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)

SAN LUIS OBISPO MOTHERS FOR PEACE'S APPLICATION FOR REHEARING OF DECISION 24-12-033

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I. INTRODUCTION

San Luis Obispo Mothers for Peace ("SLOMFP") brings this Application for Rehearing of D.24-12-033 ("Decision") pursuant to California Public Utilities Commission Rules of Practice and Procedure, Rule 16.1. The Application for Rehearing should be granted because the Decision is unlawful and commits legal error.

II. STANDARD ON AN APPLICATION FOR REHEARING

Applications for Rehearing shall set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous, and must make specific references to the record or law.[1] A legal error in or the unlawfulness of the Commission's decision can be demonstrated in a number of ways, which generally mirror the grounds for a Petition for Writ of Review before the Court of Appeal under Public Utilities Code ("P.U.C.") § 1757.[2]

III. ARGUMENT

A. THE COMMISSION HAS ACTED WITHOUT OR IN EXCESS OF ITS POWERS, HAS NOT PROCEEDED IN THE MANNER REQUIRED BY LAW AND HAS ISSUED A DECISION THAT IS NOT SUPPORTED BY THE FINDINGS THEREIN

1. THE DECISION IMPERMISSIBLY SHIFTS THE BURDEN OF PROOF ON THE CONTINGENCY FACTOR ISSUE FROM PG&E TO SLOMFP

It is legal error for the Commission to misapply the standard and burden of proof.[3] The Commission correctly states that PG&E has the burden of proof on each issue in this proceeding.[4] This necessarily includes PG&E's burden of proof on the contingency factor issue. However, the Commission impermissibly shifts the burden of proof on the contingency factor issue from PG&E to SLOMFP when the Commission states that "The Commission finds that it is reasonable for PG&E to exclude speculative costs in this application…In the absence of any new

[1] P.U.C. § 1732; California Public Utilities Commission Rules of Practice and Procedure, Rule 16.2.
[2] D.22-05-011 pp. 7-8 [discussing P.U.C. § 1757 in its analysis of whether to grant an Application for Rehearing] and D.21-08-023 pp. 4-5, 10, 23 [same].
[3] *San Pablo Bay Pipeline Co. LLC v. Public Utilities Com.* (2013) 221 Cal.App.4th 1436, 1461 [the burden of proof cannot be shifted without express justification articulated by the Commission]; *Utility Consumers' Action Network v. Public Utilities Com*. (2010) 187 Cal.App.4th 688, 698 [affirming the standard of proof applied by the Commission]; see also D.18-10-019, pp. 30-32 [where the Decision articulated the standard and burden of proof utilized in the analysis].
[4] D.24-12-033, p. 12.

information, ***asserting that certain safety risks have associated costs is highly speculative***."[5] While SLOMFP has asserted that PG&E was required to include a contingency factor in the cost forecasts, it does not follow that SLOMFP has therefore assumed PG&E's burden of proof in this proceeding. This is especially true where PG&E conceded that generally it has the responsibility of calculating the value of the contingency factor and that it has utilized contingency factors in other proceedings.[6] These concessions by PG&E in this proceeding underscore that it is PG&E that has the burden of proof on the contingency factor issue. By shifting the burden to SLOMFP, the Commission has committed legal error.

2. THE DECISION MISSTATES THE TEST FOR INCLUSION OF A CONTINGENCY FACTOR

The portion of the Decision quoted above also misstates the applicable test for inclusion of a contingency factor in the cost forecasts. The issue is not whether it is speculative to assert that certain safety risks have *associated costs*. It should be beyond dispute that, for example, the replacement or annealing of the Unit 1 reactor pressure vessel will at least have *some* associated costs. Rather, the issue, as PG&E and SLOMFP seem to agree,[7] is whether a reasonably prudent manager would have included a contingency factor for the risks identified by SLOMFP's expert witnesses (i.e., replacing or annealing the Unit 1 reactor pressure vessel, seismic hazards, ISFSI Modification, Coastal Act Compliance, and others.)[8]

