



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 January 1., 2017.)
(U39M))
_____)

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**Response of the Alliance for Nuclear Responsibility to
Petition of The Utility Reform Network
For Modification of Decision 19-02-019**

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Pursuant to Rule 16.4(f) of the Commission's Rules of Practice and Procedure, the Alliance for Nuclear Responsibility ("A4NR"), an active intervenor in this proceeding, files this Response to the *Petition of the Utility Reform Network* ["TURN"] for Modification of Decision 19-02-019 ("*TURN Petition*"), filed on March 5, 2019. For the reasons stated below, A4NR supports the modifications identified in the *TURN Petition*.

A. Background

*Decision 19-02-019*¹ addresses TURN's request for intervenor compensation for TURN's substantial contributions to the Commission's decision approving the comprehensive all-party settlement reached in the Test Year 2017 General Rate Case filed by Pacific Gas & Electric ("PG&E"), viz., *Decision 17-05-013*.² TURN's various contributions to the decision, and the underlying comprehensive settlement agreement upon which the Commission's decision is based, are recounted in *Decision 19-02-019* and, in large part, TURN's request for intervenor compensation with respect to those contributions is granted. TURN's request for intervenor compensation was, however, reduced in part – *Decision 19-02-019* denies compensation for the hours spent by TURN's attorney and expert witness on certain policy and revenue requirement issues related to the Diablo Canyon Nuclear Power Plant. The denial of compensation is based on the grounds that these issues "were resolved by PG&E's decision to seek Commission approval to retire Diablo Canyon at the end of its current NRC licenses" and "because the Commission addressed PG&E's request" for approval of the plant's retirement by a later decision issued in another proceeding.³ A4NR submits that denying TURN compensation for its work on issues related to Diablo Canyon in the PG&E general rate case fails to recognize the substantial and substantive outcomes on these issues found in *Decision 17-05-013*, and that the modifications to *Decision 19-02-019* sought by the *TURN Petition* should be granted.

B. Argument

- 1. *Decision 19-02-019* ignores the substantial outcomes, both procedural and substantive, found in *Decision 17-05-013* regarding issues related to the operation and regulatory oversight of the Diablo Canyon Nuclear Power Plant.**

¹ See *Decision Granting Intervenor Compensation to The Utility Reform Network for Substantial Contribution to Decision 17-05-013*, Decision 19-02-019, Application 15-09-001, February 21, 2019 ("*Decision 19-02-019*").

² See *Decision Authorizing Pacific Gas and Electric Company's General Rate Case Revenue Requirement for 2017-2019*, Decision 17-05-013, Application 15-09-001, May 11, 2017.

³ *Decision 19-02-019*, *ibid*, printed opinion at pp.12-13.

As the *TURN Petition* makes clear, TURN developed its evidentiary showing and recommendations regarding the present and future operation of Diablo Canyon so as to address the testimony and requests submitted by PG&E in the utility's case-in-chief. Thus, in all respects and at all times during the pendency of PG&E's general rate case application, TURN's evidentiary showing and recommendations regarding Diablo Canyon were relevant to matters originally raised by PG&E and actively pending before the Commission.⁴ Only by ignoring the disposition of TURN's Diablo Canyon-related showing and recommendations can *Decision 19-02-019* reach the conclusion that TURN did not make a substantial contribution to *Decision 17-05-013*.

A4NR believes a brief history of the process that led to the comprehensive settlement adopted by *Decision 17-05-013* is important to form a full and proper understanding of the manner in which TURN's Diablo Canyon-related issues made a substantial contribution to the settlement and, ultimately, the Commission's decision. Following the service of intervenor testimony but prior to the commencement of evidentiary hearings, the parties to this proceeding entered into negotiations to settle the full range of issues pending in PG&E's general rate case. As these negotiations proceeded, PG&E approached those parties with an interest in the issues related to Diablo Canyon, notably, A4NR, TURN and the Office of Ratepayer Advocates, and proposed terms and conditions that might resolve issues related to Diablo Canyon. While PG&E's case-in-chief as originally filed indicated PG&E considered matters related to the service life of Diablo Canyon irrelevant to this general rate case,⁵ PG&E reversed course and suggested that, subject to certain terms and conditions, PG&E would forego license extensions for the Diablo Canyon units, opening the door to resolving most of the issues raised by the parties in the general rate case regarding the revenue requirement associated with the operation of the plant and other regulatory policy issues related to the plant.

