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Date of Issuance 9/26/2023

Decision 23-09-004 September 21, 2023

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

Application of Pacific Gas and  
Electric Company in the 2021  
Nuclear Decommissioning Cost  
Triennial Proceeding. (U39E.)

Application 21-12-007

**DECISION ADOPTING SETTLEMENT AGREEMENT AND  
RESOLVING REMAINDER OF DISPUTED ISSUES**

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**Appendix A: Settlement Agreement**

**DECISION ADOPTING SETTLEMENT AGREEMENT AND  
RESOLVING REMAINDER OF DISPUTED ISSUES**

**Summary**

This decision adopts and approves the Settlement Agreement, dated December 16, 2022 between Pacific Gas and Electric Company, The Utility Reform Network, the Public Advocates Office at the California Public Utilities Commission, Alliance for Nuclear Responsibility, County of San Luis Obispo, Northern Chumash Tribal Council, DHK Associates, and Women’s Energy Matters.

This decision finds that the Settlement Agreement between the parties is reasonable in light of the record of this proceeding, is consistent with the law, and is in the public interest. This decision grants the Joint Motion for Adoption of Settlement Agreement and resolves the remaining disputed issues, approving Pacific Gas and Electric Company’s 2021 Nuclear Decommissioning Cost Triennial Application. Accordingly, Application 21-12-007 is closed.

**1. Procedural History**

On December 14, 2021, Pacific Gas and Electric Company (PG&E or Applicant) filed Application (A.) 21-12-007 for Commission review of its updated nuclear decommissioning cost studies and ratepayer contributions analyses in support of requests to fully fund the nuclear decommissioning master trusts to the level needed to decommission PG&E’s two nuclear plants, the Diablo Canyon Power Plant (DCPP) and the Humboldt Bay Power Plant Unit 3 (HBPP) and for Commission review of decommissioning projects completed since the 2018 Nuclear Decommissioning Cost Triennial Proceeding (NDCTP).

The Utility Reform Network (TURN), Women’s Energy Matters (WEM), and the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) all filed timely protests, and the Alliance for Nuclear

Responsibility (A4NR), the Northern Chumash Tribal Council (NCTC), and the County of San Luis Obispo (SLO) all filed timely responses to the Application.

On January 24, 2022, PG&E filed its Reply to Protests and Responses. On February 3, 2022, the Administrative Law Judge (ALJ) issued a ruling setting a telephonic prehearing conference (PHC) for February 17, 2022.

On February 17, 2022, the Commission held a telephonic PHC to discuss the issues of law and fact and to determine the need for hearing and schedule for resolving the matter.

On April 19, 2022, the assigned Commissioner issued the Scoping Memo and Ruling (Scoping Ruling). On April 29, parties filed comments responding to the Scoping Ruling.

On November 8, 2022, the Commission held a telephonic status conference.

On November 14 and 15, 2022, the Commission held evidentiary hearings.

On December 16, 2022, PG&E, TURN, Cal Advocates, A4NR, SLO, NCTC, DHK Associates, and WEM (Settling Parties) filed a Joint Motion for Adoption of Settlement Agreement.

On December 23, 2022, parties filed opening briefs.

On January 11, 2023, the Northern Chumash Cultural Preserve Kinship (YTT Kinship) filed a response to the Joint Motion for Adoption of Settlement Agreement.

On January 13, 2023, parties filed reply briefs.

On January 19, 2023, Southern California Edison Company (SCE) filed comments on Joint Motion for Adoption of Settlement Agreement.

On January 26, 2023, the Commission held a virtual Public Participation Hearing (PPH). On January 31, 2023, the Commission held an in-person PPH in San Luis Obispo.

This proceeding was submitted on January 26, 2023.

Public Utilities (Pub. Util.) Code Section 1701.5(a) provides that the Commission shall resolve the issues raised in the scoping memo of a ratesetting proceeding within 18 months of the date the proceeding is initiated, unless the Commission makes a written determination that the deadline cannot be met, and issues an order extending that deadline. The statutory deadline for resolving this application as a ratesetting proceeding is June 14, 2023. An extension order was issued in Decision (D.) 23-07-005 setting a new statutory deadline of December 31, 2023.

## **2. Issues Before the Commission**

The Scoping Memo identified the following issues:

1. Whether PG&E's decommissioning cost estimates (including underlying assumptions, associated trust contributions analyses, and forecasted escalation rates) for Diablo Canyon Power Plant are reasonable and in accordance with Sections 8321 through 8330 of the California Pub. Util. Code;
  - a. Whether PG&E's revenue requirements are reasonable given the decommissioning cost estimate, updated trust fund balances, proposed asset allocation glidepath, and updated trust fund return forecasts;
  - b. Whether PG&E's repurposing assumptions for facilities and infrastructure at DCPD are reasonable;
  - c. Whether PG&E's management of spent nuclear fuel, including assumptions about how long spent nuclear fuel will remain at DCPD, is reasonable;

- d. Whether PG&E reasonably considered options for reducing the volume of clean (non-radioactive) decommissioning wastes that must be disposed offsite, the economic methods for transporting such wastes, and the savings resulting from transporting such materials to in-state landfills;
  - e. Whether the DCPD Decommissioning Engagement Panel is reasonably funded and effective;
  - f. Whether the Commission should authorize PG&E's proposed revisions to the DCPD Milestone Framework;
  - g. Whether PG&E's contracting strategy for decommissioning DCPD is reasonable;
  - h. Whether PG&E's deferring of the identification of an applicable radiological release criteria for the DCPD Part 50 licenses will result in an increase in future costs;
  - i. Whether PG&E's decommissioning plan for DCPD adequately addresses the needs and concerns of the plant's host community, including concerns about the continuance of a water desalinization plant, and funding for county emergency services and warning sirens.
2. Whether PG&E's decommissioning cost estimates (including underlying assumptions, associated trust contributions analyses, and forecasted escalation rates) for HBPP are reasonable and in accordance with Sections 8321 through 8330 of the California Pub. Util. Code;
    - a. Whether PG&E's revenue requirements are reasonable given the decommissioning cost estimate, updated trust fund balances, proposed asset allocation glidepath, and updated trust fund return forecasts;
    - b. Whether variances in actual versus forecast safe storage (SAFSTOR) expenses for the period 2018 through 2019 are reasonable;
    - c. Whether PG&E's activities and associated costs for completed projects with respect to HBPP

decommissioning are reasonable (including those for non-radiological habitat restoration);

- d. Whether PG&E's costs for retaining and utilizing qualified and experienced personnel to effectively, safely, and efficiently pursue physical decommissioning related activities at HBPP are reasonable.
3. Whether a spent fuel management cost estimate that assumes Department of Energy (DOE) reimbursement adequately reflects risk associated with DOE reimbursement post shutdown.
4. Whether PG&E is meeting its obligations under the 2018 NDCTP Settlement;
  - a. Whether contributions to non-qualified nuclear decommissioning trusts will occur in a manner consistent with the 2018 NDCTP Settlement adopted in D.21-09-003 and permit a timely return to customers of unspent funds tied to specific scopes of work.
5. Whether the Commission should consider PG&E's land disposition strategy for Diablo Canyon Power Plant.<sup>1</sup>

### **3. Summary of Parties' Litigated Positions**

#### **3.1. PG&E's Position**

PG&E's litigation position would result in a site-specific Decommissioning Cost Estimate<sup>2</sup> for DCPP of \$3.96 billion.<sup>3</sup> For HBPP, PG&E's litigation position would result in a decommissioning cost estimate (DCE) for HBPP of \$1.1 billion

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<sup>1</sup> As noted in the Scoping Memo, consideration or approval of a land disposition strategy is not a waiver of any other requirements PG&E must meet when disposing of land, nor does the approval of a land disposition strategy render a judgment on the reasonableness of any project that would need to be considered as part of an application pursuant to Section 851.

