

**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

REPLY BRIEF OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)

WILLIAM V. MANHEIM
MARK D. PATRIZIO
JENNIFER K. POST

Pacific Gas and Electric Company
77 Beale Street, B30A
San Francisco, CA 94105
Telephone: (415) 973-9809
Facsimile: (415) 972-5952
E-Mail: Jennifer.Post@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

Date: June 1, 2012

**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.

Application No. 10-01-014

(U 39 E)

REPLY BRIEF OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)

Pursuant to Rule 13.11 of the California Public Utilities Commission (“CPUC” or “Commission”) Rules of Practice and Procedure, and in keeping with the Assigned Administrative Law Judge’s ruling establishing the briefing schedule in this proceeding, Pacific Gas and Electric Company (“PG&E”) respectfully submits this reply brief in support of PG&E’s Application (A.) 10-01-014.

A. Introduction

This reply brief responds to the opening briefs submitted by the Division of Ratepayer Advocates (“DRA”) and the Alliance for Nuclear Responsibility (“A4NR”).

In its opening brief, DRA recommends, for the first time, that the Commission impose a “hard cap” of \$64.25 million on cost recovery and require PG&E to bear costs in excess of the \$64.25 million, if any, until PG&E’s 2017 GRC. This recommendation could have been raised in testimony and addressed at hearing, but it was not. It should be rejected as unsupported by the evidentiary record developed in this proceeding. Even if it were supported by the evidentiary record, DRA’s hard cap proposal is unreasonable in light of the identified uncertainty associated with the \$64.25 million cost estimate and the fact that PG&E is implementing these studies at the direction of the CPUC.

In its opening brief, A4NR appears to withdraw the original recommendations contained in the testimony of Dr. Douglas Hamilton. To accept A4NR's revised and narrowed recommendation that the Commission direct PG&E to configure its onshore and offshore seismic surveys to specifically address postulated onshore and offshore faults raised in A4NR witness Hamilton's testimony, the Commission need not take any action other than to approve PG&E's Application. The record developed in this proceeding demonstrates that PG&E's studies, as proposed, will produce information to address Dr. Hamilton's postulated onshore and offshore faults.

The Commission should reject A4NR's proposal to impose a share of the cost of the seismic studies on PG&E's shareholders as well as DRA's suggestion that a cost-sharing mechanism would be appropriate. PG&E is implementing these seismic studies on the recommendation of the California Energy Commission and subsequent direction of the CPUC. Completion of the seismic studies has been required in the context of the current operation and maintenance of Diablo Canyon and, therefore, the reasonable costs of those studies are appropriately recovered in customer rates.

The Commission should also reject both A4NR's bid to reverse ALJ Barnett's decision at hearings that written evaluation reports from the Senior Seismic Hazards Committee workshop be included in the scope of this proceeding and its recommendation to impose unnecessary additional requirements on the IPRP process.

B. Issues to be Decided

1. The Scope of the Seismic Studies Identified by the Applicant

A4NR revises its original recommendation concerning the scope of the seismic studies, narrowing it to request only that the Commission direct PG&E to configure its onshore and

offshore seismic studies to specifically address the postulated onshore and offshore faults raised in A4NR witness Douglas Hamilton's testimony. As PG&E witness Nishenko testified, the seismic surveys, as proposed by PG&E, will produce information enabling PG&E to address the concerns raised by A4NR witness Hamilton.¹

Mr. Geesman: You have got at line 28 and 29 no such fault connected the mapped structures after extensive geological mapping for both Diablo Canyon Units 1 and 2. Has there ever been any offshore study of the character or extent of this faulting?

Dr. Nishenko: This, again, is part of the studies that we are currently proposing to do in this Application.

Mr. Geesman: As they are currently designed?

Dr. Nishenko: Yeah.

Mr. Geesman: Offshore?

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

Accordingly, the Commission need not take any action other than approving PG&E's application, as filed, in order to implement A4NR's revised recommendation.

