

Mr. David M. Didion
Jenner & Block LLP
1099 New York Avenue
Suite 900
Washington, DC 20001-4412

May 13, 2021

Licensee/Applicant: Pacific Gas and Electric Company
Waiver/Refund Request: Application Filing Fee
Disposition: Dismissed and Denied (47 U.S.C. §159A(d); 47 CFR § 1.1119)
Date Request Filed: February 27, 2019
Date Paid: February 27, 2019
Fee Control No.: RROG-2019-16602

Dear Mr. Didion:

This responds to the request for waiver and refund of an application filing fee (the Request) paid by Pacific Gas and Electric Company (PGE).¹ For the reasons stated below, we deny the Request.

On February 27, 2019, PGE filed the Request and an involuntary assignment application and paid a \$157,555 application filing fee. On the same day, PGE also filed a voluntary bankruptcy petition, initiating a Chapter 11 bankruptcy case in California. In its Request, PGE requests a waiver and refund of the \$157,000 application fee, asserting that the fact of its bankruptcy filing is sufficient to establish financial hardship and good cause for granting the waiver. PGE also states that a refund of the fee it paid would serve the public interest by preserving assets for its bankruptcy creditors. Other than a copy of its bankruptcy petition, PGE offers no other documentation to support its assertion of financial hardship.²

Under Section 9A(d) of the Communications Act of 1934, as amended, the Commission may waive, reduce, or defer payment of an application fee “for good cause shown, where such action would promote the public interest.”³ The Commission has narrowly interpreted its waiver fee authority to require a showing of extraordinary and compelling circumstances that outweigh the public interest in the Commission’s collection of fees.⁴ Contrary to PGE’s understanding, the Commission did not at the time the Request was filed nor does it now consider the mere fact of a licensee’s bankruptcy to establish financial hardship in every case. Instead, the Commission recognizes that “a significant question may exist as to whether bankruptcy represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs” requiring a case-by case review even in bankruptcy cases.⁵

The Commission recently reiterated this standard, emphasizing that while “a bankruptcy or receivership filing may be sufficient evidence of financial hardship, we consider such cases individually, taking into account a number of other factors that are relevant to the question of whether the regulatee lacks sufficient funds to pay the regulatory fees and maintain its service to the public … including

¹ Request for Waiver of Application Filing Fees Associated with ULS File No. 0008520282, filed by David W. Didion, Jenner & Block, in the Commission’s ULS system on Feb. 27, 2019 (Request).

² Request.

³ 47 U.S.C. § 159A(d).

⁴ See *Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, Report and Order, 9 FCC Rcd 5333, 5344, para. 29 (1994), recon. denied, 10 FCC Rcd 12759 (1995) (In which the Commission adopts its extraordinary and compelling circumstances standard for application fee waiver requests, to requests to waive regulatory fees.)

⁵ *Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, Report and Order, 18 FCC Rcd 15985, 15989, para. 11 (2003).

whether the regulatee intends to reorganize or liquidate in bankruptcy, the reason for the bankruptcy or receivership filing, the regulatee's ability or plan to obtain post-petition financing, the number, type and amount of other claims asserted against the regulatee in the bankruptcy or receivership case, and the priority accorded under bankruptcy or receivership law to the Commission's regulatory fee claim.”⁶

Here, PGE’s voluntary bankruptcy petition strongly suggests that at the time PGE filed the Request, it had sufficient funds to pay the application fee and continue in business, contrary to PGE’s claim of financial hardship sufficient to justify waiver and refund of the fee. According to the PGE’s voluntary bankruptcy petition, the value of PGE’s total assets then exceeded its total debts by almost \$20,000,000,000.⁷ Even if these assets were not then in liquid form they presumably could be and were used to obtain debtor-in-possession financing, as the PGE board resolution attached to the voluntary petition suggested PGE would do. According to the board resolution, the borrowed funds were to be used, among other things, for the continuing operation of the business.⁸ The voluntary petition also estimated that PGE would have sufficient funds to make a distribution to its unsecured creditors, from which we reasonably infer that the company anticipated having the financial wherewithal to pay its administrative claims in full.⁹ That being the case, PGE offered no justification for not paying the application filing fees, which like all other allowed administrative expenses are priority claims that are to be paid in full in a non-liquidating Chapter 11 bankruptcy case.¹⁰

In sum, PGE failed to establish financial hardship justifying waiver and refund of the fees and failed to otherwise establish extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission’s regulatory costs. Accordingly, the Request is denied.

If PGE has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink that reads "James Lyons".

James Lyons
Deputy Chief Financial Office

⁶ *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 8189, 8208, , para. 51 (2019).

⁷ PGE’s Voluntary Petition for Non-Individuals Filing for Bankruptcy, filed on Jan. 29, 2019 in Case No. 19-30089, in the United States Bankruptcy Court for the Northern District of California (Voluntary Petition) , p. 5.

⁸ Voluntary Petition at p. 13.

⁹ *Id.* at 3.

¹⁰ An administrative claim is any cost or expense of preserving the bankruptcy estate and its business operation under 11 U.S.C §§ 503 and 506. The application filing fees were clearly administrative expenses under the United States Bankruptcy Code.