

**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

**THE ALLIANCE FOR NUCLEAR RESPONSIBILITY, SIERRA CLUB,
CALPIRG AND ENVIRONMENT CALIFORNIA RESEARCH AND POLICY
CENTER (A4NR, ET AL) OPPOSITION TO PG&E and TURN'S MOTION TO
SUSPEND PROCEEDINGS PENDING COMPLETION OF SEISMIC STUDIES**

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June 17, 2010

1. INTRODUCTION

The Alliance for Nuclear Responsibility, Sierra Club, CALPIRG and Environment California Policy and Research Center (collectively A4NR, et al) request the Commission to dismiss the Motion of Pacific Gas and Electric Company (PG&E) and The Utility Reform Network (TURN) [collectively referred to as “Joint Parties”] “To Suspend Proceedings Pending Completion of Seismic Studies.”

As an alternative, A4NR et al hereby moves to dismiss the Application of Pacific Gas and Electric Company to Recover the Costs Associated With Renewal of the Diablo Canyon Power Plant Operating Licenses A.10-01-022 and dismiss any settlement agreement based on the Application. When all seismic studies of the Diablo Canyon Nuclear Power Plant (DCNPP)—per AB 1632 and California Energy Commission recommendations—are completed and the Independent Peer Review Panel’s responses and recommendations have been resolved (as authorized under CPUC decision 10-08-003), then, and only then, should the Commission consider a new application by PG&E requesting ratepayer funding for license renewal. In addition, the CPUC should begin an Order Initiating Investigation (OII) to review the reasonableness and prudence of all ratepayer funding PG&E has received and spent pursuing prematurely license renewal.

2. PROCEDURAL STATUS

A4NR, et al, has several additions to the “Joint Parties” history of A. 10-01-022. After PG&E filed its Application in this docket, on March 10, 2010 A4NR, filed a Protest stating:

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-the-art seismic

studies, recommended by the CEC and legislature, are completed and peer reviewed.¹

Assigned Commissioner Nancy Ryan recognized in the Scoping Ruling that:

The most contentious issue raised at the PHC was whether the Commission should suspend consideration of this application until after PG&E completes the seismic studies recommended by the CEC.²

The Division of Ratepayer Advocates (DRA)—which in part opposed the position of A4NR, et al—began its rebuttal by writing: “Funding for PG&E’s Diablo Canyon License Renewal Application Can Be Resolved Before the Seismic Studies Recommended by the CEC are Completed”³

DRA based its testimony on a letter from the Nuclear Regulatory Commission to Rochelle Becker of A4NR, in which DRA notes that the NRC stated:

“[a]t this time, it is not necessary for the NRC staff to delay the reviews it recently began of the license renewal application submitted by Pacific Gas and Electric (PG&E) for DCPD.”⁴

DRA failed to cite or acknowledge the August 4, 2010, Ruling of the NRC’s Atomic Safety and Licensing Board (ASLB) that found, when ruling on admissible contention EC-2:

¹ 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, March 10, 2010, p. 8.

² Assigned Commissioner’s Scoping Memo and Ruling at 2-3

³ DRA Direct Testimony, Aug 18, 2010

⁴ Letter from NRC to Ms. Rochelle Becker/Alliance for Nuclear Responsibility, July 6, 2010. As quoted in DRA Direct Testimony of August 18, 2010.

The fate of EC-2 therefore rests with the Commission, which must determine whether to grant a waiver, i.e., whether the new information and earthquake situation at Diablo Canyon constitute special circumstances warranting site-specific consideration of these risks under NEPA. See 10 C.F.R. § 2.335(b), (d)⁵

As will be discussed in Section II, this omission is of consequence in light of the most recent decision by the ASLB dated June 7, 2011 ordering a 52 month delay regarding PG&E's license renewal application with the NRC.

On December 14, 2011 A4NR filed Comments opposing the Joint Motion of DRA, TURN and PGE to approve a Settlement Agreement. The Settlement Agreement failed to address Commissioner Ryan's scoping concerns, and as a result, ALJ Barnett ruled that hearings on the Commissioner's questions were necessary.

