

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

**Application of PACIFIC GAS AND ELECTRIC
COMPANY for Authorization, Among Other
Things, to Increase Rates and Charges for
Electric and Gas Service Effective on January 1,
2007.**

(U 39 M)

**Application 05-12-002
(Filed December 2, 2005)**

**Order Instituting Investigation on the
Commission's Own Motion into the Rates,
Operations, Practices, Service and Facilities of
Pacific Gas and Electric Company.**

(U 39 M)

**Investigation 06-03-003
(Filed March 2, 2006)**

**PROTEST OF THE ALLIANCE FOR NUCLEAR RESPONSIBILITY AND
THE SIERRA CLUB TO THE MOTION OF PACIFIC GAS AND ELECTRIC COMPANY,
DIVISION OF RATEPAYER ADVOCATES, THE MODESTO IRRIGATION DISTRICT,
THE MERCED IRRIGATION DISTRICT, THE SOUTH SAN JOAQUIN IRRIGATION
DISTRICT, THE WESTERN MANUFACTURED HOUSING COMMUNITIES
ASSOCIATION, THE DISABILITY RIGHTS ADVOCATES, THE CALIFORNIA FARM
BUREAU FEDERATION, SOUTHERN CALIFORNIA EDISON, SOUTHERN**

**CALIFORNIA GAS COMPANY, SAN DIEGO GAS AND ELECTRIC COMPANY, THE
COALITION OF CALIFORNIA UTILITY EMPLOYEES FOR APPROVAL OF
SETTLEMENT AGREEMENT**

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Pursuant to Rule 44.1 of the Commission Rules of Practice and Procedure, the Alliance for Nuclear Responsibility and Sierra Club (ANR/SC) hereby submits this protest to the application of Pacific Gas and Electric Company (PG&E). ANR/SC Protest focuses on solely on nuclear operation expenses in the settlement which would fund a feasibility study for license renewal, further construction of a high-level radioactive waste storage facility (the nuclear industry refers to this as a Independent Spent Fuel Storage Installation ISFSI), and finally funding for reactor vessel heads for its Diablo Canyon Nuclear Plant. ANR/SC Protest focuses solely on PG&E's request for ratepayer funds for these four components of the Settlement Agreement.

The Settlement Agreement states: “PG&E requested that the Commission adopt a 2007 forecast of \$310.8 million in O&M expense to support the continued safe and reliable operation of Diablo Canyon Power Plant (DCPP or Diablo Canyon). DRA’s comparable 2007 forecast was \$295.6 million, for a difference of \$15.2 million.” Yet, since the filing of original testimony and the filing of PG&E, et al Settlement Agreement several factors have come to light that should be given weight by the Commission.

**FUNDING FOR PG&E’S IN-HOUSE LICENSE RENEWAL
FEASIBILITY STUDY IS PREMATURE AND SHOULD BE SPECIFICALLY
DENIED AS PREMATURE**

ANR/SC is particularly concerned with DRA’s abandonment of its position that PG&E’s License Renewal Feasibility Study is premature: “DRA opposes PG&E’s Diablo Canyon license extension feasibility study. Considering that PG&E would complete its license extension feasibility study in 2009, 10 years before it would need to initiate the license extension application process at the NRC, PG&E’s intent to begin its license extension feasibility study in 2007 is quite premature”.¹

The Settlement Agreement Motion states that: “PG&E decided it makes sense to engage in the three-year feasibility process in order to develop the factual and regulatory information necessary to determine whether to apply to the NRC for license renewal.” (Ex. PG&E-3, p. 4-18.)” However “factual and regulatory

¹ Electric Generation Costs Testimony of Truman Burns for DRA, Pg 7-13

information” developed in 2007-2010 will have little if any bearing on the actual costs of license renewal when the current licenses for Diablo Canyon reactor’s expired in 2021 and 2025.

While ANR/SC did not submit testimony, the organizations did submit exhibits and did cross-examine PG&E witnesses to demonstrate that CPUC approval of funding for a license renewal feasibility study is premature and could prove to be a complete waste of ratepayer dollars.

