

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

Application of Pacific Gas and Electric
Company to Recover the Costs Associated
with Renewal of the Diablo Canyon Power
Plant Operating Licenses.
(U 39 E)

Application 10-01

**PROTEST OF THE ALLIANCE FOR NUCLEAR RESPONSIBILITY, SIERRA
CLUB, CALPIRG, ENVIRONMENT CALIFORNIA RESEARCH AND POLICY
CENTER TO PACIFIC GAS AND ELECTRIC COMPANY'S APPLICATION TO
RECOVER THE COSTS ASSOCIATED WITH RENEWAL OF THE DIABLO
CANYON POWER PLANT OPERATING LICENSES**

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Pursuant to Rule 2.6 of the Commission Rules of Practice and Procedure, the Alliance for Nuclear Responsibility, Sierra Club, CALPIRG, Environment California Research Center, (A4NR et al) hereby submits this protest to the application of Pacific Gas and Electric Company (PG&E) to recover the costs associated with renewal of the Diablo Canyon Nuclear Plant. A4NR, et al's, Protest is based on PG&E's incomplete Application for ratepayer funding.

Decision 07-03-044 March 15, 2007 recognized A4NR, Sierra Club and TURN's concerns that PG&E's "feasibility study" was nothing less than a full Nuclear Regulatory Commission License Renewal application – absent only the signature, envelope and stamp. To address these concerns the CPUC Decision stated that: "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."¹

A4NR, et al, believe that PG&E's January 29, 2010 letter to CPUC Chairman Peevey fails to fully and completely meet the Commission's directive relating to AB 1632 recommendations and the required submittal of the application to the CPUC in advance of filing a license renewal application with the NRC.

¹ CPUC D. 07-03-044 page 5

Furthermore, it fails to satisfy the intent of the letter sent by CPUC Chairman Peevey on June 25, 2009 that clarified the CPUC's position on the recommendations of their sister agency, the California Energy Commission (CEC):

“It has come to my attention that PG&E does not believe that it should include a seismic study, and other AB 1632 Report recommended studies, as part of its Diablo Canyon license extension studies for the CPUC. Apparently, PG&E bases this position on the fact that the Nuclear Regulatory Commission's (NRC) license renewal application review process does not require that such studies be included within the scope of a license extension application.

That position, however, does not allow the CPUC to properly undertake its AB 1632 obligations to ensure plant reliability, and in turn to ensure grid reliability, in the event Diablo Canyon has a prolonged or permanent outage. Therefore, the Commission directs PG&E to perform the following tasks as part of its license renewal feasibility studies for Diablo Canyon.

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....

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."

Later in 2009, after legislation requiring seismic studies was unanimously approved by the state legislature, Governor Schwarzenegger vetoed

Assemblyman's Blakeslee's bill, AB 42, stating:

"I am returning Assembly Bill 42 without my signature. This bill would require Pacific Gas & Electric Company (PG&E) to conduct seismic fault studies on the Diablo Canyon Nuclear Power Plant and the California Energy Commission, in consultation with the Department of Conservations California Geological Survey and the Seismic Safety Commission, to perform a peer review of PG&E's work and include its finding in the Integrated Energy Policy Report.

In 2006, I signed into law AB 1632 (Chapter 766, Statutes of 2006), which required the Energy Commission to conduct a

comprehensive study of the seismic vulnerability of Diablo Canyon, as well as other areas including plant-aging related plant degradation, impacts of a major disruption, economic and environmental policy issues, nuclear waste accumulation, land use and economic implications of onsite nuclear waste storage, alternative power generation options, and license renewal issues. The study subsequently recommended that PG&E should use three-dimensional geophysical seismic reflection mapping and other advanced techniques to explore fault zones near Diablo Canyon.

In 2007, the California Public Utilities Commission (CPUC) issued a General Rate Case Decision for PG&E (Decision 07-03-044), which approved PG&E's request for ratepayer funding for a license renewal feasibility study for Diablo Canyon. The CPUC's Decision also required that PG&E incorporate the Energy Commissions AB 1632 assessments in its license renewal feasibility study, and submit the study, along with an application, to the CPUC on whether to pursue license renewal for Diablo Canyon no later than June 30, 2011. Therefore, in light of the actions already taken by the CPUC and the Energy Commission on this matter, further legislative authorization is unnecessary.²

It appears that rather than completing the seismic studies that were recommended by the CEC and confirmed by the CPUC and the Governor, PG&E felt confident that the state was not sincere in its directive to complete such studies. A4NR, et al, fails to see how PG&E can conclude that the required studies were complete, absent any publicly available documentation from PG&E,

² Oct 2009 Letter to the state legislature from Governor Schwarzenegger

the CEC, the CPUC or the legislature indicating that final and comprehensive closure of this seismic requirement has been reached.

