From: "Lake, Julian" <Julian.Lake@sanjoseca.gov>
Date: December 9, 2019 at 12:54:20 PM PST
To: "cwilliams@sonoraca.com" <cwilliams@sonoraca.com>
Subject: Proposal for Restructuring PG&E

Hello, Councilmember Williams

My name is Julian Lake. I am Assistant Chief of Staff for San Jose Mayor Sam Liccardo. Mayor Liccardo and over 50 local elected officials from PG&E's service area have submitted a letter urging the California Public Utilities Commission, CPUC, to restructure PG&E from an investor-led company to one that is customer-owned.

We find that customer-owned utilities have lower capital costs and place a higher priority on investing in infrastructure and safety, instead of being beholden to generating profit for shareholders.

The CPUC is not foreclosing the proposal for a customer-owned utility, and they in effect have veto power over how PG&E emerges from the current bankruptcy process, so this is an encouraging sign.

Considering the entire PG&E service territory faces peril with the company's uncertain future, Mayor Liccardo wants to include every city and county in this discussion, and that's why we're reaching out to you today.

The more we can show that local officials want a plan that will lead to a PG&E that's focused on serving customers instead of chasing corporate profits, and one that has the financial strength to properly invest in safety, the greater the chance this will become a reality.

Attached are some reading materials regarding the conversion of PG&E to a customer owned-utility. We hope they can clear up some initial questions or concerns that you may have.

Feel free to respond to me by phone or email if you are interested in supporting the customer-owned proposal or if you have any additional questions or concerns.

We will follow up soon to ensure we hear your thoughts on the proposal.
All the best

November 4, 2019

Hon. Marybel Batjer, President
Hon. Martha Guzman Aceves
Hon. Liane M. Randolph
Hon. Clifford Rechtschaffen
Hon. Genevieve Shiroma

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

President Batjer and Commissioners:

RE: Critical Matters Related to the PG&E Bankruptcy

As local leaders across Northern and Central California, collectively representing more than 5 million residents, we write to you about a matter vital to the safety and quality of life of the communities we serve. While our immediate attention focuses on the recovery of our neighbors and communities from recent tragic fires and power shut-offs, we have serious concerns about whatever emerges from the bankruptcy of Pacific Gas and Electric Company and its parent, PG&E Corporation. We write in our individual capacities as elected and appointed leaders, but as our coalition of local leaders grows in the weeks ahead, we will advocate these positions with our boards and councils as well, and seek their support.

Both the federal bankruptcy code and state law invest the California Public Utilities Commission with a responsibility for approving any Plan of Reorganization for those entities. The Bankruptcy Court may not confirm such a Plan if it involves any rate change (as is the likely case) without this Commission's assent, while recently-enacted state law establishes your approval as a necessary predicate for the emergent entity to have access to the Wildfire Fund. The Commission now plays an essential part in the restoration of Northern California's incumbent utility to a position where it can provide safe, reliable, and affordable power to our citizens.

At present, the Commission is considering the scope of its review. It is focusing primarily on the two plans before it, developed in the Chapter 11 proceeding by competing financial interests. One, from the companies themselves, reflects the current driving forces that govern PG&E, namely financial entities that purchased controlling equity interests as the crisis unfolded. The other is the product of distressed asset bondholders. Both vie for ultimate control, and both reflect a short-term desire to maximize financial gain for their proponents. Neither plan addresses the three key matters that we believe are of utmost importance. They are:

First, the discussions so far have been almost entirely devoid of any consideration of whether PG&E can emerge under either plan as a viable, credit-worthy entity. The bankruptcy code requires that the reorganized PG&E to be a feasible, financially stable enterprise, able to perform its functions for the long term. Under Section 1129 (a)(11) of the Bankruptcy Code, the Court

may not confirm a Plan that does not meet this standard. Even without that mandate, as a matter of public policy, this should be a primary consideration. Rather, the proceedings appear dominated so far by a pitched battle between Wall Street titans for control of the bankruptcy process, control of the company, and the ability to control exit financing. This is merely spectacle, without regard for what will be left behind when the financial players inevitably leave the scene.

Second, the scope of review must include consideration of whether the reorganization plans before you address any of the organic operational issues that have plagued this company to the great detriment of its customers. The public interest cannot be swept aside in the name of merely addressing the bankruptcy exit. The Plan of Reorganization must substantially improve the company's operational footing — boosting its capacity to deliver electricity and gas that meets its customers' reasonable expectations for reliable service, while remaining solvent. This requires aligning the financial interest of the company with the public interest — for focused investment in safe, resilient, well-maintained, and sustainable infrastructure.

