Decision 18-09-052 September 27, 2018

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

ORDER MODIFYING DECISION 18-01-022 AND DENYING REHEARING OF THE DECISION, AS MODIFIED

I. SUMMARY

Today's decision addresses the application for rehearing of Decision (D.) 18-01-022 (or "Decision"),[1] filed by Californians for Green Nuclear Power, Inc. ("CGNP"). In D.18-01-022, we approved Pacific Gas and Electric Company's ("PG&E") proposal to retire Diablo Canyon Power Plant ("Diablo Canyon") and to recover $241.2 million of various costs associated with retirement. We determined that replacement procurement is more appropriately addressed in our Integrated Resource Planning ("IRP") proceeding, Rulemaking (R.) 16-02-007. (D.18-01-022, p.60 [Ordering Paragraph 4].)

CGNP filed a timely Application for Rehearing of D.18-01-022. In its application for rehearing, CGNP alleges the following: (1) re-scoping of the proceeding midway through the proceeding violates rules 1.7, 1.12, and 7.3 of the Commission's Rules of Practice and Procedure,[2] and thus, violates parties' due process rights; (2) the

[1] Citations to Commission decisions since July 2000 are to the official pdf versions, which are available on the Commission's website at: http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx.

[2] Subsequent rule references are to the Commission's Rules of Practice and Procedure, unless

Commission acted prematurely and unlawfully because the Decision improperly usurps the Coastal Commission's power; (3) the Decision will increase greenhouse gas ("GHG") emissions and thus is inconsistent with law requiring the Commission to reduce GHG emissions; and (4) the decision violates the Commission's obligation to ensure reliable power at just and reasonable rates and thus is not in the public interest.

We have carefully considered the arguments raised in CGNP's application for rehearing, and do not find grounds to grant rehearing. We modify D.18-01-022, as discussed in footnote 12, to make one minor correction regarding the adopted modified settlement. Rehearing of D.18-01-022, as modified, is denied.

II. DISCUSSION

A. The Commission did not violate its Rules of Practice and Procedure.

CGNP contends that D.18-01-022 violates rules 1.7, 1.12, and 7.3 and parties' due process rights because the proceeding was re-scoped midway through the proceeding. (Rehg. App. at p. 3.) CGNP contends that PG&E unilaterally withdrew certain aspects of its application, and thus, changed the scope of the proceeding. (Rehg. App. at pp. 3-4.) CGNP is not correct.

PG&E's application sought Commission approval to replace a portion of Diablo Canyon's output with three tranches of energy efficiency and GHG-free energy resource procurement over a fifteen-year period. (A.16-08-006 at p. 9.) On November 11, 2016, the Assigned Commissioner and Administrative Law Judge ("ALJ") issued a Scoping Memo Ruling, which described the issues to be considered in the proceeding and the time table for resolution as required by rule 7.3.[3] With regard to the issue of replacement procurement, the Scoping Memo stated in part:

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otherwise noted.

[3] Rule 7.3 states:

> The assigned Commissioner shall issue the scoping memo for the proceeding, which shall determine the schedule (with projected submission date) and issues to be addressed. In an adjudicatory or ratesetting proceeding in which there is evidentiary hearing, the scoping memo shall also designate the presiding officer.

> PG&E has made a proposal for procurement of resources to partially replace Diablo Canyon's output, at a cost of $1.3 billion. Parties may present testimony supporting alternative procurement proposals, including proposals that all necessary replacement procurement should be addressed in this proceeding, that no replacement procurement should be addressed in this proceeding, or that some replacement procurement should be addressed in this proceeding.

(Scoping Memo at p. 2.)

On February 27, 2017, PG&E notified parties that it was withdrawing its request for two of the three tranches of replacement procurement[4] that it had proposed in its application. (D.18-01-022 at p. 5.) On March 6, 2017, the assigned ALJ sent an email to the service list informing parties that these two tranches were still within the scope of the proceeding and that parties other than PG&E may still advocate for their adoption. Although PG&E informed parties that this change would be reflected in its rebuttal testimony, PG&E's initial request remained within the scope of the proceeding. Parties made various recommendations regarding replacement procurement as summarized in the Decision. (D.18-01-022 at pp. 15-22.)

