

BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA

Pacific Gas and Electric Company, Application of
Pacific Gas and Electric Company for Approval of
Ratepayer Funding to Perform Additional Seismic
Studies Recommended by the California Energy
Commission.
(U39E).

A10-01-014

**PROTEST OF THE ALLIANCE FOR NUCLEAR RESPONSIBILITY, SIERRA CLUB,
ENVIRONMENT CALIFORNIA RESEARCH AND POLICY CENTER and CALPIRG
TO APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)**

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Pursuant to Rule 44.1 of the Commission Rules of Practice and Procedure, the Alliance for Nuclear Responsibility, Sierra Club, Environment California Research and Policy Center, and CALPIRG (ANR, et al) hereby submit this Protest to the APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)

While ANR, et al fully supports expedited funding to complete state required seismic studies resulting from AB 1632, the absence of an expedited completion schedule is not in the ratepayers' best interest.

PG&E and the Nuclear Regulatory Commission believe that the state-required seismic studies are not needed to approve a license renewal for the Diablo Canyon Nuclear Plant and onsite radioactive waste facility. This "belief" should not result in an abrogation of California's responsibility to complete state required seismic studies before PG&E is allowed to use ratepayer dollars to fund its Application process. The NRC's own current draft Generic Environmental Impact Statement rule states, "State regulatory agencies, system operators, power plant owners, and, in some cases other Federal agencies, ultimately decide whether the plant should continue to operate."¹

Therefore it is in the best interest of all California stakeholders that the CPUC, CEC and the legislature support a stay in the NRC Application process and defer expensive reviews, studies and meetings unrelated to seismic issues until California is satisfied that new seismic information will not negatively impact ratepayers, reliability of energy sources, or the state's economy. There is no more glaring an example of costs to shareholders, ratepayers and taxpayers than the 2007 quake in Japan that brought down 8000 MW of generation at the Kashiwazaki-Kariwa nuclear power plant in less than 90 seconds due to an earthquake on a recognized but unstudied and unmitigated

¹ July 2009 Generic Environmental Impact Statement for License Renewal of Nuclear Plants Main Report Draft Report for Comment



fault zone. After a lapse of two and a half years Japan has returned only two of the seven reactors to commercial operation at a cost of more than \$5 billion.

The controversial history of Diablo Canyon demands that California carefully consider the mandate to complete and review AB 1632 recommended studies *before* PG&E attains ratepayer funding for its license renewal. In his June 25, 2009 letter to PG&E CEO Mr. Darbee, CPUC President Peevey made it clear that the CPUC expected the following from PG&E before filing its license renewal application:

1. Report on the major findings and conclusions from Diablo Canyon's seismic/tsunami studies, as recommended in the AB 1632 Report (pp. 6, 7, 10 and 13), as well as studies that are directed by any subsequent legislative mandates, and report on the implications of these findings and conclusions for the long-term seismic vulnerability and reliability of the plant.
2. Summarize the lessons learned from the Kashiwazaki-Kariwa plant experience in response to the 2007 earthquake and discuss the implications that an earthquake of the same, or greater, magnitude could have on Diablo Canyon. In particular, the Commission needs PG&E to evaluate whether there are any additional pre-planning or mitigation steps that the utility could take for the power plant that could minimize plant outage times following a major seismic event.
3. Reassess the adequacy of access roads to the Diablo Canyon plant and surrounding roadways for allowing emergency personnel to reach the plants and local communities and plant workers to evacuate. This assessment needs to consider today's local population and not rely on the situation extant when the plant was constructed.
4. Conduct a detailed study of the local economic impacts that would result from a shut-down of the nuclear plant and compare that impact with alternate uses of the Diablo Canyon site.

5. Assess low-level waste disposal costs for waste generated through a 20-year plant license extension, including the low-level waste disposal costs for any major capital projects that might be required during this period. In addition, PG&E should include its plans for storage and disposal of low-level waste and spent fuel through decommissioning of the Diablo Canyon plant as well as the cost associated with the storage and disposal.

6. Study alternative power generation options to quantify the reliability, economic and environmental impacts of replacement power options.