On February 14, 2011, A4NR, et al, filed testimony in support of its opposition to the Settlement Agreement and had prepared Rebuttal per the ALJ's schedule for hearings on April 13, 2011. ALJ Barnett took the hearings off calendar on March 16, 2011.

A4NR, et al, remains uncertain as to why ALJ Barnett removed the Application from the calendar on March 16th as no specific reason was stated. A4NR felt it unnecessary to file comments on the April 14, 2011 Motion of Californian's for Renewable Energy (CARE) as our Comments, Motions, Rebuttals, Responses have consistently stated that PG&E's Application was premature and incomplete and requested denial of PG&E's application.

3. OPPOSITION TO MOTION TO "SUSPEND" PROCEEDINGS

On July 9, 2011, Pacific Gas & Electric and TURN filed a motion to suspend proceedings in A 10-01-022 "Pending Completion of Seismic Studies."

⁵ NRC ASLBP No. 10-890-01-LR-BD01, August 4, 2010

Their rationale for this motion is based on the NRC's letter to PG&E dated May 31, 2011 which acknowledges and grants PG&E's earlier request that "...the NRC delay the final issuance of the plant's license renewal, if approved, until seismic studies in the area are completed and the results are reported to the NRC." From this, they conclude, "Consistent with the steps PG&E has taken at the NRC, the Joint Parties request that the Commission suspend these proceedings until the seismic studies are completed and have been submitted to the NRC."⁶

The rationale for the suspension is not prudent or in the best interests of ratepayers, nor does it adhere to or follow prior decisions and directives of the Commission, for the following reasons:

1. The Motion fails to account for an NRC decision issued subsequent to the filing of the Joint Parties' Motion. On June 7, 2011, the Atomic Safety and Licensing Board (ASLB) of the NRC issued their "NOTICE OF A 52 MONTH DELAY AND ORDER REQUIRING STATUS REPORTS." In this decision, the ASLB notes of the revised timeline for the Diablo Canyon relicensing, established in the May 31 letter from the NRC to PG&E, that,

NRC Staff went on to say that "based on anticipated delays in obtaining your costal [sic] consistency certification, [NRC's] schedule has been updated to reflect the delay of future milestones." *Id.* However, NRC's updated schedule fails to provide any anticipated dates, by which we might develop a schedule, simply stating that the dates for all future NRC Staff actions are "TBD."

And concludes that this proposal (upon which the Motion of the Joint Parties is based),

⁶ JOINT MOTION OF PACIFIC GAS AND ELECTRIC COMPANY AND THE UTILITY REFORM NETWORK TO SUSPEND PROCEEDINGS PENDING COMPLETION OF SEISMIC STUDIES, filed June 9, 2011

“...fails—probably because of uncertainties in the PG&E schedule—to provide this Board with necessary information to permit establishment of a meaningful adjudicatory schedule pursuant to 10 C.F.R. § 2.332(c).”⁷

However, absent any sense of “finality” to the schedule, and overriding the NRC’s May 31 letter to PG&E, the ASLB has effectively halted the license renewal process and ordered PG&E to submit monthly reports through at least the year 2015, in which they must anticipate their timetable:

1. To complete the 3-D Seismic Studies;
2. To issue the reports addressing the results of the 3-D Seismic Studies;
3. To obtain the CZMA or coastal consistency certification(s); and
4. The dates of the significant interim milestones on the critical path(s) to the completion of the 3-D Seismic Studies, the CZMA certifications, and issuance of the reports concerning same.⁸

In fact, page 1 of the ASLB decision, notes PG&E’s own admission of the utility’s need to complete this seismic work prior to license renewal by quoting the utility’s letter to the NRC of April 10, 2011:

“PG&E has decided it is most prudent to have completed certain seismic studies at DCNPP prior to issuance of the coastal consistency certification.” The additional studies contemplated by PG&E consist of certain “seismic studies approved and funded by the California Public Utilities Commission (CPUC), including 3-D seismic studies recommended by the California Energy Commission” (3-D Seismic Studies).⁹

⁷ US Nuclear Regulatory Commission, Atomic Safety and Licensing Board, Docket Nos. 50-275-LR and 50-323-LR, ASLBP No. 10-900-01-LR-BD01, June 7, 2011

⁸ US Nuclear Regulatory Commission, Atomic Safety and Licensing Board, Docket Nos. 50-275-LR and 50-323-LR, ASLBP No. 10-900-01-LR-BD01, June 7, 2011

⁹ See Letter from David A. Repka, Counsel for PG&E, to Board (Apr. 12, 2011) (Repka Letter), attach. Letter from John T. Conway, Senior Vice President, PG&E, to NRC

Thus, the ASLB has halted all facets of the license renewal process for Diablo Canyon except the seismic work listed above, seismic work for which the CPUC has already granted ratepayer funding via Decision 10-08-003 issued August 12, 2010.

