

Decision 23-10-025

October 12, 2023

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U39M) for recovery of recorded expenditures related to wildfire mitigation and catastrophic events, as well as other recorded costs.

Application 20-09-019

ORDER DENYING REHEARING OF DECISION 23-02-017**I. INTRODUCTION**

In Decision (D.) 23-02-017 (Decision)¹ we approved a settlement that resolved Pacific Gas and Electric Company's (PG&E) Application (A.) 20-09-019 (or Application). (Decision at 2.) The Decision authorized PG&E to recover a total revenue requirement of approximately \$1.038 billion for its operational and capital expenditures associated with recorded amounts in various memorandum accounts. (*Ibid.*) The recorded costs relate to PG&E's work to complete various wildfire mitigation activities, respond to government-declared catastrophic events, and implement other environmental and customer-focused initiatives. (See *id.* at 2, 6-10.) The authorized amount reflects a \$242.757 million (or approximately nineteen percent) reduction from the revenue requirement PG&E sought in the Application across all memorandum accounts, including its Catastrophic Event Memorandum Account (CEMA). (*Id.* at 2-3, 11, 28.)

The CEMA is well-established at the Commission since its introduction in 1991 in Resolution E-3238 as the method for tracking and resolving recovery of costs associated with catastrophic events. (Res. E-3238 at 2-4; see, e.g., D.21-05-006

¹ Unless otherwise noted, citations to Commission decisions are to the official pdf versions, which are available on the Commission's website at: <http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx>.

at 7-8, 10-12.) Public Utilities Code² section 454.9 codifies the practices established in Resolution E-3238. (See, e.g., D.01-02-075 at 6-7.) Section 454.9 requires the Commission to authorize the public utilities to establish CEMAs to record costs for (1) restoring utility services; (2) repairing, replacing, or restoring damaged facilities; and (3) complying with government agency orders in connections with event declared as disasters by competent state or federal authorities. (§ 454.9, subd. (a).) The statute provides that these costs are recoverable in rates “following a request by the affected utility, a commission finding of their reasonableness, and approval by the commission.” (§ 454.9, subd. (b).)

Relevant here, the approved settlement in this proceeding addresses costs related to the 2017 Tubbs Fire that PG&E recorded in its CEMA, a fire previously investigated and subject to a Commission enforcement proceeding. (Decision at 18-19, Appendix 2.) The Tubbs Fire was one of several catastrophic wildfires that occurred in PG&E’s service territory in 2017 and 2018. (*Decision Approving Proposed Settlement Agreement with Modifications* [D.20-05-019] (OII Decision) at 3.) All fires were investigated by both the California Department of Forestry and Fire Protection (CAL FIRE) and Commission’s Safety and Enforcement Division (SED). (*Id.* at 4.) CAL FIRE determined that PG&E’s electrical facilities ignited each fire except the Tubbs Fire. (*Id.* at 4, 16, 75 (Finding of Fact (FOF) 2).) SED conducted separate investigations into the fires to determine whether there were violations of the law, relying on CAL FIRE’s expertise as an agency qualified to determine the source of the ignition. (*Id.* at 60.) Based on its separate investigation of the Tubbs Fire and review of relevant evidence provided by CAL FIRE, SED found no violations with respect to this fire. (*Id.* at 60-61.)

In 2019, in response to SED’s incident investigation report, we initiated the Order Instituting Investigation (OII) 19-06-015 (Enforcement OII). (*Id.* at 4.) The scope of that proceeding included fires for which SED had alleged violations and, therefore, did

² Unless otherwise indicated, all subsequent section references are to the California Public Utilities Code.

not include the cause of the Tubbs Fire and any associated violations. (*Id.* at 61, 79 (FOF 40); *Order Modifying Decision 20-05-019 and Denying Rehearing of Decision, as Modified* [D.20-12-015] (OII Rehearing) at 24-25.) Mr. Thomas R. Del Monte (Del Monte) intervened in the Enforcement OII. Although the scope of the proceeding did not include the cause of the Tubbs Fire and any associated violations, Del Monte's participation largely focused on these out-of-scope issues. (See, e.g., OII Decision at 17-18, 59-60 & fn. 139 at 59.)