7. Include PG&E's responses to nuclear-related data requests and recommendations in future IEPRs.

President Peevey's letter concluded: "PG&E's rate case, D. 07-03-044, specifically linked PG&E's license renewal feasibility study for Diablo Canyon to the AB 1632 assessment and PG&E is obligated to address the above itemized issues in its plant relicensing application. This commission will not be able to adequately and appropriately exercise its authority to fund and oversee Diablo Canyon's license extension without these AB 1632 issues being fully developed."

The public believes that "fully developed" is synonymous with fully "complete" and that the CPUC had no intent of allowing ratepayers to fund PG&E's license renewal application until fulfillment of AB 1632 is complete and reviewed. In fact, the CPUC's Decision 07-03-044 of March 15, 2007 was unambiguous:

"The statute requires the CEC to issue its assessment by November 1, 2008. PG&E shall incorporate the CEC's AB 1632 assessment into its license renewal study. To avoid unnecessary duplication and overlap with the CEC's study, PG&E should defer to the extent feasible its work on its own study, and associated spending, until after the

CEC issues its findings and conclusions. PG&E should incorporate the findings and recommendations of the CEC study in its own work.”

We [the CPUC] will require PG&E to submit by no later than June 30, 2011, an application on whether to pursue license renewal. The application shall include PG&E's license renewal study and shall address (1) whether renewal of the licenses is cost effective and in the best interests of PG&E's ratepayers, (2) the CEC's AB 1632 assessment, and (3) any legislative framework that may be established for reviewing the costs and benefits of license renewal.⁹⁸ As stated previously, it is our intent that the proceeding in 2011 will result in a decision on whether to pursue license renewal based on circumstances at that time, and that the results of the proceeding will be incorporated into the CEC's 2013 IEPR and the Commission's 2014 LTPP.

ANR/SC and TURN contend that it is premature to fund a study that will be completed approximately 15 years before the first license expires in 2024. For the reasons stated previously, we believe it is prudent to have a completed study in hand 13 years prior to license expiration. Funding the study in the 2007-2010 GRC cycle will provide 13 years of lead-time.

We [the CPUC] agree that the cost of operating Diablo Canyon over the years has consistently exceeded PG&E's forecasts. That does not mean, however, that there is no need for a license renewal feasibility study. The issue raised by ANR/SC and TURN goes to the merits of the study results, which cannot be judged until the study is submitted to the Commission for review. There will be ample opportunity at that time for the parties to review and litigate the contents of the study.

ANR/SC and TURN are concerned that PG&E may use the study to unilaterally seek license renewal. We have already addressed this concern by requiring PG&E to submit the study to the Commission as part of an application in 2011 on whether to proceed with license renewal. If PG&E fails to do so, we agree with PG&E's observation

that the Commission "has ample means to deal with PG&E's failure to comply with the Commission's order to file an application, if that should ever come to pass."⁹⁹

HOWEVER, please note: PG&E has filed the *ACTUAL RENEWAL APPLICATION* with the NRC prior to filing its current request for funding and submitting the existing feasibility study. What is unclear to the public—who participated in PG&E's 2007 GRC, the CEC's 2005, 2007, AB 1632 and 2009 IEPR, and testified to the legislature in support of seismic and aging studies—is whether PG&E is seriously implying to the NRC and to the public that a statement presented at the February 9, 2010 meeting of the Diablo Canyon Independent Safety Committee stating: "the CPUC directed PG&E to file an application on whether to renew the DCPD operating licenses by no later than June 30, 2011" is the same as stating the utility should file an actual NRC application before the seismic studies are complete and they have been independently reviewed.

While the CPUC may not have prohibited PG&E from filing an ACTUAL renewal application at the NRC prior to completion of state-required seismic studies, it would seem prudent that ratepayer funding of the application should hinge on obeying the CPUC process. Indeed, the CPUC asked PG&E to file an application on "whether to proceed with license renewal," (key word: *whether*) and not to actually pursue relicensing, which, as you read, is "pending" the CPUC making further evaluations.

Conclusion

The CPUC should expedite funding for AB 1632 seismic studies, conditioned on PG&E's willingness to expedite the completion of the studies—with data and results "fully developed" per President Peevey's letter—to no later than the June 30, 2011. Such results will be incorporated in both PG&E's final CPUC GRC and its NRC license

renewal application, and further, that PG&E shall request a stay of the NRC application process for Diablo Canyon Unit 1 & 2 until the state-required studies are resolved and results fully developed.

Respectfully Submitted,

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