

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

Application of Pacific Gas and Electric
Company to Recover in Customer Rates the
Costs to Support Extended Operation of
Diablo Canyon Power Plant from September
1, 2023 through December 31, 2025 and for
Approval of Planned Expenditure of 2025
Volumetric Performance Fees
(U 39 E)

Application 24-03-018
(Filed March 29, 2024)

REPLY BRIEF OF SAN LUIS OBISPO MOTHERS FOR PEACE

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I. PG&E IS WRONG ON THE BURDEN OF PROOF

PG&E takes inconsistent stances on the burden of proof in this proceeding. On one hand, PG&E alludes to the correct rule statement on the burden of proof -- a rule statement already set forth in SLOMFP's Opening Brief -- when PG&E states that the utility has the burden of proof to establish the requisite elements of a cost-recovery application by the preponderance of the evidence after a weighing of all the evidence, including any competing evidence.¹ Therefore, it appears that PG&E agrees with SLOMFP that the preponderance of evidence standard requires a weighing of *all* the evidence to determine if the utility has met its burden of proof.²

On the other hand, PG&E takes an inconsistent position on the burden of proof when it incorrectly states that once the utility makes a prima facie showing on the cost-recovery application, there is a shifting of the burden of proof from the utility to the parties in opposition to the request. In PG&E's view, parties in opposition to the request have the burden "going forward to produce evidence to support their position and raise reasonable doubt as to the utility's request."³ On this point SLOMFP and PG&E disagree and PG&E's request that the Commission adopt a "burden shifting" approach should be rejected. While the authority cited by PG&E generally supports this proposition, the Commission is not bound by it and should decline to adopt such an approach in this proceeding.⁴ A burden shifting approach implies a two pronged analysis whereby the Commission reviews only PG&E's evidence to determine if a prima facie case has been met and then reviews the opposition or other evidence to determine if a given party has meet its "burden" to establish that a different outcome is warranted. Such an analysis would be a perversion of the applicable burden and standard of proof, which PG&E and SLOMFP appear to agree includes a weighing of *all* the evidence concomitantly to determine if the *utility* has shown that the preponderance of evidence justifies approval of the cost-recovery application and extended operations as requested.⁵ Accordingly, the Commission should reject PG&E's request for a "shifting of the burden of proof" approach.

¹ See PG&E, Opening Brief, p.3; see also SLOMFP Opening Brief, pp. 1-2.

² *Ibid.*

³ PG&E, Opening Brief, p. 3.

⁴ Decision 16-06-053, p. 17 ["But Kerman places too much weight on the role of precedent. While the Commission can consider prior decisions as a guide, the Commission is not bound by precedent, unlike a court."].

⁵ PG&E, Opening Brief p, 3; see also SLOMFP Opening Brief, pp. 1-2.

II. PG&E CONSTRUES P.U.C. § 712.8(h)(1) IN MANNER THAT WOULD RESULT IN DISHARMONY WITH OTHER PROVISIONS OF S.B. 846 AND P.U.C. § 451

By attempting to limit the scope of review of the prudence and cost-effectiveness of extended operations to the current record period,⁶ PG&E essentially urges the Commission to construe S.B. 846 in a manner that would create internal disharmony within its provisions, as well as disharmony with P.U.C. § 451.⁷ Adopting PG&E's position would constitute legal error.⁸

The Commission's fundamental task in construing S.B. 846 is to ascertain the legislative intent so as to effectuate the purpose of the law.⁹ The first step of construing a statute begins with an examination of the statute's words, giving them a plain and commonsense meaning within their context, keeping in mind the statutory purpose.¹⁰ Statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible.¹¹ Conversely, interpreting a statute in such a way as to result in disharmony between statutes is legal error.¹²

When harmonizing two or more statutes or statutory provisions, they must be regarded as blending into each other to form a single statute and construed as to give effect, when possible, to all the provisions thereof.¹³ Generally, harmonization is possible where there is no conflict between the two statutes or the reconciliation of a possible conflict does not require the statutes to be rewritten, nor would strike a compromise the Legislature itself did not reach.¹⁴

Additionally, there is a presumption against repeal by implication, including partial repeals that occur when one statute implicitly limits another statute's scope of operation.¹⁵ There will only be an implied repeal when there is no rational basis for harmonizing two potentially conflicting statutes and the statutes are irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation. Absent an express declaration of legislative intent, the

⁶ PG&E, Opening Brief, p. 71.

