

**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 ) Application 16-08-006  
And Recovery of Associated Costs Through ) (Filed August 11, 2016)  
Proposed Ratemaking Mechanisms (U39E). )  
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**OPENING COMMENTS OF THE ALLIANCE FOR NUCLEAR RESPONSIBILITY  
ON THE *PROPOSED DECISION OF ALJ ALLEN***

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## **Subject Index of Recommended Changes to *Proposed Decision***

**A4NR respectfully requests that the Commission modify the *Proposed Decision* to:**

A. Strike certain superfluous language from the *Proposed Decision* indicating that PG&E's decision to file the Diablo Canyon Nuclear Power Plant ("DCNPP") license-renewal application with the Nuclear Regulatory Commission was reasonable;

B. Order PG&E to file an annual Tier 3 advice letter providing for the true-up of DCNPP revenue requirement related to DCNPP capital expenditures, annual depreciation expense and cancelled capital projects, to PG&E's actual recorded costs in lieu of the revenue requirement adopted in PG&E's last general rate case;

C. Approve the employee retention program as proposed; and,

D. Approve the community impacts mitigation program as proposed;

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Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, the Alliance for Nuclear Responsibility (“A4NR”) submits these opening comments on the *Proposed Decision of ALJ Allen* (“*Proposed Decision*”) issued on or about November 8, 2017, in the above-captioned proceeding. A4NR was an active party in this proceeding and, subject to specific reservations and exclusions, was among the parties executing the original “Joint Proposal” which formed the basis for the application filed by Pacific Gas & Electric Company (“PG&E”).<sup>1</sup> A4NR strongly supports the signature holding in the *Proposed Decision*, to wit, that Diablo Canyon Nuclear Power Plant (“DCNPP”) Units 1 and 2 should be retired no later than the dates upon which the current reactor operating licenses for those facilities expire in 2024 and 2025, respectively. Notwithstanding its support for this ruling, albeit momentous, A4NR submits the *Proposed Decision* bears certain legal and/or factual errors as described in these comments and should be modified to correct them.

**I. Introduction**

The *Proposed Decision* embraces and approves the headline request in PG&E’s application and the Joint Proposal, *i.e.*, that DCNPP power operations should cease no later than the expiry of the current reactor operating licenses. Notwithstanding this important holding, the *Proposed Decision* fails to approve many of the important terms and conditions attached to PG&E’s decision to retire DCNPP. In considering the various comments filed on the *Proposed Decision*, the Commission should keep in mind that the failure to approve any of the vital conditions attached to DCNPP’s retirement would, at the very least, trigger a review by each of the parties to the Joint Proposal as to whether they should be released from their support

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<sup>1</sup> See Application 16-08-006, Attachment A, *Joint Proposal of Pacific Gas and Electric Company, Friends of the Earth, Natural Resources Defense Council, Environment California, International Brotherhood of Electrical Workers Local 1245, Coalition of California Utility Employees and Alliance for Nuclear Responsibility to Retire Diablo Canyon Nuclear Power Plant at Expiration of the Current Operating Licenses and Replace It with a Portfolio of GHG Free Resources*, executed on June 20, 2016 (“Joint Proposal”).

of PG&E's decision to retire DCNPP.<sup>2</sup> The Commission should avoid these uncertainties by adopting each and every term and condition included in the Joint Proposal, as modified, and the other related settlements presented in this case, a result fully supported by the record evidence and applicable law.

## **II. The *Proposed Decision* Should Be Modified to Rely Strictly on the Terms of the Settlement Agreement Regarding the Treatment of DCNPP License Renewal Costs.**

Shortly after the close of evidentiary hearings, A4NR and PG&E entered into settlement discussions regarding PG&E's request for the recovery of the DCNPP license renewal costs. The initial discussions were promising and negotiations were broadened to include other parties. Negotiations proved fruitful and led to the execution and filing of the *License Renewal Cost Settlement*.<sup>3</sup> Under the terms of the settlement agreement, PG&E would be allowed to recover through rates the direct costs it incurred in pursuit of the DCNPP license extensions through April 10, 2011, the date on which PG&E requested that the Nuclear Regulatory Commission delay the final processing of the pending license renewal application.<sup>4</sup> The settlement agreement also provides that PG&E will waive the recovery of all allowances for funds used during construction ("AFUDC") charged to the license renewal project.<sup>5</sup> These terms would allow PG&E to recover \$18.6 million of project costs over the eight-year period from January 1, 2018, through December 31, 2025.<sup>6</sup> The *Proposed Decision* largely approves the settlement and authorizes PG&E to recover \$18.6 million of the \$52.7 million of license renewal costs PG&E originally sought in its application, as well as the amortization schedule for these costs.<sup>7</sup>

