

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application of Pacific Gas and Electric Company
for Authority, Among Other Things, to Increase
Rates and Charges for Electric and Gas Service
Effective on January 1, 2017. (U39M).

Application 15-09-001
(Filed September 1, 2015)

**PETITION OF THE UTILITY REFORM NETWORK
FOR MODIFICATION OF DECISION 19-02-019**

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I. INTRODUCTION

On February 26, 2019, the Commission issued Decision (D.) 19-02-019, which granted an award of intervenor compensation to The Utility Reform Network (TURN) for substantial contribution to D.17-05-013. In D.17-05-013, the Commission approved, with modifications, the comprehensive settlement agreement between all active parties in Pacific Gas and Electric Company's Test Year 2017 General Rate Case (GRC), and also resolved two contested issues.¹ Pursuant to Rule 16.4 of the Commission's Rules of Practice and Procedure, The Utility Reform Network (TURN) submits this petition for modification of D.19-02-019.

TURN seeks modification of D.19-02-019 to remove the disallowance for TURN's work related to the issue of PG&E's efforts to seek license renewal for the Diablo Canyon Nuclear Power Plant (Diablo Canyon) from the Nuclear Regulatory Commission (NRC). In disallowing TURN's hours associated with Diablo Canyon license renewal, the Commission reasoned, "TURN should not be compensated for its work on license renewal issues (i.e., Exhibit TURN-06, Section II.A., "Diablo Canyon Nuclear Plant, Policy"), because the Commission has already addressed PG&E's request in D.18-01-022 in A.16-08-006."² The Commission effectuated this disallowance by reducing by 50% TURN's hours associated with Diablo Canyon, as TURN's work on

¹ D.17-05-013, p. 2.

² D.19-02-019, pp. 12-13, 49.

Diablo Canyon-related issues extended beyond license renewal.³ As explained below, this disallowance should be removed because the rationale upon which it is based is flawed as a matter of logic and fairness and is inconsistent with the standard for determining “substantial contribution” set forth in California Public Utilities Code §1802(j).

II. BASIS FOR REQUESTED RELIEF

Rule 16.4(b) sets forth the required contents of a petition for modification:

A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.⁴

Put simply, the Commission should grant TURN’s petition because the disallowance in D.19-02-019 for TURN’s efforts associated with Diablo Canyon license renewal in this GRC is premised on faulty logic, namely, that an intervenor’s contribution to a Commission decision can be fairly judged by the outcome of an entirely different proceeding that commenced after the intervenor performed its work in the original proceeding. TURN urges the Commission to remove this disallowance in D.19-02-019 to ensure that the Commission’s administration of the intervenor compensation program fulfills the Legislature’s intent to encourage “the effective and efficient participation of all groups that have a stake in the public utility regulation process.”⁵

³ D.19-02-019, pp. 13, 49.

⁴ Rules of Practice and Procedure, Rule 16.4(b).

⁵ Cal. Pub. Util. §1801.3(b).

TURN provides more specific justification for its requested relief below.

A. The Commission’s Disallowance of TURN’s Costs Associated with Diablo Canyon License Renewal is Flawed as a Matter of Logic and Fairness.

The Commission in D.19-02-019 concluded that TURN should not receive intervenor compensation for its work in this proceeding related to Diablo Canyon license renewal “because the Commission has already addressed PG&E’s request in D.18-01-022 in A.16-08-006.”⁶ In D.18-01-022, the Commission approved PG&E’s request, submitted in Application (A.) 16-08-006, to retire Diablo Canyon in 2024 and 2025, when its NRC operating licenses expire, and authorized PG&E to recover in rates \$241.2 million for costs associated with Diablo Canyon retirement.⁷ The treatment of TURN’s work associated with Diablo Canyon license renewal in D.19-02-019 is inappropriate, given the timing of TURN’s work in this proceeding relative to A.16-08-006, and would in effect hold TURN responsible for future events unknown to TURN at the time it analyzed PG&E’s GRC proposals.

TURN’s GRC work related to Diablo Canyon license renewal occurred in two stages. The first stage included review of PG&E’s application, discovery, and preparation of TURN’s testimony, which was served on April 29, 2016.⁸ In pertinent part, TURN’s testimony demonstrated the need for an independent review of the long-term economics of Diablo Canyon.⁹ TURN recommended that the Commission “require

⁶ D.19-02-019, pp. 12-13, 49.

⁷ D.18-01-022, p. 2.

⁸ Ex. TURN-6 (Testimony of William P. Marcus on Behalf of TURN).

