



651 Commerce Drive  
Roseville, CA 95678

phone (916) 781-3636  
fax (916) 783-7693  
web www.ncpa.com

## Agenda – Legal Committee Meeting

**Meeting Date:** June 1, 2023 Legal Committee Meeting  
**Location:** Meeting held at NCPA Headquarters and via Teleconference Posted Locations  
**Time:** 8:30 a.m. PT

In compliance with the Brown Act, you may participate in person at the meeting location or via teleconference at one of the locations listed below. In either case, please (1) post the Agenda at a publicly accessible location at the participation location at least 72-hours before the meeting begins, and (2) have a speaker phone available for any member of the public who may wish to attend at your location.

<p><b>Northern California Power Agency</b> 651 Commerce Drive Roseville, CA 95678</p>	<p><b>City of Alameda</b> Alameda City Attorney's Office 2263 Santa Clara Avenue, No. 280 Alameda, CA 94501</p>	<p><b>San Francisco Bay Area Rapid Transit District</b> Office of the General Counsel 2150 Webster Street, 10<sup>th</sup> Floor, Room 1009 Oakland, CA 94612</p>
<p><b>City of Biggs</b> Law Office of Gregory P. Einhorn 542 Quail Walk Way Rio Vista, CA 94571</p>	<p><b>City of Alameda</b> 18217 Carmel Drive Castro Valley, CA 94546</p>	<p><b>City of Gridley</b> Rich, Fuidge, Bordsen &amp; Galyean 1129 D Street Marysville, CA 95901</p>
<p><b>City of Lodi</b> 221 West Pine Street Lodi, CA 95240</p>	<p><b>City of Healdsburg</b> Burke Williams &amp; Sorenson 688 Roble Avenue Menlo Park, CA 94025</p>	<p><b>Plumas-Sierra Rural Electric Coop</b> Somach, Simmons &amp; Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814</p>
<p><b>City of Lompoc</b> Aleshire &amp; Wynder, LLP 6001 Boeing Place Los Angeles, CA 90045</p>	<p><b>City of Palo Alto</b> Office of the City Attorney Office 250 Hamilton Avenue Palo Alto, CA 94301</p>	<p><b>Port of Oakland</b> Office of General Counsel 530 Water Street Oakland, CA 94607</p>
<p><b>City of Redding</b> Office of the City Attorney 777 Cypress Avenue Redding, CA 96001</p>	<p><b>City of Palo Alto</b> Assistant City Attorney Office 54 Bosworth Field Mendon, NY 14506</p>	<p><b>City of Santa Clara</b> 881 Martin Avenue Santa Clara, CA 95050</p>
<p><b>City of Roseville</b> Civic Center-City Attorney's Office 311 Vernon Street Roseville, CA 95678</p>	<p><b>City of Shasta Lake</b> [No teleconference location]</p>	<p><b>Truckee Donner PUD</b> [No teleconference location]</p>
<p><b>City of Ukiah</b> Rapport and Marston 405 West Perkins Street Ukiah, CA 95482</p>	<p><b>City of Alameda</b> 10572 Avenida Magnifica San Diego, CA 92131</p>	

**To participate by phone from posted meeting location:** Dial: 1 (669) 900-6833  
Meeting ID: 864 4135 4830

**To participate via Zoom from posted location:** <https://us06web.zoom.us/j/86441354830>

Persons requiring accommodations in accordance with the Americans with Disabilities Act in order to attend or participate in this meeting are requested to contact the NCPA Secretary at 916-781-3636 in advance of the meeting to arrange for such accommodations.

The Committee may act on any of the items listed on this Agenda regardless of whether an item is described as an Action item, a Report, or an Informational or Discussion item. This Agenda may be supplemented by Staff Reports which are available to the public upon request. Pursuant to California Government Code Section 54957.5, the following is the location at which the public can view Agendas and other public writings: NCPA Offices, 651 Commerce Drive, Roseville, California, or [www.ncpa.com](http://www.ncpa.com).

- **Review Safety Procedures – NCPA Headquarters Facility**

- 1. CALL MEETING TO ORDER AND ROLL CALL**

- 2. PUBLIC COMMENT**

Any member of the public who desires to address the NCPA Legal Committee on any item considered by the Legal Committee at this meeting, before or during the Committee's consideration of that item, shall so advise the Chair and shall thereupon be given an opportunity to do so. Any member of the public who desires to address the NCPA Legal Committee on any item within the jurisdiction of the Legal Committee and not listed on the Agenda may do so at this time.

