Decision 20-12-014 December 3, 2020

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In The Matter of the Application of San Diego Gas & Electric Company (U902G) and Southern California Gas Company (U904G) for a Certificate of Public Convenience and Necessity for the Pipeline Safety & Reliability Project.	Application 15-09-013 (Filed September 30, 2015)

ORDER MODIFYING DECISION (D.) 20-02-024 AND DENYING REHEARING OF DECISION, AS MODIFIED

I. INTRODUCTION

This Order disposes of the applications for rehearing of Decision (D.) 20-02-024 (Decision) filed by the Protect Our Communities Foundation (POC) and the Public Advocates Office, Sierra Club, Southern California Generation Coalition, and The Utility Reform Network (collectively, Joint Applicants). We modify D.20-02-024 and deny rehearing of the Decision, as modified, because no legal error has been demonstrated.

II. BACKGROUND

In 2010, following the catastrophic rupture of a natural gas transmission pipeline in San Bruno, California, we initiated Rulemaking (R.) 11-02-019 to consider what aspects of our regulation of natural gas transmission and distribution lines must change. In Decision (D.) 11-06-017,[1] we required utilities operating natural gas pipelines to file a comprehensive plan to replace or pressure test all natural gas transmission pipelines in California that have not been tested or for which reliable records are not available. The test and

[1] Unless otherwise noted, citations to Commission decisions and orders since 2000 are to the official pdf versions, which are available on the Commission's website at: http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx.

replacement requirements set forth in D.11-06-017 were subsequently codified in Public Utilities Code section 958.[2]

In August 2011, Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) (collectively, utilities) filed their proposed Pipeline Safety Enhancement Plan, or PSEP. Among other things, the utilities' PSEP included a proposed "Decision Tree," providing a step-by-step analysis of a pipeline segment's age, location, length, and other factors to determine whether it should be replaced, pressure tested, de-rated,[3] or abandoned. In D.14-06-007, we approved the utilities' proposed PSEP Plan, including the Decision Tree.[4]

As part of PSEP, the utilities filed Application (A.) 15-09-013, requesting a Certificate of Public Convenience and Necessity (CPCN) to construct a new pipeline, Line 3602, in San Diego County. The utilities stated that construction of the new line would allow the utilities to take the area's existing line, Line 1600, out of the PSEP Decision Tree,[5] where it would no longer satisfy various testing and/or replacement criteria. After hearings and testimony, we issued D.18-06-028, denying the utilities' CPCN application. (D.18-06-028, p. 127, Ordering Para. 1.) We determined that the utilities failed to show the need for a new pipeline, and narrowed the scope of the proceeding to focus on the safety of Line 1600, explaining that a test and replacement plan for that line was necessary to comply with the PSEP rules established in D.11-06-017, the Decision

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[2] Subsequent section references are to the Public Utilities Code, unless otherwise specified.

[3] De-rating (or derating) means the operation of a machine, device, or equipment, e.g., a pipeline, at less than its maximum capability.

[4] *In the Matter of the Application of San Diego Gas & Electric Company and Southern California Gas Company for Authority to Revise Their Rates Effective January 1, 2013, in Their Triennial Cost Allocation Proceeding* [D.14-06-007] (2014), pp. 39 & 56-57, Conclusions of Law 13-16 & Attachment II, fn. 2 (slip op.).

[5] The PSEP Decision Tree identified Line 1600 as a line subject to testing and/or replacement. (D.14-06-007, Attachment I.)

Tree in D.14-06-007, and section 958. (D.18-06-028, pp. 106, 116 & 125.) D.18-06-028 thus ordered the utilities to submit to the Commission's Safety and Enforcement Division (SED) a plan for Line 1600 that discussed two test and replacement alternatives, one to hydrotest the entire line and replace those segments that fail the test; and one to replace all pipeline segments in High Consequence Areas (HCAs)[6] and hydrotest in non-HCAs. (D.18-06-028, p. 92.) We then closed the proceeding, finding that, because the CPCN for Line 3602 was denied, and because Line 1600's compliance with PSEP was required by law, no issues were outstanding.

In response to D.18-06-028, the utilities filed their Line 1600 PSEP Plan, providing options to test, replace, and test and replace, Line 1600. In January 2019, SED approved the utilities' proposed option to test and replace Line 1600 in non-HCAs and HCAs, respectively, and the utilities moved forward with the plan.[7]

On May 31, 2019, POC, Sierra Club, Southern California Generation Coalition (SCGC), and The Utility Reform Network (TURN) filed a Petition for Modification (PFM) of D.18-06-028. Among other things, the PFM requested the Commission to reopen A.15-09-013 to provide for public review of the Line 1600 PSEP Plan through a hearing process and to provide the public with an opportunity to present potentially more effective design alternatives. (PFM, pp. 33-34.) The PFM also requested that the Commission consider the cost forecasts of the design alternatives.

We subsequently issued D.20-02-024, granting the PFM in part and denying it in part. In D.20-02-024, we declined to consider other PSEP design alternatives but agreed with Petitioners that the utilities should submit a cost

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[6] HCAs are defined by title 49 Code of Federal Regulations (CFR) Part 192.903 as areas within a potential impact radius that contain at least 20 buildings intended for human occupancy. In brief, HCAs are populated areas where a pipeline rupture can cause considerable harm.

[7] This plan is referred to in D.20-02-024 as Design Alternative 1.

forecast for the Line 1600 project during the proceeding. Thus, we reopened A.15-09-013 to address the costs associated with the project and ordered the parties to file comments accordingly. (D.20-02-024, p. 60.)

On February 24, 2020, POC filed an application for rehearing of D.20-02-024. In its rehearing application, POC argued that the Commission: (1) failed to conduct required environmental review of the Line 1600 project under the California Environmental Quality Act (CEQA); (2) failed to proceed in the manner required by law; (3) failed to make necessary findings of fact; (4) erroneously disclaimed regulatory authority over the Line 1600 project; (5) modified D.18-06-028 without conducting a hearing in violation of POC's due process rights; and (6) failed to cure violations of the Bagley-Keene Open Meeting Act and the Commission's ex parte rules. POC also claimed that the evidence did not support the Commission's determination that Line 1600 was not in good condition and requested oral argument. On March 10, 2020, the utilities filed a response.

On March 13, 2020, Joint Applicants filed an application for rehearing of D.20-02-024. In their rehearing application, Joint Applicants argued that the Commission failed to conduct required CEQA review or, alternatively, to determine whether the project was exempt from CEQA. Joint Applicants also requested that the Commission order the utilities to decrease the operating pressure of Line 1600 while the Commission conducted the requested CEQA review as an interim safety measure. Joint Applicants also joined POC's request for oral argument. On March 30, 2020, the utilities filed a response.

We have carefully reviewed each and every allegation set forth in POC's and Joint Applicants' applications for rehearing and are of the opinion that good cause has not been demonstrated to warrant rehearing. We will, however, modify D.20-02-024 to delete a statement regarding the approval of the Line 1600 project, to add a finding of fact as to the unsafe condition of Line 1600, and to add

two conclusions of law regarding the project's exemption from CEQA. Rehearing of D.20-02-024, as modified, is denied.

III. DISCUSSION

A. The Commission was not required to review the Line 1600 PSEP project under CEQA.

POC and Joint Applicants each claim that we were required to review the Line 1600 PSEP project pursuant to the requirements of the California Environmental Quality Act, or CEQA. Their claims lack merit.

1. CEQA Generally

The California Environmental Quality Act (CEQA), established under California Public Resources Code sections 21000-21177, was enacted to "[e]nsure that the long-term protection of the environment...shall be the guiding criterion in public decisions." (Pub. Res. Code, § 21001, subd. (d).)[8] "CEQA embodies a central state policy to require state and local governmental entities to perform their duties so that major consideration is given to preventing environmental damage." (*Friends of the Eel River v. North Coast Railroad Authority* (2017) 3 Cal.5th 677, 711, internal citations omitted.)

