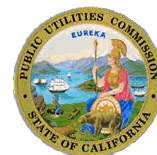


**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Develop an
Electricity Integrated Resource Planning
Framework and to Coordinate and Refine
Long-Term Procurement Planning
Requirements.

Rulemaking 16-02-007
(Filed February 11, 2016)

**REPLY OF JOINT PARTIES
TO THE RESPONSES TO THE JOINT PARTIES'
PETITION FOR MODIFICATION OF DECISION NO. 18-02-018**

Frank R. Lindh
Attorney at Law
110 Taylor Street
San Rafael, CA 94901
Telephone 415-596-3931
frankrichlindh@gmail.com

Attorney for Friends of the Earth

Marc D. Joseph
Mila A. Buckner
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd, Suite 1000
South San Francisco, CA 94080
Telephone 650-589-1660
MDJoseph@adamsbroadwell.com
MBuckner@adamsbroadwell.com

Attorneys for California Unions
for Reliable Energy

Dated: April 9, 2018

Ralph Cavanagh
Natural Resources Defense Council
111 Sutter St., 21st Floor
San Francisco, CA 94104
Telephone 415-875-6100
rcavanagh@nrdc.org

Attorney for Natural Resources
Defense Council

William V. Manheim
Pacific Gas and Electric Company
77 Beale Street, B30A
San Francisco, CA 94105
Telephone 415-973-6648
Facsimile 415-973-5520
wvm3@pge.com

Attorney for
Pacific Gas and Electric Company

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I. INTRODUCTION

Pursuant to Rule 16.4(g) of the Commission's Rules of Practice and Procedure, the Joint Parties listed on the cover to this pleading and in the footnote below¹ hereby respectfully reply to the responses submitted by other parties in response to the Joint Parties' Petition for Modification of Decision ("D") 18-02-018, filed on February 28, 2018 ("Petition" or "PFM"). As required by Rule 16.4(g), the undersigned Joint Parties requested and were granted permission by the Assigned Administrative Law Judge ("ALJ") to file this reply. The Joint Parties requested such permission by email addressed to the Assigned ALJ on April 3, 2018, which was served on all parties. The Assigned ALJ by email dated April 3, 2018, granted the Joint Parties' request for permission to submit this reply.

¹ The members of the Joint Parties group who sponsored the Petition for Modification, and who now join in this reply, are: Friends of the Earth ("FOE"), the Natural Resources Defense Council ("NRDC"), California Unions for Reliable Energy ("CURE"), and Pacific Gas and Electric Company ("PG&E").

II. BACKGROUND

A. BRIEF DESCRIPTION OF THE FEBRUARY 28 PETITION FOR MODIFICATION

The Joint Parties who submitted the February 28 Petition are among the signatories to a June 2016 multi-party agreement referred to as the “Joint Proposal.” The Joint Proposal provided for the retirement of the two generating units at Diablo Canyon Power Plant (“Diablo Canyon”), California’s last remaining nuclear power plant, at the end of their current operating licenses in 2024-2025. Among other things, the Joint Proposal also called for replacing the output at Diablo Canyon with greenhouse gas (“GHG”)-free resources, to prevent an increase in GHG emissions.

In their February 28 Petition, the Joint Parties requested the promulgation of an explicit requirement confirming that among the criteria the Commission will use in evaluating the Integrated Resource Plans of all load-serving entities (“LSEs”) will be the adequacy of such plans to contribute to avoiding any increase in GHG emissions from the closure of Diablo Canyon. The Joint Parties urged that such a requirement was necessary to prevent an increase in GHG emissions in connection with the retirement of the Diablo Canyon generating units. The Petition argued that the requested modification of D.18-02-018 was required to conform to the Commission’s recent decision authorizing the retirement of the Diablo Canyon generating units (“Diablo Canyon Decision” or “D.18-01-022”), which ruled that no increase in GHG emission should be allowed to occur in connection with this action. (*See* D.18-01-022, pp. 21-22, p. 57 Finding of Fact 4, p. 58, Conclusion of Law 3, and p. 60, Ordering Paragraphs 5 and 6.)

