

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

Order Instituting Rulemaking to Continue
Electric Integrated Resource Planning and
Related Procurement Processes.

R.20-05-003
(Filed May 7, 2020)

**COMMENTS OF
CALIFORNIANS FOR GREEN NUCLEAR POWER, INC. IN RESPONSE
TO THE ALJ's NOVEMBER 1, 2021 CALL FOR COMMENTS ON THE
DRAFT ENVIRONMENTAL AND SOCIAL JUSTICE ACTION PLAN 2.0**

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I. AUTHOR'S VERIFICATION

The author below affirms under penalty of perjury that the information contained in this written testimony is true and correct, and is given in good faith to their best available knowledge, subject to modifications resulting from new findings.

/s/ Gene Alan Nelson, Ph.D. November 22, 2021

2. INTRODUCTION

Californians for Green Nuclear Power, Inc. (CGNP) is an independent nonprofit California corporation focused on preserving the ratepayer benefits, the environmental benefits, and the public safety benefits of the continued safe operation of Diablo Canyon Power Plant (DCPP) beyond 2025. CGNP believes the DCPP closure plans are motivated by special interests that will profit directly or indirectly from the unnecessary

closure of this safe, large, reliable, cost-effective, and emission-free power plant that currently provides the equivalent of five (5) Hoover Dams of clean power each year. CGNP projects the takings from Californians connected with the needless DCPD closure plans to be in the billions of dollars per year. Given these large stakes, the most likely reason for the State of California's harmful actions is the provision of things of value to California governmental decision makers, depriving Californians of honest service by those decision makers.

3. MEANINGFUL SANCTION MECHANISMS ARE NOT PART OF THE CPUC ACTION PLAN 2.0

CGNP has focused our comments on Appendix 1 - Draft Penalty Assessment Methodology - of the CPUC's Draft Environmental and Social Justice (ESJ) Action Plan 2.0. ¹ We shall attempt to show this CPUC Action Plan is merely an aspirational document lacking meaningful sanctions - akin to California's recently-enacted SB 100 legislation which has no penalties for failing to achieve electric generation sector emissions targets according to the legislation's timetable .

Using actual examples of recently-admitted criminal conduct by a powerful corporation, namely the Pacific Gas and Electric Corporation (PG&E) CGNP will provide examples of the CPUC serving as a 'watchdog with no teeth' in the words of CPUC's former Executive Director (and whistleblower) Alice Stebbins. ² The investigative reporting cited in these Comments by ABC-10 Sacramento resulted in the station winning awards for reporting that benefitted the public interest.

¹ <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/news-office/key-issues/esj/draft-cpuc-esj-2010262021c.pdf>

² "Waiting to be fired, CPUC director describes agency as a 'watchdog with no teeth' " by Brandon Rittiman, ABC-10 Television Sacramento, August 10, 2020. <https://www.abc10.com/article/news/local/california/cpuc-director-firing/103-c1e87df7-1743-49bb-86e3-7ebf50ec9d4d>

The term "sanction" appears only three times in either the singular or plural form in Appendix 1. Quoting the second paragraph on page 132 of 137,

The purpose of a penalty is to go beyond restitution to the victim and to effectively deter further violations by the perpetrator or others. Effective deterrence creates an incentive for regulated entities to avoid violations. Deterrence is particularly important against violations that could result in public harm and other severe consequences. The following factors (section headings) shall be used in setting penalties that are appropriate to a violation:

- I. Severity or Gravity of the Offense,
- II. Conduct of the Regulated Entity
- III. Financial Resources of the Regulated Entity, Including the Size of the Business,
- IV. Totality of the Circumstances in Furtherance of the Public Interest and
- V. The Role of Precedent

Quoting from a June 16, 2020 article by the Associated Press,³ Pacific Gas & Electric confessed on Tuesday to killing 84 people in a devastating 2018 wildfire that wiped out the northern California town of Paradise in November 2018.

Bill Johnson, PG&E's CEO, entered guilty pleas on behalf of the company for 84 felony counts of involuntary manslaughter stemming from the fire, which was blamed on the company's crumbling electrical grid.

"Our equipment started that fire," said Johnson, who apologized directly to the victims' families. "PG&E will never forget the Camp fire and all that it took away from the region.".... The Camp fire killed 85 people and destroyed more than 18,000 buildings, including 14,000 homes..... PG&E has agreed to pay a maximum fine of

³ "PG&E confesses to killing 84 people in 2018 California fire as part of guilty plea," by the Associated Press, Tuesday, June 16, 2020, *The Guardian* (UK), <https://www.theguardian.com/business/2020/jun/16/pge-california-wildfire-camp-fire-paradise-guilty-plea>

\$3.5m for its crimes in addition to \$500,000 for the cost of the investigation. The San Francisco company will not be placed on criminal probation.....

