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	Application No. 10-01-022

COMMENTS OF THE ALLIANCE FOR NUCLEAR, SIERRA CLUB, CALPIRG AND ENVIRONMENT CALIFORNIA RESEARCH AND POLICY CENTER (A4NR ET AL) OPPOSING THE SETTLEMENT AGREEMENT

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Pursuant to Rule 12.2 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules), the Alliance for Nuclear Responsibility, Sierra Club, CALPIRG and Environment California Research and Policy Center (A4NR, et al) file these Comments Opposing the Settlement Agreement (Settlement) filed on November 16, 2010 for the above-referenced docket. The Settling Parties consist of Pacific Gas & Electric Company (PG&E), The Utility Reform Network (TURN), and The Division of Ratepayer Advocates (DRA) that is supposed to represent the interests of ratepayers. The Settlement excludes all other parties including Southern California Edison (SCE) and A4NR, et al.

In these comments, A4NR et al's request is a simple one — the Commission should reject the Settlement absent **all** the amendments proposed herein by A4NR et al.

The amendments include:

1) The settling parties agree that PG&E will receive no ratepayer funding for the license renewal process or operation of the Diablo Canyon Nuclear Power Plant beyond 2025 absent the approval of all California agencies with primary jurisdiction for assuring the reliability and economics of energy generation. This will require the full development of all parameters outlined in AB 1632. To enable this to proceed expeditiously, the Commission should authorize immediate funding to commence the Independent Peer Review Panel so they may set the parameters for seismic studies outlined therein.

2) The settling parties agree that absent final resolution of once-through-cooling mandates, PG&E will receive no state-approval for operation beyond 2025.

3) The settling parties agree that PG&E will receive no state approval to store radioactive waste produced after 2025, absent a funded, operational and permanent offsite radioactive waste storage solution.

4) PG&E will fully develop all potential energy generation alternatives available at the Diablo Canyon site should new seismic information result in foreseeable exorbitant costs for retrofits and litigation. The site is utility owned and provides transmission at the south end of PG&E's service territory. The development of this plan should include jobs and resources opportunities for the county and state to produce clean energy kilowatts and secure storage of existing waste in perpetuity.

As a matter of policy, the Commission has a long-standing policy of favoring settlements. However, the Commission Rule 12.1(d) sets forth the standard for approval of settlements:

> The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

Section III of the Settlement Agreement begins:

> "The Parties believe the Settlement represents a reasonable compromise of issues on the record in this proceeding. There are no laws blocking or contradicting implementation of the Settlement Agreement and the Parties believe that the Settlement Agreement is in the public interest."

As intervenors representing ratepayers and consumers, A4NR et al. cannot accept this Settlement because it is:

1. Absent a complete and whole record;
2. Is in contradiction of a former Commission decision;
3. Has no public benefit for consumers

1. A4NR et al disagrees with the signature Parties that this Settlement represents "…issues on the record in this proceeding."

To the best of our knowledge, *nothing* is "in the record" in this proceeding. An Application, testimony and rebuttal have been filed and Ex-parte meetings have been held, but we have not witnessed a single document *admitted into the record* of this proceeding. Absent the adoption of the proposed amendments of A4NR et al, we request that full hearings be held so that a complete record can be placed before the Commission and the public in this case.

Further, Section III of the Settlement Agreement states:

> "The record of this proceeding demonstrates that preserving the option to operate Diablo Canyon for an additional 20 years is, in the substantial majority of scenarios, in the best interest of PG&E's customers. Nonetheless, the record also reflects the uncertainty surrounding the assumptions used in the economic analysis."

Once again, we question the presence of the "record" referenced above. One example missing from the record involves the use of once-through-cooling, the resolution of which is currently awaiting finalization by the State Water Quality Control Board. At an all-party meeting, held on July 28, 2010, PG&E presented four financial scenarios for overall net benefit of license renewal. In the fourth scenario, in which cooling towers were required to mitigate the loss of once-through-cooling, and the plant operated at only 85% efficiency, there was a net loss of nearly half a billion dollars. And while that one scenario was not in the "majority" of scenarios, were it to come to pass, it would completely invalidate PG&E's claim in the Settlement that "Thus, the Commission can be assured that continued operation remains in the best interest of PG&E's customers." The information referenced in the all-party meeting was not entered into "the record" and the ability of parties to cross exam witnesses on this subject would be prevented without hearings.