- 3. MEETING MINUTES**

Seeking approval of the minutes of the Legal Committee meeting held on April 6, 2023. The Legal Committee meeting scheduled for May 4, 2023, was cancelled. (*Action Item*)

### **CLOSED SESSION**

- 4. CONFERENCE WITH LEGAL COUNSEL**

Pursuant to Government Code Section 54956.9(d)(1) - Existing Litigation, two (2) cases:

Case Name: *In Re PG&E Corporation and Pacific Gas and Electric Company*: United States District Court, Northern District of California, Case No. 4:22-cv-02833-HSG

Case Name: *City of Santa Clara dba Silicon Valley Power and Northern California Power Agency, Plaintiffs, v. California Department of Water Resources, Defendant*, Sacramento County Superior Court, Case No. 34-2023-00338449

### **OPEN SESSION**

- 5. REPORT FROM CLOSED SESSION**

6. **UPDATE REGARDING FERC RULING IN TO18 CASE** – NCPA General Counsel will provide an update regarding the May 18, 2023, FERC ruling in the matter of Pacific Gas and Electric Company, Docket Nos. ER 16-2320-007/ER 16-2320-009, PG&E’s eighteenth revised transmission owner tariff filing requesting an increase in stated transmission service rates.
7. **UPDATE ON FUTURE NCPA PROJECTS** – NCPA staff will provide an overview of the projects under evaluation to meet Member needs for renewable portfolio standard, resource adequacy, GHG and generation.
8. **GENERAL COUNSEL UPDATES** - NCPA’s General Counsel will update the Committee on miscellaneous business matters of interest. (*Information Item*)
9. **ADJOURNMENT**



6/1/2023 Mtg.  
Item 3.

651 Commerce Drive  
Roseville, CA 95678

phone (916) 781-3636  
fax (916) 783-7693  
web www.ncpa.com

# NCPA Legal Committee Meeting Minutes

---

**Date:** Thursday, April 6, 2023  
**Time:** 8:30 a.m. Pacific Standard Time  
**Location:** 651 Commerce Drive, Roseville, CA or via teleconference  
**Subject:** NCPA Legal Committee Meeting

---

## 1. Call Meeting to Order and Roll Call

The Legal Committee meeting was called to order at 8:33 a.m. by Chair Barry DeWalt. At the time of roll call, the following members were present by telephone:

BART-Mary Wilke, Lodi-Janice Magdich, Lompoc-Joe Pannone, Palo Alto-Aylin Bilir, Plumas-Sierra-Michael Vergara, Redding-Barry DeWalt, Roseville-Joe Mandell, Santa Clara-Daniel Ballin, and Ukiah-David Rapport. A quorum was present.

Also participating in the meeting were Lonnie Eldridge of Alameda Municipal Power, Claudia Almer of Lodi, Luis Hara of Santa Clara, NCPA General Manager Randy Howard, NCPA Chief Financial Officer Monty Hanks, NCPA Controller Sondra Ainsworth, NCPA Assistant General Manager Jane Cirrincione, NCPA General Counsel Jane Luckhardt, and NCPA administrative support Linda Stone.

City Attorney Yibin Shen joined the meeting during Closed Session.

## 2. Public Comment

The Chair read the notification regarding Public Comment and asked if any member of the public would like to address the Committee. There was no public comment.

## 3. Meeting Minutes

The minutes of the Legal Committee meetings held on February 2, 2023 were presented by staff for review and approval. Joe Pannone (Lompoc) made a motion to approve the minutes as presented; second by Mike Vergara (Plumas-Sierra). There was no discussion. A roll call vote was taken, as follows. The motion passed.

<b>Vote Summary on Motion</b>	
<b>Participant</b>	<b>Vote</b>
Alameda Municipal Power	Abstain
BART	Absent
Biggs	Absent
Gridley	Absent
Healdsburg	Absent
Lodi	Yes
Lompoc	Yes
Palo Alto	Yes
Plumas-Sierra	Yes
Port of Oakland	Absent
Redding	Yes
Roseville	Yes
Santa Clara	Yes
Shasta Lake	Absent
Truckee Donner PUD	Absent
Ukiah	Yes
<b>Vote Summary</b>	
Total Yes	8
Total Noes	0
Total Abstain	1
Total Absent	7
<b>Result:</b>	<b>Passed</b>

## **CLOSED SESSION**

The Committee went into Closed Session at 8:39 a.m.

- 4. A. Conference with Legal Counsel** - Existing Litigation pursuant to Government Code Section 54956.9(d)(1) – two (2) cases.

Case Name: *In Re PG&E Corporation and Pacific Gas and Electric Company*: United States District Court, Northern District of California, Case No. 4:22-cv-02833-HSG

Case Name: *City of Santa Clara dba Silicon Valley Power and Northern California Power Agency, Plaintiffs, v. California Department of Water Resources, Defendant*, Sacramento County Superior Court, Case No. 34-2023-00338449.

- B. Conference with Legal Counsel** - Pursuant to Government Code Section 54956.9(d)(2) – Potential Litigation, two (2) cases.

The meeting reconvened to Open Session at 8:56 a.m.

## **5. Report from Closed Session**

Chair Barry DeWalt and NCPA General Counsel Jane Luckhardt advised that no reportable action was taken during Closed Session.

## **6. CVPIA Litigation Accounting**

Jane Luckhardt introduced NCPA's Controller Sondra Ainsworth. Sondra briefed the Committee about the Excel spreadsheet Revision 3, prepared by NCPA's Accounting Department, which details the amount of proceeds calculated for distribution to the Members as a result of the favorable ruling in the case. She also explained the differences from the prior distributed version, annual settlements, and the changes resulting in some updated allocations. During discussion, some committee members indicated that the numbers presented had been approved by their staff, but others were still in the process of reviewing. Based thereon, the Committee did not make a recommendation regarding disbursement of the refunds as specified in the spreadsheets, but understood that the Revision 3 spreadsheet will be the basis on which this item will be presented to the NCPA Commission for approval. Sondra said Members will have an opportunity to instruct NCPA whether they wish the proceeds to be distributed directly or applied to their GORE accounts. With Commission approval, Sondra indicated that she expects the funds to go out the door to Members by the end of April.

