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. (U 39 E)	)	Application No. 10-01-014

ALLIANCE FOR NUCLEAR RESPONSIBILITY'S

REPLY BRIEF

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RECOMMENDATIONS

1. **The CPUC should direct PG&E to configure its onshore and offshore seismic surveys to specifically address Dr. Douglas Hamilton's testimony concerning the Diablo Cove Fault and the San Luis Range/Inferred Offshore Fault and their interaction.**

2. **The CPUC should reiterate that D.10-08-003 requires PG&E's proposed seismic studies be reviewed by the IPRP prior to implementation and remind PG&E that all recovery of seismic study costs is subject to an ex post facto reasonableness review.**

3. **The CPUC should require PG&E to formally respond in writing to IPRP review comments and, where the company chooses not to accept such recommendations, PG&E should be required to document its scientific reasons for such rejection.**

4. **The CPUC should direct PG&E to provide the parties in this proceeding, as well as the members of the IPRP, with copies of the written reports submitted by the Participatory Peer Review Panel and the Technical Integration teams after the November 29 – December 1, 2011 SSHAC workshop.**

5. **The CPUC should reject DRA's proposal for a removable cost cap.**

6. **The CPUC should allocate seismic study costs between ratepayers and shareholders on the basis of reactor years, with the existing licenses assumed to each be extended by 20 years, and ratepayers paying as an O&M expense that portion of reasonable study costs calculated by dividing the time from the decision in A.10-01-014 to license expiry (i.e., "X") by the sum of X plus 20 years. All other reasonable study costs will be treated as a capital asset with recovery contingent upon re-licensing.**

7. **The CPUC should reiterate D.10-08-003's authorization for the IPRP "to employ consultants and experts" with costs to be reimbursed by PG&E, and direct the Energy Division to ensure compliance with this Decision.**

8. **The CPUC should retain the present structure of the IPRP or, if it believes that staff support will be improved by delegating to the Director of the Energy Division, clarify that all provisions of the Bagley-Keene Open Meeting Act will be observed as if the IPRP reports directly to the Commission.**

Pursuant to Rule 13.11 of the California Public Utilities Commission ("CPUC" or "Commission") Rules of Practice and Procedure, and in keeping with the briefing schedule established by the Administrative Law Judge, the Alliance for Nuclear Responsibility ("A4NR") respectfully submits this reply brief in response to the opening briefs filed in this proceeding by Pacific Gas and Electric Company ("PG&E"), Southern California Edison Company ("SCE"), and the Division of Ratepayer Advocates ("DRA"). This reply brief addresses those arguments made by the above parties which are contrary to the Recommendations made in A4NR's opening brief under each of the five topics identified in Assigned Commissioner Florio's Scoping Memorandum.[1]

I. The scope of the seismic and tsunami studies identified by the applicant.

PG&E recommends rejection of the "alternative scope for the seismic studies" proposed by A4NR[2] without a clear identification of just what "alternative scope" A4NR has proposed. As should be clear from A4NR's opening brief – but which may have been lost on PG&E given the critical nature of A4NR's testimony – the only "alternative scope" A4NR has proposed is Recommendation #1 from its Summary of Recommendations:

> **The CPUC should direct PG&E to configure its onshore and offshore seismic surveys to specifically address Dr. Douglas Hamilton's testimony concerning the Diablo Cove Fault and the San Luis Range/Inferred Offshore Fault and their interaction.[3]**

PG&E's opening brief perpetuates the company's deeply conflicted reaction to Dr. Hamilton's testimony, perhaps unsurprisingly given his apostate views after a 20-year

[1] A.10-01-014, Assigned Commissioner's Scoping Memo and Ruling, March 6, 2012, p. 1.
[2] PG&E Opening Brief, Summary of Recommendations, unnumbered page.
[3] A4NR Opening Brief, p. i and p. 12.

association with the Diablo Canyon geoseismic licensing team. Having first attempted unsuccessfully to strike his testimony in its entirety as "irrelevant" and beyond the scope of CPUC jurisdiction,[4] and then requesting "at least another month" to respond to its fundamental nature,[5] when it came time to actually file rebuttal testimony PG&E backed down considerably. Adopting a don't-worry-we've-got-it-covered reassurance, PG&E's prepared testimony soothingly stated, "the information collected by the seismic studies proposed in this application will allow PG&E to assess the seismic characterization of the area Dr. Hamilton refers to with greater specificity."[6]