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<sup>2</sup> See Joint Proposal, at Section 7.2, which provides, "The Parties agree that, if the CPUC fails to adopt this Joint Proposal and the associated settlement agreement in its entirety and without modification, the Parties shall meet and confer as specified in CPUC Rule 12.4 within fifteen (15) days thereof to discuss whether the Joint Proposal and associated settlement agreement should be renegotiated with alternative terms and resubmitted to the Commission for approval. The Parties agree under such circumstances to bargain in good faith to restore the balance of benefits and burdens under the Joint Proposal. If the Parties cannot mutually agree to resolve the issues raised by the CPUC's actions, the Joint Proposal may be rescinded by any Party and the Parties shall be released from their obligations under the Joint Proposal. Thereafter, the Parties may pursue any action they deem appropriate." See also, Joint Proposal, at Section 7.3, which provides in pertinent part, "PG&E's obligation to withdraw its [Nuclear Regulatory Commission] license renewal application ... shall not become effective or binding until the CPUC's approval of the Joint Proposal Application has become final and non-appealable."

<sup>3</sup> See *Joint Motion of Pacific Gas and Electric Company, the Alliance for Nuclear Responsibility the Utility Reform Network, the Office of Ratepayer Advocates, the San Luis Obispo Mothers for Peace, et al., for Adoption of Settlement Agreement Regarding License Renewal Project and Cancelled Project Cost Recovery at Diablo Canyon ("License Renewal Cost Settlement")*, Application 16-08-006, May 23, 2017.

<sup>4</sup> See *License Renewal Cost Settlement*, at Section 1.1.

<sup>5</sup> See *License Renewal Cost Settlement*, at Section 1.1.

<sup>6</sup> See *License Renewal Cost Settlement*, at Section 1.2.

<sup>7</sup> *Proposed Decision* at pp.41 to 45.

In approving the settlement, the *Proposed Decision* reaches well beyond the stipulated facts and grounds to which the parties to the *License Renewal Cost Settlement* agreed. At page 44, the *Proposed Decision* states, “It was reasonable for PG&E to have spent [\$18.6 million during] 2009 to 2011 to seek to renew the operating licenses for Diablo Canyon.”<sup>8</sup> At the bottom of page 44 and continuing on to page 45, the *Proposed Decision* goes on to find 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.”<sup>9</sup> A4NR strongly disputes these findings and urges the Commission to strike this superfluous language from the final decision.

In reaching its settlement with PG&E, A4NR expressly agreed to waive any assertion that the costs subject to rate recovery under the terms of the settlement were imprudent and/or unreasonable. Further, A4NR agreed to waive any assertion that state law barred the cost recovery of any license renewal costs without regard to their prudence or reasonableness. PG&E agreed to do the same with respect to its opposing showing and legal arguments. As stated in the settlement, the parties agreed to a compromise in lieu of pursuing their factual beliefs, policy recommendations and legal theories. The *Proposed Decision* recognizes the reasonableness of the results of this compromise, noting that the settlement “provides significant ratepayer savings” and removes AFUDC from the amounts charged to rates.<sup>10</sup> In light of the settlement, A4NR strenuously objects to any finding going beyond the terms of the settlement to find that PG&E’s efforts to extend the DCNPP reactor operating licenses were reasonable, a matter which was hotly contested during the evidentiary phase of this proceeding. Furthermore, even if these factual grounds remain in the decision, they are not dispositive insofar as these facts do not speak to the legal issues related to PG&E’s rate request – as noted in the record, the state prohibition against retroactive ratemaking and the application of statutes governing the cost recovery for major capital projects costing more than \$50 million were also at bar,<sup>11</sup> and the *Proposed Decision* fails to address these issues, presumably because the settlement obviates the need to do so. This renders the language to which A4NR here objects inconclusive on the reasonableness of cost recovery.

In some part, the *Proposed Decision* bases its findings as to the reasonableness of the PG&E license-renewal application on the *circa* 2010 agreement of TURN and ORA that the costs of the

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<sup>8</sup> *Proposed Decision* at p.44.

<sup>9</sup> *Proposed Decision* at pp.44 to 45.

<sup>10</sup> *Proposed Decision* at p.44.

<sup>11</sup> See, e.g., *Opening Brief of the Alliance for Nuclear Responsibility*, Application 16-08-006, May 26, 2017, at pp.13 to 14.

application should be recovered through rates.<sup>12</sup> The *Proposed Decision* fails to note that this agreement was never approved by the Commission – it was pending review and evidentiary hearings demanded by A4NR to examine the prudence of PG&E’s determination that the DCNPP licenses should be extended, a review and hearings that were never initiated let alone completed.<sup>13</sup> Further, the agreement by TURN and ORA that PG&E’s license-renewal costs should be recovered through in rates was wholly predicated on PG&E’s agreement to submit a later, adequate showing demonstrating license renewal was a prudent resource option.<sup>14</sup> PG&E never submitted any such demonstration, despite several demands for such a showing in PG&E’s 2014 and 2017 general rate cases, on the grounds that the settlement was never approved and the terms were therefore never binding.<sup>15</sup> The findings of the *Proposed Decision* here rest on ground as famously shaky as the DCNPP site.

