Case No.____________

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION_________

San Luis Obispo Mothers for Peace,
Petitioner,
v.
California Public Utilities Commission,
Respondent,

Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas and Electric Company,

Real Parties in Interest.

Appeal from California Public Utilities Commission Decision No. D.24-12-033 (issued December 20, 2024 and rehearing denied on July 25, 2025)

SAN LUIS OBISPO MOTHERS FOR PEACE'S PETITION FOR WRIT OF REVIEW; MEMORANDUM OF POINTS AND AUTHORITIES

[APPENDIX OF EXHIBITS AND MOTION FOR JUDICIAL NOTICE FILED CONCURRENTLY]

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to California Rules of Court, Rule 8.724(c) and Rule 8.208, Petitioner, San Luis Obispo Mothers for Peace ("SLOMFP") hereby submits the following certificate of interested entities or persons:

SLOMFP is a California non-profit corporation, and no entity or person has an ownership interest in SLOMFP. Petitioner knows of no other entity or person, other than the parties themselves, with a financial or other interest in the outcome of this proceeding that must be disclosed.

DATE: August 22, 2025

VENSKUS & ASSOCIATES, A.P.C.

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PETITION FOR WRIT OF REVIEW

To the Honorable Justices of the Court of Appeal of the State of California, Second Appellate District, San Luis Obispo Mothers for Peace ("Petitioner" or "SLOMFP") hereby brings this Petition for Writ of Review ("Petition") to correct legal errors committed by the California Public Utilities Commission ("Commission") in authorizing Pacific Gas and Electric Company ("PG&E") to charge ratepayers a staggering $723 million to cover costs of extending Diablo Canyon Power Plant ("DCPP")'s operations through 2025, without first performing a review and analysis of the prudency and cost-effectiveness of authorizing PG&E's request, and making findings on those issues, as required by Public Utilities Code §§ 451 and 1705, respectively.

1. The financial well-being of ratepayers across California is at stake in this appeal. PG&E's Application to recover costs of extended operations through 2025 (Commission Proceeding No. A.24-03-018) is just the first of several such annual cost recovery applications to come with respect to DCPP. If the Commission is not compelled to comply with P.UC. §§ 451 and 1705, the ratepayers may never receive the protection of consideration, analysis, and written findings on the prudency and cost-effectiveness of PG&E's proposal to charge them potentially billions of dollars across multiple annual cost recovery applications through the current anticipated end of extended operations of DCPP in 2029/2030.

2. Despite being presented with evidence that DCPP is no longer needed for energy reliability in California, and not cost-

effective compared to renewable energy alternatives, the Commission has repeatedly ignored this evidence and refused to make findings on prudency and cost-effectiveness of the utility's proposed action to extend DCPP's life, as required by P.U.C. §§ 451 and 1705. While not at issue in this Petition, the Commission proactively excluded issues of the prudency and cost-effectiveness of extended operations from consideration in the proceeding relating to PG&E's cost recovery application for the 2026 calendar year, which is currently ongoing. (Commission Proceeding No. A.25-03-015).[1]

3. This Petition raises two issues:

- Whether the Commission committed legal error by failing to proceed in a manner required by P.U.C. § 1705 and make express findings on all issues material to PG&E's 2024 Cost Recovery Application (Commission Proceeding No. A.24-03-018).
- Whether the Commission committed legal error by failing to comply with the requirements of P.U.C. § 451 to determine the prudency and cost-effectiveness of charging ratepayers $723 million to operate DCPP through 2025 *before* authorizing PG&E's 2024 Cost Recovery Application (Commission Proceeding No. A.24-03-018).

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[1] (see Motion for Judicial Notice in Support of Petition for Review ("MJN"), Exh. B-C[May 1, 2025 Protests of Alliance for Nuclear Responsibility and Petitioner]; Exh. D pp.005 [July 2, 2025 Assigned Commissioner's Scoping Memo and Ruling in Commission Proceeding A.25-03-015, p.005].)

A. Jurisdiction

4. P.U.C. § 1756(a) authorizes any aggrieved party, within 30 days after the Commission issues an order denying an application for rehearing, to petition the Court of Appeal for a writ of review for the purpose of having the lawfulness of the Commission's original order or decision inquired into and determined. (P.U.C. § 1756(a).)

5. On January 17, 2025, Petitioner timely filed an Application for Rehearing of the Commission's decision in the Commission Proceeding No. A-24-03-018 relating to PG&E's 2024 Application to recover from ratepayers the cost of operating DCPP through 2025. (Exh. 23, Petitioner's Appendix of Exhibits ("PAE") 1003-1020.) On July 25, 2025, the Commission issued a decision denying Petitioner's Application for Rehearing. (Exh. 28, PAE 1064-1099.) This Petition for Writ of Review is timely because it is filed within 30 days of July 25, 2025. Thus, the Court has jurisdiction over this Petition under P.U.C. § 1756(a). The Court of Appeal ordinarily lacks discretion to deny a timely-filed petition that appears meritorious – **as it is the sole means provided by law for judicial review of a Commission decision**. (*S. Cal. Edison Co. v. Pub. Utils. Com.* (2006) 140 Cal.App.4th 1085, 1096.)

B. Venue

6. Venue in the second appellate district of the Court of Appeal is proper because Petitioner's principal place of business is in California, in the City and County of San Luis Obispo.

(P.U.C. § 1756(d).) DCPP is also located in the County of San Luis Obispo.

C. Parties

7. Petitioner, SLOMFP, is a non-profit corporation formed and existing under the laws of the State of California.

8. Respondent, the Commission, is a state agency of constitutional creation charged with regulating public utilities under the Public Utilities Code and Article XII of the California Constitution.

