THE TRAGEDY OF DIABLO CANYON

After 25 years of lies, mistakes and cover-ups, PG&E is getting everything it ever wanted at Diablo Canyon — and the press is blacking out the story

By Jim Balderston

In the most expensive and under-reported consumer scandal to hit California in at least 50 years, the California Public Utilities Commission is ready to make PG&E's customers pay for $3.4 billion worth of the company's mistakes in the construction of the Diablo Canyon nuclear power plant.

The agreement that would make the customers pay for the majority of 25 years of Diablo screwups was reached in secret meetings held at PG&E headquarters involving representatives of the company, the CPUC staff and Attorney General John Van de Kamp.

As a result of those meetings, the CPUC staff has reversed its strong position that PG&E should pay for its own mistakes and has agreed to sign off on what amounts to the first major deregulation of a private utility in the history of the United States.

Not only does it appear that PG&E has escaped the responsibility of paying for its own mismanagement and incompetence, the company has also subverted the public hearing process, denying public review of the details of the settlement agreement and saving PG&E the embarrassment of a public inquiry into the details of Diablo's scandalous history.

The agreement still needs approval of the full CPUC, but most observers say the commission will rubber-stamp the deal. Hearings on the agreement are underway right now, and participants say the administrative law judge overseeing the hearings has done everything possible to keep the agreement on track and to prevent critics from exposing its deficiencies.

It's one of the most important consumer stories of the century — not since PG&E subverted the Raker Act of 1912 has a private utility conspired with the government in a rip-off to consumers of this magnitude. But the local news media — and most of the major media elsewhere in the state — have completely blacked the story out.

Here, for the first time, are the details:

- The CPUC's Division of Ratepayers Advocates, which is charged with representing the public interest in utili-
ty cases, spent four years reviewing Diablo, and came to two dramatic and precedent-setting conclusions. First, the DRA staff found that PG&E, and not the consumers, should be responsible for $4.4 billion of the $5.6 billion cost of the Diablo Canyon plant. Second, the DRA staff concluded that PG&E would save money by not operating the Diablo Canyon plant. Both recommendations have been scrapped completely, and PG&E, the attorney general and the head of the DRA are trying desperately to keep the report containing the recommendations out of the public eye.

■ The negotiated settlement calls for the consumers to pay some $3.4 billion of Diablo’s cost. It also sets up a system that could reward PG&E for operating the plant without proper safety procedures—and contains provisions that amount to a substantial deregulation of the monopoly utility. The deal was hammered out by PG&E Chairman Richard Clarke, Los Angeles attorney Warren Christopher, Van de Kamp and CPUC Director of the Division of Ratepayer Advocates William Ahern, behind closed doors at PG&E’s headquarters.

■ Christopher, who was hired by PG&E, may have been the key factor in turning Van de Kamp and the CPUC regulators around. Christopher, who successfully negotiated the release of the U.S. hostages from Tehran in 1981, is a longtime Democratic Party insider, and his law firm, O’Melveny and Myers, has contributed more than $53,000 to Van de Kamp’s political campaigns since 1981.

■ Van de Kamp is running for governor in 1989, and has in the past criticized politicians accepting contributions from individuals or companies with whom they were dealing with in an official capacity. Van de Kamp claimed the contributions from O’Melveny and Myers had no effect on his role in the settlement agreement.

■ The settlement agreement is, in effect, a 30-year contract, which is in direct violation of CPUC regulation procedures. William Bennett, a member of the state Board of Equalization who has filed several motions to stop the approval of the contract, told the Bay Guardian the commission has no power to enter into such a contract. “There is an unbroken line of decisions starting in 1911 from the California Supreme Court that run contrary to this type of contract,” he said. In effect, he explained, “the CPUC is about to set a national precedent by deregulating a monopoly utility.”

■ The 30-year agreement, which has a performance clause in it, will allow PG&E to lower the amount of its responsibility if the plant runs at more than 38 percent of capacity. According to Van de Kamp and PG&E officials, this means that the better the plant performs, the lower the amount PG&E will pay for the plant. But opponents argue that this would give PG&E an incentive to run the plant as much as possible, and perhaps cut corners to continue production, despite potential safety hazards. Considering PG&E’s record in building the plant, such concerns would seem more than reasonable.