The above particulars regarding PG&E's guilty plea should lead to the CPUC levying a substantial penalty against PG&E. Instead, the CPUC suspended a \$200 million penalty against PG&E.

Quoting from the article, ⁴

"California power regulators let the Pacific Gas and Electric Company off the hook for paying a \$200 million fine, even though the company plans to walk into court this month and admit to 84 counts of felony manslaughter for the people it killed in the Camp Fire....

As a gesture, perhaps, they slapped PG&E with a \$200 million fine for starting deadly fires. But in the same decision, the commissioners permanently waived PG&E's obligation to pay it.

"I recognize that a permanent suspension of the fine is deeply unsatisfying to many." said commissioner Clifford Rechtschaffen, who handled negotiations over the penalty for PG&E's safety violations that caused deadly fires. "I also want to emphasize it is an extremely rare set of circumstances that justify departure from our normal penalty rules."

The "circumstances" to which Rechtschaffen refer are unusual, but not unprecedented, for PG&E: bankruptcy.

⁴ "State forgives PG&E's \$200M fine, despite crimes and judge's warning," by Brandon Rittiman, ABC-10 Television, Sacramento, May 6, 2020.

<https://www.abc10.com/article/news/crime/state-forgives-pges-200m-fine-despite-crimes-and-a-judges-warning/103-7416144b-41d1-41bc-ad3e-a39b749d053b>

Led by Gov. Gavin Newsom, the organs of California state government are working to assist PG&E-- a convicted felon about to plead guilty to more crimes-- to help the company out of bankruptcy by the end of June.

That will help PG&E access a state wildfire fund to help it pay damages if it starts another fire.....

“We’re dealing with sophisticated white-collar crime with an unlimited amount of money and the ability to neutralize law enforcement,” said Mike Aguirre, a former San Diego city attorney and past federal prosecutor. “.....

‘THIS IS NOT A PENALTY’

After waiving the \$200 million fine, the CPUC declared in a press release that it gave PG&E its “biggest penalty ever” in the amount of \$1.9 billion.

That money will all be reinvested into PG&E’s infrastructure to cover the cost of rebuilding its own power lines that burned in PG&E’s own fires and to pay for badly needed safety improvements that Judge Alsup said the company should have made long ago.

PG&E’s “penalty” is simply an agreement not to charge customers for \$1.9 billion of that.

“You know what a fine is. You get your checkbook, you write out a check, you deliver it to the court, the court then puts that in the bank, and they withdraw it from your account. That's a penalty.” Aguirre said.

“This is not a penalty. And they know it.”

4. A LIKELY EXPLANATION FOR THE LACK OF MEANINGFUL CPUC SANCTIONS AGAINST PG&E FOR ITS CRIMINAL CONDUCT

Being responsible for the deaths of 85 Californians and destroying more than 18,000 buildings, including 14,000 homes should be ample cause for the CPUC to levy meaningful sanctions against PG&E for its admitted criminal conduct.

Quoting from this article,⁵

"A plate of dinner at Napa County's award-winning French Laundry restaurant starts at \$350, but dining there during the pandemic cost Gov. Gavin Newsom quite a bit more than that.

It was an unforced political error that immediately put Newsom on defense from the appearance of hypocrisy for going against his own COVID safety advice to Californians.

Newsom apologized profusely for the dinner. He was only human, he said. And it was a birthday party for "a friend that I've known for almost 20 years."

The friend was lobbyist Jason Kinney, who shared more than a meal with the governor.

The two men shared an interest in PG&E.

Newsom had inserted himself as "broker" of PG&E's plan to exit bankruptcy. Bankruptcy documents show the company offered to support the plan only if its terms were "acceptable to the Governor's Office."

Kinney ran a lobbying shop, Axiom Advisors, which landed a major client in PG&E's bankruptcy: a committee of companies to whom PG&E owed money.

⁵ "PG&E, Gavin Newsom, and the French Laundry connection," by Brandon Rittiman, ABC-10 Television, Sacramento, August 11, 2021.
<https://www.abc10.com/article/news/local/abc10-originals/pge-gavin-newsom-lobbiest/103-2fc7d4f4-a0e0-492d-ac1d-ec674e58a67b>

They included obscure outfits like The Davey Tree Expert Company, but also major interests like Deutsche Bank, the IBEW 1245 union, and NextEra Energy Inc.