So far, neither Plan before you posits a vision for a reorganized PG&E that will address those operational issues.

Third, the Commission has indicated that as part of its review, it will examine "structural" issues involving PG&E's governance. We urge you to embrace this aspect of your review broadly and incisively.

Recently, Governor Newsom declared that "when they come out of bankruptcy, [PG&E] has to be a completely re-imagined company." We agree. That reimagining must begin now, as part of your review.

In a growing coalition of local community leaders, we are developing a proposed structural change for PG&E that addresses all three of these key elements. Based on a foundation currently in the Public Utilities Code, we will propose transforming PG&E into a mutual benefit corporation – in essence, a cooperative owned by its customers.

We propose a customer-owned utility for three primary reasons. The most compelling rationale is that PG&E correctly estimates it must invest tens of billions of dollars over the next decade for system hardening, wildfire protection and cyber-security. A mutualized PG&E can raise capital from a broad pool of debt financing in amounts substantially greater than can an investor-owned PG&E, and at much lower cost. A customer-owned utility can operate without the burdens of paying dividends to shareholders, and exempt from federal taxation. As a result, a cooperative financial structure will save ratepayers many billions of dollars in financing costs over this next decade. A customer-owned PG&E will better focus its scarce dollars on long-neglected maintenance, repairs, and capital upgrade, and mitigating some part of the substantial upward pressure on rates.

Next, a customer-owned utility structure can be accomplished through a Chapter 11 Plan, with results far superior to those that would be seen from the two plans currently under consideration.

Finally, the customer-owned utility structure would allow PG&E to begin the process of restoring public confidence, in part by allowing the public to have greater role in determining decisions that increasingly have come to define matters of life and death. To the extent that the public continues to believe that a profit motive has dominated PG&E's decision making, the enterprise will never regain the trust of its customers, its regulators, and public policy-makers. It is time to pass control of the company from geographically distant investors to its customers.

Although recent actions bring the urgency of change into sharp relief, we do not pursue this option out of mere anger or angst. Rather, the moment compels PG&E's transformation. AB 1054 was a response to the realization that customers will be called upon to bear billions of dollars of costs associated with wildfire recovery and payment of claims. We face the need for a completely re-engineered and reconstructed system to adapt to the realities of climate change and poorly maintained infrastructure. PG&E cannot meet these challenges if it stumbles out of bankruptcy, barely able to raise capital, and suffering prohibitive costs.

There is a better way, and we want you to consider it. Your proceeding is that opportunity. We urge that it not be a cramped or limited exercise, focused solely on getting through the current Chapter 11 case.

We stand ready to participate in these proceedings, and to work with you. However, we again urge that the scope of your inquiry must address these broader and compelling matters that go well beyond the immediate desire to simply get through the bankruptcy proceeding. The Commission must do more than approve a Plan – any Plan – merely so that the bankruptcy can be concluded. This situation requires a full and comprehensive effort to chart a sustainable course for the future of PG&E, one that will serve the interests of its customers, and position the company to meet the challenges we will face from a changing climate.

Signed:

Mayor Sam Liccardo, City of San José
Mayor Darrell Steinberg, City of Sacramento
Mayor Libby Schaaf, City of Oakland
Mayor Michael Tubbs, City of Stockton
Mayor Ted Brandvold, City of Modesto
Mayor Steve Ly, City of Elk Grove
Mayor Barbara Halliday, City of Hayward
Mayor Larry Klein, City of Sunnyvale
Mayor Jesse Arreguin, City of Berkeley
Mayor Tom Butt, City of Richmond
Mayor Drew Bessinger, City of Clovis
Mayor Randall Stone, City of Chico
Mayor Julie Winter, City of Redding
Mayor Ian Bain, City of Redwood City
Mayor Brett Lee, City of Davis
Mayor Martine Watkins, City of Santa Cruz
President Carole Groom, San Mateo County Board of Supervisors
Chair Ryan Coonerty, Santa Cruz County Board of Supervisors
Chair Kate Sears, Marin County Board of Supervisors
Chair Don Saylor, Yolo County Board of Supervisors
Chair Mark Medina, San Benito County Board of Supervisors

Mayor Teresa Barrett, City of Petaluma
Mayor Heidi Harmon, City of San Luis Obispo
Mayor Dominic Foppoli, City of Windsor
Mayor Jack Dilles, City of Scotts Valley
Mayor Amy Harrington, City of Sonoma
Mayor John Dell'Osso, City of Cotati

cc:

Hon. Gavin Newsom, Governor
Hon. Toni G. Atkins, President Pro Tem, California State Senate
Hon. Anthony Rendon, Speaker of the California Assembly
Hon. Ben Hueso, Chair Senate Committee on Energy, Utilities & Communications
Hon. John M.W. Moorlach, Vice Chair Senate Committee on Energy, Utilities & Communications
Hon. Chris R. Holden, Chair Assembly Committee on Utilities & Energy
Hon. Jim Patterson, Vice Chair Assembly Committee on Utilities & Energy
Administrative Law Judge Peter Allen
Service List I.19-09-016

Draft November 17, 2019

The Basics: Converting PG&E to a Customer-Owned Utility

Our Current Challenge

The crisis in California's electric utility industry has placed our region's health, safety, and prosperity at serious risk.

- The Governor and the Legislature have taken important steps in response, through the creation of a Wildfire Fund, to reduce the statewide financial risk of wildfire-based losses to its utilities. While very helpful, PG&E suffers from more systemic and extraordinary problems than the Fund can solve.
- PG&E's January 2019 bankruptcy filing has opened the door to completely new solutions to deal with the Company's failure. However, the two proposals before the bankruptcy court—one from PG&E and the other from a group of its creditors —do little to resolve this crisis, while proposing to compensate wildfire victims with a dubious package of cash and new PG&E stock, and to use high interest rate junk bonds as part of its pay-off for other debts. This crisis requires much more, however: substantive reform, and better alignment of PG&E's financial interests with the public interest.
- As an investor-owned utility, PG&E currently operates for the benefit of its shareholders, which may be appropriate in many contexts. In these grave circumstances, however, the short-term, shareholder-first financial focus of the Company has prompted a series of decisions that have severely undermined the safety and reliability of its service, to the great detriment of its 16 million customers.
- A broad coalition of mayors and other local leaders, representing millions of PG&E customers, has proposed a totally new approach: converting PG&E into a customer-owned utility.
- A customer-owned business will have a simple focus: serving its ratepayers safely, reliably, and cost-effectively. This business model has a proven track record: nearly 900 customer-owned cooperatives all across our country already furnish electric power to more than 40 million Americans.
- Even without the poor decisions that have put PG&E back into Chapter 11 for the second time in 20 years, the utility would face an enormous financial burden to make the grid resilient to the challenges of climate change. Tens of billions of dollars will be required for hardening, cyber-security, and wildfire protection, threatening customers with significant rate increases. A customer-owned utility will have both greater and lower-cost access to capital to address those financial needs, which means lower rates for customers.

PG&E's Future Cannot Rest In the Hands of the Hedge Funds Currently Competing in Bankruptcy Court

Chapter 11 reorganization has two functions: to repay what the company owes, and to create a financially viable successor business that will not have to seek further court protection. Neither group now competing for ownership of PG&E offers a long-term path for creating a viable, sustainable utility.

- PG&E has accrued indebtedness exceeding $25 billion to financial institutions and trade creditors, and also faces a rapidly growing mountain of tort claims arising from 2017, 2018 and 2019 wildfires that have crippled the company.
- Both groups of hedge funds have proposed deeply flawed plans of reorganization: the Company plan unduly protects the shareholders represented in its group, while the competing plan predictably benefits bondholders that dominate its interests.
- While competing claimants have consumed all of the attention in bankruptcy court, the Bankruptcy Code also requires the creation of a new reorganized utility to emerge from bankruptcy as a financially sustainable company. The two groups fighting over PG&E's assets have presented plans demonstrating little regard for the future viability for the company, and particularly for its need to raise the tens of billions of dollars to rebuild and repair an unsafe power grid.
- The current competing plans are something of a shell game, variously using - depending on the plan - an ever-changing combination of some cash, some investment-grade debt, some high-cost junk bonds, and some new stock of speculative value in a reorganized PG&E to pay claims and/or reward shareholders. Both approaches pay only lip service to the massive future challenge of rebuilding the grid and protecting customers from wildfire risk.
- Both plans emphasize immediate payment of their financial backers, leaving a fundamentally weakened PG&E vulnerable to a return to bankruptcy for a third time. The CPUC should disapprove both of the deeply flawed plans of reorganization that have been proposed.

A Customer-Owned Utility Best Serves Ratepayers and Our Communities

We seek to repay wildfire victims and other creditors, as fully and fairly as possible— and even compensate equity owners of PG&E, if the Bankruptcy Court determines that to be appropriate — while creating a new utility that will serve our citizens safely, reliably, and cost-effectively. A customer-owned utility provides the best vehicle to accomplish these objectives, particularly where it must acquire and continually operate *all* of PG&E's electric and gas businesses.

