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**PROPOSED DECISION**

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Ratesetting

1/11/2018 Item #46

Decision PROPOSED DECISION OF ALJ ALLEN (Mailed 11/8/2017)

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

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 (U39E).

Application 16-08-006

(See Appendix A for Appearances)

**DECISION APPROVING RETIREMENT OF  
DIABLO CANYON NUCLEAR POWER PLANT**

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Appendix A - List of Appearances

**DECISION APPROVING RETIREMENT OF  
DIABLO CANYON NUCLEAR POWER PLANT****Summary**

Pacific Gas and Electric Company (PG&E) proposes to retire the Diablo Canyon Power Plant in 2024 and 2025, when its federal Nuclear Regulatory Commission operating licenses expire. PG&E requests Commission approval to recover in rates over \$1.76 billion in costs associated with the retirement of Diablo Canyon. Those costs include \$1.3 billion for energy efficiency procurement to partially replace the output of Diablo Canyon, \$363.4 million for Diablo Canyon employee retention and retraining, \$85 million for a Community Impacts Mitigation Program, \$18.6 million in costs previously incurred for its Nuclear Regulatory Commission license renewal process, and an unspecified amount for cancelled capital projects. (PG&E Opening Brief at i-ii.)

This order approves PG&E's proposal to retire Diablo Canyon and approves \$241.2 million in rate recovery for costs associated with the retirement of Diablo Canyon. Specifically, PG&E is authorized to recover in rates \$222.6 million for employee retention and retraining, and \$18.6 million for its license renewal activities, plus a portion of the cost of cancelled capital projects. Rate recovery for the Community Impacts Mitigation Program requires legislative authorization. Replacement procurement issues will be addressed in the Integrated Resource Planning proceeding. This proceeding is closed.

**1. Background**

Pacific Gas and Electric Company's (PG&E) Diablo Canyon nuclear power plant is located in coastal San Luis Obispo County, and consists of two units that have been operating since 1985 (Unit 1) and 1986 (Unit 2), with a combined generation capacity of 2,240 megawatts (MW). The units are currently licensed

by the Nuclear Regulatory Commission (NRC) to operate until 2024 (Unit 1) and 2025 (Unit 2).

On August 11, 2016, PG&E filed its application proposing to retire Diablo Canyon upon the expiration of its NRC licenses. In addition to retiring Diablo Canyon, PG&E's application requested approval of: 1) procurement of three tranches of greenhouse gas-free resources to partially replace the output of Diablo Canyon; 2) retention, retraining, and severance programs for Diablo Canyon employees; 3) a program that would provide funding to the local community to mitigate the economic impact of the plant's retirement; and 4) rate recovery of various costs, including amounts spent for environmental reviews and PG&E's now-suspended NRC license renewal application. (PG&E Application at 8-12.)

PG&E's application was supported by the Natural Resources Defense Council (NRDC), Friends of the Earth (FOE), Environment California, International Brotherhood of Electrical Workers Local 1245 (IBEW 1245), Coalition of California Utility Employees (CCUE), and the Alliance for Nuclear Responsibility (A4NR), and the proposal in the application was referred as a "Joint Proposal."<sup>1</sup>

Protests to PG&E's application were filed by the California Large Energy Consumers Association (CLECA), Californians for Green Nuclear Power (CGNP), the Energy Producers and Users Coalition (EPUC), Energy Users Forum, Environmental Progress, LEAN Energy US, the Cities of Paso Robles,

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<sup>1</sup> The parties supporting the application are referred to as the "Joint Parties." While generally supporting the Joint Proposal, the A4NR did not support PG&E's request for rate recovery of its NRC license renewal costs.

Morro Bay, San Luis Obispo, Arroyo Grande, Pismo Beach and Atascadero (filed jointly), California Solar Energy Industries Association, Sierra Club, Shell Energy North America (US), L.P. (Shell), City of Lancaster, Friends of Wild Cherry Canyon, Central Coast Wave Energy Hub, The Utility Reform Network (TURN), World Business Academy, the Commission's Office of Ratepayer Advocates (ORA), Sonoma Clean Power Authority, Marin Clean Energy, SolarCity Corporation, City and County of San Francisco, A4NR, Women's Energy Matters (WEM), and the Green Power Institute.

Responses to PG&E's application were filed by OhmConnect, Inc, San Luis Obispo Mothers for Peace, Inc. (Mothers for Peace), Independent Energy Producers Association (IEP), South San Joaquin Irrigation District, Direct Access Customer Coalition, Alliance for Retail Energy Markets, Large-scale Solar Association, EnergyHub, CPower, EnerNOC, Inc., Comverge, Inc., California Energy Storage Alliance, San Luis Coastal Unified School District (School District), IBEW 1245, CCUE, Environmental Defense Fund, FOE, NRDC, Environment California, California Energy Efficiency Industry Council, Center for Energy Efficiency and Renewable Technologies (CEERT) and the County of San Luis Obispo (County).<sup>2</sup>

The general timeline of the proceeding was:

August 11, 2016 - Application filed.

September 15, 2016 - Protests and Responses filed.

September 26, 2016 - PG&E Reply to Protests and Responses filed.

October 6, 2016 - Pre-hearing Conference held.

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<sup>2</sup> Some responses were filed jointly by multiple parties.

October 20, 2016 - Public Participation Hearings held in San Luis Obispo.

November 18, 2016 - Scoping Memo and Ruling issued.

January 27, 2017 - Intervenor testimony served.

March 17, 2017 - Rebuttal testimony served.

April 19 - 27, 2017 - Evidentiary hearings held.

May 26, 2017 - Opening briefs filed.

June 16, 2017 - Reply briefs filed.

September 14, 2017 - Public Participation Hearings held in San Luis Obispo.

On December 28, 2016, PG&E filed a joint motion requesting approval of a partial settlement between PG&E, the County of San Luis Obispo, the Cities of Arroyo Grande, Atascadero, Morro Bay, Paso Robles, Pismo Beach, and San Luis Obispo (collectively Local Cities), the School District, FOE, NRDC, Environment California, IBEW 1245, CCUE, and A4NR. The proposed settlement modified the Community Impacts Mitigation Program originally proposed by PG&E in its application.

On February 27, 2017, PG&E notified the parties that it was withdrawing its request for two of the three tranches of replacement procurement (and associated cost recovery) that it had proposed in its application, and that this change would be reflected in its rebuttal testimony.

On May 23, 2017, PG&E filed a joint motion requesting approval of a partial settlement between PG&E, A4NR, TURN, ORA, Mothers for Peace, FOE, NRDC, Environment California, IBEW 1245 and CCUE. This second proposed settlement modified PG&E's original request for rate recovery of its NRC license renewal costs and its cancelled project costs.

**2. Issues Before the Commission**

The Scoping Memo identified the following issues:

**Retirement of Diablo Canyon Power Plant**

PG&E has proposed to retire Diablo Canyon Unit 1 in 2024, and Unit 2 in 2025. Parties have proposed both earlier and later retirement dates. Parties may present testimony in support of PG&E's proposed dates, or earlier or later retirement dates, including indefinite dates.

**Proposed Replacement Procurement**

PG&E has made a proposal for procurement of resources to partially replace Diablo Canyon's output. Parties may present testimony supporting alternative procurement proposals, including proposals that all necessary replacement procurement should be addressed in this proceeding, that no replacement procurement should be addressed in this proceeding, or that some replacement procurement should be addressed in this proceeding.

**Proposed Employee Program**

PG&E has proposed an employee retention, retraining and severance program associated with approximately 1,500 employees at Diablo Canyon. Parties have raised questions about the cost and funding of this program. Parties may present testimony on the need for this program and its size, cost, structure, timing and its source of funding.

**Proposed Community Impacts Mitigation Program**

PG&E has proposed a community impacts mitigation program to mitigate some of the adverse economic impacts to the residents of San Luis Obispo County as a result of the planned retirement of Diablo Canyon. Parties may present testimony on the community impacts of the proposed retirement of

Diablo Canyon, including economic and emergency response impacts, and on proposals to mitigate those impacts.

#### **Recovery of License Renewal Costs**

PG&E has proposed that it be granted rate recovery for costs relating to license renewal activities, including the filing of a license renewal application with the federal NRC. Parties may present testimony on whether it is reasonable for PG&E to recover some or all of these costs in rates.

#### **Proposed Ratemaking and Cost Allocation Issues**

PG&E has requested rate recovery for the costs of its proposals, including costs of replacement procurement, its employee program and community impacts mitigation program, and its license renewal activities, as well as other costs relating to the operation of Diablo Canyon facilities. Parties may support or criticize PG&E's proposed rate design and cost allocation, or may present alternative rate design and cost allocation proposals.

#### **Additional Issues Not Addressed Above**

Parties may present testimony on issues that are within the general scope of the proceeding, as established by the record to date, that are not specifically addressed in the above sections.

The Scoping Memo determined that it was premature to address land use, facilities and decommissioning issues, and that specific recommendations on those issues would not be considered at this time, but parties were allowed to present testimony recommending how to best preserve these issues for future consideration.

### 3. Discussion and Analysis

#### 3.1. Retirement of Diablo Canyon Power Plant

PG&E proposes to retire Diablo Canyon upon the expiration of its NRC licenses, which expire on November 2, 2024 for Unit 1 and August 26, 2025 for Unit 2. (Ex. PG&E-1 at 2-1.) PG&E's forecasts and analysis indicates that in the near future there will be a significantly reduced need for electric generation from Diablo Canyon. (PG&E Opening Brief at 11-18.) Because of projected increases in energy efficiency, distributed generation, renewable generation, and customers moving to community choice aggregation (CCA) and direct access, PG&E's conclusion is that there is simply less of a need for Diablo Canyon. (*Id.*) In fact, PG&E believes that the continued operation of Diablo Canyon beyond 2025 would exacerbate over-generation, requiring curtailment of renewable generation. (*Id.* at 16-17; Ex. PG&E-1 at 2-20.) PG&E's analysis indicates that there is no need to replace Diablo Canyon in order to maintain system reliability. (Transcript Vol. 6 at 957-958.)

PG&E has also been unequivocal that the retirement of Diablo Canyon will not have an adverse impact on local reliability. According to PG&E, because Diablo Canyon's output is exported on the bulk transmission system, Diablo Canyon is considered a system resource only, and is not needed for local reliability:

DCPP [Diablo Canyon Power Plant] is located in the Los Padres area of PG&E's service territory, which includes the cities of: San Luis Obispo, Divide, Santa Maria, Mesa, Templeton, Paso Robles, and Atascadero. [...] [M]ost of DCPP's generation is exported to the north and east of the Los Padres division through 500 kilovolts (kV) bulk transmission lines, which includes a transmission connection between the Diablo Canyon and Midway substations. [fn. omitted] Los Padres customer demand is served through a network of 115 kV and 70 kV circuits and does not include DCPP as part of the local

installed generation capacity as DCPD does not serve load within the division. As such, DCPD is not needed for local reliability. Unlike San Onofre Nuclear Generating Station, DCPD is considered as a system resource only and is not needed to provide support for local reliability. (Ex. PG&E-1 at 2-20 to 2-21; *see also* PG&E Opening Brief at 17.)

A number of parties support PG&E's determination that Diablo Canyon is not needed; in addition to the parties supporting the Joint Proposal,<sup>3</sup> other parties also agree that it is appropriate to retire Diablo Canyon:

IEP concurs with PG&E's decision not to renew the licenses of the two units of the Diablo Canyon Power Plant. Replacement resources that are both less expensive and better able to fit the needs of PG&E's customers and the electric grid are available. (IEP Opening Brief at 7.)