PG&E implies that a contingency factor is warranted if it is for a risk that is foreseeable to a prudent manager.[9] SLOMFP agrees.[10] The California Supreme Court has held that foreseeability is not to be measured by what is more probable than not, but includes whatever is likely enough in the setting of modern life that a reasonably thoughtful person would take account of it in guiding practical conduct.[11] Thus, to be foreseeable the result of an act does not have to be a foregone conclusion, or the only conclusion, but merely a reasonable possibility.[12] The

[5] D.24-12-033, p. 23. (Emphasis added.)
[6] Reporter's Transcript, Vol. 1, pp. 128-129.
[7] Reporter's Transcript, Vol. 1, pp 118-119; Exh. SLOMFP-01, Opening Testimony of Peter Bradford, p. 8, lines 3-7.
[8] *Ibid.*
[9] Reporter's Transcript, Vol. 1, pp 118-119.
[10] Exh. SLOMFP-01, Opening Testimony of Peter Bradford, p. 8, lines 3-7.
[11] *Bigbee v. Pac. Tel. & Tel. Co.* (1983) 34 Cal.3d 49, 57.
[12] *Ibid.*

Commission was required to examine and weigh the entirety of the record in this proceeding[13] to determine if **PG&E** has established by a preponderance of evidence that a prudent manager of DCPP would have omitted a contingency factor because the risks identified by SLOMFP are not reasonably possible so as to warrant accounting for them. The Commission has not performed the correct analysis, which is legal error.

3. THE DECISION FAILS TO EXPRESSLY ADDRESS AND MAKE FINDINGS ON ALL ISSUES MATERIAL TO THE PROCEEDING

The Commission was required, but has failed, to analyze and make separate findings of fact and conclusions of law on the issues of prudency, cost-effectiveness and need for DCPP. This failure is legal error.[14] P.U.C. § 1705 applies to this proceeding because a hearing was conducted and was not held under P.U.C. § 1702.1, which deals with complaints against any electrical, gas, water, heat, or telephone company under Sections 734, 735, and 736.28.

P.U.C § 1705 provides, in pertinent part, that "the decision shall contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision."[15] The California Supreme Court has held that "[e]very issue that must be resolved to reach that ultimate finding is 'material' to the order or decision…Statutes like section 1705 have been held to require findings of the basic facts upon which the ultimate finding is based."[16] The California Supreme Court has described the purpose of these findings as

> "[affording] a rational basis for judicial review. The more general the findings, the more difficult it is for the reviewing court to ascertain the principles relied upon by the administrative agency. Even when the scope of review is limited, as in this case, findings on material issues enable the reviewing court to determine whether the commission has acted arbitrarily. Since findings on material issues indicate the basis for the decision the parties can prepare accordingly for rehearing or review. Furthermore, a disappointed party, whether he plans further proceedings or not, deserves to have the satisfaction of knowing why he lost [their] case."[17]

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[13] *La Costa Beach Homeowners' Assn. v. California Coastal Com*. (2002) 101 Cal.App.4th 804, 814 [involving discussion of the judicial review standard of substantial evidence, but where the Court of Appeal also stated that it is the agency's role to weigh the preponderance of conflicting evidence].

[14] P.U.C. § 1705.

[15] P.U.C. § 1705. Thus, the Commission cannot rely on implied findings to satisfy its statutory obligation under this provision.

[16] *California Motor Transport Co. v. Public Utilities Com*. (1963) 59 Cal. 2d 270, 273-275; *Greyhound Lines, Inc. v. Public Utilities Com*. (1967) 65 Cal. 2d 811, 812-813.

[17] *California Motor Transport Co.,* supra, 59 Cal.2d 270, 273-274; see also *Greyhound Lines, Inc*., supra, 65 Cal. 2d 811, 812-813 [same].