B. RESPONSES TO THE PETITION FOR MODIFICATION

A total of nine parties responded to the February 28 Petition, seven of them in support of the Petition, and two in opposition.

The parties in support of the Petition are the Green Power Institute, Union of Concerned Scientists, Environmental Defense Fund, Center for Energy Efficiency and Renewable Technologies, Sierra Club, California Environmental Justice Alliance (the foregoing six parties filed a joint response),² and the American Wind Energy Association California Caucus.

The parties opposing the Petition are the California Community Choice Association (“CalCCA”) and the Protect Our Communities Foundation (“POC”).

With respect to the responses in *support* of the Petition, we note here only two aspects. First, the coalition of environmental advocacy organizations lined up in support of the Petition is remarkably broad and diverse. These are credible organizations with a substantial record of participation in proceedings before the Commission and elsewhere. Their efforts to promote a cleaner energy environment and the elimination of GHG emissions are longstanding and truly impressive. Their comments in support of the Petition warrant careful consideration by the Commission.

Second, the parties supporting the Petition, as well as the Joint Parties who submitted the Petition, have all based their arguments in large part on the Commission’s Diablo Canyon Decision (D.18-01-022), which affirmatively embraced the goal that the retirement of the

² R.16-02-007, “Response of the Green Power Institute, Union Of Concerned Scientists, Environmental Defense Fund, Center For Energy Efficiency And Renewable Technologies, Sierra Club, and California Environmental Justice Alliance to the Petition of Joint Parties for Modification of Decision No. 18-02-018”, filed March 26, 2018.

generating units at Diablo Canyon should not trigger any increase in GHG emissions. This is the guiding principle that should govern the Commission’s consideration of the Joint Parties’ February 28 Petition.

III. REPLY TO THE OPPONENTS OF THE PETITION FOR MODIFICATION

The remainder of this Reply will address the arguments of CalCCA and POC in their respective oppositions to the February 28 Petition.

A. REPLY TO CalCCA

CalCCA argues that the Diablo Canyon replacement criterion that the Joint Parties have proposed for all LSE procurement plans is “unnecessary,” because, according to CalCCA, “the modeling of the Reference System Plan already assumes the retirement of Diablo Canyon [and its replacement] with GHG free resources” (CalCCA Response, p. 3.) CalCCA further suggests that it would be “premature” for the Commission at this time to impose such an obligation on LSEs, since “LSEs have the ability to adjust their plans should they exceed their assigned GHG targets.” (*Id.*, pp. 3-4.)

CalCCA’s first argument amounts to wishful thinking, that somehow the necessary GHG-free replacement resources can be “assumed” for future planning purposes. In fact, what the Reference System Plan shows is an *increase* in fossil-fueled generation, and hence an increase in GHG emissions, when the Diablo Canyon generating units are removed from service. In particular, the Energy Division Staff’s “Preliminary RESOLVE Modeling Results for Integrated Resource Planning at the CPUC,” issued July 19, 2017, appears to confirm at slides 51-53 that, absent a Commission-directed GHG-free resource procurement program of the type

the Joint Parties are advocating, there will be a greater use of fossil fuel generation and a consequent increase in GHG emissions from the electric sector.

CalCCA argues that the 42 million metric ton (“MMT”) GHG emissions limit adopted by D.18-02-018 for the Reference System Plan “should be a sufficient reference point for LSEs to plan their procurement in a manner that will achieve the intended emissions goal.” (CCA Response, p. 3, *citing* D.18-02-018, p. 57.) CalCCA, however, fails to acknowledge that the time-frame the Commission was addressing in adopting the 42 MMT limit *was the year 2030*. CalCCA ignores – and in effect asks the Commission to ignore – the spike in GHG emissions that will occur in the period between the years 2024-2025 and the year 2030 as a consequence of retiring the Diablo Canyon generating units.