The Enforcement OII culminated in a settlement agreement. On December 17, 2019, PG&E, SED, the Office of the Safety Advocate, and Coalition of California Utility Employees filed a joint motion for approval of a settlement agreement to resolve all issues in the Enforcement OII. (*Id.* at 7.) As part of the settlement, SED committed that approval of the settlement would conclude its enforcement efforts pertaining to the 2017 and 2018 wildfires, including the 2017 Tubbs Fire, based on what was known or knowable at the time of settlement. (*Id.* at 61.) Thus, SED would retain the authority to further investigate the cause of the wildfires and to enforce Commission requirements should new facts arise. (*Ibid.*) Del Monte, The Utility Reform Network (TURN), Wild Tree Foundation (Wild Tree), and the Commission's Public Advocates Office (Cal Advocates) opposed the proposed settlement. (*Id.* at 15.)

On May 8, 2020, we issued the OII Decision, approving, with modifications, the proposed settlement. (*Id.* at 2.) We affirmed the OII Decision in the OII Rehearing following applications for rehearing filed by Wild Tree and Del Monte. (See generally OII Rehearing.)

On September 30, 2020, the instant proceeding was opened upon PG&E's filing of A.20-09-019. (Decision at 3.) At the outset of the proceeding, the scoping treatment of the Tubbs Fire was a contested issue. Del Monte proposed that the Commission consider the cause of the fire so that he could present evidence alleging that PG&E's equipment was the ignition source. (See, e.g., *Del Monte Protest* (Nov. 2, 2020) at 1-4, 7-8; *PG&E Reply to Protests and Responses* (Nov. 2, 2020) at 2-4; RT, Vol. 1 (prehearing conference, Dec. 4, 2020) at 22:25 to 23:21.) PG&E opposed the

recommendation considering CAL FIRE's and SED's findings in the Enforcement OII. (See, e.g., *PG&E Comments Regarding the Proposed Scope of Issues* (Dec. 11, 2020) at 1-2, 4.) Ultimately, the *Assigned Commissioner's Scoping Memo and Ruling* (Scoping Memo) determined that the cause of the Tubbs Fire was not in scope. (Scoping Memo at 3.) Despite this directive, Del Monte's participation focused on this out-of-scope issue. (See, e.g., Ex. TDM-1 (Buske testimony), *Del Monte Opening Brief* (July 23, 2021).)

Thereafter, the parties submitted testimony and conducted discovery. (See, e.g., Decision at 18, 30, *Cal Advocates Motion for Leave to Identify and Admit PG&E's Data Request Responses into Evidence* (Dec. 17, 2021).) A status conference was convened on July 7, 2021, during which, among other things, the assigned administrative law judge (ALJ) took official notice of the CAL FIRE and SED reports used in the Enforcement OII. (RT., Vol. 1 (Status Conference, June 7, 2021) at 24:22 to 26:7.) Evidentiary hearings were held on June 14, 2021, through June 16, 2021. (Decision at 5.) On July 23, 2021, PG&E, Del Monte, Cal Advocates, TURN, Wild Tree, and Federal Executive Agencies (FEA) filed opening briefs. (*Ibid.*)

On September 21, 2021, PG&E, Cal Advocates, and FEA (collectively Settling Parties) submitted a joint motion seeking approval of the proposed settlement. (*Id.*) On October 28, 2021, TURN, Del Monte, and Wild Tree filed comments on the proposed settlement agreement. (*Id.*) In his opposition to the settlement, Del Monte primarily argued that the settlement was unlawful because it sought recovery of the Tubbs Fire costs. (*Del Monte Comments Opposing Proposed Settlement Agreement* (Oct. 28, 2021) at 6-12.) The Settling Parties jointly filed reply comments on the proposed settlement agreement on November 12, 2021. (Decision at 5.)

After reviewing the proposed settlement and party comments thereto, the ALJ issued a proposed decision and Commissioner Alice Reynolds issued an alternate proposed decision on October 11, 2022. We adopted the alternate as our decision, approving the settlement as consistent with the Commission's settlement rules. (*Id.* at 17-31.) On February 8, 2023, we issued the Decision.

Del Monte timely filed an application for rehearing of the Decision. In his rehearing application, Del Monte alleges that the Decision is unlawful because: (1) the Commission did not make a finding about whether PG&E imprudently caused the Tubbs Fire, which he claims is required by statute; (2) the cause of the Tubbs Fire was excluded from the scope of the proceeding; (3) the findings are not supported by substantial evidence; (4) the Commission improperly shifted the burden of proof to Del Monte; (5) the Commission violated Rule 13.6 of the Commission's Rules of Practice and Procedure;³ (6) the approved settlement does not comply with Rule 12.1; and (7) the Commission violated Del Monte's due process rights.

PG&E filed a response to the rehearing application. In its response, PG&E recommends that the Commission deny Del Monte's rehearing application in its entirety.