A4NR respectfully requests that the problematic language, which is wholly superfluous to the approval of the settlement which fully meets the requirements of the Commission’s settlement rules and which does not need to be buttressed by any findings as to the reasonableness of the costs addressed by its terms, be stricken from any final decision.<sup>16</sup> Having laid down its arms on this issue to reach a settlement, A4NR should be allowed to exit the battle without wounds.

### **III. The *Proposed Decision* Should Be Modified to Adopt the Settlement Related to the Proposed Annual True-Up for DCNPP Actual Capital Expenditures, Adjusted Depreciation Expense, and Cancelled Projects.**

In addition to addressing the rate recovery of costs for the license renewal project, the *License Renewal Cost Settlement* addresses the recovery of the costs of DCNPP capital projects that are cancelled prior to completion. Due to DCNPP’s impending retirement, PG&E is reconsidering whether it would be more cost-effective to replace planned capital additions (as approved in prior general rate cases) with alternative operating and maintenance programs. Where PG&E decides in favor of cancelling planned DCNPP capital projects, the *License Renewal Cost Settlement* provides that PG&E should be allowed to

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<sup>12</sup> *Proposed Decision* at pp.44 to 45; see *Joint Motion of Pacific Gas & Electric Company, the Division of Ratepayer Advocates and The Utility Reform Network for Approval of Settlement Agreement*, Application 10-01-022, November 16, 2010.

<sup>13</sup> See *Prepared Direct Testimony of A4NR witness Geesman*, Exhibit A4NR-1, pp.8 to 10.

<sup>14</sup> See *Prepared Direct Testimony of A4NR witness Geesman*, Exhibit A4NR-1, p.25.

<sup>15</sup> See *Prepared Direct Testimony of A4NR witness Geesman*, Exhibit A4NR-1, pp.37; also *Prepared Direct Testimony of TURN witness William Perea Marcus*, Exhibit TURN-Volume 1, p.30.

<sup>16</sup> A4NR’s request would include the sentence appearing at page 44 of the *Proposed Decision* and quoted above, as well as the paragraph beginning at the bottom of page 44 with the words, “While nuclear plants are controversial” and ending at the top of page 45 with the words, “as proposed by the settlement.”



recover the direct costs of those projects incurred through the end of June 2016, the time when PG&E announced it would suspend the license renewal project and retire DCNPP at the end of its existing operating licenses.<sup>17</sup> For direct costs incurred after June 2016, PG&E will waive rate recovery for seventy-five percent (75%) of such costs, as well as all AFUDC charged to those projects without regard to the date of such charges.<sup>18</sup> The *Proposed Decision* approves these provisions of the settlement, but in a departure from the settlement's terms, waives the requirement that PG&E must file annual Tier 3 advice letters updating DCNPP actual capital expenditures, annual depreciation expense, and cancelled capital projects. In lieu of annual advice letters, the *Proposed Decision* orders PG&E to submit the changes to its DCNPP capital-related revenue requirement in a general rate case or through a process approved in a general rate case.<sup>19</sup> A4NR submits that this departure from the recommendations of the parties is the result of an apparent oversight and should be corrected to restore the annual Tier 3 advice letter process as proposed by PG&E and A4NR, and joined by the other parties to the settlement.

The evidentiary record in this proceeding establishes that the annual Tier 3 advice letter contemplated for DCNPP capital-related costs (*i.e.*, plant additions, depreciation accruals and project cancellations) arose in PG&E's recently concluded 2017 general rate case.<sup>20</sup> The annual true-up process is intended to (1) facilitate a more timely review of expected changes to the DCNPP capital-related annual revenue requirement adopted in the 2017 general rate case and (2) reflect those changes, which A4NR expects will decrease PG&E base electric rates, as soon as possible. Additionally, the annual Tier 3 advice letter process would remove DCNPP capital-related revenue requirement removed from the grander scale of the 2020 general rate cases, allowing for a simplified, more focused review by the few parties with an interest in this discrete set of PG&E's costs. Although the *Proposed Decision* indicates that the review process for cancelled projects might occur in a process defined by a general rate case, it fails to take into consideration that this is exactly where the Tier 3 advice letter process was originally conceived: PG&E's last general rate case. The annual Tier 3 advice letter process was in fact designed and approved in PG&E's 2017 general rate case and the *Proposed Decision* reverses this prior approval for no apparent reason. A4NR submits this was likely the result of an oversight and should be corrected.

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<sup>17</sup> See *License Renewal Cost Settlement*, at Section 2.1.

<sup>18</sup> See *License Renewal Cost Settlement*, at Section 2.1.

<sup>19</sup> See *Proposed Decision* at pp.47, 48.

<sup>20</sup> See *Prepared Direct Testimony of A4NR witness Geesman*, Exhibit A4NR-1, pp.39 to 41; also, Appendix A, at Section C. The Commission approved the agreements underlying the proposed annual Tier 3 advice letter filing in *Decision Authorizing Pacific Gas and Electric Company's General Rate Case Revenue Requirement for 2017-2019*, Decision 17-05-023, Application 15-09-001, May 18, 2017.

