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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 2014 (U39M).

Application 12-11-009  
(Filed November 15, 2012)

And Related Matter.

Investigation 13-03-007

**ADMINISTRATIVE LAW JUDGE'S RULING GRANTING ALLIANCE FOR NUCLEAR RESPONSIBILITY'S MOTION TO COMPEL**

This ruling grants the motion filed on April 8, 2013, by the Alliance for Nuclear Responsibility (A4NR) for an order to compel production of data by Pacific Gas and Electric Company's (PG&E) relating to certain Diablo Canyon seismic activities. PG&E filed a response in opposition to the motion on April 10, 2013. A4NR was granted leave to file a third-round reply to PG&E's response on April 22, 2013. The parties' positions and the disposition thereof are discussed below.

**1. Position of A4NR**

Pursuant to its April 8, 2013 motion, A4NR seeks responses to a series of data requests. A4NR contends that the requested information is relevant to the determination of whether PG&E's expenditures in PG&E's 2014 General Rate Case (GRC) relating to management of the Diablo Canyon Power Plant (DCPP)

seismic activities merit funding by ratepayers. More specifically, the data requests relate to the following topics:

- 1) PG&E's assessment of the Shoreline Fault Zone which was submitted to and acted on by the Nuclear Regulatory Commission (NRC);
- 2) PG&E's proposed amendment to a NRC license amendment to address how new seismic data should be evaluated against the DCPD seismic licensing basis; and
- 3) independent peer review of the seismic hazard evaluation the NRC ordered all United States nuclear plants to perform in the aftermath of the nuclear accident at the Fukushima Dai-ichi Nuclear Power Plant in Japan, i.e., the Senior Seismic Hazard Assessment Committee (SSHAC) analysis.

A4NR claims the data requested is either directly admissible in the proceeding, or will lead to admissible evidence. A4NR argues that the only way in which to make a determination of the reasonableness of PG&E's GRC proposal for prospective costs is with some knowledge of recent historical context as reflected in the A4NR motion for production of data.

## **2. Response of PG&E**

PG&E opposes the A4NR motion, arguing that the requested data is irrelevant, outside the scope of the GRC, and does not pertain to GRC cost recovery. PG&E states the A4NR requests relate the seismic licensing basis of Diablo Canyon and involve highly technical compliance issues that have already been addressed by the U.S. NRC. PG&E contends that the discovery sought by A4NR involves matters that are subject to the NRC's exclusive jurisdiction over nuclear plant operations and safety issues. PG&E claims that A4NR's motion circumvents the NRC process.

PG&E provides additional historical background regarding the subject matter of the A4NR discovery. PG&E explains that the data requests related to the Shoreline Fault pertain to technical studies that PG&E conducted, whether those studies complied with PG&E's seismic licensing basis, and PG&E's communications with the NRC and its consultants about the studies. PG&E states that these issues are in the NRC's jurisdiction and have been addressed by the NRC. In preparing its assessment of the Shoreline Fault, PG&E submitted to the NRC a license amendment request to clarify the seismic licensing basis for DCP. PG&E characterizes the amendment as clarifying the appropriate evaluation method to use to analyze the Shoreline Fault and any other new seismic information as PG&E continues to study the seismic hazard at and around Diablo Canyon.

PG&E has requested GRC authority to recover forecasted operations and maintenance and capital costs for the DCP for the period 2014 to 2016, and seeks funding for its Long Term Seismic Program (LTSP), an ongoing program to collect and assess seismic data and to report findings to the NRC. PG&E, however, is not seeking GRC funding during 2014-2016 for seismic activities for the Shoreline Fault assessment or for its License Amendment Request. PG&E states that those are NRC issues which are final and complete. Although PG&E is seeking GRC cost recovery for anticipated SSHAC workshops, PG&E argues that the A4NR data requests regarding the SSHAC analysis do not pertain to the reasonableness of costs or cost forecasts of its LTSP activities that are in the 2014 GRC.

PG&E argues that if A4NR seeks to litigate whether PG&E's actions were inconsistent with its Seismic Licensing basis, that issue has already been preemptively decided by the NRC, and this Commission has no jurisdiction or

expertise to challenge the NRC's determination. Even if the NRC had not already resolved the issue, PG&E contends that the Commission has no authority to regulate the Diablo Canyon licensing basis.

