



RURAL COUNTY REPRESENTATIVES
OF CALIFORNIA

January 28, 2020

The Honorable Sam Liccardo
Mayor, City of San Jose
City Hall
200 E. Santa Clara Street
San Jose, CA 95113

Mr. Dan Richard
Principal
Haskell Point Advisors, LLC
P.O. Box 11278
Oakland, CA 94611

Dear Mayor Liccardo and Mr. Richard:

On behalf of the Rural County Representatives of California (RCRC) Board of Directors, we appreciate your meeting with us to discuss the proposed transformation of Pacific Gas and Electric Company (PG&E) into a customer-owned utility. We share your main objective - increasing responsiveness to utility customers - and are interested in mechanisms that reduce the costs of making long-overdue infrastructure upgrades.

RCRC is an association of thirty-seven rural California counties, which contain much of California's forested lands and represent a significant portion of PG&E's service territory. RCRC's member counties have suffered the vast majority of the State's most catastrophic wildfire events in the last decade. Similarly, RCRC member counties have borne the lion's share of recent public safety power shutoff (PSPS) events. Finally, rural counties are home to a higher percentage of elderly and low-income individuals who are the most sensitive to significant rate increases and rural residents often necessitate higher energy usage.

Given the devastating impacts recent wildfires and PSPS events have had on our member counties, we are interested in improving utility governance, increasing responsiveness to customers, and enhancing safety cultures. Energy usage and demographics make rural California sensitive to the prospective rate hikes that will be necessary to upgrade PG&E's aging infrastructure to reduce future wildfire risk, increase system reliability, and avoid the need for widespread PSPS events. We are intrigued by your efforts to refocus PG&E on its customers, reduce the cost of acquiring capital for system improvements, and compensating wildfire victims. At the same time, we have many questions about how a very large customer-owned utility will be structured and operated. Below are a series of questions that we pose that must be adequately addressed before RCRC can lend its support to the customer-owned utility model.

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Governance

- Who will have final authority to select governing board members? The “*Customer-Owned Utility Operating Principles*” refers to a nominating committee “vetting candidates for election.” Does the proposal contemplate final choice through ratepayer election? Will elections be contested such that customers have a choice of more than one candidate?
- The “*Customer-Owned Utility Operating Principles*” states that the nominating committee will be “patterned on the CAISO selection process.” Does this refer to the selection of *nominating committee members*, or to the selection of *governing board candidates* by the nominating committee? How will nominating committee members be selected? Will the nominating committee’s vetting be advisory only, much like with the selection process for the CAISO governing board, or will it have final authority to select governing board members/candidates?
- The “*Customer-Owned Utility Operating Principles*” also indicates that “Interim Governing Board nominees will be presented in the Bankruptcy Process.” How will these “Interim Governing Board” nominees be selected?
- What mechanisms will exist for accountability of the governing board and executive leadership to the public and ratepayers? Can members of the governing board be removed?
- How much authority will be delegated to executive leadership within the entity?
- What mechanisms will exist to prevent conflicts-of-interest and self-dealing by governing board members, executive leadership, and other decision-makers? Will those individuals be subject to restrictions applicable to public entities under the Political Reform Act and Government Code Section 1090, or to those rules applicable to traditional nonprofit cooperatives under Corporations Code Section 12373?
- How would the governance structure ensure meaningful representation from rural ratepayers?

Corporate Structure

- The proposed entity has alternately been described as “customer-owned” and “a mutual benefit corporation – in essence, a cooperative owned by its customers.” What does this mean in practice?
- Would the entity have members? Would all ratepayers automatically become members of the entity?
- What will be the rights and obligations of membership?
- The “*Customer-Owned Utility Operating Principles*” states that “excess revenues will be reinvested into the communities.” Does this mean excess will be returned directly to ratepayers, allocated as grants to communities, or something else?
- Will the proposed entity operate in accordance with the Internal Revenue Service (IRS) requirements for traditional electrical cooperatives (under IRC 501(c)(12)), i.e., *democratic control*, *operation at cost*, and *subordination of capital*? If not, how will the proposed entity deviate from these requirements?