In fact, by the time of the evidentiary hearing, some four weeks later, Dr. Hamilton's concerns appeared to have been transformed into a component of PG&E's study design itself. PG&E declined to cross-examine Dr. Hamilton, but its own witness, Dr. Stuart Nishenko, reiterated – under questioning by A4NR -- PG&E's willingness to address Dr. Hamilton's concerns:

> *Q: Has there ever been any offshore study of the character or extent of this faulting?*
>
> *A: This again, is part of the studies that we are currently proposing to do in this Application.*
>
> *Q: As they are currently designed?*
>
> *A: Yeah.*
>
> *Q: Offshore?*

[4] "The Commission does not have the authority to issue an order containing **even a portion of any** of the recommendations proposed in the Hamilton Testimony." (emphasis added) PG&E's Motion to Strike Testimony of Douglas H. Hamilton on Behalf of the Alliance for Nuclear Responsibility, February 16, 2012, p. 1.

[5] "Really Dr. Hamilton's testimony is challenging the entirety of the geosciences program and the seismic hazard that has been adopted for Diablo Canyon and approved by the Nuclear Regulatory Commission. So essentially the testimony starts from scratch and suggests that we should identify new seismic sources and new seismic hazard." A.10-01-014 transcript, February 23, 2012, p. 43.

[6] PG&E-3, p. 14.

A: Offshore studies that we have conducted and we intend to conduct will address these questions, yes.

Q: The draft environmental impact report for your studies shows a gap in the proposed vibroseis 2-D lines along the Irish Hills shoreline, does it not?

A: I am not quite clear exactly what area you are referring to.

Q: Well, I'm referring exactly at the location of the so-called Diablo Cove fault.

A: So these are additional data that we can collect there.

Q: Can collect or plan to collect?

A: We plan to collect to address these questions.

Q: And do you plan to collect these data both onshore and offshore to address these questions?

A: Yes.[7]

Similarly, PG&E's opening brief actually seeks to justify its study design in part because "the proposed offshore studies also will address many of the questions raised by Dr. Hamilton."[8] Why, then, does PG&E recommend rejection of A4NR's proposed "alternative scope for the seismic studies"? The opening brief never explains.

Provocatively, PG&E's opening brief goes so far as to cite the recommendation from the California Energy Commission's AB 1632 report to "(a)ssess the implications of a San Simeon-type earthquake beneath Diablo Canyon."[9] Not only does the opening brief fail to disclose that nowhere in PG&E's testimony or study design is this CEC recommendation addressed, it refuses to acknowledge that Dr. Hamilton's suggested examination of the Diablo Cove Fault – which

[7] A.10-01-014 transcript, April 18, 2012, pp. 95 - 96.
[8] PG&E Opening Brief, p. 6.
[9] *Ibid.,* p. 2. and p. 13.

runs directly under the turbine building and Unit 1 containment foundations -- is the only item in the entire evidentiary record of A.10-01-014 to address this important AB 1632 Report concern. In fact, the second time PG&E's opening brief inaccurately claims, "These studies were also designed to address the CEC recommendation that PG&E assess the implications of a San Simeon type earthquake beneath Diablo Canyon,"[10] the company references the very page of its rebuttal testimony that attempts to justify why PG&E's proposed seismic studies **do not "address the Diablo Cove Fault"!**[11] (emphasis added)

To fully appreciate the significance of this obfuscation, it's instructive to revisit the pertinent discussion in the CEC's AB 1632 Report:

> *Another potential seismic hazard at Diablo Canyon occurs from the possibility of an earthquake directly beneath the plant. Based on seismologic interpretations and conclusions from investigations of the 2003 San Simeon earthquake (magnitude 6.5) that occurred approximately 35 miles north of the Diablo Canyon site, the tectonic (geologic plate) setting where this earthquake occurred appears similar to the local tectonic setting of Diablo Canyon. The deep geometry of faults that bound the San Luis-Pismo structural block, where Diablo Canyon sits, is not understood sufficiently to rule out a San Simeon-type earthquake directly beneath the plant…improved characterizations of these fault zones would refine estimates of the ground motion that is likely to occur at different frequencies. This information may be significant for engineering vulnerability assessments*[12]*…*
>
> *PG&E should assess the implications of a San Simeon-type earthquake beneath Diablo Canyon. This assessment should include expected ground motions and vulnerability assessments for safety-related and non safety-related plant systems and components that might be sensitive to long-period motions in the near field of an earthquake rupture.*[13]

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[10] *Ibid.*, p. 13.
[11] PG&E-3, p. 14, as cited in Footnote 60 of PG&E Opening Brief.
[12] California Energy Commission, *An Assessment of California's Nuclear Plants: AB 1632 Report,* November 20, 2008, p. 5.
[13] *Ibid.*, p. 7. The June 25, 2009 letter from CPUC President Peevey to PG&E CEO Peter Darbee specifically identified this as one of the AB 1632 Report's recommendations on which PG&E was directed to report in its license renewal feasibility studies for Diablo Canyon, as acknowledged at page 2 of PG&E's opening brief.

That PG&E's opening brief would unwittingly call attention to this recommendation as one of two from the AB 1632 Report it chooses to highlight, and that it would cite directly contrary testimony as its justification, is a good measure of the discombobulating effect Dr. Hamilton's testimony has had on the company throughout this proceeding. It also reinforces the necessity that the Commission, rather than simply rely on bland PG&E assurances, expressly direct the company to configure its studies to specifically address Dr. Hamilton's testimony concerning the Diablo Cove Fault and the San Luis Range/Inferred Offshore Fault and their interaction.

While Dr. Hamilton's recommendations provoked confusion and contradiction in PG&E's opening brief, they prompted SCE to resort to a tired and discredited debater's ploy of constructing a "straw man" to intimidate the Commission from looking too closely at the expenditure of ratepayer resources. Having sponsored rebuttal testimony which willfully misread the controlling legal authority,[14] SCE refuses to be inhibited by the deflating admission of its witness that, according to the U.S. Supreme Court decision, "The economic regulation is left to the states."[15] Instead, the SCE opening brief distorts the final two sentences of Dr. Hamilton's 54-page narrative testimony to conjure an illicit recommendation from thin air; bolsters this with selective emphasis and word-eating ellipses applied to quotes from other portions of his testimony; borrows a keyword counting method of textual analysis from the field of search engine optimization only to inadvertently catch PG&E's opening brief in its

[14] *Pacific Gas and Electric Co. v. State Energy Resources Conservation & Dev. Comm'n*, 461 U.S. 190 (1983), as discussed in A4NR Opening Brief at p. 4.
[15] SCE witness Mark Nelson, A.10-01-014 transcript, April 18, 2012, p. 151.

gunsights[16]; recites a variety of Nuclear Regulatory Commission (NRC) regulations from 10 C.F.R. Part 100, Appendix A without acknowledging that -- by PG&E's own account -- because its license pre-dates 10 CFR 100, Diablo Canyon "is not a 10 CFR 100 licensed plant";[17] and turns a blind eye to the unavoidable state interest in the economic consequences of seismic safety concerns at California nuclear plants.

SCE's march down this rabbit hole begins with a fundamental mischaracterization. The third of Dr. Hamilton's four concluding recommendations, emphasizing the geologic significance of the preceding 52 pages of his testimony, is to "(i)nitiate a program of reviewing and as appropriate, recalculating seismic margins"[18] at Diablo Canyon. His fourth recommendation is to "(p)lace both the SSHAC and the seismic margins review program recommended in (3.) above, under the oversight of an entity independent from PG&E and the NRC."[19]

From this language, SCE's opening brief reflexively envisions the CPUC usurping the regulatory authority of the NRC and prescribing the design basis event and safe shutdown

[16] A4NR is bemused to point out that PG&E's opening brief makes use of the putatively forbidden phrases "important to seismic safety" (p. 5), "continuing safe operation" (p. 6), "necessary to ensure seismic safety" (p. 6), "continue the safe operation" (p. 6) and the borderline verboten "seismic hazard" (p. 8) in seeking to use $64.25 million of its customers' money to perform the seismic studies.