PG&E has made it crystal clear that it intends to undergo this analysis in the 2007 GRC timeframe despite the fact that its current license does not expire until 2021 and 2025 for its Diablo Canyon Nuclear Plant.

PG&E states in the Settlement Agreement that: “the lead time necessary for power and resource planning, PG&E stated that its proposed timing takes advantage of the fact that the NRC currently is staffed and has their processes in place to consider license renewal applications because several other utilities have already performed feasibility studies and have decided to pursue license renewal. (Tr. 2767:25-28 to 2768:1-5, PG&E/Becker.)”. No evidence was presented that the NRC will lose its staff or will remove the “processes in place” before the 2010 GRC.

In fact, information gleaned from the NRC's website² shows that the timeframe between application and approval of license renewals averages about 24 months. Thirty-two plants have already received approval, five are being reviewed and twenty-three more are in queue. (ANR -9) The NRC is *not lagging* in its approval of license renewals and the CPUC should not rush to grant PG&E funding for an in-house study of license renewal until state concerns have been resolved.

PG&E explanation that:

[t]he license renewal feasibility study will lead us to make a very important decision, which is whether or not to pursue license renewal at Diablo Canyon. The time frame for making that decision would be around the end of this general rate case time period or roughly 15 years before the licenses expire on the operating units. If we were not -- when that time came and we were to make that very important decision not to proceed with license renewal after considering all the issues, the costs, et cetera, then we need and the state of California needs time to plan for replacement power for Diablo Canyon. So that's -- so there's the power and resource planning part of it. (Tr. 2767:8-

² <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>

ANR/SC agrees that “California needs time to plan for replacement power for Diablo Canyon”. Yet the state is currently mandating that the “need” for—and the costs of—California’s reliance on aging nuclear plants, located in active seismic zones, vulnerable to acts of terrorism, malice and insanity and forced to store hundreds of tons of high-level radioactive waste be analyzed by the California Energy Commission (AB 1632 and CEC’s 2005 IEPR). Ratepayers would be better served if this independent analysis were completed *before* the CPUC forces them to fund an in-house feasibility study that may be superfluous.

The focus of the Nuclear Regulatory Commission (NRC) license renewal review is primarily age-related issues. The California Public Utilities Commission’s (CPUC) approval for replacement of billions of dollars for aging and failing components brings Diablo Canyon’s license renewal closer to a *fait accompli*. It also brings Diablo Canyon closer to producing and storing an additional 20 years of high-level radioactive waste on California’s fragile coast.

The state’s current actions indicate a desire to exert authority over California’s future energy costs, risk and reliability—a desire that would be undermined if PG&E attempts to preclude state agencies from this process. Thus, it would be irresponsible of the CPUC to allow PG&E’s request for funding their own study to proceed 19 years before the current license expires. Funding for PG&E’s study

should be deferred until the next GRC when the state's analysis is complete and the economic impacts to PG&E ratepayers and California residents are known.

ANR/SC believes that approval of funding for PG&E's License Renewal Feasibility Study is tantamount to approval for a license renewal application for Diablo Canyon without a determination that future costs will be reasonable and prudent and in the best interest of PG&E ratepayers, California's economy and the reliability of electric generation.

Once PG&E's study is complete there will be little else for PG&E to do but sign and send its "study" in as a completed application.³ The only component left after ratepayers have been charged for an in-house study of license renewal is for PG&E management to decide when to submit their virtually completed application. This feasibility study is a de facto license renewal application and should be denied as premature.

PG&E stated several times on the record that it does not believe California agencies have decision-making power over license renewal applications. And later PG&E witness Becker, stated the cost for the full application to approval for license renewal would be about \$4-\$6 million.⁴ ANR/SC questions the costs of a \$14 + feasibility *study* that is four to five times the cost of the full license renewal application process.

