



BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Application of Pacific Gas and Electric)
Company to Recover in Customer Rates)
the Costs to Support Extended Operation)
of Diablo Canyon Power Plant from)
September 1, 2023 through December 31,)
2025 and for Approval of Planned)
Expenditure of 2025 Volumetric)
Performance Fees)

 (U 39 E))

Application A.24-03-018
(Filed: March 29, 2024)

ALLIANCE FOR NUCLEAR RESPONSIBILITY'S PROTEST

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PROTEST

Pursuant to Rule 2.6 of the California Public Utilities Commission (“Commission” or “CPUC”) Rules of Practice and Procedure, the Alliance for Nuclear Responsibility (“A4NR”) respectfully submits its Protest of the Application of Pacific Gas and Electric Company (“PG&E”) to Recover in Customer Rates the Costs to Support Extended Operation of Diablo Canyon Power Plant from September 1, 2023 through December 31, 2025 and for Approval of Planned Expenditure of 2025 Volumetric Performance Fees. A4NR requests that the Application be denied. The factual and legal grounds for A4NR’s Protest are:

1. Approval of PG&E’s Application would be inconsistent with the requirements of Pub. Util. Code § 451 that a utility’s proposed rates, services, and charges must be just and reasonable.

PG&E’s Application seeks approval of the first installment of what it currently “forecasts” to be an \$11.8 billion extended operations period for Diablo Canyon.¹ This is a material increase from the \$8.1 billion cost forecast PG&E provided in its July 28 2023 rebuttal testimony in R.23-01-007, not to mention the recanted \$5.2 billion cost estimate in its May 19, 2023 opening testimony in R.23-01-007. PG&E seeks piecemeal authorization of what is by far the largest financial commitment to a single energy project the Commission has ever been asked to endorse – plus the unprecedented ability for PG&E to spread costs statewide to all Commission-jurisdictional load-serving entities – without acknowledging the debilitating effect on R.23-01-007 of the company’s misleading prior cost estimates. The current Application’s clumsy attempt to narrow what is before the Commission for approval relies on overlooking this recent history.

As stated in D.23-12-036’s Conclusion of Law 16, “PG&E’s cost forecast does not reflect all of the costs associated with DCPD extended operations, and therefore is not an adequate foundation upon which to evaluate the cost-effectiveness, prudence, or reasonableness of DCPD operations.” D.23-12-036 further observed, “we find the Commission does not have sufficient information at this time to be able to determine whether extended operations at DCPD are ‘too

¹ PG&E March 29, 2024 CONFIDENTIAL Testimony, p. 2-AtchA-2, line 84 annual entries + line 85 annual entries.

high to justify,’ or ‘not cost effective or imprudent, or both.’ ”² D.23-12-036 also noted that PG&E’s defective cost estimate had impaired the potential usefulness of the statutorily-prescribed costs comparison³ performed by the California Energy Commission (“CEC”):

it is clear from the record in this proceeding that the CEC’s report relies on PG&E’s May 2023 cost testimony in this proceeding, and therefore excludes several cost categories associated with actual DCPD extended operations. Given current available information, the CEC’s report also does not reflect the costs associated with PG&E’s forthcoming license renewal application or any DCISC recommendations concerning seismic safety and deferred maintenance. PG&E does not contest the relevancy of these omitted costs, but merely asserts the CEC is charged with performing the relevant cost-effective analysis. PG&E’s arguments are unpersuasive.⁴

In weighing the R.23-01-007 evidence, D.23-12-036 observed, “we find party proposals that assert DCPD extended operations are cost-effective to be materially incomplete or inconclusive, and further highlight the uncertainty of costs presented in this proceeding.”⁵ As indicated in D.23-12-036 Finding of Fact 26, “No party in this proceeding disputes that the omitted costs in PG&E’s May 19, 2023 testimony are relevant to the cost-effectiveness of DCPD extended operations.”

D.23-12-036 further addressed the cost-related deficiencies in the R.23-01-007 evidentiary record by deferring final resolution to a future proceeding, which it named the “2024 DCPD Extended Operations Cost Forecast application,”⁶ reasoning:

- Pub. Res. Code Section 25548.3(c)(5)(C) does not require the Commission to ... make a cost-effectiveness determination by the date of this decision.⁷
- Pub. Res. Code Section 25548.3(c)(5)(C) does not require the Commission to rely solely on the CEC’s Draft Cost Comparison Report or make a cost-effectiveness

² D.23-12-036, p. 48.

³ Pub. Res. Code § 25233.2(a).