■ Part of the agreement includes the establishment of an Independent Safety Committee to oversee the operation of the plant. The committee will be funded by PG&E, which will also have a say in who will sit on that committee.

■ By approving the settlement agreement, the CPUC would spare PG&E the embarrassment of a long public discussion of the incredible string of mistakes and deliberate deceptions associated with the construction of the Diablo Canyon plant. The plant was under construction for 16 years, more than twice the industry average, and cost eight times the industry average to complete. PG&E repeatedly refused to acknowledge earthquake faults found near the plant, and twice had to rebuild or substantially renovate the entire facility. The CPUC staff placed the blame of these problems squarely on PG&E, noting in its analysis that “PG&E imprudently failed to adopt management practices, such as the widely used project management system, needed to plan, integrate and control a large plant undertaking.”

■ No public officials from San Francisco or any other public agency in the state — with the exception of Bennett, an attorney, former CPUC member and longtime foe of PG&E — has appeared in front of the commission to argue against the settlement. City Attorney Louise Renne, charged with protecting the interests of San Francisco and its residents, has sent representatives to the hearings, but they have not been involved on a day-to-day basis and have submitted no testimony against the agreement.

■ Bennett, who opposed Diablo when it first came before the CPUC in 1967, has challenged the secret agreement and has raised questions about PG&E’s legal right even to build the plant in the first place. But Administrative Law Judge Robert Barnett has summarily rejected almost every one of Bennett’s motions and denied him the right to examine many of the key witnesses in the case. Barnett has refused to force Ahern, Van de Kamp or Christopher to testify about the secret settlement agreement and has quashed Bennett’s subpoena of those witnesses on dubious technicalities.

■ Meanwhile, the billion-dollar settlement agreement has received virtually no press coverage in Northern California. Bennett says he has called Examiner and Chronicle reporters to try to interest them in the story, but “it was useless, so I gave up.”

 Diablo Canyon has been among the most hotly contested plants in the history of the nation’s nuclear power industry. Since PG&E first proposed to build the plant 25 years ago, it has drawn the ire of a wide range of anti-nuclear and environmental activists and has become a major focal point for resistance to nuclear power across the country. More than 1,900 people were arrested at a blockade at the plant’s gate in 1981 that drew international attention.

The Nuclear Regulatory Commission yanked PG&E’s license for the plant at the end of that demonstration, when an engineer revealed that part of the plant had been built upside-down. Yet despite all of this attention, PG&E appears to have won everything it wanted: The right to operate the plant, and the right to force the ratepayers to pay for a huge percentage of its cost, including most of the 1,452 percent cost overrun.

The story begins back in 1963, when PG&E, still stinging from the defeat of its proposal to build a nuclear power plant at Bodega Bay, went looking for a suitable site along the central California coast. The company first eyed a spot on the Nipomo Dunes, but environmentalists and community leaders fought bitterly against the idea, and — determined to avoid a repeat of its loss at Bodega Bay — PG&E officials settled on Diablo Canyon, near San Luis Obispo...
On Nov. 7, 1967, the California Public Utilities Commission issued PG&E a Certificate of Convenience and Necessity, a license to begin construction of a nuclear power plant to augment the company's electrical generation capability. PG&E's estimated cost at the time: $364 million.

But according to the report prepared by the CPUC Division of Ratepayers Advocates, PG&E bungled the construction job from the start. "When PG&E began the project in the mid-1960s," the report states, "the company failed to conduct studies to look for offshore earthquake faults. Had PG&E spent about $65,000 for seismic surveys offshore, or had PG&E looked at the data collected by the Shell Oil Company at the time, PG&E would have discovered the Hosgri fault 3.5 miles offshore."

But the company did neither. "Instead, PG&E designed and built Diablo Canyon to standards inadequate to safely withstand a large earthquake nearby," the report states. The Shell Oil survey estimated that the Hosgri fault was capable of a 7.5 earthquake, a fact confirmed and reported by a PG&E geologist.