CGNP contends that PG&E's withdrawal of replacement procurement requests altered the substance of the proceeding citing to *Southern California Edison Co. v. Public Utilities Com.* ("*Edison*") (2006) 140 Cal.App.4th 1085, 1106. *Edison* is not on point. In *Edison*, the ALJ amended the scope of the issues in the proceeding to include new proposals and then provided parties only three days to comment on the new proposals. The court found that the Commission violated its rules by considering new issues, and that three business days was not sufficient time for parties to respond to the new proposals and thus was prejudicial. Here, because no issues were added or removed from the proceeding, there was no change to the scope of the proceeding and no violation of rule 7.3.

> In a proceeding initiated by application or order instituting rulemaking, the scoping memo shall also determine the category and need for hearing.

[4] PG&E withdrew its request for tranches #2 and #3. (D.18-01-022 at p. 17.)

CGNP argues that D.18-01-022 violates our rule 1.12, which addresses amendments to applications. Rule 1.12 states in relevant part:

> An amendment is a document that makes a substantive change to a previously filed document. An amendment to an application, protest, complaint, or answer must be filed prior to the issuance of the scoping memo.

PG&E's withdrawal of its request for two of the three tranches of replacement procurement was not an amendment to its application in violation of rule 1.12. It was not filed prior to the issuance of the scoping memo, and the replacement procurement remained within the scope of the proceeding.

CGNP contends that D.18-01-022 violates rule 1.7[5] but CGNP does not discuss how the rule is violated. CGNP is required under Public Utilities Code section 1732[6] to "set forth specifically the ground or grounds on which the applicant believes the decision or order to be unlawful." (Pub. Util. Code, § 1732.) We have ruled that "[s]imply identifying a legal principal or argument, without explaining why it applies in the present circumstances does not meet the requirements of Section 1732." (D.10-07-050 at p. 19.)[7] An application for rehearing must contain specific claims

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[5] Rule 1.7 - Scope of Filing states:

> (a) Separate documents must be used to address unrelated subjects or to ask the Commission or the Administrative Law Judge to take essentially different types of action (e.g., a document entitled "Complaint and Motion to File Under Seal" would be improper; two separate documents must be used for the complaint and for the motion). Motions that seek leave to file another document (e.g., to accept a later filing or to file a document under seal) shall be tendered concurrently and separately with the document that is the subject of the motion.
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> (b) Except as otherwise required or permitted by these Rules or the Commission's decisions, general orders, or resolutions, prepared testimony shall not be filed or tendered to the Docket Office. If prepared testimony is issued in support of a filing at the time the filing is made, it shall be served (i) on the service list together with the filing, and (ii) on the Administrative Law Judge or, if none is yet assigned, on the Chief Administrative Law Judge.

[6] Subsequent section references are to the Public Utilities Code, unless otherwise noted.

[7] *Order Instituting Rulemaking to Consider the Adoption of a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006 - Order Modifying Decision (D.) 07-10-013 and Denying Rehearing of the Decision as Modified* [D.10-07-050] (2007).

because the application's purpose is "to alert the Commission to a legal error, so that the Commission may correct it expeditiously." (Rule 16.1(c).) As we have explained, "[w]e should not be forced to guess how our decisions might be in error by extrapolating from such claims… If the parties do not explain, with specificity, in their applications for rehearing why a decision is in error, we have no opportunity to correct our decisions." (D.10-07-050 at p. 20.) CGNP has failed to comply with section 1732 and rule 16.1(c) by not providing any discussion of, or support for, how D.18-01-022 violates rule 1.7.

Finally, CGNP contends that it was prejudiced by the withdrawal of the procurement tranches because: (1) PG&E cited the removal as one of the rationales for denying one of its data requests, (2) it could have focused its resources elsewhere, and (3) it was denied its request to delay the proceeding. (Rehg. App. at pp. 5-6.) Again, CGNP has failed to comply with section 1732 and rule 16.1(c) by not providing sufficient discussion of, or support for, how the Decision was unlawful.

Here, the ALJ properly denied CGNP request to delay the proceeding. CGNP had asked for the delay because it alleged that PG&E had improperly amended its application. However, as discussed above, PG&E did not amend its application and the issues of replacement procurement remained within the scope of the proceeding. Moreover, CGNP did not file a motion to compel answers to its data request as provided by our rules. Thus, any prejudice CGNP may have suffered was due to it not requesting ALJ review of its discovery dispute.