The economic ramifications of unresolved once-through-cooling issues are not hypothetical:

> "On Dec 8, 2010, headlines announced that Oyster Creek Nuclear Generating Station in the Forked River section of Lacey Township will close a decade earlier than called for under its current license. In return, the aging plant will not be required to build one or more cooling towers to replace its current technology, which draws 1.4 billion gallons of water a day from Barnegat Bay, killing billions of aquatic creatures each year."[1]

Clearly, the economic efficiency projections for the Oyster Creek facility that were posited in the years leading up to its presumptive 20 year period of extended operation will now need to be recalculated. As California's statewide policy is scheduled to be adopted in the near future, it is prudent, reasonable and in the ratepayer's best interest to await that decision before finalizing any future cost estimates.

A4NR et al's second amendment (2) attempts to correct this oversight; absent its adoption, full hearings are called for.

2. The Settlement seemingly contradicts the directive of the Commission's Decision 07-03-044 (March 15, 2007) which specifically states:

> We will require PG&E to submit by no later than June 30, 2011, an application on **whether** (*emphasis added*) 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.[2]

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[1] http://www.nj.com/news/index.ssf/2010/12/oyster_creek_nuclear_plant_to_1.html

[2] CPUC Decision 07-03-044 (March 15, 2007)

At no place in the Settlement is there any language that addresses the Commission's concerns with, as referenced above, "(2) the CEC's AB 1632 assessment." In fact, in a letter of June 25, 2009, CPUC President Peevey wrote to PG&E chairman Darbee:

> "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** (*emphasis added*). [3]

As one specific example of inadequate information (hence an incomplete record), we offer Item 5 from President Peevey's letter:

> 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.

Has the information requested by President Peevey been "fully developed" as well as adequately addressed and evaluated by the Commission? Is there only a *presumption* that these AB 1632 issues have been fully developed? As no hearings were held, no evidence could be entered into the record. However, in a data request from TURN, PG&E reveals that they have not fully estimated the costs "associated with waste storage and disposal" for waste created during the license renewal period (in this case, for the Independent Spent Fuel Storage Installation--ISFSI) as requested by President Peevey:

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[3] Letter from CPUC President Michael Peevey to PG&E CEO Peter Darbee, June 25, 2009

In response to TURN's Data Request question 6, (TURN_001-06) PG&E provided the following answer:

Question 1

Why has PG&E not prepared a detailed estimate of the cost of an additional ISFSI?

Answer 1

PG&E has not prepared a detailed estimate of the cost of an additional ISFSI because it is too premature and speculative at this time, given PG&E may not need to build an additional ISFSI for at least another 30 years, and the Department of Energy may be able to collect and remove spent fuel from nuclear facilities by this time.

Question 3

If spent fuel "may not be moved sooner than 5 years after operations cease," what is the itemized cost of operations and maintenance for the spent fuel pools on an annual basis for each of those 5 or more years after operations cease?

Answer 3

A detailed itemized cost of operations and maintenance for the spent fuel pools on an annual basis for each of those 5 or more years after operations cease is not available.

However, the cost of operating and maintaining the spent fuel pools after operations has ceased is included in multiple areas and as portions of areas of the Decommissioning Cost Analysis for the Diablo Canyon Power Plant prepared by TLG Services, Inc. [4]

Commission decision 07-03-044 required *the full development* of these and other AB 1632 issues. Absent the financial implications of continuing waste storage (and the recent defunding at the federal level of a national repository) the full and ongoing costs to ratepayers cannot be reasonably and prudently evaluated. PG&E's non-answer ("…PG&E has not prepared…") to these questions is but one example of the inadequate

[4] PG&E Response to TURN Data Request TURN_001-06 sent October 20, 2010

record. The failure to comply with D. 07-03-044 is a contradiction of an existing decision. A4NR et al's amendment 1 to the Settlement rectifies this procedural oversight. A4NR amendment 3 rectifies the specific omission on waste costs listed in the above example.