⁷ PG&E, Opening Brief, p. 71.

⁸ *State Dept. of Public Health v. Superior Court* (2015) 60 Cal. 4th 940, 955-956.

⁹ *Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 715.

¹⁰ *Tan v. Appellate Division of Superior Court* (2021) 76 Cal.App.5th 130, 136.

¹¹ *Ibid.*

¹² *Pacific Legal Foundation v. Unemployment Ins. Appeals Bd.* (1981) 29 Cal.3d 101, 114; see also *Legacy Group v. City of Wasco* (2003) 106 Cal.App.4th 1305, 1313.

¹³ *State Dept. of Public Health*, supra, 60 Cal. 4th 940, 955-956.

¹⁴ *Tan*, supra, 76 Cal.App.5th 130, 139.

¹⁵ *Id.* at p. 138.

presumption is that a statute was not impliedly repealed by a subsequent statute unless there is no rational way to harmonize the two potentially conflicting statutes.¹⁶

PG&E argues that the burden of proof to justify extended operations in this proceeding is limited to the current record period ending December 2025, not the full period of extended operations through 2030.¹⁷ PG&E's interpretation of S.B. 846 and P.U.C. § 451 is incorrect. When the statutes are properly harmonized, it is clear that prudence (including the ongoing need for DCP) and cost-effectiveness of extended operations must be addressed in the instant proceeding and that the scope of the review of extended operations must include not just the current record period ending 2025, but the entirety of extended operations through 2030.

SLOMFP expert Peter Bradford has testified to the review required by P.U.C. § 451. In the context of cost-recovery applications, he described PG&E's duty under P.U.C. § 451 as a continuing obligation to evaluate prudence, need, and cost-effectiveness of extended operations - not just for the current record period, but wholistically through the entirety of extended operations.¹⁸

This is consistent with relevant provisions of S.B. 846. The following provisions of S.B. 846 show that the Legislature intended extended operations as a stopgap measure to address then-perceived uncertainties about electrical supply until the time new renewable energy and zero carbon resources become adequate to meet demand:

P.R.C. § 25548(b) states that "Preserving the option of continued operations of the Diablo Canyon powerplant for an additional five years beyond 2025 may be necessary **to improve statewide energy system reliability and to reduce the emissions of greenhouse gases while additional renewable energy and zero-carbon resources come online, until those new renewable energy and zero-carbon resources are adequate to meet demand.** Accordingly, it is the policy of the Legislature that seeking to extend the Diablo Canyon

¹⁶ *Ibid.*

¹⁷ PG&E, Opening Brief, p. 71.

¹⁸ Exh. SLOMFP-01, Opening Testimony of Peter Bradford, p. 6, 26 to 30 [I concluded that an effective review of cheaper and more effective energy alternatives was not performed. I further concluded that without such a review, a commitment to extend the operating life of DCP past its initial license expiration of 2024/2025 was not prudent.]; p. 7, lines 7 to 17; p. 8, lines 8 to 16 [PG&E has not performed any meaningful analysis, as its duty under P.U.C. section 451 dictates, of whether it is prudent to continue extended operations in light of new data strongly suggesting that the need for DCP from a reliability standpoint is even weaker now. In performing this analysis a prudently managed utility would constantly use available market and planning mechanisms to determine whether its commitments, especially one with the skyrocketing costs and uncertainties of the aging Diablo Canyon, could instead be used towards providing adequate power supply at the lowest cost (e.g. renewable energy).].