B. PG&E's requests to recover costs are not "developments" requiring a Coastal Commission permit.

CGNP contends that D.18-01-022 is unlawful because a coastal-development permit was needed before we could act on PG&E's application because it involves a change of use. (Rehg. App. at p. 6.) CGNP contends that California Public Resources Code section 30600 requires that parties "wishing to perform or undertake **any developmen**t in the coastal zone . . . shall obtain a coastal development permit." (Rehg. App. at p. 6, emphasis in original.) CGNP contends PG&E's application to retire Diablo

Canyon and recover associated costs is a "development." CGNP cites to *La Fe, Inc. v. City of Los Angeles ("La Fe")* 73 Cal.App.4th 231 (1999) to argue that "development" should be construed broadly to apply to PG&E's cost recovery application. (Rehg. App. at p. 6.) *Le Fe* is not on point.

Public Resource Code section 30106 defines "development:"

> "Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).
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> As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

In *La Fe*, landowners sought to adjust the lot lines between sixteen parcels of their land, which covered ninety-two acres. The County of Los Angeles approved the lot line adjustment in concept but advised the landowners they were required to obtain California Coastal Commission approval. The Coastal Commission denied landowners a permit, concluding that the proposed lot line adjustment made all of the lots accessible to a public street but the street was insufficient to provide access to firefighting equipment in a high fire area as required by Public Resource Code section 30253. (*La Fe*, *supra,* 73

Cal.App.4th at pp. 236-238.) Landowners petitioned for writs of mandate and related relief against the county and the Coastal Commission. The trial court denied the petitions against the Coastal Commission finding that the lot line adjustment constitutes a division of land under in Public Resources Code section 30106. (*La Fe*, *supra,* 73 Cal.App.4th at p. 238.) The Court of Appeal affirmed the trial court's judgment. The court concluded that "development" as defined by Public Resource Code section 30106 included lot line adjustments. Specifically, the court stated that Public Resource Code section 30106 explicitly applied to "a subdivision . . . and any other division of land . . ." and "[a] lot line change constitutes a 'division of land.'" (*La Fe*, *supra,* 73 Cal.App.4th at p. 240.)

PG&E's application is a request to recover costs associated with the retirement of Diablo Canyon. The proceeding specifically excluded land use, facilities, and decommissioning issues from the scope of the proceeding. (Scoping Memo at p. 6.) PG&E's request does not involve any division of land nor does it initiate or in any way authorize development in the coastal zone.

CGNP contends that PG&E must obtain a coastal development permit before it filed its application with the Commission citing to *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles*, ("*Pacific Palisades*") 55 Cal.4th 783 (2012).[8] Because PG&E's cost recovery request to the Commission does not involve any "development," no coastal-development permit is required and this argument has no merit.

CGNP contends that by approving PG&E's application to retire Diablo Canyon we usurp the Coastal Commission's authority to determine decisions affecting the coast because all that can happen is plant retirement. (Rehg. App. at p. 7.) CGNP argues that "the act of decommissioning the power plant, *i.e*. turning the operations off,

[8] *Pacific Palisades* is also not on point. There, the City of Los Angeles deemed plaintiff's (Pacific Palisades Bowl Mobile Estates) application to convert a mobile home park from tenant occupancy to resident ownership incomplete under a local coastal program because it did not include an application for a coastal development permit which the City's processes required to ensure compliance with the Coastal Act.

would affect the coast, notably water temperature" and results in a change of use or intensity that requires a coastal development permit. (Rehg. App. at p. 7.) CGNP does not cite any law to support its position. As discussed above, PG&E's application does not involve a development.

Moreover, we have not approved decommissioning of the power plant. As clearly stated in the Scoping Memo and confirmed in the Decision, we determined it was premature to address land use, facilities, and decommissioning issues in this proceeding. (D.18-01-022 at p. 58 [Finding of Fact 12].) It is within our jurisdiction to determine whether a power plant should continue operations. (Pub. Util. Code, § 701 - *The Commission has the power and jurisdiction to regulate public utilities and can do all things necessary to exercise such power and jurisdiction.*) The Coastal Commission's jurisdiction is to protect, maintain, restore and enhance the state's coastal resources, which it still has the ability to do. (Pub. Resources Code, § 30001.5.)