We have carefully considered the arguments raised in the rehearing application and do not find grounds for granting rehearing. Rehearing of D.23-02-017 is denied.

II. DISCUSSION

A. The Scoping Memo lawfully limited the scope of the proceeding to exclude the cause of the Tubbs Fire.

Del Monte makes several claims that our scoping treatment of the Tubbs Fire is unlawful. As explained below, Del Monte's claims lack merit.

1. The Commission has expansive constitutional and statutory authority to establish the scope of its proceedings.

We have expansive constitutional and statutory authority to organize our own proceedings, including a proceeding's scope. The California Constitution provides: "Subject to statute and due process, the commission may establish its own procedures." (Cal. Const., art. XII, § 2.) The California Supreme Court has interpreted this provision to allow the Commission to "choose its own criteria or method of arriving at its

³ Unless otherwise indicated, all subsequent Rule(s) references are to the Commission's Rules of Practice and Procedure

decisions....” (*Pacific Telephone and Telegraph Co. v. Public Utilities Com.* (*Pacific Telephone*) (1965) 62 Cal. 2d 634, 647; *Sale v. Railroad Commission* (*Sale*) (1940) 15 Cal.2d 613, 618.)

We also derive our scoping authority from the Public Utilities Code. (*San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 914-915.) Section 1701.1, in relevant part, requires us to “issue by order or ruling a scoping memo,” and provides us the discretion to “describe[] the issues to be considered.” (§ 1701.1, subd. (b); Rule 7.3.) Section 701 broadly authorizes us to “supervise and regulate every public utility in the State” and “do all things ... which are necessary and convenient in the exercise of such power and jurisdiction.” (§ 701; see *San Pablo Bay Pipeline Co., LLC v. Pub. Utilities Com.* (*San Pablo Bay*) (2015) 243 Cal.App.4th 295, 313-314.)

In light of the above powers, it is entirely within our discretion to decide how to organize our proceedings, absent some violation of law. The California Supreme Court has determined that such a violation must come from an express statutory limit on our authority or due process violation. (*Southern California Edison Co. v. Peevey* (*Peevey*) (2003) 31 Cal.4th 781, 792; *Sale, supra*, 15 Cal.2d at 618.) As discussed below, Del Monte’s allegations to these ends lack merit.

2. The Scoping Memo is consistent with the Commission’s broad ratemaking authority.

Del Monte argues that the cause of the Tubbs Fire is a material issue that we must decide to determine whether PG&E’s requested CEMA costs are reasonable. (App. Reh’g. at 4-7.) He claims that the issue is material pursuant to sections 451, 451.2, 454.9, and 1705 and two past decisions applying the Prudent Manager Standard in wildfire cost recovery proceedings (D.17-11-033 and D.21-08-024).⁴ (*Ibid.*) Del Monte also suggests that he has a right under section 451 to fully litigate his allegations.

⁴ D.17-11-033 and D.21-08-024 are discussed further in this section. Respectively, these decisions concerned SDG&E’s wildfire cost recovery application for three wildfires ignited in its service territory in 2007 (the Witch, Guejito and Rice Fires) and SCE’s wildfire cost recovery application for wildfires ignited in its service territory in 2017, including the Thomas and Rye Fires.

(See *id.* at 5, 6.) Del Monte therefore argues that we may not lawfully exclude the cause of the Tubbs Fire from the proceeding scope. (*Id.* at 6-7.)

In establishing rates, we exercise our broad and comprehensive legislative ratemaking powers. (*People v. Western Air Lines (Western Airlines)* (1954) 42 Cal.2d 621, 630, *Wood v. Public Utilities Com. (Wood)* (1971) 4 Cal.3d 288, 292.) The standard for setting rates is that of reasonableness, and we have discretion to choose what factors and criteria are relevant under this standard. (*Pacific Telephone, supra*, 62 Cal.2d at 647; see *Pacific Bell Wireless LLC v. Public Utilities Com.* (2006) 140 Cal.App.4th 718, 740-743.) Sections 451, 451.2, 454.9 are ratemaking statutes applying the reasonableness standard.

Section 451, in relevant part, requires that “[a]ll charges demanded or received by any public utility ... for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable.” Section 451.2(a) applies section 451 to an electric utility’s application to recover costs from catastrophic wildfires ignited in 2017, such as the Tubbs Fire. Section 454.9(b) provides that approval of CEMA costs requires “a commission finding of their reasonableness.”