To this end, the Commission must engage in a weighing of the evidence[18] and bridge the analytical gap between the raw evidence and ultimate conclusion.[19] Thus, the Commission's decision must contain separately stated findings of fact and conclusions of law by the Commission on all issues material to the order or decision. SLOMFP expert Peter Bradford has observed that it is a legal error for the Commission to approve cost recovery without support of a finding, pursuant to P.U.C. § 451, that PG&E's request for cost recovery for extended operations is cost-effective, prudent and needed from an energy resource standpoint.[20] The Commission has committed legal error by not doing so.

a) The Decision Does Not Address Cost-Effectiveness

The Commission's Conclusion of Law No. 15 in D.23-12-036 stated that "[i]t **is well within the Commission's authority, and in ratepayers' best interest, to continue to evaluate the prudence and cost-effectiveness of continued DCPP operations.**"[21] Thus, ratepayers were promised a cost-effectiveness evaluation in the instant proceeding to ensure that continued operations at DCPP are in their best interests. Ratepayers did not receive the protection of a cost-effectiveness evaluation in the Rulemaking proceeding because the Commission punted the issue.[22] The Commission has not kept its promise to the ratepayers in the instant proceeding as the issue of cost-effectiveness is not addressed in the Decision. Prudency requires that PG&E show that the costs it seeks to recover will provide the public with efficient, just and reasonable service which will achieve the desired result of providing adequate renewable and zero-carbon power supply at the lowest possible cost.[23] Thus, the cost-effectiveness evaluation that must occur within the prudency analysis requires a comparison of the costs of operating DCPP with the costs of renewable and zero-carbon resources.[24]

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[18] *Toward Utility Rate Normalization v. Public Utilities Com.* (1978) 22 Cal.3d 529, 540.
[19] *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1976) 11 Cal. 3d 506.
[20] P.U.C. § 451; see also Exh. SLOMFP-01, Opening Testimony of Peter Bradford, p. 7, citing Opening Testimony of Peter Bradford on Phase 1 Track 2 Issues, pp. 8-11 [Discussing P.U.C. § 451, the definition of prudency, predetermination of prudency and the importance of making early prudency determinations]; see also P.U.C. § 1705.
[21] D.23-12-036, p. 127, [Conclusion of Law No. 15]. (Emphasis added.)
[22] D.23-12-036, p. 127, [Conclusion of Law No. 16].
[23] Exh. SLOMFP-01, Opening Testimony of Peter Bradford, pp.7-8; D.23-12-036, p. 46 fn 134 [affirming support for the definition of the Prudent Manager Standard under P.U.C. § 451 set forth by Expert Witness Peter Bradford]; Exh. SLOMFP-02, Opening Testimony of Mark Cooper, pp. 4-8 and 10, lines 17-23.
[24] *Ibid.*

There are no express findings on cost-effectiveness in the Decision's conclusions of law nor findings of fact. The term appears only once in the body of the Decision, ironically in a section implying that a cost-effectiveness evaluation is required.[25] No other portion of the body of the Decision can be construed to have addressed the issue of cost-effectiveness. The Commission never engaged in an actual analysis of the comparison of the costs of operating DCPP to any other energy resources, let alone alternative renewable, GHG-free resources – despite SLOMFP providing such a comparison.[26] At minimum, the Commission was required to weigh all the evidence in the record implicating the issue of cost-effectiveness (including expert witness Mark Cooper's cost comparison). The Commission was then required to determine whether PG&E, in light of said evidence, met its burden to show that the requested cost recovery will provide the public with efficient, just and reasonable electric service which will achieve the desired result of providing adequate renewable and zero-carbon power supply at the lowest possible cost.[27] The Commission's failure to do so constitutes legal error.

b) The Decision Does Not Address Prudency

The cost-effectiveness of DCPP, as well as the demonstrated need for DCPP's power, are components of the prudency analysis required under P.U.C. § 451.[28] SLOMFP has already shown, as discussed above, that the Commission has not performed a cost-effectiveness analysis at all. Even if it could be argued that a cost-effectiveness analysis was performed in this proceeding, the cost-effectiveness analysis is deficient because the Commission did not apply the proper test for inclusion of a contingency factor and therefore has failed, as a matter of law and fact, to correctly and sufficiently analyze the issue of the cost-effectiveness of DCPP.[29] Thus, for these reasons, the Commission has not performed a full and robust prudency analysis required under P.U.C. § 451.