2. The Motion To Suspend does not adequately address the requirements of the Commission's prior decisions D.10-08-003 or D. 07-03-044. In the Motion, the Joint Parties write: "Consistent with the steps PG&E has taken at the NRC, the Joint Parties request that the Commission suspend these proceedings until the seismic studies are complete and have been submitted to the NRC."¹⁰

Absent in the statement by the Joint Parties is the fact that submission of the studies to the NRC is not a milestone or measure of their completion, validation, or relevance to the state of California. D.10-08-003, which granted funding for PG&E's seismic studies, also includes the requirement for this Commission to implement an Independent Peer Review Panel, whose role is described as:

1. Peer Review Panel

In addition to PG&E's proposal to employ outside consultants and subject its seismic studies to peer review, this Commission will convene its own Independent Peer Review Panel (IPRP). The Commission will invite the CEC, the California Geologic Survey, the California Coastal Commission, and the California Seismic Safety Commission to participate on the panel. Under the auspices of the California Public Utilities Commission (CPUC), the panel will conduct a peer review of the seismic studies including independently reviewing and commenting on the study plan and completed study findings. **Our order in this application will require PG&E to submit its study plans and completed study findings to**

Commissioners and Staff, entitled "Request for Deferral of Issuance of Diablo Canyon Power Plant Renewed Operating Licenses" (Apr. 10, 2011) at 1-2 (PG&E Letter).

¹⁰ JOINT MOTION OF PACIFIC GAS AND ELECTRIC COMPANY AND THE UTILITY REFORM NETWORK TO SUSPEND PROCEEDINGS PENDING COMPLETION OF SEISMIC STUDIES, filed June 9, 2011

the IPRP for review prior to implementation. [emphasis added] Should a dispute arise it should be resolved informally but if that is not attainable the Commission has authority to halt the associated rate recovery.¹¹

Thus, the Joint Parties assertion in their motion that the completed studies "...have been submitted to the NRC" as a mark of finality neglects the requirements of the funding decision which includes CPUC oversight of "...independently reviewing and commenting on the study plan and completed study findings." The NRC has no jurisdiction over the economics and reliability of nuclear power, a role ceded to the appropriate state authority and codified in a 1983 Supreme Court decision.¹² As A4NR et al have pointed out in numerous documents filed since January 2010, the collusion between the NRC and PG&E over seismic issues is rife with costly missteps. The Public Staff's 1988 disallowance report on seismic cost overruns and the 1987 transcript of the state hearings where the CPUC public staff admit that they were negligent in scrutinizing the NRC-PG&E seismic pronouncements are but two examples.

In addition, Commission Decision 07-03-044 (March 15, 2007) states:

We will require PG&E to submit by no later than June 30, 2011, an application on whether 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

¹¹ Decision 10-08-003 August 12, 2010, Application 10-01-014 (Filed January 15, 2010)

¹² PACIFIC GAS & ELEC. v. ENERGY RESOURCES COMM'N, 461 U.S. 190 (1983)
461 U.S. 190

the proceeding will be incorporated into the CEC's 2013 IEPR and the Commission's 2014 LTPP.¹³

In fact, PG&E has disregarded key aspects of this decision. When PG&E submitted their initial application to the CPUC on January 29, 2010, it included only partial completion of the AB 1632 requirements and most specifically *did not include* the “Three-dimensional geophysical seismic reflection mapping and other advanced techniques to explore fault zones near Diablo Canyon...”¹⁴

It should also be noted that a key aspect of D. 07-03-044 is that the forecast CPUC “proceeding” scheduled subsequent to June 30, 2011 *should have followed the completion of the required studies* and would have “resulted in a decision on whether to pursue license renewal based on circumstances at that time...”