Nothing in these statutes expressly limits our expansive constitutional and statutory authority to establish the scope of our proceedings. Rather, these statutes grant us wide latitude to determine what factors are relevant to our reasonableness review, as discussed above. Nor do these statutes grant intervenors an unfettered right to fully litigate their allegations in CEMA proceedings. (See *Wood, supra*, 4 Cal.3d at 292.) Del Monte’s suggestion to the contrary mistakenly presumes that we must entertain any and all issues deemed relevant by any party. However, no legal authority imposes such a requirement. Accordingly, Del Monte’s statutory arguments are unfounded.

Del Monte’s reliance on D.17-11-033 and D.21-08-024 is equally unavailing. We adopted the long-standing Prudent Manager Standard to ensure that charges requested by a utility are just and reasonable, consistent with section 451. (D.18-07-025 at 2-3.) Under this standard, a utility has the burden to show that it reasonably and prudently operated and managed its system. (*Id.* at 3.)

In D.17-11-033 and D.21-08-024, we required San Diego Gas & Electric Company (D.17-11-033) and Southern California Edison Company (D.21-08-024) to show that they acted reasonably and prudently in operating and managing their systems leading up to fires for which they sought cost recovery, where CAL FIRE had concluded that the utilities' equipment ignited the fires. (D.17-11-033 at 2-3, 9-11; D.21-08-024 at 17-18.) The circumstances are different in the present matter. Here, CAL FIRE determined that PG&E's equipment did not ignite the Tubbs Fire. Accordingly, D.17-11-033 and D.21-08-024 do not establish that the cause of the Tubbs Fire is a material issue in this proceeding. (See D.18-07-025 at 6 [under the Prudent Manager Standard, each matter is evaluated on a case-by-case basis]; see also *Postal Telegraph-Cable Co. v. Railroad Com.* (*Postal Telegraph*) (1925) 197 Cal. 426, 436-437 [deviation from previous Commission decisions is not legal error and may be justified by the circumstances].)

Del Monte fares no better under section 1705. Section 1705, in relevant part, requires our decisions to "contain, separately stated, findings of fact and conclusions of law ... on all issues material to the order or decision." Section 1705 does not independently identify issues that may be material; rather, it merely requires us to include findings on issues otherwise material. (See, e.g., *U.S. Steel Corp. v. Public Utilities Com.* (1981) 29 Cal.3d 603, 608-609.) Since there is no support for Del Monte's argument that the cause of the Tubbs Fire is a material issue, his section 1705 argument is unsupported.

For the above reasons, Del Monte fails to show that the authorities he relies on limited our scoping authority. Thus, there is no basis to grant rehearing.

3. Section 315 does not require the scope of this proceeding to include the Tubbs Fire.

Del Monte argues that the use of CAL FIRE's report is an improper delegation of our duties under section 315. (See App. Rehg. at 5, 9.) He therefore argues that we had no lawful basis for failing to make a finding on the cause of the Tubbs Fire. (*Id.*) These arguments lack merit.

Section 315 requires us to “investigate the cause of all accidents” involving utility property that result in “loss of life or injury to person or property and requiring, in the judgment of the commission, investigation by it, and may make such order or recommendation with respect thereto as in its judgment seems just and reasonable.” Among other things, this statute grants us the discretion to determine how to conduct our investigations and whether to pursue an enforcement action. (See, e.g., D.17-09-008 at 16 (FOF 7, Conclusion of Law (COL) 3), OII Rehearing at 25.) Nothing in section 315 prohibits us from reviewing and ultimately relying on CAL FIRE’s expertise in the course of our own investigation proceedings. (See § 315; OII Decision at 60-61.)

Relatedly, we did not need to make a finding on the cause of the Tubbs Fire in this proceeding in light of the CAL FIRE report. (See Sections II.A.1 & 2, *supra*.) We have relied on the findings of agencies with the statutory obligation and expertise to perform specific duties that relate to our regulatory functions, such as CAL FIRE. (See, e.g., OII Decision at 60-61, D.00-10-049 at 4-6, D.01-08-069 at 21, D.16-01-044 at 59, D.97-10-070 [1997 Cal. PUC 975 at *10, 76 Cal. PUC 2d 246]; cf. D.02-02-052 at 22, 111 (COL 2).) CAL FIRE is statutorily authorized to enforce forest and fire laws and is an agency qualified to determine the source of a wildfire’s ignition. (See Pub. Res. Code, §§ 713, 714, 4119, 4137.) In addition, SED conducts separate investigations into the fires and any associated violations, while relying on CAL FIRE’s technical expertise. (§ 315; OII Decision at 60-61 & fn. 143 at 60.) CAL FIRE and SED already conducted their investigations of the cause of the Tubbs Fire and concluded that PG&E’s equipment did not play a role in the fire’s ignition. (See Section I, *supra*.) SED also retains the authority to initiate enforcement activity in the event it learns of new information concerning the cause of the Tubbs Fire. (OII Decision at 61; see D.17-09-008 at 13 [under section 315, it is within the Commission’s sole judgment to determine whether further investigation of a utility is necessary based on misconduct alleged by a party].) Considering the above, we reasonably excluded the cause of the Tubbs Fire from scope.