⁹ Ex TURN-6, pp. 4-8.

any future spending on Diablo Canyon (after this GRC) to be accompanied by a long-term cost-effectiveness analysis that highlights assumptions that have changed since A.10-01-002,” when PG&E last provided a cost-effectiveness analysis of the plant.¹⁰ TURN urged, “Only by subjecting such analysis to public scrutiny and an open process can the Commission be confident that continued spending on Diablo Canyon, including projects designed to permit extended operations under a renewed license, will serve the public interest.”¹¹

The second stage of TURN’s GRC work on Diablo Canyon license renewal included participation in settlement negotiations, which commenced in May 2016 after the submission of intervenor testimony.¹² These negotiations culminated in the motion for approval of the settlement agreement filed by TURN and the other settling parties on August 3, 2016.¹³ Approximately one week later, on August 11, 2016, PG&E filed A.16-08-006, seeking to close Diablo Canyon at the expiration of its current NRC licenses.¹⁴

All of the time TURN devoted to Diablo Canyon license renewal in this proceeding occurred *before* PG&E filed A.16-08-006 and *long before* the Commission issued D.18-01-022. Although PG&E announced on June 21, 2016, that it intended to seek Commission approval to retire Diablo Canyon at the end of its NRC licenses, that announcement came nearly two months after TURN submitted its GRC testimony (on

¹⁰ Ex. TURN-6, pp. 4, 8-9.

¹¹ Ex. TURN-6, p. 9.

¹² D.17-05-013, p. 13.

¹³ Joint Motion for Adoption of Settlement Agreement, filed on Aug. 3, 2016.

¹⁴ D.18-01-022, p. 3.

April 29, 2016).¹⁵ TURN prepared this testimony without any knowledge of PG&E's future actions regarding Diablo Canyon or any expectation that the issue would be addressed in a different proceeding. Hence, disallowing the time TURN devoted to addressing Diablo Canyon license renewal in the GRC -- an issue presented in PG&E's GRC application and anticipated to be resolved in this proceeding -- because of events that occurred in the future in another proceeding, is illogical under the circumstances presented here.

Furthermore, the treatment of TURN's work on Diablo Canyon license renewal in D.19-02-019 is unfair because of the timing of the underlying decisions. The Commission in D.19-02-019 seems to suggest that A.16-08-006 would have been the more appropriate venue for seeking compensation associated with those hours since that is where the Commission approved PG&E's request to retire Diablo Canyon when the existing licenses expire. It is true that the outcome adopted in A.16-08-006 effectively mitigated TURN's concern, raised in the GRC, about the economics of long-term operation of Diablo Canyon, including investments associated with license renewal. But until the Commission issued D.19-02-019 (or its underlying proposed decision, published on February 11), TURN had no reason to believe that compensation for the GRC work associated with Diablo Canyon license renewal issues that PG&E raised in its GRC application might need to be included in a request filed in another proceeding. By the time the Commission finally acted on TURN's compensation request in A.15-09-001, TURN had already sought and received an award of intervenor compensation in A.16-08-

¹⁵ D.17-05-013, p. 153.

006.¹⁶

The Commission issued D.19-02-019 nineteen months after TURN submitted its request for intervenor compensation in this proceeding on July 17, 2017, following the issuance of D.17-05-013. Had the Commission addressed TURN's request here at any time before March 16, 2018, when TURN filed its request for compensation in A.16-08-006, TURN could have responded to the Commission's concerns about the correct proceeding in which to claim GRC work related to Diablo Canyon license renewal by seeking compensation for that time in the A.16-08-006 claim. Even beyond the date TURN filed its request in A.16-08-006, TURN could have amended its claim to include the hours at issue up until the point at which the Commission resolved TURN's request in A.16-08-006 on Oct. 2, 2018. But the Commission did not resolve TURN's claim in this proceeding until those other opportunities to seek relief had come and gone. TURN submits that the result of this timing is unfair.

B. The Disallowance Is Inconsistent with the Standard for Determining "Substantial Contribution" Set Forth in California Public Utilities Code § 1802(j).

The Commission should also modify D.19-02-019 because it errs in concluding that D.18-01-022 rendered TURN's contributions regarding Diablo Canyon license renewal in this proceeding moot. The question before the Commission in resolving TURN's request for an award of intervenor compensation in this proceeding is whether TURN's presentation here made "a substantial contribution to the adoption, in whole or

¹⁶ Following the issuance of D.18-01-022, TURN timely filed a request for intervenor compensation in A.16-08-006 on March 16, 2018. The Commission granted that request in D.18-09-038, issued on Oct. 2, 2018.

in part, of the commission's order or decision," that is, to D.17-05-013.¹⁷

A substantial contribution, as defined in Public Utilities Code Section 1802(j),

means that, in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer.¹⁸

An intervenor need not demonstrate that it prevailed on every contention it presented to establish its substantial contribution to a Commission order or decision. Rather,

Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.¹⁹

Here, TURN's testimony called for a review of PG&E's spending on license renewal activities and a review of Diablo Canyon's cost-effectiveness.²⁰ In D.17-05-013, the Commission summarized the resolution of these recommendations in the settlement agreement as follows:

Fourth, both TURN and A4NR recommended that PG&E be required to submit information annually to the Commission related to PG&E's decision-making on license renewal. TURN proposed that PG&E provide a cost-effectiveness showing in the next GRC and A4NR proposed that PG&E file annual advice letters addressing the status of license renewal and providing certain analysis. Since PG&E has decided in the Joint Proposal not to proceed with license renewal, TURN and A4NR agreed no longer to pursue these requests. *However, in the Settlement Agreement, PG&E has agreed to submit Tier 1 advice letters notifying the Commission of any material changes to the condition of Diablo Canyon*

¹⁷ Cal. Pub. Util. Code § 1803.

