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 (U 39 E)	Application 16-08-006 (Filed August 11, 2016)

JOINT REPLY COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E), THE ALLIANCE FOR NUCLEAR RESPONSIBILITY, THE UTILITY REFORM NETWORK, THE OFFICE OF RATEPAYER ADVOCATES, FRIENDS OF THE EARTH, NATURAL RESOURCES DEFENSE COUNCIL, ENVIRONMENT CALIFORNIA, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 1245, AND COALITION OF CALIFORNIA UTILITY EMPLOYEES REGARDING LICENSE RENEWAL PROJECT AND CANCELLED PROJECT COST RECOVERY SETTLEMENT

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Pursuant to Rule 12.2 of the California Public Utilities Commission's ("Commission" or "CPUC") Rules of Practice and Procedure ("Rules"), Pacific Gas and Electric Company ("PG&E"), the Alliance For Nuclear Responsibility ("A4NR"), The Utility Reform Network ("TURN"), the Office of Ratepayer Advocates ("ORA"), Friends of The Earth ("FOE"), the Natural Resources Defense Council ("NRDC"), Environment California, International Brotherhood of Electrical Workers Local 1245 ("IBEW 1245"), and the Coalition of California Utility Employees ("CCUE"),[1] (collectively, the "Settling Parties") respectfully file this joint reply to comments on the Settling Parties'[2] May 23, 2017, joint motion (the "Settlement

[1] Together, PG&E, FOE, NRDC, Environment California, IBEW 1245, CCUE, and A4NR are the "Joint Parties" to the Joint Proposal filed as Attachment A to the Application in the above-referenced proceeding.

[2] While the San Luis Obispo Mothers for Peace ("MFP") is a party to the Settlement Agreement Regarding License Renewal Project and Future Cancelled Project Cost Recovery filed in this proceeding on May 23, 2017, MFP is not a joint party to this reply.

Motion") requesting that the Commission approve the Settlement Agreement Regarding License Renewal Project and Future Cancelled Project Cost Recovery (the "Agreement").[3]

The Green Power Institute ("GPI") filed late[4] comments that oppose adoption of the Agreement. The Californians for Green Nuclear Power ("CGNP") did not file a document styled as comments regarding the Settlement Motion, but CGNP's post-hearing reply brief filed on June 16, 2017, in this proceeding briefly refers to the Agreement and urges its rejection.[5] The Settling Parties respond below to both of these parties' comments. Pursuant to Rule 12.2, all other parties have waived objections to the Agreement, and no party has asserted that a hearing on the Agreement is necessary. For the reasons discussed below, the Commission should reject the perfunctory objections raised by GPI and CGNP and should approve the Agreement.

I. SUMMARY OF THE AGREEMENT

The Agreement is a compromise among the Settling Parties' respective litigation positions to resolve some, but not all, of the disputed issues raised by parties in this proceeding. Specifically, the Agreement addresses the mechanisms and amounts proposed by PG&E in this proceeding for recovery of costs associated with both PG&E's suspended License Renewal Project[6] and other Diablo Canyon Power Plant ("Diablo Canyon") projects that are cancelled during the remaining operational life of the facility.[7]

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[3] The Agreement was included as Attachment 1 to the Settlement Motion.

[4] *See* Opening Comments of the Green Power Institute on Joint Motion for Adoption of Settlement Agreement Regarding License Renewal Project and Cancelled Project Cost Recovery at Diablo Canyon, filed in A.16-08-006 on June 23, 2017 ("GPI Comments"). The Settling Parties filed and served their Settlement Motion on May 23, 2017. Pursuant to Rule 12.2, any reply was due to be filed within 30 days of that date, or by June 22, 2017. GPI's comments, filed on June 23, 2017, were therefore untimely.

[5] *See* Reply Brief of Californians for Green Nuclear Power, filed in A.16-08-006 on June 16, 2017, at p. 21, lines 17-22 ("CGNP Comments").

[6] Identified in the Scoping Memorandum issued in this proceeding as Issue 2.5. *See* Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge, filed in A.16-08-006 on November 18, 2016, at p. 5.

[7] Recovery of future cancelled project costs at Diablo Canyon were included within the scope of Issue 2.6 in the Scoping Memorandum. *See* Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge, filed in A.16-08-006 on November 18, 2016, at pp. 5-6.

The Agreement is comprised of two substantive components: (1) a compromise governing the recovery of capital costs expended from 2009-2016 on a project initiated and now suspended by PG&E to seek the renewal of the Nuclear Regulatory Commission ("NRC") operating licenses for Diablo Canyon (the "License Renewal Project"); and (2) a compromise governing the recovery of costs for any other capital projects at Diablo Canyon that are cancelled (i.e., abandoned) in the future.

First, the Agreement would authorize PG&E to recover a total of $18.6 million in direct costs[8] 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. The Agreement would therefore allow recovery of about 35 percent of PG&E's original request of $52.7 million for the License Renewal Project.[9]

Second, the Agreement would authorize a cost recovery mechanism to be applied to any cancelled capital projects at Diablo Canyon through the end of the plant's operations in 2025. Under the mechanism, PG&E would be authorized to recover 100 percent 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 percent of the direct costs associated with cancelled capital projects recorded after June 30, 2016. All other direct costs and the AFUDC associated with such projects would not be recovered from customers.

Each of these substantive components of the Agreement, the principles upon which the settlement is based, and the other general and miscellaneous provisions of the Agreement, are described more fully in the Settlement Motion. In their Settlement Motion, the Settling Parties

[8] The Agreement explicitly excludes recovery of Allowance for Funds Used During Construction ("AFUDC") associated with the License Renewal Project.