9. Real Party in Interest PG&E filed the Application that initiated Commission Proceeding No. A-24-03-018 before the Commission. PG&E is a corporation formed and existing under the laws of the State of California, an investor-owned electric utility, an "electrical corporation" under P.U.C. § 218, and a "public utility" under P.U.C. § 216.

10. Real Parties in Interest, Southern California Edison Company and San Diego Gas and Electric Company are subject to certain cost allocations in Commission Proceeding No. A-24-03-018 and are both investor-owned electric utility, an "electrical corporation" under P.U.C. § 218, and a "public utility" under P.U.C. § 216.

D. Statement of Case

11. DCPP is in coastal San Luis Obispo County and consists of two nuclear reactors that have been operating since 1985 (Unit 1) and 1986 (Unit 2) under a 40-year federal license. (Exh. 1, PAE 6, 9.) The plant is owned and operated by PG&E. (*Id*. at 9-10.) In 2018, after PG&E reached an agreement with stakeholders to

forego renewing its federal license that was to expire in 2024/2025, the Commission approved the retiring DCPP when its federal licenses were set to expire in 2024/2025. (*Id*. at 10.)[2]

12. On September 2, 2022, the legislature passed Senate Bill ("SB") 846, which invalidated the Commission's decision approving the retirement of DCPP. SB 846 instructed the Commission to initiate a rulemaking proceeding to consider whether to extend operations of DCPP until 2029/2030.[3] Essentially, SB 846 gave the Commission three options. First, the Commission could authorize extended operations through 2029/2030. Second, the Commission could establish new retirement dates which are earlier than 2029/2030. Third, the Commission could affirm the current 2024/2025 retirement dates. The second and third options can be ordered by the Commission, if, among other grounds, the Commission determines that it would not be cost-effective or prudent, or both, to extend DCPP's retirement date. (Exh. 1, PAE, 6, 19; P.U.C. §§ 712.8(c)(1)(B); Public Resources Code (P.R.C.) § 25548.3(c)(5)(C).) SB 846 also requires the Commission to annually report to the legislature "on

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[2] On March 3, 2023, the Nuclear Regulatory Commission approved an exemption to allow DCPP to continue to operate under its current licenses past their expiration dates, provided PG&E submits a new license renewal application by the end of 2023 and satisfies various regulatory requirements at the federal and state levels. (Exh. 1, PAE 6, 12.)

[3] The legislature requires the Commission to review whether extending operations at DCPP is prudent and cost-effective and if not, modify the retirement dates. (P.U.C. §§ 712.8(c)(1)(B) and P.R.C. § 25548.3(c)(5)(C).)

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 DCPP online." (P.U.C. § 712.8(r).)

13. On January 20, 2023, the Commission initiated rulemaking proceeding R.23-01-007 ("Rulemaking Proceeding") to consider whether to extend DCPP's retirement date. (Exh. 1, PAE 6.) Various parties, including Petitioner, participated in the Rulemaking Proceeding and provided "extensive comment" on the issues of prudency and cost-effectiveness of authorizing extended operations at DCPP. (e.g. Exh. 1 PAE 6, 39-40, 50-51; Exh. 13 641, 648.) This included extensive comment and evidence that different technologies, including energy storage (long-duration storage) and solar and battery storage were currently available and were an adequate substitute for and more cost-effective than DCPP. (e.g. Exh. 1, PAE 6, 37.) On December 14, 2023, the Commission issued its decision in the Rulemaking Proceeding ("Rulemaking Decision")(Exh. 1, PAE 6.)

14. In the Rulemaking Decision, the Commission acknowledged its statutory mandate under P.U.C. § 451 to make findings as to the prudency and cost-effectiveness of authorizing extended operations at DCPP :

> (Exh. 1, PAE 6, 54, citing P.U.C. § 451 ["Within the Commission's broader review of charges demanded or received by a public utility, the Commission is **statutorily obligated** to ensure that utility operations result in rates that are "just and reasonable"](Emphasis added); Exh. 1, PAE 6, 54 ["The Commission **implements its mandatory review under Section 451 by assessing the reasonableness and prudence of utility actions,**

> **an evaluation that incorporates consideration of cost-effectiveness, among other factors.”**] (Emphasis added); Exh. 1, PAE 6, 54, [“In enacting SB 846, the Legislature affirmed the **Commission’s broad statutory mandate in Section 451** by requiring the Commission **to ensure extended DCPP operations are cost-effective and prudent**.”][4](Emphasis added); Exh. 1, PAE 65 [the Commission is “**statutorily required** to ensure utility rates associated with DCPP extended operations are just and reasonable.”].)(Emphasis added.)

15. Yet, the Commission ultimately decided to authorize PG&E to extend operations at DCPP until October 2029 for Unit 1 and October 2030 for Unit 2 (Exh. 1, PAE 6, 142 [Ordering Paragraph 1]) without making the findings that extended operations were prudent and cost-effective as required by P.U.C. § 451, and by extension, SB 846.

16. In fact, the Rulemaking Decision punted on the Commission’s review of prudency and cost-effectiveness of extending DCPP operations through 2029/2030 because the Commission claimed to purportedly not have sufficient information to make the necessary findings on those issues. (Exh. 1, PAE 6, 55 [“we find the Commission does not have sufficient information at this time to be able to determine whether extended operations at DCPP are…‘not cost-effective or imprudent”]; see also Exh. 1, PAE 6, 58 [“absent a complete and

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[4] Notably, in describing its mandatory review under P.U.C. § 451, the Commission cited the summary of the prudent manager standard proffered by Petitioner’s expert. (Exh. 1, PAE 6, 54, fn 139.)

transparent accounting of all DCPP extended operation costs, it is not possible for the Commission to determine at this time whether DCPP extended operations are cost-effective."].)