3. The Settlement has no public benefit for consumers. Without recognizing Diablo Canyon's historical past and acknowledging the directives of the California Energy Commission, the Legislature, the California Coastal Commission and the State Water Quality Control Board, the Settlement places ratepayers at risk. The public record provides ample documentation of the controversial seismic history and subsequent cost overruns due to inadequate state and federal oversight of seismic issues at Diablo Canyon during its original licensing and construction. It was this history that prompted the CPUC's sister agencies to analyze the estimated costs, benefits and risks of the state's dependence on aging reactors. The concern was heightened in July 2007 when Japan lost 8000 MW of nuclear power in 90 seconds due to an earthquake on an unstudied fault that exceeded the seismic standards the Japanese nuclear regulators has established for that facility. Nearly 5000 MW from that facility remain off-line to date while repairs and replacement power have cost the Japanese more than $10 billion.[5]

California cannot ignore the ramifications to electric and grid reliability from nuclear plants in seismic regions. Yet, the DRA, signatory to the Settlement, served testimony mistakenly relying upon a letter to Ms. Becker from the NRC to ignore A4NR et al, the California Energy Commission and the Legislature's call for completion of seismic studies, mapping and reviews before expending ratepayer funding on license renewal. Furthermore, the DRA selectively cites the letter to Ms. Becker (a non-intervenor in the NRC relicensing proceeding), while ignoring a directly relevant ruling of the Atomic Safety and Licensing Board, who noted with skepticism that the NRC's study of the Shoreline Fault (only *one* of the specific seismic concerns noted by AB 1632) was "preliminary."[6]

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[5] Tokyo Electric Power Company Annual Report 2010, year ended March 31, 2010
[6] US Nuclear Regualtory Commission, PACIFIC GAS & ELECTRIC COMPANY Docket Nos. 50-275-LR and 50-323-LR ASLBP No. 10-890-01-LR-BD01 August 4, 2010

CONCLUSION:

The Applicant frequently contends that this case involves only the decision on whether to fund the ability to "preserve the option" to relicense the reactors. However, while only an "option," ratepayers asked to fund said "option" deserve to have all the parameters and variables analyzed and independently reviewed. As Commission Decision 07-03-044 made clear, the CPUC intended to make *its* decision relevant to the 2014 LTPP. In fact, there is no NRC mandate for PG&E to file for license renewal at the federal level *at this time*. Were the CPUC to deny funding to PG&E for this current NRC relicensing, PG&E could easily apply once the full development of the AB 1632 issues was complete. In an email response to A4NR from the NRC, we were informed:

> "There are no penalties associated with re-filing nor are there additional "time-consuming procedures" associated with re-filing. The re-filed application is received without prejudice."[7]

The assurances sought by the state's regulatory agencies to preserve and protect electrical reliability and affordability in California are reasonable and prudent. This proposed Settlement skirts those obligations, and as such, without adoption of the proposed amendments of A4NR et al to mitigate these deficiencies, we oppose this settlement and request full hearings.

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[7] email from Jeremy Susco, NRC to Rochelle Becker, October 15, 2010

Dated: December 14, 2010

Respectfully Submitted,

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CERTIFICATE OF SERVICE BY ELECTRONIC MAIL OR U.S. MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not 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 December 14, 2010, I caused to be served a true copy of:

COMMENTS OF THE ALLIANCE FOR NUCLEAR, SIERRA CLUB, CALPIRG ANENVIRONMENT CALIFORNIA RESEARCH AND POLICY CENTER (A4NR, ET AL) OPPOSING THE SETTLEMENT AGREEMENT

[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 with an e-mail address.
[] By U.S. Mail – by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to all parties of record on the service list for A.10-01-022 who do not have an email address.

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 December 14, 2010 at San Luis Obispo, California.

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