide Web site at:

https://www.pge.com/en_US/about-pge/company-information/regulation/affiliate-transactions/affiliate-transactions.page

Protests

Anyone wishing to protest this submittal may do so by letter sent electronically via E-mail, no later than December 13, 2022, which is 20 days after the date of this submittal. Protests must be submitted to:

CPUC Energy Division
ED Tariff Unit
E-mail: EDTariffUnit@cpuc.ca.gov

The protest shall also be electronically sent to PG&E via E-mail at the address shown below on the same date it is electronically delivered to the Commission:

Sidney Bob Dietz II
Director, Regulatory Relations
c/o Megan Lawson
E-mail: PGETariffs@pge.com

Any person (including individuals, groups, or organizations) may protest or respond to an advice letter (General Order 96-B, Section 7.4). The protest shall contain the following information: specification of the advice letter protested; grounds for the protest; supporting factual information or legal argument; name and e-mail address of the protestant; and statement that the protest was sent to the utility no later than the day on which the protest was submitted to the reviewing Industry Division (General Order 96-B, Section 3.11).

Effective Date

Pursuant to General Order (GO) 96-B, Rule 5.1, this advice letter is submitted with a Tier 1 designation. PG&E requests that this Tier 1 advice submittal become effective upon date of submittal, which is November 23, 2022.

Notice

In accordance with General Order 96-B, Section IV, a copy of this advice letter is being sent electronically to parties shown on the attached list and the parties on the service list for R.05-10-030. Address changes to the General Order 96-B service list should be directed to PG&E at email address PGETariffs@pge.com. For changes to any other service list, please contact the Commission's Process Office at (415) 703-2021 or at Process_Office@cpuc.ca.gov. Send all electronic approvals to PGETariffs@pge.com. Advice letter submittals can also be accessed electronically at: <http://www.pge.com/tariffs/>.

/S/

Sidney Bob Dietz II
Director, Regulatory Relations

cc: Service List R.05-10-030



ADVICE LETTER SUMMARY

ENERGY UTILITY



MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No.: Pacific Gas and Electric Company (ID U39 M)

Utility type:

☒ ELC ☒ GAS ☐ WATER
☐ PLC ☐ HEAT

Contact Person: Kimberly Loo

Phone #: (415)973-4587

E-mail: PGETariffs@pge.com

E-mail Disposition Notice to: KELM@pge.com

EXPLANATION OF UTILITY TYPE

ELC = Electric GAS = Gas WATER = Water
PLC = Pipeline HEAT = Heat

(Date Submitted / Received Stamp by CPUC)

Advice Letter (AL) #: 4685-G/6772-E

Tier Designation: 1

Subject of AL: Notification of the Creation of a New Affiliate: Pacific Generation LLC

Keywords (choose from CPUC listing): Compliance, Affiliate

AL Type: ☐ Monthly ☐ Quarterly ☐ Annual ☒ One-Time ☐ Other:

If AL submitted in compliance with a Commission order, indicate relevant Decision/Resolution #: D.97-12-088, D.98-08-035 and D.06-12-029

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: No

Summarize differences between the AL and the prior withdrawn or rejected AL:

Confidential treatment requested? ☐ Yes ☒ No

If yes, specification of confidential information:

Confidential information will be made available to appropriate parties who execute a nondisclosure agreement. Name and contact information to request nondisclosure agreement/ access to confidential information:

Resolution required? ☐ Yes ☒ No

Requested effective date: 11/23/22

No. of tariff sheets: 0

Estimated system annual revenue effect (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: N/A

Service affected and changes proposed¹: N/A

Pending advice letters that revise the same tariff sheets: N/A

¹Discuss in AL if more space is needed.

Protests and correspondence regarding this AL are to be sent via email and are due no later than 20 days after the date of this submittal, unless otherwise authorized by the Commission, and shall be sent to:

California Public Utilities Commission
Energy Division Tariff Unit Email:
EDTariffUnit@cpuc.ca.gov

Contact Name: Sidnev Bob Dietz II. c/o Megan Lawson
Title: Director, Regulatory Relations
Utility/Entity Name: Pacific Gas and Electric Company

Telephone (xxx) xxx-xxxx:
Facsimile (xxx) xxx-xxxx:
Email: PGETariffs@pge.com

Contact Name:
Title:
Utility/Entity Name:

Telephone (xxx) xxx-xxxx:
Facsimile (xxx) xxx-xxxx:
Email:

CPUC
Energy Division Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102

Clear Form

**PG&E Gas and Electric
Advice Submittal List
General Order 96-B, Section IV**

AT&T
Albion Power Company

Alta Power Group, LLC
Anderson & Poole

Atlas ReFuel
BART

Barkovich & Yap, Inc.
Braun Blaising Smith Wynne, P.C.
California Cotton Ginners & Growers Assn
California Energy Commission

California Hub for Energy Efficiency
Financing

California Alternative Energy and
Advanced Transportation Financing
Authority
California Public Utilities Commission
Calpine

Cameron-Daniel, P.C.
Casner, Steve
Center for Biological Diversity

Chevron Pipeline and Power
City of Palo Alto

City of San Jose
Clean Power Research
Coast Economic Consulting
Commercial Energy
Crossborder Energy
Crown Road Energy, LLC
Davis Wright Tremaine LLP
Day Carter Murphy

Dept of General Services
Don Pickett & Associates, Inc.
Douglass & Liddell
Dish Wireless L.L.C.

East Bay Community Energy Ellison
Schneider & Harris LLP
Engineers and Scientists of California

GenOn Energy, Inc.
Goodin, MacBride, Squeri, Schlotz &
Ritchie

Green Power Institute
Hanna & Morton

ICF
iCommLaw
International Power Technology
Intertie

Intestate Gas Services, Inc.
Kelly Group
Ken Bohn Consulting
Keyes & Fox LLP
Leviton Manufacturing Co., Inc.

Los Angeles County Integrated
Waste Management Task Force
MRW & Associates
Manatt Phelps Phillips
Marin Energy Authority
McClintock IP
McKenzie & Associates

Modesto Irrigation District
NLine Energy, Inc.
NRG Solar

OnGrid Solar
Pacific Gas and Electric Company
Peninsula Clean Energy

Pioneer Community Energy

Public Advocates Office

Redwood Coast Energy Authority
Regulatory & Cogeneration Service, Inc.

Resource Innovations

SCD Energy Solutions
San Diego Gas & Electric Company

SPURR
San Francisco Water Power and Sewer
Sempra Utilities

Sierra Telephone Company, Inc.
Southern California Edison Company
Southern California Gas Company
Spark Energy
Sun Light & Power
Sunshine Design
Stoel Rives LLP

Tecogen, Inc.
TerraVerde Renewable Partners
Tiger Natural Gas, Inc.

TransCanada
Utility Cost Management
Utility Power Solutions
Water and Energy Consulting Wellhead
Electric Company
Western Manufactured Housing
Communities Association (WMA)
Yep Energy