#### **IV. The *Proposed Decision* Should Be Modified to Approve the Employee-Retention Program as Proposed.**

The *Proposed Decision* approves rate recovery for a limited portion of the costs of the employee-retention program proposed by the Joint Proposal. Rather than authorize PG&E to recover \$352.1 million for the employee-retention program as proposed, the *Proposed Decision* limits cost recovery to no more than \$160.5 million, with the actual amounts and structure of the program to be determined by a Tier 2 advice letter to be filed by PG&E. The advice letter is to describe “an employee retention program that is designed to provide incentives as needed for sufficient PG&E employees to continue working at Diablo Canyon up until the date of its retirement.”<sup>21</sup> This limited approval is unsupported by the record evidence and the *Proposed Decision* should be modified to approve the entire program as described in the Joint Proposal.

##### **A. The record evidence does not support the proposition that cutting more than half of the funding for the proposed employee-retention program will prevent worker flight effectively.**

The *Proposed Decision* rejects funding the employee-retention program as proposed based on a series of inferences drawn from the structure of the employee-retention program and the evidentiary record. In reaching its conclusion, the *Proposed Decision* finds that:

- The program fails to address “free riders,” that is, retention bonuses are offered to every full-time DCNPP employee, including those who “would continue to work at Diablo Canyon (until it closes) without a retention payment, or ... would leave their employment at Diablo Canyon regardless of a retention payment”;<sup>22</sup>
- Retention bonuses will be paid to employees who might “continue to work at Diablo Canyon after its retirement, on tasks such as decommissioning, nuclear fuel storage, maintenance and security”;<sup>23</sup>
- Retention bonuses may be received by unhappy or unmotivated employees, a result that does not serve ratepayer interests;<sup>24</sup>
- The evidence addressing the likelihood that high-skill, high-wage workers would be attractive candidates for other jobs and leave once the closure date was announced was not specific to employment opportunities in the nuclear industry;<sup>25</sup>

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<sup>21</sup> *Proposed Decision* at p.29.

<sup>22</sup> *Proposed Decision* at pp.26 to 27.

<sup>23</sup> *Proposed Decision* at pp.27 to 28.

<sup>24</sup> *Proposed Decision* at p.27, footnote 12.

<sup>25</sup> *Proposed Decision* at p.28.

- The funding level proposed by the Office of Ratepayer Advocates (“ORA”) is “more reasonable” and should be authorized;<sup>26</sup>
- Approval of the proposed employee-retention program would mean “the specifics of the retention program would effectively be locked in place by a Commission decision, meaning that neither employees, nor unions, nor PG&E could renegotiate a new deal absent Commission approval,...[i]n essence, [delegating] management of the program to the Commission”;<sup>27</sup> and,
- For reasons that are “unclear,” PG&E and its unions executed agreements for the employee-retention program in advance of Commission approval, putting the Commission in the awkward “position of saying ‘no’ ... , while the employees may already be thinking that the answer is ‘yes,’” admonishing PG&E for having created this situation.<sup>28</sup>

Assuming for the moment that each of the foregoing criticisms are valid, A4NR submits that, individually and collectively, none of them are as compelling as the need to meet the stated objective of the proposed employee-retention program. That objective, which even opponent ORA described as meritorious,<sup>29</sup> is to provide the greatest reasonable assurance that as many of DCNPP’s trained and experienced workers as possible, many of whom hold unique and necessary federal and state licenses and/or security registrations and clearances, will remain in place through the end of DCNPP’s power operations.<sup>30</sup> Achieving this objective is vital: apart from the self-evident importance of the program’s objective, a properly trained workforce, with appropriate licenses and/or security clearances, is a requirement of federal safety regulations.<sup>31</sup>

While the *Proposed Decision* arguably makes the case that some retention payments will be made to workers who might remain in place without them and that others will leave despite the program, the *Proposed Decision*’s failure to approve the full extent of the program on these grounds fails to address the fundamental premise that the program is necessary to assure that (1) enough of the existing DCNPP workforce will remain in place so that federal regulatory requirements can be met and, more importantly, (2) DCNPP will be operated reliably and safely through the dates upon which the DCNPP units are to be

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<sup>26</sup> *Proposed Decision* at p.29. A4NR assumes the *Proposed Decision* agrees as to the merits of the program’s purpose since funding for the program is approved, albeit at a much lower level than requested.

<sup>27</sup> *Proposed Decision* at p.29.

<sup>28</sup> *Proposed Decision* at p.30.

<sup>29</sup> See *Prepared Direct Testimony of ORA witness Logan*, Exhibit ORA-7, at p.3.

<sup>30</sup> See *Prepared Direct Testimony of A4NR witness Becker*, Exhibit A4NR-1, at p.5.

