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)	A.10-01-022 (Filed January 29, 2010)

RESPONSE OF ALLIANCE FOR NUCLEAR RESPONSIBILITY, SIERRA CLUB, CALPIRG, ENVIRONMENT CALIFORNIA REASEARCH AND POLICY CENTER TO PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E) MOTION TO STRIKE THE "REBUTTAL TESTIMONY OF ROCHELLE BECKER REPRESENTING THE ALLIANCE FOR NUCLEAR RESPONSIBILITY, SIERRA CLUB, CALPIRG AND ENVIRONMENT CALIFORNIA RESEARCH AND POLICY CENTER"

Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission "CPUC" or "Commission"), the Alliance for Nuclear Responsibility (A4NR), et al files the instant response to Pacific Gas and Electric Company's (PG&E) motion to strike the "Rebuttal Testimony of Rochelle Becker on Behalf of the Alliance for Nuclear Responsibility. A4NR et al's Rebuttal Testimony is neither "improper, outside the scope of this proceeding, nor is it too speculative to be considered by the Commission."

I. The Commission Should NOT Strike the A4NR Document as Improper Rebuttal Testimony.

A. A4NR et al's rebuttal was directed towards the testimony of the Division of Ratepayer Advocates (DRA) with a smaller component regarding overlapping issues in the testimony of Southern California Edison (SCE). The mission of the DRA, as stated on their home page, is:

> "Our statutory mission is to obtain the lowest possible rate for service consistent with reliable and safe service levels. In fulfilling this goal, DRA also advocates for customer and environmental protections."

In previous proceedings over the past decade, DRA has provided, and the public has come to expect, testimony with adequate, detailed and thorough research. Thus armed, a citizen-ratepayer non-profit organization can use the data and analysis as background for the cross examination process, and in doing so, provide input into the public record through CPUC proceedings. A4NR et al has an established history of doing so, and has participated in this manner in several hearings related to both PG&E and SCE's aging nuclear reactors since 2005. Never during those hearings were any questions ever raised as to the "qualifications" of Ms. Becker as a "witness" or in any capacity as a participating and concerned member of the public. Without resources to fund an attorney to counsel witnesses, A4NR chose to follow its historical path of making its case though cross-examination and opening and closing briefs. The Commission need only look at A4NR, et al's participation in the 2007 GRC to support the above statements and determine that our participation consisted only of cross examination and the filing of briefs.

In the current proceeding 10-01-022, A4NR, et al, were surprised that the DRA, with lax attention to its above stated mission, made no attempt to address the requirements of AB 1632, ignoring not only A4NR, et al, but the California Energy Commission (CEC), the Legislature, the State Water Quality Control Board and the California Coastal Commission (CCC)—all of whom have been deliberating about the need for additional information before the state can rely on the economic generation and coastal protections of an aging nuclear facility on a seismically active coast.

The Commission may find precedent in the ruling of Judge Kenney re: Application 05-12-002, in which "Aglet Consumer Alliance (Aglet) filed a motion to strike portions of the rebuttal testimony served by Pacific Gas and Electric Company on May 17, 2006. PG&E filed a response on May 26, 2006. This Ruling denies Aglet's motion." In his ruling, ALJ Kenney writes:

> "Aglet's testimony asserts that PG&E failed to provide sufficient information to justify its request for $36.2 million in 2007 for work at PG&E's Diablo Canyon Nuclear Power Plant. PG&E responded in its rebuttal testimony by providing more information to justify its request. The issue presented in Aglet's motion is whether PG&E's rebuttal testimony is proper."
>
> "Rebuttal testimony should explain, repel, contradict or disprove an adversary's testimony. (United States v. Laboy, 909 F.2d 581, 588 (1st Cir. 1990.)) A narrow interpretation of this standard supports Aglet's motion, as PG&E's rebuttal does not respond directly to Aglet's testimony that PG&E provided too little information. A broader interpretation would allow PG&E's rebuttal, as it cures a defect in PG&E's case that is identified in Aglet's testimony. By curing the defect, PG&E's rebuttal testimony "repels" Aglet's testimony."