⁴ D.23-12-036, p. 58. See also Finding of Fact 24: “The CEC’s Draft Cost Comparison Report relies on PG&E’s May 19, 2023 testimony to forecast DCPD extended operations costs, and does not reflect the costs associated with PG&E’s forthcoming license renewal application or any DCISC recommendations concerning seismic safety and deferred maintenance.”

⁵ *Id.*, p. 50.

⁶ *Id.*, p. 58.

⁷ *Id.*, pp. 58 – 59.

determination by the end of 2023, while the Commission has broad authority to ensure just and reasonable rates under Pub. Util. Code Section 451.⁸

- This decision finds it is well within the Commission’s authority and in ratepayers’ best interest to continue to evaluate the reasonableness and prudence of continued DCPD operations, including ongoing evaluation of the cost-effectiveness of extended DCPD operations. In support of this continued evaluation, PG&E is directed to produce a complete and transparent forecast of DCPD operations through 2030 as part of its 2024 DCPD Extended Operations Cost Forecast application.⁹
- It is reasonable for PG&E to provide, in a single forecast analysis, any and all costs PG&E expects to be recovered from utility ratepayers for DCPD extended operations.¹⁰
- Additionally, we find it in ratepayers’ best interest to require PG&E to produce a more comprehensive and transparent forecast of the costs associated with DCPD extended operations for Commission and party review, compared to what has been presented to date in this proceeding ... An upfront, transparent forecast of all anticipated DCPD costs through 2030 is also expected to provide a more comprehensive framework to aid parties and the Commission in determining whether the costs included in PG&E’s annual DCPD Extended Operations Cost Forecast applications are reasonable and prudent.¹¹

D.23-12-036 expressly conditioned its authorization of extending operation of Unit 1 until 2029 and Unit 2 until 2030 on the Commission not making “a future determination that DCPD extended operations are imprudent or unreasonable,”¹² and identified the need for the Commission “to continue to consider the prudence and cost-effectiveness of extended DCPD operations.”¹³ PG&E’s Application appears to confine its request for Commission approval of “forecasts and their underlying financial assumptions and calculations”¹⁴ to the November 3, 2024 thru December 31, 2025 record period. PG&E’s conspicuous attempt to radically shrink its burden of proof – i.e., to establish by a preponderance of evidence, the reasonableness,

⁸ *Id.*, Conclusion of Law 14.

⁹ *Id.*, pp. 57 – 58. See also Conclusion of Law 15: “It is well within the Commission’s authority, and in ratepayers’ best interest, to continue to evaluate the prudence and cost-effectiveness of continued DCPD operations.”

¹⁰ *Id.*, Conclusion of Law 18.

¹¹ *Id.*, p. 59.

¹² *Id.*, p. 2.

¹³ *Id.*

¹⁴ PG&E Application, p. 17.

prudence, and cost-effectiveness of extended Diablo Canyon operations over the full 2024 – 2030 period – flouts the requirements of both Pub. Util. Code § 451 and D.23-12-036.

2. PG&E’s two severe underestimates of extended operations costs in R.23-01-007 constituted violations of Rule 1.1 and should be sanctioned.

An owner/operator with nearly 40 years of experience at an established plant, subject to the rigorous inspections and maintenance regimen regularly heralded by the nuclear industry, should possess considerable insight into likely expenditures within a 2030 time horizon. D.23-12-036 Conclusion of Law 12 acknowledged the continuing absence of any of the three cost drivers identified in SB 846 – recommendations from the Diablo Canyon Independent Safety Committee concerning seismic safety and deferred maintenance, and conditions of license extension required by the Nuclear Regulatory Commission – and PG&E has not identified any major equipment replacements or new construction necessary for extended operations. Yet PG&E’s cost projections have rocketed from the \$5.2 billion derived from its Civil Nuclear Credit application used to size the federal grant (and, implicitly, the state loan), to \$8.1 billion in its revised R.23-01-007 forecast, to \$11.8 billion in its current Application.

The nonexistence of identifiable sources of major cost uncertainty underlying PG&E’s soaring forecast revisions gives rise to a reasonable inference that the need for such large modifications was a product of gross negligence or recklessness, if not willful misrepresentation. In the aftermath of *Pacific Gas & Electric Co. v. Public Utilities Com.* (2015) 237 Cal.App.4th 812, the Commission has consistently held that violation of Rule 1.1 does not require a purposeful intent.¹⁵ As stated by the court in *Pacific Gas & Electric Co. v. Public Utilities Com.*, Rule 1.1 addresses a subject -- “ensuring the transmission of truthful information to the Commission” – that “is obviously central to the proper discharge of the PUC’s responsibilities.”¹⁶ In view of the magnitude of prospective ratepayer costs at issue and the harm caused to the R.23-01-007 process, A4NR requests that the Commission issue an Order to Show Cause why PG&E should

¹⁵ See extended discussion of Rule 1.1 enforcement in D.15-08-032.