<sup>31</sup> See *Pacific Gas and Electric Company’s Opening Brief*, pp.43-44 (especially, citations to record evidence). Additionally, the record establishes that the Commission’s Diablo Canyon Independent Safety Committee has expressed some concern that, with the retirement announcement having been made, DCNPP will experience worker flight to the point that it will affect plant operations and safety, a phenomenon suffered by other shuttered nuclear plants. See *Rebuttal Testimony of A4NR witness Becker*, Exhibit A4NR-2, at p.2.

retired. Whether these objectives can be met with a few dollars less or a more precisely crafted program that would discriminate between workers who might leave and those who might not (assuming PG&E or the DCNPP unions could make these distinctions with any degree of precision) simply misses the point: since the Commission expects DCNPP to operate through the full period of the DCNPP reactor operating licenses, *i.e.*, for another seven to eight years, the Commission should also provide PG&E with the necessary tools to assure the Commission's expectations can and will be met. None of the imperfections cited in the *Proposed Decision* diminishes the more critical and dispositive matter: the employee-retention program as proposed is more likely to achieve the objective of the program than the impecunious, halfway approach taken by the *Proposed Decision*. There is simply nothing in the record to support the proposition that cutting program funding by more than half will prevent worker flight effectively or at levels necessary to achieve the program's purposes.

**B. The record evidence does not support the *Proposed Decision's* criticisms of the employee-retention program.**

**1. The Alleged Program Imperfections**

The *Proposed Decision's* assertion that the employee-retention program as proposed will benefit free riders and "unhappy or unmotivated" workers, while yet failing to induce others to stay in place, may seem logical, after all no such program can be perfect. But the *Proposed Decision's* conclusion that the level of workers falling into these groups is so material as to render the proposal unreasonable or ineffective is without substantial support in the evidentiary record. Rather, the *Proposed Decision* disregards the greater body of evidence indicating the program was designed and is expected to meet its purposes. While a single party speculated that the 800-plus DCNPP employees nearing retirement age will remain in place to protect their earned retirement benefits, it would be equally likely that workers, upon meeting the requirements for retirement, will retire, receive their PG&E benefits, and move on to other employment. Contravening the rank speculation of this one party, the potential adverse effects of plant closure on worker retention has been raised by members of this Commission's Diablo Canyon Independent Safety Committee based on the experience at other shuttered nuclear plants.<sup>32</sup>

The *Proposed Decision* also asserts that the concern regarding worker flight was based on irrelevant experience at fossil plants rather than other nuclear plants. The *Proposed Decision* interprets this evidence too narrowly. The point is that the closure of a place of employment will affect the likelihood

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<sup>32</sup> See *Rebuttal Testimony of A4NR witness Becker*, Exhibit A4NR-2, at p.2.

that workers will remain in place, a specter that is unaffected by other details – the salient characteristic of the plant from the worker perspective is that it is being closed, not its particulars.

In this case, the Commission approves DCNPP's retirement in 2024/2025, some eight years from today. The length of this period increases the probability workers will have opportunities to move on and retire or accept alternative employment. The proposed employee-retention program provides a significant incentive for DCNPP's workers to disregard those opportunities. The *Proposed Decision* itself embraces this logic by approving funding for an employee-retention program, albeit at less than half the cost of the proposed program. The issue then is one of efficacy and here the Joint Proposal is superior to the *Proposed Decision*: the evidence demonstrates that the proposed program will provide a prudently designed incentive that will cause over eighty-five percent (85%) of DCNPP's union workers to remain in place through the plant's retirement, while no evidence exists to indicate how effective a program scaled back by forty-five percent (45%) can or will be.<sup>33</sup> Whatever the minor imperfections of the proposed employee-retention program might be, it is demonstrably effective at achieving the incontrovertibly important goal, conceded by the *Proposed Decision*, of minimizing employee attrition.

## **2. The Reasonableness of the ORA Funding Level Adopted by the *Proposed Decision***

Notwithstanding its criticisms of the proposed employee-retention program, the *Proposed Decision* approves funding for a redrawn program at the funding level recommended by the ORA. The record evidence does not support any finding that such a program will be effective and misapplies the ORA funding recommendation.

Contrary to the implications drawn from the *Proposed Decision*, ORA did not argue that the proposed program was improperly structured. To the contrary, ORA agreed that the proposed two-tier

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<sup>33</sup> The *Proposed Decision* curiously dismisses the early worker-enrollment rates as indicating that the program is unnecessary, *i.e.*, the *Proposed Decision* indicates the high response rate implies DCNPP workers would remain at the plant in the absence of the offer of financial incentives. (See *Proposed Decision* at p.30.) A4NR is at a complete loss to understand the reasoning behind this interpretation of the record evidence. The question posed to workers was whether they would agree to remain at DCNPP if they received a financial incentive. Even with the offer of incentives, one out of seven union workers at DCNPP declined to enter into such an agreement, which already raises obvious staffing retention issues for management. It is an open question as to the number of workers who would remain at DCNPP through 2025 in the absence of incentives or if less attractive incentives were offered. But it defies logic and common sense to believe that omitting or reducing retention incentives would have the same or better results than is the case under the structure of the program as proposed. There is simply nothing in the record to suggest that those electing to remain under the offer of financial incentives would remain in the absence of incentives, and not even ORA, upon whose recommendation the *Proposed Decision* relies, made any such claims in this regard.