TURN's economic analysis demonstrates that ratepayers would benefit from retiring Diablo Canyon and satisfying customer need with incremental renewable resources. This analysis, along with the recognition that continued operations at Diablo Canyon involve the potential for a catastrophic accident or unexpected premature shutdown, affirms the reasonableness of PG&E's decision to permanently retire the plant by 2025. (TURN Opening Brief at 2.)

The City of San Francisco supports shutting down Diablo Canyon, and states:

PG&E has persuasively demonstrated that Diablo Canyon is a no longer a good fit for PG&E's bundled customers. PG&E has shown that Diablo Canyon should be closed because of the high cost of operating Diablo Canyon, potential regulatory requirements regarding the once through cooling technique used by Diablo Canyon, and system over-generation problems related to Diablo

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<sup>3</sup> Those parties are: NRDC, FOE, Environment California, IBEW 1245, CCUE and A4NR.

Canyon's constant operation. [fn. omitted] PG&E showed also that continued operation of Diablo Canyon is a bad fit in the context of California's goal of reducing GHG [greenhouse gas] emissions in part by increasing use of renewable energy resources. This is because Diablo Canyon is a baseload, relatively inflexible resource that would exacerbate overgeneration and would result in continued curtailment of renewable resources. PG&E also admits that Diablo Canyon is no longer necessary for reliability. [fn. omitted]

PG&E also projects that its load will shrink considerably by the time Diablo Canyon closes. Between 2017 and 2025, PG&E forecasts that approximately 20,000 GWh [gigawatt hours] of load will migrate to CCAs. [fn. omitted] This is comparable to the amount of bundled customer load (18,500 GWh) Diablo Canyon currently serves. In PG&E's own words "whether CCA loads depart somewhat sooner or later than expected does not change the overall conclusion that DCCP is not needed for PG&E's customers after the expiration of the Nuclear Regulatory Commission licenses in 2024 and 2025." [fn. omitted] (City and County of San Francisco Opening Brief at 3.)

Other parties, while not actively supporting PG&E's proposal, do not oppose it, including: ORA (ORA Opening Brief at 4),<sup>4</sup> Alliance for Retail Energy Markets, the California Clean DG Coalition, CLECA, the Direct Access Customer Coalition, the Energy Users Forum, Marin Clean Energy, Peninsula Clean Energy, Silicon Valley Clean Energy Authority, and Sonoma Clean Power Authority (Joint Opponents Opening Brief at 2).

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<sup>4</sup> Elsewhere, however, ORA states: "ORA supports PG&E's proposed retirement of the DCCP units at the end of their respective operating license periods in 2024 and 2025." (Ex. ORA-2 at 4.)

Only one active party, CGNP, argues that Diablo Canyon should continue to operate beyond 2025.<sup>5</sup> CGNP makes three substantive arguments for keeping Diablo Canyon operating: Diablo Canyon is more cost effective than the alternative sources of supply, retiring Diablo Canyon would diminish system reliability, and retiring Diablo Canyon would have an adverse impact on GHG emissions. (CGNP Opening Brief at 5.)

On the issue of the cost effectiveness of Diablo Canyon, TURN identified significant flaws and omissions in CGNP's cost calculations and estimates. (See, TURN Reply Brief at 1-7; Transcript, vol. 8 at 1,302-1,318.) The record of this proceeding undercuts, rather than supports, CGNP's argument that continued operation of Diablo Canyon would be cost effective. Accordingly, CGNP's testimony on this issue is given little weight.

CGNP's argument that retiring Diablo Canyon would be detrimental to grid reliability seems to be based on the fact that Diablo Canyon has been a reliable resource, and that other generation resources have been less reliable. (CGNP Opening Brief at 40.) The reliability of the plant and the reliability of the system are separate things, and there has been clear testimony that the retirement of Diablo Canyon would not adversely affect the reliability of the system. (Transcript Vol. 6 at 957-958.)<sup>6</sup> As Joint Opponents unequivocally state: "Diablo Canyon, an inflexible resource, is not needed either for system or local

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<sup>5</sup> One other party, Environmental Progress, made a similar argument in its protest of the application, but did not present testimony or file briefs.

<sup>6</sup> For example, if a person owned 12 cars, but never used more than three cars at one time, selling cars 11 and 12 – even if they were more reliable than cars 9 and 10 – would not significantly change the ability to have three operable cars.

reliability. [fn omitted] It can be retired without impacting grid reliability.”

[fn. omitted] (Joint Opponents Opening Brief at 3.)

CGNP’s reliability argument also appears to assume that Diablo Canyon could operate as a flexible resource that could ramp up and down to meet changing daily demand, rather than how it has been operated, as a constant-level baseload resource. (CGNP Opening Brief at 40.) PG&E points out that this is a speculative and unrealistic assumption, and would make Diablo Canyon even less cost effective:

Operating in load-following mode<sup>7</sup> would take Diablo Canyon outside of the currently authorized NRC license conditions and would require extensive technical feasibility studies, redesign of procedures, processes and systems, maintenance practices and nuclear fuel redesign. [...] It is unclear if Diablo Canyon could be retrofitted to safely and reliably operate in a different operating mode, whether the NRC would approve it, and whether it would be cost-effective to do so given the reduction in capacity factor that would result if Diablo Canyon were to be frequently ramped down to minimum operating levels during the daytime hours when solar power is prevalent. (PG&E Reply Brief at 7.)

Finally, CGNP argues that retiring Diablo Canyon will make it “impossible” for the state to meet its GHG reduction goals, and accordingly it should be relicensed and kept available. (CGNP Opening Brief at 41-42.) CGNP claims that the retirement of Diablo Canyon would result in California importing large amounts of fossil fuel generated electricity from PacifiCorp. (*Id.*)

While the specific arguments made by CGNP are not well supported by the record, the GHG impact of Diablo Canyon’s retirement (and any replacement

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<sup>7</sup> In this mode Diablo Canyon would ramp up and down to meet daily variations in load.

procurement) does need to be considered. This issue is discussed in more detail below in the section addressing replacement procurement, which finds that the question of the GHG impact of Diablo Canyon's retirement should be addressed in the Commission's Integrated Resource Planning (IRP) proceeding.

Two parties – WEM and Mothers for Peace – argue that Diablo Canyon should be shut down earlier than PG&E's proposed 2024/2025 timing. WEM argues that Diablo Canyon will become “commercially unreasonable” to operate well before 2024/2025, that replacement energy is also available before then, and given the risks associated with nuclear power, Diablo Canyon should be shut down no later than 2020. (WEM Opening Brief at 1-2.) Mothers for Peace similarly recommends a shutdown date of 2019/2020. (Mothers for Peace Opening Brief at 3.)

WEM and Mothers for Peace base their arguments in part upon the potential dangers of nuclear power. While this Commission has broad authority over PG&E and Diablo Canyon (including non-nuclear safety), the Commission's authority over *nuclear* safety is less clear; accordingly, the Commission's decision on this issue is not based on nuclear safety.

But the economics of Diablo Canyon can provide a basis for this Commission's decision, and WEM and Mothers for Peace also argue that Diablo Canyon will be uneconomic to operate well before 2025. WEM points out that as PG&E's bundled load decreases, more of Diablo Canyon's output will need to be sold at a loss on the wholesale market, and that: “This foreseeable development will make continued operation of Diablo Canyon increasingly uneconomic and dysfunctional, and this will likely begin to happen before 2020, not 2025.” (WEM Opening Brief at 12.)

Similarly, Mothers for Peace argues that Diablo Canyon costs are already high:

[T]he costs of operating and maintaining Diablo Canyon are disproportionately high for the contribution the power plant makes to PG&E's electrical generation capacity and, therefore, further investment in the continued operation of Diablo Canyon is not a prudent economical capital expense for the utility. (*Id.* at 8.)

Mothers for Peace also raises the additional concern that PG&E will need to spend increasing amounts of money on maintenance and repair of Diablo Canyon due to its age, particularly because of the degradation of a number of major plant components. (Mothers for Peace Opening Brief at 6-9.)

WEM and Mothers for Peace raise valid concerns about the current cost of operating Diablo Canyon, and the potential for significant costs that could be incurred between now and 2024/25, but those concerns cannot be considered in isolation. While shutting down Diablo Canyon in 2019/2020 would likely provide some cost savings, it would also provide less time for replacement procurement to be considered in the IRP proceeding and for the development and deployment of additional greenhouse gas-free resources.<sup>8</sup> These factors are difficult to balance, as we cannot forecast with certainty the precise growth of CCAs, the deployment of greenhouse gas-free resources, or the near-future costs of operating Diablo Canyon. For example, WEM argues that a foreseeable range of utility bundled sales:

[R]esults in a similar – or potentially much less – bundled load for PG&E in 2020 as PG&E projects for 2025. Therefore it is likely that constraints on the need for Diablo Canyon will arise by 2020, and

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<sup>8</sup> An early shutdown would also accelerate the impacts on plant employees and the local community.

possibly even earlier. When this occurs, a substantial fraction of Diablo Canyon's energy will need to be sold on the wholesale market, which is below cost. [fn. omitted] This foreseeable development will make continued operation of Diablo Canyon increasingly uneconomic and dysfunctional, and this will likely begin to happen before 2020, not 2025. (WEM Opening Brief at 12.)

Given the relatively early state of the IRP proceeding, the more prudent and conservative approach to balancing this uncertainty tips against a shutdown before 2024 and 2025. As we gain a clearer picture of future developments, such as the relative cost of operating Diablo Canyon, this balance could change. Because there is a possibility that Diablo Canyon may cease operations earlier than 2024 and 2025, PG&E should prepare for that contingency. In the IRP proceeding, PG&E should be prepared to present scenarios assuming Diablo Canyon retirement dates prior to 2024/2025, including ones that demonstrate no more than a de minimis increase in the greenhouse gas emissions of its electric portfolio.

Based on the record of this proceeding, PG&E's proposed 2024/2025 retirement schedule for Diablo Canyon provides a reasonable amount of time for the transition process, including further examination of replacement procurement. Accordingly, PG&E's proposed retirement schedule for Diablo Canyon is approved. 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.

### **3.2. Proposed Replacement Procurement**

In its initial Application, PG&E proposed to partially replace Diablo Canyon with greenhouse gas-free resources in three tranches, consisting of: 1) 2,000 gross GWh of energy efficiency; 2) 2,000 GWh of GHG-free energy, including energy efficiency and Renewables Portfolio Standard (RPS) eligible

energy resources; and 3) a voluntary 55% RPS commitment. (PG&E Application at 9.) PG&E described these three tranches as “[A] first step towards replacing Diablo Canyon with a portfolio of GHG-free resources.” (*Id.*)

While proposing this significant procurement of resources, PG&E noted that:

Additional resources beyond those specified in the Joint Proposal may be needed on a system-wide basis to replace the output of Diablo Canyon. The Joint Parties envision that this issue will primarily be addressed through the Commission’s Integrated Resource Planning process (i.e., R.16-02-007). (*Id.*)

Multiple parties protested PG&E’s replacement procurement proposal, including Shell, Sierra Club, SolarCity, TURN, and Marin Clean Energy. While parties did not object to the idea of replacing Diablo Canyon with GHG-free resources, they challenged the feasibility, effectiveness, cost-effectiveness, cost, and cost allocation of PG&E’s specific proposal. (*See, e.g.* Shell Protest at 3-4, Sierra Club Protest at 6-12, SolarCity Protest at 2-7, TURN Protest at 7-11, Marin Clean Energy Protest at 7-10.)