powerplant’s operations for a renewed license term is prudent, cost effective, and in the best interests of all California electricity customers. The Legislature anticipates that this **stopgap measure** will not be needed for more than five years beyond the current expiration dates.”¹⁹

P.R.C. § 25548(c) states “**During the time the Diablo Canyon powerplant’s operations are extended, the state will continue to act with urgency to bring clean replacement energy online to support reliability and achieve California’s landmark climate goals. The state is accelerating efforts to bring offshore wind and other clean energy resources online, including action to streamline permitting for clean energy projects.**”²⁰

P.R.C. § 25548.3(c)(5)(C) states that the DWR loan can be terminated upon “[a] determination by the Public Utilities Commission that an extension of the Diablo Canyon powerplant **is not cost effective or imprudent, or both.**”²¹

P.R.C. § 25233.2(b) states that “With respect to the **Department of Water Resources loan** to the operator of the Diablo Canyon powerplant, pursuant to Chapter 6.3 (commencing with Section 25548), **if the costs of the extension of operations of the Diablo Canyon powerplant exceed limits provided for in the loan agreement at any time, the commission shall reevaluate the cost-effectiveness of prolonging the powerplant’s operations.**”²²

P.U.C. §712.8(q) states that “**The Legislature finds and declares that the purpose of the extension of the Diablo Canyon powerplant operations is to protect the state against significant uncertainty in future demand resulting from the state’s greenhouse-gas-reduction efforts involving electrification of transportation and building energy end uses and regional climate-related weather phenomenon, and to address the risk that currently ordered procurement will be insufficient to meet this supply or that there may be delays in bringing the ordered resources online on schedule.** Consequently, the continued operation of Diablo Canyon Units 1 and 2 beyond their current expiration dates shall not be factored into the analyses used by the commission or by load-serving entities not subject to the commission’s jurisdiction when determining future generation and transmission needs to ensure electrical grid reliability and to meet the state’s greenhouse-gas-emissions reduction goals. To the extent the commission decides to allocate any benefits or attributes from extended operations of the Diablo Canyon powerplant, the commission may consider the higher cost to customers in the operator’s service area.”²³

¹⁹ (Emphasis added).

²⁰ (Emphasis added).

²¹ (Emphasis added).

²² (Emphasis added).

²³ (Emphasis added).

P.U.C. § 712.8(r) states that “Notwithstanding Section 10231.5 of the Government Code, in coordination with the Energy Commission, the Independent System Operator, and the Department of Water Resources, **the commission shall submit, in accordance with Section 9795 of the Government Code, a report to the Legislature each year on the status of new resource additions and revisions to the state’s electric demand forecast, and the impact of these updates on the need for keeping the Diablo Canyon powerplant online.**”²⁴

The above-referenced statutory provisions demonstrate that the scope of review of extended operations in the instant cost-recovery proceeding includes the entirety of the extended operations period (2024 through 2030) because the provisions refer to extended operations as a whole, not piecemealed review in annual cost recovery record periods. Thus, PG&E’s urging to limit those provisions’ application to just the current record period (through 2025 only) is wrong from a statutory interpretation standpoint.²⁵

The above-referenced provisions also demonstrate the Legislature intended that the scope of review of extended operations in this proceeding must include prudence, need and cost-effectiveness evaluations because the Legislature explicitly declared that DCPD is a stopgap measure, that California is continuing to act to bring replacement energy online,²⁶ that the DWR loan can be terminated (at any time) upon a Commission finding that extended operations are not cost-effective or imprudent or both, and that the Commission must continually assess the need for keeping DCPD online.²⁷ Accordingly, the Commission must continually assess in these DCPD proceedings whether the statutory purpose underlying S.B. 846 (i.e. DCPD as a temporary stopgap measure) has been satisfied. If the Commission adopts PG&E’s attempt to restrict the scope of the prudence and cost-effectiveness review of extended operations, the Commission’s decision will constitute an impermissible repeal by implication of one or both of a pair of statutes -- P.U.C. 451 and SB 846. -- which are fully capable of harmonization.²⁸

As pointed out in SLOMFP’s Opening Brief, the Commission directed PG&E to provide a forecast of all costs to be recovered from ratepayers over time, in a single analysis.²⁹ What would be the point of directing PG&E to provide all costs associated with extended operations in

²⁴ (Emphasis added).