[17] PG&E, "License Amendment Request 11-05, 'Evaluation Process for New Seismic Information and Clarifying the Diablo Canyon Power Plant Safe Shutdown Earthquake,' "October 20, 2011, p. 3, accessible at http://pbadupws.nrc.gov/docs/ML1131/ML11312A166.pdf

[18] A4NR-4, p. 53.

[19] *Ibid.*, p. 54. Additionally, A4NR witness Becker testified that the SSHAC process "occupies a position of considerable significance to this proceeding" but questioned whether PG&E's unilateral rejection of the more rigorous Level 4 review is appropriate: "In PG&E's words, it is intended for regions of 'active, complex tectonic settings'; 'potential for significant public impact/scrutiny'; and/or 'significant Regulatory scrutiny.' Apparently, the utility has determined none of these conditions are present at Diablo Canyon. According to PG&E's workshop presentation, 'A SSHAC Level 4 study is not being used because of (1) significantly increased schedule requirement, (2) Iterative process of Evaluation and Integration, and (3) relatively minor increase in regulatory assurance associated with a Level 4 study.' " A4NR-2, p. 8.

earthquake for Diablo Canyon.[20] A4NR's witnesses have each emphasized the imperative of the Commission doing its own job as steward of ratepayer interests, not supplanting the NRC as regulator of radiological safety. Under cross-examination, SCE's witness admitted as much -- without his rereading Dr. Hamilton's testimony and A4NR witness Becker's testimony, he said, "it is not clear to me whether or not it is formally recommended;"[21] having previously stated that "(t)he Commission I think is free to suggest anything it cares to suggest"[22] and "I think, as you say, I think informality is permissible."[23]

But these distinctions appear to have been lost on the authors of the SCE opening brief, intent upon stretching to find federally pre-empted action. In pursuit of this quest, they string together quotes from the rest of Dr. Hamilton's testimony, using **underlined bold** type to attribute an ostensibly impermissible safety motive to his recommendations, but ignoring or even excising the inconvenient phrasing highlighted below in **RED CAPITAL LETTERS**:

- *Page 6 -- My testimony for this proceeding raises concerns regarding the seismic setting of the plant,* ***both as it relates to public health and safety*** ***, AND TO THE RELIABILITY OF ITS CONTRIBUTION TO THE ELECTRIC POWER SUPPLY OF CALIFORNIA.***

- *Page 6 -- My Testimony also questions relevance of much of PG&E's* ***EXTREMELY COSTLY PROGRAM*** *of geology, geophysics and seismology research, to resolving or even addressing the important* ***seismic safety issues affecting DCNPP****.*

- *Page 7 -- This has the likely consequence of putting the safety of the plant,* ***THE ELECTRICITY IT PROVIDES TO THE STATE POWER GRID****, and* ***potentially the health and property of the public at risk****.*

[20] SCE Opening Brief, pp. 2 – 3.
[21] SCE witness Mark Nelson, A10-01-014 transcript, April 18, 2012, p. 158.
[22] *Ibid.*, p. 157.
[23] *Ibid.,* p. 158.

- *Page 43 -- This has the likely consequence of putting the **safety of the plant**, **THE ELECTRICITY IT PROVIDES TO THE STATE POWER GRID**, and potentially the **health and safety of the public and its property at risk**.*[24]

The reasoning behind this strained approach to selective quotation is made clear by the SCE opening brief's reliance on the controversial trial court decision in *Entergy Nuclear Vt. Yankee, LLC v. Shumlin*.[25] There the U.S. District Court counted the number of times the word "safety" was mentioned in legislative debate to find pre-emption by the federal Atomic Energy Act of a Vermont statute that declared "[n]o nuclear energy generating plant within this state may be operated beyond the date permitted in any certificate of public good ... unless the general assembly approves and determines that the operation will promote the general welfare."[26] SCE neglects to point out, however, the weight placed by the District Court, in reconciling its ruling with the U.S. Supreme Court's decision in *Pacific Gas and Electric Co. v. State Energy Resources Conservation & Dev. Comm'n*, on the fact that the Entergy nuclear plant in question is a merchant plant:

