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BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for	)	
Authority, Among Other Things, to Increase Rates and	)	
Charges for Electric and Gas Service Effective on	)	Application 18-12-009
January 1, 2020.	)	(Filed December 13, 2018)
(U 39 M)	)	

ALLIANCE FOR NUCLEAR RESPONSIBILITY'S RESPONSE TO MOTION OF PACIFIC GAS AND ELECTRIC COMPANY (U 39M) TO STRIKE THE PREPARED TESTIMONY OF THE ALLIANCE FOR NUCLEAR RESPONSIBILITY

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I. INTRODUCTION.

Pursuant to Rule 11.1 of the California Public Utilities Commission ("Commission" or "CPUC") Rules of Practice and Procedure, the Alliance for Nuclear Responsibility ("A4NR") respectfully submits its Response to the July 29, 2019 Motion of Pacific Gas and Electric Company ("PG&E") to Strike the Prepared Testimony of the Alliance for Nuclear Responsibility ("Motion").

PG&E attempts to ignore the rapid acceleration of its loss of bundled customer load (now a shrinking minority of its service territory load[1], down from 82% in 2017[2]) and the massive above-market costs assigned to the Diablo Canyon Nuclear Power Plant ("DCNPP") by the Power Charge Indifference Adjustment ("PCIA") methodology adopted in D.18-10-019 ($410 million in 2018, and $523 million in 2019[3]). Perhaps overwhelmed by its burden to reconcile the proposed (and avoidable) $1.124 billion of new DCNPP O&M and Capital expenditures for the 2020-22 rate cycle[4] with Cal. Pub. Util. Code §451's requirement that rates be just and reasonable[5] and Cal. Pub. Util. Code §454(a)'s requirement that any new rate be justified,[6]

[1] A4NR-01, p. 5, ln. 25 – p. 6, ln. 7.
[2] A4NR-01, p. 5, lns. 18 – 19.
[3] A4NR-01, p. 11, lns. 13 – 15.
[4] A4NR-01, p. 16, ln. 8.
[5] Cal. Pub. Util. Code §451 states, in pertinent part: "All 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. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful. Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities...as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."
[6] Cal. Pub. Util. Code §454(a) states, in pertinent part: "Except as provided in Section 455 , a public utility shall not change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the commission and a finding by the commission that the new rate is justified."

PG&E recommends that the Commission simply strike A4NR's testimony as "procedurally inappropriate and outside of the scope of this proceeding."[7]

PG&E's Motion neglects to address the very first issue identified in the March 8, 2019 Assigned Commissioner's Scoping Memo and Ruling: "Whether or not the proposed revenue requirements, proposed costs, and proposed recovery mechanisms for TY 2020 are just and reasonable and whether these should be adopted by the Commission."[8] Rather than accept that A4NR's testimony merely advances an unadorned burden-of-proof argument, PG&E's Motion instead mischaracterizes the testimony as seeking "reconsideration of the Commission's prior decisions to retire Diablo Canyon Nuclear Power Plant … at the end of its current operating licenses."[9] A4NR does not take issue with the planning assumptions the Commission has used in prior decisions, and doubts even PG&E would suggest these planning assumptions can indemnify a utility from lapses in the prudent management of its supply portfolio or authorize it to charge rates that are unjust and unreasonable.

A4NR's testimony poses a straightforward challenge to PG&E: prove, by a preponderance of the evidence, that the DCNPP-related portions of the new revenue requirement and resulting rates are just and reasonable in light of the accelerated departure of bundled load and the above-market costs calculated by the PCIA methodology. PG&E's evasion of this statutory responsibility, or diversion into a different proceeding, would prolong the incurrence of potentially unjustifiable costs of immense magnitude. Such an outcome would

[7] PG&E Motion, p. 1.
[8] Assigned Commissioner's Scoping Memo and Ruling, p. 3.
[9] PG&E Motion, p. 1.

directly undercut the Commission's trumpeted intent to rein in the growth in electric utility revenue requirements to not exceed the growth rate in customer incomes.[10]

II. DISCUSSION.

A. PG&E's Motion distorts D.18-01-022 into an open-ended cost recovery entitlement coterminous with the DCNPP operating licenses.