In their testimony, multiple parties expanded upon their criticisms of PG&E’s replacement procurement proposal. Some raised procedural objections. For example, ORA argued that no replacement procurement should be addressed in this proceeding, but it should instead be addressed in the IRP proceeding. (Ex. ORA-3 at 1-5, Ex. ORA-5 at 7-8.) Others, such as MCE, questioned the need for any replacement procurement:

It is certainly possible that there is no need at all to replace the generation that will be lost when PG&E closes Diablo Canyon. ...[D]iscontinued operation of the facility, from an operational perspective, is likely a solution to PG&E’s declining energy requirements in and of itself. (Ex. MCE-1 at 10.)

Subsequently, on February 27, 2017, PG&E provided notice to the service list that it was withdrawing part of its replacement procurement proposal:

Specifically, after careful review of the important feedback provided by parties in their January 27, 2017 opening testimony on the Diablo Canyon replacement proposal, PG&E is withdrawing the Diablo Canyon Tranches #2 and #3 replacement proposals, as well as the proposal to implement the Clean Energy Charge to recover the costs associated with Tranches #2 and #3. The Joint Parties believe that these aspects of the Diablo Canyon replacement proposal are better addressed in the Commission's Integrated Resource Plan ("IRP") proceeding (Rulemaking 16-02-007). (PG&E February 27, 2017 e-mail.)

PG&E modified its direct testimony to reflect this change. Subsequently, the other parties took a range of positions; some parties (primarily the Joint Parties) supported PG&E's new position, others proposed different partial replacement procurement schemes, and still others recommended that all replacement procurement be addressed in the IRP proceeding.

Some parties recommended that the Commission approve partial replacement procurement for Diablo Canyon in this proceeding, but in a form different than that proposed by PG&E:

The GPI supports the authorization in this proceeding of an early tranche of procurement of greenhouse-gas-free resources that can be brought online prior to the retirement of DCP, **but only if the procurement is primarily an all-source procurement.** (GPI Opening Brief at 19, emphasis in original.)

Thus, CEERT continues to strongly support the authorization of the Tranche #1 and Tranche #2 competitive solicitations in *this Application, without deferral to the IRP Process, as critical "early action"* GHG-free energy procurement to meet PG&E's bundled customer need upon the retirement of Diablo Canyon and as a contingency plan in the event of early retirement or shutdown, with cost recovery approved according to existing ratemaking and cost

allocation mechanisms. (CEERT Opening Brief at 7, emphasis in original.)

IEP similarly argued that PG&E should immediately be directed to do an “all-source” solicitation in order to take advantage of federal tax credits for renewable generation projects that are expected to expire or decline in the near future. (IEP Opening Brief at 1-2, 11-12.)

Other parties recommend that the Commission NOT authorize any replacement procurement in this proceeding, but instead advocate that the Commission should do a need analysis (and any resulting authorization) in the IRP proceeding. Those parties include Shell:

The appropriate forum for consideration of all Diablo Canyon replacement procurement, including PG&E’s proposed first “tranche” of procurement, is the IRP proceeding. Ex. Shell-i at pp. 4-7 (Dyer). SB 350 provides that the investor-owned utilities’ (“IOU”) procurement planning decisions must be made in the context of a comprehensive planning process. [fn. omitted] PG&E’s proposal in this proceeding, to replace a portion of Diablo Canyon energy output with energy efficiency, interferes with the Commission’s ability to establish a comprehensive procurement strategy for PG&E in the IRP proceeding. (Shell Opening Brief at 2-3.)

ORA makes a similar argument as well:

In its testimony, ORA recommended that no replacement procurement be addressed in this proceeding. ORA continues to make that recommendation since PG&E has not withdrawn its Tranche #1 proposal, and other parties may seek Commission approval of the Tranche #2 and #3 proposals even though PG&E has withdrawn them.

As ORA noted in its testimony, R.16-02-007, the Commission’s Integrated Resource Planning and Long-Term Procurement Planning rulemaking (“Integrated Resource Planning proceeding”)

is the appropriate Commission proceeding to address all replacement procurement associated with the closure of the Diablo Canyon units. [...]

PG&E will be required to perform portfolio optimization as part of its IRP in 2017. PG&E has likely included Energy Efficiency as part of its proposed preferred resources portfolio. The correct, optimized levels of these resources will be determined in the Commission's IRP system plan.

PG&E's proposal for replacement procurement outside of the IRP portfolio optimization process creates the potential for over-procurement in PG&E's service territory, thereby leading to higher costs for customers and resulting in a sub-optimal resource plan. (ORA Opening Brief at 4-5, fn. omitted)

In addition to arguments that replacement procurement should be addressed in the IRP proceeding rather than here, a number of parties argued that PG&E's remaining Tranche 1 proposal itself was flawed:

TURN supports PG&E's intention to dramatically scale up its procurement of cost-effective EE [energy efficiency]. However, as shown in TURN's testimony and explained below, PG&E has not met its burden of demonstrating that its Tranche 1 proposal offers the right mechanism through which to do that. [fn. omitted] In sum, Tranche 1 suffers from three fundamental design flaws: it may not be feasible, it does not ensure that the EE savings will be additional to the savings that would otherwise occur, and it does not ensure that the EE savings will still be available when Diablo Canyon comes offline. Moreover, the notion of a major EE procurement outside of PG&E's existing EE portfolio and its new EE Business Plan is ill-conceived, and PG&E has not demonstrated that the benefits of this separate procurement will exceed the costs. (TURN Opening Brief at 20.)

While acknowledging that Tranche 1 may exacerbate conditions of overgeneration and renewable curtailment, PG&E and the other Joint Parties fail to address it: PG&E witness Strauss agreed that

procurement of just EE, as proposed in Tranche 1, may worsen overgeneration issues. (Joint Opponents Opening Brief at 4-5, fn. omitted.)

ORA similarly opposes PG&E's request for \$1.3 billion in customer funding for its Tranche #1 EE procurement proposal and associated shareholder incentive payments. According to ORA:

PG&E fails to demonstrate that its requested Tranche #1 procurement, which is an increase of more than 50% of the currently-identified energy efficiency potential, would be cost effective. (ORA Opening Brief at 10.)

As ORA points out, PG&E is already required under California's loading order for energy resources to first meet its resource needs through "all available energy efficiency...resources that are cost effective, reliable, and feasible." (*Id.*, quoting Pub. Util. Code § 454.5(b)(9)(C)(i).) According to ORA, PG&E has acknowledged that in Decision (D.) 15-10-028, the Commission set a goal for PG&E to procure all cost-effective and feasible EE for the years 2016-2024. For 2018-2024, the period corresponding to the Tranche #1 procurement proposal, that goal is a total of 3,741 gross GWh savings. (*Id.*, citing Ex. PG&E-1, at 4-3, Table 4-1, lines 3-9.)

ORA concludes:

Yet, PG&E's Diablo Canyon application proposes to procure an additional 2,000 gross GWh installed in its service territory in the same period 2018-2024. [fn. omitted] This represents an increase of 53.5% over currently approved goals for the years 2018-2024. Such a substantial increase in the EE potential is only possible by lowering the Commission's threshold criteria for cost-effectiveness. Lowering the cost-effectiveness standards would burden customers with the cost of Energy Efficiency measures that provide insufficient value to qualify under current standards. (ORA Opening Brief at 11.)

EPUC makes a similar argument:

While labor unions, local governments, environmental organizations and shareholders all receive firm, defined benefits, there are no benefits and no protections for ratepayers. Instead they shoulder greater uncertainty and risks, and the revenue consequences as these uncertainties are resolved. These include:

- whether any replacement of DCCP's output is needed;
- when, if ever, that replacement should be procured;
- whether the quantity of energy efficiency (EE) to be procured in Tranche 1 is feasible and whether it will be cost-effective, and
- whether the authorization of the Tranche 1 procurement will conflict with and potentially impair the targets of the Rolling Portfolio Business Plans filed by PG&E and the other utilities. [fn. omitted] The ratepayers assume the risk that all cost effective EE will have been procured through the Business Plan and each of its annual updates, and that any EE authorized in this docket will be more expensive and raise rates inefficiently. (EPUC Opening Brief at 1-2.)

ORA and EPUC make a good point - it is not clear that PG&E could actually procure over 50% more energy efficiency than a goal that is already supposed to include all cost-effective energy efficiency (unless PG&E procures energy efficiency that is not cost effective). There is no reason to approve a \$1.3 billion rate increase for a proposal that will most likely either fail to achieve its goal or will achieve a goal not worth reaching. Accordingly, PG&E's Tranche 1 proposal is not adopted.

While we are rejecting the specific replacement procurement proposed here by PG&E, the larger question remains about what, if anything, should be done here to ensure that the retirement of Diablo Canyon will not result in an increase in GHG emissions. The answer to that is that we simply cannot tell based on the record in this proceeding. It is the intent of the Commission to

avoid any increase in greenhouse gas emissions resulting from the closure of Diablo Canyon. Given the time between now and 2024 and 2025, the rapid changes in the California electricity market, and the growth of renewable generation and CCAs, however, it is not clear based on the limited record in this proceeding what level of GHG-free procurement (if any) may be needed to offset the retirement of Diablo Canyon.

The IRP proceeding, however, is better equipped to make that determination. The IRP is supposed to incorporate the analysis leading to an optimized portfolio of resources, reflecting constraints such as GHG emissions, reliability, cost, and RPS and energy efficiency requirements, while ensuring safe and reliable electricity service at just and reasonable rates. (R. 16-02-007 at 13.) In short, the IRP has the ability to look at a bigger picture than this proceeding, and can better analyze the potential impacts of the retirement of Diablo Canyon and its interaction with other dynamics in the electricity markets in a manner consistent with state policies. PG&E's previous Tranche 2 and 3 proposals would better be considered in the IRP proceeding.

Overall, practical and policy reasons indicate that it is better for potential replacement procurement issues to be addressed in the Commission's IRP process, rather than addressing it in a more piecemeal fashion in this proceeding. Accordingly, the need for and authorization of any replacement procurement should be addressed in the IRP proceeding.<sup>9</sup>

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<sup>9</sup> Or in another proceeding as determined in the IRP proceeding.

### 3.3. Proposed Employee Program

PG&E proposes to implement an employee retention, severance and retraining program for its Diablo Canyon employees, and requests three related approvals from the Commission:

[1]. Recover \$352.1 million in costs associated with retaining approximately 1,500<sup>10</sup> employees at Diablo Canyon to ensure the plant's continued safe and efficient operation through the end of each unit's license in 2024 and 2025, respectively, over a 7-year period through an annual expense-only revenue requirement of \$50.9 million beginning January 1, 2018 through December 31, 2024 through the Nuclear Decommissioning Non-Bypassable Charge (NDNBC).

[2]. Implement the Employee Severance Program and authorize PG&E to continue to forecast and recover the cost of the Employee Severance Program in each subsequent Nuclear Decommissioning Cost Triennial Proceeding (NDCTP).

[3]. Recover \$11.3 million in costs associated with retraining eligible employees at Diablo Canyon and to recover these costs over a 5-year period through an annual expense-only revenue requirement of \$2.3 million from January 1, 2021 through December 31, 2025 through the NDNBC. (PG&E Opening Brief at i.)