> *States have historically regulated retail markets and vertically integrated electric generation utilities with monopolies within the state, serving captive customers; this situation requires regulation because competitive market forces do not serve as a check on price and service quality, for example. **This Court is mindful that the energy landscape has changed since the Supreme Court's decision in Pacific Gas, and notes that Vermont Yankee is a merchant plant free to sell electricity wholesale to any customer in the interstate market. While this status has not entirely displaced state regulation, the range of issues subject to state regulation may have narrowed**. The precise scope of the state's regulatory authority is … a question that is not before this Court.*[27] (emphasis added)

[24] SCE Opening Brief, pp. 8 – 9.
[25] 2012 WL 162400 (D. Vt. Jan. 19, 2012).
[26] *Ibid.,* p. 38, citing Vt. Stat. Ann. tit. 30, § 248(e)(2).
[27] *Ibid*. The State of Vermont has announced its intention to appeal the District Court's decision.

By the standards of the SCE opening brief, even the AB 1632 Report would be considered to go too far into NRC territory to be legally defensible. And maintaining a poker face to conceal the real objective of its exhortations that the CPUC abdicate its ratepayer responsibilities proves too much for the brief. It's not just formal CPUC action to specify putative safety standards that concerns SCE, it's something decidedly short of that: "engaging in an impermissible evaluation";[28] "render an impermissible judgment";[29] "or second guess the judgment of the NRC".[30]

The SCE opening brief simply fails to accept the State's profound interest in the economic consequences of seismic safety concerns at California nuclear plants. SCE would like to consider "safety" and "reliability" completely bifurcated, with the CPUC grudgingly afforded some vague role in the latter only if it makes a vow of ignorance in the former. But how is an ignorant CPUC supposed to assess the likelihood that Diablo Canyon will operate in the future and not suffer a safety-related shutdown? How is an ignorant CPUC supposed to anticipate the economic magnitude of seismic safety retrofits that may be ordered under new NRC requirements? How is an ignorant CPUC supposed to determine at what point the seismic safety cost/benefit calculation for ratepayers turns away from continued operation of the plant?

A4NR cannot accept the notion that the Commission's performance of its jurisdictional duties requires impermissibly supplanting NRC authority, and apparently has greater confidence in the constitutional principles of federalism than does SCE. Where is it preordained

[28] SCE Opening Brief, p. 3.
[29] *Ibid.*, p. 7.
[30] *Ibid.*

that state and federal agencies cannot work cooperatively together? What did the authors of NUREG-2117 and NUREG/CR-6372,[31] both cited approvingly in SCE's opening brief,[32] intend by their repeated reference to "other regulator" if not an agency holding the purse strings like the CPUC? In fact, similar to A4NR's suggestion in its comments on the Proposed Decision in SCE's seismic study proceeding, A.11-04-006, depending on the role ratepayer funds ultimately play in paying for PG&E's seismic studies, the Commission should give serious consideration to being the "sponsor", in NUREG-2117 terminology, of the SSHAC peer review process.[33]

By SCE's calculus, CPUC involvement inevitably equates to CPUC interference with NRC jurisdiction. As SCE's witness described and its opening brief emphasized, "…by having additional demands that are outside the NRC structure, it will create a more complex regulatory environment that … creates uncertainty and instability for the licensee."[34] A4NR agrees with SCE that the Commission should adopt the identical language from D.12-05-004 to establish that it does not intend to interfere with the NRC's requirements set forth in the NRC's March 12, 2012 50.54(f) letter.[35] But, contrary to SCE's harangue, the CPUC should engage the process

[31] NUREG-2117, *Practical Implementation Guidelines for SSHAC Level 3 and 4 Hazards Studies,* February 2012, and NUREG/CR-6372, *Recommendations for Probabilistic Seismic Hazard Analysis: Guidance on Uncertainty and Use of Experts,* April 1997, have been assigned a scriptural role by the NRC in defining the proper conduct of the SSHAC process.

[32] SCE Opening Brief, footnote 21, p. 6.