## **7. Funding Question Presented Related to Funding Authority for TANC California-Oregon Transmission Project (COTP) Agencies**

Jane Luckhardt generally explained the COTP, a major transmission line project between Southern Oregon and Central California that is one of the three lines comprising the California-Oregon Intertie. The discussion focused on available funding options for a large capacitor bank replacement project which is included in the COTP Maintenance and Project plan. Given that WAPA does not carry money over from one year to the next, TANC is working on options to fund the project. Economics say that replacing the capacitor bank all at one time is most efficient, versus phasing the work, however, the goal would be to spread the cost over its useful life of about 30 years. There was recognition of the need for this project. Jane Luckhardt said bond counsel has been consulted. Discussion continued with input from NCPA CFO Monty Hanks, Controller Sondra Ainsworth, and GM Randy Howard about various possible funding activities being considered. Barry DeWalt commented that Redding is opposed to loaning any money to WAPA. Additional comments were made by committee members about bond document covenants, prepays, cash on hand, a reserve account, and finding the most secure arrangement to ensure WAPA pays its share. Jane Luckhardt wants to ensure that Sondra Ainsworth is getting the feedback she needs from this group of lawyers as she works on this project. Roseville expressed its willingness to discuss whatever solutions are presented for consideration. Redding remains unsure and does not like the idea of possible default. Randy Howard commented about the even higher risks should failure occur resulting in the transmission line going down. The group agreed a solution is needed. Jane Luckhardt said NCPA will continue to watch this project as it evolves and keep the committee advised.

## **8. General Counsel Updates**

Given the time, Jane Luckhardt had no updates for the Committee.

## **9. Adjournment.**

The meeting was adjourned at 9:36 a.m.

Respectfully submitted,

---

Linda Stone

183 FERC ¶ 61,118  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;  
James P. Danly, Allison Clements,  
and Mark C. Christie.

Pacific Gas and Electric Company

Docket Nos. ER16-2320-007  
ER16-2320-009

ORDER REJECTING COMPLIANCE FILING AND DIRECTING  
FURTHER COMPLIANCE

(Issued May 18, 2023)

1. On May 17, 2021, Pacific Gas and Electric Company (PG&E) submitted a compliance filing (Initial Compliance Filing), as superseded on July 2, 2021 (Revised Compliance Filing), in response to an order on rehearing<sup>1</sup> directing PG&E to adjust its test-year data during January and February 2018 to account for changes in the corporate income tax rate due to the Tax Cuts and Jobs Act of 2017 (Tax Act).<sup>2</sup> In this order, we dismiss PG&E's Initial Compliance Filing. We also find that PG&E's Revised Compliance Filing does not comply with the directives in the April 2021 Rehearing Order and therefore reject it. As discussed below, we direct PG&E to submit a further compliance filing.

**I. Background**

**A. PG&E Filing and Decision**

2. On July 29, 2016, PG&E submitted its eighteenth revised transmission owner tariff (TO Tariff) filing (TO18) requesting an increase in TO Tariff stated transmission service rates, effective October 1, 2016. On September 30, 2016, the Commission accepted PG&E's tariff revisions for filing, suspended them for five months to become effective on March 1, 2017, subject to refund, and established hearing and settlement

---

<sup>1</sup> *Pac. Gas & Elec. Co.*, 175 FERC ¶ 61,040 (2021) (April 2021 Rehearing Order).

<sup>2</sup> Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054 (2017).

judge procedures.<sup>3</sup> PG&E's TO18 rates were effective from March 1, 2017 through February 28, 2018.<sup>4</sup>

3. On December 22, 2017, the Tax Act was signed into law, reducing the federal corporate income tax rate from 35% to 21%, effective January 1, 2018, one day after the close of the test-year period for PG&E's TO18 filing.<sup>5</sup>

4. On March 15, 2018, the Commission issued a series of orders related to the Tax Act. As relevant here, in Docket No. EL18-72, et al., the Commission issued a Show Cause Order directing certain utilities, including PG&E in Docket No. EL18-108-000, to: (1) propose revisions to the transmission rates under their open access transmission tariff or transmission owner tariffs to reflect the change in the federal corporate income tax rate; or (2) show cause why they should not be required to do so.<sup>6</sup>

5. On October 1, 2018, the Presiding Administrative Law Judge (Presiding Judge) issued the Initial Decision in this proceeding.<sup>7</sup> Among other things, the Presiding Judge found that PG&E must revise its income tax calculations for January and February 2018 to reflect the fact that the Tax Act lowered the federal corporate income tax rate from the maximum 35% rate that PG&E had been paying, to a flat 21% rate, effective January 1, 2018.<sup>8</sup> Noting that "[t]he record does not show any other developments during those

---

<sup>3</sup> *Pac. Gas & Elec. Co.*, 156 FERC ¶ 61,238 (2016).

