

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric
Company for Approval of Ratepayer
Funding to Perform Additional Seismic
Studies Recommended by the
California Energy Commission (U39E)

Application 10-01-014

**OPENING BRIEF OF THE
OF THE DIVISION OF RATEPAYER ADVOCATES**

I. INTRODUCTION

In accordance with Rule 13.11 of the Rules of Practice and Procedure (Rules) of the California Public Utilities Commission (Commission) and pursuant to the instructions provided by Administrative Law Judge (ALJ) Barnett, the Division of Ratepayer Advocates (DRA) hereby submits its Opening Brief for the above-captioned proceeding, Application (A.)10-01-014.

Pacific Gas and Electric Company (PG&E) filed A.10-01-014 on January 29, 2010 and in Decision (D.) 10-08-003 the Commission granted PG&E's application, authorizing PG&E to recover in rates \$16.73 million to perform seismic studies recommended by the California Energy Commission (CEC). D.10-08-003, approved on August 12, 2010, resolved all issues in PG&E's initial request and the proceeding was duly closed.¹ On September 23, 2011, PG&E filed a motion to reopen in order to recover a total cost of approximately \$64.25

¹ Ordering Paragraph (OP) # 8 in D.10-08-003 provided that: "Pacific Gas and Electric Company is authorized to file a motion to reopen this Application when it believes the seismic studies costs authorized by this decision will exceed \$16.73 million."

million, which includes PG&E's assessment of increased costs of seismic studies at Diablo Canyon.²

The Commission approved PG&E's motion to Re-Open A.10-01-014. The Commission held a Prehearing Conference on February 23, 2012. Parties filed testimony on February 10, 2012 and the Commission held evidentiary hearings on April 18, 2012. During the evidentiary hearings, ALJ Barnett provided a common briefing outline, as listed in the Commission's Scoping memo.

II. ISSUES

A. The Scope of the Seismic and Tsunami Studies Identified By the Applicant

Regarding the scope of PG&E's proposed seismic and tsunami studies, PG&E asserts in its December 9, 2011 Prepared Testimony that it is responding to the CEC's Assembly Bill (AB) 1632 recommendations. PG&E appears to be making efforts to collaborate with the IPRP.³ DRA notes that there is no evidence that the United States Nuclear Regulatory Commission (NRC) has requested or mandated PG&E conduct the CEC's recommended studies, and that the NRC's post-Fukushima seismic and tsunami study requirements may be significantly different from what PG&E has proposed in this proceeding.

B. Costs of the Studies, Whether They Should Be Capped; DRA Recommends a \$64.25 Million Hard Cap

DRA takes a more than reasonable position that PG&E must stay within the authorized cost approval that the Commission adopts, i.e., a hard cost cap of \$64.25 million.

DRA has analyzed the costs estimates provided by PG&E. There is a significant level of uncertainty surrounding those costs: (1) PG&E has already

² Exhibit (Exh.) PG&E-1 at 1-2.

³ *Id.*

spent \$2.21 million⁴ more than the \$16.7 million authorized in D.10-08-003, which raises doubts about their ability to forecast costs, (2) PG&E has yet to finalize a contract with a 3D seismic survey vendor, which represents the largest portion of the proposed costs, (3) PG&E forecasts a significant level of contingency in only one area,⁵ which appears to understate the potential for cost overruns, (4) there may be up to \$25 million in additional mobilization/demobilization and permitting/mitigation costs related to California State Lands Commission and California Coastal Commission permits⁶ and (5) there is no long-term historical cost record. PG&E does not deny these cost uncertainties. PG&E's witness Mr. Sharp discussed the cost uncertainties during the evidentiary hearings.⁷

Given the above uncertainties, DRA recommends that the Commission put a hard cap of \$64.25 million on PG&E's cost recovery request. PG&E has admitted to already exceeding the \$16.7 million cap previously authorized by D.10-08-003 without first obtaining Commission approval as specifically guided in OP # 8.⁸ If PG&E exceeds its current \$64.25 million forecast, then PG&E should be responsible for any cost overruns prior to its next General Rate Case (GRC). Ratepayer funding should be authorized for the \$64.25 million request only. PG&E can request additional funding and provide its justification in its' (Test Year) TY 2017 GRC.

C. Whether PG&E's Shareholders Will Bear a Share of the Costs; DRA Would Not Oppose Such a Measure

While DRA's testimony did not recommend a sharing mechanism between PG&E's shareholders and ratepayers in this proceeding, a sharing mechanism as

⁴ Exh. DRA-3.

⁵ Exh. DRA-1 at 3, "PG&E's original \$16.73 million cost estimate did not contain any contingency amounts. [footnote omitted] PG&E's updated cost estimate includes a 25% weather down-time cost contingency of \$3.25 million.[footnote omitted]"

⁶ Exh. DRA-2.

⁷ 4 RT 20, lines. 1-6.