A4NR appears to have withdrawn the recommendations contained in Dr. Hamilton's testimony that would have required the Commission to impermissibly infringe upon the exclusive jurisdiction of the United States Nuclear Regulatory Commission ("NRC") over seismic safety at Diablo Canyon.² In fact, A4NR's opening brief seems to abandon Dr. Hamilton's original recommendations regarding the scope of the seismic studies entirely. If A4NR intends by the language of its revised recommendation for the Commission to direct

¹ PG&E/Nishenko, Tr., p. 96, lines 3-11.

² A4NR omits any reference to Dr. Hamilton's original recommendations in its opening brief. PG&E assumes this omission, and A4NR's revised recommendation, constitutes a withdrawal of those recommendations.

PG&E to assume a new design basis event, i.e., to adopt a new safe shutdown earthquake (“SSE”) for Diablo Canyon, and to require PG&E to re-calculate seismic margins based on the new safe shutdown earthquake as proposed in Dr. Hamilton’s testimony, the Commission is precluded from doing so. The Atomic Energy Act of 1954 (“AEA”) gave the federal government exclusive authority to regulate the design, construction and operation of nuclear power plants – including Diablo Canyon.³ Interpreting the AEA, the United States Supreme Court ruled that it gives the “federal government... complete control of the safety and nuclear aspects of energy generation, the states exercise their traditional authority over the need for additional generating capacity, the type of generating facilities to be licensed, land use, ratemaking, and the like.⁴ The responsibility for assuring public health and safety with respect to radiological hazards related to those nuclear plants is vested in the NRC.⁵ Establishment of an SSE and performing seismic margin analysis for Diablo Canyon clearly falls within the public health and safety jurisdiction of the NRC, not the retained jurisdiction of the states over economic regulation of nuclear power plants.⁶

To the extent Dr. Hamilton’s original recommendations remain by some twist of language in A4NR’s revised recommendation, the Commission must make clear in its decision that it rejects those recommendations. As noted above, it is not necessary for the Commission to

³ 42 U.S.C. section 2021(c)(1). Exhibit PG&E-3, p. 3.

⁴ See *Pac. Gas & Electric Co. v. State Energy Res. Conserv. & Dev. Comm’n*, 461 U.S. 190, 207 (1983). (“State safety regulation is not pre-empted only when it conflicts with federal law. Rather, the Federal Government has occupied the field of nuclear safety concerns, except the limited powers specifically cede to the States. When the Federal Government occupies a given field or an identifiable portion of it, as it has done here, the test of pre-emption is whether the matter on which the State asserts the right to act is in any way regulated by the Federal act.”) See also *Bennett v. Pac. Gas & Electric Co.*, 25 CPUC2d 374. Federal preemption of the field of nuclear safety has been confirmed in several subsequent court decisions, most recently in *Energy Nuclear Vermont, LLC, et al. v. Shumlin et al.* (January 19, 2012).

⁵ *Id.*

⁶ Exhibit SCE-1, p. 2.

take any action other than approval of PG&E's application, as proposed, to ensure that PG&E's seismic studies are designed to collect data that will address the postulated faults raised in Dr. Hamilton's testimony.

2. The Costs of the Studies and Whether They Should Be Capped

DRA revised its original recommendation that the Commission authorize recovery of \$64.25 million, but require PG&E to file a separate application for any costs in excess of \$64.25 million.⁷ Instead, in its opening brief, DRA now recommends that the Commission adopt a "hard cap" of \$64.25 million and require PG&E to bear any costs in excess of \$64.25 until PG&E's 2017 General Rate Case ("GRC"), thereby eliminating the option of PG&E's filing a separate application if and when it appears costs may exceed \$64.25 million.⁸

Because DRA did not make a "hard cap" proposal in testimony or at hearings, there is no evidence in the record to support it. PG&E's position is that a hard cap is unreasonable given the identified level of uncertainty associated with the seismic study costs. As PG&E witnesses testified, it is quite possible that PG&E will have to incur reasonable costs in addition to the \$64.25 million supported in this Application:

PG&E must note that there is some possibility for the costs to significantly increase even further if the California State Lands Commission or the California Coastal Commission do not permit 24/7 marine survey operations ..., if the permitting process delays implementation of the seismic surveys and if those state agencies require more significant environmental mitigation as a condition of permitting the projects.⁹

⁷ Exhibit DRA-1, p. 8.

