



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Application of Pacific Gas and Electric Company
for Approval of the Retirement of Diablo Canyon
Power Plant, Implementation of the Joint Proposal,
and Recovery of Associated Costs Through
Proposed Ratemaking Mechanisms (U39E)

Application 16-08-006
(Filed August 11, 2016)

**PROTEST OF MARIN CLEAN ENERGY TO THE
APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY
SEEKING AUTHORITY TO PROCURE REPLACEMENT POWER
FOR THE RETIREMENT OF DIABLO CANYON POWER PLANT
AND IMPOSE THE RESULTING COSTS ONTO ALL RATEPAYERS**

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I. INTRODUCTION

In accordance with Rule 2.6 of the California Public Utilities Commission (“Commission” or “CPUC”) Rules of Practice and Procedure, Marin Clean Energy (“MCE”), submits the following protest to the *Application of Pacific Gas and Electric Company (U 39 E) for Approval of the Retirement of Diablo Canyon Power Plant, Implementation of the Joint Proposal, and Recovery of Associated Costs Through Proposed Ratemaking Mechanisms*, dated August 11, 2016 (“Application”).

MCE generally supports the retirement of the Diablo Canyon Power Plant (“Diablo Canyon”) as well as PG&E’s commitment to replace Diablo Canyon’s generation with greenhouse-gas (“GHG”) free resources. However, MCE strongly opposes PG&E’s Application for two main reasons: (1) it circumvents existing Commission processes for both energy efficiency (“EE”) and electric resource procurement; and (2) it is a thinly-veiled, unlawful attack against the procurement autonomy of the Community Choice Aggregators (“CCAs”) operating and emerging throughout PG&E’s service territory.

Pursuant to established Commission rules and precedent, this Application proceeding is not the appropriate venue for the Commission to consider or authorize procurement to replace Diablo Canyon, particularly given the immense size and scope of PG&E's requested procurement and the impact it will have on the entire state. In fact, the Commission already has at least two ongoing proceedings in which it is considering these very same issues: the Integrated Resources Plan ("IRP") proceeding, Rulemaking ("R.") 16-02-007; and the EE Business Plan & Rolling Portfolio proceeding, R.13-11-005. PG&E has offered no credible explanation for why the replacement of Diablo Canyon cannot be addressed in the existing IRP and EE proceedings.

PG&E's proposal would also unlawfully force CCAs to bear the costs of PG&E's unilateral procurement decisions, which would foist enormous costs onto CCAs, artificially inflate the costs of CCA service when compared to PG&E's bundled service, and significantly hinder CCAs' ability to independently procure resources on behalf of their own customers. CCAs are already making procurement decisions that far exceed the targets PG&E proposes for both GHG-free and Renewables Portfolio Standard ("RPS") procurement, and their customers are already paying the costs related to such CCA procurement. CCA customers also pay a fair and proportionate amount of the costs needed to decommission Diablo Canyon through existing, non-bypassable nuclear decommissioning charges that the Legislature has expressly authorized through statute. Accordingly, the Commission should not allow PG&E to use Diablo Canyon as an excuse to effectively reclaim full control over electric procurement in Northern California or create an entirely new non-bypassable charge without the Legislature's approval.

PG&E's proposal would also create an unfair advantage for PG&E in energy efficiency because it proposes to circumvent the Commission's established rules – including rules related to cost effectiveness – applicable to all other energy efficiency administrators including MCE. If

the Commission were to consider EE program issues within the scope of this proceeding, it could undermine the Commission's efforts in the ongoing EE proceeding and potentially exclude EE stakeholders that do not have the time and resources to participate in numerous proceedings.

For the foregoing reasons, MCE respectfully requests that the Commission limit the scope of this proceeding to consideration of PG&E's requests related to the safety and environmental impacts of the closure of Diablo Canyon, employment and property tax issues, and accounting issues (i.e. Issues 6-13 in Section VI.D.3 of the Application).¹ MCE further requests that the Commission expressly exclude all procurement and cost allocation issues from the scope of this proceeding (i.e. Issues 1-5 in Section VI.D.3 of the Application),² and direct that such issues be considered within the scope of the Commission's existing proceedings, including the IRP and EE proceedings.