structure and level of financial incentives were all reasonable. Despite these agreements, ORA recommended limiting rate recovery to the costs of the program's second tier, which covers the later years of the program. ORA justified its approach as a matter of "equitable funding," a proposition not aimed at either structural flaws in the proposal or the purposes of the program. Whatever the reason for the funding cut, the record evidence indicates that the reduction in funding as proposed by ORA would undermine the launch of the program's first tier and reduce the success rate of the second tier.<sup>34</sup> The record evidence simply does not support adopting the funding level included in the *Proposed Decision*.

### 3. The Issue of Management Discretion

The *Proposed Decision* next finds that the parameters of the employee-retention program are too specific and "would effectively be locked in place by a Commission decision, meaning that neither employees, nor unions, nor PG&E could renegotiate a new deal absent Commission approval,...[i]n essence, [delegating] management of the program to the Commission."<sup>35</sup> A4NR disagrees.

To begin, many of the program details were negotiated between PG&E and its unions and memorialized by contract. From a ratemaking perspective, the details and contracts simply provide the fundamental bases for estimating the costs of the program. Without these program details and cost estimates, the Commission would be unable to determine the reasonableness of the costs of the program, undermining the logic of the *Proposed Decision's* complaint here.

More to the point of the criticism posed by the *Proposed Decision*, it is hardly unusual for the Commission to receive the level of contract and programmatic detail as was the case here. The design of the program, the number of workers eligible for the program, the level of financial incentives for which those workers are eligible, the forecast of the proportion of workers who would agree to the offer, the terms and conditions under which those incentives would have to be repaid if a worker left prior to the plant's closure, *etc.*, are all necessary for the Commission to review the prudence of the program and set reasonable rates. Even if the Commission's approval of the costs of the program implied that these details were "locked in place," this hardly constitutes a delegation of management duties by PG&E to the Commission<sup>36</sup> – PG&E would still have a duty to manage the program prudently and responsibly and seek changes from both its

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<sup>34</sup> See *Rebuttal Testimony of A4NR witness Becker*, Exhibit A4NR-2, at p.2.

<sup>35</sup> *Proposed Decision* at p.29.

<sup>36</sup> If anything "locks" the program details in place and limits PG&E's discretion to change them at will, it is the underlying contractual agreement negotiated between PG&E and its unions. The case presented by the instant employee-retention program is no different from the situation the Commission inevitably faces in a utility's general rate case, where a utility's labor agreements form the basis for wage and salary cost estimates.

unions and the Commission where circumstances warranted changes.<sup>37</sup> The Commission's approval of the program does not constrain PG&E's freedom to manage the program prudently any more than does the Commission's ongoing authority to oversee the program and approve the actual costs of the program, all of which will occur periodically in the context of the Commission's review of the balancing account to which the costs and revenues related to the program will be recorded.

#### 4. Timing of the Agreement

Lastly, the *Proposed Decision* complains that, by executing agreements with its unions regarding the employee-retention program prior to the filing of the instant application, PG&E may have jumped the gun and thereby placed the Commission in the awkward "position of saying 'no' ... while the employees may already be thinking that the answer is 'yes.'"<sup>38</sup> This concern is misplaced. DCNPP's employees were made fully aware of the fact that this Commission had the discretion to reject the program in whole or in part, and that the payment of any financial incentives is contingent on the Commission's approvals. Additionally, the terms of the Joint Proposal have received considerable local attention and make clear that DCNPP's scheduled retirement is to a not insignificant degree contingent on approval of the employee-retention program: an impoverished program would mean higher worker flight, jeopardizing safe, reliable plant operations, and perhaps even a reconsideration of the plant's retirement. If the Commission adopts the *Proposed Decision* as written, and in the absence of some further agreement reached between PG&E and the unions in that event, it would come as no surprise to A4NR if either PG&E or the unions, or both, at the very least exercise their rights to renegotiate the terms of the Joint Proposal. The *Proposed Decision* is simply wrong in suggesting that anyone, least of all the workers and their unions, have considered either the approval of the employee-retention program or DCNPP's retirement a "done deal."

Finally, contrary to the assertion in the *Proposed Decision* that the reason for the sequencing of the agreements and the filing of the application was "unclear," the reason is abundantly clear. The purpose of the program was to address worker concerns about the closure of the plant and the effects closure would have on their careers, their livelihoods and the financial security of their families. Addressing those concerns early, prior to the announcement of the Joint Proposal and the dates of DCNPP's retirement, was

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<sup>37</sup> As the *Proposed Decision* acknowledges, the Commission's rules provide for the modification of prior Commission orders in the event of "new or changed facts." (See Commission Rule 16.4 addressing petitions for modification.) This "key" belies the notion that any of the terms of the employee-retention program are permanently "locked."