4. The Commission afforded Del Monte adequate due process.

Del Monte contends that the Scoping Memo violates his due process rights to be free from arbitrary adjudicative procedures. (App. Reh'g. at 15, citing *People v. Ramirez (Ramirez)* (1979) 25 Cal.3d 260.) He contends that the Scoping Memo denied him the ability to be meaningfully heard on the cause of the Tubbs Fire as allegedly required by section 451, including full consideration of his evidence and his ability to conduct discovery on this issue. (*Ibid.*) Del Monte fails to show any due process violation.

Under the California Constitution, “A person may not be deprived of life, liberty, or property without due process of law....” (Cal. Const., art. I, § 7, subd. (a).) In *Ramirez*, the California Supreme Court held that when a person may be deprived of a statutorily conferred benefit, due process requires that the individual be free from arbitrary adjudicative procedures. (*Ramirez, supra*, 25 Cal.3d at 263-264.)

Del Monte’s due process argument fails at the threshold. He cites no authority to support his contention that section 451 confers upon him the right to fully litigate the cause of the Tubbs Fire in this proceeding. (See Section II.A.2, *supra*.) Further, Commission procedures provided Del Monte adequate due process on scoping matters and throughout the proceeding, as discussed below. (See *Ramirez, supra*, 25 Cal.3d at 269 [in some instances, due process requires only that an agency comply with statutory limits on its authority].)

With regards to our orders, the California Supreme Court has explained that Constitutional due process protections require us, in broad terms, to give parties adequate notice and an opportunity to be heard. (*Western Air Lines, supra*, 42 Cal.2d at 632.) We have explained the due process rights of parties to our proceedings as follows:

Parties are normally entitled to know the subject matter of a proceeding, to know what information this Commission will consider when it addresses those subjects, and to have an opportunity to present their views to us. [Citation.] As long as it meets these broad requirements, however, this Commission has been granted discretion to establish its own

procedures for conducting proceedings. Normally, questions about the conduct of our proceedings are resolved by referring to the requirements of any applicable statute and our Rules. (Cal. Const., art. XII, § 2.)

(D.12-08-046 at 28.) Accordingly, due process in terms of a proceeding's scope is provided with notice and opportunity to be heard on the potential issues to be considered. (*Ibid.*; *San Pablo Bay*, *supra*, 243 Cal.App.4th at 314.)

Our procedures provide parties notice regarding the potential scope of the proceeding and several opportunities to be heard on this matter. (Rule 2.1 [applications]; Rule 2.6 [party protests and responses to applications and applicant replies]; Rule 7.2 [prehearing conferences and statements]; Rule 7.3 [scoping memos]; see Rule 11.1 [motions].) Del Monte had full access to, and indeed availed himself of, these procedures. After PG&E filed its application, Del Monte filed a protest requesting that the proceeding scope include the cause of the Tubbs Fire. (*Del Monte Protest* (Nov. 2, 2020) at 1-4, 8-9.) In its response, PG&E argued that this issue should be beyond scope due to CAL FIRE's and SED's findings in the Enforcement OII. (*PG&E Reply to Protests and Responses* (Nov. 2, 2020) at 2-4.) Del Monte then requested, and was permitted by the ALJ, to file a reply, where he again argued that the cause of the Tubbs Fire should be within scope. (*Del Monte Response to PG&E's Reply to Protests and Responses* (Dec. 1, 2020) at 1-3.) Del Monte also asserted this position during the prehearing conference, which the ALJ took under advisement. (RT, Vol. 1 (prehearing conference, Dec. 4, 2020) at 22:25 to 23:21.) Thereafter, parties were afforded the opportunity to submit comments on the ALJ's proposed scope of issues. (*Id.* at 11:22-26; see, e.g., *PG&E Comments Regarding the Proposed Scope of Issues* (Dec. 11, 2020) at 1-2, 4.)