Despite D.18-01-022's plain language to the contrary – e.g., Ordering Paragraph 1: "Pacific Gas and Electric Company's proposal to retire Diablo Canyon Unit 1 **by** 2024 and Unit 2 **by** 2025 is approved." (emphasis added) – PG&E pretends to possess *carte blanche* approval to incur DCNPP costs without limitation **until** expiration of the federal operating licenses. Such entitlement, by PG&E's logic, should immunize the utility's DCNPP-related decisions from ongoing application of the prudent manager standard and predetermine compliance with Cal. Pub. Util. Code §§ 451 and 454(a) **for the duration** of the operating licenses. PG&E's Motion offers no factual basis for this claimed entitlement, and D.18-01-022 is replete with Commission avowals to not tie its own hands going forward:

- the possibility that "the more prudent and conservative approach" could shift in favor of a "shutdown before 2024 and 2025" was specifically acknowledged.
- the increased knowledge "(a)s we gain a clearer picture of future developments" was specifically identified as prompting such a shift.
- the "relative cost of operating Diablo Canyon" was specifically cited as a pertinent example of such clearer picture of future developments.

[10] *See, e.g.,* D.19-05-020, p. 20.

- PG&E was specifically put on notice: "Because there is a possibility that Diablo Canyon may cease operations earlier than 2024 and 2025, PG&E should prepare for that contingency."
- Commission approval of PG&E's proposed 2024/25 retirement schedule carried the specific caveat: "If in the interim period the facts change in a manner that indicates Diablo Canyon should be retired earlier, the Commission may reconsider this determination."[11]

The PG&E Motion attaches unexplained, but ostensibly enduring, significance to what it calls "relevant" statements in the 2016 Joint Proposal[12] which served as the precursor to A.16-08-006. Of course, from a regulatory standpoint, the terms of the Joint Proposal were supplanted by D.18-01-022. And, as D.18-01-022 explains:

> During the course of the proceeding, PG&E consistently argued that it intended to operate Diablo Canyon until 2024/2025, particularly in response to parties' suggestion that PG&E develop a contingency plan for an earlier shutdown. (See, e.g. WEM Opening Brief at 4, quoting PG&E witness Strauss.) Now, in the wake of the proposed decision (and its reduction in PG&E's requested rate recovery), PG&E is warning that it may in fact shut down Diablo Canyon earlier. (PG&E Comments at 4.) The proposed decision has been modified to reflect an increased probability of Diablo Canyon shutting down earlier than 2024/2025.[13]

B. Even a PG&E entitlement would not suspend the applicability of the prudent manager standard or enforcement of Cal. Pub. Util. Code §§ 451 and 454(a).

Notwithstanding PG&E's demonstrably false claim that D.18-01-022 entitles it to incur DCNPP costs without limitation during the remaining years of the DCNPP operating licenses,

[11] D.18-01-022, p. 15.
[12] PG&E Motion, pp. 1 – 2.
[13] D.18-01-022, p. 49.

such costs remain subject to the Commission's prudent manager standard. The Commission most recently elaborated in D.18-07-025 its longstanding approach to evaluating prudence:

> We have summarized this concept of reasonableness in 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) at p. 31 (slip op.), stating:
>
> > California law, Commission practice and precedent, and common sense, all essentially require that before ratepayers bear any costs incurred by the utility, those costs must be just and reasonable....When that occurs, the Commission can find the costs incurred by the utility to be just and reasonable and therefore, they can be recovered from ratepayers. When this is not the case however, the Commission can and must disallow those costs: that is unjust or unreasonable costs must not be recovered in rates from ratepayers.
>
> In implementing Section 451 for purposes of utility reasonableness reviews, the Commission utilizes an established Prudent Manager Standard as the test to evaluate whether requested costs are just and reasonable. We have summarized this test as follows:
>
> > The standard for reviewing utility actions has been established as one of reasonableness and prudence....The term "reasonable and prudent" means that at a particular time any of the practices, methods, and acts engaged in by a utility follows the exercise of reasonable judgment in light of facts known known [sic] or which should have been known at the time the decision was made. The act or decision is expected by the utility to accomplish the desired result at the lowest reasonable cost consistent with good utility practices. Good utility practices are based upon cost-effectiveness, reliability, safety, and expedition.
>
> (See, e.g., Re SCE [D.87-06-021], supra, 24 Cal.P.U.C.2d at p.486.)
>
> Further guidance is embodied in other decisions, such as D.02-08-064, which states:
>
> > A reasonable and prudent act is not limited to the optimum practice, method, or act to the exclusion of all others, but rather encompasses a spectrum of possible practices, methods, or acts consistent with the utility system needs, the interest of the ratepayers and the requirements of governmental agencies of competent jurisdiction....The greater the level of money, risk and uncertainty involved in a decision, the greater the care the utility must take in reaching that decision....The burden rests heavily upon a utility to prove... that it is entitled to the requested rate relief and not upon the Commission, its staff, or any interested party to prove the contrary.