⁸ DRA Opening Brief, pp.2-3.

⁹ Exhibit PG&E-1, pp.1-3 to 1-4. See also PG&E/Sharp, Tr., p. 21, lines 2-28.

It is true, as DRA asserts, that PG&E proceeded with the seismic studies even when the cost of the studies exceeded the \$16.73 million authorized in D.10-08-003. PG&E believes the information from the seismic surveys will help PG&E constrain the seismic hazard and, in turn, support safe operation of Diablo Canyon. PG&E proceeded despite the cost recovery risk because PG&E did not want to interrupt or delay collection of important seismic information solely for budgetary reasons.

In addition, imposition of a hard cap may cause costs to increase further than would be necessary were no hard cap to be imposed, if contractors were to be mobilized and de-mobilized based on funding constraints. Creating this inefficiency by the imposition of a hard cap would make no sense for any reasonable utility activity, but it makes even less sense when you consider that the Commission itself has directed PG&E to perform these seismic studies. As such, the Commission should reject DRA's new "hard cap" proposal.

As noted above, it is difficult to predict with certainty the cost of the seismic studies due to various unknowns. A4NR objects to the uncertainty of PG&E's cost estimates for the seismic studies and recommends that the Commission reject DRA's proposal for a "removable cost cap."¹⁰ In support of its recommendation that the Commission reject a removable cost cap, A4NR cites to the fact that PG&E plans to perform additional studies to those for which it has requested cost recovery in this Application. PG&E has pointed out, repeatedly, that it has and will continue to perform seismic studies in the context of its ongoing Long Term Seismic Program ("LTSP").¹¹ The LTSP has been in place since Diablo Canyon commenced operations and will remain in place for as long as it operates, if not longer. PG&E requests cost recovery

¹⁰ A4NR Opening Brief, p. 17.

¹¹ Exhibit PG&E-2, p. 7.

for LTSP in its test year GRC proceedings. The fact that PG&E will perform additional seismic studies to those proposed in this Application in no way undermines, or even challenges, PG&E's testimony in support of the \$64.25 million cost estimate or the uncertainties inherent in this number. Indeed, A4NR does not even specifically object to the cost estimates PG&E presented in this Application. Accordingly, the Commission should ignore A4NR's objection to a removable cost cap.

To the extent the Commission agrees that it is in the best interests of PG&E's customers to conduct the seismic studies, the Commission should adopt a ratemaking mechanism that allows PG&E to recover in customer rates the reasonable costs of those studies. PG&E proposes recovery of actual costs up to \$64.25 million through the Diablo Canyon Seismic Studies Balancing Account and recommends that it be given an opportunity to request recovery of costs above \$64.25 million, if necessary, through a Tier 3 advice letter. The advice letter process is an appropriate process through which to review unexpected, increased costs of activities previously approved by the Commission. It is a more efficient process than an application because Commission and intervenor review occurs on a faster schedule while still subjecting the costs to Commission review and approval.¹² The Commission recently adopted this ratemaking mechanism for recovery of SCE's seismic study costs.¹³

3. Whether PG&E Shareholders Should Bear Any Portion of the Seismic Study Costs

A4NR continues to propose that shareholders bear a share of the seismic study costs. While DRA does not propose a shareholder/ratepayer cost-sharing mechanism, it notes in its

¹² D.12-05-004, p. 13.