17. The Commission made this statement regarding the purported insufficiency of evidence on the prudency and cost-effectiveness issues despite receiving what the Commission itself described as "extensive comment" on those issues. (Exh. 1, PAE 6, 39-40, 50-51.) As just one example, Petitioner's expert witness Peter Bradford, a former Nuclear Regulatory Commissioner and former Chair of the Maine and New York Public Utilities Commission, testified in the Rulemaking Proceeding that it is crucial for the Commission to assess the prudency and cost-effectiveness of a utility's proposed action ***before*** the proposed action is approved by the Commission. (Exh. 1, PAE 6. 54.)

18. Yet, the Commission still declined to make *any* findings on the prudency and cost-effectiveness of extending operations at DCPP in the Rulemaking Decision and punted its mandatory review under P.U.C. § 451 to the annual Cost-Recovery Application Proceedings that it ordered PG&E to initiate.[5]

> (Exh. 1, PAE 6, 64-65 ["This decision finds it is well within the Commission's authority and in ratepayers' best interest to continue to evaluate the reasonableness and prudence of continued DCPP operations, including ongoing evaluation of the cost-

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[5] In the Rulemaking Decision, the Commission ordered PG&E to submit annual applications requesting authorization to charge ratepayers (via electricity rate increases) the forecasted costs of operating DCPP in the following calendar year. ("Cost Recovery Application"). (Exh. 1, PAE 6, 143 [Ordering Paragraph 4].) The first such Cost Recovery Application was ordered to be filed by March 29, 2024. (*Ibid*.)

effectiveness of extended DCPP operations. **In support of this continued evaluation**, PG&E is directed to produce a complete and transparent forecast of DCPP operations through 2030 as part of its 2024 DCPP Extended Operations Cost Forecast application."](Emphasis added); Exh. 1, PAE 6, 66 ["[a] forecast of all anticipated DCPP costs through 2030 is also expected to provide a more comprehensive framework to **aid parties and the Commission in determining whether the costs included in PG&E's annual DCPP Extended Operations Cost Forecast applications are reasonable and prudent**."](Emphasis added); Exh. 1, PAE 6, 20 ["[a]ccordingly, this decision finds it is within the Commission's authority, and in ratepayers' best interest, to continue to evaluate the prudence and cost-effectiveness of continued DCPP operations, **and to this end directs** PG&E to provide certain historical and forecast cost information **as part of its 2024 DCPP Extended Operations Cost Forecast application**](Emphasis added); Exh. 1, PAE, 6, 67-68 [same]; Exh. 1, PAE 6, 134 [Conclusion of Law 15].)

19. On March 29, 2024, PG&E initiated Commission Proceeding No. A-24-03-018 by filing its first annual Cost Recovery Application seeking authority to charge ratepayers $418.4 million in costs for operating DCPP from September 1, 2023 through 2025 ("2024 Cost Recovery Application"). (Exh. 2, PAE 148, 150, 155.)[6]

20. Petitioner fully participated in the 2024 Cost Recovery Application proceeding. Petitioner argued that PG&E should be denied cost recovery for extended operations based on its failure

[6] The Amended Cost Recovery Application filed on April 8, 2024 was filed to make corrections to the original application. (Exh. 2, PAE 148-149.)

to show, by a preponderance of evidence, that it was prudent and cost-effective under P.U.C. § 451 to do so. (See e.g. Exh. 6, PAE 338, 348-350 [summarizing the prudent manager standard]; Exh. 6, PAE 338, 350-351 [describing lack of analysis of the standard as fatal to PG&E's application]; Exh. 6, PAE, 338, 355; Exh. 11, PAE 547-551 [summarizing Petitioner's evidence on the issue of cost-effectiveness and comparing DCPP's price per megawatt-hour to the price per megawatt-hour of various renewable energy alternatives].)[7]

21. Other parties also addressed the Commission's mandatory obligation under P.U.C. § 451. (Exh. 4, PAE 211, 223-226 [Energy Producers and Users Coalition ("EPUC") Opening Brief]; Exh. 9, PAE 452, 458-459 [Alliance For Nuclear Responsibility ("A4NR") Reply Brief].)

22. On October 11, 2024, amid briefing in the 2024 Cost Recovery Application Proceeding, PG&E submitted its scheduled cost forecast update. (Exh. 7, PAE 360, 361.) The update increased the forecasted charges to be recovered from ratepayers through increased electricity rates to ***nearly double*** the amount of what was initially forecasted: from $418.4 million to <u>$761 million</u>. (Exh. 7, PAE 360, 370.)

23. Just over two months later, on November 14, 2024, the Commission issued a Proposed Decision, authorizing PG&E to charge ratepayers a total of $723 million for the cost of operating DCPP through the end of 2025. (Exh. 12, PAE 554, 555.) The

[7] Price per megawatt-hour is a metric to measure the cost of producing or purchasing one megawatt of electricity for one hour.

Commission proposed to authorize this massive charge to ratepayers without analyzing or making findings on prudency and cost-effectiveness as required by P.U.C. § 451. (Exh. 12, PAE 554 – 640.) The Commission was silent on prudency and cost-effectiveness despite its assurance in the Rulemaking Decision that the Commission would analyze and make findings in the Cost Forecast Application Proceeding as to the prudency and cost-effectiveness of extending DCPP operations.