- Two reasons support a customer-owned utility as the best path forward: (1) it provides access to capital at the lowest cost to pay creditor claims to exit bankruptcy, rebuild the company, and operate the utility, and (2) it re-aligns PG&E's financial interests with the public interest.
- A customer-owned utility can avail itself of less expensive access to capital for several reasons. By law, a customer-owned utility sets its own rates and determines how to recover its costs. Avoiding the uncertainties of governmental regulatory control over rates enables a customer-owned utility to have access to public market financing, eschewing much more expensive equity and conventional debt. An investor-owned utility's imperative to pay dividends to shareholders alone places much more burdensome capital costs on the company. As a result, a customer-owned entity may save as much as 50% in lower capital costs, translating to billions of dollars of savings in interest payments.
- Further, going forward a customer-owned utility will be exempt from federal taxation (we expect it will need to make whole its obligations on state and local taxes through in lieu payments, however), enabling the company to refocus save dollars for investment on critical maintenance and capital infrastructure.

- The magnitude of these savings becomes apparent when we consider that PG&E has projected that it will have to spend—and borrow—$28 billion on system hardening and upgrades in the next four years. The financing savings unleashed by a cooperative model run in the billions of dollars, and if properly reinvested in grid resiliency, these savings will have a multiplier effect by reducing losses, mitigating claims, and dampening customer rate increases.
- The customer-owned utility's leaner financing model also enables it to undertake essential insurance needs relating to future wildfire risk, including participating in the recently-established $21 billion state wildfire fund, and other forms of risk management.
- Second, the different financing structure of a utility cooperative liberates it from the constant short-term imperative of maximizing shareholder value through the stock price. This will enable a new culture at the utility, one that can harmonize the goals of management and the workforce with the real needs of their customers and the public.
- The governing board of the utility will ultimately be responsible to customers, not shareholders, and the company will establish a formal process for incorporating ratepayer input into the board election process.
- In a customer-owned utility, the new governing board will determine whether to retain the current operating managers who were recently selected to run PG&E after its bankruptcy, or whether a new executive team should be chosen.
- A publicly-owned utility—as distinguished from the customer-owned model that we propose—has merit, and several municipal utilities have demonstrated strong track records. Conversion of an investor-owned PG&E to a publicly-owned utility, however, faces daunting hurdles. The California Constitution prohibits the state from owning a company. Purchasing the company also poses fiscal risk to the state, as Standard & Poor's recently publicly stated that any state acquisition of PG&E would result in a downgrade of state bonds, increasing future financing costs on taxpayers. Finally, public acquisitions of private assets through eminent domain—and lengthy litigation—very often result in taxpayer payments in excess of the market value of the assets.

Bankruptcy Can Enable PG&E's Transformation to a Customer-Owned Utility

The Chapter 11 process provides a path for the conversion of PG&E to a utility cooperative.

- The Bankruptcy Code confers statutory authority on the Federal Courts to change the corporate form of a company in Chapter 11 as part of the reorganization process. This can be accomplished with or without the consent of the equity owners of the company.
- The cities and counties supporting creation of an electrical cooperative will propose their own Chapter 11 plan (the "Customer Plan"), just as the Company and the bondholders have each proposed a plan. The terms of this Customer Plan will convert PG&E into a customer-owned utility cooperative. It will pay claims in cash instead of using the uncertainties of the payment proposals of the other plans.
- The CPUC must review and approve the structure of whatever company emerges from bankruptcy. The coalition of local leaders submitted a November 4, 2019 letter to CPUC Board President Marlene Batjer, seeking to ensure that the agency's scope of review incorporates consideration of a reorganized structure that will best serve the public. In her November 14, 2019 response, President Batjer observed that the Commission has already begun to discuss

"concepts such as mutual benefit corporations and similar models. There are many benefits from such models that warrant further consideration."

- Perhaps most importantly, the Customer Plan will articulate a clear approach for financing the more than $50 billion in debts and obligations of PG&E.
- If the Customer Plan is approved by the Bankruptcy Court and the CPUC, PG&E will emerge from chapter 11 as a customer-owned cooperative, with a new governing board, new ownership, a new financing structure, and board selection process focused on the best interests of the customers.