2. CEQA does not apply to ministerial decisions.

CEQA only applies to discretionary projects and approvals; it does not apply to purely ministerial decisions. (Pub. Res. Code, § 21080, subds. (a) & (b)(1); Guidelines, § 15268, subd. (a).) A project is "ministerial" when the agency must only determine "conformity with applicable statutes, ordinances, regulations, or other fixed standards." (Guidelines, § 15357.) Public Resources Code section 21080, subdivision (b)(1) specifically excludes from coverage by CEQA ministerial projects approved by public agencies. Alternatively, "discretionary"

[8] As an aid to implementing CEQA, the State Resources Agency has issued a set of regulations, called Guidelines for the California Environmental Quality Act (Guidelines). The Guidelines are located at title 14 of the California Code of Regulations, starting at section 15000. References to Guidelines are to those regulations.

projects, to which CEQA does apply, are those that require the "exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity…." (Guidelines, § 15357.) The threshold determination of CEQA's applicability thus turns on whether the "project qualifies as a 'discretionary' rather than a 'ministerial' action." (*Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286, 300.) The determination of what is ministerial or discretionary is most appropriately made by the public agency. (Guidelines, § 15268.)

3. The Line 1600 PSEP project is a ministerial project exempt from CEQA review.

Here, the Line 1600 PSEP project is exempt from CEQA review, since the project is ministerial, rather than discretionary, in nature. Specifically, requiring compliance with the established statutory and Commission directives to test and/or replace Line 1600 under PSEP is not a matter of discretion. As noted above, pursuant to D.11-06-017, the Decision Tree adopted in D.14-06-007, the directives in D.18-06-028, and section 958, the utilities must test and/or replace all pipelines that were not pressure tested or that lack sufficient details related to pressure testing. As a result, the approval of the utilities' Line 1600 PSEP project was a ministerial act, only requiring confirmation of conformity with these rules. Thus, the Line 1600 project is exempt from CEQA pursuant to the exemption for ministerial actions set forth in Public Resources Code section 21080, subdivision (b)(1). We therefore reject POC's and Joint Applicants' claims that the Line 1600 project was subject to CEQA and deny rehearing on this issue.[9] As a result, we

[9] POC and Joint Applicants argue that we cannot rely on the CEQA exemption provided under Guidelines section 15284 for a "project consisting of the inspection, maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of an existing hazardous or volatile liquid pipeline or any valve, flange, meter, or other piece of equipment that is directly attached to the pipeline." (POC Rhrg. App., p. 27; Joint Applicants Rhrg. App., pp. 19-22.) However, we are not claiming this exemption, and, as a result, these arguments are rejected.

will modify the Decision to add conclusions of law that the Line 1600 project is exempt from CEQA.

4. The submission of alternative test and replacement designs in the Line 1600 PSEP Plan did not invoke CEQA.

Joint Applicants claim that, because D.18-06-028 ordered the utilities to submit alternative test and replacement designs for the Line 1600 project, a discretionary action was taken. (Joint Applicants Rhrg. App., p. 18.) Joint Applicants are incorrect.

The fact that the utilities presented alternative test and replacement designs for the Line 1600 project does not remove the project from the mandatory, i.e., ministerial, scope of PSEP. PSEP permits the utilities to present multiple test and replace options for any given pipeline project. (D.11-06-017, p. 1.) Thus, the fact that the utilities submitted alternative test and replacement designs for the Line 1600 project does not take the project outside the scope of the PSEP requirements established by our directives and by statute. As a result, the Line 1600 PSEP project remains exempt from CEQA under the ministerial exemption set forth in Public Resources Code section 21080, subdivision (b)(1).

5. Joint Applicants' claim that various utility statements in the Line 1600 PSEP Plan invoked CEQA lacks merit.

Joint Applicants argue that certain statements in the Line 1600 PSEP Plan concerning potential environmental issues related to the project necessarily invoke CEQA. (Joint Applicants Rhrg. App., pp. 15-17.) Specifically, Joint Applicants claim that the utilities' statement that a "project within an environmentally-sensitive area may require an incidental take permit due to the potential for an endangered and/or listed species occurring within the proposed construction work areas" implicates CEQA. (Joint Applicants Rhrg. App., p. 15, quoting PSEP Plan, p. 24.) Joint Applicants also claim that, because the utilities stated that there may be community concerns over the location of some Line 1600 segments, CEQA review is required. (Joint Applicants Rhrg. App., pp. 15-16.) In

so arguing, Joint Applicants cite to a portion of the Line 1600 PSEP Plan that states, "[g]iven the size, scope, and complexity of the project, [the utilities] assume extensive community and consumer outreach will be necessary to achieve the schedule and timeline set forth in [the] Plan." (Joint Applicants Rhrg. App., p. 16, quoting PSEP Plan, p. 24.)

Joint Applicants' argument misses the point. As discussed above, the Line 1600 project is a ministerial project exempt from the requirements of CEQA. As the California Supreme Court has explained, "the very purpose of the statutory CEQA exemptions is to avoid the burden of the environmental review process for an entire class of projects, *even if there might be significant environmental effects*." (*Sunset Sky Ranch Pilots Assn. v. County of Sacramento* (2009) 47 Cal.4th 902, 909, italics added.) Based on the foregoing, we reject this claim.

6. POC's and Joint Applicants' claims that the Commission erroneously piecemealed review of the Line 1600 PSEP project in order to avoid CEQA analysis lacks merit.

POC and Joint Applicants also claim that the Decision violated CEQA's prohibition on the "piecemeal" review of separate portions of a project in order to avoid considering the environmental impact of the project as a whole. (POC Rhrg. App., pp. 23-28; Joint Applicants Rhrg. App., pp. 17 & 20-21.) POC and Joint Applicants cite to case law holding that public agencies cannot avoid CEQA review by "chopping a large project into many little ones - each with a minimal potential impact on the environment - which cumulatively may have disastrous consequences." (*Laurel Heights Improvement Assn. v. Regents of University of Cal.* (*Laurel Heights*) (1988) 47 Cal.3d 376, 397.) POC and Joint Applicants take issue with the fact that the Decision determined that the sections of the Line 1600 project, of which there are 19, can be implemented independently in order to effectively address the safety, operational, community, and cost considerations associated with each distinct portion of the line. (D.20-02-024,

p. 52.) POC and Joint Applicants argue that our decision on this matter constitutes improper piecemealing analysis designed to avoid CEQA review. (POC Rhrg. App., p. 24; Joint Applicants Rhrg. App., pp. 17 & 20-21.) This argument lacks merit.

Courts have found that agencies have erroneously piecemealed environmental review of projects in several circumstances. First, there may be improper piecemealing when "the purpose of the reviewed project is to be the first step toward future development." (*Banning Ranch Conservancy v. City of Newport Beach* (*Banning Ranch*) (2012) 211 Cal.App.4th 1209, 1223; *Laurel Heights, supra*, 47 Cal.3d at p. 398.) In *Laurel Heights*, the California Supreme Court found that "future development" is part of a larger project under CEQA only if: "(1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects." (*Laurel Heights, supra*, 47 Cal.3d at p. 396.) There may also be improper piecemealing when the "reviewed project legally compels or practically presumes completion of another action." (*Banning Ranch, supra,* 211 Cal.App.4th at p. 1223.) Improper piecemealing, however, does not occur when "projects have different proponents, serve different purposes, or can be implemented independently." (*Aptos Council v. County of Santa Cruz* (*Aptos Council*) (2017) 10 Cal.App.5th 266, 280.)

Here, future development is not a foreseeable consequence of the Line 1600 project within the meaning of *Laurel Heights* or *Banning Ranch*. Once Line 1600 has been tested and replaced in accordance with PSEP, the project is complete. The entire purpose of PSEP is to avoid future testing, development, or similar activities on any given pipeline once the utilities have completed this process. Nor does the Line 1600 project "legally compel or practically presume" the completion of another action as prohibited by *Banning Ranch.* Again, the goal of PSEP is to *avoid* the need for future pipeline projects in California, and

presumes that, once a PSEP project is complete, no similar actions will be necessary.