After considering party input, we issued the Scoping Memo, which excluded the cause of the Tubbs Fire from scope. (Scoping Memo at 3.) Despite the exclusion of the Tubbs Fire's cause, Del Monte submitted testimony on April 14, 2021, that purported to establish causal links between PG&E's alleged safety law violations, the

cause of the Tubbs Fire, and PG&E's CEMA costs for this fire. (Ex. TDM-1 (Buske testimony); Ex. TDM-2 (Del Monte testimony).) On April 20, 2021, Del Monte filed a motion seeking to amend the scope to include the cause of the Tubbs Fire. (*Del Monte Motion to Amend Proceeding Scope to Include PG&E's Involvement in Causing the Tubbs Fire and Related Violations or Remove Tubbs Fire Costs* (April 20, 2021).)

The ALJ denied the motion on the basis that Del Monte's arguments were not persuasive. (*ALJ Ruling Denying Motion to Amend Scope and Denying Motion to Strike Testimony* (May 21, 2021) at 3.)

Based on the above procedures, Del Monte was provided adequate notice and opportunity to be heard on scoping matters. (*San Pablo Bay, supra*, 243 Cal.App.4th at 314; *Drummey v. State Bd. of Funeral Directors* (1939) 13 Cal.2d 75, 80-81 ["If the statute provides for reasonable notice and a reasonable opportunity to be heard, that is all that is required."].) Accordingly, Del Monte's due process claim is baseless.

In addition to the adequate procedures for the scoping issues, Del Monte was afforded the opportunity to be heard throughout the proceeding on matters within scope. PG&E moved to strike Del Monte's testimony as beyond scope. (*PG&E Motion to Strike Testimony Submitted by Thomas Del Monte* (April 15, 2021).) The ALJ denied the motion, ruling that Del Monte's testimony "is within the scope of this proceeding so long as it is used as evidence to evaluate the reasonableness of PG&E's request for recovery of costs" for issues within scope. (*ALJ Ruling Denying Motion to Amend Scope and Denying Motion to Strike* (May 21, 2021) at 3-4.) Del Monte also participated in evidentiary hearings and cross-examined PG&E's CEMA witness. (RT, Vol. 2 (evidentiary hearings, June 15, 2021) at 204:23 to 221:7.) Del Monte subsequently filed an opening brief and comments on the proposed settlement, proposed decision, and alternate proposed decision. (Decision at 5, 32-33.)

Further, we reviewed and duly considered Del Monte's evidence and arguments within the proceeding's scope. (*Id.* at 18-19, 34 (FOF 7), 35 (COL 1).) While Del Monte takes issue with the Decision's characterization of his testimony (App. Reh'g. at 9-11), his contentions miss the point. Our review of Del Monte's evidence gave the

evidence a fair reading based on the proceeding's scope and the corresponding appropriate use of his evidence. (See *People v. Harris* (1978) 85 Cal.App.3d 954, 957; see also Evid. Code § 355.) Del Monte's own failure to present evidence or argument on issues within scope is not a violation of his due process rights. (See, e.g., *BullsEye Telecom, Inc. v. Public Utilities Com.* (2021) 66 Cal.App.5th 301, 327 [petitioners' failure to present relevant evidence "was their own strategic decision and they cannot now be heard to complain"].)

For the above reasons, Del Monte was afforded adequate due process throughout the proceeding. Accordingly, we reject his arguments to the contrary.

B. The Decision did not rely on the underlying hearsay in the CAL FIRE or SED reports to make any conclusions on the cause of the Tubbs Fire or misapply the burden of proof.

Del Monte contends that the Decision is not supported by substantial evidence because it relies on uncorroborated hearsay from the CAL FIRE and SED reports to establish that PG&E's equipment did not cause the Tubbs Fire and to directly refute his evidence. (App. Rehg. at 7-9.) Relying the same reasoning, he argues that the Decision violates Rule 13.6. (*Id.* at 12.) Relatedly, Del Monte alleges that we improperly placed the burden of proof on him to show that PG&E's Tubbs Fire costs were unreasonable because PG&E did not presented evidence refuting his causal allegations. (*Id.* at 10-13.) Del Monte misunderstands the Decision.

Rule 13.6(a) broadly provides that while evidence need not be excluded in our proceedings based on the technical rules of evidence, "the rights of parties to meaningfully participate in the proceeding and to public policy protections shall be preserved." It is well-established that we may rely upon hearsay and informal evidence in supporting our decisions. (See § 1701, subd. (a); *The Utility Reform Network v. Public Utilities Com.* (2014) 223 Cal.App.4th 945, 959-960.) However, we may not rely on uncorroborated hearsay evidence as the sole basis to support a finding on a disputed issue. (*Id.* at 961-962.)