⁴ See *Assigned Commissioner's Ruling and Scoping Memo*, Application 15-09-001, December 1, 2015, at pp.4, 14 and 15, holding that relevant issues in the proceeding included all matters regarding whether the needs and costs identified by PG&E in its application were just and reasonable, including those matters "reasonably inferred from the application," and any "affirmative proposals and recommendations concerning subjects that are relevant to this GRC but are not covered by PG&E's application or testimony."

⁵ See, e.g., from PG&E's original testimony, *Exhibit PG&E-5*, at page 3-4, line 20, where PG&E's witness indicates that issues related to the then pending license extensions PG&E was seeking before the Nuclear Regulatory Commission were "outside the scope of the 2017 GRC", a position repeated in PG&E's rebuttal testimony, *Exhibit PG&E-24*, at page 1-10, lines 23-24, where PG&E's witness opined that "[t]he issues raised by TURN and A4NR are outside the scope of and nor relevant to the issues to be addressed in this proceeding or in the next GRC which will set rates for the period 2020-2022."

While not all of the terms and conditions proposed by PG&E for Diablo Canyon's retirement were acceptable to all of the parties with an interest in Diablo Canyon-related matters,⁶ all of the parties agreed that, for the purposes of the general rate case, PG&E's proposal to cease its efforts to extend the Diablo Canyon operating licenses and to file a separate application with the Commission addressing the plant's retirement constituted an acceptable substantive and procedural outcome to all of the pending Diablo Canyon issues relevant to the general rate case. With this outcome in hand, the parties reached an agreement that not only facilitated the filing of Application 16-08-006, but which provided the procedural path by which a comprehensive settlement of the pending general rate case could still be reached. Essentially, the parties agreed that the settlement in the general rate case could address certain Diablo Canyon issues, and defer yet others to other proceedings, including Application 16-08-006.⁷ Thus, the Commission should fully appreciate that, by agreeing to defer some of its Diablo Canyon-related recommendations to other proceedings, TURN allowed the settlement to proceed and take the form of the comprehensive and complete settlement the full roster of parties was attempting to craft and which the Commission later approved, a procedural outcome that contributed significantly to the administrative and regulatory efficiencies served by the Commission's policy favoring settlements in the first instance.

Moreover, in denying TURN any intervenor compensation for the issues TURN raised regarding Diablo Canyon (other than the Unit 2 Main Generator Stator Replacement Project, discussed below), *Decision 19-02-019* wholly ignores the substantial and substantive effects the settlement of Diablo Canyon-related issues had on the outcome of PG&E's general rate case. The comprehensive settlement adopted by the Commission in *Decision 17-05-013* plainly includes important substantive provisions that materially enhance regulatory oversight by this Commission regarding Diablo Canyon's operations. For example, PG&E is now required to submit Tier 1 advice letters apprising the Commission (and the interested public) regarding all matters having a material bearing on the remaining service life of the plant.⁸ This is no small

⁶ As is clear from the record in the *Application of Pacific Gas and Electric Company for Approval of the Retirement of Diablo Canyon Power Plant, Implementation of the Joint Proposal and Recovery of Associated Costs Through Proposed Ratemaking Mechanisms*, Application 16-08-006, filed August 11, 2016, only A4NR agreed to the terms and conditions that became the "Joint Proposal" submitted in this later and separate proceeding.