<sup>2</sup> Decommissioning cost estimates are future obligations that need to be settled when taking a plant offline, ending its use as a productive power plant. These estimates are used to inform the collection of revenues required for the decommissioning of the plant. The revenues required are collecting over a period of time.

<sup>3</sup> See Exhibit PG&E-1 at 1-9.



with a cost to complete of \$182.5 million. PG&E requested that the Commission approve \$89 million in completed decommissioning activities as reasonable and prudently incurred.<sup>4</sup> PG&E did not seek a revenue requirement for DCPD or HBPP.

### **3.2. A4NR's Position**

A4NR's litigation position is that PG&E's assumptions about the date the DOE will pick up spent nuclear fuel at DCPD and HBPP are erroneous. A4NR also asserts that the DCE for HBPP is deficient in that it uses an outdated assessment of tsunami risk at the Humboldt Bay (HB) Independent Spent Fuel Storage Installation (ISFSI) in light of updated analytic methodologies and projected sea level rise.<sup>5</sup> A4NR urges PG&E to promptly commit to a radiation cleanup standard for DCPD that achieves the lowest dose-based levels, measured by millirem per year, previously approved by the Nuclear Regulatory Commission (NRC) in a license termination plan. A4NR also challenges the efficacy of the Diablo Canyon Decommissioning Engagement Panel (DCDEP) and makes several recommendations for improvement.

### **3.3. Cal Advocates' Position**

Cal Advocates does not oppose PG&E's DCE for DCPD or its proposed hybrid decommissioning contracting strategy. Cal Advocates recommends that PG&E be required to submit an advice letter with a total of its pre-decommissioning spending with a breakdown of costs spent on pre-shutdown decommissioning planning activities, and that planning costs from 2018 through 2024 should continue to be subject to reasonableness review in the appropriate

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<sup>4</sup> See Exhibit PG&E-1 at 1-12 and 1-13.

<sup>5</sup> See Exhibit A4NR-1 at 20 - 36.

NDCTP. Cal Advocates does not oppose PG&E's HBPP DCE or the reasonableness of its completed decommissioning activities.

### **3.4. TURN's Position**

TURN's litigation position is that the Nuclear Decommissioning Qualified Trust fund is overfunded, that PG&E's proposed use of these funds is inconsistent with the settlement adopted in the 2018 NDCTP, and that all funds collected in 2022 and 2023 for deposit into the Nuclear Decommissioning Non-Qualified Trust fund for DCPD should be refunded to PG&E customers.<sup>6</sup> TURN also asserts that PG&E should remain open to considering models other than its proposed hybrid decommissioning contracting strategy, should pursue an approach that minimizes potential duplication of work by utility staff and contractors, and should ensure that contractual obligations are carefully defined and do not include unreasonable limits on liability.<sup>7</sup> TURN requests that the Commission compare security staffing levels and costs at DCPD and an San Onofre Nuclear Generating Station (SONGS) and that the Commission direct that a third party conduct a comparison between the DCEs for Diablo Canyon, SONGS and other comparable nuclear facilities.

TURN recommends that PG&E's burial escalation rates for low level radioactive waste be reduced to 2.17% for DCPD and 3% for HBPP.<sup>8</sup> TURN also makes certain recommendations with respect to PG&E's land disposition cost recovery and treatment of gain on sale.<sup>9</sup> TURN identifies a discrepancy between the Environmental Impact analysis presented as part of PG&E's application to

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<sup>6</sup> See Exhibit TURN-1 at 7 - 9.

<sup>7</sup> See Exhibit TURN-1 at 9 - 12.

<sup>8</sup> See Exhibit TURN-1 at 15 - 18.

<sup>9</sup> See Exhibit TURN-1 at 19 - 21.

SLO seeking a land use permit for the decommissioning project, and the assumptions included in the DCE.<sup>10</sup> TURN also raised concerns about the Commission's failure, despite the adoption of a specific commitments in D.21-09-003, to engage other state agencies on the rules governing the disposal of uncontaminated materials at in-state Class III landfills.<sup>11</sup> TURN asserts that PG&E should be limited to recovery of 50 percent of the annual membership fees for the Nuclear Energy Institute (NEI) and the Decommissioning Plants Coalition (DPC).<sup>12</sup> Finally, TURN asserts that PG&E did not provide information regarding ongoing recovery of incremental spent nuclear fuel costs from the federal government as required by the 2018 NDCTP settlement.<sup>13</sup>

### **3.5. SLO's Position**

SLO supports PG&E's proposed DCPD DCE.<sup>14</sup> SLO's litigation position addresses necessary emergency planning and response activities at DCPD;<sup>15</sup> repurposing of existing Diablo Canyon facilities for the region's benefit;<sup>16</sup> and disposition and future use of DCPD lands.<sup>17</sup> SLO also responds to A4NR's proposal regarding the DCDEP.<sup>18</sup>

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<sup>10</sup> See Exhibit TURN-1 at 24 - 25.

<sup>11</sup> See Exhibit TURN-1 at See Exhibit TURN-1 at 23 - 24.

<sup>12</sup> See Exhibit TURN-1 at 26 - 28.

<sup>13</sup> See Exhibit TURN-1 at 28 - 30.

<sup>14</sup> See Exhibit SLO-1 at 1 - 2.

<sup>15</sup> See Exhibit SLO-1 at 2 - 4.

<sup>16</sup> See Exhibit SLO-1 at 4 - 6.

<sup>17</sup> See Exhibit SLO-1 at 6 - 7.

<sup>18</sup> See Exhibit SLO-2 at 2-3.

### **3.6. WEM's Position**

WEM addresses PG&E's proposed hybrid contracting strategy for DCPD and provides additional information regarding sites that have opted for License Stewardship and License Transfer Asset Sale contracting strategies.<sup>19</sup> WEM provides benchmarking information regarding state-mandated and licensee-sponsored community advisory boards.<sup>20</sup> In its Protest dated January 13, 2022, WEM questioned PG&E's inclusion of spent nuclear fuel (SNF) costs in its DCEs despite its finding that a majority of utilities in the United States assume DOE reimbursement when developing SNF management costs for their DCEs.<sup>21</sup> WEM also addressed the need for ongoing site characterization at DCPD prior to permanent shutdown.<sup>22</sup> WEM discussed future uses for the 230 kilovolt (kV) switchyard and lines.<sup>23</sup>

### **3.7. NCTC's Position**

NCTC's litigation position is that PG&E's land disposition strategy – for which PG&E requests Commission approval in its application - does not allow for the proper future application of the Commission's Tribal Land Transfer Policy (TLTP) and should be considered in this proceeding.<sup>24</sup> NCTC proposes that PG&E provide an equitable opportunity for tribes to acquire DCPD lands proposed for disposition, and a clear and transparent process for land acquisition that provides ample notice to tribes and meaningful consultation opportunities.<sup>25</sup>

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<sup>19</sup> See Exhibit WEM-1 at 2 – 8.

<sup>20</sup> See Exhibit WEM-1 at 8 – 15.