There is an distressing feeling of déjà vu by those who have been actively involved in rate issues before this agency for more than two decades. There were no known faults in 1967 when Diablo was permitted. In 1981 when the NRC first licensed Diablo to commercially operate there was one confirmed major active fault, and today *two known* major active faults lie within three miles offshore of Diablo. Yet PG&E continues to attempt to convince oversight agencies that their seismic experts are competent and should be the sole arbiters of whether new seismic studies should be completed before ratepayer funds are granted for a twenty-year license extension.

PG&E chose to file its application for a twenty year license renewal in November 2009 – to the surprise of oversight agencies, legislators, and the public.

According to a conversation with Chairman Jaczko on March 4, 2010 at NRC Headquarters – the NRC was also surprised and A4NR was asked if “we” knew *why* PG&E had filed at this unexpected time – we do not..

In our 2007 Protest A4NR/SC stated that “factual and regulatory 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. Our concern is substantiated in PG&E’s license renewal funding request. In the 2007 GRC, PG&E witness, James Becker, stated the “cost for the full application to approval for license renewal would be about \$4-\$6 million.

A4NR, et al, questioned the \$4--\$6 million estimate in light of the \$16+ million requested merely for the feasibility study.³

Today it is challenging to follow PG&E's funding requests for Diablo. There is some funding requested for Diablo in the GRC, expedited funding for seismic studies in a separate case (without any attempt to expedite completion of studies) and now \$85 million to cover the cost of PG&E's license renewal application process. If Diablo Canyon is to operate and ratepayers are to fund the continued operation beyond the current license of 2025, then all parties must understand the seismic ramifications of producing and storing highly radioactive waste within three miles of two major active faults and the likelihood of additional seismic activity.

Headlines expounding the tragedies and costs of four devastating earthquakes in 2010 alone on the Pacific Rim (Humboldt, Haiti, Chile, and Taiwan) should give the CPUC pause. These quakes appear to be a clear indication to the general public that the 3D Reflective Mapping recommended by the CEC and unanimously approved by the state legislature must be the basis for determining whether or not it is ratepayers interest to fund a license renewal study before completion of the state-required seismic review.

The CPUC must stop wasting ratepayer dollars for the convenience of one investor owned utility. The CPUC directed PG&E to include AB 1632 recommendations, the legislature directed PG&E to do the AB 1632 recommended seismic studies and the Governor, in his veto, stated the CEC and

³ 2006 CPUC GRC transcript June 20, 2006

CPUC had the authority to require PG&E to complete the AB 1632 recommended studies. These studies should be jointly peer reviewed by the USGS/NRC and state seismic oversight agencies before PG&E can receive one penny of ratepayer funding for license renewal. Ratepayers have no more money to waste on PG&E's legal maneuvers than the state does. Ph.D Seismologist Assemblyman Sam Blakeslee confirmed that 3D seismic data can be collected within a few weeks and the analysis could be completed and reviewed within a year. Nothing in this Protest would place California in a bind to meet its generation needs as PG&E's license does not expire until 2025. Allowing PG&E to collect from ratepayers now for a license renewal fifteen years in the future without completing these seismic studies would be an affront to hard working men and women in this state.

The focus of the Nuclear Regulatory Commission (NRC) license renewal review is primarily age-related issues. The NRC's scope is so narrow that new seismic information and the cancellation of Yucca Mountain do not weigh into their process. This leaves it to California oversight agencies to ensure that Californians are not financially harmed or left without reliable services if PG&E is allowed to produce and store highly radioactive waste within three miles of at least two major active earthquake faults for an additional twenty years.

CONCLUSION

The CPUC should deny PG&E's request for ratepayers to fund its license renewal application until 3D seismic reflection mapping and new state-of-art seismic studies, recommended by the CEC and legislature, are completed and peer reviewed. A4NR intends to participate fully in the Application of Pacific Gas

and Electric Company to Recover the Costs Associated with Renewal of the Diablo Canyon Power Plant Operating Licenses, and

A4NR, et al, intends to participate actively in this case and will begin discovery on a range of topics next week. We intend to participate in evidentiary hearings (if convened), and submit post-hearing briefs. A4NR, et al believes that hearings will likely be necessary in this case in order to explore the validity of PG&E's forecasts and clarify what risks and costs are not included in the cost effectiveness analysis.

Respectfully Submitted,

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Alliance for Nuclear Responsibility
Also representing
Sierra Club
CALPIRG
Environment California Research and Policy