¹⁶ *Pacific Gas & Electric Co. v. Public Utilities Com.* (2015) 237 Cal.App.4th 812, 853.

not be found in violation of Rule 1.1 for submittal of its materially misleading May 19, 2023 and July 28, 2023 forecasts.

3. PG&E’s Application seeks unlawful recovery of fuel costs that cannot be charged to ratepayers under Pub. Util. Code § 712.8(c)(1)(C).

PG&E’s Application seeks recovery from ratepayers of incremental fuel-related costs for the November 3, 2024 thru December 31, 2025 record period, directly ignoring the cost shield erected by the Legislature in SB 846: “preparation for extended operations ... shall not be funded by ratepayers of any load-serving entities, but may be funded by the loan ... or other nonratepayer funds available to the operator.”¹⁷ Financial commitments for future fuel supply, made by PG&E in transitioning Diablo Canyon from existing operations into extended operations, clearly fall into this category, and PG&E has previously acknowledged that some of these costs may even occur after the period of extended operations begins.¹⁸ But PG&E’s Application would use government funding for only 40% of the fuel costs projected for the period of extended operations; bill ratepayers for the remaining 60%, amortized over six years, beginning with the 2025 amortization installment; and effectively banish advance procurement of fuel from the plain meaning of “preparation for extended operations.” In addition to violating Pub. Util. Code § 712.8(c)(1)(C), such cost-shifting contradicts

- the identification of “(p)rocurment of materials, products, and services necessary or appropriate to manufacture nuclear fuel” as “Authorized Expenses” under PG&E’s October 18, 2022 loan agreement with the Department of Water Resources;¹⁹
- the inclusion in Pub. Res. Code § 25548.3(c)(3) of “fuel purchase” and “fuel storage” among the authorized loan disbursements based on milestones set forth in annual plans;

¹⁷ Pub. Util. Code § 712.8(c)(1)(C).

¹⁸ See A.16-08-006, PG&E Opening Comments on Amended Scoping Memo and Ruling, p. 4.

¹⁹ PG&E-DWR Loan Agreement, ¶ 3. b. at p. 3. See also ¶ 9. c. at p. 15, which addresses potential early termination of the loan and specifies: “PG&E shall take reasonable steps to remarket, resell or salvage fuel, materials or equipment purchased by PG&E with the proceeds of Disbursements made under this Agreement and shall use the proceeds thereof to satisfy any outstanding Winding Down Costs first and return any remaining balance of such proceeds to DWR thereafter.”

- the assurance in PG&E AL-6870-E that “PG&E intends to make some fuel purchases during the transition period consistent with SB 846 and AB 180;”²⁰
- the provision in PG&E AL-6870-E that costs to be recorded into the Diablo Canyon Transition and Relicensing Memorandum Account (“DCTRMA”) “include incremental costs related to ... fuel purchases;”²¹
- the distinction drawn in PG&E AL 6870-E between costs to be recorded in the DCTRMA (“costs that are eligible for government funding”²²) and costs to be recorded in the Diablo Canyon Extended Operations Balancing Account (“DCEOBA”) (“expenses ... that are not eligible for government funding pursuant to Senate Bill 846, Assembly Bill 180, or the United States Department of Energy’s Civil Nuclear Credit Program”²³); and
- D.22-12-005’s direction: “PG&E should attempt to recover the following transition and extended operations costs using government funding to the greatest extent possible: ... fuel purchases ...”²⁴

4. PG&E’s Application seeks approval of a slush fund for non-Diablo projects, paid for by a \$13 MWh Diablo Canyon surcharge.

Notwithstanding D.23-12-036’s acknowledgment that the scope of its direction on the implementation of Pub. Util. Code § 712.8(s)(1) was expressly limited to “the use of any surplus performance-based fees PG&E receives for Diablo Canyon in 2024,”²⁵ PG&E’s Application plows forward with a list of dubious proposed projects that strain “just and reasonable” credulity during an affordability crisis among California electricity users. For the November 3, 2024 thru December 31, 2025 record period, PG&E seeks approval of its forecast of \$159.6 million in surcharge collections and an expenditure plan for the resultant slush fund. Rather than use

²⁰ PG&E AL 6870-E, p. 6.

²¹ *Id.*, Attachment 1, Electric Preliminary Statement Part JQ Sheet 1, Cal. P.U.C. Sheet No. 55705-E.

²² *Id.*, Attachment 1, Electric Preliminary Statement Part JR Sheet 1, Cal. P.U.C. Sheet No. 55707-E.

²³ *Id.*

²⁴ D.22-12-005, p. 17.