<sup>21</sup> See WEM Protest at 2.

<sup>22</sup> See WEM Protest at 15 – 17.

<sup>23</sup> See WEM Protest at 17.

<sup>24</sup> See Exhibit NCTC-1 at 4 – 6.

<sup>25</sup> See Exhibit NCTC-1 at 6 – 8.

### **3.8. YTT Kinship's Position**

YTT Kinship's position is represented below in our discussion on PG&E's land disposition strategy.<sup>26</sup>

### **4. Settlement Agreement**

On December 16, 2022, PG&E, TURN, Cal Advocates, A4NR, SLO, NCTC, DHK Associates, and WEM (Settling Parties) filed a Joint Motion for Adoption of Settlement Agreement. The Settlement Agreement resolves all but the following two issues: (1) Whether PG&E's deferring of the identification of the applicable radiological release criteria for DCPD Part 50 NRC licenses will likely result in an increase in future costs; and (2) Whether amounts currently contained in the Nuclear Facilities Non-Qualified California Public Utilities Commission (CPUC) Decommissioning Master Trust fund for DCPD should be refunded to customers.

The Settling Parties note that the first issue was addressed in evidentiary hearings and the second issue is to be addressed in briefs without the need for cross examination.<sup>27</sup> The Motion for Adoption of the Settlement Agreement further notes that notwithstanding the two issues mentioned above, which are expressly carved out of the Settlement in Section II of the Settlement Agreement, "all proposals and recommendations by the Settling Parties inconsistent with the terms and conditions of the Settlement Agreement are either withdrawn or considered subsumed without adoption by the Settlement Agreement."<sup>28</sup> Below we present a summary of the specific items in the Settlement Agreement.

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<sup>26</sup> See YTT Kinship Response to Joint Motion for Adoption of Settlement.

<sup>27</sup> Joint Motion for Settlement at 8.

<sup>28</sup> Joint Motion, at 1-2.

#### **4.1. Interim Order on 2023 Revenue Requirement**

The Settling Parties agree to jointly request an interim order from the Commission approving PG&E's proposal not to request a revenue requirement for DCP and HBPP nuclear decommissioning trust funding during the 2021 NDCTP rate period of 2023 through 2026. An interim order will permit PG&E to make a downward adjustment to the nuclear decommissioning charge retroactive to January 1, 2023 rather than continuing the currently authorized nuclear decommissioning revenue requirement subject to refund upon Commission issuance of a final decision in this proceeding. Upon the issuance of an order approving this proposal, PG&E shall cease collection of the revenue requirement in rates and refund any collections occurring since January 1, 2023, to ratepayers.

#### **4.2. Nuclear Facilities Non-Qualified CPUC Decommissioning Master Trust**

The Settling Parties agree that Pub. Util. Code Section 712.8(n) states that "the Commission shall halt disbursements from the Diablo Canyon Nuclear Decommissioning Non-Qualified Trust, excluding refunds to ratepayers." Consistent with this requirement, PG&E withdraws its proposal to finance DCP spent fuel management contract costs from the Non-Qualified Trust fund.

#### **4.3. DOE Spent Nuclear Fuel Assumptions**

With respect to both DCP and HBPP, the Settling Parties agree to defer proposals addressing the assumed date DOE will commence picking up spent nuclear fuel, and the rate treatment of DOE spent nuclear fuel litigation/settlement proceeds to PG&E's 2024 NDCTP.

#### **4.4. Escalation Rate for Low Level Radioactive Waste Burial Costs and Disposal Assumption**

For purposes of the 2021 NDCTP, PG&E agrees that it is reasonable for the HBPP and DCPD DCEs to reflect a 3% escalation rate for low level radioactive waste burial costs. TURN agrees that it is reasonable for the DCPD DCE to reflect an assumption that the DCPD decommissioning waste will be disposed of outside of California.

#### **4.5. DCPD DCE Security Staffing Costs**

PG&E agrees to pursue additional discussions with SCE with the goal of explaining the difference in the security staffing costs assumed in the SONGS decommissioning cost estimate versus the DCPD decommissioning cost estimate and to present this information in PG&E's 2024 NDCTP.

#### **4.6. Use of Independent Consultant to Compare Decommissioning Cost Estimates**

The Settling Parties urge the Commission to directly engage a third-party consultant to compare DCEs of SONGS, DCPD and all nuclear plants in the United States currently undergoing decommissioning. In the event the Commission limits the nuclear plants included in the cost comparison study, the Settling Parties request the Commission provide (or direct the consultant to provide) the rationale for selecting the nuclear plants for cost comparisons. At a minimum, the third-party consultant should review the following:

- Significant differences in forecasted costs for license termination, spent fuel management, and site restoration;
- Comparison of security staffing and costs for different phases of decommissioning;
- Treatment of DOE spent nuclear fuel litigation proceeds for purposes of ratemaking and decommissioning cost estimation; and

- Comparison of costs from the use of different contracting approaches.

This evaluation should be complete prior by February 1, 2024, so that the results may inform development of PG&E's 2024 NDCTP.

#### **4.7. Humboldt Bay ISFSI Updated Tsunami Hazard Assessment**

PG&E agrees to perform an updated tsunami hazard assessment for HBPP incorporating the most current information about sea level rise and tsunamigenic earthquakes benchmarked against the similar analysis performed for the SONGS ISFSI. PG&E will submit the updated tsunami hazard assessment along with PG&E's 2024 NDCTP application.

#### **4.8. Ratemaking Treatment for Disposition of PG&E Assets and Lands**

PG&E agrees that it is reasonable for the full value of any sale of DCPD depreciable assets to be refunded directly to customers as a credit against generation rates. PG&E will propose a specific ratemaking proposal in its 2024 NDCTP application. The Settling Parties agree that, consistent with Pub. Util. Code Section 712.8(o), the Commission may address disposition of DCPD lands owned by PG&E or its affiliate Eureka Energy, including the ratemaking associated with disposition, in a new or existing proceeding. The Settling Parties agree that this Settlement Agreement does not foreclose the ability or rights of any party to fully participate in those proceedings, including, but not limited to, proposing new or additional processes that may affect the disposition of the DCPD lands.

#### **4.9. DCPD Lands Disposition Strategy**

PG&E agrees to reach out to each entity listed on California's Native American Heritage Commission (NAHC) contact list that have included the DCPD lands as part of their aboriginal territory and hold at least one meeting



addressing: (1) a summary of decommissioning; (2) potential repurposing; and (3) properties expected to be available for acquisition. These meetings will occur upon the request of an interested tribe or on PG&E's initiation after the Commission issues a final, non-appealable decision in PG&E's 2021 NDCTP. These meetings do not constitute the formal right of first offer notification called for in the Commission's TLTP guidelines. PG&E agrees it will not voluntarily enter any Memorandum of Understanding or other agreement with any party regarding disposition of DCPD lands until the above process occurs, but PG&E must comply with any regulatory or statutory directive to take action related to disposition of DCPD lands. Consistent with Public Resources Code Section 25448(g), PG&E will: (1) consult and work collaboratively with local California Native American tribes and California Native American tribes listed on the NAHC contact list for the DCPD lands to consider requests related to: tribal access, use, conservation and co-management of DCPD lands. Such consultation and collaboration will be upon request; and (2) PG&E will work cooperatively with local California Native American tribes and California Native American tribes listed on the NAHC contact list that are interested in acquiring DCPD lands. Also consistent with Public Resources Code Section 25548(g), PG&E will identify a tribal liaison by November 1, 2022. The tribal liaison will be responsible for compliance with the requirements enumerated in Section 3.9 of the Settlement Agreement and will be PG&E's primary point of contact for the California Native American tribes. The Settling Parties acknowledge that, consistent with Pub. Util. Code Section 712.8(o), other Commission proceedings and/or legislative mandates may result in additional or different procedures or provisions relating to the disposition of the DCPD lands. The Settling Parties agree that this Settlement Agreement does not foreclose the ability or rights of

any party to fully participate in those proceedings, including, but not limited to, proposing new or additional processes that may affect the disposition of the DCPD lands.