- Will the corporation operate in accordance with existing state law governing cooperatives or mutual benefit corporations? If not, what changes will be sought?
- What benefits does the proposed structure offer over a traditional electrical cooperative, a public utility district, JPA, or similar public entity? Are there any significant tradeoffs that come with those benefits?
- How will the governance provisions for the entity – relating to member rights, board selection, and fundamental operating rules – be protected from future change? Will they be codified in statutory changes?
- How can the bylaws or other non-statutory governing document be amended? Will ratepayer, Governor, Legislative, or PUC approval be required?

PUC Oversight, Service Territory, and Protections for Rural Ratepayers

- Will the proposed entity qualify as a “cooperative” under Public Utilities Code sections 2776 et seq.? If so, what external oversight, if any, will there be for decisions by the proposed entity relating to those matters exempted from PUC jurisdiction under Section 2777 (i.e., “establish[ing] rates or regulat[ing] the borrowing of money, the issuance of evidences of indebtedness, or the sale, lease, assignment, mortgage, or other disposal or encumbrance of the property of any electrical cooperative...”)?
- What mechanisms will there be to ensure that such decisions are *transparent* and *accountable* to the *public* and to *ratepayers*?
- How will rates be set? What oversight mechanisms will exist for rates, both within and external to the entity? Similarly, what limitations will exist upon disposal of entity assets?
- Could the proposed entity sell off all or any part of its service territory to another entity? Could a municipal utility be formed within part of the proposed entity’s service territory, and if so, would the entity be allowed (or obligated) to sell its assets in that territory to the municipal utility?
- How will the proposed structure guarantee *uniformity* of rates throughout the service territory, so that rural areas do not experience unaffordable rates?

Taxation

- Will the proposed entity be exempt from federal and/or California state income tax? How will this be accomplished?
- Will the entity be eligible to issue tax exempt debt (either directly or through a conduit issuer)?
- Will the entity pay property taxes to the same extent as PG&E?

Provider of Last Resort

- The “*Customer-Owned Utility Operating Principles*” indicates that under this structure, “qualified” community choice aggregators (CCA), rather than the entity, would be “the provider of last resort.” What new obligations do you anticipate this imposing on CCA’s and how do you intend to ameliorate the impacts on their rates?

- Who decides whether a CCA is "qualified"?
- Is "provider of last resort" status optional for interested CCA's, or mandatory if "qualification" criteria are met?
- Will shifting responsibility for being the "provider of last resort" ultimately result in increased or decreased customer rates?

Financial and Operational Stability

- Many of PG&E's most pressing concerns today involve structural imbalances between rates and costs and/or the results of decades of deferred maintenance, which exist without regard to the managing entity. Indications have been made that being able to reduce the cost of capital will enable a customer-owned utility to perform these necessary system upgrades while reducing or mitigating some of the ratepayer impacts that would be associated with normal utility financing efforts. We are intrigued by the potential ratepayer savings associated with lower financing costs. Are there any other cost savings that will accrue as a result of the proposed restructuring?
- Does the proposal contemplate that the new entity will pay fair market value to acquire PG&E's assets?
- Would PG&E's assets be acquired directly from the bankruptcy estate, overseen by the bankruptcy court, or through some other method?
- How will the proposed entity attract investors and obtain competitive rates for what may be perceived as a novel operational and governance model?
- How would the entity's liability for future fires and other types of claims compare with the framework that currently applies to investor owned utilities and municipally owned utilities?
- Will the entity be subject to the same procurement and labor laws that other public entities are required to follow? Will it "contract out" any part of the maintenance or operation of the transmission and distribution system?

RCRC looks forward to further discussions with you on these issues to ensure that PG&E emerges from bankruptcy with a governance structure that is responsive to its customers and embraces an improved safety culture that is willing to make system improvements to increase reliability while reducing wildfire risk.

Sincerely,



Daron McDaniel
Member, Merced County Board of
Supervisors
RCRC Chair



Stacy Corless
Member, Mono County Board of
Supervisors
RCRC 1st Vice Chair

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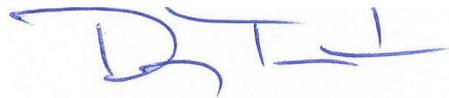
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cc: Members of the Boards of Supervisor, RCRC Member Counties