II. BACKGROUND ON MCE AND CCAS

MCE is the first operational CCA within California. MCE is one of three operational CCAs within PG&E's service territory, the other two being Sonoma Clean Power Authority and Clean Power San Francisco. Peninsula Clean Energy and Silicon Valley Clean Energy will also soon begin service in PG&E's service territory. MCE currently provides electric generation services to approximately 250,000 customer accounts within twenty-four distinct communities

¹ See Application, at 17-18

² *Id.*

across four counties, amounting to approximately 500 megawatts (“MW”) of peak demand.³ MCE’s customers receive generation services from MCE while continuing to receive transmission, distribution, billing and other services from PG&E. Because of this split in electricity service provisions, CCA customers are commonly referred to as “unbundled” electricity customers.

CCAs procure electric supply resources through long-term power purchase agreements to ensure: (i) stability in customers’ rates, (ii) in-state and local economic benefit, and (iii) steady market signals to encourage the continued development of RPS and GHG-free electric resources. CCAs have consistently met or exceeded state procurement mandates, and MCE continues to outpace the state’s Investor Owned Utilities (“IOUs”) in pursuing cleaner procurement portfolios. In 2015, MCE’s Governing Board directed MCE to provide its customers with a default Light Green electricity product containing 80% RPS-eligible and 95% GHG-free electricity by 2025. Since its launch, MCE has also been directed by its Governing Board to not procure electricity from nuclear generation.

The primary factor inhibiting MCE’s ability to achieve its ambitious procurement goals sooner than 2025 is the continued expansion of non-bypassable charges, such as the Power Charge Indifference Adjustment (“PCIA”) and the Cost Allocation Mechanism (“CAM”), that MCE’s customers are continuing to be forced to pay. PG&E’s Application seeks to unlawfully change the non-bypassable charge framework at the Commission by creating a new charge

3 Communities currently participating in MCE’s CCA include: the City of American Canyon, City of Belvedere, City of Benicia, City of Calistoga, Town of Corte Madera, City of El Cerrito, Town of Fairfax, City of Lafayette, City of Larkspur, City of Mill Valley, County of Marin, City of Napa, County of Napa, City of Novato, City of Richmond, Town of Ross, City of Saint Helena, Town of San Anselmo, City of San Pablo, City of San Rafael, City of Sausalito, Town of Tiburon, City of Walnut Creek, and City of Yountville.

PG&E refers to as the Clean Energy Charge, which would create dramatic further impediments for MCE and other CCAs to cost-effectively procure renewable and GHG-free electricity on behalf of their customers.

For these reasons as well as the general concerns MCE raises throughout this Protest relating to the impact PG&E's Application could have on MCE's customers, MCE requests that it be granted party status in this proceeding.

III. BACKGROUND ON DIABLO CANYON POWER PLANT

Diablo Canyon has been highly controversial since before it even started generating electricity, in part because of construction errors that resulted in significant additional costs.⁴ Numerous complicating factors for Diablo Canyon have also arisen during the course of its operation, including the discovery of numerous seismic fault lines near the plant⁵ and staggeringly-high estimates for maintenance costs that would be necessary for Diablo Canyon to comply with the state's Once Through Cooling mandate.⁶

California's electricity supply and demand profiles have shifted dramatically due to the continuing adoption of renewable electricity generation and distributed energy resources, making an inflexible massive baseload resource like Diablo Canyon less useful for meeting the needs of

⁴ See <http://www.energy-net.org/01NUKE/DIABLO1.HTM>

⁵ Note In particular the Shoreline fault line was discovered in 2008 which is a "few hundred feet" away from coastline on which Diablo Canyon is situated. See <http://www.sfgate.com/news/article/PG-E-USGS-disagree-on-Diablo-Canyon-fault-danger-2354326.php>

⁶ Note A study by Bechtel estimated implementing Once Through Cooling at Diablo Canyon could cost as much as \$13.3 Billion. See Bechtel Alternative Cooling Technologies Report (Bechtel Report) issued September 2014 cited within PG&E's Workpaper 004 supporting Table 2-6.

from alternate providers such as CCAs. The Commission should view this request for what it really is—a power grab by PG&E that is meant to counteract the increasing penetration and success of community choice aggregation in PG&E’s service territory.