24. Petitioner filed comments on the Proposed Decision, arguing that it was legal error for the Commission to fail to analyze and make the findings on prudency and cost-effectiveness as required by P.U.C. § 451. (Exh. 13, PAE 641, 649-651.) While some parties concurred (Exh. 15, PA 676, 694-670 [A4NR Comments on Proposed Decision – "Failure to address the reasonableness, prudence, and cost-effectiveness of 2024 – 2030 extended operations abdicates a core Commission responsibility, as explained by D.23-12-036"]; Exh. 17, PAE 716, 719 [Californians For Renewable Energy, Inc. ("CARE") Opening Comments]), others disagreed (Exh. 14, PAE 657, 663 Coalition of California Utility Employees ("CUE") Comments on Proposed Decision [claiming P.U.C. § 451 does not apply to one component (Volumetric Performance Fees) of PG&E's costs forecasts]; Exh. 16, PAE 701, 708-709; Exh. 18, PAE 727-730 [EPUC Comments and Reply Comments on Proposed Decision]).

25. On December 16, 2024, the Commission held oral argument on the Proposed Decision. Petitioner appeared and reiterated the

arguments made in briefing and in the written comments on the Proposed Decision. (Exh. 20, PAE 745, 786-790.)

26. On December 20, 2024, the Commission issued its final decision essentially adopting its Proposed Decision with respect to PG&E's cost recovery request ("Decision"). (Exh. 21, PAE 887, 973 [Ordering Paragraph 1].) The Decision failed to correct any of the deficiencies Petitioner had identified in its written comments on the Proposed Decision and in oral argument.

27. On January 17, 2025, Petitioner timely filed an Application for Rehearing of the Decision, indicating that the Commission acted without or in excess of its powers, had failed to proceed in the manner required by law, and had issued a decision that is not supported by the findings therein. The Application for Rehearing was based, in part, on the Commission's failure to address and make express findings on the issues of prudency and cost-effectiveness as required by P.U.C. §§ 451 [review of prudency and cost-effectiveness] and 1705 [findings required on all material issues]. (Exh. 23, PAE 1003, 1010-1013.) A4NR also filed an Application for Rehearing raising similar arguments. (Exh. 22, PAE 978, 1001.) EPUC and Small Business Utility Advocates ("SBUA") both responded to the applications, expressing agreement with Petitioner and A4NR. (see Exh. 24, PAE 1021, 1032-1034 [EPUC Response] and Exh. 26, PAE 1048, 1058-1060 [SBUA Response].) PG&E disagreed, arguing that the Decision satisfied the mandate to analyze and make findings required by P.U.C. § 451. (Exh. 25, PAE 1041, 1045.)

28. On July 25, 2025, the Commission issued its Order Modifying and Denying Rehearing of D.24-12-033 ("Order"). (Exh. 28, PAE 1064.) Notably, the Order denied, in full, both Applications for Rehearing filed by Petitioner and A4NR. The Commission surprisingly claimed in its Order that it was under no legal obligation to review or make findigns on prudency or cost-effectiveness. (Exh. 28, PAE 1064, 1079.) The Order did not modify the Decision in any manner that has bearing on the issues presented by this Petition. (Exh. 28, PAE 1064, 1098-1099.)

E. Exhibits

29. Pursuant to P.U.C. § 1756(a), the Commission certifies the record in the proceeding below to the Court only after the writ issues. The documents referred to in this Petition are provided as exhibits in separate volumes. All exhibits accompanying this Petition are true and correct copies of original documents on file with the Commission. The exhibits are incorporated by references fully set forth in this Petition. The exhibits are paginated consecutively as Petitioner's Appendix from pages PAE 1 through PA 1099, and page references in this Petition and accompanying memorandum are to the consecutive pagination.

F. Case Preference

30. Pursuant to P.U.C. § 1767 this Petition and appellate proceedings related thereto shall be referred over and shall be heard in preference to all other civil business except election causes, irrespective of position on the calendar. (P.U.C. § 1767.)

PRAYER FOR RELIEF

WHEREFORE, pursuant to P.U.C. § 1756(a), Petitioner respectfully requests this Court to grant relief, as follows:

1. Issue a writ of review to determine the lawfulness of Commission Decision No. 24-12-033;
2. Direct the Commission to certify its record in the subject proceeding to this Court;
3. Determine that the Commission acted in excess of its powers or jurisdiction, abused its discretion, failed to proceed in a manner required by law, and issued a Decision not supported by the Findings;
4. Reverse, set aside, annul and vacate Decision No. 24-12-033 and remand the matter to the Commission for it to reconsider the Decision and whether to authorize PG&E to recover from ratepayers its requested revenue requirement in proceeding A.24-03-018;
5. Instruct the Commission, in its reconsideration of Decision No. 24-12-033, to analyze, weigh evidence pertaining to and make express findings of fact and conclusions of law with respect to P.U.C. § 451 and the prudent manager standard, inclusive of the prudency and cost-effectiveness of authorizing PG&E's revenue requirement for DCPP extended operations through the end of the 2025 calendar year as well as for the entirety of extended operation through 2030;
6. Grant other relief that this Court deems just and proper.

DATED: August 22, 2025

Respectfully Submitted,

VENSKUS & ASSOCIATES, A.P.C.

By:____________________________

Sabrina D. Venskus
Jason R. Sanders
Attorney for San Luis Obispo
Mothers for Peace

VERIFICATION

I, Jane Swanson, declare as follows:

I am the president for Petitioner, San Luis Obispo Mothers for Peace. I am authorized to and thereby make this verification on behalf of San Luis Obispo Mothers for Peace, a non-profit corporation. I have read the foregoing San Luis Obispo Mothers for Peace's Petition for Writ of Review and know the contents thereof, and the facts therein stated are true to my own knowledge, except as to those matters stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 21, 2025 at San Luis Obispo, California.