Starting with the last one, the retraining of Diablo Canyon employees is intended to support the placement of Diablo Canyon employees who are interested in transitioning to other employment roles within PG&E as a result of the retirement of Diablo Canyon. (Ex. PG&E 1 at 7-8.) While the precise components and details of this program have not been determined, PG&E identifies possible elements of the program, including support for an internal

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<sup>10</sup> PG&E's cost estimates used a headcount of 1,461. (Exhibit PG&E-1 at 7-6.)

PG&E job search, limited wage protection, professional and technical training and relocation assistance. (*Id.*)

PG&E forecasts the cost of the retraining program to be approximately \$11.3 million, to be recovered through the NDNBC. (*Id.* at 7-11.) PG&E also requests a new two-way expense-only subaccount (the Employee Retraining Program Subaccount) within the existing Diablo Canyon Retirement Balancing Account.

The proposed retraining program is directly related to the retirement of Diablo Canyon, and the cost of the program is recoverable in rates through the NDNBC. (Pub. Util. Code sections 8322(g) and 8330.) PG&E's request for the retraining program, the new two-way expense-only subaccount, and associated rate recovery through the NDNBC is approved.

PG&E has in place an Employee Severance Program, which provides payments of specified amounts to employees whose jobs will be eliminated upon the closure of Diablo Canyon. (Ex. PG&E -1 at 7-7.) The Employee Severance Program is directly related to the decommissioning of Diablo Canyon, and \$148 million in estimated costs for the program are already incorporated into PG&E's decommissioning estimate. (Ex. PG&E-1 at 7-11.)<sup>11</sup> PG&E does not request rate recovery for the severance program in this proceeding, as the forecast and recovery of costs are being addressed in PG&E's NDCTP. (*Id.*) A severance program for Diablo Canyon employees is appropriate in light of the plant's pending retirement, and the cost and ratemaking for that program should continue to be addressed in PG&E's nuclear decommissioning proceeding.

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<sup>11</sup> PG&E's more recent estimate of the cost of the program is \$168 million.

PG&E's proposed employee retention program, however, is not so clearly related to the decommissioning of the plant. EPUC argues that the costs of the retention program are not related to the decommissioning of the plant, but rather to its continued operation:

The retention program is part of the operating costs of the plant, incurred to ensure there are qualified employees to continue to operate the plant. As Ms. King testified, it has been a regular practice in the past to increase wages of plant employees to retain them. [fn. omitted] Such operating costs have been, and should continue to be, recovered through the energy rates charged to bundled customers, who benefit from the operation of the plant. (EPUC Reply Brief at 6.)

In response, PG&E argues that the retention program is related to the retirement of the plant, as absent that there would not be a need for the retention plan:

The only reason the Employee Program is necessary is due to the announcement that PG&E would retire and decommission the plant. Accordingly, there is a direct causal link between the closure of the plant and the Employee Program, making it appropriate to recover the costs of the Employee Program through decommissioning rates. (PG&E Reply Brief at 66.)

At the same time, however, PG&E acknowledges that it intends to continue to operate Diablo Canyon for almost a decade before it plans to actually retire the plant. (Ex. PG&E-1 at 7-2.) Looking at PG&E's proposal, it appears to confirm that EPUC's position is correct: PG&E is proposing to keep operating Diablo Canyon until 2024/2025, and is proposing the retention program for the purpose of keeping the plant operating, not for the purpose of shutting it down. (PG&E Reply Brief at 49.) This is further reinforced by the fact that the retention program ends on August 31, 2023, but the plant will not completely retire until

2025. (Ex. PG&E-1 at 7-4.) Accordingly, rate recovery for the employee retention plan should come through the existing ratemaking treatment for the operation of Diablo Canyon, not through the NDNBC.

In addition, there are problems with the design and the resulting cost of PG&E's proposal. PG&E, with the support of the Joint Parties, proposes to pay retention bonuses to every employee of the plant who continues to work through specified time periods. PG&E proposes two "tiers" of retention payments. Tier 1 would run from September 1, 2016 through August 31, 2020, would provide a retention payment to each employee of 25% of the employee's base salary at the end of each of the four years, and would cost \$191.6 million. Tier 2 would run from September 1, 2020 through August 31, 2023, would provide a retention payment to each employee of 25% of the employee's base salary at the end of each of the three years, and would cost \$160.5 million. (Ex. PG&E-1 at 7-4 and 7-6.) PG&E's estimated \$352.1 million cost for the retention plan assumes that approximately 1,500 employees would be retained until August 31, 2023. (*Id.* at 7-6.)

ORA and CGNP oppose PG&E's employee retention program as proposed. ORA argues that ratepayers should not pay for the \$191.6 million cost of Tier 1, but generally supports rate recovery for the \$160.5 million cost of Tier 2. (ORA Opening Brief at 25.) CGNP argues that the entire retention program is unnecessary (CGNP Opening Brief at 14-17), but does note that retention payments may be necessary for a very limited set of hard-to-fill positions. (*Id.* at 15.)

PG&E's proposal appears to have a significant "free rider" problem that PG&E does not address, and as such the proposal is overly generous with ratepayer funding. The approximately 1,500 employees eligible to receive the

retention payments include all active full-time employees working at Diablo Canyon, plus those who support Diablo Canyon operations and those whose job or job functions would be eliminated as a result of Diablo Canyon's retirement. Contractors and temporary or rotational employees would not be eligible. (Ex. PG&E-1 at 7-4, fn. 1.) In short, PG&E is asking the ratepayers to pay for a retention payment for every full-time PG&E employee at Diablo Canyon. As PG&E puts it: "The Employee Retention Program is aimed to keep the entire employee population retained until August 31, 2023." (*Id.* at 7-6.)

PG&E's testimony does not adequately address factual questions such as how many employees would continue to work at Diablo Canyon (until it closes) without a retention payment, or how many employees would leave their employment at Diablo Canyon regardless of a retention payment. In both of those situations, the retention payment provides no benefit to ratepayers.<sup>14</sup> PG&E has significant data about the Diablo Canyon workforce, including retirement eligibility, and has done modeling of potential retirements (PG&E Opening Brief at 45; Ex. PG&E-6), but has chosen to just pay every employee, rather than using that information to more efficiently use ratepayer funds.

CGNP, on the other hand, has used PG&E's data to support its analysis, and comes to a more nuanced conclusion than that embodied by PG&E's broad-brush proposal:

In response to Commission\_001-Q15, PG&E witness King stated that there are 442 employees eligible for full retirement and 471 eligible for retirement with partial benefits before 2024. [fn. omitted] These

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<sup>14</sup> There may also be employees who would continue to work at Diablo Canyon only because of the retention payment, but are otherwise unhappy or unmotivated with their job, so their retention would provide little or no benefit to ratepayers.

employees constitute 63% of the 1458 regular Diablo employees, and it is highly unlikely they would be eager to leave when they could continue to work towards retirement. Older workers face well-known difficulties in finding new employment, thus given the choice of transferring within PG&E vs. a severance package if their job was eliminated, there would be little incentive for employees to leave voluntarily. (CGNP Opening Brief at 15.)

In another area where there is a paucity of analysis, PG&E does not address how many employees would continue to work at Diablo Canyon after its retirement, on tasks such as decommissioning, nuclear fuel storage, maintenance and security. In fact, PG&E states that it does not currently know how many employees it expects will remain at Diablo Canyon after its retirement. (Ex. PG&E-6 at 24.) Because these employees would have continuing employment after the plant retires, they would presumably have less of an incentive to leave because of the retirement. But under PG&E's proposal, all of these employees would still receive ratepayer-funded retention payments.

PG&E likewise does not address the potential employment prospects for nuclear power plant employees. PG&E cites to CCUE witness Dalzell for the argument that many Diablo Canyon employees are "high-skill, high-wage workers and would be attractive candidates for other jobs." (PG&E Opening Brief at 46.) PG&E explains the basis for that argument:

The CCUE witness, Tom Dalzell, testified that based on his experience with divestiture of PG&E's fossil fuel and geothermal generation facilities in the late 1990s, he was certain that absent an employee retention package, employees would find jobs outside of DCPD once a closure date was announced. (PG&E Opening Brief at 46.)

This is not a valid comparison; there are many more fossil fuel plants than there are nuclear plants, and the situation today is different from the divestiture

of plants in the 1990s. A better comparison would be to look at the relative current and forecasted supply and demand of nuclear power plant jobs and experienced nuclear power plant employees. These factors have a significant impact on how likely Diablo Canyon employees will be to look for and obtain outside employment. PG&E did not present such an analysis in this proceeding.<sup>15</sup> While there is certainly ratepayer benefit from Diablo Canyon being operated in a safe and reliable manner until its retirement, PG&E has failed to show that the amount of ratepayer dollars requested is necessary or reasonable. At the same time, the funding level recommended by ORA, while more reasonable from a ratepayer perspective, also lacks analytical support. ORA's proposal does not adequately address the possible need for a retention payment in the earlier (Tier 1) years, nor does it consider the nature of Diablo Canyon's workforce.<sup>16</sup> As a result, while PG&E's proposed retention payments appear to be too high, ORA's may be too low.

Taking into consideration the benchmarking data, the presence of significant and pre-funded severance pay, the unique nature of the nuclear industry, and the extended payment period, a 15% per year retention payment level is reasonable. Accordingly, we authorize PG&E's proposed employee retention program, but at an annual payment level of 15%, rather than 25%. This results in a maximum cost of \$115 million for Tier 1, and a maximum cost of

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<sup>15</sup> Nor did ORA or CGNP. One commenter at a public participation hearing stated: "Given the current status of the nuclear industry, there is no need to pay Diablo Canyon employees an additional \$352 million in order to retain them for the eight years in question. The industry is in serious decline." (Transcript v. 9 at 1,446.)

<sup>16</sup> Significant amounts of Diablo Canyon employee data were put into the record in response to a Commission data request. (Ex. PG&E-6.)

\$96.3 million for Tier 2, for a total cost of \$211.3 million. PG&E is authorized rate recovery for up to \$211.3 million for its employee retention program.

Finally, it appears that PG&E (with the participation of at least some of its unions) has already executed retention agreements with its employees, presumably incorporating the payment levels proposed by PG&E in this proceeding. CCUE cites to these agreements, and the fact that 86% of IBEW 1245's represented employees<sup>19</sup> at Diablo Canyon have signed them, as showing that PG&E's retention program is working. (CCUE Opening Brief at 13-14.) CGNP, however, points out that: "[T]he 86% only means that workers will accept free money until such times as they may quit." (CGNP Reply Brief at 10.)

The retention payments negotiated and agreed to by PG&E and its unions require funding from ratepayers, and accordingly require Commission approval for their funding. At the time it entered into those agreements, PG&E did not have authority to make the payments that the agreements (appear to) promise. This puts the Commission in the position of potentially saying "no" to PG&E's proposal, while the employees may already be thinking that the answer is "yes." PG&E should not be making promises (even implied ones) to its employees that it does not know it can keep.

### **3.4. Proposed Community Impacts Mitigation Program**

In its Application, PG&E proposed a Community Impacts Mitigation Program (CIMP), which was described as follows:

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<sup>19</sup> 410 out of 476 represented employees.