²⁵ *Tan, supra*, 76 Cal.App.5th 130, 139.

²⁶ PRC § 25548(c).

²⁷ PUC § 712.8(r).

²⁸ *Tan, supra*, 76 Cal.App.5th 130, 139.

²⁹ *Id* at p. 14; see also D.23-12-036, p.60.

a single analysis, if the entirety of the forecasted costs of extended operations cannot be considered? As stated in SLOMFP's Opening Brief, the instant proceeding is uniquely positioned to be the only proceeding where the entirety of the costs associated with extended operations can be reviewed *before* the lion's share of extended operation costs are incurred.³⁰ Otherwise, with each cost-recovery application, PG&E would be permitted to lead the Commission down a primrose path where the total costs of extended operations are not fully analyzed until the very end of extended operations. At that point, the Commission's ability to adequately protect ratepayers from a too-expensive and unneeded aging nuclear power plant will have already come to pass. Thus, the Commission should conclude that P.U.C. § 451 and S.B. 846 require that the scope of prudence and cost-effectiveness review in this proceeding must consider not just the current record period, but the entirety of extended operations through 2030.

A close reading of the S.B. 846 cost-recovery provision, P.U.C. § 712.8(h)(1)³¹, does not change this conclusion. Subdivision (h)(1) does not contain any statement suggesting that the Commission, when assessing PG&E's cost-recovery application under subdivision (h)(1), should inexplicably divorce itself from the statutory framework mandating continual review of DCP's need as a "stopgap" measure. Even PG&E's Opening Brief concedes that the cost-recovery application "is part of a greater effort that PG&E is supporting to respond to the State's call to support electric reliability..."³² So it is odd that PG&E would then suggest that review in this cost-recovery proceeding is cabined to the process described in P.U.C. § 712.8(h)(1).³³ When the Legislature intends for a statute to prevail over all contrary law, it typically signals this intent by using phrases like "notwithstanding any other law" or "notwithstanding other provisions of law."³⁴ The Legislature did not signal such intent by including any of the requisite language in P.U.C. § 712.8(h)(1).

Accordingly, as urged in SLOMFP's Opening Brief, the Commission should find that P.U.C. § 451 and S.B. 846 require an ongoing review of prudence, need, and cost-effectiveness of the entirety of extended operations in this proceeding.³⁵ Since PG&E's application and

³⁰ SLOMFP Opening Brief, p.6.

³¹ Cited in PG&E Opening Brief, p. 71.

³² PG&E Opening Brief, p. 1.

³³ PG&E Opening Brief, p. 71.

³⁴ *Tan*, supra, 76 Cal.App.5th 130, 138.

³⁵ Opening Brief of SLOMFP, pp. 5-11.

testimony has failed to meet its burden of proof on these issues, the Commission should reject PG&E's claims of cost-recovery associated with extended operations.

III. PG&E UTILIZES A STRAWMAN FALLACY WITH RESPECT TO EXPERT WITNESS PETER BRADFORD'S TESTIMONY

PG&E claims that the testimony of Bradford "generally can be described as challenging all of PG&E's forecasts as unreasonable because of omitted costs, but SLOMFP does not specifically challenge PG&E's O&M expense forecast of \$304.6 Million."³⁶ PG&E mischaracterizes Bradford's testimony in an effort to make rebutting the testimony possible. PG&E's strawman argument should be rejected by the Commission. Bradford actually testified that PG&E's costs forecasts were unreasonable, not just because of omitted O&M Projects,³⁷ but also because PG&E is seeking to move forward with incurring these projected costs without utilizing a contingency factor and without consideration of cost-effectiveness, the continuing need for DCP, and whether the goals of S.B. 846 have already been satisfied.³⁸ PG&E has not meaningfully addressed Bradford's points in its own testimony nor in its opening brief. The Commission should construe this omission as an admission that PG&E had no substantive rebuttal evidence or argument to present.