We are now a scant two weeks away from June 30, 2011. A4NR et al have repeatedly stated, since PG&E’s initial application was filed in January 2010, that the evidence clearly pointed to the need for this state, and for regulatory agencies like the CPUC, to have the seismic evidence completed and independently peer-reviewed so that they could make a prudent decision on the potential costs, benefits and risks of relying on nuclear power beyond the currently licensed period. The ratepayers deserve nothing less than rigorous scrutiny of all the variables. Rather than follow the requirements of the 2007 decision, and begin the seismic work at that time, PG&E chose to oppose and delay implementation—and then to actually file a license renewal application with the NRC—leading to years of delay and over a year and a half of labor and expense on the part of interveners.

When the Joint Parties conclude that “Administrative efficiency would be best served by simply suspending the proceedings as they currently stand...” there is a temptation to remind them that administrative efficiency would have been best served if PG&E had

¹³ Decision 07-03-044 (March 15, 2007)

¹⁴ An Assessment of California’s Nuclear Power Plants: AB 1632 Report, California Energy Commission, November 2008, p. 6.

actually followed, rather than shown contempt for, D.07-03-044, legislative, California Coastal Commission, and CEC recommendations.

Instead of expecting and reviewing the results of the seismic studies put in timely motion by D. 07-03-044, and having the CPUC contemplating, as the decision said, “whether to pursue license renewal based on circumstances at that time,” California energy regulators and customers will find themselves waiting until 2015 for those answers.

In the wake of the nuclear disaster at Fukushima, and a year in which energy production related disasters from coal mines to oil rigs have strained the credibility and integrity of federal regulatory agencies, ratepayers have a right to their skepticism. Here in California, PG&E’s San Bruno explosion—for which the CPUC has been criticized as jointly culpable—brings such tragedies closer to home. As a result of the ongoing studies and investigations involving seismic hazards and nuclear plants, it is very likely that the new data will be drastically different from the information now on hand. That is why A4NR et al, finds it inadequate to merely “suspend” this proceeding and then simply “restart” when the “seismic studies are complete and have been submitted to the NRC.” We have outlined why that is an inadequate solution. In addition, by 2015, many of the parameters in PG&E’s application as well as the Settlement Agreement—cost estimates, the status of alternatives, the regulation of once-through-cooling—may be drastically different and require significant re-evaluation.

In Japan, the government is now contemplating how to pay for the anticipated \$100 billion in current and potential future claims stemming from the nuclear disaster at Fukushima. At the same time, they are also taking drastic measures to overcome the power generation shortfall impacting the onset of the summer season. Amid these logistical problems are increasing allegations of negligence among the regulators and the utility that may have deliberately understated the potential seismic risks faced by Japan’s nuclear facilities.

4. Conclusion

Thus, A4NR et al respectfully request that this Commission formally reject both the Joint Parties' Motion to Suspend A. 10-01-02 and the Settlement Agreement, and, instead, dismiss A. 10-01-022. It can only be hoped that the time lost will instead yield to new information and increased awareness and understanding of the reliability and economic consequences of continuing to operate California's aging nuclear reactors on a seismically active coastline.

Furthermore, the CPUC should begin an OII to determine the reasonableness and prudence of ratepayer funding spent during the license renewal process. PG&E failed to address risks of operating aging reactors on a seismically active coast without updating seismic studies and completing new 3-D mapping directed by the CEC, CCC, CPUC and legislature after the Analysis legislated in AB 1632. Review of PG&E's expenditures for reasonableness is well justified on the facts presented.

Respectfully submitted,

/s/

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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 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 June 17, 2011, I caused to be served a true copy of:

**THE ALLIANCE FOR NUCLEAR RESPONSIBILITY, SIERRA CLUB, CALPIRG
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(A4NR, ET AL) OPPOSITION TO PG&E and TURN'S MOTION TO SUSPEND
PROCEEDINGS PENDING COMPLETION OF SEISMIC STUDIES**

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.

Hand-delivered to docket

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 June 17, 2011, at San Luis Obispo, California.

/S/

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