

Decision 18-11-024 November 29, 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

**DECISION IMPLEMENTING SENATE BILL 1090 AND  
MODIFYING DECISION 18-01-022**

**Summary**

This decision implements Senate Bill 1090, which added Section 712.7 to the Public Utilities Code and directs the Commission to approve “full funding” for the community impact mitigation program and the employee retention program proposed in this proceeding. This decision modifies in part the outcome of the Commission’s Decision (D.) 18-01-022 in this proceeding, which authorized the retirement of the Diablo Canyon nuclear power plant. In compliance with the new Public Utilities Code Section 712.7, Pacific Gas and Electric Company is authorized to collect an additional \$225.8 million in rates over the amounts authorized in D.18-01-022.

The provision of Section 712.7 addressing potential greenhouse gas emissions impacts will be addressed in the Commission’s Integrated Resource Planning proceeding.

This proceeding is closed.

**1. Background**

The original application of Pacific Gas and Electric Company (PG&E) included a request for \$49.5 million in ratepayer funding for a Community Impacts Mitigation Program (CIMP) and \$352.1 million in ratepayer funding for an employee retention program. Those requests were part of a “Joint Proposal,” in which the Natural Resources Defense Council (NRDC), Friends of the Earth (FOE), Environment California, International Brotherhood of Electrical Workers Local 1245 (IBEW 1245), Coalition of California Utility Employees (CCUE), and the Alliance for Nuclear Responsibility (A4NR) expressed support for PG&E’s application. (Decision (D.) 18-01-022 at 3.)<sup>1</sup>

Later in the proceeding, PG&E entered into a settlement with the County of San Luis Obispo (County), the Cities of Arroyo Grande, Atascadero, Morro Bay, Paso Robles, Pismo Beach, and San Luis Obispo (collectively Local Cities), and the San Luis Coastal Unified School District (School District), plus FOE, NRDC, Environment California, IBEW 1245, CCUE, and A4NR, that increased the cost of the CIMP from \$49.5 million to \$85 million.

As proposed, the CIMP funds would go to the County, the Local Cities and the School District,<sup>2</sup> and the employee retention funds would provide 25% annual bonuses for up to seven years for all 1,461 PG&E employees at Diablo Canyon. (D.18-01-022 at 23.)

---

<sup>1</sup> The Joint Proposal also included other issues that are not addressed by Pub. Util. Code § 712.7 or this decision.

<sup>2</sup> The County would allocate the money it received to local cities and districts based upon past tax revenue allocations. (D.18-01-022 at 31-32.)

Other parties opposed PG&E's requests for rate recovery of \$85 million for the CIMP and of \$352.1 million for the employee retention program, and the policy and legal issues relating to these payments were actively litigated before the Commission. (D.18-01-022 at 23-41.) Based on the record of the proceeding, the Commission authorized \$0 in rate recovery for the CIMP, and a maximum of \$211.3 million in rate recovery for the employee retention program. No party filed an application for rehearing or otherwise sought to appeal the Commission's decision on these issues.<sup>3</sup>

On September 19, 2018, the Governor signed Senate Bill (SB) 1090, which added Section 712.7 to the Public Utilities Code (Pub. Util. Code), effective January 1, 2019. Section 712.7 reads:

- (a) The commission shall approve both of the following:
  - (1) The full funding for the community impact mitigation settlement proposed in Application 16-08-006.
  - (2) The full funding for the employee retention program proposed in Application 16-08-006.
- (b) The commission shall ensure that integrated resource plans are designed to avoid any increase in emissions of greenhouse gases as a result of the retirement of the Diablo Canyon Units 1 and 2 powerplant.
- (c) The commission shall establish an expedited advice letter process for the approval and implementation pursuant to subdivision (a) of the community impact mitigation settlement and the employee retention program.

---

<sup>3</sup> Californians for Green Nuclear Power filed an application for rehearing on a different issue.

This decision addresses subdivision (a). Subdivision (b) will be addressed in the Commission's Integrated Resource Planning proceeding (Rulemaking 16-02-007).