CalCCA sidesteps the main issue, claiming that the individual LSE plans (to be filed four months from now, on August 1) will be sufficient, or can be amended at a later time if necessary, to achieve their respective GHG emissions targets. (CalCCA Response, p. 4). CalCCA does not even agree that the CCAs are obligated to procure their share of the GHG-free resources to replace the output at Diablo Canyon, much less that they will they will procure those resources and get them built and operating by 2024-2025. Their response underscores the need for the Commission to rule on the issues they raise as soon as possible. Unless sufficient GHG-free replacement resources are contracted and built over the next few years, an increase in GHG emissions as a consequence of retiring the Diablo Canyon generating units is a certainty.

It would be imprudent to merely *assume* that the LSEs will step up and procure the necessary GHG-free resources at any time, absent a Commission directive that they do so. In reality, it seems very likely that many LSEs will simply omit any Diablo Canyon replacement

effort from their respective Integrated Resource Plans, unless they are required by the Commission to procure such replacement resources.

Indeed, CalCCA quotes testimony by one of its members in the Diablo Canyon proceeding (A.16-08-016) that “[i]t is certainly possible that there is *no need at all to replace the generation that will be lost when PG&E closes Diablo Canyon . . .*” (CalCCA Opposition, p. 4, fn. 7 (quoting testimony of MCE in A.16-08-006) (emphasis added).)

Given the large and growing market share of the CCAs, their obligation to do their share of replacing Diablo Canyon’s output needs to be confronted and addressed now, before it is too late.

CalCCA also argues that the Commission should disregard as not pertinent the experience of what happened when the San Onofre Generating Station (“SONGS”) broke down in 2012 and could not be returned to service. The consequence in that case was a large increase in GHG emissions, because the only available replacement resources were GHG-emitting power plants that in fact were dispatched to replace the lost SONGS output. (*See* Petition, p. 6, for a discussion of the SONGS experience and its implications for Diablo Canyon.) CalCCA criticizes the Joint Parties’ citation of the SONGS experience as “factually inaccurate” and “fear mongering.”

In reality, the two situations are very similar, with one important exception: In contrast to SONGS, the retirement of the generating units at Diablo Canyon has been approved by the Commission as a *planned event*, six years in advance, enough time for the LSEs (including PG&E, the CCAs, and all other LSEs) to plan for, acquire and build the necessary replacement resources to prevent a spike in GHG emissions. The reluctance of the CCAs – a major group of

LSEs with a large and growing market share – to accept their obligation to implement such an effort needs to be met with timely direction by the Commission.

It would not be prudent nor even lawful for the Commission to defer a decision on Diablo Canyon replacement resources to the governing boards of the CCAs. This would be an abdication of the Commission’s responsibility. As the Commission stated in D.18-02-018 in ruling on similar challenges raised by the CCAs, while it is appropriate “to work collaboratively with all LSEs and their representatives, including CCA governing boards,” ultimately it is the Commission’s “responsibility to ensure a reliable system that meets the state’s GHG goals, for which CCAs have a joint responsibility with all other LSEs.” (D.18-02-018, p. 158.)

In sum, the response of CalCCA opposing the Petition for Modification is not well-taken. If anything, the opposition by the CCAs actually serves to reinforce the need for the relief requested in the Petition.

B. REPLY TO POC FOUNDATION

POC also filed an opposition to the Petition. However, POC’s reasons for opposing the Petition are unclear.

POC’s mission statement on its website reads as follows:

Protect Our Communities Foundation defends communities and nature in San Diego County, Imperial County, and northern Baja California. We advance better energy and environmental solutions through advocacy and law.

Further, according to POC’s website:

In fulfillment of its mission, much of POC’s current substantive work involves interventions before the California Public Utilities Commission to stop new gas fired power plants, new transmission

lines, and other “conventional” infrastructure that drains financial resources from smart energy solutions and negatively impacts the environment.

It is a puzzle to ascertain why an organization with such a mission and purpose would oppose action designed to prevent an increase in GHG emissions as a consequence of retiring the generating units at Diablo Canyon. POC makes no effort to explain the discrepancy.

Be that as it may, the arguments raised by POC in opposition to the Petition are without merit.