[33] NUREG-2117, at pp. 17 -18, describes the "rather unusual process" in the Level 4 assessment of four nuclear sites in Switzerland where the regulator asserted leadership over the peer review process. While indicating "a number of lessons learned and opportunities for improvement" (including, "It is likely that committing more resources to the gathering of site data to characterize site material properties would be more effective than addressing the issue using expert judgment."), NUREG -2117 characterizes the Swiss study as "conducted successfully, accepted by the regulator … and commended for use in subsequent risk analyses." The CPUC may want to give particular consideration to the Swiss model.

[34] SCE Opening Brief, p. 7, citing SCE witness Mark Nelson, A.10-01-014 Transcript, April 18, 2012, pp. 152 – 153. A4NR wonders how that compares to the uncertainty and instability for a licensee flowing from severe vibration in the tubes of inadequately reviewed replacement steam generators paid for entirely by ratepayers, but will defer that question to another day.

rather than abdicate its responsibilities.

DRA's opening brief makes the interesting point – but draws no conclusion – that there is no evidence that the NRC has requested or mandated that PG&E conduct the AB 1632 Report'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 A.10-01-014.[36] A4NR regards this as still another reason for close involvement of the CPUC in the SSHAC process and heightened attention to the prudent use of ratepayer resources in meeting both State and NRC objectives.

II. The costs of the studies, and whether they should be capped.

In the course of attempting to justify the current cost estimates of its proposed seismic studies, PG&E's opening brief makes three somewhat less-than-accurate claims that together reinforce the slapdash nature of a program which has quadrupled in cost in less than two years:

- the studies were designed in part to address the CEC recommendation to assess the implications of a San Simeon type earthquake beneath Diablo Canyon.[37] This fallacy was discussed above at pp. 3 – 5.
- PG&Es commitment to reducing seismic hazard is demonstrated by the "continuous and ongoing seismic evaluation and analysis" performed by the company's Long-Term

[35] SCE Opening Brief, p. 7.
[36] DRA Opening Brief, p. 2.
[37] PG&E Opening Brief, p. 13.

Seismic Program (LTSP).[38] In fact, after being ordered by the NRC in 1991 in the aftermath of the tumultuous controversies over seismic review in the original Diablo Canyon licensing process, the pre-Fukushima PG&E had allowed the LTSP to stagnate considerably.[39] Ignoring the NRC's hardly burdensome requirement to report on major developments no less frequently than every 10 years, the 2001 report cycle seems to have been missed entirely while the 2011 Shoreline Fault report was found seriously deficient by the NRC staff.[40] The license amendment request PG&E filed in response to this infraction would reduce its 1991 commitment from "maintain a strong geosciences and engineering staff" for LTSP purposes to a less ambitious "maintain staff" for the identical purposes.[41]

- the advice letter process PG&E envisions going forward is designed to review "unexpected, increased costs …"[42] Apparently, when they adopted this pretense, the authors of PG&E's opening brief had not read the Commission's decision in SCE's parallel $64 million seismic studies program, D.12-05-004. Finding of Fact #6 let that cat out of the bag by declaring, "It is reasonably foreseeable that the costs may exceed the current estimates of $64 million."[43] Additional costs in the PG&E program have the foreseeability of tomorrow's sunrise, especially with more than a billion dollars in

[38] *Ibid.,* p. 14.
[39] The U.S. Government Accountability Office recently reported that PG&E has not updated its probabilistic risk assessment of seismic hazard at Diablo Canyon since 1988. GAO-12-465, "Natural Hazard Assessments Could Be More Risk Informed," April 26, 2012, p. 19.
[40] A4NR-1.
[41] PG&E, "License Amendment Request 11-05, 'Evaluation Process for New Seismic Information and Clarifying the Diablo Canyon Power Plant Safe Shutdown Earthquake,'"October 20, 2011, p. 12.
[42] PG&E Opening Brief, p. 15.
[43] D.12-05-004, adopted May 10, 2012, p. 17.

additional data gathering ideas having been generated at the company's SSHAC workshop.[44]

To this impressive litany of cost-expanders, DRA's opening brief adds the compelling observations that PG&E has yet to finalize its contract with the selected 3D survey vendor – the largest portion of proposed costs – and has budgeted a significant contingency in only one area.[45] A4NR is not persuaded that DRA's purported remedy, the so-called "hard cap of $64.25 million,"[46] is anything more than bureaucratic paper-shuffling – especially when described in DRA's prepared testimony as removable once PG&E seeks additional funding.[47] And in light of the CPUC's admitted lack of seismic expertise,[48] A4NR fears the only thing worse than a phony cap would be an arbitrary cap administered by the uninformed.