Moreover, the record supports our determination that the Line 1600 project segments can, and, in fact, must be implemented independently. (*Aptos Council, supra,* 10 Cal.App.5th at p. 280.) As explained in the PSEP Plan, the Line 1600 segments are located in areas with unique safety, scheduling, infrastructure, and reliability needs that require independent attention in order to test and/or replace the segments safely and efficiently. (PSEP Plan, pp. 17-24.) Additionally, as explained in D.18-06-028, "Line 1600 runs through changing terrain and elevation and testing will have to be done in numerous segments which could impact the severity of reliability issues." (D.18-06-028, p. 79.)[10] This determination was not challenged by POC or Joint Applicants at the time that D.18-06-028 was issued, and the time to do so has long since passed. Because the record shows that the Line 1600 project segments require independent implementation, we did not piecemeal the project.

POC claims, however, that the Decision violates *Laurel Heights* because it failed to consider several issues that it believes are "reasonably foreseeable consequences" of the Line 1600 project. (POC Rhrg. App., pp. 23-28.) These issues will be discussed in turn.

POC first argues that the Decision failed to address environmental consequences that it believes are associated with a potential increase in the maximum allowable operating pressure (MAOP)[11] of Line 1600. Specifically, POC claims that increasing the MAOP of Line 1600 will conflict with the state's goal of mitigating the impacts of climate change due to greenhouse gas (GHG)

[10] Joint Applicants also argue that the utilities have not sought to identify or demonstrate the independent purpose of the 19 project segments. (Joint Applicants Rhrg. App., p. 20.) However, the above discussion demonstrates otherwise, and this claim is rejected.

[11] MAOP means the maximum allowable operating pressure at which a pipeline or segment of a pipeline may be operated under 49 CFR, § 192.619.

emissions from the natural gas sector. (POC Rhrg. App., p. 24.) This argument lacks merit.

The State of California has adopted ambitious rules and policies aimed at mitigating GHG emissions. (See, e.g., Pub. Util. Code, § 975.) POC claims that, because the Decision acknowledges that the utilities "contemplate" increasing the MAOP of Line 1600, we are moving away from these goals. (POC Rhrg. App., p. 24.) However, these increases are required by law and are time-limited in a manner that avoids the environmental consequences presumed by POC. As explained in D.18-06-028, the utilities must temporarily increase the MAOP of Line 1600 to comply with the federal industry strength testing standards adopted in 49 CFR, Part 192, known as the Pipeline and Hazardous Materials Safety Administration (PHMSA) rules. (D.18-06-028, p. 113.) The PHMSA rules are incorporated into the PSEP Decision Tree, as well as the Commission's General Orders. (D.14-06-007, Attachment I; General Order 112-F, section 141.1.) Pursuant to these rules, when a pipeline is operated in an HCA or areas known as "Class 3" and "Class 4" locations,[12] it must be hydrotested at a pressure of at least 1.25 times its MAOP to determine its strength and integrity. The required increases are also only hours long and are designed to obtain sufficient test data. (See 49 CFR, §§ 192.505 [at least 8 hours]; 192.506 [at least 8 hours]; 192.507 [at least 1 hour].) Because Line 1600 falls within this category of pipelines, the utilities have no choice but to increase the line's MAOP in order to comply with the law. Thus, POC's claim that these increases will have long-term climate change consequences is unsupported.[13]

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[12] PHMSA defines four class locations by the number of human-occupied buildings located within 220 yards of the pipeline: Class 1, 10 or fewer buildings; Class 2, 10 to 45 buildings; Class 3, 46 or more buildings or with a place of public assembly; and, Class 4, where buildings with four or more stories are prevalent. (49 CFR, § 192.5.)

[13] In D.18-06-028, we also explicitly ordered that any replacement plan for Line 1600 not expand gas capacity in the region absent our authorization. (D.18-06-028, p. 127, Ordering Para. 1.)

POC also claims that any increase in the operating pressure of Line 1600 is not justified because D.18-06-028 stated that, "once short-term issues are resolved, [Line 1600's] MAOP should be further reduced as soon as practicable while maintaining reliability." (POC Rhrg. App., p. 25, quoting D.18-06-028, p. 124.) This claim lacks merit. First, POC points to no evidence that we will require an increase in the MAOP of Line 1600, despite having the discretion to do so to maintain reliability of service – a determination that POC did not challenge. (D.20-02-024, pp. 54-55.) Additionally, we have done nothing that would conflict with this directive. POC fails to recognize that the "short-term issues" contemplated by D.18-06-028 include compliance with section 958 and the implementation of PSEP, which have not yet occurred. (D.18-06-028, p. 124.) Thus, POC's reliance on this statement fails to demonstrate any error in our decision.

POC also argues that, in the Decision, we failed to recognize the "foreseeable consequence" that the utilities will seize upon our concern over manufacturing defects in Line 1600 known as "hook cracks" to justify the replacement of otherwise stable pipelines in the future. (POC Rhrg. App., p. 26.)[14] POC argues that the record does not support our "careless and unsupported statements" that Line 1600 is currently unsafe due to hook cracks and claims that the record instead shows that hook cracks are "passive artifacts" that pose no foreseeable safety issues. (POC Rhrg. App., pp. 25-26.)

What POC is trying to do is have us reweigh the evidence in the record, which does not constitute a basis for granting rehearing. The purpose of a rehearing application is to specify legal error, not to relitigate issues already determined by the Commission. (Pub. Util. Code, § 1732; Cal. Code of Regs.,

[14] Hook cracks are cracks in the seam of a pipeline that, if combined with other anomalies, such as corrosion or third-party damage, may cause pipeline failure. The enlargement of hook cracks has caused failure in other pipelines. (Utility Supplemental Testimony, pp. 75 & 131.) Hook cracks have been identified in Line 1600. (Utility Supplemental Testimony, p. 99.)

tit. 20, § 16.1, subd. (c).) Here, we weighed the evidence in the record and rejected POC's prior claims that hook cracks are not a safety concern for Line 1600. (D.18-06-028, pp. 83, 121 & 124.) Moreover, the fact that there may be contradictory evidence in the record regarding the safety of hook cracks does not demonstrate legal error in our decision. It is for the Commission to weigh conflicting evidence in the record and reach a determination. (*Eden Hospital Dist. v. Belshe* (1998) 65 Cal.App.4th 908, 915.)

Yet, to support its claim that the utilities will abuse our concern over hook cracks to justify future pipeline projects, POC points to a federal law adopted in July 2020 that requires pipeline operators to evaluate, and remediate, as necessary, all pipeline segments with hook cracks and similar defects that could adversely affect the integrity of the pipeline. (POC Rhrg. App., p. 26, citing 49 CFR, § 192.917, subd. (e)(6).) 49 CFR section 192.917, subdivision (e)(6) states, in full:

> Cracks. If an operator identifies any crack or crack-like defect (e.g., stress corrosion cracking or other environmentally assisted cracking, seam defects, selective seam weld corrosion, girth weld cracks, hook cracks, and fatigue cracks) on a covered pipeline segment that could adversely affect the integrity of the pipeline, the operator must evaluate, and remediate, as necessary, all pipeline segments (both covered and non-covered) with similar characteristics associated with the crack or crack-like defect. Similar characteristics may include operating and maintenance histories, material properties, and environmental characteristics. An operator must establish a schedule for evaluating, and remediating, as necessary, the similar pipeline segments that is consistent with the operator's established operating and maintenance procedures under this part for testing and repair.

POC claims that this law is "generic" and is therefore subject to exploitation by utilities wishing to implement needless pipeline projects in the future. (POC Rhrg. App., pp. 26-27.) This argument has no basis in the record and is based upon pure speculation, and, as a result, rehearing is denied on this issue.