Jane Swanson

MEMORANDUM OF POINTS AND AUTHORITIES

STANDARD OF REVIEW

Per P.U.C. § 1757(a), a Commission decision in a ratesetting proceeding – such as the underlying proceeding – is subject to reversal by the Court of Appeal if: the Commission acted without, or in excess of, its powers or jurisdiction (§ 1757(a)(1)); the Commission has not proceeded in the manner required by law (§ 1757(a)(2)); the decision of the Commission is not supported by the findings (§ 1757(a)(3)); the findings in the decision of the Commission are not supported by substantial evidence in light of the whole record (§ 1757(a)(4)); or the order or decision of the Commission was an abuse of discretion (§ 1757(a)(5)).

The California Supreme Court recently confirmed that on questions of law, such as issues of whether a state agency has acted in a manner consistent with the statute it purports to implement, or the agency's interpretation of the meaning or effect of a statute, the Court engages independent judicial review – applying its independent judgment de novo to the merits of the legal issues before it. (*Center For Biological Diversity, Inc. et al. v. Public Utilities Commission* (2025) ("CBD") 2025 Cal. LEXIS 4935, p. 15-16.) In the process of performing this independent judicial review, the Court can assess the merits of the agency's interpretation of a statute and the weight it should be given based on a set of factors set forth in *Yamaha Corp. of America v. State Bd. Of Equalization* (1998) 19 Cal.4th 1. (*Ibid.*) Courts of Appeal commit error to the extent they utilize the highly deferential standard in these circumstances. (*CBD,* 2025 Cal. LEXIS 4935, 22-23.)

ARGUMENT

I. The Petition Should Be Granted Because the Commission Committed Legal Error by Failing to Proceed in a Manner Required by P.U.C. § 1705 and its Decision is Not Supported by the Findings

A. <u>P.U.C. § 1705 Required Analysis and Express Findings on all Issues Arising Under P.U.C. § 451</u>

P.U.C. § 1705 applies to the underlying ratesetting proceeding because a hearing was conducted but was not held pursuant to P.U.C. § 1702.1. Section 1705 provides, in pertinent part, that "the [commission's] decision shall contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision." (P.U.C. § 1705.)

Under P.U.C. § 1705 "every issue that must be resolved to reach the 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." (*California Motor Transport Co. v. Public Utilities Com*. ("*Cal. Motor*")(1963) 59 Cal.2d 270, 273; see also *Northern California Power Agency v. Public Utilities Com*. ("*NCPA*")(1971) 5 Cal.3d 370, 380-381; *San Francisco v. Public Utilities Com.* (1971) 6 Cal.3d 119, 130.)

Here, the ultimate issue in the 2024 Cost Recovery Proceeding is whether the Commission should authorize PG&E's request to charge ratepayers nearly three-quarters of a billion dollars for the cost of operating DCPP through 2025 as being just and reasonable under P.U.C. § 451. (Exh. 2, PAE 148,184 [PG&E Application Requesting Authorization to Charge Ratepayers]; Exh. 7, PAE 360, 370 [updating forecast to $761 million]; P.U.C. § 451 [unjust and unreasonable rates are unlawful]; *Guerrero v. Pacific Gas & Electric Co.* (2014) 230 Cal.App.4th 567, 574, [central function of Commission is to ensure just and reasonable rates].)

To authorize recovery of such a staggering sum from ratepayers as just and reasonable under P.U.C. § 451, the Commission must first find that it comports with the prudent manager standard (i.e. prudency and cost-effectiveness). (See e.g. *In re PG&E Corp.* (2019) 611 B.R. 110, 114; see also Section II, *infra* [discussing P.U.C. § 451's dependence on the prudent manager standard and in turn the role of prudency and cost-effectiveness in analysis of the prudent manager standard].)

Accordingly, satisfaction of the prudent manager standard and all issues related thereto (i.e. prudency and cost-effectiveness) are material to the underlying proceeding – compelling the need for separately stated findings of fact and conclusions of law under P.U.C. § 1705. (See *Cal. Motor, supra,* 59 Cal.2d 270, 273.)

B. <u>The Commission Failed to Analyze and Make Separate Findings on all Issues Arising Under P.U.C. § 451</u>

Here, it is beyond dispute that the Decision contains no analysis, no findings of fact, no conclusions of law nor any ordering paragraphs on prudency and cost-effectiveness as required by P.U.C. § 451. (Exh. 21, PAE 887-977.) In fact, the Commission concedes this in its Order denying rehearing by erroneously stating that the Commission is under no legal obligation to take up the "review criteria" of prudency and cost-effectiveness (Exh. 28, PAE 1064, 1079, 1081). The Commission's statement is also inconsistent with its representation in the Rulemaking Decision that it would review prudency and cost-effectiveness in the Cost Recovery Proceedings. (E.g. Exh. 1, PAE 6, 20 64-68.)

The Commission's refusal to make the prudency and cost-effectiveness findings required by P.U.C. § 451 in PG&E's 2024 Cost Recovery Application proceeding is a violation of P.U.C. § 1705.

Violations of P.U.C. § 1705 are remedied by annulling the Decision. (*Cal. Motor, supra*, 59 Cal.2d 270, 273 [annulling a Commission decision where the only finding made was on the ultimate issue]; see also *NCPA*, *supra*, 5 Cal.3d 370, 380-381, [annulling a Commission decision for violating P.U.C. § 1705 because it failed to consider a collateral issue presented to it and no findings of fact could be construed as dealing with the issue at hand]; *San Francisco*, *supra*, 6 Cal.3d 119, 130, [annulling Commission decision for failure to consider lawful alternatives in calculation of federal income tax expense].)