⁸ 4 RT 65.

recommended by Alliance for Nuclear Responsibility (A4NR) could be a vital means of holding down costs. If PG&E's shareholders are responsible for a portion of the costs of the AB 1632 CEC-recommended studies, PG&E's management will have a strong incentive to pay closer attention to the costs incurred. Without a shareholder cost-sharing mechanism, the Commission should impose a hard cost cap and adopt DRA's revised reporting recommendations.

DRA disagrees with the notion that the seismic study costs are a typical cost-of-service expense since they are based on CEC recommendations, not mandates, and are not required by the ultimate nuclear safety regulator, the U.S. NRC.⁹ The proposed seismic studies serve to protect PG&E's multi-billion dollar investment in Diablo Canyon. As such, DRA would not oppose any conclusion by this Commission that held shareholders responsible for their reasonable stake in the seismic studies costs.

D. Whether Outside Experts Should Be Retained To Review the Planned Studies and Their Costs

The Commission has established the IPRP¹⁰ as an outside peer review panel. Regarding the need for additional outside experts, the IPRP stated the following:

However, the members and staff of the IPRP do not have the expertise to review the techniques used in acquiring and processing the data from the high energy off-shore seismic surveys. These techniques are most commonly used by seismic exploration contractors working for the oil industry. The IPRP

⁹ The notion that PG&E's proposed seismic studies are in some way supportive of a greater understanding of PG&E's system reliability is dubious since the impact on system reliability of a long-term outage at Diablo Canyon can be assessed with relatively inexpensive system modeling and planning, as opposed to \$64 million or more in seismic studies. Indeed, the current SONGS 2 and 3 outage provides a real-time case study of what happens when 2200 MW of baseload generation is not available to meet needs.

¹⁰ The IPRP consists of members from the CEC, California Geologic Survey, California Coastal Commission and California Seismic Safety Commission.

has suggested that CPUC consider an additional contract to review this aspect of the seismic studies for DCP. ¹¹

DRA takes no position on whether outside experts should be retained to review the planned seismic studies, but notes that the IPRP apparently feels it lacks the expertise needed for the job. DRA notes that Assigned Commissioner Florio and ALJ Barnett issued an interim ruling on May 16, 2012 that granted the County of San Luis Obispo's request for funding for a seismic expert that would serve both the County and the IPRP.

Regarding the proposed and actual costs of the seismic studies, PG&E's expenditures should be subject to reasonableness review by the Commission in a separate proceeding.

E. The Structure of The Independent Peer Review Panel (IPRP); DRA Strongly Recommends Notice and Transparency

The meeting notices for the IPRP are not sent to the service list of the instant proceeding. DRA recommends that IPRP meetings be, at minimum, noticed to the service list, as opposed to the Commission's current reliance on notice in the Commission's Daily Calendar. All of the parties on the service list are interested in the activities of the IPRP, and notices in the Commission's Daily Calendar are easily missed.

Aside from the structure of the IPRP, DRA emphasizes its request made in the DRA's February 10, 2012 testimony that the IPRP meetings should be transparent. ¹² The public and all stake holders should be provided with sufficient notice through the most appropriate channels in order to attend the meetings.

DRA testified that:

The goal is to make a recommendation to assist the Commission through this process which we have come to

¹¹ Exh. PG&E-5 at 3, IPRP Report No. 3, April 6, 2012 (emphasis added).

¹² Exh. DRA-1 at 1-2 and 7-9.

understand to have some difficulties getting going. So some of the recommendations are based on trying to possibly assist the process. Another motivation for the recommendation is to add or increase some transparency to the process.¹³

F. DRA's Proposed Reporting Requirements

DRA's testimony recommended the following reporting requirements:

- 30 days following Commission approval, PG&E should file a detailed seismic study plan and project schedule, with an updated cost estimate;
- Every six months, PG&E should file a detailed report showing actual seismic study activities, their costs, and any revisions to the study plan;
- The final seismic study report should be filed six months after the completion of the studies, anticipated in 2013; and;
- That the Diablo Canyon Seismic Studies Balancing Account (DCSSBA) be subject to audit at the discretion of the Commission staff and DRA.¹⁴

These reporting requirements should provide PG&E with guidance to manage the study process in a cost-efficient manner. The Commission should be concerned that not only has PG&E's cost estimate for completing the seismic studies *quadrupled* since the original Application was filed over two years ago, but that there remains a high degree of uncertainty regarding the new cost estimate.

III. CONCLUSION

DRA respectfully requests the Commission to adopt DRA's recommendations in the instant proceeding. DRA's \$64.25 million hard cost cap recommendation would protect PG&E's ratepayers from the risk of cost overruns related to the proposed seismic studies. The additional reporting requirements requested above are very reasonable and should be granted.

¹³ 4 RT 137 (DRA/Logan).

¹⁴ Exh. DRA-1 at 1-2 and 7-9.

Respectfully submitted,

/s/ RASHID A. RASHID

Rashid A. Rashid

Attorney for the Division of Ratepayer
Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
E-mail: rhd@cpuc.ca.gov
Phone: (415) 703-2130
Fax: (415) 703-2262

May 18, 2012