### **3. Discussion**

PG&E objects to the A4NR motion based on claims of lack of jurisdiction and lack of relevance. PG&E claims that the requested data involves matters under the exclusive jurisdiction of the NRC, and that the data is irrelevant to the GRC. If A4NR's purpose in seeking the discovery was to litigate matters under NRC jurisdiction, PG&E's objections would be on point. A4NR does not dispute the NRC's jurisdiction over nuclear safety and operations, however, and affirms it is not seeking discovery to litigate any issues under NRC jurisdiction. A4NR seeks the discovery to understand PG&E's management and policies as informed by recent activities relating to Diablo Canyon operations and safety, and to discern how those activities and policies can inform judgments as to the reasonableness of PG&E's proposed use of GRC ratepayer funds.

In resolving the motion, the question is whether the data requested is "relevant to the subject matter involved in [PG&E's 2014 GRC], if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence, unless the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence."<sup>1</sup>

In order to be admissible, evidence must be relevant to the scope of PG&E's GRC, and more specifically, relevant with respect to Diablo Canyon

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<sup>1</sup> See CPUC Rules of Practice and Procedure, Rule 10.1 "Discovery from Parties."

seismic activities revenue requirements forecast for the 2014-2016 period for which PG&E seeks ratepayer funding. Permissible discovery, however, need not necessarily be admissible evidence. Even if, or to the extent that, data regarding completed NRC licensing activities may not be admissible evidence in the GRC, the data is still discoverable under the Commission's Rules, and the motion may be granted, as long as the discovery "appears reasonably calculated to lead to admissible evidence."

The parties disagree as to whether the information in the A4NR requests pertain to spending or management of GRC funds proposed to be recovered in customer rates. A4NR explains that it seeks information relating to PG&E's past behavior in connection with Diablo Canyon operation and safety issues to inform judgments concerning PG&E's prospective management behavior and the related costs. The relevance of the discovery is based on the nexus between the reasonableness of how ratepayer funds were expended on the past activities sought in the A4NR discovery and evaluating the merits of authorizing similar expenditures in this GRC.

Given the circumstances and arguments presented, A4NR meets this threshold test for granting the motion. Even though the requested data relates to past events, discovery of PG&E's past management behavior "appears reasonably calculated to lead to admissible evidence" in assessing how PG&E management may conduct itself during the 2014-2016 period, and consequently, how cost recovery from ratepayers may be implicated.

Although the NRC has exclusive jurisdiction over Diablo Canyon operating and safety regulations, this Commission regulates the retail rates and recovery of costs that PG&E seeks in this GRC relating to Diablo Canyon issues. By arguing that A4NR seeks the data in order to litigate matters that have been

concluded and that are solely within NRC jurisdiction, PG&E unduly narrows the possible range of use for the data sought by A4NR. Merely because the requested data includes historical details of nuclear safety and operations over which the NRC exercises jurisdiction, doesn't mean that the only use of the data would be to litigate matters in this GRC that are under NRC jurisdiction. A4NR is entitled to discover the requested documents regarding PG&E's past conduct even though PG&E is not seeking cost recovery for the past activities in this GRC.

A4NR has the expectation that the requested data could lead to admissible evidence as to the reasonableness of PG&E's GRC funding proposal. Whether the data actually leads to admissible data depends on what specifically A4NR discovers and how it makes use of the discovery in presenting evidence.

In any event, Diablo Canyon seismic activities for which PG&E seeks GRC ratepayer funding during the 2014-2016 period bear a sufficient relationship to the subject matter in the A4NR discovery to justify granting the motion for discovery.

**IT IS RULED** that the motion filed on April 8, 2013, by the Alliance for Nuclear Responsibility for an order to compel production of data by Pacific Gas and Electric Company's relating to certain Diablo Canyon seismic activities is hereby granted.

Dated May 1, 2013, at San Francisco, California.

/s/ THOMAS R. PULSIFER  
Thomas R. Pulsifer  
Administrative Law Judge