A4NR remains convinced that the obvious cost control problems emanating from PG&E's proposed seismic study program are a function of: 1) the inattentive management often associated with utility performance of purely ratepayer-funded activities; and 2) the severe deficiencies in external review of PG&E's proposals that have been tolerated by the CPUC despite the worthy structure established by D.10-08-003. A4NR's solution for the first problem is premised on shareholder cost-sharing, while its approach to the second (Recommendations #2, 3, 4, and 5 from its Summary of Recommendations) relies upon a diligent and conscientious effort to implement D.10-08-003:

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[44] A.10-01-014 transcript, April 18, 2012, pp. 109 – 110.
[45] DRA Opening Brief, p. 3.
[46] *Ibid.*
[47] DRA-1, p. 8.
[48] Department of Finance, State of California Budget Change Proposal for Fiscal Year 2011-12, Public Utilities Commission BCP #1, February 11, 2011, p. I-1.

The CPUC should reiterate that D.10-08-003 requires PG&E's proposed seismic studies be reviewed by the IPRP prior to implementation and remind PG&E that all recovery of seismic study costs is subject to an ex post facto reasonableness review.

The CPUC should require PG&E to formally respond in writing to IPRP review comments and, where the company chooses not to accept such recommendations, PG&E should be required to document its scientific reasons for such rejection.

The CPUC should direct PG&E to provide the parties in this proceeding, as well as the members of the IPRP, with copies of the written reports submitted by the Participatory Peer Review Panel and the Technical Integration teams after the November 29 – December 1, 2011 SSHAC workshop.

The CPUC should reject DRA's proposal for a removable cost cap.

III. Whether shareholders of Pacific Gas and Electric Company will bear a share of the costs.

PG&E's opening brief might have tried to explain why the expansive costs of seismic research – a large part of which is inextricably linked to its hopes to extend Diablo Canyon's licenses by 20 years – could possibly be considered an O & M cost of the existing plant. It might have attempted to justify such expenditures as those that it would make anyway, no matter how little time remains on the licenses, as a matter of urgent public safety. It might have at least sought to reconcile the confused testimony of its financial witness, Joseph O'Flanagan, who couldn't ultimately make up his mind whether the expenditures were a "cost of operating an investment" or an "asset" themselves.[49]

[49] A.10-01-014 transcript, April 18, 2012, pp. 125 – 127.

But the PG&E opening brief did none of these. It didn't even make such an attempt. Instead, it resorted to rote recital of the most banal of ratemaking platitudes. Truism stacked upon truism does not provide much illumination, but it does create a glow in which even a notorious miscreant can aspire to bask: The legal standard for ratemaking is one of reasonableness.[50] A utility must be afforded a reasonable opportunity to earn a return on its investments.[51] This standard fails when reasonable and foreseeable expenses are excluded from rates.[52] Yea, verily.

Most of all, PG&E wants to be treated like SCE. "The Commission recently rejected a cost sharing proposal for similar seismic study costs,"[53] the opening brief longingly sighs, seemingly oblivious to the radically different context. In the SCE case, A4NR did not present a cost-sharing proposal and the only one in front of the Commission was DRA's suggestion of an arbitrary 90-10 ratepayer/shareholder split premised solely on making the utility behave better as it ventured into a comparatively new arena. There wasn't the ugly history of a pre-licensing "undiscovered" Hosgri Fault; paused licensing for midstream seismic engineering re-design; $4 billion(1982 dollars) in seismic-related, customer-absorbed, cost overruns; 20 years of ratepayer-supported LTSP which still missed the Shoreline Fault (self-aggrandizing claims notwithstanding); official disinformation efforts to minimize the Shoreline Fault's significance; ongoing defiance of the NRC's seismic analysis requirements relating to the Shoreline Fault; evasion of meaningful peer review by the Commission's own IPRP; and barely explained quadrupling of projected study costs after less than two years. Clearly, giving PG&E a blank

[50] PG&E Opening Brief, p. 16.
[51] *Ibid.*
[52] *Ibid.*
[53] *Ibid.*, citing D.12-05-004.

check from its ratepayers for any and all activities it chooses to characterize as seismic-related has not proven one of the Commission's more successful practices.