C. D.18-01-022 does not violate Greenhouse Gas emission laws.

CGNP contends that D.18-01-022 will result in an increase in GHG emissions, and thus violates sections 454.51(a),[9] 400(b),[10] and 701(c). (Rehg. App. at p. 8.) CGNP argues that testimony showed that removing this resource from the power mix will cause the ensuing power deficit to be filled with less environmentally-friendly options. (Rehg. App. at p. 9.) What CGNP is really seeking is to have us reweigh the

[9] Section 454.51(a) states that the Commission shall:

> Identify a diverse and balanced portfolio of resources needed to ensure a reliable electricity supply that provides optimal integration of renewable energy in a cost-effective manner. The portfolio shall rely upon zero carbon-emitting resources to the maximum extent reasonable and be designed to achieve any statewide greenhouse gas emissions limit. . . .

[10] Section 400(b) states that the Commission shall:

> Take into account the opportunities to decrease costs and increase benefits, including pollution reduction and grid integration, using renewable and nonrenewable technologies with zero or lowest feasible emissions of greenhouse gases, criteria pollutants, and toxic air contaminants onsite in proceedings associated with meeting the objectives.

record evidence, which does not constitute a basis for granting rehearing.[11] The purpose of a rehearing application is to specify legal error, not to relitigate issues already determined by this Commission. (Pub. Util. Code, § 1732; Cal. Code Regs., tit. 20, § 16.1, subd. (c).)

We found that the impact of the retirement of Diablo Canyon on GHG emissions was not clear. (D.18-01-022 at p. 57 [Finding of Fact 3].) We appropriately determined that the proper place to consider GHG emissions is in our broader Integrated Resource Planning proceeding, which "is considering issues including optimized portfolios of generation resources to achieve statewide GHG emissions targets."[12] (D.18-01-022 at p. 57 [Finding of Fact 4].) The IRP proceeding will address efforts to avoid an increase in greenhouse gas emissions relating to the retirement of Diablo Canyon. (D.18-01-022 at p. 60 [Ordering Paragraph 5].)

As D.18-01-022 explained:

> Given the time between now and 2024 and 2025, the rapid changes in the California electricity market, and the growth of renewable generation and CCAs, however, it is not clear based on the limited record in this proceeding what level of GHG-free procurement (if any) may be needed to offset the retirement of Diablo Canyon.
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> The IRP proceeding, however, is better equipped to make that determination. The IRP is supposed to incorporate the analysis leading to an optimized portfolio of resources, reflecting constraints such as GHG emissions, reliability, cost, and RPS and energy efficiency requirements, while ensuring safe and reliable electricity service at just and reasonable rates. (R. 16-02-007 at 13.) In short, the IRP has the ability to look at a bigger picture than this proceeding, and can better analyze the potential impacts of the

[11] D.18-08-022 determined that CGNP's arguments were not well supported by the record. (D.18-01-022 at p. 12.)

[12] "The Commission opened Rulemaking (R.) 16-02-007 as its primary venue for implementing Senate Bill (SB) 350 (Stats. 2015, Ch. 547) requirements related to integrated resource planning (IRP), codified as Public Utilities Code Sections 454.51 and 454.52. Senate Bill 350 mandated that the Commission adopt a process for integrated resource planning to ensure that load-serving entities meet targets to be established by the California Air Resources Board, reflecting the electricity sector's contribution to achieving economy-wide greenhouse gas emissions reductions of 40 percent from 1990 levels by 2030." (R.16-02-007 at p. 2.)

> retirement of Diablo Canyon and its interaction with other dynamics in the electricity markets in a manner consistent with state policies. PG&E's previous Tranche 2 and 3 proposals would better be considered in the IRP proceeding.
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> Overall, practical and policy reasons indicate that it is better for potential replacement procurement issues to be addressed in the Commission's IRP process, rather than addressing it in a more piecemeal fashion in this proceeding. Accordingly, the need for and authorization of any replacement procurement should be addressed in the IRP proceeding [footnote omitted].

(D.18-01-022 at p. 22.)