#### **4.10. Repurposing of 230 kV Transmission Line**

The Settling Parties support re-use of the 230 kV transmission line by PG&E or by a third party for offshore wind power, energy storage, subsea transmission projects that deliver renewable energy, or renewable energy technologies, in the near term. Such repurposing will not be included in the DCPD decommissioning project scope, but work may occur done in parallel with decommissioning activities.

#### **4.11. Decommissioning Contract Strategy**

In conducting any solicitation for the decontamination and dismantlement (D & D) contract, PG&E shall expressly allow bidders to submit conforming offers that incorporate alternative approaches to the hybrid model proposed in PG&E's 2021 NDCTP Application. PG&E agrees to consider such offers and to evaluate whether they could deliver superior value and lower overall cost. Prior to executing the D & D contract, PG&E shall identify opportunities to minimize duplication of work by utility staff and third-party contractors. In the NDCTP following execution of the D & D contract, PG&E shall (1) explain how the D & D contract results in optimized overall staffing over time and (2) identify all relevant dispute resolution and liability cap provisions and explain the rationale for agreeing to each provision.

#### **4.12. Industry Association Membership Fees**

PG&E agrees it is reasonable to include only 50% of Nuclear Energy Institute and Decommissioning Plant Coalition membership costs in the DCPD and HBPP DCEs.

#### **4.13. Future of DCDEP**

PG&E agrees to the participation of the CPUC Executive Director or their delegate on the DCDEP recruitment and selection committee. PG&E agrees to establish a formal process for tracking and responding to decommissioning-related (including questions about the impact of extended operations on decommissioning planning activities) questions raised by DCDEP panel members and members of the public that PG&E is not able to answer in real time. This process will include a publicly available question log, and the responses will be posted on PG&E's DCDEP webpage. Unless it provides prompt notice to the DCDEP that a question will require additional time to respond, PG&E will provide responses to the DCDEP decommissioning-related (including questions about the impact of extended operations on decommissioning planning activities) questions within 30 days, or at the next DCDEP meeting, whichever occurs first. If an alternative entity to the DCDEP is not adopted following the 2021 NDCTP proceeding, PG&E agrees to propose an amendment to Sections V.A.v and V.A.vi of the DCDEP Charter for consideration and agreement by the DCDEP as follows:

- The Panel will consist of a minimum of eight (8) and a maximum of 11 community members, a senior representative of PG&E's decommissioning team (appointed by PG&E), and up to five (5) Ex-Officio members. Vacancies will be filled consistent with Section V.A.xiii.
- Ex-Officio member(s) (which may include elected officials) may be selected by the Panel and PG&E to represent local interests. Immediate family members of PG&E employees are not eligible to serve in Ex-Officio capacity. At least two Ex-Officio spots will be reserved for representatives from the tribal organizations listed on California's Native

American Heritage Commission contact list affiliated with the DCPD lands.

- Proposals for additional revisions to the DCDEP, including A4NR's proposal to eliminate the DCDEP and replace it with the Diablo Canyon Community Advisory Board, will be deferred for consideration until PG&E's 2024 NDCTP. DCDEP costs incurred through September 2024 will be reviewed for reasonableness in PG&E's 2024 NDCTP.

#### **4.14. DCPD Decommissioning Planning Costs Advice Letter and Review**

PG&E agrees to submit to the Commission annual advice letters for disbursement of funds from the DCPD Nuclear Decommissioning Trusts. PG&E will file an advice letter setting out PG&E's proposed procedures, including the information to be provided with each advice letter. Milestones 1-3 will be subject to reasonableness review in the first NDCTP after shutdown, consistent with the Milestone Framework. Costs incurred pre-shutdown for other Milestones will be reviewed in future NDCTPs in accordance with the Milestone Framework.

#### **4.15. Permitting/DCPD Project Description**

PG&E will update the DCPD DCE to include the cost of SLO staff required to oversee implementation of mitigation measures and compliance with permit conditions in the first NDCTP after the final permits are issued for the decommissioning project. PG&E will update the DCPD DCE to include the cost of mitigation measures in the first NDCTP after the final permits containing those mitigation measures are issued for the decommissioning project. PG&E will update the DCPD DCE as necessary in the first NDCTP after SLO issues the final Environmental Impact Report to reflect the project description included in the final Environmental Impact Report supporting issuance of discretionary permits.

#### **4.16. Site Characterization**

PG&E agrees to perform soil and sediment sampling and characterization for Diablo Creek within the Part 50 NRC license boundary by November 1, 2023. PG&E will conduct sampling in Diablo Creek consistent with NUREG-1575<sup>29</sup> and the Multi-Agency Radiation Survey and Site Investigation Manual for radioactivity and California Environmental Protection Agency guidance for hazardous materials. PG&E's agreement to perform soil and sediment sampling and site characterization for Diablo Creek within the Part 50 NRC boundary by November 1, 2023, resolves disputed issues regarding site characterization for purposes of this 2021 NDCTP.

#### **4.17. HBPP DCE and Reasonableness Review**

The Settling Parties do not oppose PG&E's estimate to complete the remaining work at the HBPP site as of January 1, 2021, of \$153.3 million (2021\$) (total cost to decommission HBPP \$1.1 billion (nominal/2021\$)). The Settling Parties also do not oppose PG&E's request that the Commission find that the \$89 million in costs incurred for completed decommissioning activities at HBPP were reasonable and prudently incurred.

### **5. Settlement Standard of Review**

Pursuant to Rule 12.1(d), the Commission will only approve settlements that are reasonable in light of the whole record, consistent with the law, and in the public interest. Eight parties filed the Joint Motion for Approval of Settlement Agreement. Proponents of a settlement agreement have the burden of proof of

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<sup>29</sup> NUREG is short for Nuclear Regulatory Commission. Publications from the Nuclear Regulatory Commission may begin with the NUREG abbreviation.

demonstrating that the proposed settlement meets the requirements of Rule 12.1 and should be approved by the Commission.<sup>30</sup>

First, we examine whether the Settlement Agreement is in the public interest. The Parties to the Settlement Agreement represent distinct interests. For example, PG&E represents the interests of its customers and shareholders. TURN represents the interests of residential customers. Cal Advocates represents utility customers' interests before the CPUC. A4NR represents the interests of consumers concerned about the cost and safety of PG&E's nuclear operations. SLO represents the interests of its constituents in the political jurisdictions surrounding Diablo Canyon and is responsible for operational area emergency response. NCTC represents the interests of a tribe of indigenous Northern Chumash people from San Luis Obispo region whose ancestral territory includes lands surrounding Diablo Canyon. WEM represents the perspectives of residential customers, particularly women and low-income customers. DHK focuses on the management of the Nuclear Decommissioning trust funds. The Settling Parties represent all active parties who submitted testimony in this proceeding.