<sup>38</sup> *Proposed Decision* at p.30.

necessary to achieving the objective of retaining as many of DCNPP's workers as possible and as early as possible. The *Proposed Decision's* criticism of the employee-retention program here is mistaken.

#### **V. The Commission May Lawfully Authorize Rate Recovery for the Risk-Related Repairs and Removal Costs Underlying the Community Impacts Mitigation Program.**

The *Proposed Decision* rejects the funding for the proposed community impacts mitigation program, in part, on the grounds that the Commission does not have the legal authority to approve such a program.<sup>39</sup> As to this holding, the *Proposed Decision* commits legal error.

A4NR submitted un rebutted testimony demonstrating that other communities geographically and demographically similar to DCNPP's surrounds suffered adverse fiscal and socioeconomic effects from the retirement of a nearby nuclear power plant. Local governments and agencies providing services and benefits to those other power plants and their employees were adversely affected by the plant closures and forced to address the loss of tax base by which those services and benefits were funded, notwithstanding that the need for those services and benefits continued beyond the cessation of plant operations.<sup>40</sup> So as to prevent the reoccurrence of this situation in the communities near DCNPP, A4NR successfully pursued legislative solutions aimed at mitigating the effects of a potential retirement of the DCNPP with local legislators, resulting in the enactment of 2016 Senate Bill 968 (Monning) and the codification of Public Utilities Code Section 712.5.<sup>41</sup> As a result, California law, contrary to the holding in the *Proposed Decision*, clearly establishes that it is wholly consistent with the public interest for the Commission to address the "potential actions for the state and local jurisdictions to consider in order to mitigate" any adverse socioeconomic and fiscal impacts arising from DCNPP's retirement.<sup>42</sup> While a greater range of those methods and impacts will be addressed in a separate, later Commission proceeding, the plain language of the bill's provisions makes clear that public policy and state law bring the proposed community impact mitigation program within the definition of costs that, if approved by the Commission, would result in just and reasonable rates.

In adding Section 712.5 to the Public Utilities Code, the Legislature expressly acknowledged that the Joint Proposal was pending the Commission's approval.<sup>43</sup> In addition to recognizing that the Commission might soon take action on the Joint Proposal, the Legislature also explicitly distinguished (a)

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<sup>39</sup> *Proposed Decision* at pp.32, 35 to 41.

<sup>40</sup> *Rebuttal Testimony of A4NR witness Weisman*, Exhibit A4NR-2, at p.3.

<sup>41</sup> *Stats.2016*, Ch.674.

<sup>42</sup> Public Utilities Code Section 712.5(a)(1).

<sup>43</sup> *Stats.2016*, Ch.674, Section 2.



the “*further* information and recommendations” expected from the study compelled under this new statute from (b) the *pending* proposals to mitigate community impacts included in the Joint Proposal, taking care to indicate that any information and recommendations that might result from the future study were “not intended to interfere with or invalidate the joint proposal.”<sup>44</sup> These provisions clearly demonstrate the Legislature’s view that the Commission had jurisdiction to proceed with the review and approval of the *Joint Proposal* and each of its constituent parts, *most notably the provisions of the Joint Proposal comprising the community impacts mitigation program*, and that additional recommendations and other similar programs would be forthcoming.<sup>45</sup> The language of Section 2 of Chapter 674 of the Statutes of 2016 provide clear, dispositive guidance to the Commission regarding its jurisdiction to reflect the costs of the proposed community impacts mitigation program in rates. Based upon these provisions of state law, the omnibus ratemaking authorities granted to the Commission by the Legislature fully support the approval of the program. See Public Utilities Code Section 451, 701, 728, 761; see also, *Greyhound Lines v. Public Utilities Commission*, 68 Cal.2d 406, 410-411 (Cal.Sup.Ct., 1968), establishing the presumptive validity of the Commission’s interpretation of the provisions of the Public Utilities Act if within statutory purposes; accord, *Southern California Edison Company v. Public Utilities Commission*, 31 Cal.4<sup>th</sup> 781, 796 (Cal.Sup.Ct., 2003).

Despite ruling that the Commission is without jurisdiction to approve the community impacts mitigation program, the *Proposed Decision* goes on to criticize the fairness of the proposed program and the allocation of funds among the political subdivisions which are the initial beneficiaries of the program, indicating that such unfairness also justifies excluding the program’s costs from rates.<sup>46</sup> A4NR submits that any issues as to program design or the initial allocation of funds pending in the instant application can easily be cured by the further actions of this Commission. As provided in Public Utilities Code Section 712.5, the Commission has been directed by the Legislature to complete a study by no later than July 1, 2018, “of the adverse and beneficial economic impacts, and the net economic effects, for the County of San Luis Obispo and the surrounding regions,” and further, “review...potential actions for the state and local jurisdictions to consider in order to mitigate the adverse economic impact of a shutdown.” The study and

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<sup>44</sup> *Stats.2016*, Ch.674, Section 2 (emphasis added).