<sup>4</sup> PG&E subsequently filed its proposed nineteenth revised transmission owner tariff (TO19) filing on July 27, 2017. The Commission accepted PG&E's filing, suspended it for five months, and established hearing and settlement judge procedures. *Pac. Gas & Elec. Co.*, 160 FERC ¶ 61,128 (2017). PG&E's TO19 rates became effective on March 1, 2018.

<sup>5</sup> April 2021 Rehearing Order, 175 FERC ¶ 61,040, at P 72 (2021).

<sup>6</sup> *Alcoa Power Generating, Inc.*, 162 FERC ¶ 61,224 (2018) (Show Cause Order).

<sup>7</sup> *Pac. Gas & Elec. Co.*, 165 FERC ¶ 63,001 (2018) (Initial Decision).

<sup>8</sup> *Id.* PP 1032, 1035, 1039 (recognizing that "during January and February 2018, PG&E will be collecting rates based on a 35[%] tax rate while paying a tax rate of only 21[%]"). The Presiding Judge noted that "because PG&E's transmission rates are fixed, and not formulary, the necessary reductions to [PG&E's Transmission Revenue Requirement] resulting from lowering the corporate tax rate will not automatically flow through to customers without an order compelling such action in this proceeding." *Id.* P 1035.



months that have distorted PG&E's rates,"<sup>9</sup> the Presiding Judge found that PG&E will over-collect its income tax costs for January and February 2018 unless its rate is adjusted to reflect the tax rate reduction.<sup>10</sup> The Presiding Judge explained that the Commission has "frequently recognized that rates should reflect a significant decrease in the federal corporate income tax rate."<sup>11</sup>

6. On February 21, 2019, after holding the Show Cause Order proceeding in abeyance pending settlement discussions in PG&E's TO19 proceeding,<sup>12</sup> the Commission dismissed the Show Cause Order proceeding.<sup>13</sup> The Commission determined that it was unnecessary to evaluate the impact of the Tax Act on PG&E's stated rates in a stand-alone rate proceeding because the issue had already been addressed in the settlement of PG&E's TO19 filing (TO19 Settlement), which covered rates effective March 1, 2018 through February 2019.<sup>14</sup>

7. Subsequently, in Opinion No. 572, issued on October 15, 2020, the Commission held that the impact of the Tax Act on PG&E's stated rates had been resolved in the TO19 proceeding and thus did not have to be addressed here in PG&E's TO18 proceeding.<sup>15</sup> Transmission Agency of Northern California (TANC) and City of Santa Clara sought rehearing of this issue, arguing that the Commission erred by failing to address the effect of the Tax Act on PG&E's January and February 2018 rates.<sup>16</sup>

8. On rehearing, the Commission set aside its determination on the Tax Act issue in Opinion No. 572 and directed PG&E to adjust its test-year data to account for the corporate income tax rate changes during January and February 2018.<sup>17</sup> The Commission

---

<sup>9</sup> *Id.* P 1042.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* P 1039.

<sup>12</sup> *Pac. Gas & Elec. Co.*, 165 FERC ¶ 61,131, at P 1 (2018).

<sup>13</sup> *Pac. Gas & Elec. Co.*, 166 FERC ¶ 61,130, at P 6 (2019).

<sup>14</sup> *Id.* PP 6-7.

<sup>15</sup> *Pac. Gas & Elec. Co.*, Opinion No. 572, 173 FERC ¶ 61,045, at P 296 (2020).

<sup>16</sup> We note that parties sought rehearing of other aspects of Opinion No. 572 that have been addressed by the Commission and are not relevant to this compliance filing.

<sup>17</sup> April 2021 Rehearing Order, 175 FERC ¶ 61,040 at PP 69-73.

based its finding, in part, on the language in the TO19 Settlement, which states that the settlement “fully reflects the impact of the change in the federal corporate income tax rate resulting from the Tax Act on PG&E’s stated TO19 transmission rates.”<sup>18</sup> Because the TO19 Settlement only resolved issues regarding the TO19 filing, which became effective on March 1, 2018, the Commission found that the TO19 Settlement did not address the impact of the Tax Act on PG&E’s rates during January and February 2018, during which time the TO18 rates were in effect.<sup>19</sup> Accordingly, the Commission determined that, while it had terminated the Show Cause Order proceeding based on its approval of the TO19 Settlement, the Commission had not actually resolved the issue of the effect of the Tax Act on PG&E’s January-February 2018 rates in the Show Cause Order proceeding because the TO19 Settlement did not address PG&E’s rates for those two months.<sup>20</sup> Accordingly, consistent with precedent, the Commission required PG&E to submit a compliance filing adjusting its test-year period data to reflect the reduced federal corporate income tax rate for January and February 2018.<sup>21</sup> The Commission explained that this adjustment would “ensure that customers do not pay unjust and unreasonable high federal income tax costs.”<sup>22</sup>

9. On May 17, 2021, in Docket No. ER16-2320-008, PG&E sought rehearing of the April 2021 Rehearing Order. On rehearing, PG&E contended that the *Southwestern Public Service Company*<sup>23</sup> case that the Presiding Judge and the Commission relied upon to require PG&E to adjust its test-year period data to account for a post-period reduction in federal corporate income tax is not analogous to the instant case.<sup>24</sup> Additionally, PG&E asserted that the rates approved in the TO19 Settlement addressed the going-forward period, and therefore the settlement fully accounted for the change in tax rates.<sup>25</sup> PG&E also argued that the April 2021 Rehearing Order failed to address the lack of evidence necessary to support the Commission’s requirement for PG&E to adjust its test-

---

<sup>18</sup> *Id.* PP 69, 71.