B. The Commission's determination that Line 1600 is not in good condition is supported by the evidence.

Throughout its rehearing application, POC claims that the record does not support our conclusion that Line 1600 is not in good condition. (POC Rhrg. App., pp. 25-27, 31 & 33-34.) POC claims that we erroneously accepted the utilities' "unsupported fear mongering" on this issue and argues that our finding is contradicted by D.18-06-028, which it contends found that Line 1600 was safe. (POC Rhrg. App., p. 31.) POC also argues that D.20-02-024 is unlawful because it limits the scope of the second phase of the proceeding based upon safety reasons but fails to make required findings of fact on safety issues in violation of section 1705. (POC Rhrg. App., pp. 33-34.)

Again, POC is attempting to relitigate issues previously decided in D.18-06-028, which is a final and conclusive decision, and is requesting that we reweigh the evidence. (Pub. Util. Code, § 1732; Cal. Code of Regs., tit. 20, § 16.1, subd. (c).) Contrary to POC's assertion, in D.18-06-028, we rejected POC's claim that Line 1600 was safe, as well as its claim that the utilities were "attempting to instill fear in the Commission about the safety of the line." (D.18-06-028, pp. 76, 83 & 88.) POC did not file an application for rehearing of D.18-06-028 regarding these or anything other findings or holdings of D.18-06-028, which are final and conclusive. (Pub. Util. Code, § 1709.)

Moreover, ample evidence exists to support our determination that Line 1600 is not in good condition. This evidence includes testimony that the pipeline was constructed using now-obsolete manufacturing methods and is subject to known integrity concerns that render the pipeline more susceptible to leakage and/or rupture. (See, e.g. Travis Sera Direct Testimony, pp. 3-5, 7, 10-11 & 16; Utility Supplemental Testimony, pp. 74-76.) We will add a finding of fact to the Decision reflecting these safety issues.

POC speculates, however, that, in reaching our conclusions as to the safety of Line 1600, we relied on information that was not in the record because

(1) D.20-02-024 did not have findings on an ALJ Ruling striking portions of the utilities' comments on safety issues, (2) D.20-02-024 did not mention POC's motion to strike portions of the utilities' reply comments, and (3) its reply to the utilities' opposition to its motion to strike is not listed on the Commission's docket card. (POC Rhrg. App., p. 35.)

POC has not demonstrated legal error. POC fails to cite any rule or statute requiring our decisions to have findings on ALJ Rulings or that our decisions mention or discuss all pleadings filed. Section 1705 requires Commission decisions to include separately stated findings of fact and conclusions of law on all issues material to the order or decision. It is within the Commission's discretion to determine what those issues are. (*Clean Energy Fuels Corp. v. Pub. Util. Com.* (2014) 227 Cal.App.4th 641, 659.) The issues raised by POC are not material issues, as they are not necessary to "afford a rational basis for judicial review and assist the reviewing court to ascertain the principles relied upon by the commission and to determine whether it acted arbitrarily, as well as assist parties to know why the case was lost and to prepare for rehearing or review.…" (*Greyhound Lines, Inc. v. Pub. Util. Com.* (1967) 65 Cal.2d 811, 813-814.) Additionally, to the extent that POC believes that we relied on extra-record material simply because we did not mention its filings or the evidentiary challenges therein, this is speculation. We are not required to, nor can we reasonably, discuss and make findings on every issue or sub-issue raised by a party. (*Toward Utility Rate Normalization v. Pub. Util. Com.* (1978) 22 Cal.3d 529, 540.) As just discussed, we did consider and weigh the evidence regarding the safety of Line 1600, and the fact that we did not adopt POC's view of that evidence does not demonstrate that we relied on information outside the record.

C. The Line 1600 PSEP Plan complied with the requirements of D.18-06-028.

Joint Applicants claim that the utilities failed to satisfy the requirement in D.18-06-028 that, as part of their PSEP Plan, they submit the following design alternatives for the testing and/or replacement of Line 1600:

1. Hydrotest the entire 49.7 miles of line and replace those segments that fail the test; and
2. Replace all pipeline segments in High Consequence Areas (HCAs) along Line 1600, thus ensuring a new pipeline without vintage pipeline characteristics that increase the risk of Line 1600. Hydrotesting in solely non-HCA segments would ensure less impact if there was a failure during testing.[15]

As part of these alternatives, D.18-06-028 required the utilities to discuss the following:

> Applicants shall provide a detailed rationale that explains which segments of Line 1600 it proposes to hydrotest, and which segments it proposes to replace. Applicants shall also provide a detailed summary of existing physical commercial and residential structures that directly abut the edge of the easement (and any possible encroachments that lie within the easement) on Line 1600, including GPS coordinates. Based on this analysis, Applicants shall also identify proposed rerouting of the line in specific segments and/or removal or moving of specific physical structures, known at the time, due to safety compliance reasons.

Joint Applicants argue that the second design alternative meant replacing Line 1600 "in the *existing* right-of-way for the *existing* Line 1600, not in a new right-of-way location." (Joint Applicants Rhrg. App., pp. 5-6, italics in original; see also POC Rhrg. App., p. 29.) Thus, as Joint Applicants read D.18-06-028, any proposal to relocate segments of Line 1600 to a new right-of-way would require a new application for construction with supporting documentation necessary for environmental review. (Joint Applicants Rhrg. App.,

[15] D.18-06-028, p. 92.

pp. 6-7, 16 & 18; see also POC Rhrg. App., p. 29.) Alternatively, the utilities assert that rerouting portions of Line 1600 to new rights-of-way was part of the Commission-ordered alternatives that did not require a new application. (Response, p. 4.) In so arguing, the utilities cite to the 2018 Decision's requirement that, as part of the two alternatives, the utilities were required to "identify proposed *rerouting* of the line in specific segments…." (Response, p. 12, quoting D.18-06-028, p. 92, italics added.)

We agree with the utilities that, under the language of D.18-06-028, the utilities were not required to file a new application in order to reroute portions of Line 1600 into new rights-of-way. The utilities correctly point out that D.18-06-028 specifically ordered that rerouting be part of the Line 1600 PSEP Plan. Additionally, unlike Joint Applicants, the utilities do not attempt to read a requirement into the design alternatives that does not exist. Specifically, the required design alternatives do not state that the utilities were required to replace Line 1600 in its "existing right-of-way." Indeed, the phrase "existing right-of-way" is nowhere to be found. We decline to insert such language into the design alternatives required by D.18-06-028.

D. The utilities were not required to obtain a CPCN prior to implementing the Line 1600 PSEP project.

POC argues that, prior to commencing the Line 1600 project, the utilities were required to obtain a Certificate of Public Convenience and Necessity (CPCN) from the Commission pursuant to section 1001.[16] (POC Rhrg. App., pp. 20-22.) POC claims that, without a CPCN, any attempt to approve or begin construction on Line 1600 is unlawful. For the reasons that follow, we reject this argument. Section 1001 provides, in pertinent part, that:

> No...gas corporation...shall begin the construction...of a line, plant, or system, or of any extension thereof, without having first obtained

[16] See also Cal. Code of Regs., tit. 20, § 3.1 (establishing information required in section 1001 applications).

> from the Commission a certificate that the present or future public convenience and necessity require or will require such construction.
>
> This article shall not be construed to require any such corporation to secure such certificate for an extension within any city or city and county within which it has theretofore lawfully commenced operations…or for an extension within or to territory already served by it, necessary in the ordinary course of its business.

According to POC, the only limited exception to the CPCN requirement is for pipeline extensions that are within jurisdictions already served by the utility and are "necessary in the ordinary course of business." (POC Rhrg. App., p. 21.) POC claims that this exemption is inapplicable because we did not find that a new pipeline, i.e., Line 3602, was necessary. (POC Rhrg. App., p. 21.)

POC misunderstands the purpose of section 1001, which has long been construed by the Commission as permitting a utility to construct extensions into an area that it already serves. (See, e.g., *Marzolf v. PG&E* (1994) 53 CPUC 2d 10.) Here, POC does not claim that the utilities do not already provide gas services to the areas where Line 1600 will be rerouted. Therefore, a CPCN is not a condition precedent to the implementation of the Line 1600 project.