The Settlement balances the interests of these diverse parties and reaches a mutually agreeable solution in the form of a compromise on all but two of the issues in this proceeding. A settled outcome is favored as it avoids expending time and resources on further litigation of the issues. We find that a Settlement based on a consensus between many distinct interests and stakeholders to be in the public interest.

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<sup>30</sup> D.12-10-019 at 14-15; D.09-11-008 at 6.

Next, we examine whether the Settlement Agreement is reasonable in light of the whole record. The Joint Parties argue that the Settlement Agreement represents “compromises developed after careful review and extensive discussion by all interested parties” and “after each party had made significant concessions to resolve issues in a manner that reflects a reasonable compromise of their litigation positions.”<sup>31</sup> The Parties reached a compromise on the litigated positions that, in totality were agreeable to all stakeholders. Therefore, we find that the Settlement Agreement is reasonable in light of the whole record as parties’ positions as litigated in the record were used to reach the settled positions.

Last, we examine whether the Settlement Agreement is consistent with existing law. The Settlement Agreement as written is consistent with existing law, however we note that statute, the Commission’s TLTP, or other Commission decision or directives prevail over the language in Section 3.9 of the Settlement Agreement should a conflict arise. This decision affirms application of the Commission’s TLTP to any future disposition of DCPD absent a change in law or Commission order.

## **5.1. Objections to Settlement Agreement**

### **5.1.1. Section 3.6 – Procurement of a Third-Party Consultant**

SCE recommended the Commission reject Section 3.6 of the Settlement Agreement, where “[t]he Settling Parties Urge the Commission to directly engage a third-party consultant to compare DCEs of SONGS, DCPD, and all nuclear plants in the United States currently undergoing decommissioning.”<sup>32</sup>

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<sup>31</sup> See Joint Motion for Settlement at 14.

<sup>32</sup> See Joint Motion for Settlement at 6.

SCE contends that the review recommended by the Settlement Agreement would be duplicative in both effort and resources of the review of SONGS and DCPD DCEs that the Commission already undertakes in the respective NDCTPs. SCE expresses further concerns that the additional review would require it to expend resources to provide information, in addition to the resources it is already expending in its existing NDCTP. Finally, SCE contends that because the various plants are at different points in the decommissioning process, comparing costs and existing funding levels would be challenging.

The language contained in the Settlement Agreement urges the Commission to procure a consultant to compare the decommissioning costs. The Commission will take the position of both the Settling Parties and SCE under advisement on this matter and may or may not elect to engage an independent consultant. The Settlement Agreement does not constrain the Commission's ability to make this choice. We do not find it necessary to reject the Settlement Agreement or to remove this provision as it is not necessary to resolve this matter in this proceeding.

**5.1.2. Section 3.9 – PG&E's Land Disposition Strategy**

YTT Kinship recommends the Commission reject Section 3.9 of the Settlement Agreement, which addresses PG&E's DCPD Lands Disposition Strategy. In Section 3.9 of the Settlement Agreement, PG&E commits to contacting every entity listed on California's Native American Heritage Commission contact list that includes the DCPD lands as part of its aboriginal territory and to hold at least one meeting to address specified issues. The meeting is to occur once a tribe expresses interest or upon PG&E's initiation following the issuance of a final decision resolving this proceeding. PG&E also



commits to refraining from entering into a Memorandum of Understanding with any party regarding the disposition of DCPD lands until the occurrence of such a meeting.

The language of the Settlement Agreement notes that the aforementioned meetings “do not constitute formal right of first offer notification called for in the Commission’s Tribal Land Transfer Policy guidelines” and that PG&E must comply with any regulatory or statutory direction to take action related to disposition of DCPD lands.”<sup>33</sup>

YTT Kinship contends that Section 3.9 of the Settlement resolves matters outside of the scope of the proceeding, including: (1) the accuracy and applicability of California’s Native American Heritage Commission contact list for DCPD lands; (2) PG&E’s responsibilities under the Commission’s TLTP; and (3) PG&E’s responsibilities under Public Resources Code Section 25548(g).<sup>34</sup>

The relevant language in the Commissioner’s Scoping Ruling on the land disposition strategy reads as follows:

Given that PG&E has included a land disposition strategy as part of its application and opening testimony, the Commission may wish to further consider how or whether approval of a land disposition strategy may implicate any future Section 851 applications. Therefore, we will include the narrow issue of whether the Commission should consider PG&E’s land disposition strategy in this proceeding, including whether the policy as written allows for proper future application of the Tribal Land Transfer Policy that is the subject of Rulemaking (R.) 22-02-002.<sup>35</sup>

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<sup>33</sup> See Settlement Agreement at 8.

<sup>34</sup> See YTT Kinship Response to Motion for Settlement at 8.

<sup>35</sup> This item is listed as # 5 in the Scoping Ruling and includes a footnote stating that consideration or approval of a land disposition strategy is not a waiver of any other requirements PG&E must meet when disposing of land, nor does the approval of a land

*Footnote continued on next page.*

The Settling Parties respond argue that YTT's argument does not justify removal of Section 3.9 because:

(1) PG&E's land disposition strategy is within the scope of this proceeding; (2) use of the California Native American Heritage Commission (NAHC) contact list for Tribal outreach and consultation is consistent with the existing Tribal Land Transfer Policy (TLTP) framework; and (3) Section 3.9 is not intended to 'resolve' or otherwise satisfy PG&E's obligations under the Commission's TLTP or Section 25548(g) of the Public Resources Code.<sup>36</sup>

The Joint Parties argue that PG&E presented its Land Disposition strategy in its testimony and all parties, including YTT Kinship, had an opportunity to submit testimony on the strategy, noting that only NCTC filed testimony on the issue. The Joint Parties add that no party challenged or moved to strike the PG&E or NCTC testimony as outside the scope of the proceeding.

The Joint Parties also argue that Section 3.9 does not impact PG&E's responsibilities under the TLTP or foreclose any party's rights to fully participate in future proceedings, but rather reflects a compromise between PG&E's request for Commission approval of the Diablo Canyon Power Plant land disposition strategy and NCTC's proposal that PG&E provide an equitable opportunity for tribes to acquire lands proposed for disposition through a clear process for land acquisition that includes ample notice and meaningful consultation opportunities.<sup>37</sup>

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disposition strategy render a judgment on the reasonableness of any project that would need to be considered as part of an application pursuant to Section 851.

<sup>36</sup> See Joint Parties Reply Comments at 3-4.

<sup>37</sup> See Joint Parties Reply Comments at 5.

The Joint Parties argue that the NAHC identifies the tribes to be included on the contact list and the TLTP determines the applicability of the NAHC contact list, making the process “neither new nor controversial.”<sup>38</sup> The Joint Parties also argue that Section 3.9 “recognizes that other Commission proceedings may result in additional or different procedures or provisions relating to the disposition of the Diablo Canyon Power Plant lands” and that “Section 3.9 does not address PG&E’s responsibilities under the TLTP.”<sup>39</sup>

We find that the consideration of PG&E’s land disposition strategy and the extent to which it is consistent with or does not interfere with existing statute and Commission policy, including Section 851 and the Commission’s TLTP is within the scope of this proceeding. We find that the Joint Parties’ reply comments address many of the concerns raised by YTT Kinship. Whilst the instant decision adopts the Settlement as is, including Section 3.9, we note that PG&E’s land disposition strategy for Diablo Canyon Power Plant is separate and distinct from the TLTP requirements. Should a conflict arise between the land disposition strategy and the TLTP or any other statutory requirement or Commission directive, the latter would prevail over the land disposition strategy described in this application. In essence, the land disposition strategy must not and cannot conflict with any obligations PG&E has under Pub. Util. Code Section 851, the TLTP (as it exists or as it is revised and updated in R.22-02-002), or other Commission directives or statutory requirements.