<sup>19</sup> *Id.* P 71.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* PP 69, 73.

<sup>22</sup> *Id.* P 73.

<sup>23</sup> 49 FERC ¶ 61,354 (1989) (*Southwestern*).

<sup>24</sup> PG&E May 2021 Rehearing Request at 8-9 & n.28 (citing April 2021 Order, 175 FERC ¶ 61,040 at P 73 & n.239; Initial Decision, 165 FERC ¶ 63,001 at P 1038).

<sup>25</sup> *Id.* at 9.

year period. PG&E argued that because the issue was not raised at the procedurally appropriate time, it lacked the opportunity to provide offsetting evidence.<sup>26</sup>

10. On August 19, 2021, the Commission issued an order addressing arguments raised on rehearing, modifying the discussion in the April 2021 Rehearing Order and continuing to reach the same result finding that the Commission had not resolved the issue of the effect of the Tax Act on PG&E's January-February 2018 rates in the Show Cause Order proceeding, and requiring PG&E to adjust its test-year period data to reflect the reduced federal corporate income tax rate for those two months.<sup>27</sup> The Commission was not persuaded by PG&E's argument that the Commission's reliance on *Southwestern* was misplaced, noting the Presiding Judge's undisputed finding that PG&E will over-collect its income tax costs for January and February 2018 unless its rate is adjusted to reflect the tax rate reduction.<sup>28</sup>

## II. Compliance Filings

11. On May 17, 2021, in Docket No. ER16-2320-007, PG&E submitted the Initial Compliance Filing in compliance with the April 2021 Rehearing Order. On July 2, 2021, in Docket No. ER16-2320-009, PG&E submitted the Revised Compliance Filing explaining that the Revised Compliance Filing supersedes the Initial Compliance Filing. PG&E asserts that the directives of the April 2021 Rehearing Order violate the Internal Revenue Service (IRS) rules and therefore, PG&E states, the Revised Compliance filing does not modify the current or deferred income tax expense to ensure PG&E does not violate the normalization consistency rules.<sup>29</sup> Specifically, PG&E asserts that determining rates under the April 2021 Rehearing Order is not a normalization method of accounting because it violates the "Consistency Rule" of Internal Revenue Code (IRC) section 168(i)(9)(B)<sup>30</sup> and the limitation on the reduction in excess deferred income taxes imposed by section 13001(d)(1) of the Tax Act. PG&E states that IRC section 167 allows for a depreciation deduction for a reasonable allowance for exhaustion, wear and

---

<sup>26</sup> *Id.* at 10.

<sup>27</sup> *Pac. Gas & Elec. Co.*, 176 FERC ¶ 61,106 (2021) (August 2021 Rehearing Order).

<sup>28</sup> *Id.* PP 15-16 (citing Initial Decision, 165 FERC ¶ 63,001 at P 1042). PG&E has filed a petition for review of the Commission determinations in this proceeding with the United States Court of Appeals for the District of Columbia Circuit. PG&E's petition for review is currently pending before the court.

<sup>29</sup> Revised Compliance Filing at 5-7.

<sup>30</sup> *See* 26 U.S.C. § 168(i)(9)(B).

tear of property used in a trade or business. According to PG&E, IRC section 168 establishes the modified accelerated cost recovery system (MACRS), and IRC section 168(f)(2) provides that MACRS depreciation does not apply to any public utility property if the taxpayer fails to use a normalization method of accounting. PG&E therefore maintains that not using a normalization method of accounting would adversely affect PG&E's ability to use MACRS depreciation for tax purposes.<sup>31</sup>

12. PG&E explains that the "Consistency Rule," under IRC section 168(i)(9)(B), provides that the Normalization Rules are not satisfied if the taxpayer, for ratemaking purposes, uses a procedure or adjustment that uses an estimate or projection of tax expense, depreciation expense, or a reserve for deferred taxes, unless such estimate or projection is also used with respect to the other two items and with respect to rate base. According to PG&E, under this section, ratemaking procedures and adjustments must be consistent with the requirements of normalization accounting. PG&E explains that the Consistency Rule is further supported by Treasury Regulation section 1.167(l)-1(h)(6)(i),<sup>32</sup> which provides that a taxpayer does not use a normalization method of accounting if, for ratemaking purposes, the amount of the accumulated deferred income tax (ADIT) excluded from the rate base, or treated as cost-free capital, exceeds the amount of the ADIT reserve for the period used in determining the taxpayer's ratemaking tax expense.<sup>33</sup>

13. PG&E states that it followed the Consistency Rule when it submitted its TO18 filing, such that depreciation expense and tax expense were projected for the calendar year 2017 test period. PG&E explains that the rate base and ADIT were projected for December 31, 2017, which was consistent with PG&E's use of the calendar year 2017 depreciation expense and tax expense. PG&E maintains that the Consistency Rule does not allow just two items to be adjusted for the months of January and February 2018, when depreciation expense and rate base are not adjusted.<sup>34</sup> PG&E explains that the IRS previously concluded that, to satisfy the Normalization Rules, the reserve for deferred taxes that is deducted from the rate base must be based on the same deferred portion of the tax expense used to compute the cost of service.<sup>35</sup>

14. PG&E also asserts that a second tax normalization rule is potentially violated because Tax Act section 13001(d)(1) requires a regulated utility to maintain its excess

---

<sup>31</sup> Revised Compliance Filing at 4-5.