After ignoring the earthquake threat, PG&E ran into trouble with the Nuclear Regulatory Commission. The company had assured the regulators that there was no potential for a large earthquake offshore the site. But the NRC ordered an earthquake study conducted anyway, and in 1976, ordered PG&E to redesign and rebuild the plant. At the time, the plant was nearly complete, at a cost just under $1 billion.

Between 1976 and 1981, the company worked on upgrading the plant to meet NRC earthquake specifications. But this operation, too, was wracked with mismanagement and cost overruns.

The DRA staff report noted, "PG&E's engineering practices and quality assurance procedures were so deficient that a series of major design errors occurred. The company's inadequate quality assurance program did not detect or correct these errors."

In 1981, the NRC suspended PG&E's license to begin low-power operation of the first of two reactor units at the plant. PG&E incurred the wrath of the NRC by installing part of the reactor system incorrectly, in effect, putting it in backward due to a "mirror image" problem in reading design drawings.

According to the DRA staff report, this was not a minor problem. "Rather than being an isolated incident, as PG&E suggested to the NRC, investigations over the following months uncovered pervasive design errors."

In 1981, PG&E brought in Bechtel Corporation to do a final make over of the plant. When it was completed, in 1985, the Diablo Canyon plant had a tab of $5.6 billion, the majority of that tab paying for the "correction of design errors."

The CENTRAL issue facing the CPUC boils down to this: Now that the plant is built, who should pay for it?

The DRA staff concluded that this dismal history of design and implementation of the power plant left the majority of the costs on PG&E, and not the company's ratepayers, who had no say in the plant's construction and who now have no alternative to buying PG&E electricity. The staff noted that the plant "had to be designed and completed three times."

The DRA staff recommended that PG&E be allowed to charge its ratepayers $791 million, "the estimated cost to build and operate Diablo Canyon by 1976," and another $359 million "for plant upgrades."

The report noted that the staff "does not believe that the ratepayers should pay for the unnecessary costs of designing and completing Diablo Canyon the second and third times."

The staff report then explained the commission's role in this matter — perhaps too clearly for Van de Kamp and PG&E. "Statutes require the Commission to identify and disallow all unreasonable costs specifically associated with the Hosgri fault and mirror image errors, and all other unreasonable costs of utility plants," the report stated.

The DRA staff lawyers were apparently confident that they could win any litigation that PG&E would bring to fight the DRA recommendations. Attorney Edward O'Neill, who had prepared the commission's case against PG&E, was quoted at the time as saying, "I was disappointed that they chose to settle. We had a very strong case, and I was looking forward to litigating it."

Perhaps more stunning, however, was the staff analysis, backed up by independent analysis by a consultant hired by the Redwood Alliance, a Northern California environmental or-
total cost of the plant, and its power would be $17 billion over the course of the plant’s operation. Under the settlement agreement, the cost would be almost $14 billion.

On the other hand, if the plant were never built, the cost of the electricity needed would be only $6.6 billion, or approximately $7 billion less over the course of 30 years than the Diablo electricity.

THE SETTLEMENT deal, however, contains a clause that will prevent — for 30 years — any examination of the economic feasibility of running Diablo Canyon and conducting the type of analysis that Bernow suggests should be undertaken.

The three years of DRA preparation, which culminated in 17,000 pages of documentation produced by the staff, outside consulting firms, financial analysts and economists, has all been abandoned as a result of the secret settlement.

That settlement represented a 180-degree about-face for Van de Kamp. In September 1987, Van de Kamp was quoted in the San Francisco Examiner as saying: “It ought to be obvious that violations of NRC safety regulations are imprudent and that the financial burden should rest squarely on the company, not ratepayers.”

One of Van de Kamp’s staff members, Deputy Attorney General Peter Kaufman, echoed that sentiment, noting in a UPI story of the same date that “PG&E is responsible for all costs since 1981 having to do with violation of NRC regulations.”