We did not rely on the reports to establish the cause of the Tubbs Fire or refute Del Monte's testimony because the cause of the Tubbs Fire was not in scope. For the same reason, neither Del Monte nor PG&E had the burden of proof to demonstrate that PG&E's equipment did or did not ignite the Tubbs Fire. The Decision merely states, "CalFIRE has concluded that PG&E did not cause the fire and the Commission's Safety and Enforcement Division has found no violations by PG&E with respect to the fire." (Decision at 19.) The Decision's simple description of the existence and contents of the CAL FIRE and SED reports points only to the fact that these entities charged with investigating wildfires reached these findings, as evidenced by the Decision's lack of any factual or legal findings regarding the cause of the Tubbs Fire. (*Jazayeri v. Mao* (2009) 174 Cal.App.4th 301, 316 ["Documents not offered for the truth of the matter asserted are, by definition, not hearsay."].) Thus, Del Monte's fails to show any improper use of the reports, misapplication of the burden of proof, or violation of Rule 13.6.

C. The Decision complies with Rule 12.1.

Del Monte argues that the settlement violates Rule 12.1 for several reasons. (App. Rehg. at 12-14.) First, he argues that the settlement's global reduction is unlawful because it does not allow the Commission to assess individual costs, including the Tubbs Fire costs. (*Id.* at 12-14.) Second, he contends that the settlement does not reflect a reasonable balance of the various interests because it was not an all-party settlement. (*Id.* at 14.) Third, Del Monte argues that one of the justifications for settlement, to conserve resources by avoiding further litigation, is undermined because the matter was almost fully litigated before a proposed settlement was reached. (*Ibid.*) Fourth, Del Monte claims that the Settling Parties' release of personal liability is an unlawful release from defrauding the Commission. (*Id.*) Each argument is without basis.

Rule 12.1(d) sets forth the standard of review for approving settlement: "The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest." The standard of proof is a preponderance of the evidence and the proponents bear the burden of proof. (D.13-04-012 at 3; Rule 12.1, subd. (a).)

We have consistently reiterated that there is “a strong public policy favoring settlement of disputes if they are fair and reasonable in light of the whole record.” (See, e.g., D.07-11-018 at 6, original italics omitted.) We have recognized that settlement supports a number of worthwhile policy goals including, for example, reducing the expense and uncertainty of litigation and conserving valuable Commission resources. (See, e.g., D.19-10-003 at 6, D.14-11-040 at 21-22.) To these ends, we have explained:

In assessing settlements we consider individual settlement provisions but, in light of strong public policy favoring settlements, we do not base our conclusion on whether any single provision is the optimal result. Rather, we determine whether the settlement as a whole produces a just and reasonable outcome.

(D.10-04-033 at 9.) Relatedly, there is no requirement that a settlement identify the specific costs that were reduced by an individual program, project, account, or CEMA event. (See, e.g., D.22-03-011 at 15-16, D.18-06-011 at 7, D.22-07-007 at 9, 13, D.04-12-015 at 49.) We have explained that settlements by nature are to a certain extent “black box,” but nevertheless are reasonable when supported by adequate detail. (D.04-12-015 at 2, 49.)

Our approval of the settlement is consistent with Rule 12.1. First, the settlement’s global reduction is consistent with Rule 12.1. (Decision at 2-3, 27-29.) The Settling Parties submitted a summary table that provides the costs for each memorandum account and the disputed costs so that we could review the reasonableness of the settlement as a whole. (*Id.* at 2-3, 28, Appendix 2.) We reviewed each disputed cost, analyzed the party’s arguments to this end, and made findings as to reasonableness of the disputed costs in light of settlement as a whole. (*Id.* at 12-29, 33-35; see *Joint Reply of Cal Advocates, FEA, and PG&E to Comments on the Proposed Settlement Agreement* (Nov. 12, 2012) at 6-10, 13-17.) Our weighing of the evidence is supported by the record and therefore final and unreviewable. (*Ibid.*; *Pacific Gas and Electric Co. v. Public Utilities Com.* (2015) 237 Cal.App.4th 812, 838-839.)

Second, we correctly found that the settlement reflects a reasonable balancing of the interests. As part of our analysis of the public interest, we have explained that a settlement which “commands broad support among participants fairly reflective of the affected interests” well serves the public interest. (See, e.g., D.18-11-025 at 6, internal citation and quotations omitted.) The Decision correctly found that the Settling Parties fairly represent the interests of the public affected by PG&E’s application. (Decision at 30, 33, (FOF 4), 35 (COL 3).) Cal Advocates is statutorily mandated to represent ratepayers in California (§ 309.5, subd. (a)) and “is uniquely positioned to evaluate the reasonableness of a settlement from the intervenors’ perspective.” (*Joint Reply of PG&E, Cal Advocates, and FEA to Comments on the Proposed Settlement Agreement* (Nov. 12, 2021) at 11-12.) Indeed, we have found that Cal Advocates fairly represented the interests of PG&E’s ratepayers even in the absence of other ratepayer groups joining a settlement. (See, e.g., D.07-03-044 at 268.)