Axiom advisors said it “met periodically with the Governor’s office” in a \$400,000 fee statement filed in bankruptcy court. Kinney was listed as performing 31.5 hours of billable work. (\$12,698.41 / hour)

The plan delivered for Kinney’s clients. They got cash “paid in full” plus interest.

Axiom Advisors did not reply to a written request for comment on this story.

The deal was done four months before he and the governor sat down for their now-infamous dinner.....

In the town of Paradise, Lawrence Graham prepares his meals inside of a small trailer he’s called home since PG&E committed the felonies that burned his house down.

“All they care about is their bottom line,” Graham said. “I understand business is business, but this is our lives they’re messing with.”....

Even though PG&E exited bankruptcy more than a year ago, the restitution money hasn’t come.

That’s because the bankruptcy plan approved by Gov. Newsom didn’t pay PG&E’s victims cash in full.

PG&E’s bankruptcy rolled their restitution into a trust fund to settle civil damages for more than a dozen other PG&E wildfires, some of whom have been waiting for payment since 2015.

In Paradise, fire victims lost not only their homes and livelihoods: They lost their community. Paradise will take years to be reborn.

“They’re helping each other get ahead and stepping on us to get there,” Graham said.....

At the beginning of 2021 wildfire season in June, thousands of PG&E fire victims watched the retired judge in charge of paying them deliver a stern message on their phone and computer screens:

“It’s important for you to want PG&E to do well,” the voice told them.

The message came from retired state appellate court judge John Trotter, who earns \$1,500 an hour from the victims’ settlement to manage their money.

It’s a shocking thing to tell 70,000 people whose homes and loved ones PG&E incinerated.

He said it for a reason: “half” of the victims’ \$13.5 billion settlement was supposed to come from holding and selling shares of PG&E stock.

Trotter declined to be interviewed for this series, but has cited federal tax concerns as a reason for delays in selling PG&E stock shares to obtain cash for victim payments.

Asked whether fire victims will ever be made whole in an interview that aired in August on public radio station KQED (@ 8min) he cut to the point: “They never will.”

The Fire Victim Trust run by Trotter has paid out the first 30 percent of some claims and hopes to be able to pay out 50 percent by this fall, he told the station.

The victims were nearly \$2 billion short on stock value when Trotter made the video.

“You are 25 or 24 and a half percent owners of PG&E,” Trotter said. “The story of the stock has not been a very good one. And that’s in the face of a very buoyant stock market.”

The stock has never been worth the \$6.75 billion victims were told by the bankruptcy court. They were warned that the value could go up or down, but on the day PG&E exited bankruptcy the victims would have needed the stock to go up another 56 percent to be made whole.

The stock value plummeted even further the next month after PG&E admitted its power lines may have caused the massive Dixie Fire, which is still growing after burning more than 500,000 acres in the same region where the Camp Fire burned.

As the flames consumed the town of Greenville, attorneys who pushed for the plan struggled to make sense of Wall Street's lack of faith in the company, given that Gov. Newsom's office commissioned and then passed a law intended to ensure there was "no real financial danger to PG&E.".....

The official voting materials from the bankruptcy court told victims that the plan was the "fastest" way to be paid, pointing to a June 30, 2019 deadline in AB 1054, the state law that granted PG&E state safety certificates.

As first reported by ABC10, that law was authored by lawyers working for Gov. Gavin Newsom's office and the CPUC, consulting with investment bankers paid by the state.

A no vote, the bankruptcy court warned, would cause their payments to be "delayed" and possibly "reduced." Delays could take "months and perhaps years."

The victims voted for the plan. They voted to avoid delays.

They got delays anyway.....

"It's infuriating and disgusting. It causes you to lose faith in government," said Steve Bradley. "It's not like they fixed PG&E."

On the day he tried to save his Grandma Colleen, Bradley couldn't make it past the roadblocks into the town of Paradise.

He drove home that night, dejected, watching the flames burn the hill where his grandmother lived.

“This is going to sound weird, but I feel more helpless now than I did back on the day of the fire,” Bradly said. “I understand how fire works, but I don't understand why this is allowed.”

A summary of the above news article could be that it serves as an example of how entities making large politically-connected expenditures obtain their desired outcomes with Sacramento. This bodes poorly for communities of color that bear disproportionately harmful impacts from California's energy policies that appear primarily designed to benefit deep-pocketed special interests.

5. LATE-BREAKING DEVELOPMENTS REGARDING PG&E'S CULPABILITY IN THE CAMP FIRE

Quoting from the November 8, 2021 news article:⁶

Marc Noel and his team made history when they convicted PG&E of the deadliest homicide ever committed by a corporation on U.S. soil, but it doesn't always feel like an accomplishment.