<sup>45</sup> This section of the law also acknowledges the pendency of the Commission’s consideration of the employee-retention program as part of the Joint Proposal application. The *Proposed Decision* does not, however, indicate that the Commission is without jurisdiction to approve this part of the Joint Proposal.

<sup>46</sup> *Proposed Decision* at pp.32 to 35.

review of these further recommendations can and should address any “unfairness” the *Proposed Decision* finds in the present proposal.

Finally, although the *Proposed Decision* describes the community impacts mitigation program as a putative tax and revenue substitute, the record establishes that the program is fully justified as a reparations payment, compensating the local community for the unique risks posed by DCNPP’s close proximity.<sup>47</sup> PG&E itself has identified the risk of catastrophic events at the site as an “enterprise-level” risk, corporate-speak for a life-changing event of unfathomably adverse consequences.<sup>48</sup> A4NR urges the Commission to exercise its preeminent discretion to treat these costs as a reparations payment and legitimate negative removal and/or salvage costs that may be recorded as a plant retirement costs.

Given the imminent opportunity the Commission will have to cure any perceived unfairness in the pending proposal, the *Proposed Decision*’s rejection of the program is unduly harsh and inconsistent with the state policies expressed in California law. PG&E’s proposed community impacts mitigation program assures that the local programs and public amenities enjoyed by plant workers, both as PG&E employees and citizens, will be supported for as long as skilled labor is needed to support plant operations and the ensuing decommissioning project. The record fully establishes that the aging of the national pool of nuclear plant operators means these workers are in high demand in other locations and the Commission should support proposals to assure the DCNPP workforce stays put for as long as they are needed in the San Luis Obispo area.<sup>49</sup>

## **VI. Conclusion and Summary of Recommendations**

For the foregoing reasons and so as to cure certain factual and legal errors in the *Proposed Decision*, A4NR respectfully requests that the Commission modify the *Proposed Decision* so as to:

A. Strike the superfluous language at pages 44 and 45 of the *Proposed Decision* finding that PG&E reasonably incurred costs related to the DCNPP license renewal application filed with the Nuclear Regulatory Commission;

B. Order PG&E to file an annual Tier 3 advice letter providing for the true-up of DCNPP revenue requirement related to DCNPP capital expenditures, annual depreciation expense and cancelled capital

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<sup>47</sup> Compare *Proposed Decision* at pp.35 to 41, with *Rebuttal Testimony of A4NR witness Weisman*, Exhibit A4NR-2, at p.5.

<sup>48</sup> See *Rebuttal Testimony of A4NR witness Weisman*, Exhibit A4NR-2, at p.5.

<sup>49</sup> See *Rebuttal Testimony of A4NR witness Weisman*, Exhibit A4NR-2, at p.5.

projects, to PG&E's actual recorded costs in lieu of the revenue requirement adopted in PG&E's last general rate case;

- C. Approve the employee-retention program as proposed by the parties to the Joint Proposal; and,
- D. Approve the community impacts mitigation program as proposed.

Respectfully submitted,

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November 29, 2017  
Encinitas, California

## APPENDIX A

### PROPOSED MODIFICATIONS TO FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS

#### Findings of Fact

Strike Finding of Fact 6 and replace so as to read: “6. PG&E’s proposed employee retention program is necessary to assure that trained, qualified employees will remain in place until such time as Diablo Canyon ceases power operations and the current Diablo Canyon reactor operating licenses expire.”

Strike Finding of Fact 8 and replace so as to read: “8. The CIMP provides reasonable reparations to the local communities for the burdens borne by those communities during past, present and future utility operations at the Diablo Canyon site.”

#### Conclusions of Law

Modify Conclusion of Law 5 as follows: “5. PG&E’s proposed employee retention plan is ~~not~~ reasonable, and should ~~not~~ be approved.”

Strike Conclusion of Law 7 and replace so as to read: “7. It is reasonable for PG&E’s rates to reflect the costs of reasonable reparations made to the local communities that have borne, are bearing and will bear the burdens of past, present and future nuclear power operations at the Diablo Canyon site.”

Modify Conclusion of Law 9 as follows: “9. The proposed settlement on cancelled capital projects is reasonable ~~as modified~~, and should be approved.”

#### Ordering Paragraphs

Modify Order 7 to read: “7. Pacific Gas and Electric Company’s proposed employee retention program is ~~not~~ approved.”

Modify Order 9 to read: “9. Pacific Gas and Electric Company is authorized to recover ~~\$160.5 up~~ to \$352.1 million in rates for a Diablo Canyon employee retention program.”

Modify Order 10 to read: “10. Ratepayer funding of the Community Impacts Mitigation Program is ~~not~~ approved.”

Modify Order 12 to read: "12. The proposed settlement on cancelled capital projects is approved as modified."