## **2. Community Impacts Mitigation Program (CIMP)**

In evaluating PG&E's request for ratepayer funding of the CIMP, the Commission considered both policy and legal issues. In rejecting ratepayer funding of the CIMP, the Commission found that a significant amount of the money to be collected from ratepayers would be a substitute for tax revenue. (D.18-01-022 at 35.) In short, PG&E ratepayers would be paying increased rates to provide funding for government services that previously had been paid for through taxes. The Commission found that: "Utility rates should be used to provide utility services, not government services, no matter how beneficial those services may be." (*Id.* at 33.)

In addition, the allocation of payments under the CIMP did not appear to be fair, with the settling parties (who agreed to support or not oppose PG&E's litigation position on other issues) receiving the lion's share of the funding. (*Id.* at 34.) The Commission observed: "As a result, the amount and allocation of payments appear to have more to do with PG&E's litigation needs than the economic needs of the community." (*Id.*)

Finally, the Commission followed its own precedent. In a 1997 decision addressing a request for ratepayer funding from the County due to an expected decline in tax revenue from Diablo Canyon, the Commission held that: "The County's proposal that ratepayers pay for property taxes that PG&E does not incur is not permitted under either general ratemaking principles or public utility law." (*Id.* at 36, quoting D.97-05-088 at 100.) Consistent with its 1997 decision, in 2018 the Commission held that: "Absent legislative authorization,

utility rates should be used to provide utility services, not government services.” (*Id.* at 40.)

The legislature and the governor, through SB 1090, have now provided that legislative authorization. While the Commission remains concerned about the fairness of the CIMP, PG&E is authorized to collect \$85 million in rates to fund the CIMP, as proposed in this proceeding.

PG&E requested that the costs of the CIMP be recovered through the nuclear decommissioning non-bypassable charge (ND NBC). (PG&E Opening Brief at 80-81.) The Energy Producers and Users Coalition (EPUC) opposed this, arguing that the CIMP costs should only be recovered from bundled PG&E customers (*Id.*, citing to Ex. EPUC-1).

Because the CIMP is a simple payout to benefit the local community, it is not a plant operating expense of the kind reasonably chargeable to bundled customers. From a policy standpoint, it is more closely related to a decommissioning expense, as it will be used to offset some of the impacts of Diablo Canyon’s retirement. In addition, it would also be more reasonable to spread the costs of the CIMP broadly, as is done with decommissioning costs, in order to minimize the impact on ratepayers. Accordingly, the costs of the CIMP should be recovered through the ND NBC.

The Utility Reform Network (TURN) argued that if the CIMP is funded by ratepayers, it is important for the public to understand the source of the funds, so communications relating to CIMP should state that the payments are being funded through an increase in customer rates, and did not come from PG&E shareholders. (TURN Opening Brief at 44.) This is consistent with PG&E’s position that the CIMP is not a charitable contribution, and is not intended to

enhance its public image or to provide a corporate benefit in the form of goodwill. (PG&E Reply Brief at 58-59.)

TURN's proposal to ensure clear public understanding of the source of the funds for the CIMP is reasonable, and would avoid potential misattribution of the source of the CIMP. Because communications regarding CIMP funding may not come solely from PG&E, it is appropriate to make sure that all parties clearly communicate the source of the CIMP. Accordingly, all parties to this proceeding, when referring to CIMP funding in any communication that identifies the source of the funding, must identify it as coming from "PG&E ratepayers" or as being "PG&E ratepayer-funded." This description should appear in the main body of the communication, not in a footnote or endnote.

### **3. Employee Retention Program**

PG&E has an existing employee severance program (paid for by ratepayers through decommissioning funds) which will pay specified amounts to employees whose jobs are eliminated when Diablo Canyon closes. (D.18-01-022, citing Ex. PG&E -1 at 7-7.) According to PG&E's latest estimate in this proceeding, \$168 million is available for the employee severance program. Accordingly, if all 1,461 PG&E Diablo Canyon employees were eligible for severance payments, on average each employee would receive approximately \$115,000. The employee severance program is not changed by Pub. Util. Code § 712.7 or this decision, and remains in effect.