Additionally, and as will be discussed in further detail in Section 4 below, the Commission unlawfully excluded the issue of need and reliability from this proceeding

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[25] D.24-12-033, p. 4.
[26] See Section II.B. *infra*.
[27] Exh. SLOMFP-01, Opening Testimony of Peter Bradford, pp.7-8; D.23-12-036, p. 46, fn 134 [affirming support for the definition of the Prudent Manager Standard under P.U.C. § 451 set forth by Expert Witness Peter Bradford].
[28] Exh. SLOMFP-01 Opening Testimony of Peter Bradford, pp. 7-8; Exh. SLOMFP -05 Rebuttal Testimony of Peter Bradford, pp. 3-6; see also Exh. SLOMFP-02, Opening Testimony of Mark Cooper, pp. 4-8 and 10, lines 17-23.
[29] See Section A, *supra*.

entirely.[30] The issue of need for DCPP's power is clearly implicated in a prudency analysis.[31] The fact that DCPP is no longer needed from an energy resource reliability perspective is relevant to an analysis of whether it is prudent to authorize cost recovery for DCPP.[32] Accordingly, the Commission has also failed to perform the required full and robust prudency analysis based on its failure to address the need for DCPP.

At minimum, the Commission was required to weigh all the evidence in the record on the issues of need (including testimony provided by SLOMFP expert Rao Konidena) and cost-effectiveness (including testimony provided by SLOMFP expert Mark Cooper).[33] The Commission was then required to determine, in light of said evidence, whether PG&E met its burden to demonstrate prudency.[34] The Commission's failure to do so constitutes legal error.

4. THE COMMISSION ADOPTED AN INTERPRETATION OF THE LAW THAT IS INCONSISTENT WITH S.B. 846 AND WOULD IMPERMISSIBLY REPEAL BY IMPLICATION THE COMMISSION'S BROAD STATUTORY AUTHORITY TO CONSIDER RELIABILITY AND PRUDENCY.

It is legal error for the Commission to interpret S.B. 846 in a manner that is inconsistent with its provisions or that repeals a law by implication. In the Decision, the Commission states that "Reliability issues are out of the scope of this proceeding and considered in the IRP proceeding."[35] This is an unlawful interpretation of S.B. 846 because the interpretation results in disharmony within and amongst the provisions of S.B. 846; the interpretation is also baldly inconsistent with S.B. 846.

The first step in 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

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[30] D.24-12-033, p. 78, Finding of Fact No. 28

[31] Exh. SLOMFP-01 Opening Testimony of Peter Bradford, pp. 7-8, Exh. SLOMFP -05 Rebuttal Testimony of Peter Bradford, pp. 3-6.

[32] *Ibid*.

[33] *La Costa Beach Homeowners' Assn., supra,* 101 Cal.App.4th 804. 814-815.

[34] Exh. SLOMFP-01, Opening Testimony of Peter Bradford, pp.7-8; D.23-12-036, p. 46 fn 134 [affirming support for the definition of the Prudent Manager Standard under P.U.C. § 451 set forth by Expert Witness Peter Bradford].

[35] See D.24-12-033, p. 75. However, the Rulemaking decision, D.23-12-036, indicated that S.B. 846 prohibits the IRP from considering the DCPP in IRP portfolios, resource stacks or PSPs after 2024 for Unit 1 and 2025 for Unit 2.[35] So, the IRP proceeding will be useless as to the economics and prudence (i.e. reliability) of operating DCPP from 2025 to 2030. More to the point, consideration of reliability in an IRP does not foreclose the issue from being considered in this proceeding, especially in the context of prudency.

purpose.[36] Statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible.[37] Conversely, interpreting a statute in such a way as to result in disharmony between statutes is legal error.[38]

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.[39] 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.[40]

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.[41] 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 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.[42]

The only lawful interpretation of S.B. 846 with respect to the issue of need for DCPP's power is that the legislature mandated a continuous and ongoing review of the need for the DCPP's power, such as in the instant proceeding. There are multiple provisions of S.B. 846 that compel this interpretation:

P.R.C. § 25548(b) states "Preserving the option of continued operations of the Diablo Canyon 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";

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

[36] *Tan v. Appellate Division of Superior Court* (2021) 76 Cal.App.5th 130, 136.
[37] *Ibid*.
[38] *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.
[39] *State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 955-956.
[40] *Tan, supra,* 76 Cal.App.5th 130, 139.
[41] *Id.* at p. 138.
[42] *Ibid*.