Our order to address any replacement procurement from the retirement of Diablo Canyon in the IRP proceeding complies with statutory requirements. Senate Bill 350 requires utility procurement planning decisions be made in the context of a comprehensive planning process. (Pub. Util. Code, § 454.51.) Considering GHG emissions relating to the retirement of Diablo Canyon in the IRP proceeding will allow us to address what additional GHG-free resources are appropriate and reasonable in a comprehensive manner.

D. Commission Decision 18-01-022 is just and reasonable.

CGNP contends that D.18-01-022 is not in the best interest of ratepayers. (Rehg. App. at p. 10.) CGNP argues that Diablo Canyon electricity will continue to be needed as a source of base-load generation and replacement will be at enormous cost. (Rehg. App. at p. 11.) CGNP further argues that the employee retention and retaining program will cost ratepayers hundreds of millions of dollars and is based on speculative assumptions not supported by the record. (Rehg. App. at p. 11.) Thus, CGNP contends that D.18-01-022 does not ensure that customers receive adequate service at just and reasonable rates. (Rehg. App. at p. 10.) CGNP cites to rule 12.1(d) on settlements and to *Re Southern California Edison Company* ("*Edison Settlement Decision*") (1998) 84 Cal.P.U.C.2d 113 to support its position. The *Edison Settlement Decision* involved our review and approval of a contested settlement.

CGNP's citations to our settlement rule and the *Edison Settlement Decision* are not on point as the topics it takes issue with are not associated with the Diablo Canyon settlement adopted in this proceeding.[13] What CGNP is really arguing is that D.18-01-022 violates section 451 because it does not result in just and reasonable cost recovery. However, again, CGNP is seeking to have us reweigh the record evidence, supporting our approval of PG&E's application, which does not constitute a basis for granting rehearing. As previously discussed, the purpose of a rehearing application is to specify legal error, not to relitigate issues we have already determined. (Pub. Util. Code, § 1732; Cal. Code Regs., tit. 20, § 16.1, subd. (c).)

Based upon record evidence, we determined that continued operation of Diablo Canyon beyond 2025 would not be cost effective.[14] (D.18-01-022 at p. 57 [Finding of Fact 1]; Exhibit PG&E 1 at pp. 2-22, 2-23.) PG&E's testimony demonstrated that there would be significantly reduced need for electric generation from Diablo Canyon due to projected increases in energy efficiency, distributed generation, renewable generation and customers moving to community choice aggregation and direct access. (Exhibit PG&E-1 at pp. 1-20.)

With the determination that continued operation of Diablo Canyon beyond 2015 would not be cost effective, we reviewed associated retirement costs, finding PG&E's retraining program for Diablo Canyon employees reasonable. (D.18-01-022 at p. 58 [Finding of Fact 4].) We also adopted a less costly retention plan to ensure continued safe operation of Diablo Canyon until retirement. (D.18-01-022 at p. 58 [Findings of Fact 6 & 7].) Such costs are necessary to the continued operation of Diablo

[13] The adopted modified Diablo Canyon settlement addressed license renewal and cancelled project costs. The Findings of Fact address each issue as a separate settlement and mistakenly does not find that the modified cancelled capital projects portion of the settlement met the requirements of rule 12.1. We correct this inadvertent error in the ordering paragraphs below.

[14] On the issue of cost effectiveness of Diablo Canyon, we stated that we gave CGNP's testimony little weight, indicating that TURN had identified significant flaws and omissions in CGNP's cost calculation and estimates and the record evidence undercuts CGNP's argument that continued operation of Diablo Canyon would be cost effective. (D.18-01-022 at p. 11.)

Canyon until retirement. Ratepayers benefit from continued safe, reliable, and cost-effective operation of the plant until that time.

III. CONCLUSION

As discussed above, we modify D.18-01-022 to make a minor correction, as set forth below. Rehearing of D.18-01-022, as modified, should be denied as no legal error has been shown.

THEREFORE, IT IS ORDERED that:

1. Conclusion of Law 11, in D.18-01-022, is modified to read:

   The proposed settlement on NRC license renewal costs and the proposed settlement on cancelled capital projects, as modified, meet the requirements of Rule 12.1.

2. Rehearing of D.18-01-022, as modified, is denied.

3. This proceeding, Application (A.) 16-08-006 will remain open.

This order is effective today.

Dated September 27, 2018, at Sacramento, California.

MICHAEL PICKER
President
CARLA J. PETERMAN
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
Commissioners