Diablo Canyon is one of the largest employers, taxpayers, and charitable contributors in the San Luis Obispo County area. Diablo Canyon currently contributes approximately \$22 million in property taxes to the local community. With the retirement of Diablo Canyon, this could decline to zero by 2025. The Parties will support funding of continuing revenue streams to address community needs and concerns. PG&E will propose to compensate San Luis Obispo County for the loss of property taxes associated with the declining rate base in Diablo Canyon through a transition period ending in 2025. The payment in lieu of taxes will be recovered through nuclear decommissioning funding. PG&E estimates that the total cost of the Community Impacts Mitigation Program is approximately \$49.5 million. As specified in Section 5.4.1, as a condition of the program, PG&E will recover the costs of the Community Impacts Mitigation Program through CPUC-approved rates for nuclear decommissioning. (PG&E Application, Attachment A (Joint Proposal) at 10-11.)

Later in the proceeding, PG&E entered into a proposed settlement with the County, the Local Cities and the School District, along with the original Joint Parties.<sup>20</sup> This proposed settlement primarily addressed the Community Impacts Mitigation Program, with PG&E agreeing to increase the payment to the communities to a total \$85 million, compared to the prior \$49.5 million. (Joint Motion re Settlement on Community Impacts at 2.)

Of the \$85 million, \$75 million is called an “Essential Services Mitigation Fund” (ESMF), and would be distributed to the County. That \$75 million would be allocated by the County to local cities and districts based upon their 2015-2016 unitary tax allocations; approximately \$36.8 million would go to the School

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<sup>20</sup> PG&E filed a joint motion on December 28, 2016 with the County Of San Luis Obispo, the Cities of Arroyo Grande, Atascadero, Morro Bay, Paso Robles, Pismo Beach, San Luis Obispo, the San Luis Coastal Unified School District, FOE, NRDC, Environment California, IBEW 1245, CCUE, and A4NR. (Joint Motion re Settlement on Community Impacts.)

District, including \$10 million dedicated to an educational foundation designated by the School District. (Joint Motion re Settlement on Community Impacts at 16.)

In addition to the \$75 million ESMF, the proposal includes another \$10 million “Economic Development Fund” (EDF). Of that \$10 million, \$4.24 million would go to the County, and \$5.76 million would go to the six Local Cities. The County would then allocate \$192,000 to the City of Grover Beach, which is not a party to this proceeding. (*Id.* at Appendix 2, Attachment A.)

It is uncontested that the retirement of Diablo Canyon would result in reduced local tax revenues and a loss of well-paying jobs, with a corresponding potential for significant adverse economic impacts on the local area. The question before this Commission is not whether there will be economic impacts, or even the potential size and scope of those impacts,<sup>21</sup> but rather whether PG&E ratepayers should pay to mitigate these impacts.<sup>22</sup>

The parties presented a range of policy and legal arguments on this issue. The policy arguments focus on issues of fairness: who benefitted from Diablo Canyon, who bore the costs and risks of Diablo Canyon’s operation, and who should bear the costs and risks of the plant’s retirement. (*See, e.g.* County Opening Brief at 1-3, 16-17; TURN Opening Brief at 43-44.) While it is reasonable for this Commission to consider whether the proposed payment to the community is fair, the Commission must also consider whether that payment is legal.

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<sup>21</sup> The economic impacts of the retirement of Diablo Canyon are to be studied pursuant to Pub. Util. Code § 712.5, enacted in 2016.

<sup>22</sup> Existing support for local emergency services provided through PG&E rates is not at issue in this proceeding, and remains in effect.

Based on the specific facts presented here, and consistent with this Commission's decision in D.97-05-088, in the absence of legislative authorization, the CIMP is not approved. Utility rates should be used to provide utility services, not government services, no matter how beneficial those services may be. In addition, we have some concerns about the fairness of the CIMP under the proposed settlement.

Looking first at whether the CIMP under the proposed settlement is fair to PG&E, to the community, and to ratepayers, it is clear that the proposed settlement on this issue is fair to PG&E. Because the cost of the payment would be recovered in rates, PG&E itself bears no out-of-pocket costs.

ORA and TURN argue that PG&E's willingness to provide funding to the community is essentially a type of charitable giving, intended to enhance PG&E's goodwill in the community, and as such should be funded with shareholder dollars, not ratepayer dollars. (ORA and TURN Joint Comments at 6-7.) PG&E, the Local Cities and the County respond that the CIMP payments do not meet the technical definitions of a charitable gift or a goodwill payment. (PG&E Reply at 10-13; Coalition Cities<sup>23</sup> Reply at 10-11; County Brief at 17-19.) While PG&E and its supporters may be correct that the payments (in large part due to their multiplicity of benefits) may not squarely fall into the technical definitions of charitable giving or goodwill payments, ORA and TURN raise a fair point that as a practical matter, PG&E will garner praise and enhance its reputation in the community as a result of the CIMP. (ORA and TURN Comments at 6-7.)

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<sup>23</sup> The "Coalition Cities" are the same as the "Local Cities": Arroyo Grande, Atascadero, Morro Bay, Paso Robles, Pismo Beach, and San Luis Obispo.

PG&E also gets another benefit: the support (or at least non-opposition) of the settling parties for its other litigation positions. The settling parties agreed to:

[S]upport the Employee Program as proposed by PG&E in its Application initiating this proceeding, and the County, the Cities, and the District agree not to oppose or to take no position on the remaining relief requested in PG&E's Application, as modified by the Agreement. (Joint Motion, December 28, 2016 at 2.)

In short, this appears to be a very good deal for PG&E – it gains some community goodwill, and gets support (or eliminates potential opposition) for its litigation positions, and all at no financial cost.

The fairness to the community is less clear. While the proposed settlement's payment of \$85 million is a clear benefit to the recipient community, not all of that payment is allocated fairly. While the majority of the CIMP appears to be allocated fairly (based upon historic unitary tax allocations), a significant portion is earmarked for the County, Local Cities, and the School District, which are parties to the proceeding and negotiated the proposed payment with PG&E. This is particularly true of the \$10 million EDF.

As a result, the amount and allocation of payments appear to have more to do with PG&E's litigation needs than the economic needs of the community. While in general the community strongly supports the proposed settlement, the allocation of payments to the affected communities does not appear to be fair, and we cannot tell from the record whether the amount of the proposed payment is fair. A clearer picture of the economic impacts on the community should be available upon completion of the assessment required under Pub. Util. Code § 712.5.

Finally, it is essential to consider whether the proposed settlement is fair to PG&E's ratepayers, who are being asked to pay the \$85 million cost of the

payment program. ORA and TURN oppose the proposed payment. ORA argues that the payments to be made “would effectively be a substitute for PG&E’s property taxes,” and should not be funded by PG&E customers. (ORA Opening Brief at 29.)

In its reply brief, PG&E argues that the CIMP: “is not intended to be an in-lieu or substitute tax.” (PG&E Reply Brief at 53.) According to PG&E: “The decline in tax revenues is one measure of the magnitude of the direct fiscal impacts to local governments, and it was therefore appropriate for the settling parties to consider the size of those tax revenue declines in negotiating the appropriate amount of mitigation,” but the payment should not be thought of as a tax payment or a substitute for a tax payment. (PG&E Reply Brief at 53-55; *see also* County Opening Brief at 19.)

One problem with this attempt to finesse the nature of the CIMP into something other than a substitute for lost tax revenue is that it is contradicted by other statements on the record:

With regard to economic and fiscal impacts, the Cities argued that, at a minimum, PG&E should be required to make payments to the Cities equal to their combined property, sales, and other local taxes over the nine-year period to mitigate the decline in the taxes that the plant’s operations have traditionally provided. (Joint Motion at 10, citing to Protest.)

And: “The District intervened in this proceeding because the property tax PG&E pays for Diablo Canyon each year accounts for a significant portion of the District’s annual funding.” (*Id.* at 10, citing to Response of School District.)

While all of the money at issue may not be specifically designated as a substitute for tax payment, as a practical matter a significant amount of the money to be collected from ratepayers is in fact a substitute for tax revenue.

Accordingly, we have to analyze whether it is appropriate to substitute ratepayers for taxpayers, which raises legal as well as policy issues.

The parties contesting this issue cite to Commission Resolution E-3535, adopted in 1998, which addressed a similar issue, also for Diablo Canyon. The parties are correct that Resolution E-3535 is on point here; but in order to understand and apply the logic of Resolution E-3535, it is essential to consider D.97-05-088, which led to the Commission's adoption of Resolution E-3535. In the proceeding leading to D.97-05-088, in the wake of electric restructuring:

The County of San Luis Obispo and the San Luis Coastal Unified School District (County) seek protection against the risk that Diablo Canyon-related property taxes will decrease precipitously and jeopardize the ability of the County to provide basic public and educational services. If the threat actually materializes, the County wants to be made whole. By its recommendation, the County seeks adoption by the Commission of a mechanism that insures that the County has the opportunity to recover the property tax revenues they had a reasonable expectation of receiving but for electric restructuring. (D.97-05-088 at 91.)

In that proceeding, the Commission held that: "The County's proposal that ratepayers pay for property taxes that PG&E does not incur is not permitted under either general ratemaking principles or public utility law." (*Id.* at 100.) As a result, the Commission held that the County should direct its request for relief to the Legislature, not the Commission.<sup>24</sup> (*Id.*) In large part because the facts presented in this proceeding are unusually aligned with those in D.97-05-088, the Commission reaches the same result today.

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<sup>24</sup> The County did so, and received limited relief, which was then implemented via Resolution E-3535.

Because the analysis set forth by the Commission in D.97-05-088 is directly on point, we quote it here at length:

The County of San Luis Obispo and the San Luis Coastal Unified School District (County) seek protection against the risk that Diablo Canyon-related property taxes will decrease precipitously and jeopardize the ability of the County to provide basic public and educational services. If the threat actually materializes, the County wants to be made whole. By its recommendation, the County seeks adoption by the Commission of a mechanism that insures that the County has the opportunity to recover the property tax revenues they had a reasonable expectation of receiving but for electric restructuring.

The County recommendation is that this Commission should:

- Find that \$ 158 million (NPV in 1999 dollars) represents a reasonable estimate of the potential difference between property tax revenues that the County would have received from PG&E in the absence of accelerated recovery of Diablo Canyon depreciation and what the County could actually receive given restructuring.

[...]

- Order that the \$ 158 million in potentially forgone property taxes be collected by PG&E as CTC at a rate of \$ 39.5 million per year during the CTC recovery period and held in a separate, segregated interest-bearing account until 2026.

- Order PG&E, starting in 1999 and continuing thereafter on an annual basis, to withdraw funds from the segregated CTC account and to remit to the County the difference between the estimated tax payments based upon straight-line depreciation of Diablo Canyon through the year 2026 [...] and any amount of property taxes actually determined [sic] to be due and payable by PG&E to the County in each year, to the extent such actual taxes are less than the estimated straight-line depreciation based property taxes [...].

[...]

The County asserts that adoption of its recommendation will provide protection against the possibility that the County will experience drastic reductions in property tax revenues as a direct

result of electric restructuring. If the risk of property tax reductions does not materialize or produces lower tax revenue losses than predicted, any excess amounts otherwise reserved for payment to the County will be returned to ratepayers.