[9] Application at p. 17 (Request 11).

demonstrate that the Agreement is reasonable in light of the whole record, is consistent with law, and is in the public interest.

II. REPLY TO GPI COMMENTS

GPI states that while it is "cautiously supportive" of the Settlement Motion, it is compelled to propose modifications to the Agreement.[10] GPI's proposed modifications only relate to the recovery of costs for the License Renewal Project, and GPI specifically supports without modification the Agreement's terms regarding recovery of future cancelled project costs at Diablo Canyon.[11]

GPI's proposed modifications to the Agreement are as follows:

(1) PG&E's shareholders and customers should share equally the costs of the License Renewal Project;[12]

(2) PG&E should recover $9.3 million for the License Renewal Project rather than the $18.6 million set forth in the Agreement.[13]

(3) PG&E should not recover any of the License Renewal Project costs incurred after it requested suspension of the NRC's relicensing process in April 2011.[14]

The last of these recommendations is fully consistent with the proposed Agreement. Namely, the Settling Parties agreed 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 the NRC suspension request in April 10, 2011.[15] The Settling Parties

[10] GPI Comments at p. 1.

[11] *Id.* at p. 4.

[12] *See id.* at p. 1.

[13] *Id.* at p. 2.

[14] *Id.*

[15] *See* Ex. PG&E-5-2, Attachment 5-16.

then agreed, consistent with GPI's recommendation, that PG&E should not recover the direct costs incurred subsequent to that deferral request. GPI's recommendation supports the use of the same April 2011 cut-off date for determining which costs are recoverable and which are not.

Turning to GPI's first recommendation, the Agreement reached by the Settling Parties actually allows PG&E to recover less than 50 percent of License Renewal Project costs. As GPI itself recognizes, the Agreement reduces by nearly two-thirds the amount of incurred License Renewal Project costs that PG&E would be allowed to recover in rates.[16] The evidence in this proceeding demonstrates that PG&E recorded a total of $52.7 million in direct costs and AFUDC associated with the License Renewal Project.[17] The very substantial reduction from $52.7 million to $18.6 million in the settlement reflects not only the Settling Parties' agreement to allow recovery of only direct costs incurred prior to April 2011, but also their agreement that no AFUDC should be recovered for the License Renewal Project as a reasonable sharing of risk between customers and shareholders.

Notwithstanding the fact that the Agreement would allow PG&E to recover only about 35 percent of its recorded costs, GPI seeks to cut in half again the allowed recovery under the Agreement. GPI argues that allowing only $9.3 million in cost recovery, or about 18 percent of PG&E's actual incurred costs, is necessary to ensure that PG&E's shareholders and its customers share the costs "equally."[18] GPI's math does not follow its arguments. Under the proposed Agreement, PG&E's shareholders would already waive recovery of more than half of the recorded costs of the Project. The Agreement does not, as GPI asserts, represent a situation in which "all expenditures made ostensibly on behalf of ratepayers" are "fully recovered."[19] GPI's

[16] GPI Comments at p. 2.

[17] *See* Attachment 2 to Settlement Motion (corrected version of PG&E workpapers originally included in Ex. PG&E-2).

[18] GPI Comments at p. 3.

[19] *Id.*

arguments might apply to PG&E's original proposal to recover $52.7 million, but they do not reflect the very large disallowance already embodied in the Agreement.

GPI's argument appears to be based on its factually incorrect and unsupported assertion that $18.6 million in direct costs incurred until April 2011 are "approved" costs that can be differentiated from the remaining License Renewal Project costs. GPI cites neither the record nor any conclusion of law to support this assertion, and in fact there is no basis in the record of this proceeding for GPI's argument. GPI's proposal is therefore arbitrary. In contrast, the Settlement Motion describes in detail why the Agreement represents: (a) a reasonable compromise between the Settling Parties' competing litigation positions that recovery should include all or nothing; and (b) reasonably represents the costs incurred during the time when PG&E was actively pursuing the NRC license extensions (prior to May 2011). The Commission should recognize the significant compromises that all Settling Parties made to reach a reasonable and principled outcome and should reject one party's attempt to unilaterally re-negotiate that compromise on an arbitrary basis.

III. CGNP COMMENTS

CGNP's opposition to the Agreement is stated in a single sentence: "CGNP urges the commission to reject this self-serving settlement as not being in the public interest and instead authorize the full reimbursement of all past and future license renewal costs to firmly establish the plant capital costs and regulatory costs of future Diablo operation."[20] The Commission should summarily reject CGNP's conclusory, unsupported statement that the Agreement is not in the public interest. CGNP's only rationale appears to be that the Agreement is "self-serving," a statement that is patently false. None of the Settling Parties achieved their desired outcome in the Agreement. Rather, the Agreement represents a reasonable compromise between PG&E's request to recover all of its incurred costs and the positions of some intervenors that PG&E should recover none of these costs. In this way, the Agreement serves the public interest, and not

[20] CGNP Reply Brief at p. 21.

the interest of any single party, by contributing to the efficient and fair resolution of this proceeding.

IV. CONCLUSION

The record of this proceeding, Commission precedent, and the public interest support the granting of the Settlement Motion and adoption of the Agreement. While this outcome represents a compromise of each of the Settling Parties' litigation positions, this compromise is reasonable when viewed in its entirety and in light of the record. For the foregoing reasons, the comments of GPI and CGNP should be rejected, and the Commission should approve the Agreement in its entirety.

Pursuant to Commission Rule 1.8(d), counsel or representatives for the Settling Parties have authorized PG&E to submit this Motion on their behalf.

Respectfully Submitted,

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