Judge Kenney offers the following elucidation:

> "…it is unacceptable for utilities to offer only minimal support in their applications, choosing instead to wait and see what issues appear to be of concern to others, and then providing focused rebuttal. Put differently, utilities should not pursue a litigation strategy of waiting until rebuttal testimony to spring information on unsuspecting parties. That does not appear to be the case here; there is no suggestion by Aglet or others that PG&E has pursued such a litigation strategy on a wholesale basis."

In this regard, A4NR et al respond to DRA in a manner similar to PG&E's response to Aglet: our rebuttal is providing more information to "cure a defect" in the DRA's testimony. As Judge Kenney indicated in the above paragraph, we believe that the DRA did not deliberately provide only minimal support for its assertions in its testimony and likewise, A4NR did not wait until rebuttal testimony to "spring information on unsuspecting parties." It would have been impossible for A4NR to know that the DRA would not advocate the same position that has been proffered by the CEC, CCC and the state legislature. Had the DRA addressed the issues found

mandatory for license renewal funding in their Testimony, Ms. Becker would not have needed, or been asked, to prepare any rebuttal testimony. However, with the DRA failing to diligently develop and analyze what we believe are the broad scope of ratepayer concerns, A4NR et al were compelled to file rebuttal testimony.

Further, Judge Kenney concludes his ruling, "…allowing PG&E's rebuttal does not unduly prejudice Aglet. Aglet will have adequate time to assess the rebuttal testimony and an opportunity to cross examine PG&E's witness sponsoring the rebuttal testimony." Likewise, PG&E has time and opportunity to address A4NR's issues via cross examination and briefing. If the Commission believes that PG&E would be prejudiced by those methods of addressing A4NR's testimony, A4NR would propose that the Commission allow PG&E to prepare surrebuttal testimony. This added opportunity would permit PG&E to fully address the issues raised by A4NR.

B. The Commission Should NOT Strike Portions of the A4NR et al's Rebuttal Testimony As Outside the Scope of this Proceeding.

A4NR, et al, has participated in local, state, and federal oversight, and state legislative proceedings addressing PG&E's license renewal since 2005. We have attended numerous legislative hearings, listened to the representatives of the utilities, all state and federal oversight agencies, the nuclear industry, unions, and alternative energy experts. Had the CPUC staff assigned to the license renewal process participated in the same democratic process that A4NR, et al, has monitored, they would know that support for full development of the issues raised in AB 1632 was clearly more than a what PG&E characterizes as "generalized warning to the Commission that it should not fund PG&E's license renewal application, A4NR's testimony does not address this issue."

It does not fall to A4NR et al to issue any "generalized warning" to the Commission regarding the need to incorporate the full scope of the AB 1632 results into their decision; however, as

referenced in A4NR's rebuttal, it is no one less than the president of the CPUC, Michael Peevey, who issued to PG&E the instructions in his letter of June 25, 2009:

> 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.

First, PG&E claims that, "The fact that these issues have been raised and will be addressed by the NRC and the Coastal Commission in the context of the federal application is irrelevant to the Commission's consideration of whether PG&E's customers should fund the license renewal process itself." PG&E errs in assuming that there is no connection between these studies and the funding for the license renewal. In their CPUC application, PG&E makes many projections and assumptions of costs going forward for Diablo Canyon, both in the current and extended license period. It is on the basis of these cost projections that they arrive at their claim that "it is in the best interest of its customers to retain the ability to operate this low-cost, carbon free generation source." And yet, the studies mandated by AB 1632 require answers to questions about the seismic suitability of the site, once through cooling concerns and long-term waste storage. The resolution of these issues could result in requirements to backfit, retrofit, or otherwise alter the plant's operation in a manner that would require reevaluation of all the cost estimates and projections. One need only look at the history of plant, as A4NR has submitted through a series of official documents (the presence of which PG&E acknowledges in their Motion To Strike) to see how the "low-cost" form of energy originally resulted in a $4.4 billion cost overrun principally attributed to seismic negligence.

Second, PG&E claims that the adequacy of the CEC recommended study on "lessons learned" from the Kashiwazaki-Kariwa Nuclear Power Station is "irrelevant to the Commission's consideration of whether PG&E's customers should fund license renewal application prior to completion of seismic studies recommended by the CEC." They add that, "Rochelle Becker's

opinion and speculation regarding the adequacy of the study is simply not relevant to the Commission's decision on this application."