(Investigation into the Natural Gas Procurement Practices of Southwest Gas Company [D.02-08-064] (2002) at pp. 5-8 (slip op.) (citations omitted).)[14]

PG&E's Motion offers no authority by which the Commission could suspend the applicability of the prudent manager standard for the duration of the DCNPP operating licenses, let alone nullify the ratepayer protections of Cal. Pub. Util. Code §§ 451 and 454(a). A4NR's testimony does not contest PG&E's authorization under D.18-01-022 to operate DCNPP until the expiration of its operating licenses, only PG&E's legal ability after December 31, 2019 to recover in rates certain avoidable costs identified in A4NR's testimony without first proving by a preponderance of the evidence that the associated revenue requirements and resultant rates are just and reasonable.

C. PG&E simply ignores CPUC guidance that the GRC is a proper forum to review future DCNPP costs made potentially imprudent by material changes in circumstances.

PG&E's Motion also appears ignorant of the warning (despite citation in A4NR's prepared testimony) against managerial inertia provided in D.18-10-019: "Utilities are of course required to manage their portfolios prudently. Imprudent management would justify disallowing recovery of portfolio costs, and could be considered in ERRA or General Rate Case (GRC) proceedings."[15] Addressing legacy utility-owned generation ("UOG") like DCNPP, D.18-10-019 expressly noted, "CalCCA's concern about ongoing costs for legacy UOG has potential merit, but lacks sufficient record support or an adequately developed test for evaluating such costs….any such analysis must be fact-specific to the plants and spending in question, and is better suited to a GRC

[14] D.18-07-025, pp. 5 – 6.
[15] A4NR-01, p. 11, citing D.18-10-019, p. 112.

evaluating such spending."[16] The PG&E Motion is similarly silent about D.19-02-023, which deferred consideration of the proper recording of DCNPP capital additions for refueling and going-forward O&M costs to "either the compliance ERRA or the General Rate Case."[17] As noted in D.19-02-023, any rate adjustments stemming from a decision in the ERRA compliance proceeding would not be reflected in customer rates until 2021[18] – in contrast to the January 1, 2020 effective date of any decision by the Commission in the current General Rate Case.

The inordinate size of annual DCNPP above-market costs calculated by the Commission's PCIA methodology ($410 million in 2018, $523 million in 2019, and a large but presently undetermined amount in 2020[19]) should favor review of PG&E's prudence in that forum offering the timeliest deterrent of any future imprudently-incurred costs. The statutory requirements of Cal. Pub. Util. Code §§ 451 and 454(a) proscribing, respectively, "(e)very unjust or unreasonable charge demanded or received" by PG&E and "any new rate" that is not "justified," compel such review prior to the Commission decision in this proceeding. If the DCNPP-related portions of the revenue requirement and resulting rates are not first proven by PG&E to be just and reasonable, they cannot be lawfully approved by the Commission.

D. PG&E's entitlement theory and diversionary forum suggestions would shackle the Commission to stale facts and untimely oversight of rates.

Rather than acknowledge the economically stranded status of its DCNPP asset, or the illogic of piling additional (and avoidable) above-market costs on top of a greatly eroded

[16] D.18-10-019, p. 135.
[17] D.19-02-023, pp. 16 – 17.
[18] D.19-02-023, p. 17.
[19] PG&E's 2020 ERRA Forecast application, A.19-06-001, projects bundled customer load to decline further to 43% of service territory load in 2020 and requests a company-wide (i.e., broader than DCNPP alone) PCIA revenue requirement of $2.549 billion (compared to $1.043 billion approved in D.19-02-023).

customer load base, PG&E's Motion attaches significance (and, apparently, entitlement) to the fact that the Commission's resource planning process has yet to update its assumption of a 2024/25 DCNPP retirement. A4NR has no quarrel with that planning assumption, notes that it does not annul the aforementioned requirements of Cal. Pub. Util. Code §§ 451 and 454(a), and suggests that PG&E's misleading and out-of-context quotes from D.19-04-040 should – in the interest of an accurate understanding of the decision's DCNPP discussion – be supplemented with the following narrative from D.19-04-040:

> By utilizing the assumption that the two Diablo Canyon units will retire in 2024 and 2025, as we did with the formulation of the RSP adopted in D.18-02-018, we are already planning for the emissions impact of that action. Analysis conducted leading up to the issuance of D.18-02-018 showed that the electric sector will still be on a trajectory to satisfy the 2030 GHG emissions target even with the retirement of Diablo Canyon. Stated another way, the retirement of Diablo Canyon will not prevent the electric sector from meeting its portion of the statewide GHG obligations between now and 2030.
>
> The Joint Parties to the PFM would have us read the SB 1090 requirements and the D.18-01-022 commitments more narrowly, such that there would not be any increase in emissions at the very moment that the Diablo Canyon units go offline. For a number of reasons, this is not a reasonable reading of the intentions of the Legislature or the Commission.
>
> Emissions from the electric sector in California vary considerably every year depending on the hydroelectric production, the retirement of power plants, the growth in load, the functioning of the natural gas system, and many other factors. Expecting an exact one-for-one replacement of energy from Diablo Canyon that is timed perfectly to coincide with the Diablo Canyon closure would be a costly and illogical way to ensure that the emissions trajectory of the electric sector is on track to meet the State's goals.
>
> If we read the Legislative intent so narrowly, as the Joint Parties filing the PFM would have us do, we would wait to procure additional renewables and have them come online only in 2024 or 2025, in order to ensure no uptick in emissions at the time of Diablo Canyon retirement. That would risk further erosion of the benefits of any federal tax credits, as well as likely require over-procurement of renewables because of the different capacity values of Diablo Canyon and most renewables. Both of these consequences would cost ratepayers extra money unnecessarily. Instead, while the specific year-on-year changes in emissions as Diablo Canyon units retire are difficult to predict and control, as long as LSEs procure resources consistent with the Commission's adopted system resource portfolios,

> emissions will remain below the levels required to keep the state on a trajectory to our 2030 electricity sector goal of 42 MMT.
>
> This is all notwithstanding the commitment that PG&E made when it filed the application for the closure of Diablo Canyon that they would replace the power with clean energy. **The fact is that with the considerable load departure to CCAs in PG&E's territory, PG&E likely does not need to replace the power at all, or at least not all of it. Instead, numerous CCAs need to be procuring to serve their load**, which most are proposing to do in their IRPs, and mostly utilizing renewable resources.[20] (emphasis added)

Having misconstrued both D.18-01-022 and D.19-04-040 in order to bolster an unfounded claim of entitlement, PG&E's Motion offers the classic *non sequitur* solution: "Proposed modifications to D.18-01-022 and/or D.19-04-040 based on changed facts and circumstances should be raised – if at all – in Petitions to Modify those decisions consistent with Rule 16.4, not in this GRC proceeding."[21] But A4NR's prepared testimony is unaffected by, and does not require changes to, either decision: seeking to remind the Commission of PG&E's burden of proof in this proceeding cannot objectively be construed as a collateral attack on either decision. Neither decision is dispositive of whether the DCNPP-related portions of PG&E's proposed revenue requirement and resulting rates will be just and reasonable in light of the accelerated departure of bundled load and the above-market costs calculated by the PCIA methodology.

III. CONCLUSION.

A fundamental tenet of coherent regulatory oversight is that it avoids handcuffing itself to verifiably outdated facts. Decisionmakers are constrained by the best available evidence at the time of their decisions, but cannot turn a blind eye to compelling new evidence if subsequent decisions are to retain any contemporaneous integrity when they are adopted. Life

[20] D.19-04-040, pp. 147 – 149.
[21] PG&E Motion, p. 3.

cannot be frozen; evolution should not be shunned; adaptation is a necessity. PG&E urges the Commission to ignore the ramifications of reduced bundled load and PCIA methodology, treating the DCNPP-related portions of the requested revenue requirement (and the multi-hundred million dollars in annual above-market costs) as a PG&E entitlement. But the only true entitlement here is held by ratepayers, who are statutorily entitled to the durable protections afforded them by Cal. Pub. Util. Code §§ 451 and 454(a).

PG&E's Motion to Strike the Prepared Testimony of A4NR should be denied.

Respectfully submitted,

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