POC also claims that we failed to make findings on issues necessary to authorize rerouting portions of Line 1600, including issues relating to rights-of-way, community concerns, environmental influences, recreational areas, aesthetics, and costs. (POC Rhrg. App., pp. 13 & 21, citing Pub. Util. Code, §§ 1002, 1002.5, 1003, 1003.5, 1004, 1005.1 & 1005.5.) POC claims that, absent such findings, the utilities were prohibited from commencing construction of Line 1600. (POC Rhrg. App., p. 21.) Again, POC misunderstands the application of these statutes. The considerations set forth in these statutes are relevant to our determination *whether* to approve a CPCN application, not to determine whether the "territory already served" exception set forth in section 1001 applies. Thus, section 1002, et al. are not a bar to the implementation of the Line 1600 project.

E. The utilities did not violate General Order 112-F in implementing the Line 1600 PSEP project.

POC claims that the existence of encroachments on the easements containing the Line 1600 pipeline demonstrates that the utilities failed to comply with General Order (GO) 112-F, which requires utilities to address encroachments upon their property as they arise. (POC Rhrg. App., p. 18.) In D.20-02-024, we rejected this argument, finding that the utilities had already complied with this rule. (D.20-02-024, p. 24.) Upon review, we uphold this determination.

GO 112-F states, in pertinent part,

> (1) [T]he utility shall not allow a building or other encroachments to be constructed on to its pipeline right-of-way that would hinder maintenance activities on the pipeline or cause a lengthy delay in accessing its pipeline facilities during an emergency. (2) If the utility finds a building or other encroachment built over a pipeline facility… then the utility may require the party causing the encroachment to remove the building or other encroachment from over the pipeline facility or to reimburse the utility for its costs associated with relocating the pipeline system.

POC asserts that various encroachment issues remain outstanding in this case, where the utilities have identified 34 structures located within 15 feet of the pipeline, and have stated that a minority of their easements do not preclude landowners from constructing "any building or other structure within 15 feet of any pipe, or plant any trees over said pipe, or drill or dig any well in a location which would jeopardize the safe use and operation of said pipe lines." (POC Rhrg. App., p. 20.) POC claims that, because the Line 1600 PSEP Plan does not explain how the utilities will resolve these issues, the utilities have yet to comply with GO 112-F. This argument lacks merit, where the record demonstrates that the utilities have, in fact, complied with the requirements of GO 112-F.

Applying the first section of GO 112-F, the Line 1600 PSEP Plan confirmed that "there are no known encroachments on Line 1600 that would hinder maintenance activities on the pipeline or cause a lengthy delay in accessing Line 1600 during an emergency." (PSEP Plan, p. 56.) The second section of

GO 112-F is inapplicable here. This section only applies if the utility finds an encroachment built "over a pipeline facility." (GO 112-F.) In the PSEP Plan, the utilities stated: "SDG&E and SoCalGas identified no structures built over the pipeline." (PSEP Plan, p. 57.) Based on the foregoing, the Decision properly concluded that the utilities complied with the requirements of GO 112-F. Thus, we deny rehearing on this issue.

F. The Commission did not erroneously disclaim regulatory responsibility over the Line 1600 PSEP project.

POC claims that we disclaimed regulatory responsibility over the Line 1600 project by relying on a letter issued by our Safety and Enforcement Division (SED Letter) "approving" the Line 1600 project. (POC Rhrg. App., pp. 13-16; see also Joint Applicants Rhrg. App., p. 7.) POC claims that we "hid" behind this letter, thereby erroneously delegating our regulatory authority over the Line 1600 project to SED. POC also claims that, by relying upon the SED Letter, we neglected our duties to approve or deny proposals to abandon existing infrastructure pursuant to section 851 and to ascertain the scope of the utilities' existing easements pursuant to general principles of property law. (POC Rhrg. App., p. 13.) These claims lack merit.

The letter to which POC refers, sent by SED to the utilities on January 15, 2019, states, in relevant part:

> SED has reviewed and analyzed the hydrostatic test and replacement plan that SDG&E and SoCalGas submitted….SED approves the SDG&E and SoCalGas' proposed PSEP replacement of 37 miles of Line 1600 pipeline in [HCAs] and hydrotesting approximately 13 miles of the remainder of Line 1600 pipeline in non-HCAs (Replace in HCA/Test in Non-HCA Alternative)…SED directs that SDG&E and SoCalGas submit to SED all the required PSEP construction notifications, scope of work, engineering design data, welding and fabrication data…for SED's safety assurance review and inspections.

(SED Letter, pp. 2-3.)[17]

POC is incorrect that the SED Letter demonstrates that we improperly delegated our regulatory authority over the Line 1600 project to SED. By law, we may delegate the performance of ministerial tasks to our staff, including functions relating to the application of regulatory standards.[18] Here, the SED Letter concluded that the Line 1600 project is consistent with PSEP, which, as discussed in section III.A.3, *supra*, is a ministerial determination required by statute and Commission directive. As succinctly explained in D.18-06-028, SED's delegated authority included the ability to "oversee the Applicants' compliance with § 958 and PSEP consistent with directives in prior decisions and OP 15 of the Decision." (D.18-06-028, p. 107.)[19]

We do note that one statement in the Decision may have caused some confusion on when the project was approved. Specifically, in rejecting POC's request to consider the basis for the cost of the full hydrotest alternative during the second phase of the proceeding, we stated, "Because this decision approves Design Alternative 1, the cost of a different alternative is not relevant." (D.20-02-024, p. 46.) This is not an accurate reflection of the events that occurred during the proceeding. We will therefore delete this sentence and replace it with the following: "Because Design Alternative 1 is in effect as legally required, the cost of a different alternative is not relevant."

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[17] The SED Letter was also provided to the A.15-09-013 service list. (D.20-02-024, p. 10.)

[18] *Application of Union Pacific Railroad Company and BNSF Railway Company for Rehearing of Resolution ROSB-002 – Order Modifying Resolution ROSB-002 and Denying Rehearing as Modified* [D.09-05-020] (2009), p. 2 (slip op.).

[19] POC also claims that SED provided the utilities carte blanche over various aspects of the Line 1600 project, relying "entirely" upon the utilities to make certain decisions regarding the plan. (POC Rhrg. App., p. 15.) POC is incorrect. The record shows that SED coordinated with the utilities throughout the development of the Line 1600 PSEP Plan, and that SED conducted field inspections to evaluate the safety conditions, constructability, and serviceability of the line. (SED Letter, p. 2; PSEP Plan, pp. 11-12.)

1. The Commission did not violate section 851.

POC also claims that, pursuant to section 851, we were required to approve, in writing, the utilities' request to abandon certain pieces of infrastructure identified in the Line 1600 PSEP Plan. (POC Rhrg. App., p. 14.) This claim lacks merit.

The purpose of section 851 is to enable the Commission, before any transfer of useful public property is consummated, to review the situation and to take such action as the public interest may require. (*In the Matter of the Application of Sierra Pacific Power Company for an Order Pursuant to Section 853 of the Public Utilities Code Exempting the Sale of Certain Generating Plants and Related Assets Located in the State of Nevada from Section 851 of the Public Utilities Code* [D.01-03-013] (2001), p. 12 (slip op.).) The Commission has described the purpose of section 851 as follows:

> The design of PU Code § 851 is to prevent the impairment of the public service of a utility by the transfer of its property into the hands of agencies incapable of performing an adequate service at reasonable rates or upon terms which will bring the same undesirable results. Transfers and reorganizations often are made which leave the utility so burdened with fixed interest charges and crippled financially that it is totally unable to perform its duty to the public; and to prevent the bringing about of such conditions, the Commission has been given the authority to regulate the transfer and encumbrance of its property by a utility.[20]

In claiming that we were required act under section 851, POC relies upon the following statement in the Line 1600 PSEP Plan: "Also included in this analysis is the abandonment of existing infrastructure, including pressure regulator stations that would no longer be needed." (PSEP Plan, p. 17.) However, POC does not explain how the potential abandonment of pressure regulator stations constitutes a "transfer" of utility property that would invoke section 851. The

[20] *In the Matter of the Application of Southern California Edison Company for Authority to Lease Certain Optical Fibers to Sprint Communications Company, LP, a Limited Partnership Organized in Delaware – Opinion* [D.04-04-002] (2004), p. 4 (slip op.).

remaining tenet of section 851, that is, to prevent the property from falling into the hands of agencies incapable of providing adequate service, is equally inapplicable. There is no evidence that the utilities' pressure regulator stations, if in fact abandoned, would fall into the hands of such entities. Thus, because no activity implicating section 851 has occurred, we reject POC's claim and deny rehearing on this issue.