POC’s first argument is that the relief sought by the Joint Parties should have been presented in an Application for Rehearing of D.18-02-018, rather than a Petition for Modification. (POC Opposition, pp. 2-4.) POC accuses the Joint Parties of presenting “a watered down version of already suggested, considered, and disposed-of changes.” (*Id.*, p. 4.) POC claims this constitutes a “misuse of the Petition for Modification process” of the type that “has been struck down by the courts and should be done so here.” (*Id.*, p. 4, citing *The Utility Reform Network v. Public Utilities Commission*, 223 Cal.App.4th 945, 951 (2014).

As a preliminary matter, the above-referenced court decision cited by POC does not support the proposition that the Petition for Modification filed by Joint Parties somehow was procedurally improper. At issue in that case was the adequacy of the evidentiary record to support the Commission’s decision to approve a contract for a major new power plant. The Court of Appeal held that the record was insufficient. At no point did the Court express any opinion, one way or another, about the Petition for Modification process under the Commission’s rules. Rather, in a section of the opinion entitled “Factual and Procedural Background,” the Court of Appeal merely described the fact that the Commission in that case had chosen to treat a Petition for Modification as a new Application, in response to objections by parties who argued

that the Petition was the wrong procedural device. The Court certainly did not “strike down” this action by the Commission, and it is misleading for POC to argue otherwise.

Here, it was entirely appropriate for the Joint Parties to submit a Petition for Modification. They were not obligated to file a Request for Rehearing. The Petition by its terms sought to address what by any fair reading was an omission in the Commission’s decision – in this case, the omission of any response to parties (including several of the Joint Parties) who asked the Commission in its decision to address Diablo Canyon replacement resources.

The scope of this Proceeding is among the most ambitious the Commission has ever attempted, and the Commission’s Decision (D.18-02-018) covers an extraordinary array of topics. It handled in a generally forthright and comprehensive manner the comments submitted by literally dozens of parties. In asking the Commission to address a perceived omission in such a huge decision, through a Petition for Modification, the Joint Parties acted entirely in good faith.

In contrast, POC itself was rather harsh in its Comments on the Assigned Commissioner’s Proposed Decision in this case, filed earlier this year:

While the [Proposed Decision] makes some effort to summarize the position of the parties with a sentence or two, party comments are left mostly unaddressed.

(POC Comments on Proposed Decision (January 17, 2018), p. 2.)

On the merits, POC’s arguments generally track those of the CalCCA, which are addressed above. Like the CCAs, POC argues in effect that a business-as-usual approach will be sufficient to mitigate any GHG emissions impacts from the retirement of the generating units at Diablo Canyon, and that the Commission can simply assume that the spike in GHG emissions of concern to the Joint Parties will not materialize. As stated earlier in this Reply, this would not be

an appropriate or responsible response by the Commission, especially in light of the language in the Diablo Canyon Decision (D.18-01-022) that adopted the goal of preventing any increase in GHG emissions as a consequence of retiring the Diablo Canyon generating units.

III CONCLUSION

The Joint Parties as proponents of the Petition for Modification, and the seven parties who support the Petition, have made a strong case for the relief they seek, namely, a requirement that the criteria by which the Integrated Resource Plans of all LSEs will be evaluated will include the adequacy of their respective plans in contributing to avoiding any increase in greenhouse gas emissions from the closure of Diablo Canyon. The opponents have not made a persuasive case for denying the requested modification of D.18-02-018.

Respectfully submitted,

By: /s/ Frank R. Lindh

Frank R. Lindh
Attorney at Law
110 Taylor Street
San Rafael, CA 94901
Telephone 415-596-3931
frankrichlindh@gmail.com

Attorney for Friends of the Earth

Marc D. Joseph
Mila A. Buckner
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd, Suite 1000
South San Francisco, CA 94080
Telephone 650-589-1660
MDJoseph@adamsbroadwell.com
MBuckner@adamsbroadwell.com

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Ralph Cavanagh
Natural Resources Defense Council
111 Sutter St., 21st Floor
San Francisco, CA 94104
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77 Beale Street, B30A
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