¹⁸ Cal. Pub. Util. Code § 1802(j).

¹⁹ Cal. Pub. Util. Code § 1802(j).

²⁰ Ex. TURN-6, pp. 4-9.

*that may affect the retirement date. In addition, PG&E will on an annual basis update its GRC forecast of planned capital improvements, projects and additions for Diablo Canyon as part of its proposal for implementation of the Joint Proposal.*²¹

The added transparency required by the settlement agreement about future expenditures related to Diablo Canyon addresses TURN's concern with the "growing divergence between the capital and expense forecasts presented in A.10-01-022, recorded spending since 2011, and PG&E's forecasts through 2019."²² Thus, TURN contributed to this Commission-adopted settlement provision through its participation in the GRC, which reflects both the concerns TURN raised in its testimony and the changed circumstances brought about by PG&E's announcement of its plan to retire Diablo Canyon.

By looking to D.18-01-022 to assess the value of TURN's contribution to D.17-05-013, the Commission's analysis in D.19-02-019 is contrary to the intervenor compensation statute. There is nothing in the intervenor compensation statute to suggest that D.17-05-013 is any less of a "decision" for the statute's purposes, or that a later decision *in a different proceeding* could effectively undo some or all of TURN's substantial contributions to D.17-05-013 under the circumstances here.

Even if there were some provision for retrospective, cross-proceeding analysis of substantial contribution (a notion without any statutory support), the outcome would be the same in this instance. The commitment PG&E made in the settlement agreement adopted in D.17-05-013 both preceded and continued in force after the Commission's disposition of A.16-08-006 in D.18-01-022.

²¹ D.17-05-013, p. 155 (emphasis added).

²² Ex. TURN-6, p. 8.

As such, the Commission should modify D.19-02-019 to find that TURN made a substantial contribution to the outcome in D.17-05-013 related to Diablo Canyon. The Commission should accordingly remove the disallowance for TURN's work associated with the license renewal issue.

III. SPECIFIC MODIFICATIONS TO D.19-02-019 TO PROVIDE THE REQUESTED RELIEF

TURN recommends the following specific modifications to D.19-02-019 to remove the disallowance for TURN's work associated with Diablo Canyon license renewal:

- In Part II, Section A, the Commission's discussion of TURN's claimed contribution to "Energy Supply" issues on pages 12-13 should be modified as follows:

Verified, in part.

~~Section 3.2.3.1.2 of the Settlement Agreement states that "PG&E withdraws its request for pre-approval of the Unit 2 main generator stator project in this proceeding." TURN should be compensated for this contribution to D.17-05-013 (i.e., Exhibit TURN-06, Section II.B., "Diablo Canyon Nuclear Plant, Capital Spending: Unit 2 Stator Upgrade").~~

~~However, as TURN acknowledges, the issues raised by TURN regarding license renewal for Diablo Canyon were resolved by PG&E's decision to seek Commission approval to retire Diablo Canyon at the end of its current NRC licenses. TURN should not be compensated for its work on license renewal issues (i.e., Exhibit TURN-06, Section II.A., "Diablo Canyon Nuclear Plant, Policy"), because the Commission addressed PG&E's request in D.18-01-022 in A.16-08-006.~~

~~TURN witness Marcus claimed 9.25 hours for Diablo Canyon-related work, and should be compensated for 50% of those hours. TURN attorney Freedman claimed 23.25 hours for Diablo Canyon-related work, and should be compensated for 50% of those hours.~~

- In Part III, Section D (“CPUC Discussion and Adjustments”), CPUC Adjustment 2 on page 49 should be stricken. Removing this adjustment would restore 4.625 hours for William Perea Marcus and 11.625 hours for Matthew Freedman (which is 50% of total claimed hours for Diablo Canyon-related work disallowed by D.19-02-019).
- In Part III, Section B (“Specific Claim”), the CPUC Award should be adjusted to reflect the removal of Adjustment 2 to Matthew Freedman’s 2015 and 2016 hours and William Perea Marcus’s 2015 and 2016 hours. This modification would increase TURN’s award by \$6,098.75, as shown in the table below.

	Year	Hours Disallowed	Hours Restored	Hourly Rate	Award Increase
Matthew Freedman	2015	4.125	4.125	\$410	\$1,691.25
Matthew Freedman	2016	7.5	7.5	\$415	\$3,112.50
William Perea Marcus	2015-2016	4.625	4.625	\$280	\$1,295.00
Total Modification					\$6,098.75

IV. CONCLUSION

For the foregoing reasons, TURN recommends that the Commission modify D.19-02-019 to remove the adjustment for TURN’s work associated with Diablo Canyon license renewal.

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Date: March 5, 2019

Respectfully submitted,

By: _____/s/_____
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