POC makes a similar claim regarding our alleged duty under section 851 to analyze the scope of the utilities' easements to determine whether the portions that they intend to abandon are "necessary or useful in the performance of [the Utilities'] duties to the public." (POC Rhrg. App., p. 15, quoting Pub. Util. Code, § 851, subd. (c).) However, POC does not cite to any portion of the record that shows that the utilities intend to abandon their easements. The utilities confirm that this is the case. (Response, p. 14 ["Because there is no evidence that [the project] disposes of any easements, there is no factual basis for POC's claim that the Commission violated Section 851."].) Because there is no indication that the utilities are abandoning their easements, the requirements of section 851 are inapplicable, and rehearing on this issue is denied.

2. The status of the utilities' existing easements does not undermine the validity of the Line 1600 PSEP project.

POC also claims that the status of the utilities' existing easements raises doubt as to whether the utilities' plan to reroute various portions of Line 1600 is justifiable. Specifically, POC takes issue with the utilities' failure to note in the PSEP Plan that their franchise rights to the City of San Diego's streets will expire in January 2021. (POC Rhrg. App., p. 16.) POC finds this omission troubling, where the utilities cite to the expiration of a different easement located in Miramar in 2022 as a reason to reroute its pipeline into the City of San Diego's streets. This argument does not establish legal error.

First, POC fails to acknowledge that the Miramar easement set to expire in 2022 is not an ordinary easement that the utilities are using as a mere

excuse to reroute a portion of Line 1600. The record shows that this easement contains 2 miles of pipeline that crosses land owned by the Marine Corps Air Station (MCAS) in Miramar, and that the reroute is necessary to address airfield security, access, and environmental concerns raised by MCAS. (PSEP Plan, pp. 4 & 21.)

Moreover, this claim is based upon a speculative assumption that the City of San Diego and the utilities will not reach a new agreement by the time the MCAS Miramar easement expires in 2022. The presumption that the City would now block access to its streets, thereby preventing the utilities from providing safe and reliable service to its residents, is an unreasonable one that has no support in the record. Because POC's claim amounts to little more than an argument of unsubstantiated fact, it fails to meet the requirements of section 1732 and Rule 16.1 of the Commission's Rules of Practice and Procedure,[21] which require applications for rehearing to set forth specifically grounds for legal error. As a result, we deny rehearing on this issue.

3. POC's reliance on general principles of real property law to challenge the Line 1600 project is misplaced and does not establish legal error.

POC next cites to general principles of real property law to suggest that, if the utilities had properly exercised their rights as easement owners, they would have had no trouble repairing and replacing Line 1600 in its existing location. (POC Rhrg. App., pp. 17-18.) In so arguing, POC claims that, as a general rule, an easement carries with it certain "secondary easements essential to its enjoyment," including the right to make reasonable repairs and replacements. (POC Rhrg. App., p. 17.) According to POC, any secondary easements associated with Line 1600 should provide the utilities with sufficient room to repair and replace Line 1600 in its current location.

[21] All subsequent Rule references are to the Commission's Rules of Practice and Procedure unless otherwise noted.

This argument turns a blind eye to the record. The evidence shows that the utilities' existing easements are not, in fact, wide enough to repair and replace the pipeline. As one utility witness explained during the proceeding,

> [W]hen Line 1600 was put in, it was rural cross-country construction and we acquired a 20-foot easement….We have properties that abut that pipeline for long corridors right up, that we don't have work space to work.

(Evidentiary Hearing Transcript, p. 563.)

POC also claims that there is no real need to enlarge the utilities' easements where the PSEP Plan states that an eminent domain action, commenced to acquire property necessary for a public project, may be challenging due to the law's "public necessity" requirement. (POC Rhrg. App., p. 18.) The portion of the PSEP Plan upon which POC relies provides,

> The effort and cost of expanding the existing rights-of-way for pipeline replacement construction is anticipated to be considerable, as well as disruptive to the property owners and tenants. In addition, by law, the success of an eminent domain action is determined by balancing various factors, including whether the property is necessary for the public project for which it is condemned. Existing roadways would not pose these challenges and costs, as SDG&E has existing franchise rights that permit installation of pipeline in streets and disruption would be limited.

(PSEP Plan, p. 27.)

The inference that POC attempts to draw from this statement, namely, that the utilities' existing easements are sufficiently wide to accommodate repair and replacement work, is unreasonable. This section of the PSEP Plan, titled "Routing Criteria," simply explains the reality that rerouting portions of the pipeline to already-disturbed roadways is far less intrusive than displacing hundreds, if not thousands, of people from their homes and workplaces through an eminent domain action. (PSEP Plan, pp. 25-27 [in situ construction places at least 120 residences, 20 commercial buildings, and 7 apartment buildings at risk of

eminent domain].) As a result, POC's argument fails, and rehearing on this issue is denied.

G. Joint Applicants' request for interim action does not establish legal error.

Joint Applicants argue that we should direct the utilities to take certain interim steps to enhance the safety of Line 1600 until we perform their requested CEQA review. (Joint Applicants Rhrg. App., pp. 23-25.) Specifically, Joint Applicants request us to order the utilities to lower, i.e., derate, the MAOP of Line 1600 from its current operating pressure of 512 pounds per square inch gauge (psig) to 320 psig. Joint Applicants claim that derating Line 1600 would decrease the risk of pipeline rupture, and believes that, when supplanted with capacity from a separate pipeline, this MAOP would satisfy peak demand for the foreseeable future. (Joint Applicants Rhrg. App., pp. 24-25.)

This request does not inform us what about D.20-02-024 Joint Applicants believe is erroneous. As discussed above, section 1732 and Rule 16.1 require parties to provide allegations of legal error. As a result, rehearing on this issue is denied.

Joint Applicants also claim that the 512 psig operating pressure ordered in D.18-06-028 and upheld in D.20-02-024 is no longer necessary to satisfy natural gas demand in the utilities' service area. Joint Applicants argue that the demand forecast assumed in D.18-06-028 is outdated, where a gas report published after its issuance shows that natural gas demand in California is declining. (Joint Applicants Rhrg. App., pp. 24-25, citing 2018 California Gas Report, p. 117.) Joint Applicants claim that, as a result, derating Line 1600 to 320 psig will now meet future demand. (Joint Applicants Rhrg. App., pp. 24-25.) The response to this claim is twofold. First, to the extent that Joint Applicants may be taking issue with the conclusions in D.18-06-028, this argument constitutes an impermissible collateral attack of D.18-06-028, which, again, is a final and conclusive decision. (Pub. Util. Code, §§ 1709 & 1731.) Secondly, insofar as

Joint Applicants are challenging the factual basis for our decision in D.20-02-024 that the MAOP of Line 1600 should remain at 512 psig, this claim is an improper attempt to reweigh the evidence and is barred by section 1732 and Rule 16.1.