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<sup>38</sup> See Joint Parties Reply Comments at 5.

<sup>39</sup> See Joint Parties Reply Comments at 6.

## **6. Issues Not Included in Settlement Agreement**

As for the two disputed issues not included in the Settlement Agreement, PG&E, the Applicant, bears the burden of proof to show that the regulatory relief it requests is just and reasonable and the related ratemaking mechanisms are fair. The Applicant likewise “has the burden of affirmatively establishing the reasonableness of all aspects of its application. Intervenors do not have the burden of proving the unreasonableness of [the utility’s] showing.”<sup>40</sup> The two outstanding issues are discussed and resolved below.

Finally, we adopt the uncontested DCE for Diablo Canyon of \$3.96 billion.<sup>41</sup>

### **6.1. Radiological Release Criteria**

The issue of whether deferring identification of an applicable radiological release criteria for the DCCP Part 50 NRC Licenses will result in an increase in future costs is within the scope of this proceeding and is not included in the Settlement Agreement. However, it is important to distinguish the issue of whether the *deferral* of an identification of a cleanup standard will result in an increase in future costs from the issue of whether the Commission should *impose* a cleanup standard on PG&E or what that standard should be. Only the issue of whether a deferral in identification of an applicable radiological release criteria, or cleanup standard, will result in an increase in future costs will be examined here.

The standards for protection against ionizing radiation resulting from activities conducted under licenses issued by the Nuclear Regulatory

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<sup>40</sup> D.06-05-016 at 7.

<sup>41</sup> See Scoping Ruling at 4, PG&E Opening Brief at 11, and the Joint Motion for Adoption of Settlement Agreement at 5 (Cal Advocates’ Position).

Commission are governed by the §20 of the Code of Federal Regulations (CFR).

As stated in federal code:

It is the purpose of the regulations in this part to control the receipt, possession, use, transfer, and disposal of licensed material by any licensee in such a manner that the total dose to an individual does not exceed the standards for protection against radiation prescribed in the regulations in this part.<sup>42</sup>

PG&E has committed to a cleanup standard of 25 millirem (mrem) per year,<sup>43</sup> as required by 10 CFR 20.1402, which states:

A site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a TEDE [total effective dose equivalent] to an average member of the critical group that does not exceed 25 mrem (0.25 mSv) per year, including that from groundwater sources of drinking water, and the residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA).

A4NR characterizes PG&E's radiation cleanup standard to achieve unrestricted site release as a deficiency in PG&E's 2021 DCE for DCP. A4NR argues that states such as Maine, Vermont, and New York have adopted stricter cleanup standards that have been approved by the NRC, and therefore PG&E "know[s] better."<sup>44</sup> By the latter, A4NR states that PG&E achieved a lower mrem cleanup standard at HBPP and therefore should justify why the same should not be expected at DCP.

A4NR provides three reasons why PG&E should adopt lower mrem standard in place of what is required by federal code. First, A4NR contends that PG&E adopting a lower clean up standard may not cost more than the standard

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<sup>42</sup> See § 20.1001 Purpose.

<sup>43</sup> See Exhibit PG&E-8 at 1-12:22-23.

<sup>44</sup> See Exhibit A4NR-1 at 3, lines 15-20.

required by federal code since PG&E has not analyzed any prospective cost difference between the 10 mrem requirement adopted by other states and the 25 mrem standard identified in PG&E's DCPD DCE.<sup>45</sup>

Second, A4NR contends that PG&E's failure to adopt a lower mrem standard will create controversy among Californians who will expect a more stringent standard, such as that adopted by other states. A4NR further contends that this in turn will extend the decommissioning timeline and result in an increase in costs.

Third, A4NR contends that the DCDEP's desire to repurpose as many buildings and assets as possible "requires as pristine a restored site as possible." A4NR cites to PG&E's Repurposing and Reuse Concepts Report, submitted to SLO Department of Planning and Building in December of 2021, as cautioning "that public perception of contamination of the site may result in resistance to certain uses."<sup>46</sup>

PG&E argues that, during decommissioning, the state is preempted from imposing regulatory requirements concerning radiation hazards and nuclear safety by the NRC's exclusive jurisdiction over radiological aspects of licensed nuclear reactors and reactor decommissioning. PG&E further contends that the 25 mrem standard complies with NRC requirements, which were based on "an extensive rulemaking process, reviewing dozens of expert radiological studies and public comments."<sup>47</sup> PG&E adds that "if the site is remediated to the NRC

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<sup>45</sup> See Exhibit A4NR-1 at 4, lines 4-10.

<sup>46</sup> See Exhibit A4NR-1 at 5, lines 1-9.

<sup>47</sup> PG&E Opening Brief at 5.

standard [of 25 mrem]... the site may be used for any purpose, including residential living or residential farming.”<sup>48</sup>

PG&E also argues that there is no evidence in the record to substantiate A4NR’s claims regarding cost savings resulting from the adoption of a lower mrem standard. Furthermore, implementing a lower mrem standard may require more site disturbance and impacts from associated activities including additional excavation and backfill work resulting in additional environmental impacts. The latter was also articulated by SLO when addressing A4NR’s stance on the adoption of a lower standard.

Finally, PG&E argues that the DCDEP was established “to enhance and foster open communication, public involvement, and education on decommissioning plans” and PG&E “is actively engaged in open and transparent dialogues with interest stakeholders on a variety of matters regarding decommissioning and future use of lands around DCP.”<sup>49</sup> PG&E requests the Commission not preempt ongoing discussions with stakeholders when considering whether stakeholder concerns regarding any type of cleanup standard for future uses.

The issue being considered in this proceeding is solely whether *deferring* identification of an applicable radiological release criteria for the DCP Part 50 NRC licenses will result in an increase in future costs” (emphasis added).<sup>50</sup>

A4NR has provided no credible evidence that PG&E’s deferral in identifying a specific standard will result in an increase in costs. A4NR states that PG&E has not conducted an analysis of the cost difference between adopting a

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<sup>48</sup> PG&E Reply Brief at 2.

<sup>49</sup> PG&E Opening Brief at 8.

<sup>50</sup> Commissioner’s Scoping Ruling at 5.

25 mrem standard and a 10 mrem standard, however the absence of a cost analysis is not evidence that favors either standard, including a lower standard, which is what A4NR favors. Rather, PG&E has committed to meeting existing requirements for site release.

Second, we find A4NR's contention that PG&E's failure to adopt a lower standard, as was done in other states, will result in public controversy and discontent to be speculative and unsupported by evidence in the record of this proceeding. The Commission cannot make decisions based on speculation, especially in instances where there is no clear evidence that the relief requested would result in an added benefit. Clean up to the 25 mrem standard results in unrestricted use of the land, a fact that A4NR conceded to in evidentiary hearing.<sup>51</sup> No evidence was presented to show how achieving the required cleanup standard will result in an increase in future costs as compared to a lower standard.