³ <http://www.nrc.gov/reactors/operating/licensing/renewal/process.html#current>

⁴ CPUC transcript, June 20, 2006

PG&E's responses to cross-examination regarding whether or not any state agency has the authority to review a license renewal application if PG&E decides to file once its study is complete--and they appear to believe the state does not--are not a part of the Settlement Agreement. This is significant, for if the issue of license renewal will not come before any state agencies--including the CPUC--until *after* the application has been filed with the Nuclear Regulatory Commission (NRC), the state's issues will be preempted.

PG&E's track record of accurate forecasts for costs at Diablo Canyon has been dismal and a license renewal feasibility study fifteen to nineteen years before expiration will not give ratepayers any assurance of future costs. The "study" will also not assure ratepayers that components that are deemed operable by the NRC for the period of license renewal will not need to be replaced again during that period. PG&E has admitted that costs are often beyond the utility's control and ratepayers are held hostage to NRC mandates.

A report issued September 18, 2006 by the Union of Concerned Scientists finds that nuclear reactors are prone to costly, lengthy shutdowns for safety problems regardless of their age or the experience of their managers. So many costs are in fluctuation in the energy sector, to guess at forecasts that would accurately gauge the costs of operation of Diablo Canyon during a license renewal period from 2025-2045 is virtually impossible. The "unknowns" in the nuclear industry

continue to “surprise” oversight agencies and result in millions of dollars charged to ratepayers to fix. Components that ratepayers and oversight agencies anticipated would last the life of nuclear reactors are now failing and there is no guarantee they will not fail again.

Ratepayers should not be forced to pay for a study that will have little if any relevance to real costs decades in the future. If ratepayers are to be protected from cost-overruns, from paying for replacement of parts assumed to last the full operating life of reactor generation, and from increasing security needs then it is vital that the Commission deny funding for this premature study in PG&E’s 2007 GRC and wait until the 2010 to understand if license renewal has been determined to be in the best interest of California’s economy and future reliable generation..

The original Nuclear Regulatory Commission (NRC) license to operate for PG&E’s Diablo Canyon Nuclear Plant was granted in 1982. The Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission (CPUC) was granted over a decade before the NRC approved the license to operate. Both the license and certificate were founded on forecasts that large components (steam generators, reactor vessel heads, turbines, communication systems...) would safely operate for the life of this nuclear plant and that has proven to be erroneous and extremely costly to ratepayers.

Energy costs are beginning to break the back of our economy and this tide can only be stemmed if *California* begins planning responsibly for our future energy needs. The CPUC is well aware that the California Energy Commission has recommended a full cost, benefit and risk analysis of the state's dependence on aging nuclear plants post current licenses (ANR 25).

The Alliance for Nuclear Responsibility and Sierra Club believe the only prudent action is for the Commission to remove funding for PG&E's premature request for a license renewal feasibility study from this Settlement Agreement. We would also request the Commission support the CEC's recommendation for a state sponsored look at how much radioactive waste California will allow to be produced by aging nuclear plants on our seismically active coast and for AB 1632 which mandates the study and is currently awaiting the Governor's signature.

California must determine how long our state is willing to accept the economic risks of continued operation of aging nuclear reactors and the increasing stockpiles of high-level radioactive waste on our fragile and earthquake active coast. If funding is allowed for this premature study in the 2007 GRC it is highly likely the actual license renewal application will have been filed. Then what authority will the CPUC or any other state agency have regarding an additional 20 years of radioactive waste production and storage on the state's coast?

PG&E has already completed two license renewal feasibility studies (2003 & 2005)⁵&⁶. ANR/SC purports that PG&E's request for a *feasibility study* is in fact thinly disguised and full ratepayer funding for the full license application.

We ask that the CPUC join all state agencies, the legislature, the utilities and the public to work together to focus on the “big picture” for California's future energy requirements. After a fully independent analysis of all costs, benefits and risks on California's continued reliance on aging nuclear plants is complete, perhaps California will have determined that nuclear power will not be the future energy choice for our children. Ratepayers would then have wasted \$14 million which could have been used for a down-payment on a serious study of how to replace 2000 MW at Diablo Canyon by 2025.