H. The Commission did not violate the Bagley-Keene Open Meeting Act or the Commission's Rules of Practice and Procedure.

POC contends that D.20-02-024 is unlawful because we failed to cure violations of the Bagley-Keene Opening Meeting Act (Bagley-Keene) and the Commission's ex parte rules. (POC Rhrg. App., pp. 36-39.) Regarding the alleged Bagley-Keene violation, POC states that we unlawfully considered this proceeding during a January 13, 2020 closed session in violation of Government Code sections 11128[22] and 11132,[23] which limit when and why closed sessions may be held. (POC Rhrg. App., p. 36.) POC argues that we only provided three days' advance notice of the closed meeting, when Government Code section 11125, subdivision (a) requires 10 days' advance notice. (POC Rhrg. App., p. 37.) POC also argues that the description of the meeting was insufficient, as it only stated that it was a Ratemaking Deliberative Meeting (RDM). (POC Rhrg. App., p. 37.) POC is not correct.

POC was informed by a January 17, 2020 letter from the Commission's General Counsel that Public Utilities Code section 1701.3, subdivision (h)(6) provides the Commission the authority to hold RDM meetings with processes that are separate and distinct from the default Bagley-Keene rules. As the General Counsel explained, this is essentially an exemption from certain Bagley-Keene processes.

In ratesetting cases, section 1701.3, subdivision (h)(6)(A) allows the Commission to "establish a 'quiet period' during which no oral or written ex parte

[22] Gov. Code, § 11128 states: "Each closed session of a state body shall be held only during a regular or special meeting of the body."

[23] Gov. Code, § 11132 states: "Except as expressly authorized by this article, no closed session may be held by any state body."

communications may be permitted" and authorizes "the commission [to] meet in closed session during that period."[24] The quiet period can be established either "[a]fter a proposed decision or order is issued and is scheduled for a vote" or "[a]fter a proposed decision is scheduled for a vote, but is then held and rescheduled for a vote." (Pub. Util. Code, § 1701.3, subds. (h)(6)(B)(i) & (ii).) The quiet period must cover "the three business days before the commission's scheduled vote on a decision." (Pub. Util. Code, § 1701.3, subd. (h)(6)(C).) Any meeting of the Commission during a quiet period requires a minimum of three days' advance public notice. (Pub. Util. Code, § 1701.3, subd. (h)(6)(E)(i).)

Here, we complied with the notice requirements. The RDM notice was published on our website and distributed on January 10, 2020, which was three days before the RDM meeting, which was held on January 13, 2020, as required by section 1701.3, subdivision (h)(6)(E)(i). As required by Government Code section 11125, subdivision (b), the notice provided a brief description of the item being discussed in closed session. The notice indicated that an RDM would occur in this proceeding and described the proposed outcomes of both the proposed decision and an alternate proposed decision that would be discussed. This description was significantly more detailed than required.[25] The notice also included a citation to section 1701.3, subdivision (h)(6), the statutory authority under which the closed session was being held, as required by Government Code section 11125, subdivision (b).

POC also contends that D.20-02-024 is unlawful because an ex parte communication occurred during the required quiet period of January 13-16, 2020 in violation of section 1701.3, subdivision (h)(6)(C) and Rule 8.2, subdivision (c)(4)(B) of the Commission's Rules of Practice and Procedure. (POC Rhrg. App., p. 38.)

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[24] This provision applies to catastrophic wildfire proceedings also.

[25] Gov. Code, § 11125, subd. (b) states that "A brief general description of an item generally need not exceed 20 words."

With the scheduling of the RDM, we were required to have a quiet period from January 13, 2020 to January 16, 2020, which was three business days before the Commission was scheduled to vote on the decision at the January 16, 2020 meeting. Despite the quiet period requirement, on January 14, 2020, SDG&E and SoCalGas sent a prohibited written ex parte communication to the Commissioners and some advisors. Pursuant to Rule 8.2, subdivision (h), the utilities filed notice of its prohibited communication and stated that they were not aware that an RDM meeting had been scheduled on January 13, 2020. Because of the prohibited communication, we held the item as shown on the final Hold List published on January 15, 2020.

POC contends that we did not cure the utilities' ex parte violation because we did not give parties "a reasonable opportunity to respond" as required by section 1701.1, subdivision (e)(5). POC argues that we must reopen this proceeding and allow for the provision and testing of evidence to counter the improperly provided evidence by the utilities. (POC Rhrg. App., p. 39.)

In response to the prohibited ex parte communications, we held the item for twenty-one days until the next voting meeting on February 6, 2020. At the January 16, 2020 Commission meeting, President Batjer explained that the Commission was holding the item to provide the parties a reasonable opportunity to respond to the prohibited communication. This provided parties seventeen days to address the contents of the prohibited communication before the new default three-day quiet period began on February 3, 2020. POC does not explain why this was not a reasonable amount of time to respond. Moreover, POC's claim that we must reopen this proceeding and allow for the provision and testing of evidence to counter the improperly provided evidence by the utilities is groundless, because Commission decisions must be based on record evidence and ex parte communications are not part of the evidentiary record in a proceeding. (Cal. Code of Regs., tit. 20, § 8.2, subd. (m).)

I. The Commission was not required to hold a hearing on POC's Petition to Modify.

POC contends that we violated its right to a hearing on its Petition to Modify D.18-06-028, citing *California Trucking Assn. v. Pub. Util. Com.* (*CTA*) (1977) 19 Cal.3d 240. (POC Rhrg. App., p. 30.) POC is incorrect.

CTA does not support POC's claim. In *CTA*, the Commission initiated a proceeding in which it cancelled minimum rates for certain commodities based upon a staff "white paper" which contained such proposal. (*CTA*, *supra*, 19 Cal.3d at p. 242.) Parties were permitted an opportunity to comment on the white paper proposal but were denied hearings on the proposal. The Court determined that cancelling rates previously set by the Commission requires a hearing if so requested. The Court noted that the staff recommendation to cancel rates was based upon factual determinations made by the staff. The Court further noted that California Trucking's challenges included objecting to the public interest representations of the staff. The Court thus determined under these circumstances that a party, at a minimum, must be permitted to prove the substance of its protest through a hearing.

This case, however, does not involve a Commission initiated proceeding to change rates or a public interest representation. Here, POC initiated the reopening of the proceeding by filing its Petition for Modification (PFM). As the moving party, POC had the opportunity to be heard to prove the substance of its motion. Under Commission Rule of Practice and Procedure 16.4, subdivision (b), POC had the opportunity to include declarations or affidavits to support any new or changed facts alleged in its PFM, which it did not do. (Cal. Code of Regs., tit., § 16.4, subd. (b).)

The statutes cited by POC also do not require a hearing merely because POC filed a PFM. (POC Rhrg. App., p. 30, fn. 139.) A party is not entitled to a hearing simply because it filed a PFM. Such procedure would essentially lead to endless hearings on a finalized decision.

J. The Commission did not modify prior decisions.

POC claims that, in D.20-02-024, we made several findings that erroneously modified past Commission decisions, namely, D.18-06-028 and D.14-06-007. Each claim will be addressed in turn.

1. The Decision did not eliminate the pressure test alternative required by D.18-06-028 and D.14-06-007.

POC contends that the Decision erroneously eliminated the requirement from D.18-06-028 that the utilities pressure test Line 1600. POC also contends that Finding of Fact 11 in D.20-02-024 is erroneous because D.14-06-007 requires pressure testing of a piggable line in HCAs that can be taken out of service with manageable customer impacts. (POC Rhrg. App., pp. 31-32, citing D.14-06-007, Attachment I.)[26]

First, POC is incorrect that D.20-02-024 modified either D.18-06-028 or D.14-06-007. Finding of Fact 11 states:

> Applicants evaluated the design alternatives consistent with the requirements detailed in the Decision, Applicants' PSEP Decision Tree, and the overarching objectives of PSEP to: 1) comply with the Commission's directives (subsequently codified in § 958); 2) enhance public safety; 3) minimize customer impacts; and 4) maximize the cost effectiveness of safety investments.

(D.20-02-024, p. 51.)

Nothing in this finding of fact modifies any prior decision, nor does POC identify what exactly it alleges that it modifies. Finding of Fact 11 concerns activities that occurred subsequent to the issuance of D.18-06-028 and D.14-06-007 and is a new finding and not a modification of a prior decision.