In response, it should be noted that Ms. Becker's comments are directed at the DRA's failure to comparatively analyze the full scope of the AB 1632 recommendation, not the specific details of PG&E's single report. PG&E claims that this study is "complete;" A4NR et al does not believe PG&E has "completed" it; however, it remains for the Commission to determine if it is complete. For DRA to support the notion of "complete" without have done due diligence and research is a disservice to the ratepayers and an abdication of their mission statement as noticed earlier. Finally, as in the previous paragraph, the financial impacts to ratepayers of seismic miscalculations as evidenced by the Kashiwazaki-Kariwa incident and the repercussions to the utility and Japanese ratepayers cannot be ignored, and such potential contingencies would have to be factored into any ongoing assumptions of costs as PG&E may use to support their claim that proceeding with this license renewal is cost effective and a benefit to the rate paying public.

Third, PG&E chooses to characterize portions of the A4NR's rebuttal as "…a rhetorical scolding of the Commission's prior decisions." That subjective description may reflect PG&E's perspective, but the official documents and testimony cited are replete not with the words of A4NR but with those of elected officials, appointed regulators and Commission staff. Indeed, just as A4NR's rebuttal is directed at the DRA, so too are the comments in these documents, particularly the 1987 "California Joint Hearing of the Senate Energy and Public Utilities Committee and Assembly Utilities and Commerce Committee on the subject of "Diablo Canyon Nuclear Plant." Once again, A4NR points to the deficiencies acknowledged by the DRA's predecessor, Public Staff Division, during this 1987 proceeding. The Public Staff Division acknowledged the gaps in their analysis and carelessness of their investigation into the original seismic miscues from the CPUC proceedings of the 1980s. A4NR's rebuttal takes the opportunity to make the current DRA cognizant that its testimony provides "too little information" and (as referenced in Judge Kenney's decision) to "cure" this defect in their examination so that it may satisfy the broad scope of ratepayer concerns.

II. CONCLUSION

PG&E believes that the only consideration before the Commission is whether it is in the best interests of ratepayers to fund the license renewal process for Diablo Canyon. They claim to have "presented overwhelming evidence that is in the best interests of its customers…" However, the costs and calculations they used to arrive at this conclusion are suspect if they do not include an evaluation of all the variables, contingencies and unknowns that our state Legislature, the California Energy Commission and those elected and appointed regulators charged with delivering reliable and economic electricity to the residents of California have requested. The DRA's testimony did not appear to disagree, prompting A4NR, et al Rebuttal Testimony. A4NR et al believes the ratepayers are best served by taking a broader philosophical perspective that past is prologue. Any informed decision for ongoing operation should be informed by both miscues and lessons learned from the past.

A4NR, et al, has presented evidence available to the public of state legislative and oversight actions, as well as, NRC rulings that clearly demonstrate the record in this proceeding is incomplete and does not provide an adequate evidentiary record on which the DRA, SCE, TURN, or the Commission can responsibly base a reasonable and just decision.

Accordingly, the A4NR, et al's, Rebuttal Testimony should not be stricken in A. 10-01-022.

Dated: October 26, 2010

Respectfully Submitted,
ROCHELLE BECKER

By:_____/s/_____ ROCHELLE BECKER
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CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the County of San Luis Obispo; that I am over the age of eighteen (18) years and a party to the within cause; and that my business address is Alliance for Nuclear Responsibility, PO 1328, San Luis Obispo, CA 93406

I am readily familiar with the business practice of the Alliance for Nuclear Responsibility for collection and processing of correspondence for mailing with the United States Postal Service.

In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On the 26th day of October, 2010, I served a true copy of:

ALLIANCE FOR NUCLEAR RESPONSIBILITY, SIERRA CLUB, CALPIRG, ENVIRONMENT CALIFORNIA REASEARCH AND POLICY CENTER REPLY TO PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E) MOTION TO STRIKE THE "REBUTTAL TESTIMONY OF ROCHELLE BECKER REPRESENTING THE ALLIANCE FOR NUCLEAR RESPONSIBILITY, SIERRA CLUB, CALPIRG AND ENVIRONMENT CALIFORNIA RESEARCH AND POLICY CENTER"

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for A.10-01-022.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 26th day of October, 2010 at San Luis Obispo, California.

_____/s/_____ Rochelle Becker

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