⁷ Notably, the terms and conditions of the comprehensive settlement approved by the Commission in this proceeding recognize that neither approval of the Joint Proposal nor the proposed retirement of Diablo Canyon were necessarily *fait accompli*. *Decision 17-05-013* recognizes that rights were reserved, with PG&E's agreement, to reopen the general rate case to address several Diablo Canyon-related issues in the event the Commission either rejected the retirement proposal or approved the retirement proposal on unacceptable terms and conditions. See *Decision 17-05-013*, printed opinion, at pp.153-155.

⁸ See *Joint Motion [etc.] for Adoption of Settlement Agreement*, Application 15-09-001, August 3, 2016, and attached Settlement Agreement at Section 3.2.3.1.4.

matter: two Commission Presidents had unsuccessfully sought similar information from PG&E on an informal basis, but the settlement forged by TURN and its cohorts, including A4NR, now embed the production of this information by PG&E into the regulatory requirements imposed on PG&E for as long as the plant remains in operation. This, and other provisions of the settlement, allowed the parties, TURN among them, to settle important pending and relevant issues related to alleged deficiencies in PG&E's risk analyses regarding the operation of Diablo Canyon and the absence of required economic analyses justifying the ongoing NRC license-extension proceedings.

Contrary to the implication of the holding in *Decision 19-02-019* by which the Commission denies TURN compensation for this contribution, this new regulatory tool was adopted in *Decision 17-05-013*, and is nowhere to be found in the record or disposition of PG&E's separate Application 16-08-006. As the *TURN Petition* notes, these issues were not "mooted" by PG&E'S announcement that it would cease its pursuit of license extensions for Diablo Canyon. Rather, the settlement of these issues facilitated the announcement in the first place and the provisions of the settlement addressing these issues had their own independent legal, regulatory and substantive value apart from PG&E's announcement. Yet, *Decision 19-02-019* omits any discussion of the substantive terms found in the settlement agreement regarding the Diablo Canyon-related issues, and the denial of TURN's request for intervenor compensation for TURN's work on these issues can only be justified by ignoring these terms and TURN's work altogether. The Commission should correct this omission by granting the modifications to *Decision 19-02-019* sought by the *TURN Petition*.

2. The grounds upon which *Decision 19-02-019* denies TURN intervenor compensation for its pursuit of Diablo Canyon-related issues are inconsistent with other findings in the decision and fundamentally unfair.

Decision 19-02-019 denies TURN a portion of its request for intervenor compensation on the grounds that the issues TURN raised were addressed by a later Commission decision in a subsequent proceeding. This holding is fundamentally unfair. As noted above, TURN chose to settle its Diablo Canyon-related issues by including substantive terms and conditions in the comprehensive all-party settlement approved by *Decision 17-05-013* and deferring other issues to future proceedings, including (but not exclusively) Application 16-08-006. The holding in *Decision 19-02-019* in effect punishes TURN for agreeing to defer the disposition of certain issues to other proceedings rather than sticking to its litigation

guns and pursuing them to a contested disposition, which would have confounded the achievement of the comprehensive settlement reached in this general rate case.

The unfairness of the result reached in *Decision 19-02-019* is all the more apparent when juxtaposed to the disposition of TURN's request for intervenor compensation related to the Unit 2 Main Generator Stator Replacement Project – *Decision 19-02-019* agrees TURN should be compensated for its contributions to this issue, even though the settlement approved in *Decision 17-05-013* provides that consideration of whether the project should be pursued or is prudent should be deferred to PG&E's next general rate case. Here, the Commission appears to agree with the *TURN Petition* that a procedural deferral of a substantive issue can, in and of itself, constitute a substantial contribution to a Commission decision. But in denying TURN compensation for its work in support of the recommendation that PG&E be forced to produce an economic justification for continuing to seek Diablo Canyon license extensions, an issue deferred to Application 16-08-006, the Commission reaches the opposite result. A4NR submits this inconsistency should be rectified by granting the *TURN Petition*.

Date: April 4, 2019

Respectfully submitted,

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