A Customer-Owned Model Can Best Meet Our Communities' Expectations and Values

- We have begun discussions with legislators who have expressed an interest in carrying a bill to implement a customer-owned model that meets our collective expectations for transparency and accountability in governance structure, and ensures that such good governance laws as the Brown Act and the Public Records Act apply appropriately to the company's operations.
- We have drafted a set of guiding principles that articulate many of these specific objectives, and we continue to engage with our coalition of local leaders to improve those principles.
- We seek the wholesale transformation of every part of PG&E's service area, so that no parts of the state will suffer disparate impacts from exclusion, and to ensure a geographically equitable governance structure. A customer-owned model will succeed only if it leaves no part of our state behind—particularly those rural regions that bear the burden for the high-voltage transmission infrastructure necessary for the grid's proper functioning.
- In collaboration with the Legislature and Governor, we will aggressively advocate to ensure that in lieu fees are paid to state and local governments for any taxes for which a customer-owned utility might be exempt, to ensure that our local communities are made whole.
- We will insist that positive PG&E efforts to meet State clean energy and energy efficiency mandates, along with other public policy imperatives, will continue under a customer-owned utility structure.
- We will honor PG&E's workforce. Although PG&E's problems have many sources, they do not lie in its highly trained, skilled and motivated workforce. We will insist that the conversion to a customer-owned utility not affect their jobs, benefits, or pay structures, as articulated in existing contracts.

The Opportunity of Change

Widespread hostility toward PG&E has become an unnecessarily regrettable fact of life in Northern California, the Central Coast, and the Central Valley. Anger over the Company's failures and the suffering of our communities will not disappear with the mere emergence of a customer-owned entity. It will take time to rebuild confidence, and to rebuild the system. Nonetheless, a transformation of the company to a customer-owned cooperative opens the door to a more collaborative approach with the public and the state's leadership. We aspire to create a company that fundamentally realigns its interest with the public interest.

Customer Owned-Utility Operating Principles

Geographic Inclusion and Equity

- The customer-owned utility would not seek to sever any portion of the current PG&E service area
- Governance and operations would reflect a priority for ensuring that no disparate negative impact is borne by any specific region, county, or city, as a result of the transformation of the utility.

Governing Board Responsibilities & Selection Process

- Assumes ratemaking and capitalization responsibilities in place of CPUC regulation.
- Governing Board would oversee management of the organization, hire and/or retain senior management.
- Fiduciary duty of the Board would be to the customer-owners.
- Interim Governing Board nominees would be presented in the Bankruptcy Process.
- Selection of Governing Board members would be through a two-step process, with a nominating committee patterned on the CAISO selection process (see attached), vetting candidates for election.
- Organization charter would require board members to meet qualification requirements of competence, independence, and specific skill sets (e.g., safety, cyber-security, management, etc.).

Power Supply Procurement

- Customer-owned utility would be subject to all State requirements for clean energy procurement, energy efficiency initiatives, etc. as they relate currently to the investor-owned utilities.
- Primary responsibility for power supply procurement in areas where qualified CCA's already procure power would shift to those qualified CCAs, who would become provider of last resort (POLAR) in their territory. ("Qualified" CCAs would meet good utility practices; including adopting risk management policies and procedures, adequate operating reserves, and limits on uses of ratepayer funds). The customer-owned utility would serve as backstop POLAR for the remaining customers whose communities choose not to form a CCA.
- The customer-owned utility would support new CCA formation and options to reduce costs for all ratepayers including options to reduce and stabilize the PCIA and other non-bypassable charges.
- The Customer Owned Utility would support local efforts to administer and implement public purpose programs such as energy efficiency and renewable energy programs funded through the public goods charge.

Public Accountability

- Notwithstanding "private" entity legal status, Customer-owned utility would operate as though it were a public agency with regard to transparency and accountability of decision-making. That includes:
  - Compliance with applicable public record and open meeting rules, including the Brown Act and Public Records Act

- Prohibitions on organized political contributions or activities, except educational programs
- Outreach to underserved communities,
- Goals for women & minority contracting and employment,
- And other important public policy objectives.

Rate Impact & Credit Quality

- Customer-owned utility would be committed to lowest cost financing for capital investments needed to maintain the grid, adhere to safety and reliability standards, realize energy policy objectives, and improve customer affordability.
- By charter, the organization would be required to maintain investment-grade credit quality.
- The current balance of rate allocation between urban and rural customers would be maintained.

Safety and Response

- The customer-owned utility would be subject to state agency standards and oversight relating to health, safety & wildfire protection.
- The utility would develop a transparent, prioritized capital investment plan to address infrastructure needs of both the distribution and transmission system to prevent wildfires, reduce PSPS events, and improve overall reliability.
- Required Public Safety Power Shutoffs would be based on best practices, with a transparent decision-making structure, emphasis on coordination with local first responder and emergency service agencies, and high quality customer communication.
- A customer-owned utility would fully support development of distributed energy generation and storage, including local micro grids.