The County contends that the evidence produced by it shows:

- that the County enjoys unique status by reason of long-standing, mutual commitments with PG&E relating to the location and operation of Diablo Canyon within the County;
- that electric restructuring, and PG&E's related pricing proposal for Diablo Canyon in particular, create the real possibility that the County will suffer far greater negative consequences from restructuring than any other similarly situated stakeholder, primarily in the form of dramatic reductions in the level of otherwise expected property tax revenues to be received from PG&E;
- that the consequence for the County of any property tax revenue reductions resulting from PG&E's Diablo Canyon pricing proposal includes severe reductions in essential public services available to the residents and schoolchildren of San Luis Obispo County;
- that the mutual commitments between the County and PG&E and, in particular, the County's reliance on PG&E's promises to provide identifiable economic benefits in exchange for siting and operating a nuclear generation facility within San Luis Obispo County, create an enforceable entitlement to a stable and predictable level of property tax revenues for the County throughout the projected operating life of Diablo Canyon; and
- that the difference between property tax revenues that the County would have received from PG&E in the absence of accelerated recovery of Diablo Canyon depreciation and what the County actually receives given implementation of electric restructuring is properly recoverable (by PG&E and payable to the County)[...].

This evidence, in the opinion of the County, leads to only one

conclusion of law: It is consistent with law, policy, and the public interest for the Commission to adopt a mechanism that will provide a safety net for the County by ensuring that the County's property tax receipts are unaffected by any accelerated depreciation of Diablo Canyon authorized by the Commission in conjunction with its initiative to restructure the state's electric industry.

PG&E and ORA oppose the County. [...]

In addition to the problems in predicting the actual impacts of restructuring on the County, PG&E asserts that the County's proposal to recover lost property tax revenues is legally suspect. AB 1890 contains no explicit provision to allow utilities to recover costs or lost governmental revenues that they are not liable for but which are incurred by third parties, such as counties, under restructuring. In addition, as a general principle of ratemaking, utilities are not permitted to include in their cost of service payments which in fact they have not incurred or accrued, or forecast to incur, and which they have not become legally obligated to incur or accrue.

ORA states that the County has not cited any statute or rule that would support its position. ORA notes that there has never been any guarantee that Diablo Canyon property tax revenues would not decrease, even in the absence of electric restructuring and PG&E's accelerated depreciation proposal. For example, if Diablo Canyon continued to perform at current levels in the future such that PG&E recovered more in revenues than intended under the original ratemaking settlement, the Commission could require a reduction in prices as was done in 1995, or the early termination of the ratemaking treatment. This would impact San Luis Obispo tax revenues, even in the absence of electric restructuring. In addition, nothing in the existing Diablo Canyon ratemaking treatment precludes the facility from shutting down, not just for catastrophic failure, but for economic reasons as well. Under such circumstances, regardless of electric restructuring, there would likely be no tax revenues for San Luis Obispo. [...]

[...]

Most telling is ORA's argument that San Luis Obispo would have the Commission impose on ratepayers what is essentially a tax that

is entirely unrelated to utility service. The County's proposal that ratepayers pay for property taxes that PG&E does not incur is not permitted under either general ratemaking principles or public utility law. Section 451 of the PU Code requires:

"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."

A utility cannot charge ratepayers costs that are unrelated to the provision of any product or commodity or service, and the Commission cannot lawfully order such charges. [fn. omitted]

However, ORA supports San Luis Obispo's efforts to seek relief in a more appropriate forum. It is within the state's powers, not the Commission's, to levy taxes and to disburse tax revenues. [...]

The arguments of PG&E and ORA are persuasive. There is no legal basis for this Commission to authorize PG&E to include in its rates and cost of service estimated property taxes which it is not lawfully obligated or forecasted to pay. Taxes which are included in rates are those in effect at the time the rates are approved, unless the existing law provides for a change at a future date. (Re Pac. Tel. & Tel. (1954) 53 CPUC 276, 295.) Absent legislative change, or Board of Equalization change, PG&E's taxes are what they are under existing law and the County's proposal will not change that fact. The County must direct its request for relief to the Legislature and the Board, not this Commission. (D.97-05-088 at 91-100.)

As in 1997, this Commission is reluctant to require ratepayers to pay for the cost of local government services that are typically paid for by taxpayers, no matter how beneficial those services may be. Absent legislative authorization, utility rates should be used to provide utility services, not government services. While Resolution E-3535 subsequently did authorize ratepayer payment to the County and the School District, it is important to take into consideration what

happened in between D.97-05-008 and Resolution E-3535. As described in Resolution E-3535:

After the Commission's Decision was issued, the California Legislature passed into law Chapter 282, section 8660-001-0462, paragraph 3, of Statutes of 1997. This new law states that if PG&E and the County and School District enter into a settlement that resolves claims by the latter parties relating to the effects of AB 1890 (Brulte), enacted 1996, Chapter 854, then PG&E may recover an additional amount, not to exceed \$ 10 million, through base rates in 1998. (Resolution E-3535 at 3.)

In short, there was express legislative authorization for rate recovery for a payment to the community, which was implemented by Resolution E-3535.

Accordingly, ratepayer funding of the CIMP is not authorized. If legislation specifically directs this Commission to provide ratepayer funding for the CIMP (or a similar payment to the community), the Commission would do so, as it did in 1998. PG&E may also choose to use shareholder funds to support the CIMP.

### **3.5. Recovery of License Renewal Costs**

In its Application, PG&E requested rate recovery for \$52.688 million in costs incurred for its efforts to renew the NRC operating licenses for Diablo Canyon. (Ex. PG&E-1 at 9-1.) This request was opposed by TURN, ORA, A4NR and Mothers for Peace, who argued that PG&E should not get rate recovery for any of the costs associated with relicensing Diablo Canyon. (*See, e.g.* TURN Protest at 4-6; A4NR Protest at 5-13.)

In late 2009, PG&E filed an application with the NRC to renew Diablo Canyon's operating licenses. In early 2010, PG&E filed an application with this Commission requesting rate recovery for its estimate of \$85 million in costs for Diablo Canyon NRC license renewal and related activities. (Ex. PG&E-1 at 9-4.)

In that proceeding (Application (A.) 10-01-022), PG&E, the Commission's Division of Ratepayer Advocates (DRA)<sup>25</sup> and TURN reached a tentative settlement. (D.12-02-004 at 2.)

In March, 2011, prior to a hearing on the settlement, an earthquake and tsunami caused serious damage to a nuclear plant located at Fukushima, Japan, and the NRC effectively halted the relicensing of Diablo Canyon pending further seismic studies. (*Id.* at 2-4; Ex. PG&E-1 at 9-5 to 9-6.) The Commission then closed A.10-01-022 without addressing the proposed settlement. (D.12-02-004 at 5-7.) The proposed settlement between PG&E, DRA and TURN would have allowed PG&E rate recovery for \$80 million in licensing renewal costs. (Ex. PG&E-5-2 at 5-19.)

While the license renewal process at the NRC was suspended, PG&E reduced its spending on license renewal activities, but continued with some activities in order to keep its application up-to-date (Ex. PG&E-1 at 9-6) and to retain the ability to re-start and complete the license renewal process in the future. (Ex. PG&E 5-2 at 5-22.) PG&E's license renewal spending ramped back up significantly in 2014 (although PG&E's testimony does not clearly identify when it re-started active work on the license renewal). (Ex. PG&E -7 at 278.) PG&E did not return to the Commission to request approval for rate recovery of the license renewal costs it incurred until it filed the present application in August 2016.

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<sup>25</sup> Now ORA.

PG&E divides the costs it incurred for Diablo Canyon license renewal into three time periods: Original LRA Review (2009-11), LR On-Hold (2012-13), and LR Re-Start (2014-16). (*Id.*) PG&E's request breaks down as follows:

Original LRA Review (2009-11)	\$23,651,457
LR On-Hold (2012-2013)	\$ 9,290,172
LR Re-Start	<u>\$19,744,364</u>
Total	<u>\$52,687,764</u>

For all three periods, PG&E's original request included rate recovery for Allowance for Funds Used During Construction (AFUDC), reflecting the financing cost of the license renewal project. (*Id.*) TURN and A4NR questioned PG&E's request for recovery of AFUDC, given that the license renewal project was abandoned or cancelled. (*See*, Transcript Vol. 8 at 1214-1246.)

Subsequent to evidentiary hearings, a joint motion for adoption of a settlement agreement was filed by PG&E, A4NR, TURN, ORA, Mothers for Peace, FOE, NRDC, Environment California, IBEW 1245, and CCUE (Settling Parties). The proposed settlement addresses the costs incurred by PG&E for its license renewal activities, and recommended that PG&E be granted \$18.6 million in rate recovery. (May 23, 2017 Joint Settlement Motion at 13, 15.) The motion explained the basis for this number:

In approaching settlement on this issue, the Settling Parties desired to identify a set of principles upon which to base that settlement. One principle was that PG&E should recover its direct costs incurred during the time that the project was reasonably and prudently undertaken. In this regard, the Settling Parties agreed, for the purpose of compromise and without conceding their litigation positions, that the Commission should consider the project reasonably and prudently undertaken from its inception in 2009 until April 10, 2011, when PG&E requested that the Nuclear Regulatory Commission ("NRC") defer issuance of the Diablo

Canyon renewed operating licenses. [fn. omitted] The Settling Parties then agreed that PG&E should not recover the direct costs incurred subsequent to that deferral request. After reviewing the costs of the project as summarized in Exhibit PG&E-2, as corrected in Attachment 2 to this Motion, the Settling Parties submit that \$18.6 million is a reasonable approximation of the direct costs incurred between the project inception and April 10, 2011 that should be authorized for recovery. Finally, the Settling Parties agreed that no AFUDC should be recovered for the License Renewal Project as a reasonable sharing of risk between customers and shareholders. (*Id.* at 12-13.)

The parties opposing PG&E's original request support the settlement. The \$18.6 million figure is supported by the record, is well within the range of possible litigation outcomes in this proceeding, and provides significant ratepayer saving compared to PG&E's original request of more than \$52 million. It was reasonable for PG&E to have spent that amount of money in 2009 to 2011 to seek to renew the operating licenses for Diablo Canyon. The removal of AFUDC from the amount sought, given that the relicensing was not completed, also supports the conclusion that the amount is reasonable. The proposed settlement meets the requirements of Rule 12.1(d).

While nuclear power plants are controversial, and renewal of Diablo Canyon's licenses would have drawn opposition, the record supports a finding that PG&E's decision to seek renewal of Diablo Canyon's operating license (and its approach for doing so) from 2009 to April 2011 was reasonable. PG&E requested Commission approval for rate recovery of the costs of renewal at approximately the time they began to actively pursue license renewal, which provided an opportunity for parties (and the Commission) to address the reasonableness of their decision. In that proceeding, DRA and TURN agreed to a proposed settlement allowing PG&E rate recovery for its relicensing costs, which

implies that whether or not they believed PG&E's course of action to be reasonable, they believed it likely the Commission would find it reasonable. The Commission also had a potential opportunity to determine that it was unreasonable for PG&E to seek to renew Diablo Canyon's NRC licenses, but did not do so. And finally, the realities on the ground in California were very different in 2009 than they are in 2017. Our current situation, with the rapid growth of renewable generation and CCAs, had not so fully manifested itself yet, making Diablo Canyon look to be a potentially more valuable asset then than it is now. There is not a good basis to now find unreasonable PG&E's decision in 2009 to pursue relicensing of Diablo Canyon.<sup>26</sup> Accordingly, it is reasonable to grant PG&E rate recovery for the costs (not including AFUDC) that it incurred through April 2011, as proposed by the settlement.