“They're not learning from their history, and that's why they keep repeating it,” Noel said of PG&E. “We had hoped that the job we did in the Camp Fire would cause that to change. And apparently it hasn't.”

PG&E pleaded guilty to the Camp Fire charges Noel developed: 84 felony counts of involuntary manslaughter and one felony for sparking the fire through reckless, criminally negligent behavior.

Since then, Noel does see PG&E changing. But not in the way he'd like.

⁶ "Secrets of the Camp Fire: 3 years later, exposing evidence of PG&E's crimes"

ABC10 obtained 1,500 pieces of photo and video evidence used to convict PG&E of 85 felonies in the Camp Fire, but thousands of pages remain sealed by court order.

by Brandon Rittiman, ABC-10 Sacramento, November 8, 2021.

<https://www.abc10.com/article/news/local/wildfire/camp-fire-evidence-of-pge-crimes/103-1a46d20d-9891-4043-a474-944a8b97d9f2>

“[PG&E] is not so much learning how to do things safer,” Noel said. “That would be the hope. But instead, what they're learning is how better to bury their crimes.”

Three years after the Camp Fire, Noel is already investigating PG&E again. The company's power lines are suspected of sparking the 963,000-acre Dixie Fire this July.....

The Dixie Fire isn't an isolated incident.

Since the Camp Fire, PG&E has been charged with felonies in the 2019 Kincadee Fire, and it's been charged with four felony manslaughter counts in the 2020 Zogg Fire.

As the PG&E-linked disasters continued, California's state government accommodated PG&E's return to profit. ABC10's FIRE - POWER - MONEY investigation revealed that Gov. Gavin Newsom's office crafted a state law to prop up PG&E's finances, supported a bankruptcy plan that prioritized business clients of the governor's close friends over PG&E's fire victims, and exerted control over PG&E's independent state regulators.....

PHOTO CAPTION: Lead Camp Fire prosecutor Marc Noel (left) and Butte County District Attorney Mike Ramsey (right) pose with the 7,000-page transcript of the criminal case against PG&E for the 2018 Camp Fire. The records, which come from an investigatory grand jury that took testimony over the course of a year, remain under seal due to a court order in a lawsuit funded by PG&E in the wake of the Camp Fire convictions. PG&E's century-old Caribou-Palermo transmission line was allowed to wear down until it broke in a windstorm, resulting 85 felony convictions in the deadliest homicide ever committed by a corporation on U.S. soil.....

PG&E admitted to funding the lawsuit, calling it a wildfire-related expense and insisting in a statement that “there is no new fact or understanding to be gained from having the names of the employees included in the transcripts.”

In an ironic twist for a case arguing for the redaction of names, the attorneys failed to properly black out the names of the 22 PG&E workers they represent....

The list of names proves the attorneys' claim that the workers are "low- and mid- level employees" is false.

Two of the employees, Dave Gabbard and Raymond Thierry, appear on PG&E's own 2017 list of "high-level" employees, filed on the docket in PG&E's federal criminal case for the deadly 2010 San Bruno gas explosion.

Gabbard is PG&E Senior Director of Transmission Asset Management and has appeared publicly in PG&E corporate video.

Thierry is PG&E's Director of Gas Distribution Integrity Management, one of several gas division employees that Camp Fire prosecutors used to draw parallels between the San Bruno case and Paradise....

Many of the other PG&E workers suing for anonymity maintain public profiles online which disclose that they work for PG&E.

The LinkedIn profile of one finance office worker boasts that he reduced PG&E's expenses on "maintenance work" by \$2.8 million in the years before the Camp Fire.....

The truth, according to prosecutors, is much simpler: a powerful California corporation cut back so severely on maintenance that it was criminal and then took steps to keep any individuals in the company from being held liable for the crimes.

The prosecutors hope the appeals court will soon let you read the truth as told by PG&E's own people.

They argue the public and the people burned out by PG&E's crimes have a right to know.

"Such secrets would be corrosive to a free society," Ramsey said.

The information CGNP cites in these Comments does not bode well for the citizens of California who have a right to reliable, reasonably-priced natural gas and electricity utilities. ESJ communities will face disproportionately negative consequences. CGNP has raised criticisms of CPUC policies in many recent Commission Proceedings.⁷ Our well-researched criticisms based on scientific, engineering, economics, and legal analysis have been routinely ignored by the Commission. CGNP asks "How outrageous does the situation have to degrade to until Californians demand meaningful CPUC reforms?"

Dated: November 22, 2021

Respectfully submitted,

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⁷ A.1509001, A.1602019, A.1608006, A.1804002, A.1807013, I.1508019, R.1602007, R.1804018, R.2001007, R.2005003, and R.2011003