For example, in *NCPA*, the Commission failed to consider a material issue [antitrust considerations] when making a determination on the ultimate finding of public safety, welfare, convenience and necessity in granting a certificate for construction and operation of two new generating units at Geyers Power Plant. (*NCPA*, *supra*, 5 Cal.3d 370, 380.) The Court annulled the Decision authorizing the certificate, in part, because the decision contained no findings of fact which could possibly be construed as dealing with antitrust considerations, no determination of its effect upon competition, and no finding as to the reasonableness of any restraint. (*Id*. at 380-381.) Similarly, in the instant case, the Decision contains no analysis or findings that could be construed to address the material issues of prudency and cost-effectiveness. (Exh. 21, PAE 0887-0977.)

In failing to analyze and make the required findings of prudency and cost-effectiveness, the Commission runs afoul of the two public policies that P.U.C. § 1705 is aimed at as articulated by the Supreme Court in *Cal. Motor, supra*, 59 Cal.2d 270. First, the findings required by PUC § 1705 aid the Commission in avoiding careless and arbitrary action. (*Cal. Motor, supra*, 59 Cal.2d 270, 274-275.) Second, the requirement to issue findings ensures a rational basis for judicial review, as "[t]he more general the findings, the more difficult it is for the reviewing court to ascertain the principles relied upon by the administrative agency" and "findings on material issues enable a reviewing court to determine whether the Commission has acted arbitrarily." (*Id*. at 274.) The Commission issued a Decision that violates both of these policies.

Even the most generous of readings reveals that the Decision is solely focused on *what* amount PG&E should be authorized to recover from ratepayers, rather than on *whether* it is prudent, cost-effective and in the interest of ratepayers to authorize the massive recovery in the first instance.

The outcome of the underlying proceeding may have been markedly different had the Commission grappled with the issues presented by prudency and cost-effectiveness, rather than turning a blind eye to them (*Cal. Motor, supra*, 59 Cal.2d 270, 273 ["[o]ften a strong impression that, on the basis of the evidence, the facts are thus-and-so gives way when it comes to expressing that impression on paper."].)

For example, and as will be further detailed in Section II below, the prudent manager standard requires the Commission's evaluation of whether the utility's proposed action is an exercise of reasonable judgment based on the facts on hand and which is expected to accomplish the utility's desired result at the lowest reasonable cost. The Commission also evaluates whether the utility's proposed action is cost-effective, in the interest of ratepayers and consistent with good utility practice. Here, the Commission failed to perform this analysis.

In its Decision, the Commission did not include any discussion of what PG&E's "desired result" is for purposes of the 2024 Cost Recovery Application, nor did the Commission address Petitioner's proffered definition of the "desired result" being the provision of renewable and clean energy to ratepayers at the lowest reasonable cost. (Exh. 6, PAE 338, 350 and Exh. 23, PAE 1003, 1011).

The Commission failed to perform any analysis of whether DCPP provides ratepayers with renewable and clean energy at the lowest reasonable cost, despite Petitioner providing evidence that alternative renewable energy sources actually have a lower price per megawatt-hour than DCPP and were therefore more cost-effective than DCPP. (See e.g. Exh. 6, PAE 338, 354-355.)

The Commission further failed to analyze, within the context of prudency, Petitioner's argument that record evidence showed that increases in new renewable energy sources have obviated the need DCPP's power. (Exh. 6, PAE 338, 348-353.)

Finally, the Commission failed to analyze the overarching material issues of whether, given the above, it was prudent, cost-effective, consistent with good utility practice and in the interest of ratepayers for PG&E to: 1) charge ratepayers nearly three-quarters of a billion dollars to continue operating the aging nuclear plant through the end of 2025[8], or 2) instead pursue other options for providing ratepayers with clean and renewable power at the lowest reasonable cost, such as funding the purchase of cheaper, clean and renewable energy resources or repurposing DCPP for transmission of off-shore wind energy. (See e.g. Exh. 6, PAE 338, 351-352, 354-355.) The Commission violated P.U.C. § 1705 by failing to perform this analysis and make findings addressing these issues.

Since the Commission failed to proceed in a manner required by P.U.C. § 1705, the Decision should be reversed.

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[8] It follows then that the Commission also did not analyze the prudency and cost-effectiveness of incurring the total costs of extended operations not just through the end of 2025, but through the end of the 2029 and 2030 for Units 1 and 2 respectively. (Exh. 6, PAE 347; Exh. 1 PAE 134 [COL 18].)

Moreover, and for the same reasons, the Commission's Decision is not supported by the findings, as it is devoid of findings required by P.U.C. §§ 1705 and 451.

II. The Petition Should Be Granted Because the Commission Committed Legal Error by Failing to Comply With P.U.C. § 451

A. The Commission failed to Comply With its Mandatory Duty Under P.U.C. § 451

P.U.C. § 451 provides, in relevant part, "[a]ll charges demanded or received by any public utility… for…any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such…service is unlawful. Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service…as are necessary to promote the safety, health, comfort, and convenience of its patrons…and the public." (P.U.C. § 451.)

Even though P.U.C. § 451 does not expressly mention the Commission, it is clear that the statute imposes a duty or "charge" on the Commission to ensure that services rendered by a utility comply with the statute's mandate. (*Communities for a Better Environment v. State Energy Resources Conservation & Development Com.* (2020) 57 Cal.App.5th 786, 793.)

P.U.C. § 451 forms the basis for "one of the central functions of the Commission" – determining "whether charges demanded by any public utility are just and reasonable." (*Guerrero v. Pacific Gas & Electric Co.* (2014) 230 Cal.App.4th 567, 574, citing P.U.C. § 451.) The interplay between P.U.C. § 451 and the prudent manager standard was discussed in *In re PG&E Corp.* (2019) 611 B.R. 110, 114.[9] There, the Court found that the Commission is ***"bound"*** by the Public Utilities Code, including P.U.C. § 451. (*Ibid.*)(Emphasis added.) The Court noted that a utility's ability to spread costs via rate increases must be reasonable and judged by the prudent manager standard developed by the Commission. (*Ibid.*) The Commission evaluates the utility's proposed course of action against the prudent manger standard ***"before"*** agreeing to authorize the utility to pass on costs to ratepayers. (*Ibid.*)(Emphasis added.) The Commission did not do so in the instant case and has never done so with respect to DCPP extended operations thus far. Yet, the Commission went ahead and authorized PG&E to recover in increased rates nearly three-quarters of a billion dollars from ratepayers just to operate DCPP through the end of 2025. It is set to do so again for costs to operate DCPP in 2026. This is a clear violation of the Commission's statutory mandate and case law.