The rate recovery structure of the proposed settlement is described:

The Agreement further provides that PG&E should be authorized to recover the \$18.6 million through an annual, levelized, expense-only revenue requirement to be recovered from customers over an 8-year period from January 1, 2018, through December 31, 2025, through the generation rate component of PG&E's rates. (May 23, 2017 Joint Settlement Motion at 15.)

The proposed settlement on license renewal costs is approved, including the amount of cost recovery and the ratemaking structure. The provisions of the proposed settlement addressing cancelled capital projects are discussed in the Proposed Ratemaking and Cost Allocation Issues section below.

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<sup>26</sup> Whether PG&E was reasonable to continue relicensing activities after April 2011 is less clear, and the proposed settlement's use of that date as a cutoff is reasonable and is supported by the record.

### 3.6. Proposed Ratemaking and Cost Allocation Issues

PG&E's proposed ratemaking treatment for Diablo Canyon as it approaches retirement does not alter the existing ratemaking treatment, which has generation rates based on a depreciation schedule that assumes Diablo Canyon will be retired (and depreciated to zero) at the end of 2024 for Unit 1 and the end of 2025 for Unit 2. (PG&E Opening Brief at 70.)<sup>27</sup> PG&E does propose to add an annual true-up to reflect actual depreciation and capital spending at Diablo Canyon. (*Id.*, citing Ex. PG&E-1, at 10-4.)

PG&E also proposes:

For capital additions after 2016, PG&E proposes to simplify the recovery over the remaining years of Diablo Canyon's operations by calculating a remaining life depreciation rate based on the vintage of the addition. Thus, a capital addition project that goes into service in 2017 would have an assumed 8-year life/depreciation schedule and a capital addition project added in 2018 would have an assumed 7-year life/depreciation schedule.

Beginning in 2017, PG&E will true-up the depreciation rates for plant and capital additions set in the 2017 GRC with the actual costs incurred/recorded for these two categories. To implement this proposal, PG&E proposes to establish a new 2-way subaccount within the proposed Diablo Canyon Retirement Balancing Account that would be called the "Diablo Canyon Capital Depreciation Subaccount." This subaccount would track and adjust the capital revenue requirements associated with Diablo Canyon's net book value and capital additions. Starting in 2018, PG&E proposes to file in May of each year a Tier 3 advice letter trueing-up the prior year's forecast to recorded costs and establishing the amount of the depreciation rate adjustment that will be incorporated into the AET

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<sup>27</sup> The net plant cost for Diablo Canyon (which PG&E forecasts to be \$1.805 billion) and its recovery in rates are addressed in PG&E's general rate case (GRC).

advice letter for January 1 of the next year. (PG&E Opening Brief at 70-71, fn. omitted.)

In general, this approach (and the new subaccount) is reasonable. However, the review and true-up process should be reviewed in a GRC (or in a process established in a GRC) rather than by advice letter.

For the employee retraining program, as discussed in the employee program section above, the estimated cost of \$11.3 million is recoverable in rates through the NDNBC. PG&E's request for a new two-way expense-only subaccount (the Employee Retraining Program Subaccount) within the existing Diablo Canyon Retirement Balancing Account is approved.

For the employee retention program, as discussed in the employee program section above, PG&E is authorized rate recovery for up to \$211.3 million through the existing ratemaking treatment for the operation of Diablo Canyon. PG&E is authorized to establish a two-way expense-only balancing account (or sub-account) consistent with this decision.

For the costs of PG&E's NRC license renewal project, as discussed in the license renewal costs section above, PG&E is authorized to recover \$18.6 million for the license renewal project through an annual, levelized, expense-only revenue requirement of approximately \$2.4 million to be recovered from customers over an 8-year period from January 1, 2018, through December 31, 2025, through the generation rate component of PG&E's rates.

For cancelled capital projects at Diablo Canyon, PG&E is authorized rate recovery generally consistent with the proposed settlement on relicensing costs, under which:

PG&E would be authorized to recover 100% of the direct costs associated with cancelled capital projects at Diablo Canyon recorded to the project as of June 30, 2016, and would be further authorized to

recover 25% of the direct costs associated with cancelled capital projects recorded after June 30, 2016. All other direct costs and the Allowance for Funds Used During Construction (“AFUDC”) associated with such projects would not be recovered from customers. (May 23, 2017 Joint Settlement Motion at 3.)

PG&E’s original position in its Application was that:

In any instance in which PG&E decided in the future to cancel Diablo Canyon capital projects, PG&E proposed that the total projects costs incurred at the time of the decision to cancel be recovered from customers.<sup>28</sup> (*Id.* at 8.)

Accordingly, the proposed settlement results in potentially significant (albeit unquantified) cost savings to ratepayers. The proposed settlement on cancelled capital projects is approved, with one modification. PG&E should make its specific cost recovery requests through its GRC process (or another formal application), rather than through an advice letter process.

### **3.7. Additional Issues**

The Scoping Memo in this proceeding stated:

It is premature to address land use, facilities and decommissioning issues. At the same time, parties expressed concern that deferring consideration of these issues could result in PG&E making changes that would preclude future options. PG&E must obtain Commission approval under Pub. Util. Code § 851 prior to selling, leasing, or otherwise encumbering utility-owned land or facilities. While some of the land at issue is owned by a subsidiary of PG&E, PG&E has committed to take no action with any of the lands and facilities, whether owned by the utility or a subsidiary, before completion of a future process including a public stakeholder process, and states that the parties will not be prejudiced by excluding these issues from the current scope of this proceeding. PG&E is directed to abide by that commitment. (Scoping Memo at 6.)

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<sup>28</sup> In addition, those capital project costs charged would include AFUDC.

The commitments and directions in the Scoping Memo are reiterated here in order to ensure that there will be local input and further Commission review prior to the disposition of Diablo Canyon facilities and surrounding lands.

All unaddressed motions are denied.

#### **4. Comments on Proposed Decision**

The proposed decision of ALJ Allen was mailed to the parties in accordance with Section 311 of the Public Utilities Code, and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on November 29, 2017. Reply comments were filed on December 4, 2017.

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.

While many parties support the proposed decision's deferral of replacement procurement issues, including GHG impacts, to the IRP proceeding (*see, e.g. Comments of CLECA, California Clean DG Coalition, AReM, Joint Intervenors and the City and County of San Francisco*), a number of parties argue that the Commission should not defer to the IRP proceeding consideration of the GHG impacts of the retirement of Diablo Canyon (*see, e.g. Comments of CEERT, FOE, PG&E and NRDC*).

CEERT, for example, argues that by doing so the proposed decision ignores SB 350 and that law's GHG emission reduction requirements. (CEERT Comments at 5.) According to CEERT, the proposed decision rejects "a commitment to or procurement of GHG-free energy to replace Diablo Canyon," and accordingly is inconsistent with the Governor's objectives for clean energy, clean air, and pollution reduction. (*Id.*)

This is a mischaracterization of the proposed decision. Deferring consideration to the IRP proceeding of the GHG impacts of Diablo Canyon replacement procurement does not reject a commitment to procurement of greenhouse gas-free energy. Consideration of GHG impacts in the IRP proceeding is consistent with SB 350 and the GHG reduction policies of the State of California. The scope of the IRP proceeding expressly includes the following:

Based on the OIR, parties' comments on the OIR, and the discussion at the PHC, the scope of this proceeding will be focused around two of the new sections of the Public Utilities Code, codified by SB 350. These sections are as follows:

**454.51.** The commission shall do all of the following:

(a) Identify a diverse and balanced portfolio of resources needed to ensure a reliable electricity supply that provides optimal integration of renewable energy in a cost-effective manner. The portfolio shall rely upon zero carbon-emitting resources to the maximum extent reasonable and be designed to achieve any statewide greenhouse gas emissions limit established pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code) or any successor legislation. [...]

**454.52.**

(a) (1) Commencing in 2017, and to be updated regularly thereafter, the commission shall adopt a process for each loadserving entity, as defined in Section 380, to file an integrated resource plan, and a

schedule for periodic updates to the plan, to ensure that load-serving entities do the following:

(A) Meet the greenhouse gas emissions reduction targets established by the State Air Resources Board, in coordination with the commission and the Energy Commission, for the electricity sector and each load-serving entity that reflect the electricity sector's percentage in achieving the economy-wide greenhouse gas emissions reductions of 40 percent from 1990 levels by 2030. (R.16-02-007 Scoping Memo and Ruling at 3-5.)

IRP is implementing SB350 and California's GHG policies. Careful consideration of the relationship between Diablo Canyon, SB 350, and California's GHG policies in the IRP proceeding is more consistent with SB 350 and those policies than attempting to do so in this more narrowly focused proceeding. To clarify this issue, the decision has been modified to direct PG&E to be prepared to demonstrate in the IRP proceeding the greenhouse gas emissions of its electric portfolio in scenarios assuming Diablo Canyon retirement dates prior to 2024/2025.

CUE and PG&E, in arguing for higher employee retention payments, cast the choice of payment level as an either/or choice - the \$352.1 million originally proposed,<sup>29</sup> or the \$160.5 million approved by the proposed decision. (CUE Comments at 2-8, PG&E Comments at 3.) CUE then argues that because more evidence was presented supporting the \$352.1 million figure than the \$160.5 million figure, the proposed decision errs by adopting the lower figure.

This is a false dichotomy. Rather than a binary choice, the Commission must consider a spectrum. Absent a showing that it is reasonable to charge a

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<sup>29</sup> In its Reply Comments, CUE acknowledges that approximately \$303 million would likely provide the same effective level of payment.

cost to ratepayers, the proper amount is zero. With an adequate showing by a party, the needle moves off of zero, up to whatever level is supported by the record. The proposed decision found that in this case the parties had provided adequate support to move off of zero (although there was also record support for zero), but failed to support a level of \$352.1 million. ORA's testimony in support of \$160.5 million helped push the needle up to that level. At the same time, it is not clear that \$160.5 million is the correct level, particularly since it does not provide funding for the earlier (Tier 1) years.

CUE and PG&E further fault the proposed decision for not deferring to the retention payment "benchmarking" data cited by PG&E. (CUE Comments at 2, 4-6, 14; PG&E Comments at 6.) But as ORA points out:

[T]here is no data presented in the record regarding an applicable time-period for retention payments. Nothing was presented by PG&E's consultant in testimony, workpapers, or discovery responses regarding the reasonableness of a seven year retention payment plan relative to the time frame for those programs included within its industry data. (ORA Reply Comments at 3.)

In addition, the retention payment benchmarking data that was used appears to be broad, across a range of industries, rather than specific to the unique characteristics of the nuclear power industry. There is also nothing in the record to indicate that the retention payment benchmarking data reflects an equivalent level of severance pay as is present here. PG&E forecasts severance payment costs of \$168 million. (Exhibit PG&E-1 at 7-7.) If that amount were to be distributed equally to 1,461 employees, each employee would receive a severance payment of \$115,000. If anything, the benchmarking data appear to confirm that a 25% per year retention payment level is too generous.

There is, however, a benefit to providing certainty as to the contours of the retention program. Continued uncertainty could exacerbate employee concerns,

possibly resulting in increased attrition. In addition, the comments do support the desirability of retention payments throughout the entire period of Diablo Canyon's continuing operations, including the early years. (*See*, PG&E Comments at 3, 9.) Accordingly, the proposed decision has been modified to provide a reasonable fixed level of retention plan payments for Diablo Canyon's remaining years of operation.