IV. CGNP'S OPENING BRIEF IGNORES THE REALITY OF THE CURRENT STATE OF ENERGY SUPPLY AND DEMAND RESPONSE IN CALIFORNIA

In review of the parties' opening briefs, SLOMFP expert Mark Cooper appears to be the only expert to offer an actual, comprehensive cost-comparison of DCP to alternative energy sources. CGNP engages in lengthy discussion of the purported cost-effectiveness of DCP.³⁹ CGNP's \$/mwh for DCP is more than twice as low as the inaccurate figure proffered by PG&E.⁴⁰ It is also at least three times lower than the \$/mwh for DCP calculated by other parties to this proceeding, including SLOMFP's expert Mark Cooper.⁴¹ CGNP's \$/mwh for DCP should therefore be rejected by the Commission.

CGNP also discusses the purported need for DCP, citing alleged ongoing concerns with price volatility during and/or as a result of wildfires,⁴² natural gas supply impairments, and

³⁶ PG&E Opening Brief, p. 9.

³⁷ Exh. SLOMFP-01, Opening Testimony of Peter Bradford, p. 7, line 12 to p. 8, line 7; see also ³⁷ Exh. SLOMFP-05 Rebuttal Testimony of Peter Bradford, p. 5, lines 10 to 20.

³⁸ ³⁸ Exh. SLOMFP-01, Opening Testimony of Peter Bradford, p. 6, 26 to 30; p. 7, lines 7 to 17; p. 8, lines 8 to 16.

³⁹ CGNP Opening Brief, pp. 10 to 11.

⁴⁰ *Ibid.*; see also Exh. PG&E-02, PG&E Rebuttal Testimony, p. 1-3. lines 1-7.

⁴¹ Exh. SLOMFP-02, Opening Testimony of Mark Cooper, p. 6, line 18 to p. 8, line 3.

⁴² CGNP Opening Brief, p. 12.

record electricity demand during California heat storms.⁴³ However, CGNP’s Opening Brief makes little to no mention of the S.B. 846 Joint Agency Reliability Planning Assessment First Quartey Report dated May 2024 or the Combined Second and Third Quarterly Report dated August 2024. SLOMFP experts Bradford and Konidena, as well as A4NR, have all indicated that these assessments establish that supply (fueled primarily by battery storage) and demand response have now reached sufficient levels to obviate the need for DCPD.⁴⁴

Thus, CGNP misses the point that there is substantial evidence in the record that the statutory purpose of S.B.846 - extended operations as a stopgap measure to address perceived uncertainties about electrical supply until the time new renewable energy and zero carbon resources become adequate to meet demand⁴⁵ - has been met. CGNP’s failure to meaningfully address the implications of the S.B. 846 Joint Agency Reliability Planning Assessment First Quartey Report dated May 2024 or the Combined Second and Third Quarterly Report dated August 2024 on the prudence, need, and cost-effectiveness evaluations of extended operations should detract from the weight of its testimony on this issue.

V. CONCLUSION

Based on the foregoing, SLOMFP requests that the recommendations contained in Section I of its Opening Brief be adopted.

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⁴³ CGNP Opening Brief, pp. 14 to 21.

⁴⁴ Exh. A4NR-01, Prepared Testimony of John Geesman, pp. 4, line 13 to 5, line 16; Exh. SLOMFP-03, Corrected Opening Testimony of Rao Konidena, p. 15, lines 4 to 21; Exh. SLOMFP-07, Rebuttal Testimony of Rao Konidena, p. 1, line 1 to p. 2, line 17; Exh. SLOMFP-02, Opening Testimony of Mark Cooper, p. 6, lines 8 to 17 and p. 8, lines 1-3.

⁴⁵ See Section II, *supra*.