The Commission already has at least two ongoing rulemakings to address procurement of EE and GHG-free resources: (1) the EE program deployment proceeding, R.13-11-005; (2) the IRP Proceeding, R.16-02-007. Both of these detailed and complex multi-stakeholder processes are already underway. Any parallel consideration of PG&E’s procurement requests within this proceeding would risk undermining the Commission’s EE and IRP efforts, and also potentially exclude stakeholders that do not have the time or resources to actively participate in multiple proceedings. Moreover, given the size and scope of PG&E’s requested Diablo Canyon-related procurement authorizations, the Commission will undoubtedly have to consider such requests in connection with its new holistic IRP planning process.

C. PG&E’s Proposal to Foist Non-Bypassable Charges on CCAs for Bundled Procurement is Unlawful and Inappropriate

Section 366.2 of the Public Utilities Code mandates that CCAs “shall be solely responsible for all generation procurement activities on behalf of [their] customers, except where other generation procurement arrangements are expressly authorized by statute.”⁹ Likewise, Section 380 directs the Commission to “maximize the ability of community choice aggregators to determine the generation resources used to serve their customers.”¹⁰ CCAs are also obligated to meet certain procurement requirements that are overseen by the Commission due to specific

⁹ California Public Utilities (“P.U.”) Code Section 366.2(a)(5).

¹⁰ P.U. Code Section 380(b)(5).

statutorily defined requirements, such as RPS,¹¹ Resource Adequacy,¹² and Energy Storage.¹³ Additionally, CCAs are empowered by statute to self-provide resources to meet any renewable energy integration costs they may be deemed responsible for by the Commission.¹⁴

The only exclusions to CCA self-procurement that have been authorized by statutes are non-bypassable charges, such as the PCIA and CAM, which spread the costs of IOU procurement and other activities onto CCAs' customers. These non-bypassable charges are problematic for a number of reasons and the CCAs will continue to address such problems in the appropriate forums. For the purposes of this Application, however, it is entirely unlawful and inappropriate for PG&E to propose that the Commission authorize an entirely new non-bypassable charge – the so-called “Clean Energy Charge” – so that PG&E can pass the costs of its own procurement onto non-bundled customers in its service territory. As set forth above, Section 366.3 of the Public Utilities Code expressly requires that any new non-bypassable charges be authorized by the Legislature through statute, not created by the decree of the very entity (i.e. PG&E) that would stand to benefit most from the existence of such a charge.

PG&E seeks unprecedented and unlawful changes to how non-bypassable charges, and specifically “on behalf of” procurement, is applied to IOU resource procurement. If the Commission wishes to entertain PG&E’s requests for substantial changes to the present framework and balance of non-bypassable charges, it is imperative that the Commission address the issue in a separate, properly-noticed rulemaking dedicated to evaluating the comprehensive

¹¹ P.U. Code Section 399.12(j)(2).

¹² P.U. Code Section 380(a).

¹³ P.U. Code Section 2836(a).

¹⁴ P.U. Code Section 454.51(d) and 454.52(c).

reform of non-bypassable charges, not through a once-off Application that would only impact a single IOU's jurisdiction.

D. There is No Rush—the Commission Should Take a Measured and Reasonable Approach to the Closure of Diablo Canyon

The anticipated closure of Diablo Canyon is markedly different from the last major shutdown of a nuclear plant in California, the San Onofre Generating Station (“SONGS”). SONGS was shut down in June 2013 due to emergency circumstances that began with radiation leaks first detected in January 2012.¹⁵ As a result, the Commission had very little time to assess the impacts related to SONGS’ closure. Unlike Diablo Canyon, which has been determined by the California Independent Systems Operator to not provide a local reliability need,¹⁶ SONGS served as a critical asset for local reliability needs in both Southern California Edison and San Diego Gas and Electric Companies’ service territories. Given the urgency to replace SONGS-related generation and capacity, the Commission still decided to conduct a SONGS-specific needs assessment within a separate track of the 2012 LTPP rulemaking that ultimately determined to how SONGS generation and capacity would be promptly replace with new resource procurement.

The anticipated shutdown of Diablo Canyon in 2025 is completely different than the unexpected shutdown of SONGS. The Commission has nine years until Diablo Canyon will stop producing electricity, which gives the Commission plenty of time to determine how PG&E should replace the lost generation, whether continued growth by CCAs throughout PG&E’s service territory will offset the need for additional procurement for PG&E’s bundled customers,

¹⁵ See Update: San Onofre Nuclear Reactor Shut Down After Leak <http://patch.com/california/sanclemente/operators-shut-down-san-onofre-one-reactor-unit-as-a-precaution>

¹⁶ Chapter 2 of PG&E Testimony at 2-20 and 2-21.

whether such generation should be from new or existing GHG-free resources, and who should pay for it. Even assuming that significant amounts of utility-scale greenfield renewable resources need to be developed, the Commission still has at least 5+ years to authorize the development of such resources. There simply is no rush, and the Commission should view PG&E's claims of urgency with significant skepticism.