In addition to the existing employee severance program, PG&E proposed ratepayer funding of an employee retention program at a level that would require a rate increase of up to \$352.1 million, in addition to the existing ratepayer-funded \$168 million employee severance program. The Commission rejected PG&E's request for \$352.1 million, and instead approved \$211.3 million

in ratepayer funding for PG&E's proposed employee retention program. (D.18-01-022 at 29-30.) The Commission-approved level of funding would have provided a 15% annual bonus to eligible Diablo Canyon employees for up to seven years. For each eligible employee, this would average about \$21,000 per year, for a total of \$145,000 over 7 years.<sup>4</sup> Accordingly, under the Commission's decision, employees eligible for both the severance program and the retention program would potentially collect up to \$260,000 in bonuses, in addition to their average annual salary of about \$137,700.

The Commission determined that this level of retention and severance payments, requiring up to \$211.3 million of increased ratepayer funding, would be adequate to retain employees for the continued safe operation of Diablo Canyon. (D.18-01-022 at 29.)

Under PG&E's proposal for \$352.1 million in ratepayer funding for employee retention, now codified in Pub. Util. Code § 712.7, each of the 1,461 eligible employees gets a 25% annual bonus for up to seven years. This would average about \$34,000 per year, for a total of \$241,000 over seven years.<sup>5</sup> Together with the severance program, this would result in a potential average bonus totaling \$356,000.

The Commission found that PG&E's proposal for \$352.1 million in ratepayer funding of its employee retention program was not justified. The Commission found that PG&E's proposal had a significant "free rider" problem, and PG&E's testimony failed to address issues such as how many Diablo Canyon employees would continue to work without a retention bonus and how many

---

<sup>4</sup> \$211.3 million ÷ 1461 employees ÷ 7 years = \$20,661.

<sup>5</sup> \$352.1 million ÷ 1461 employees ÷ 7 years = \$34,428.

would leave even with a retention bonus. (D.18-01-022 at 27.) PG&E also failed to address how many employees would continue to work at Diablo Canyon after its retirement and the potential employment prospects for nuclear power plant employees. (*Id.* at 28.) Accordingly, the Commission found that PG&E's request for \$352.1 million for its employee retention program was not supported by the record, and was not reasonable to include in PG&E customers' rates.

SB 1090, now codified at Pub. Util. Code § 712.7, does not address these issues or concerns, but requires the Commission to approve the full \$352.1 million in ratepayer funding requested by PG&E, rather than the \$211.3 million approved by the Commission. Accordingly, we modify D.18-01-022 to increase the ratepayer funding of PG&E's employee retention program by \$140.8 million, for a total of up to \$352.1 million, consistent with PG&E's proposal in this proceeding. The ratemaking treatment approved in D.18-01-022 remains unchanged.

#### **4. Advice Letter Process**

Pub. Util. Code § 712.7(c) states:

The commission shall establish an expedited advice letter process for the approval and implementation pursuant to subdivision (a) of the community impact mitigation settlement and the employee retention program.

PG&E may file a Tier 1 advice letter after January 1, 2019, consistent with this decision and Pub. Util. Code § 712.7, to implement the rate increases for the CIMP and the employee retention program.

#### **5. Comments on Proposed Decision**

The proposed decision of ALJ Allen was mailed to the parties in accordance with Section 311 of the Public Utilities Code, and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.



Comments were filed by EPUC, TURN, Green Power Institute, the “Joint Parties” (PG&E, CCUE, NRDC and FOE) and the County. Reply comments were filed by EPUC, TURN and the Joint Parties.

The proposed decision held that the cost of the CIMP could not be recovered through the ND NBC (even though that would be the best approach) because it was not clear that the CIMP costs would qualify as legitimate decommissioning costs under Nuclear Regulatory Commission and Internal Revenue Service requirements.

TURN, however, points out that:

Eligibility determinations made by the NRC and IRS only apply to withdrawals from the nuclear decommissioning trust funds. CIMP costs may be collected via the ND rate component and disbursed to program beneficiaries without being channeled through the decommissioning trust funds. Since the CIMP costs will not be deposited into, or withdrawn from, the nuclear decommissioning trusts, there is no applicable NRC or IRS jurisdiction. Therefore, TURN urges the Commission to modify the PD to clarify that the costs of CIMP may be recovered from the ND Nonbypassable Charge. (Comments of TURN at 2.)