As to POC's allegation that the Decision erroneously eliminated the requirement that the utilities pressure test Line 1600, POC is also mistaken. A

[26] POC raises this claim, as well as the one addressed in section III.J.2*, infra*, in conjunction with its claim that a hearing was required on its Petition for Modification. However, POC does not tie these claims back to a need for a hearing on them. As a result, they will be addressed separately from POC's hearing claim, which, as discussed in section III.I, *supra*, lacks merit.

plain reading of D.18-06-028 shows that we already considered and rejected this claim. Specifically, we rejected POC's claim that it was "absolutely feasible, reasonable, cost-effective and prudent to pressure test Line 1600 and return it to transmission service without any changes to the SDG&E gas system." (D.18-06-028, p. 88.) We found that, although pressure testing may be technically feasible, sections of the work would be difficult and could be disruptive. (D.18-06-028, p. 121, Finding of Fact 64.)[27] We further found that pressure testing would never remove or cure known hook crack defects on the line. (D.18-06-028, p. 121, Finding of Fact 64.) Thus, we required the utilities to provide SED with a *hydrostatic test or replacement plan* for Line 1600. (D.18-06-028, p. 128, Ordering Para. 7, italics added.) We required the utilities to include two options in the plan: one to hydrotest the entire line and replace those segments that fail the test; one to *replace* all pipeline segments in HCAs and pressure test other areas. (D.18-06-028, p. 92.) POC did not file an application for rehearing of D.18-06-028. Because POC's claim constitutes no more than an attempt to relitigate a position that we already considered and rejected, there is no basis for granting rehearing. (Pub. Util. Code, § 1732; Cal. Code of Regs., tit. 20, § 16.1, subd. (c).)

Additionally, contrary to POC's claim, the Decision Tree approved in D.14-06-007 did not require pressure testing of Line 1600. When we adopted the Decision Tree, we made it clear that we were adopting a conceptual plan or tool to use to enhance the safety of utilities' natural gas pipeline systems. D.14-06-007 expressly states that the Decision Tree was a work in progress and only demonstrated the first steps taken by SDG&E and SoCalGas to define the scope of work for Safety Enhancement. (D.14-06-007, pp. 15-16.) As

[27] See PSEP Plan, p. 73 ("Pressure testing the existing Line 1600 pipeline does not reduce the rupture risk from future mechanical damage, remove sub-critical flaws that may grow or interact with other threats, improve the pipe material's resistance to rupture, or ensure that Line 1600 will remain in transmission service in the future.")

D.20-02-024 properly noted, we viewed the Decision Tree as a tool for providing logic for decision-making about the natural gas pipeline system, and not an automatic determinant of each step. (D.20-02-024, p. 45, quoting D.14-06-007, Conclusion of Law 5 ["The Decision Tree analysis used to evaluate the existing pipeline network for safety, documentation, and reliability, is a reasonable but not final process."].) In other words, nothing regarding Line 1600 was set in stone at that time, and we reject POC's claim to the contrary.

2. The Decision did not eliminate a directive to consider derating Line 1600.

POC argues that the Decision erroneously eliminated the finding in D.18-06-028 to consider derating Line 1600. (POC Rhrg. App., p. 32.) POC argues that the rationale for doing so is not based on record evidence and is contrary to past Commission decisions. (POC Rhrg. App., p. 32.) POC states that our rationale was flawed because we determined that it was no longer necessary to consider derating the pipeline where the test and replacement plan was already approved by SED.

It appears that POC contends that D.20-02-024 eliminated Conclusion of Law 12 of D.18-06-028, which states:

> It is reasonable to maintain Line 1600 in transmission service at 512 psig in the short-term subject to the PSEP Decision Tree and Pub. Util. Code § 958; however, once short-term issues are resolved, its MAOP should be further reduced as soon as practicable while maintaining reliability.

(D.18-06-028, p. 124.)

Again, D.20-02-024 did not modify Conclusion of Law 12 of the 2018 Decision. That conclusion concerned the reasonableness of the Commission's actions at the time of that decision. Since D.18-06-028 was issued, the utilities complied with our direction and submitted Line 1600 test and replacement options. The utilities are moving forward with the option to replace

Line 1600 in HCAs and to hydrotest in non-HCAs. Derating of Line 1600 is no longer practicable at this time.

Moreover, D.18-06-028 did not mandate derating of Line 1600. In fact, we specifically denied requests to derate Line 1600. (D.18-06-028, p. 128, Ordering Para. 3.) We found that it was "reasonable to keep Line 1600 in transmission service at 512 psig for the foreseeable future and maintain it according to more stringent Transmission Integrity Management Plan standards." (D.18-06-028, p. 121, Finding of Fact 61.) Moreover, by requiring the utilities to provide both a test and a replacement option, it is apparent that we were not mandating future derating. As D.18-06-028 made clear, any determination concerning derating of Line 1600 would be made in the future. (D.18-06-028, p. 124, Conclusion of Law 9.)[28]

K. POC's and Joint Applicants' requests for oral argument are denied.

POC requests oral argument pursuant to Rule 16.3 of the Commission's Rules of Practice and Procedure. POC states that oral argument will materially assist us because its rehearing application raises issues of major significance concerning the Decision's departure from Commission precedent and because it presents legal issues of public importance.

Rule 16.3, subdivision (a) requires applicants to *explain* how oral argument will materially assist the Commission in resolving the application. POC failed to demonstrate how oral argument will materially assist us in resolving the rehearing application. Generally stating that oral argument will assist us and stating that issues are of major significance or of great importance is

[28] Conclusion of Law 9 states: "Before making a final determination regarding *if and when* the Commission should lower the pressure of Line 1600 to 320 psig, replacing the projected 25 MMcfd capacity reduction should be explored via an RFO, and the status of Line 1600 pipeline records as 'traceable, verifiable, and complete' should be decided, which may help inform various interim, short-term, and long-term safety goals and activities." (Italics added.)

not sufficient. The issues raised by POC are not unique. We have complete discretion to determine the appropriateness of oral argument in any particular matter. (See Cal. Code of Regs., tit. 20, § 16.3, subd. (a).) Accordingly, there is no basis to conclude that oral argument would benefit us in disposition of POC's application for rehearing.

In a cursory, one sentence claim, Joint Applicants join POC's request for oral argument. (Joint Applicants Rhrg. App., p. 25.) Section 1732 neither contemplates nor allows a rehearing applicant to simply piggyback on arguments raised by other parties. A party must submit its own standalone argument that meets the requirements stated in section 1732. Because Joint Applicants failed to do this, we reject their request for oral argument.

IV. CONCLUSION

We modify D.20-02-024 for the reasons discussed in sections III.A.3, III.B, and III.F, *supra*. Otherwise, good cause has not been shown to grant POC's and Joint Applicants' applications for rehearing, as legal error has not been established. Therefore, we deny rehearing of D.20-02-024, as modified.

THEREFORE, IT IS ORDERED:

1. Decision 20-02-024 is modified as follows:

   a. On page 46, delete the second to last sentence (beginning with "Because this decision approves") and replace with the following:

      "Because Design Alternative 1 is in effect as legally required, the cost of a different alternative is not relevant."

   b. On page 50, add a Finding of Fact immediately after Finding of Fact 6 that states:

      "In D.18-06-028, the Commission determined that Line 1600 is not in good condition due to the presence of hook cracks and other known safety risks such as corrosion or other integrity threats."

c. On page 56, add a Conclusion of Law immediately after Conclusion of Law 3 that states:

"The Line 1600 test and replacement project is mandated by Public Utilities Code section 958 and Commission directive."

d. On Page 56, add a Conclusion of Law immediately after the Conclusion of Law required in Ordering Paragraph 1.c, *supra,* that states:

"The Line 1600 test and replacement project is exempt from CEQA as a ministerial project under Public Resources Code section 21080, subdivision (b)(1)."

2. Rehearing of D.20-02-024, as modified, is denied.

3. Application 15-09-013 remains open.

The order is effective today.

Dated December 3, 2020, at San Francisco, CA

MARYBEL BATJER
President
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
Commissioners