The cases cited above discussing P.U.C. § 451 are consistent with the Commission's own precedent on its obligations under P.U.C. § 451. The Commission has stated that its:

> "regulation of privately owned utilities is governed by the principle of reasonableness, as to both a utility's ability to spread costs and charges among its ratepayers, as well as its provision of a safe and reliable utility system. The principle derives from Section 451. **In implementing Section 451 for**

[9] This Court may properly cite to federal cases as persuasive authority. (*Landmark Screens, LLC v. Morgan, Lewis & Bockius, LLP* (2010) 183 Cal.App.4th 238, 251, fn. 6.)

> **purposes of utility reasonableness reviews**, the Commission utilizes an **established**[10] **Prudent Manager Standard as the *test* to evaluate whether requested costs are just and reasonable**." (Petitioner's Motion for Judicial Notice ("MJN"), Exh. A, 2018 Cal. PUC LEXIS 314 p.4.)(Emphasis added.)

The Commission summarized this test as follows:

> The standard for reviewing utility actions has been established as one of reasonableness and prudence….The term "reasonable and prudent" means that at a particular time any of the practices, methods, and acts engaged in by a utility follows the **exercise of reasonable judgment** in light of facts known or which should have been known at the time the decision was made. The act or decision is expected by the utility to accomplish the **desired result** at the **lowest reasonable cost** consistent with good utility practices. Good utility practices are based upon **cost-effectiveness**, reliability, safety, and expedition. (MJN, Exh. A 2018 Cal. PUC LEXIS 314, pp. 2-3.)(Emphasis added.)

The Commission went on to state that prudency:

> "encompasses a spectrum of possible practices, methods, or acts consistent with the utility system needs, the **interest of the ratepayer**s and the requirements of governmental agencies of competent jurisdiction. The greater the level of money, risk and uncertainty involved in a decision, the greater the care the utility must take in reaching that decision." (MJN, Exh. A, 2018 Cal. PUC LEXIS 314, pp. 5-6.)(Emphasis added.)

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[10] In the same decision, the Commission described the prudent manager standard as "longstanding". (MJN, Exh. A, 2018 Cal. PUC LEXIS 314, p. 3.)

In essence, the Commission concedes that P.U.C. § 451 imposes on it a statutory obligation to act as a gatekeeper – protecting the public from unjust and unreasonable charges. The Commission further concedes that it implements the reasonableness review under P.U.C. § 451 by utilizing the prudent manager standard. The Commission itself has noted that it cannot grant rate recovery if the requested rates and charges are unreasonable, which in turn, depends on whether they comport with prudent manager standard. (MJN, Exh. A, 2018 Cal. PUC LEXIS 314, p. 4.)[11]

Accordingly, and as previously argued above, the Commission must analyze and make findings on the prudency and cost-effectiveness issues in order to make a determination on the ultimate issue of whether to authorize PG&E's Cost Recovery Application as just and reasonable under P.U.C. § 451.

Underscoring this mandatory duty is the fact that the legislature directed in S.B. 846 that the Commission review

[11] In its Order Denying Rehearing, the Commission suggests, citing its past decisions, that proceeding A.24-03-018 was structured similar to an Energy Resource Recovery Account Proceeding which requires an intelligible standard of cost-effectiveness based on "least cost dispatch." (Exh. 28, PAE 1078-1079.) Yet, the Order Denying Rehearing did not modify the Decision to incorporate this discussion. Moreover, the cases cited are inapposite because proceeding A.24-03-018 did not involve approval of a procurement plan and Petitioner did supply an intelligible standard (see Exh. 11, PAE 547-551 [summarizing Petitioner's evidence on the issue of cost-effectiveness and comparing DCPP's price per megawatt-hour to the price per megawatt-hour of various renewable energy alternatives].) The Commission simply failed to address the proffered standard in its Decision.

whether DCPP extended operations are not cost-effective, imprudent or both.[12] But, as already established above, the Commission did not analyze nor make findings on prudency and cost-effectiveness with respect to authorizing PG&E to recover $723 million from ratepayers for the costs of operating DCPP just through 2025 ***before*** approving PG&E's Application. Adding insult to ratepayer injury, the $723 million cost recovery does not even include the subsequent Cost Recovery Applications that PG&E has filed and will be filing seeking to recover costs for operating the plant in 2026, 2027, 2028, 2029 and 2030, as a result of the Commission's authorizing continued operations of DCPP past its 2024/2025 expiration.

The Commission's statement in the Order Denying Rehearing that the Rulemaking is the "more appropriate" venue for this determination to be made (Exh. 28, PAE 1081) defies not only the mandate of P.U.C. § 451 for a pre-approval determination, but also logic as that would sanction the approval of hundreds of millions of dollars in view of a post-hoc review of issues that the Commission has already indicated it is under no obligation to review and which the Commission proposes will take place in a proceeding that is now closed. (MJN, Exh. E.)