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";

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";

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";

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."

When read together, these provisions demonstrate the Legislature's intention that the scope of review of extended operations in this proceeding must include prudency, need and cost-effectiveness evaluations because the Legislature explicitly declared that DCPP is a stopgap measure, that California is continuing to act to bring replacement energy online, 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 DCPP online.

The Commission committed legal error because its exclusion of need for DCPP's power from this proceeding is inconsistent with the express language and purpose of S.B. 846. The Commission's exclusion of need from this proceeding also removes a key component (i.e., analysis of reliability and need for DCPP) from the protections afforded by P.U.C. §451. This section shields ratepayers from unreasonable and unjust rate increases.[43] In excluding the need for DCPP's power from consideration in the prudency analysis under P.U.C. § 451, the Commission also repeals by implication its full authority to police a utility's acts using all the tools at the Commission's disposal.[44] The interpretation that a reliability analysis is now cabined to the IRP proceeding is completely detached from the plain language contained in S.B. 846. What of the P.U.C. § 712.8(r)-mandated annual report to the Legislature 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? If reliability issues pertaining to DCPP were somehow confined solely to the IRP proceeding, which focuses on a long-term 10 year outlook, it seems the Legislature's requirement for an annual report that continually assesses the need for DCPP would serve no practical purpose. Furthermore, how does the Commission's consideration of long-range reliability needs in the IRP conflict with its promise to the ratepayers to perform a full, robust prudency analysis of DCPP extended operations over the instant record period and 5 year extension period, inclusive of reliability? It does not.

B. THE COMMISSION'S FINDINGS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

1. THE DECISION'S FINDING THAT IT IS REASONABLE FOR PG&E TO EXCLUDE SPECULATIVE COSTS IN THE APPLICATION IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

The Commission's conclusion that it is reasonable for PG&E to omit "*speculative costs"* from the cost forecasts[45] does not even pertain to the correct inquiry on the contingency factor

[43] Exh. SLOMFP-01 Opening Testimony of Peter Bradford, pp. 7-8; Exh. SLOMFP -05 Rebuttal Testimony of Peter Bradford, pp. 3-6.
[44] See P.U.C. § 451.
[45] D.24-12-033, p. 23. (Emphasis added.)

issue.[46] The correct inquiry concerns the foreseeability of the *risk* that the events, circumstances and conditions identified by SLOMFP will occur, not whether they are speculative; indeed, the very nature of a contingency factor assumes some level of speculation, as the future is always uncertain to some extent.[47] Nevertheless, the Commission's conclusion on the omission of a contingency factor is not supported by the substantial evidence.[48]

The Commission's discussion of evidence on the contingency factor issue includes reference to PG&E's labored distinction between "known unknowns" and "unknown unknowns,"[49] as well as PG&E's dubious claim that it may not proceed with the ISFISI modification.[50] But the Commission does not explain how either of PG&E's claims constitute evidence that establishes that a prudent manager would not foresee risk at DCPP associated with seismic hazards, reactor pressure vessel replacement or annealing, or operating the plant without a Coastal Development Permit as extended operations continue.[51] The Commission then inappropriately turns its attention to what is not in the record, i.e., new information from DCISC or NRC.[52] The evidence eligible for consideration in the Commission's prudency and cost-effectiveness analysis is not limited solely to reporting from the DCISC or NRC.[53] For example, Public Resources Code § 25548.3(c)(5)(C) does not limit the nature of evidence to be considered in the cost-effectiveness inquiry. More importantly, the Commission's approach eviscerates the burden of proof and lets PG&E off the proverbial hook to prove its case that it should be entitled to recover nearly three quarters of a billion dollars in costs. The issue is not whether SLOMFP has supplied new information from DCISC or NRC to support its assertion, but whether PG&E