The supporters of the CIMP make two arguments – first, that the CIMP is not a substitute for tax revenues, and second, that the CIMP is authorized (or at least not prohibited) by statute.

The Local Cities argue that the CIMP is not a substitute for tax revenues, and accordingly, the current situation is distinguishable from that addressed in D.97-05-088. The Local Cities argue that D.97-05-088 addressed a situation in which the County was explicitly “seeking a substitute for lost tax revenue,” while claiming: “Here, the CIMP is not explicitly based on tax revenues at all. Calculating the amount under the CIMP does not involve a computation of tax revenues.” (Local Cities Comments at 3.) This argument, however, is undercut by the County, which states:

Of the 91 taxing jurisdictions in the County, 20 have budgets that will not decrease as Diablo Canyon's unitary tax payments decrease. For the remaining 71 taxing jurisdictions whose budgets will decrease as Diablo Canyon is depreciated to \$0, the County re-allocated the unitary tax factors for the 20 unaffected jurisdictions to the 71 affected jurisdictions and arrived at \$75 million as the amount necessary to maintain the status quo. Under the settlement, the County would distribute the annual payment to each of the affected jurisdictions according to its proportional factor; the remaining 20 jurisdictions would receive funding from the State to make up the shortfall from Diablo Canyon's taxes. (County Comments at 7-8, footnotes omitted.)

Accordingly, it appears that the CIMP is based on tax revenues, and calculating the amount of the CIMP does involve a computation of tax revenues. The Cities have failed to distinguish the present case from D.97-05-088.

A number of parties attempted to cobble together arguments, based on Public Utilities Code Sections 701 and 712.5, to show that the Commission has at least implied authority to approve rate recovery for the CIMP payments to the community. (See, e.g. School District Comments at 3-6; A4NR Reply Comments at 1-4.) While Public Utilities Code Section 701 is very broad, and does grant the Commission significant authority, it does not directly address the situation here, and does not specifically authorize substituting ratepayers for taxpayers.

By comparison, Pub. Util. Code § 712.5 (SB 968) is much narrower, and is specifically focused on Diablo Canyon, but (as TURN points out) also does not expressly authorize the Commission to approve ratepayer funding for the CIMP:

Contrary to the claims made by A4NR and SLCUSD, Public Utilities Code §712.5 (SB 968) does not expressly authorize the Commission to approve ratepayer funding for this purpose. The provision merely directs the Commission to “cause an assessment to be completed’ regarding the “net economic effects” of a Diablo Canyon shutdown. The bill does not provide sweeping (and unbounded) authorization for unlimited ratepayer-funded payments to the affected communities to compensate for any impacts identified in the assessment. (TURN Reply Brief at 2, footnotes omitted.)

TURN is correct; even read in a broad way, Section 712.5 does not provide a basis for rate recovery of the CIMP. Minor clarifying changes have been made to the proposed decision on this issue.<sup>30</sup>

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<sup>30</sup> The retirement of Diablo Canyon and the CIMP proposal, along with D.97-05-088, present a unique situation. This decision is based on and limited to the specific facts presented, and is not a broad or general statement of the scope of the Commission’s authority.

The County requested clarification or greater emphasis of: “PG&E's commitment to continue funding local emergency response-related equipment, programs, and personnel, through the cessation of plant operations in 2025.” (County Comments at 13.) According to the County: “[T]he emergency response programs are of such importance to the community that there should be no ambiguity as to PG&E's continued funding.” (*Id.*) As the County notes, the proposed decision states in a footnote that “[e]xisting support for local emergency services provided through PG&E rates is not at issue in this proceeding, and remains in effect.” (*Id.*, citing Proposed Decision at 32, fn. 18.) This decision is addressing rate recovery for new costs; the cost of PG&E funding of emergency services that is already in rates is not at issue in this proceeding, and accordingly this decision does not reduce or eliminate that funding.

A number of parties criticize the proposed decision for inadequately valuing the “joint” aspect of the Joint Proposal, and argue that the proposed decision should have given the Joint Proposal more deference, as it was the product of a multi-party collaborative process. As FOE puts it:

While it is certainly true that PG&E is the Applicant in this case, it is incorrect to describe the various aspects of the Joint Proposal or the First Amendment as “PG&E proposals.” Doing so obscures the important fact that the Joint Proposal was a negotiated agreement among a diverse group of arms-length parties representing various and often conflicting interests, including labor unions and environmental organizations. (FOE Comments at 13; see also NRDC Comments at 2-3, CEERT Comments at 2-3.)

PG&E takes a similar position, including an argument that the employee retention benefit levels were agreed upon in an “arm’s length” bargaining process, and that the end result was “hard-bargained.” (PG&E Comments at 6.) The Local Cities likewise argue that the CIMP was the result of “good-faith,

arms-length” negotiations among “numerous parties.” (Local Cities Comments at 2.)

These arguments are undercut by the significant fact that the ratepayers were not at the table for these “arms-length” and “hard bargained” negotiations that decided they should pay for the costs of replacement procurement, employee retention, and the CIMP. This is akin to joining a group for dinner, who inform you that they have already ordered, and have decided that you will pay the bill. While the parties to the Joint Proposal may often have conflicting interests, that does not appear to have been the case here, and the Joint Proposal would have received more deference if it had included the interests of those who were being asked to pick up the tab. No changes have been made to the proposed decision on this issue.

Some parties argue that the proposed decision is too short, and that it does not adequately discuss the proposals that it rejects, particularly the deferral of replacement procurement issues to the IRP proceeding. (*See*, CEERT Comments at 1-2; IEP Comments at 2.) But as the Joint Intervenors point out:

There is detailed and extensive record support for the PD’s conclusion that the IRP should address replacement procurement, including testimony from PG&E’s own witnesses and the other Joint Parties. The PD briefly references solid record evidence supporting deferral of replacement procurement to the IRP, citing ORA and MCE testimony. More than those two parties offered experts who testified on the record that the replacement procurement should be considered in the IRP; the long list of experts whose record testimony supports deferral to the IRP includes: CCSF Witness Kinoshian; CLECA witness Barkovich; Joint Intervenor Witnesses Kinoshian and Barkovich; MCE Witness Dusel; ORA Witness Myers; Shell Witness Dyer; Solar City Witness Franz; and TURN Witnesses Marcus and Woodruff. These experts spoke to many reasons why the IRP is the right forum for a determination of need and

replacement procurement. (Joint Intervenors Comments at 4, footnotes omitted.)

The Joint Intervenors are correct that there is extensive record support for the proposed decision, particularly on this issue. The decision is based on the record and cites to the record; it is not necessary for it to address in detail every argument made in this proceeding.<sup>31</sup> Other than the changes noted above, the proposed decision has not been expanded.

## **5. Assignment of Proceeding**

Michael Picker is the assigned Commissioner and Peter V. Allen is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. Continuing operation of Diablo Canyon Unit 1 beyond 2024 and Unit 2 beyond 2025 would require renewal of NRC licenses, and would not be cost effective.
2. The retirement of Diablo Canyon will not cause adverse impacts on local or system reliability.
3. The impact of the retirement of Diablo Canyon on GHG emissions is not clear.
4. The IRP proceeding is broader in scope than this proceeding, and is considering issues including optimized portfolios of generation resources to achieve the statewide GHG emissions target.

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<sup>31</sup> The record in this proceeding includes 21 opening briefs, 17 reply briefs and over 100 exhibits.

5. PG&E employees at Diablo Canyon who want to transfer to other jobs at PG&E due to the retirement of Diablo Canyon may require retraining and related assistance.

6. PG&E's proposed employee retention plan is costly and inefficient.

7. A less costly employee retention plan would be more reasonable, and may help to ensure the continued safe operation of Diablo Canyon until its retirement.

8. The CIMP is largely intended to substitute for anticipated lost tax revenue.

9. PG&E's original request for rate recovery for relicensing costs totaled \$52.688 million for expenses from 2009 through 2016, including AFUDC.

10. The proposed settlement on relicensing costs would provide PG&E \$18.6 million in rate recovery for expenses from 2009 through 2011, and excludes AFUDC.

11. The proposed settlement on cancelled capital projects reduces ratepayer exposure to the cost of those projects.

12. It is premature to address land use, facilities and decommissioning issues.

13. PG&E has committed to take no action with any of the Diablo Canyon lands and facilities before completion of a future public stakeholder process.

### **Conclusions of Law**

1. PG&E's proposal to retire Diablo Canyon Unit 1 by 2024 and Unit 2 by 2025 is reasonable, and should be approved.

2. The need for procurement to replace Diablo Canyon should be addressed in the IRP proceeding.

3. Any procurement to replace Diablo Canyon should be addressed in the IRP proceeding to avoid increased GHG emissions in the most optimal manner.

4. Implementation of a retraining program for PG&E employees at Diablo Canyon is reasonable, and should be approved.

5. PG&E's proposed employee retention plan is not reasonable, and should not be approved.

6. A cost-effective employee retention plan for employees at Diablo Canyon is reasonable, and should be approved.

7. Having ratepayers take the place of taxpayers in paying for government services is not reasonable, and should not be approved.

8. The proposed settlement on relicensing costs is reasonable, and should be approved.

9. The proposed settlement on cancelled capital projects is reasonable as modified, and should be approved.

10. Land use, facilities and decommissioning issues do not need to be addressed in this decision.

11. The proposed settlement on NRC license renewal cost meets the requirements of Rule 12.1.

**O R D E R**

**IT IS ORDERED** that:

1. Pacific Gas and Electric Company's proposal to retire Diablo Canyon Unit 1 by 2024 and Unit 2 by 2025 is approved.

2. Pacific Gas and Electric Company's "Tranche 1" proposal to procure 2,000 gigawatt hours of energy efficiency is not approved.

3. Pacific Gas and Electric Company's withdrawn "Tranche 2" and "Tranche 3" replacement procurement proposals are not approved.

4. Replacement procurement will be addressed in the Integrated Resource Planning proceeding or a proceeding designated by the Integrated Resource Planning proceeding.

5. Efforts to avoid an increase in greenhouse gas emissions relating to the retirement of Diablo Canyon, including any replacement procurement, will be addressed in the Integrated Resource Planning proceeding or a proceeding designated by the Integrated Resource Planning proceeding.

6. Pacific Gas and Electric Company should be prepared to present scenarios for Diablo Canyon retirement in the Integrated Resource Planning proceeding that demonstrate no more than a de minimis increase in the GHG emissions of its electric portfolio.

7. Pacific Gas and Electric Company is authorized to recover \$11.3 million in rates for its Diablo Canyon employee retraining program.

8. Pacific Gas and Electric Company's proposed employee retention program is approved at a reduced payment level.

9. Pacific Gas and Electric Company is authorized to recover up to \$211.3 million in rates for a Diablo Canyon employee retention program.

10. Ratepayer funding of the Community Impacts Mitigation Program is not approved.

11. The proposed settlement on Nuclear Regulatory Commission (NRC) license renewal costs is approved, and Pacific Gas and Electric Company is authorized to recover \$18.6 million in rates for its NRC license renewal costs.

12. The proposed settlement on cancelled capital projects is approved as modified.

13. Pacific Gas and Electric Company will take no action with respect to any of the lands and facilities, whether owned by the utility or a subsidiary, before

completion of a future process including a public stakeholder process; there will be local input and further Commission review prior to the disposition of Diablo Canyon facilities and surrounding lands.

14. Application 16-08-006 is closed

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

# Appendix A

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