Further, in its Order Denying Rehearing, the Commission claims that the Rulemaking Decision prescribed the scope of the review in A.24-03-018 (Exh. 28, PAE 1082) but the portions of the

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[12] (P.U.C. §§ 712.8(c)(1)(B), [modify extended operations upon termination of loan] and P.R.C. § 25548.3(c)(5)(C)[termination of loan upon finding by Commission that extended operations are not cost-effective, imprudent or both].)

Rulemaking the Commission cited only discuss what the Application was to contain and are not inconsistent with other portions of the Rulemaking where the Commission promised ratepayers it would review prudency and cost-effectiveness in the Cost-Recovery Proceedings, as it is required to do P.U.C. § 451.

B. In the Alternative, the Commission Unlawfully Abdicated any Discretion it Did Have in Performing the Review Required by P.U.C. § 451.

The Commission has already conceded that it "implements its mandatory review under Section 451 by assessing the reasonableness and prudence of utility actions, an evaluation that incorporates consideration of cost-effectiveness, among other factors" (Exh. 1, PAE 54.) In the event that this Court concludes that the Commission has discretion in whether to utilize the prudent manager standard to assess reasonableness under P.U.C. § 451, then the Commission has abused any such discretion by staying silent on the issues of prudency and cost-effectiveness and effectively doing *nothing* as to addressing those issues. (*Elmore v. Imperial Irrigation Dist.* (1984) 159 Cal.App.3d 185, 193, [an agency can be compelled to exercise discretion when it has failed to do so]; *Woodbury v. Brown-Dempsey* (2003) 108 Cal.App.4th 421, 438, [an agency may abuse its discretion if its acts arbitrarily or capriciously. Abdication of discretion is also unlawful].)

Here and in the alternative, the Commission has abused its discretion by engaging in a complete abdication of any discretion it did have under P.U.C. § 451 because the Commission failed to do anything in terms of conducting analyses or making findings on the prudency and cost-effectiveness issues in its Decision. This is especially true, given: 1) the extent of the Commission precedent using the prudent manager standard and describing it as "longstanding"; 2) the extent of evidence, briefing and argument on the issues (Exhs. 5 -6, PAE 257-359; Exhs. 8-11, PAE 388-553; Exhs. 13-20, PAE 641-886; Exhs. 22-23, PAE 978-1020; and 3) the Commission's statement in the Rulemaking Decision that it was ordering PG&E to provide detailed forecasts of the costs to operate DCPP through 2030 with its Cost Recovery Applications **to aid the parties and the Commission in determining whether the costs included in PG&E's annual DCPP Extended Operations Cost Forecast applications are reasonable and prudent** (Exh. 1, PAE 6, 20, 64-65, 67-68 [same]; Exh. 1, PAE 6, 134 [Conclusion of Law 15].)(Emphasis added.)

In light of the foregoing, it was arbitrary and capacious for the Commission to completely ignore and do nothing on the issues of prudency and cost-effectiveness after it was finally presented with the complete cost forecasts that it requested in order to determine whether costs of DCPP extended operations were prudent. (Exh. 1, PAE 6, 20, 64-65, 67-68 [same]; Exh. 1, PAE 6, 134 [Conclusion of Law 15].) The Commission ignored this evidence without any explanation or rationale as to why it did nothing on the issues of prudency and cost-effectiveness of DCPP extended operations. This gives the rate-paying public no confidence or clarity as to when, if ever, the Commission will consider issues of prudency and cost-effectiveness of extended operations at DCPP.

Finally, it was arbitrary and capacious and a complete abdication of any discretion the Commission has under P.U.C. § 451 for the Commission to ignore the issues of prudency and cost-effectiveness despite being provided with: a definition of the "desired result" for purposes of the prudency analysis (Exh. 6, PAE 349-350 [provision of adequate renewable energy and zero-carbon power supply at the lowest reasonable cost]); a comparison of the cost (in price per megawatt-hours) of operating DCPP against the cost of alternative energy resources (Exh. 6, PAE 354-355); new capacity and energy supply data going to the need (or lack thereof) for DCPP's power (Exh. 6, PAE 351); and an explanation that P.U.C. § 712.8(r) requires the Commission to consider and annually report to the Legislature on the need for DCPP's power.(Exh. 23, PAE 1019). How did the Commission even conclude that it was reasonable to authorize the $723 million without applying the prudent manager standard and the prudency and cost-effectiveness considerations under that standard? No one knows.

If it is not appropriate to consider prudency and cost-effectiveness ***before*** authorizing PG&E to charge ratepayers nearly three-quarters of a billion dollars for the costs of extending operations of DCPP, then arguably, it never will be. The need for prudence evaluations **before** the action is taken, when costly mistakes can still be avoided, is paramount. Such prudency evaluations allow the Commission to protect the interests of those to whom risks will be shifted – in this case the ratepayers – with the same vigilance that the financial community looks after the interests of investors. Investors would never put-up billions of dollars without performing due diligence. Neither should the Commission.

CONCLUSION

In summary, the Commission has committed legal error in authorizing PG&E to recover from ratepayers nearly three quarters of a billion dollars to operate DCPP through the end of 2025 without the required review under P.U.C. § 451 and without the required findings under P.U.C. § 1705. In doing so, the Commission has violated its mandatory duty under P.U.C. § 451 to assess the prudency and cost-effectiveness of PG&E's proposed action, or in the alternative, the Commission has unlawfully abdicated any discretion it has in performing the review under P.U.C. § 451. Petitioner respectfully requests that the Court grant writ relief as prayed for in the Petition.

DATE: August 22, 2025

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CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, Rule 8.204, I hereby certify that the text of this Petition for Review and Memorandum of Points and Authorities contains 8,143 words, as determined by the word processing software used to prepare this brief and exclusive of this certification and the other exclusions referenced in Rule of Court 8.204.

DATE: August 22, 2025 VENSKUS & ASSOCIATES, A.P.C.

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