Nuclear power plants designed in the 1960's are exhibiting dangerous signs of aging. Components assumed to last the full life of these nuclear reactors are failing half-way through the original license periods and billions of dollars in replacement costs are being charged to California ratepayers. High-level radioactive waste mandated in 1982 by Congress to be removed from reactor sites to a permanent repository dangerously lies on California's earthquake active coastal zones. The radioactive waste remains vulnerable to the whims of those who would attempt to devastate the California economy – the 7th largest in

⁵ ANR/SC Exhibit #

⁶ ANR/SC Exhibit #

the world. ANR/SC fails to understand how an in-house feasibility study beginning in 2007 will determine if Diablo Canyon can safely, economically and reliably operate from 2025-2045.

These issues must be addressed before the Commission passes on costs to ratepayers for PG&E to “study” whether the continued operation of an aging, dangerously sited and vulnerable nuclear plant will be profitable and reliable for an additional 20 years beyond current license terms. For these reasons the CPUC should reduce the Settlement Agreement by \$14 million and deny PG&E’s request for a license renewal feasibility study over a decade and a half before its current license expires.

FUNDING IN THE SETTLEMENT AGREEMENT FOR CONSTRUCTION OF A HIGH-LEVEL RADIOACTIVE WASTE FACILITY SHOULD BE DENIED AS THE 9TH CIRCUIT COURT HAS RULED THE NRC ILLEGALLY GRANTED A LICENSE FOR ONSITE STORAGE WITHOUT ALLOWING HEARINGS ON TERRORISM AND ACTS OF INSANITY AND MALICE.

As in the case of PG&E’s request for a feasibility study of license renewal, the utility’s request for funding of an onsite radioactive waste storage facility (known in the industry as an ISFSI) is premature. On June 2, 2006, the Federal Appellate Court – 9th Circuit, ruled that “We hold only that the NRC’s stated reasons for categorically refusing to consider the possibility of terrorist attacks

cannot withstand appellate review based on the record before us.”⁷ If ratepayer funding is allowed for a project that may need to be redesigned and reconstructed the Commission will have failed in its mandate to protect customers from unreasonable and imprudent expenses.

The original license for storage of highly radioactive fuel used in reactor operation was limited to 540 fuel assemblies (ANR 22). Nuclear utilities across the country have applied for and received permission to increase the number of radioactive fuel assemblies in storage pools. Today there are 2164 radioactive fuel assemblies tightly packed in a pool outside of the steel reinforced concrete containment of Diablo’s reactors (ANR 23). PG&E’s plan is to remove only 256 of these radioactive assemblies from its pool to its dry cask storage facility during Phase 1 of its high-level radioactive waste storage project.

ANR/SC agrees with PG&E in that the “Federal Government’s failure to provide long-term storage for spent nuclear fuel”⁸ has resulted in additional costs to nuclear utilities consumers. Yet that failure should not result in less than the most secure storage facility that can be constructed to protect those who live by default “interim” radioactive storage facilities.

The completion of an “interim” and much less a permanent safe offsite storage facility remains mired in controversy. PG&E and the NRC have admitted that

⁷ ANR/SC Exhibit XX 9th Circuit ruling pg 6096

⁸

“interim” onsite storage could remain on a seismically active coast for 100 years. Dry cask canisters are licensed for 20 years and at several nuclear facilities the highly radioactive waste in the casks has needed to be “repackaged”. The NRC does not require a solution to the permanent storage of high-level radioactive waste as a condition of license renewal, in fact it is an issue not allowed to be litigated if a local or state agency wished to intervene.