[46] See Section II.A.2, supra, discussing the test for contingency factor in detail.
[47] Exh. SLOMFP-01 Opening Testimony of Peter Bradford, pp. 7-8; Exh. SLOMFP -05 Rebuttal Testimony of Peter Bradford, pp. 3-6.
[48] D.24-12-033, p. 23.
[49] D.24-12-033, pp. 22 to 23.
[50] *Id*. at p. 22; see also Exh. SLOMFP_11 [PG&E Letter to California Coastal Commission]; Exh. SLOMFP-04 Rebuttal Testimony of SLOMFP Sponsored by Sabrina Venskus, p.6, lines 3-22 and Attachment A, pp. 1; 31; and last two pages, [Coastal Commission documents showing PG&E has now received an approved Coastal Development Permit to construct and operate the IFSFI expansion/modification.]
[51] *Id.* at pp. 22 to 23; *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 [Agencies must bridge the analytical gap between raw evidence and the ultimate conclusion or finding]; Exh. SLOMFP-04 Rebuttal Testimony of SLOMFP Sponsored by Sabrina Venskus, p. 7.
[52] *Id*. at p. 23.
[53] Public Resources Code § 25548.3(c)(5)(C).

has shown by substantial evidence, in light of the whole record, that its omission of a contingency factor was reasonable.

In support of its omission of a contingency factor, PG&E claimed that activities such as annealing or replacing the Unit 1 reactor pressure vessel and seismic upgrades are not needed for safe operation of DCPP.[54] This was a conclusory statement unsupported by any substantive facts as to why PG&E's witness believed the statement to be true. PG&E merely states that there is currently no actual forecastable NRC licensing or DCISC recommendations.[55] Yet, the testimony from PG&E's witness does not establish, for example, that there will never be any forecastable NRC licensing or DCISC recommendations. PG&E also claims it does not anticipate that the NRC or DCISC will, for example, desire to further study the DCPP Unit 1 reactor pressure vessel.[56] PG&E's witness statement was conclusory and unsupported by any substantive facts. The testimony is also disingenuous, as it is common knowledge that the NRC's Petition Review Board has taken review of potential seismic hazards at DCPP.[57] At minimum, the Commission must weigh PG&E's conclusory and unsubstantiated statements against that of SLOMFP expert and former New York and Maine PUC Commissioner Chair and former NRC Commissioner, Peter Bradford – who testified on serious issues of seismic risk and embrittlement of the Unit 1 reactor pressure vessel raised by Drs. Peter Bird and Digby Macdonald, respectively.[58] Bradford's testimony advises that Unit 1 reactor pressure vessel embrittlement concerns were, at the time, under consideration at the DCISC.[59]

2. THE DECISION'S CONCLUSIONS AS TO THE REASONABLENESS OF SOME COMPONENTS OF PG&E'S COST RECOVERY APPLICATION ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

The Commission made findings as to the reasonableness of certain components of PG&E's costs forecast, such as the reasonableness of the Operations and Maintenance costs .[60] These findings were not supported by substantial evidence. As discussed further above, the Commission committed legal error by failing to analyze cost-effectiveness and prudency of

[54] PG&E Rebuttal Testimony, p. 2-10.
[55] PG&E Rebuttal Testimony, p. 2-10.
[56] Reporter's Transcript Vol. 1, p.129.
[57] Reporter's Transcript, Vol. 1, p. 127, lines 5-16.
[58] Exh. SLOMFP-01, Opening Testimony of Peter Bradford, pp. 7-8.
[59] *Ibid.*
[60] E.g., D.24-12-033, pp. 81 [Conclusion of Law No. 3]; see also [Conclusion of Law No. 1 – Revenue Requirement Should Be Approved].

authorizing PG&E's cost recovery request. The Commission's failure to analyze these issues also left relevant evidence unaddressed, and thus the Commission failed to consider the whole of the record.