The Joint Parties concur, stating:

The concern raised in the PD about whether CIMP costs qualify as legitimate decommissioning costs under NRC and IRS regulations is not applicable. PG&E is required to follow NRC and IRS guidelines for costs that are deposited in the nuclear decommissioning trust for Diablo Canyon and later withdrawn to fund decommissioning work. In this case, CIMP-related revenues and costs will not be deposited into and withdrawn from the decommissioning trust. Rather, PG&E will make the CIMP payments directly from revenues and obtain reimbursement from customers through the revenue requirement established in the ND NBC. The NRC and IRS guidelines are therefore inapplicable. (Comments of Joint Parties at 3-4.)

The proposed decision has been modified to reflect these comments and to allow the costs of the CIMP be recovered through the ND NBC.

The Joint Parties argue that Section 712.7 also requires the Commission to adopt not just the full funding of the costs of the CIMP and employee retention program proposed in this proceeding, but also the specific rate design or cost allocation that was proposed. (Comments of Joint Parties at 2-6.) EPUC disagrees, and argues for an opposite cost allocation. (Comments of EPUC at 2-3; Reply Comments of EPUC at 2-3.) TURN disagrees with EPUC on policy grounds, but does not endorse the Joint Parties' reading of Section 712.7. (Reply Comments of TURN at 1-3.)

The Joint Parties are attempting to read into Section 712.7 something it does not say. The statute does not require any specific rate design or cost allocation – it is silent on that issue, and only requires “full funding” of the two programs. The plain meaning of “full funding” refers to the amount of funding, not the rate design or cost allocation.<sup>6</sup> No change is made to the proposed decision on this issue.

The proposed decision stated that the language in Section 712.7(b) relating to treatment of greenhouse gas emissions in integrated resource plans would be addressed in the Commission proceeding that is addressing integrated resource plans. (Integrated Resource Planning Rulemaking 16-02-007). The Joint Parties argue that *this* decision in *this* proceeding should address how the Commission

---

<sup>6</sup> In response to EPUC, the Joint Parties vigorously repeat their same argument, claiming that the statute “unambiguously requires” the allocation preferred by the Joint Parties, and that any other allocation is unlawful. (Reply Comments of Joints Parties at 1-4.) Again, this argument is without basis, and the Joint Parties' pleading is misleading.

will address this issue in the other proceeding. (Comments of Joint Parties at 6-7.) Given the statutory direction to address the issue of greenhouse gas emissions in the context of integrated resource plans, this issue is clearly within the scope of Rulemaking 16-02-007, and beyond the scope of this proceeding. Addressing it here – in essence, pre-judging the outcome in the other proceeding – would be inconsistent with the statutory language. No change is made to the proposed decision on this issue.

## **6. Assignment of Proceeding**

Commission President Michael Picker is the assigned Commissioner and Peter V. Allen is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. Newly-enacted Public Utilities Code Section 712.7 directs the Commission to approve full funding for the community impact mitigation settlement and employee retention program proposed in Application 16-08-006, effective January 1, 2019.

2. Public Utilities Code Section 712.7 directs the Commission to establish an expedited advice letter process for the implementation of the community impact mitigation settlement and the employee retention program.

### **Conclusion of Law**

1. Public Utilities Code Section 712.7 requires modification of D.18-01-022.

**O R D E R**

**IT IS ORDERED** that:

1. Pacific Gas and Electric Company is authorized to collect \$85 million in rates to fund the Community Impacts Mitigation Program.
2. Pacific Gas and Electric Company is authorized to collect up to an additional \$140.8 million in rates in addition to the \$211.3 million authorized in Decision 18-01-022, for a total of up to \$352.1 million.
3. Pacific Gas and Electric Company may file a Tier 1 advice letter after January 1, 2019, to implement the rate increases authorized by this decision.
4. This proceeding is closed.

This order is effective today.

Dated November 29, 2018, at San Francisco, California.

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