Third, the Settling Parties provided adequate justifications for the settlement. The settlement conserved party and Commission resources from potentially voluminous litigation costs (e.g., applications for rehearing and court proceedings). Also, Del Monte fails to acknowledge several other reasons presented by the Settling Parties in support of the settlement (e.g., uncertainty of litigation and the knowledge and expertise of the Settling Parties). (See, e.g., *Joint Motion of Cal Advocates, FEA, and PG&E for Approval of Settlement Agreement* (Sept. 21, 2021) at 1, 8, 11-12; *Joint Reply of PG&E, Cal Advocates, and FEA to Comments on the Proposed Settlement Agreement* (Nov. 12, 2021) at 3-12.) Del Monte’s focus on just one justification is unavailing.

Lastly, the liability release provision is reasonable. The Settling Parties explained that this provision does not relate to our authority. Rather, it relates to the Settling Parties’ rights and obligations as to one another as signatories of the agreement. (*Joint Reply of PG&E, Cal Advocates, and FEA to Comments on the Proposed Settlement Agreement* (Nov. 12, 2021) at 17.) Further, the provision is a common term in Commission settlements. (See, e.g., D.13-06-007, Attachment D at 5; D.23-04-043, Attachment 1 at 8.) Thus, Del Monte fails to identify any legal issue with this provision.

In conclusion, we correctly determined that the settlement is consistent with Rule 12.1. Accordingly, Del Monte fails to show legal error.

D. Del Monte was not deprived of any right to intervenor compensation.

Del Monte argues that the Scoping Memo's exclusion of the cause of the Tubbs Fire violates his statutory right to intervenor compensation. (App. Rehg. at 15.) Del Monte's claim is not properly before us and otherwise lacks merit.

Pursuant to California statute, utility customers may apply to receive reasonable compensation for their contributions to our regulatory efforts under the intervenor compensation program. (§ 1801 et seq.) We award compensation if an intervenor makes a "substantial contribution" to our decisions. (§§ 1803, subd. (a), 1802, subd. (j).) An intervenor must submit a request for compensation within 60 days after the final decision for it seeks compensation is issued. (§ 1804, subd. (c).) We are required to issue a decision within 75 days of the request, determining whether the intervenor made a substantial contribution and, if yes, awarding an appropriate amount. (§ 1804, subd. (e).)

The Decision approves a settlement, it does not address intervenor compensation. Accordingly, we made no determination on Del Monte's potential right to compensation. Indeed, these determinations are made in a separate decision based on an intervenor's request for compensation. (§ 1804, subds. (c) & (e).) More importantly, Del Monte did not submit a request for compensation as required by section 1804(c). By failing to meet this procedural requirement, Del Monte is barred on his own accord from receiving compensation for any possible contribution to the Decision.

Even if the Decision could be read to address intervenor compensation, Del Monte would have no right to compensation for any claims to work on issues outside the proceeding's scope. Intervenors are only entitled to compensation if they meet all statutory mandates for the program, including the substantial contribution requirement. (§ 1803.) It is well-established that an intervenor's efforts addressing issues outside the scope of a proceeding do not make a substantial contribution and, thus, are not compensable. (*Interim Opinion Revising the Intervenor Compensation Program*

[D.98-04-059] at 13-14, 32-33 [79 CPUC 2d 628, 1998 Cal. P.U.C. LEXIS 429 at **21, 53].) Accordingly, to the extent Del Monte may have claimed hours for work on issues outside the proceeding's scope, he would have no statutory right to compensation for that work.

III. CONCLUSION

For the reasons stated above, we have determined that good cause has not been demonstrated to grant rehearing of D.23-02-017, as no legal error has been shown. Rehearing of D.23-02-017 is denied.

THEREFORE, IT IS ORDERED that:

1. Rehearing of D.23-02-017 is denied.
2. This proceeding, Application 20-09-019, is closed.

This order is effective today.

Dated October 12, 2023, at Stockton, California.

ALICE REYNOLDS
President
GENEVIEVE SHIROMA
JOHN REYNOLDS
KAREN DOUGLAS
Commissioners

Commissioner Darcie L. Houck, being necessarily absent, did not participate.