By June 27, 1988, Van de Kamp had radically changed his stance, however. He called the agreement “a real world” settlement, and professed, “We are relieved that ratepayers will no longer be at risk for much of the past and potential problems of Diablo Canyon.”

What brought this turnaround? Since most of it was done in secret, it’s almost impossible to say for sure — but one thing is clear. A key player in the negotiations was Attorney Warren Christopher, a longtime Democratic Party insider whose Los Angeles law firm, O’Melveny and Myers, was hired by PG&E to handle the case and the litigation that CPUC staff lawyers were so confident they could win.

O’Melveny and Myers is the second-largest law firm in Los Angeles and the eighth-richest firm in the country, according to the Los Angeles Times.

PG&E hired O’Melveny and Myers in 1987, in an effort to break a stalemate between PG&E’s own attorneys, who wanted to find some way to get the company off the hook for its Diablo mistakes, and the CPUC staff, which was determined that the ratepayers should not be stuck with the tab.

PG&E has spent $100 million in legal fees attempting to prevent the company from paying the lion’s share of the Diablo Canyon fiasco. According to published reports, O’Melveny and Myers will charge PG&E some $15 million for its services in the case.

Christopher, who is known as “the Bill Coblenz of Los Angeles,” worked with as many as 20 attorneys from the firm to lead negotiations with the CPUC. The 16-month battle, which had intensified at the beginning of the year after national investment houses estimated that PG&E would have to pay around $4 billion of the cost of the plant, finally culminated in the June 27th announcement of the settlement plan.

According to articles at the time, Christopher’s law firm’s entry into the talks was crucial. “O’Melveny and Myers did this litigation what Bechtel did for the power plant,” one assistant attorney general was quoted as saying at the time in The Recorder, a San Francisco legal newspaper.

But O’Melveny and Myers had more than just legal wisdom to offer. The firm, through individual attorneys and a political action committee, has contributed almost $54,000 to Van de Kamp’s political campaigns since 1981. Van de Kamp is widely rumored to be seeking the Democratic nomination for governor.

One of the few impediments to this apparent railroad of the settlement agreement has been Bennett, who has for years taken the lonely stand fighting PG&E (see sidebar, page 11). Bennett has filed two briefs with the CPUC challenging its handling of the settlement agreement.

In the first brief, dated April 25, 1985, Bennett argued the November 1967 Certificate of Convenience and Necessity issued by the CPUC to allow PG&E to construct the Diablo Canyon plant had lapsed by the time the company began construction of the plant. The original certificate stated that the “commercial operation” would begin “in the spring of 1972.” The plant began commercial operation 13 years later.

Since the plant began operating well beyond the 1972 deadline, and no subsequent certificate was issued, Bennett argued that PG&E had no legal right to operate the plant.
Bennett also argued that PG&E had misled the commission when it claimed that the company needed the plant by 1972 and that it could build the plant for $364 million. The ensuing 14 years show that not only did PG&E not need the plant, but that it was wildly off the mark in plant construction charges.

PG&E filed a countermotion, for which the administrative law has never set a hearing.

According to Bennett, the refusal to review his motion was entirely arbitrary and not without strong political motivations. "The commission has refused to hear it. They have stalled the thing to death," he said.

Last month, Bennett filed a motion asking the CPUC for an "Examination of Antitrust Factors" in the settlement. Bennett charged in his brief that PG&E, Van de Kamp and the CPUC "met over a period of thirteen months past in secret session and negotiated a settlement agreement in which the price for the power produced by Diablo Canyon was fixed."

Rates for the Diablo Canyon power are set — by the agreement — to start at 7.8 cents per kilowatt hour and escalate from there, with no provision for the cost of generation or cost of other sources of power in the PG&E system that may be less expensive to produce. To Bennett, this is a violation of the Sherman Antitrust Act.

"PG&E has a monopoly on all power, gas, electric and nuclear. They have a monopoly on a monopoly. That presents very serious anti-competitive consequences," he said.

Bennett also argued that the settlement agreement, and its negotiations "are all protected from public examination by rulings of the assigned commissioner, Donald Vial, and Administrative Law Judge Robert Barnett."