²⁵ D.23-12-036, Finding of Fact 63: ““The Assigned Commissioner’s Scoping Memo and Ruling limited the consideration of additional guidance for the implementation of Section 712.8(s)(1) to the use of any surplus performance-based fees PG&E receives for Diablo Canyon in 2024.”

these revenues to address Diablo Canyon needs, PG&E proposes to divert them to many activities it is already required to adequately fund as a public utility expected to “furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities ... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.”²⁶ Included within PG&E’s list of “public purpose priorities” that inexplicably went unfunded in the 2023 General Rate Case – but which all now rank higher than spending funds (or offsetting expenses) at Diablo Canyon – are five contingency programs to shore up General Rate Case budgets for the company’s methane gas system. PG&E exacerbates its “just and reasonable” burden by categorically excluding projects in the SCE and SDG&E service territories – the source of some 27.5% of slush fund revenues – from any of the identified “public purpose priorities.”

5. The PG&E Application’s proposed schedule allows no time for anything more than a rubberstamped approval from the Commission.

A4NR strongly objects to the dysfunctional nature of the post-briefing schedule included in PG&E’s Application. PG&E’s proposal allows exactly two weeks between submittal of party Reply Briefs/Reply Comments and a contemplated December 5, 2024 adoption of the Commission’s Final Decision. The Thanksgiving holiday comes in the midst of this two-week period. In PG&E’s plan, a Proposed Decision would be “issued 20 days before Commission voting meeting.”²⁷ Even this compression of the ordinary 30-day period for public review and comment is numerically incompatible with PG&E’s envisioned December 5, 2024 adoption date, as it would have the Proposed Decision issued six days *before* receipt of party Reply Briefs/Reply Comments. PG&E wanly notes that Rule 14.6(b) allows, upon unanimous stipulation by the parties, a reduction in the time prescribed by Rule 14.3 for Opening and Reply Comments on a Proposed Decision. A4NR will not so stipulate.

PG&E’s bollixed schedule proposal is a continuation of thinly-veiled contempt, notable in both A.16-08-006 and R.23-01-007, for the non-delegable oversight role the Commission must

²⁶ Pub. Util. Code § 451.

²⁷ PG&E Application, p. 25.

play in evaluating an extended operation of Diablo Canyon. While PG&E prefers to believe it has already completed its heavy lifting work in Sacramento, the Commission is constitutionally and statutorily obligated to determine that an extension would be reasonable, prudent, and cost-effective. And PG&E bears the burden of proving this, by a preponderance of evidence, to the Commission's satisfaction. Based upon PG&E's latest estimates, the costs will sum to \$11.8 billion, but there is a significant discrepancy between the 11,648,840 MWh of Diablo Canyon electricity production identified in PG&E's testimony²⁸ and the 9,003,753 MWh identified in the PG&E Workpapers²⁹ used to project market revenues received from the CAISO. The larger electricity production assumption results in a \$101.50/MWh cost, while the smaller production assumption yields a cost of \$131.32/MWh. According to PG&E's testimony, the \$11.8 billion forecast cost of extended operations would exceed estimated CAISO market revenues³⁰ by nearly \$5.8 billion on a cumulative basis.

The schedule adopted for this proceeding must ensure that the Commission has sufficient time to thoughtfully consider all written submittals from the parties, and that the Proposed Decision is adequately vetted by the comment process established in Rule 14.3. Cal. Pub. Util. Code § 1701.5 provides 18 months for resolution of a ratesetting proceeding, and allows extensions of that deadline if necessary. PG&E's push to reduce that timeframe by half should be rejected. Commission precedent offers ample mechanisms – from stipulated retroactive effective dates for new rates to interim rates subject to refund – to enable timely resolution of this proceeding without lobotomizing its final stages.

A4NR represents residential and small-business ratepayers in the PG&E, SCE, and SDG&E service territories who would be required to pay the Diablo Canyon Nonbypassable Charge proposed in PG&E's Application. A4NR agrees with PG&E that the proceeding is properly categorized as ratesetting; requests evidentiary hearings to address disputed factual issues; and

²⁸ PG&E Testimony, p. 4-2, line 2.

²⁹ PG&E Workpapers, p. 4-1. See also PG&E Workpapers, p. 8-2.

³⁰ PG&E March 29, 2024 CONFIDENTIAL Testimony, p. 2-AtchA-2, line 87 annual entries.

intends to sponsor testimony that the proposed extended operation of Diablo Canyon is neither reasonable, prudent, nor cost-effective. The undersigned will be A4NR's principal contact in this proceeding, but A4NR also asks that the following individuals be placed in the "*information only*" category of the Service List:

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Respectfully submitted,

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