<sup>32</sup> See 26 U.S.C. § 1.167(l)-1(h)(6)(i).

<sup>33</sup> Revised Compliance Filing at 5.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 5-6 (citing Private Letter Ruling (PLR) 7836038 (June 8, 1978)).

deferred income tax (EDIT) that would otherwise be reduced when a tax rate reduction takes effect. PG&E explains that this section requires PG&E to maintain its ADIT balance as of December 31, 2017, even though the corporate tax rate had been reduced to 21% on January 1, 2018, and that the normalization of EDIT does not permit PG&E to reduce its ADIT on December 31, 2017. Thus, PG&E asserts that the April 2021 Rehearing Order is inconsistent with the normalization method of accounting by requiring a reduction of ADIT at that date for the purposes of establishing the rate for January and February 2018. PG&E explains that its Revised Compliance Filing therefore modifies neither the current nor deferred federal income tax expense.<sup>36</sup>

### III. Motion to Lodge Private Letter Ruling

15. On March 10, 2022, PG&E filed a motion to lodge in the record of this proceeding a PLR released by the IRS in October 2021.<sup>37</sup> PG&E states that the PLR in question finds that a violation of the IRS Normalization Rules occurred when a regulatory commission required that a utility use a particular method of accounting to adjust its deferred income tax expense following the reduction of the federal corporate tax rate in the Tax Act without adjusting the remaining three elements of cost of service. PG&E explains that the PLR is relevant to the issues raised in the Rehearing Order and asks the Commission to take three corrective actions: (1) direct PG&E to seek a PLR from the IRS regarding these issues; (2) defer acting on the Revised Compliance Filing until the PLR is resolved; and (3) direct PG&E to implement a mechanism that will enable PG&E and the Commission to address any issues as a result of the PLR.<sup>38</sup>

16. PG&E explains that a utility will lose use of accelerated depreciation, resulting in higher customer rates, if it does not use a normalization method of accounting.<sup>39</sup> PG&E states that a regulatory commission previously required an annual rate adjustment for EDIT amortization without also adjusting depreciation expense, income tax expense, rate base, or ADIT. PG&E explains that in the PLR, the IRS found that accounting for EDIT as required by a previous regulatory commission order would result in violation of the Normalization Rules. According to PG&E, the IRS recognized the agreement between the regulatory commission and the utility to open a proceeding upon receipt of the PLR to

---

<sup>36</sup> *Id.* at 6-7.

<sup>37</sup> PLR 202142002 (Oct. 22, 2021) (October PLR). The parties and location of the parties in a PLR are anonymous.

<sup>38</sup> Motion to Lodge at 1-2, 11.

<sup>39</sup> *Id.* at 3.

ensure the commission order complies with the Normalization Rules.<sup>40</sup> PG&E states that the April 2021 Rehearing Order did not address the limit on the reduction in ADIT for EDIT in the Tax Act and the requirement that PG&E maintain its ADIT balance on December 21, 2017 despite the reduction of the corporate tax rate by the Tax Act.<sup>41</sup> PG&E contends that the PLR confirms that the April 2021 Rehearing Order violates Normalization Rules by requiring PG&E to calculate its income tax expense for January and February 2018 using the 21% corporate tax rate, while the ADIT is based on the 35% corporate tax rate. PG&E also maintains that its Revised Compliance Filing and Motion to Lodge the IRS PLR represent PG&E's efforts to avoid a normalization violation.<sup>42</sup>

#### **IV. Notice of Filing and Responsive Pleadings**

17. Notice of PG&E's Initial Compliance Filing was published in the *Federal Register*, 86 Fed. Reg. 27,844 (May 24, 2021), with interventions and protests due on or before June 7, 2021. Timely protests were filed by TANC and Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities). On July 2, 2021, PG&E filed an answer to the protests. On July 19, 2021, TANC and Six Cities filed a joint motion to reject the answer and response to PG&E's answer. As noted above, we dismiss the Initial Compliance Filing as moot in light of PG&E's representation that the Revised Compliance Filing supersedes the Initial Compliance Filing. Consequently, the responsive pleadings and answers addressing the Initial Compliance Filing are also moot and we will not address them here.

18. Notice of PG&E's Revised Compliance Filing was published in the *Federal Register*, 86 Fed. Reg. 36,276 (July 9, 2021), with interventions and protests due on or before July 23, 2021. A timely joint protest was filed by TANC and Six Cities. On March 10, 2022, PG&E filed a motion to lodge the PLR and request for additional corrective actions. On March 25, 2022, TANC and Six Cities filed an answer to PG&E's motion to lodge the PLR.

##### **A. Joint Protest to the Revised Compliance Filing**

19. TANC and Six Cities assert that PG&E's Revised Compliance Filing results in an unjust and unreasonable transmission revenue requirement (TRR), and contend that the Revised Compliance Filing is "procedurally improper" and is essentially an out-of-time

---

<sup>40</sup> *Id.* at 5.