Of perhaps even greater significance in PG&E's case, however, is the clear nexus with re-licensing. Even prior to the 2008 adoption of the AB 1632 Report, PG&E made a public spectacle of its unwillingness to treat completion of the studies as a prerequisite to seeking license extensions. Only the heightened pressure on the company's safety culture created by the Fukushima tragedy, coming just six months after San Bruno, caused PG&E to relent – and only the unilateral 52-month suspension of proceedings by the NRC's Atomic Safety Licensing Board to allow the studies to be completed has given substance to an otherwise coy PG&E announcement. The linkage between these proposed seismic studies and Diablo Canyon re-licensing is indelible. In contrast, SCE has made something of a public fetish of proclaiming that it has yet to decide whether it will seek license extensions for SONGS.

A4NR's testimony provides a clear metric by which to apportion study costs between ratepayers and shareholders, and even PG&E's financial witness acknowledged that the costs of license extension should be treated as an asset.[54] Notably, DRA's opening brief says that A4NR's proposal "could be a vital means of holding down costs"[55] that would provide PG&E's management "a strong incentive to pay closer attention to the costs incurred."[56] Considering the A4NR proposal as an alternative to its own "hard cost cap and … revised reporting

[54] Joseph O'Flanagan, A.10-01-014 transcript, April 18, 2012, p. 126.
[55] DRA Opening Brief, p. 4.
[56] *Ibid.*

recommendations," DRA declares that it "would not oppose any conclusion by this Commission that held shareholders responsible for their reasonable stake in the seismic studies cost."[57]

That reasonable stake and how to calculate it are explained in Recommendation #6 in A4NR's Summary of Recommendations:

The CPUC should allocate seismic study costs between ratepayers and shareholders on the basis of reactor years, with the existing licenses assumed to each be extended by 20 years, and ratepayers paying as an O&M expense that portion of reasonable study costs calculated by dividing the time from the decision in A.10-01-014 to license expiry (i.e., "X") by the sum of X plus 20 years. All other reasonable study costs will be treated as a capital asset with recovery contingent upon re-licensing.

IV. Whether outside experts should be retained to review the planned studies and their costs.

Neither PG&E nor SCE addressed this topic in their opening briefs,[58] and DRA said it "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."[59] A4NR finds the respective positions of the parties to be wholly consistent with Recommendation #7 from its Summary of Recommendations:

The CPUC should reiterate D.10-08-003's authorization for the IPRP "to employ consultants and experts" with costs to be reimbursed by PG&E, and direct the Energy Division to ensure compliance with this Decision.

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[57] *Ibid.*

[58] PG&E's failure to do so, and its acknowledgment at p. 17 of its opening brief that it had sponsored no testimony on the issue, adds further credence to the concern expressed by A4NR in its opening brief (pp. 21 - 24) that PG&E's months-long machinations around the County of San Luis Obispo's effort to retain an expert consultant for the IPRP were motivated by a desire to impede review of PG&E's choice of offshore survey vessel until too late to affect the permit process of the State Lands Commission.

[59] *Ibid.,* p. 5.

V. The structure of the Independent Peer Review Panel authorized in Decision 10-08-003.

DRA was the only other party beside A4NR to address this topic, and "strongly" emphasized the recommendation of its prepared testimony that the IPRP process be transparent.[60] A4NR believes the respective positions of the parties corroborate the wisdom of Recommendation #8 from its Summary of Recommendations:

The CPUC should retain the present structure of the IPRP or, if it believes that staff support will be improved by delegating to the Director of the Energy Division, clarify that all provisions of the Bagley-Keene Open Meeting Act will be observed as if the IPRP reports directly to the Commission.

Respectfully submitted,

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Date: June 1, 2012

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ALLIANCE FOR NUCLEAR RESPONSIBILITY

[60] *Ibid.,* citing DRA-1, pp. 1 - 2 and 7 - 9.