Senate Bill 350 directs the Commission to conduct an IRP process to evaluate how long-term electricity procurement plans can help meet the state's ambitious GHG reduction goals, and the matter of how to replace Diablo Canyon generation in a way that is GHG-emissions net neutral is a perfect test case for this new planning framework. Accordingly, the Commission should recognize that the IRP is the ideal proceeding to evaluate the replacement electricity procurement needs and constraints caused by the retirement of Diablo Canyon.

V. RULE 2.6(D) COMPLIANCE

A. Proposed Category

The instant proceeding is appropriately categorized at "ratesetting."

B. Need for Hearing

Evidentiary hearings will be necessary, at the very least to assess the significant anti-competitive impacts on CCAs resulting from specific non-bypassable charge funding requests within PG&E's proposal. The factual record will need to be explored in detail to determine whether these proposed cost recovery mechanism are lawful, accurate, and reasonable.

C. Issues to Be Considered

The Commission should amend the scope of this Application to clearly state what matters are deemed inside and outside of the scope. Based on the list presented by PG&E in Section

VI.D.3 of its Application,¹⁷ matters that should be deemed outside of the scope should include Issues 1-5 and matters that should remain within the scope include Issues 6-13.

D. Proposed Schedule

MCE believes this proceeding will require a much more thorough exploration of the Application, likely through a combination of workshops and formal discovery. As such, MCE does not believe the schedule presented by PG&E in its initial Application is reasonable. Exactly how much time within the schedule should be reserved for such workshops and discovery will depend heavily on what portions of the Application remain within the formal scope. MCE presents two procedural schedules below: Schedule A assumes MCE's requests regarding scope are granted, and Schedule B assumes the Application proceeds with the entirety of the scope presented in PG&E's Application.

¹⁷ PG&E Application at 17-18.

Schedule A – Limited Scope (Items 6-13 Only)

Date	Event
Aug. 11, 2016	PG&E Files Application
Aug. 16, 2016	Notice of Application in Daily Calendar
Sept. 15, 2016	Protests and Responses Filed
Sept. 26, 2016	Reply to Protests Filed
Oct. 3, 2016	Prehearing Conference
Oct. 17, 2016	Workshop 1 – Presentation by PG&E on the Details of its Request
Nov. 4, 2016	ORA and Intervenor Testimony served (if any)
Dec. 2, 2016	Rebuttal Testimony served (if any)
Dec. 20-23, 2016 <i>or</i> Jan. 10-13, 2017	Evidentiary Hearings (if any)
Jan. 23, 2017 <i>or</i> Feb. 13, 2017	Opening Briefs
Feb. 10, 2017 <i>or</i> March 3, 2017	Reply Briefs
May 2017	Proposed Decision
June 2017	Final Decision

Schedule B – Entire Scope (Items 1-13)

Date	Event
Aug. 11, 2016	PG&E Files Application
Aug. 16, 2016	Notice of Application in Daily Calendar
Sept. 15, 2016	Protests and Responses Filed
Sept. 26, 2016	Reply to Protests Filed
Oct. 3, 2016	Prehearing Conference
Oct. 17, 2016	Workshop 1 – Overview Presentation of Proposal by PG&E
Oct. 18, 2016	Workshop 2 – Replacement Procurement Request by PG&E
Oct. 19, 2016	Workshop 3 – Cost Allocation Requests by PG&E
Nov. 16, 2016	ORA and Intervenor Testimony served (if any)
Dec. 14, 2016	Rebuttal Testimony served (if any)
Jan. 10-13, 2017	Evidentiary Hearings (if any)
Feb. 13, 2017	Opening Briefs
March 3, 2017	Reply Briefs
May 2017	Proposed Decision
June 2017	Final Decision

VI. SERVICE

Filings and other communications to this proceeding should be served to the following individuals:

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VII. CONCLUSION

MCE thanks Commission President Picker and Assigned Administrative Law Judge Peter V. Allen for their thoughtful consideration of this protest and the issues detailed herein.

Respectfully submitted,

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