<sup>41</sup> *Id.* at 5-6.

<sup>42</sup> *Id.* at 10.

request for rehearing and should be disregarded.<sup>43</sup> TANC and Six Cities maintain that PG&E's Revised Compliance Filing fails to comply with the Commission's directives and that PG&E wrongly claims these directives violate IRS Normalization and Consistency Rules.<sup>44</sup> TANC and Six Cities explain that IRS Normalization Rules apply only to accelerated depreciation, and the Commission's directives in the April 2021 Rehearing Order do not require changes to accelerated depreciation or ADIT.<sup>45</sup>

20. TANC and Six Cities state that the Federal Income Tax Expense Deferred and Current Liabilities, remeasured as of December 31, 2017 at the 21% federal corporate income tax rate, are not subject to IRS Normalization Rules and that PG&E's rate base will not change due to the remeasurement because excess/deficient amounts from the Federal Income Tax Expense Deferred Liability will be reclassified, consistent with the Commission's accounting guidance. TANC and Six Cities also state that the IRS Consistency Rules are inapplicable because the Total Federal Income Tax Expense is not a component of rate base, nor does it relate to the use of flow-through accounting for accelerated depreciation.<sup>46</sup> TANC and Six Cities state that the Commission should direct PG&E to submit a compliance filing that appropriately reflects the change in federal income tax from 35% to 21%.<sup>47</sup>

#### **B. Answer to Motion to Lodge the PLR**

21. TANC and Six Cities assert that PG&E's Motion to Lodge the PLR wrongly claims that the Commission's directive would violate IRS Normalization Rules, and state that the PLR that PG&E moves to lodge involves different facts than the instant proceeding. TANC and Six Cities state that the PLR addresses a three-year general rate case, where a rate case established separate yearly calculations for the three-year period. TANC and Six Cities further explain that in the proceeding underlying the PLR, the regulatory commission required the taxpayer to change the income tax allowance based on the reduction in the federal corporate income tax rate, including refunding of annual EDIT, but did not also require a corresponding annual change to the rate base to reflect EDIT refunding for each separate year's calculation. According to TANC and Six Cities, this resulted in a normalization violation because the rate base for each year covered by the general rate case was held constant and did not change based on the annual EDIT

---

<sup>43</sup> TANC and Six Cities Joint Protest at 2, 9.

<sup>44</sup> *Id.* at 4-5.

<sup>45</sup> *Id.* at 5 (citing IRS Rev. Proc. 2020-39).

<sup>46</sup> *Id.* at 6.

<sup>47</sup> *Id.* at 10-12.

amortization refunds to customers. TANC and Six Cities argue that PG&E's TRR is different because it is in place for a set period of time based on a single rate base, so there is no concern with a mismatch between the test-year and the amortization for subsequent years, since there is only one time period in question. TANC and Six Cities conclude that PG&E fails to recognize this key difference between the general rate case at issue in the PLR and the TO18 proceeding, which renders the IRS's determination in the PLR inapplicable, because the same concerns simply do not exist.<sup>48</sup>

22. TANC and Six Cities state that the April 2021 Rehearing Order only required PG&E to modify its income tax expense, whereas the PLR required adjustments to amortization of the EDIT average rate assumption method or the total ADIT and EDIT balance.<sup>49</sup> TANC and Six Cities also note that amortization of EDIT has not been addressed throughout this proceeding, as PG&E claims, and that the April 2021 Rehearing Order "effectively requires PG&E to maintain the EDIT balance that would otherwise reduce the ADIT balance upon the effective date of a tax rate reduction by requiring PG&E to maintain rate base neutrality."<sup>50</sup>

23. TANC and Six Cities conclude that PG&E's Motion to Lodge the PLR is an attempt to circumvent the Commission's directives and avoid implementing any change to account for the reduction in the federal corporate income tax rate for January and February 2018. TANC and Six Cities therefore urge the Commission to reject PG&E's request for corrective actions, as they are unnecessary, considering the Commission's clear guidance in the August 2021 Rehearing Order.<sup>51</sup>

## V. Discussion

### A. Procedural Matters

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2022), prohibits answers to a protest and an answer unless otherwise ordered by the decisional authority. PG&E's answer to TANC and Six Cities' protests and TANC and Six Cities' answer to PG&E's answer relate to the Initial Compliance Filing, which we dismiss as moot. Accordingly, we are not persuaded to accept PG&E's and TANC and Six Cities' answers and will, therefore, reject them.

---

<sup>48</sup> TANC and Six Cities Answer to Motion at 6-7.

<sup>49</sup> *Id.* at 7-8.

<sup>50</sup> *Id.* at 8.

<sup>51</sup> *Id.* at 5-6.