Finally, A4NR contends that the DCDEP's desire to repurpose the area requires "as pristine a restored site as possible."<sup>52</sup> Yet it is unclear what uses would suffer from a 25 mrem standard, or which would benefit from a lower standard. "As pristine a restored site as possible" is a subjective and qualitative measurement that is not clearly connected with any tangible or measurable benefit. For the reasons stated, we find A4NR's arguments regarding the additional cost that will result from PG&E's deferral of identifying a specific site release criteria to be unsupported by the record in the proceeding. PG&E states that it is very likely its release criteria will be lower than the 25 mrem NRC

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<sup>51</sup> See Evidentiary Hearing Transcript at 34:5-8.

<sup>52</sup> See Exhibit A4NR-1 at 5, lines 1-9.



standard “without additional cost to customers.”<sup>53</sup> PG&E has committed to meeting the regulatory requirements for site release; for purposes of this proceeding, we do not find that deferring a commitment to a specific standard lower than what is required will result in an increase in future costs. This decision does not prevent a party from presenting evidence on or revisiting this issue in future NDCTPs.

PG&E is directed to conduct a study on the cost difference between a 25-millirem standard and a 10-millirem cleanup standard. The study is to include both costs and benefits for each standard, be they financial, environmental, or of another nature. The study should also include an analysis of how the deferral of the identification of a cleanup standard may impact decommissioning costs at DCP. PG&E is to submit its findings as part of its next NDCTP filing, where the Commission may choose to revisit the issue.

## **6.2. Decommissioning Master Trusts**

The second issue not resolved as part of the Settlement Agreement is whether amounts currently contained in the Nuclear Facilities Non-Qualified CPUC Decommissioning Master Trust fund for DCP should be refunded to customers.<sup>54</sup> This issue falls under the umbrella of whether PG&E’s decommissioning cost estimates (including underlying assumptions, associated trust contributions analyses, and forecasted escalation rates) for Diablo Canyon Power Plant are reasonable and in accordance with Sections 8321 through 8330 of the California Pub. Util. Code.

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<sup>53</sup> See Exhibit PGE-8 at 1-13:1-3.

<sup>54</sup> See Joint Motion for Settlement at 8.

In D.21-09-003, the Commission adopted the Settlement Agreement which found PG&E's annual revenue requirement of \$112.5 million recovered over eight years (2022-2029)<sup>55</sup> to be reasonable.<sup>56</sup> Section 2 of the Settlement Agreement approved in D.21-09-003 directs PG&E to deposit the additional contributions "to trusts or other mechanisms not requiring IRS rulings."<sup>57</sup> PG&E has been accumulating these funds in a non-qualified trust (NQT).

TURN recommends the Commission "direct PG&E to refund all balances in the DCPN Non-Qualified Trust (NQT) to ratepayers at the earliest possible date."<sup>58</sup> TURN argues that the refund of NQT balances to customers is required pursuant to Pub. Util. Code Section 712.8(n), which reads as follows:

The Commission shall halt disbursements from the Diablo Canyon Nuclear Decommissioning Non-Qualified Trust, excluding refunds to ratepayers.

TURN offers three reasons why the Commission should direct PG&E to refund customers the NQT balance. First, TURN contends that it is required by law (as cited above) and would address near-term affordability challenges; second, TURN contends that it is consistent with principles of intergenerational equity; and third, TURN argues that it is appropriate in light of the general overfunding of the Diablo Canyon Decommissioning Trust Funds.

PG&E argues that a requirement to refund the amounts in its NQT would constitute retroactive ratemaking, is imprudent at this time given the uncertainty regarding final decommissioning costs and timeline, and that if the funds were

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<sup>55</sup> See Application at 3.

<sup>56</sup> See D.21-09-003, Decision Adopting Settlement, Appendix A at 8.

<sup>57</sup> See D.21-09-003, Decision Adopting Settlement, Appendix A at 6.

<sup>58</sup> See TURN Opening Brief at 1.

removed at this time and there was a future shortfall, the burden would fall entirely on future customers.

PG&E states that “TURN’s argument is based on the supposition that the DCPD Qualified NDT contains funds in excess of what will ultimately be needed.”<sup>59</sup> PG&E adds that “changes in assumptions, including stock market performance and escalation rates (and unforeseen wars), can result in dramatic changes to the assumed value of the funds.”<sup>60</sup>

We disagree with TURN’s interpretation that Pub. Util. Code Section 712.8(n) requires an immediate refund. A plain reading of the statutory language simply does not impose any such requirement. Rather, the statute is silent on the timing of any refund, granting the Commission discretion on if and when PG&E should be directed to issue a refund. Any future use of the NQT funds, excluding the issuance of a refund, may only occur if the statute is repealed or amended. Given the current statute prohibiting the use of the NQT funds for any purpose other than a refund to customers, it is unclear what purpose retaining the NQT funds can serve PG&E. A refund of NQT funds will provide relief to ratepayers, who may be struggling with ongoing rate increases.

Should the Commission elect to extend operations at DCPD in R.23-01-007, funds for decommissioning would be collected from all ratepayers who stand to benefit from the extension of operations. The current NQT funds were collected exclusively from PG&E ratepayers. If the Commission does not elect to extend operations at DCPD, any shortfall related to the issuance of a refund can be considered as an issue in PG&E’s next NDCTP filing.

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<sup>59</sup> See PG&E Reply Brief at 5.

<sup>60</sup> See PG&E Reply Brief at 5-6.

For the reasons stated above, the Commission directs PG&E to file a Tier 2 advice letter within 60 days of the adoption of this decision, with a detailed plan to issue a full refund of the NQT to customers by no later than January 1, 2024.

### **6.3. Decommissioning Cost Estimate for Diablo Canyon**

PG&E's litigated position would result in a site-specific DCE for DCPD of \$3.96 billion.<sup>61</sup> PG&E does not seek a revenue requirement for DCPD.<sup>62</sup> The Public Advocates Office does not oppose PG&E's DCE for DCPD.<sup>63</sup> SLO County supports PG&E's DCE for DCPD.<sup>64</sup> There are no disputed issues related to the DCPD DCE beyond the radiological release criteria discussed and resolved in Section 6.1, and the Decommissioning Master Trusts, discussed and resolved in Section 6.2. Accordingly, the Commission adopts the DCE for DCPD.

## **7. Comments on Proposed Decision**

The proposed decision of ALJ Amin Nojan in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. On August 17, 2023, TURN, Alliance for Nuclear Responsibility, and Women's Energy Matters filed comments. On August 22, 2023, PG&E and Southern California Edison filed reply comments.

Rule 14.3 requires that comments "focus on factual, legal, or technical errors in the proposed or alternative decision and, in citing such errors, shall make specific references to the record or applicable law. Comments which fail to

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<sup>61</sup> See Exhibit PG&E-1 at 1-9.

<sup>62</sup> See Exhibit PG&E-1 at 10-1 – 10-2.

<sup>63</sup> See Settlement Agreement at 5.

<sup>64</sup> See Settlement Agreement at 6.

do so will be accorded no weight.” Thus, the Commission shall give no weight to comments that do not comply with this rule.

A4NR notes that PG&E “admits that it has not analyzed any prospective cost difference between a 10-millirem and 25-millirem objective... so no evidence of hypothetical additional costs exists.”<sup>65</sup> We do not find any evidence that deferring the identification of a cleanup standard at this point in the decommissioning process will result in an increase in future costs. As discussed in Section 6.1 above, PG&E was directed to conduct a study on the cost differences between a 25-millirem standard and a 10-millirem standard and to report its findings as part of its next NDCTP filing, where this issue may be revisited.