The preponderance of evidence on the issue of cost-effectiveness, had the issue been analyzed and decided, demonstrates that the costs of operating DCPP are much higher than renewable and clean energy resources. Yet, the phrase "cost-effective" is barely mentioned in PG&E's testimony or PG&E's briefing. The term "cost-effective" appears just once in PG&E's rebuttal testimony, and not in the context of a cost comparison of DCPP and alternatives.[61] SLOMFP's expert Mark Cooper submitted an updated cost comparison evaluating the costs of DCPP to other energy sources.[62] SLOMFP expert Mark Cooper concludes that DCPP is not cost-effective. Again, that conclusion was based on Dr. Cooper's calculation and comparison of costs to operate DCPP to the costs of alternatives – where the costs of the three core renewables (efficiency, wind-onshore and utility PV) were much lower than the costs of DCPP.[63]

The preponderance of evidence on the issue of need for DCPP or reliability, had the issue been analyzed and decided, demonstrates that DCPP is no longer needed from an energy resource standpoint and that therefore a prudent utility manager would not have decided to incur the magnitude of costs forecasted in the instant Application. As already noted above, SLOMFP expert Rao Konidena demonstrated that DCPP is no longer needed from an energy resource and reliability standpoint. PG&E was silent on the issue of need and reliability. Meanwhile, the record in this proceeding contains largely unrebutted new evidence from multiple parties demonstrating that DCPP is no longer needed from a reliability standpoint.[64]

Therefore, the overwhelming evidence submitted by SLOMFP and other parties establishes that PG&E cannot meet its burden to show that DCPP is still needed to provide ratepayers with clean and renewable energy at the lowest possible cost.

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[61] Exh. PG&E-02, Rebuttal Testimony, p. 5-9, lines 26 to 31.
[62] E.g., Exh. SLOMFP-02 Opening Testimony of Mark Cooper, pp. 6-8.
[63] Exh. SLOMFP-02, Opening Testimony of Mark Cooper, pp. 6-11.
[64] E.g., Exh. A4NR-01, Prepared Testimony of John Gessman, pp. 4 to 5; Exh. SLOMFP-03 Corrected Opening Testimony of Rao Konidena at p. 15; Exh. SLOMFP-07, Reply Testimony of Rao Konidena, pp. 1-2; CARE's October 14, 2024 Motion for Official Notice of reliability documents, including the Summary of Compliance with Integrated Resource Planning (IRP) Order D.19-11-016 and Mid Term Reliability (MTR) D.21-06-035 Procurement December 2023 Data Filings Energy Division Staff Recommendations. Failure to take Official Notice of these documents was an abuse of discretion.

IV. REQUEST FOR ORAL ARGUMENT

Pursuant to Rule 16.3(a), if the applicant for rehearing seeks oral argument, it should request it in the application for rehearing. "The request for oral argument should explain how oral argument will materially assist the Commission in resolving the application, and demonstrate that the application raises issues of major significance for the Commission because the challenged order or decision: (1) adopts new Commission precedent or departs from existing Commission precedent without adequate explanation; (2) changes or refines existing Commission precedent; (3) presents legal issues of exceptional controversy, complexity, or public importance; and/or (4) raises questions of first impression that are likely to have significant precedential impact. These criteria are not exclusive..."[65] SLOMFP requests oral argument on this Application for Rehearing because the Commission has departed from its promise to ratepayers in D.23-12-036 to continue to conduct a cost-effectiveness and prudency analysis. This request for oral argument is further made on the ground that the issue of whether a full and robust prudency and cost-effectiveness analysis is required to be performed prior to authorizing recovery of three-quarter of a billion dollars from ratepayers presents a legal issue of exceptional public importance.

V. CONCLUSION

In light of the foregoing, SLOMFP requests that the Commission grant this Application for Rehearing and issue a Decision correcting all of the legal errors set forth herein.

Respectfully submitted,

Venskus & Associates, A.P.C.

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/s/ Sabrina Venskus
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[65] Rule 16.3(a).