**B. Substantive Matters****1. PG&E's Motion to Lodge the PLR**

25. We deny PG&E's motion to lodge. The PLR PG&E seeks to lodge addresses a different situation from the instant proceeding. Specifically, the PLR addresses a general rate case that established separate yearly calculations for the three-year period and identifies a normalization violation resulting from the regulatory agency's directive to the taxpayer to change the income tax allowance based on the reduction in the federal corporate income tax rate, including refunding of annual EDIT, without requiring a corresponding annual change to the rate base to reflect EDIT refunding for each separate year calculation. In the instant case, PG&E's TRR is based on a single rate base for a set period of time. Accordingly, we find that there is no concern that a mismatch would arise between the test-year and the amortization for subsequent years, since there is only one time period in question. Additionally, in the April 2021 Rehearing Order, the Commission only required PG&E to modify its income tax expense,<sup>52</sup> whereas the PLR required adjustments to amortization of the EDIT average rate assumption method or the total ADIT and EDIT balance.

26. We also deny PG&E's request that we direct it to seek a PLR from the IRS to address its concerns. The Commission may direct a utility to obtain a PLR from the IRS on an issue of first impression if the Commission believes that its decision of the issue would greatly benefit from a private letter ruling from the IRS on the specific matters of tax law.<sup>53</sup> Despite PG&E's attempts to portray it as a complex issue requiring the IRS's subject matter expertise, we do not believe this is the case here. In the April 2021 Rehearing Order, in establishing the directive for PG&E "to adjust its test-year period data to reflect the reduced federal corporate income tax rate for January and February," the Commission has followed its own precedent and that of the courts.<sup>54</sup>

**2. Revised Compliance Filing**

27. At the outset, we dismiss the Initial Compliance Filing as moot, since it has been superseded by the Revised Compliance Filing. We reject PG&E's Revised Compliance Filing because it fails to satisfy the directives of the April 2021 Rehearing Order, as

---

<sup>52</sup> April 2021 Rehearing Order, 175 FERC ¶ 61,040 at P 73.

<sup>53</sup> See, e.g., *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,254, at P 18 (2014).

<sup>54</sup> April 2021 Rehearing Order, 175 FERC ¶ 61,040 at PP 72-73 (citing *Williston Basin Interstate Pipeline Co.*, 52 FERC ¶ 61,170, at 61,645 (1990); *Nat'l Fuel Gas Supply Corp.*, 51 FERC ¶ 61,122, at 61,334-335 (1990); *Papago Tribal Util. Auth. v. FERC*, 773 F.2d 1056, 1059, 1063 (9th Cir. 1985); *Southwestern*, 49 FERC at 62,282-84.

reiterated in the August 2021 Rehearing Order. In essence, PG&E has refused to adjust its test-year data to account for the corporate income tax rate changes during January and February 2018. PG&E's attempt to justify its failure to comply with the Commission's directives by making new arguments not previously raised on rehearing constitutes a collateral attack on the Commission's August 2021 Rehearing Order, which reaffirmed the Commission findings in the April 2021 Rehearing Order.<sup>55</sup>

28. On the merits, PG&E's arguments are also flawed. We agree with TANC and Six Cities that PG&E's compliance with the Commission's directives would not violate the IRS Normalization Rules, contrary to PG&E's assertions. The IRS Normalization Rules only apply to accelerated depreciation,<sup>56</sup> and complying with the Commission's directives in the April 2021 and August 2021 Rehearing Orders would not require changes to accelerated depreciation or ADIT. We also find that the Federal Income Tax Expense Deferred Liability and the Federal Income Tax Expense Current Liability, remeasured as of December 31, 2017 at the 21% federal corporate income tax rate, are based on the actual amount owed rather than deferral estimates, and thus are not subject to the IRS Normalization Rules. Additionally, we agree with TANC and Six Cities that the "Consistency Rule" is not violated because the Total Federal Income Tax Expense is not a component of rate base, and it does not relate to the use of flow-through accounting for accelerated depreciation.

29. For these reasons, we find that PG&E's Revised Compliance Filing does not comply with the Commission's April 2021 and August 2021 Rehearing Orders. Therefore, we reject PG&E's Revised Compliance Filing and continue to require PG&E to adjust its test-year data so that its transmission rates reflect the reduction in the corporate income tax rate effective as of January 1, 2018. We direct PG&E to submit a further compliance filing, within 30 days of the date of this order, to adjust its TRR pursuant to the Commission's directives in the April 2021 and August 2021 Rehearing Orders.<sup>57</sup>

#### The Commission orders:

(A) PG&E's Initial Compliance Filing in Docket No. ER16-2320-007 is hereby

---

<sup>55</sup> See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 136 FERC ¶ 61,244, at P 175 (2011) ("[W]e will not entertain here what essentially constitutes an untimely request for rehearing and an improper collateral attack of ... [prior] orders.").

<sup>56</sup> 26 U.S.C. § 168 Accelerated Cost Recovery System (i)(9).

<sup>57</sup> April 2021 Rehearing Order, 175 FERC ¶ 61,040 at PP 69, 73; August 2021 Rehearing Order, 176 FERC ¶ 61,106 at P 2.

dismissed as moot, as discussed in the body of this order.

(B) PG&E's Revised Compliance Filing in Docket No. ER16-2320-009 is hereby rejected, as discussed in the body of this order.

(C) PG&E is hereby directed to submit a compliance filing within 30 days of issuance of this order, as discussed in the body of this order.

(D) PG&E's motion to lodge the PLR and for additional corrective action is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Debbie-Anne A. Reese,  
Deputy Secretary.