The public’s call for hardened onsite storage (berms and/or bunkers) and spreading casks out over the site--rather than lining up like bowling pins under transmission lines--to protect citizens from radioactive fallout in the event of a terrorist attack or acts of sabotage or malice should be heeded by the CPUC. This denial of PG&E’s request for design and construction funding for its “ISFSI” at Diablo Canyon is further supported by the recent introduction of the Domenici/Reid bill which calls for interim onsite storage of highly radioactive waste produced at the nation’s nuclear power plants. In addition, HR 4527 calls for states with Department of Energy sites to consider storage of high-level waste from reactors. It would be highly irresponsible for the CPUC to pass on costs for a facility that may not be used or more likely need to be rebuilt before it can be used.

The San Luis Obispo Mothers for Peace, Sierra Club and former San Luis Obispo County Supervisor Peg Pinard requested the project be stayed until the question of safe onsite storage is resolved. PG&E responded and the NRC

agreed that “As for SLOMFP's request that we "declare" that PG&E is going forward with construction at its own risk, PG&E itself has already said as much: it fully acknowledges that continuing to construct the ISFSI comes "at its own financial risk." Thus, in light of PG&E's acknowledgment, there is no controversy as to who bears the financial risk of going forward with construction of the ISFSI.⁹

It is important to note that PG&E stated “at its own financial risk,” not the financial risk of its ratepayers. For this and many other financial risk reasons the CPUC should deny any ratepayer funding for onsite storage of high-level radioactive waste until resolution of the NRC proceeding on this issue.

PG&E states that “In 2004, PG&E sued the United States for the Department of Energy’s (DOE) breach of contract for failure to “implement and operate a program for the removal and ultimate disposal of spent nuclear fuel and high-level radioactive waste “¹⁰ In truth it is PG&E ratepayers that provided both the funds for a permanent waste disposal site and the DOE lawsuit. PG&E has failed to apprise the CPUC that if a license renewal is granted the current onsite storage facility (under federal appeal) will not be adequate to hold the highly radioactive waste produced during the license renewal term – again a fact the NRC does not consider in the license renewal approval process.

⁹ NRC Memorandum and Order CLI-06-23, Sept 6, 2005

¹⁰ Ibid

**RATEPAYERS SHOULD NOT BE REQUIRED TO PAY TO REPLACE
COMPONENTS THAT ARE NOT DEFECTIVE**

From the time of PG&E's application parties revealed that the forecasts for new Reactor Vessel Heads (RVH) have risen from \$67 million in the recent steam generator replacement proceeding to \$141 million today. If PG&E could demonstrate that these parts were needed during the 2007 GRC, those of us who live in close proximity to the Diablo Canyon reactors might be persuaded to support this expense, yet during cross examination both PG&E witnesses stated this is not the case:

PG&E stated in cross-examination that it will not be replacing RVH or cooling pumps again, but will this hold true during a license renewal period? The nuclear industry's record relating to future costs has been egregious and for the Commission to give this argument any credence would be irresponsible.

Once again the public is being asked to believe components that were anticipated to last the full design-life of Diablo Canyon and are currently being replaced half-way through that license will not fail again. On what factual evidenced is PG&E basing its projected reduction in capital costs?

CONCLUSION

Funding for Nuclear Operations should be reduced by:

- \$14 million for license renewal feasibility study
- All costs of reactor vessel head replacements
- All costs of design and construction of PG&E's high-level radioactive waste storage facility until resolution from the June 2, 2006 of the 9th Circuit Court of Appeals.

If the Commission were to agree to the Settlement Agreement without these reductions it would be abrogating its duty to protect ratepayers. To allow funding for a License Renewal Feasibility Study would be comparable agreeing that a forecast of expenses 10-15 years before license expiration for an additional 20 years of operation have any basis in reality and could remotely be justified as "reasonable and prudent". To force ratepayers to replace components that are not defective flies in the face of justified rates. To pass on costs for a high-level radioactive waste storage project based on findings of the NRC that have been overturned by a recent ruling of the 9th Circuit would be irresponsible.

In order to avoid this type of misperception, the Commission should deny funding of PG&E's license renewal feasibility study, reactor vessel head replacement, and design and construction funds for PG&E's onsite storage facility for high-

level radioactive waste. Hearings should be scheduled to discuss these issues on the record.

Respectfully submitted,

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