TURN argues that the Commission “modify the PD to correctly interpret the requirements of the provision” in Public Utilities Code Section 712.8(n). TURN believes that because the plain language of the statute prohibits the disbursement of funds from the NQT, except for the purpose of refunds to customers, that the Commission should direct PG&E to issue an immediate refund.

We find that although statute is silent regarding the timing of a potential refund of PG&E’s NQT to customers, a refund at this time may yield a benefit to ratepayers struggling with recent rate increases.

Upon review of the comments and reply comments, we have made changes to the proposed decision to clarify existing language, incorporate comments from parties, and to account for pending proceedings. To the extent

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<sup>65</sup> See A4NR Opening Comments at 7.

justified, revisions have been incorporated herein to reflect the substance of comments received.

## **8. Assignment of Proceeding**

Darcie L. Houck is the assigned Commissioner and Amin Nojan is the assigned Administrative Law Judge in this proceeding.

## **Findings of Fact**

1. On December 14, 2021, PG&E filed A.21-12-007 for Commission review of its updated nuclear decommissioning cost studies and ratepayer contributions analyses in support of requests to fully fund the nuclear decommissioning master trusts to the level needed to decommission PG&E's two nuclear plants, the DCPD and the HBPP Unit 3 and for Commission review of decommissioning projects completed since the last NDCTP.

2. On December 16, 2022, PG&E, TURN, Cal Advocates, SLO, NCTC, DHK Associates, and WEM filed a Joint Motion for Approval of Settlement Agreement.

3. On January 11, 2023, YTT Kinship filed comments opposing Section 3.9 of the Settlement Agreement.

4. On January 17, 2023, SCE filed comments opposing Section 3.6 of the Settlement Agreement.

5. The Settlement Agreement resolves all but two of the issues identified in the scope of this proceeding; the issues not resolved in the Settlement Agreement are: (1) Whether PG&E's deferring of the identification of the applicable radiological release criteria for DCPD Part 50 NRC licenses will likely result in an increase in future costs; and (2) Whether amounts currently contained in the Nuclear Facilities Non-Qualified CPUC Decommissioning Master Trust fund for DCPD should be refunded to customers.

6. The terms of the Settlement Agreement are mutually beneficial to both PG&E and to ratepayers.

7. The Settling Parties reflect a diverse array of interests and the Settlement Agreement balances those interests.

8. The Settlement Agreement serves the public interest by resolving competing interests in a collaborative and cooperative manner.

9. The Settlement Agreement is consistent with the Commission's long-standing policy favoring the settlement of disputes to avoid costly and protracted litigation.

10. There are no terms within the Settlement Agreement that would bind the Commission in the future or that would violate existing law.

11. The Settling Parties include the utility, SLO, NCTC, and groups advocating for various customer interests.

12. The Settlement reasonably balances the competing interests.

13. There are considerable differences between DCPD and other nuclear plants currently undergoing decommissioning in the United States.

14. There is uncertainty regarding the final costs for decommissioning DCPD at this stage in the process.

15. The Commission is currently deliberating on the potential extension of operations at the Diablo Canyon Nuclear Powerplant in Rulemaking (R.) 23-01-007.

16. The NRC rules state that a radiological release standard of 25 mrem is adequate when repurposing a site.

17. There is no evidence in the record of this proceeding that demonstrates that mandating a lower mrem standard for site cleanup would result in cost savings.

18. PG&E's deferral of identifying site release criteria will not result in an increase in future costs.

19. There is no cost analysis in the record of this proceeding that compares the costs of achieving a 25 mrem standard for site cleanup relative to achieving a 10 mrem standard for site cleanup.

20. The current timeline for decommissioning Diablo Canyon is unclear.

21. PG&E requests no revenue requirement for DCPD or HBPP.

### **Conclusions of Law**

1. The Joint Motion for Adoption of Settlement Agreement, filed December 16, 2022, should be granted.

2. The Settlement Agreement (attached to this decision as Appendix A) is reasonable in light of the whole record, consistent with the law, and in the public interest and should be approved and adopted.

3. The parties complied with the provisions of Rule 12.

4. Pursuant to Rule 12.5, the Settlement Agreement does not bind or otherwise impose a precedent in this or any future proceeding.

5. PG&E's land disposition strategy does not relieve it of its obligation to meet all Commission directives and statutory requirements regarding the disposition of DCPD lands, including but not limited to Pub. Util. Code Section 851 and the TLTP.

6. If PG&E's land disposition strategy conflicts with Commission directives or statutory requirements regarding the disposition of DCPD lands, including but not limited to Pub. Util. Code Section 851 and the TLTP, the relevant Commission directive, policy or statutory requirement prevails over Section 3.9 of the Settlement Agreement.



7. The Commission should direct PG&E to refund the balance of its non-qualified trust to customers.

8. Pub. Util. Code Section 712.8(n) grants the Commission discretion on the timing of a possible refund of its non-qualified trust balance to customers..

9. PG&E should refund the NQT funds to customers no later than January 1, 2024, by filing a Tier 2 advice letter within 60 days of the adoption of this decision.

10. PG&E should conduct a study on the cost differences between a 25-millirem cleanup standard and a 10-millirem cleanup standard. The study should include both costs and benefits for each standard, be they financial, environmental, or of another relevant nature. The study should also include an analysis of how the deferral of the identification of a cleanup standard may impact decommissioning costs at DCCP. PG&E should submit its findings as part of its next NDCTP filing.

11. PG&E's Decommissioning Cost Estimate for Diablo Canyon Power Plant is reasonable and should be approved.

12. PG&E should cease collection of the revenue requirement in rates and refund any collections occurring since January, 1, 2023 to ratepayers.

13. All rulings issued by the assigned Commissioner and ALJ should be affirmed herein; and all motions not specifically addressed herein or previously addressed by the assigned Commissioner or ALJ should be denied.

14. This proceeding should be closed.

**O R D E R**

**IT IS ORDERED** that:

1. The Joint Motion for Adoption of Settlement Agreement, filed December 16, 2022, is granted, and the Settlement Agreement attached to this decision as Appendix A is approved and adopted.
2. Pacific Gas and Electric Company's Decommissioning Cost Estimate for Diablo Canyon Power Plant is adopted.
3. Pacific Gas and Electric Company shall cease collection of the revenue requirement in rates and refund any collections occurring since January 1, 2023 to ratepayers.
4. PG&E shall file a Tier 2 advice letter within 60 days of the adoption of this decision with a detailed plan to issue a full refund of the NQT to ratepayers by no later than January 1, 2024.
5. PG&E shall conduct a study on the cost differences between a 25-millirem cleanup standard and a 10-millirem cleanup standard. The study shall include both costs and benefits for each standard, be they financial, environmental, or of another relevant nature. The study shall also include an analysis of how the deferral of the identification of a cleanup standard may impact decommissioning costs and Diablo Canyon Power Plant. PG&E must submit its findings as part of its next Nuclear Decommissioning Triennial Proceeding filing.
6. All rulings issued by the assigned Commissioner and Administrative Law Judge are affirmed; and all motions not specifically addressed herein or previously denied by the assigned Commissioner or Administrative Law Judge are denied.

7. Application 21-12-007 is closed.

This order is effective today.

Dated September 21, 2023, at Sacramento, California.

ALICE REYNOLDS  
President  
GENEVIEVE SHIROMA  
DARCIE L. HOUCK  
JOHN REYNOLDS  
KAREN DOUGLAS  
Commissioners

APPENDIX A  
Settlement Agreement