¹³ Id.

opening brief that it “would not oppose any conclusion by this Commission that held shareholders responsible for their reasonable stake in the seismic studies costs.”¹⁴

As PG&E discussed in its opening brief, the A4NR cost sharing proposal reveals a fundamental misunderstanding of the cost-of-service ratemaking applicable to Diablo Canyon. Customers provide funding required to operate and maintain the assets of investor-owned utilities consistent with federal and state laws, regulations and directives. PG&E is conducting the seismic studies addressed in this Application on the recommendation of the CEC and at the direction of the CPUC.¹⁵ Additionally, enhanced knowledge of the seismic hazard near Diablo Canyon provides a clear benefit to PG&E’s customers in that it enables PG&E to continue the safe operation of this valuable generation resource.¹⁶ The Commission recently rejected a cost sharing proposal for similar seismic study costs, stating:

The legal standard for ratemaking is one of reasonableness. In meeting this standard, the Commission must afford a utility a reasonable opportunity to earn a return on its investments. This standard fails when reasonable and foreseeable expenses of utility operations are excluded from rates.¹⁷

Consistent with its recent decision, the Commission should reject A4NR’s cost sharing proposal and authorize PG&E to include the full costs of PG&E’s seismic studies in customer rates.

4. Other

In its opening brief, A4NR renews its attempt to expand the scope of this proceeding to include review of materials generated as a result of the November 29-December 1, 2011 Senior

¹⁴ DRA Opening Brief, p. 4.

¹⁵ Exhibit PG&E_3, p. 17.

¹⁶ Exhibit PG&E-1, p. 1-3. See also PG&E/O’Flanagan, Tr. p. 128, lines 6-13.

¹⁷ D.12-05-004, p. 10.

Seismic Hazard Analysis Committee (SSHAC).¹⁸ At hearings, ALJ Barnett squarely rejected A4NR's request that written evaluations and reports prepared by PG&E, its consultants and the Participatory Peer Review Panel of the SSHAC be included in the record for this proceeding. A4NR argued that it is necessary to review those documents in order to put the seismic studies being considered in this Application into context.¹⁹ PG&E argued that the SSHAC evaluation reports are irrelevant to the Commission's consideration of the seismic studies for which PG&E has requested cost recovery in this proceeding.²⁰ Administrative Law Judge Barnett took those arguments under consideration and, at the close of hearings when A4NR renewed its request, ruled: "I have considered that and I am going to deny your request."²¹ A4NR asserts no additional basis or support in its opening brief for its recommendation that the Commission direct PG&E to provide the SSHAC evaluation reports to A4NR and the IPRP. The IPRP's scope and authority is specifically limited to review and comment on the seismic studies approved and funded in the Commission's initial decision on this Application.²² Likewise, A4NR's participation as an intervenor in this Application is limited to the seismic studies that are the subject of this application. The SSHAC evaluation reports, which address additional seismic studies that may be performed in the future under PG&E's Long Term Seismic Program, are not relevant to the Commission's consideration of the scope and cost of the seismic studies addressed in this Application. Therefore, the Commission should reject A4NR's recommendation.

¹⁸ A4NR Opening Brief, p. 17.

¹⁹ Hearing Transcript, Statements of Counsel, pp. 111-113.

²⁰ Id.

²¹ ALJ Barnett, Tr., p. 168, lines 5-7.

²² D.10-08-003, Conclusion of Law 4.

The Commission should also reject A4NR's recommendation that the Commission direct 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."²³ The record developed in this proceeding demonstrates that PG&E has been meeting regularly with the IPRP to review the seismic survey plans and has revised those plans in response to IPRP comments and concerns.²⁴ PG&E will continue to meet with the IPRP to present and review any additional changes to the seismic study plans, to provide progress updates to the IPRP regarding implementation of the studies and to receive IPRP feedback. The formality A4NR suggests the Commission impose on the process is unnecessary and should be rejected.

C. Conclusion

For the foregoing reasons, the Commission should approve PG&E's Application as filed.

Respectfully submitted,

WILLIAM V. MANHEIM
MARK D. PATRIZIO
JENNIFER K. POST

By: /s/ Jennifer K. Post
JENNIFER K. POST

Pacific Gas and Electric Company
77 Beale Street, B30A
San Francisco, CA 94105
Telephone: (415) 973-9809
Facsimile: (415) 972-5952
E-mail: Jennifer.Post@pge.com
Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

Dated: June 1, 2012

²³ A4NR Opening Brief, p. 17.

²⁴ Exhibit PG&E-2, pp. 2-6.