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### **6.3. Nuclear Operations**

PG&E's DCPD is a 2,240-MW facility located 7.5 miles north of Avila Beach in San Luis Obispo County, California. The site consists of approximately 12,000 acres of PG&E-owned land and the assets related to two nuclear units, including a power block and related facilities. PG&E's primary responsibility as the owner and operator of DCPD is to generate power safely and reliably through

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cost-efficient management of plant and related assets. As a preliminary observation, in addressing PG&E's nuclear operations costs, we take general note that various degrees of uncertainty exist concerning future measures that may be imposed by other regulatory agencies to address, in particular, DCPD seismic risk and one-through cooling requirements that may ultimately impact future operation of DCPD. In particular, PG&E has an ongoing commitment in connection with the operating licenses for DCPD issued by the Nuclear Regulatory Commission (NRC) to fund and implement a Long Term Seismic Program (LTSP) to continuously study and update the state of knowledge regarding seismic hazards affecting DCPD. The LTSP ensures that seismic hazards are continuously assessed by PG&E and the NRC and ensures the safe operation of Diablo Canyon. PG&E was expected to submit a draft report containing the most recent results of its seismic surveys to the NRC by mid-summer 2014. Depending on the outcome of these seismic studies, there could be potential long-term seismic vulnerabilities for DCPD that would need to be addressed.

We make no ratemaking adjustments to reflect these uncertainties regarding DCPD seismic studies at this time. In general recognition of such uncertainties, however, we affirm that the Commission retains discretion to exercise its options as may be deemed necessary to protect ratepayers from unreasonable costs if the plant was to no longer be operational.

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**6.3.1.14. Alliance for Nuclear Responsibility (A4NR)**

A4NR recommends that the Commission: (1) disallow 50% of PG&E's funding request for the SSHAC as "advocacy" expenditures; (2) engage the existing Independent Peer Review Panel (IPRP) in the SSHAC process while bolstering its ground motion control capabilities through the use of expert consultants; (3) establish a two-way balancing account for NRC rulemaking expenses; and (4) provide for recovery of expenditures for NRC Rulemaking expenses through PG&E's annual Energy Resource Recovery Account (ERRA) compliance.

A4NR submitted additional proposals in its opening brief: (1) that the Long Term Seismic Plan (LTSP) forecast of \$4.84 million (including \$2.0 million for the SSHAC process, as well as the associated amounts for the two attrition years) be added to the Diablo Canyon Seismic Studies Balancing Account (DCSSBA) adopted in D.12-09-008, subject to ERRA proceeding and Tier 3 Advice Letter provisions; (2) PG&E's LTSP and SSHAC activities be subject to the same review by the Commission's Energy Division Director and IPRP as specified for other DCSSBA funded activities; and (3) that PG&E submit a plan in the next GRC to comply with recommendations of the CEC regarding the pace of transfer of spent nuclear fuel to dry casks as a condition of approving costs forecast for these activities.

During the evidentiary hearings, the Administrative Law Judge (ALJ) granted a motion filed by PG&E to strike portions of the originally submitted testimony of A4NR. In its brief, A4NR argues that although the ruling was granted to strike portions of its testimony, a sufficiently detail explanation of the reasons for the ruling was not provided. We hereby affirm the ruling of the ALJ. We conclude that the ALJ properly relied upon the reasons cited by PG&E in A.12-11-009, I.13-

striking the testimony at issue. PG&E moved to strike the majority of the testimony. The ALJ left in the record the A4NR ratemaking proposal for the SSHAC costs to be incurred in 2014 to 2016. The ALJ granted PG&E's motion to strike the remaining A4NR testimony and appendices that addressed NRC substantive seismic licensing issues. The ALJ properly struck this testimony since it has no bearing on costs to be incurred at Diablo Canyon in 2014 through 2016 and involves issues which are subject to review and resolution by the NRC. We affirm the ALJ's ruling to strike the portions of the A4NR testimony which addressed the seismic licensing basis of Diablo Canyon and challenging the prudence of the manner in which the NRC addressed and resolved the seismic licensing basis issue. Also, this Commission does not have authority to override the NRC's resolution of the seismic licensing basis of DCCP. The issue also has no bearing on PG&E's GRC funding request.

**6.3.1.14.1. Proposed Disallowance of SSHAC Costs**

PG&E requests \$4.84 million for the LTSP, of which \$2 million is for the SSHAC process. PG&E is implementing the NRC directive to re-evaluate the Diablo Canyon seismic hazard using a Level 3 SSHAC process. The current SSHAC process follows the NRC guidance governing the process and substance of a Level 3 SSHAC process.

A4NR proposes that 50% of PG&E's 2014 forecast of SSHAC costs be disallowed as advocacy costs. A4NR refers to PG&E's settlement in the 2011 GRC which provides for 50% recovery of NEI fees as a precedent for its proposed treatment here. The 50% exclusion of NEI fees was based on the position that certain NEI activities, like advertising, should be funded by shareholders rather than customers because such costs do not contribute to safe, reliable and

cost-effective utility operations. PG&E claims that concern is not applicable to the LTSP and the SSHAC process which covers consultant costs associated with technical seismic studies and peer reviews, and include no lobbying, advertising or other advocacy costs.

PG&E argues that LTSP costs have always been included in the GRC and can be readily estimated based upon a defined project scope. PG&E claims its LTSP forecast of \$4.84 million is reasonable, and that there is no basis for transferring LTSP costs from the GRC to the ERRA proceeding. PG&E manages the LTSP subject to a NRC license commitment and is conducting the SSHAC process in response to NRC directives.

PG&E claims that A4NR wants to use the GRC process to condition rate recovery for nuclear operations as a means of indirectly compelling PG&E to take actions that the Commission does not have legal authority to directly order. The federal court of appeals recently held such indirect attempts by states to regulate nuclear safety issues are preempted by federal law.

### **Discussion**

We decline to grant the request of A4NR that 50% of PG&E's 2014 forecast of LTSP costs be disallowed as advocacy costs. After its testimony was stricken, A4NR withdrew this recommendation for lack of evidentiary support.

#### **6.3.1.14.2. Transfer of Seismic Plan Costs out of the GRC**

A4NR proposes that the Commission remove \$4.84 million in LTSP costs from this GRC and transfer the costs to the Diablo Canyon Seismic Studies Balancing Account (DCSSBA), a balancing account adopted in D.12-09-008 as a ratemaking mechanism for seismic studies funded by that decision. A4NR believes that LTSP costs should be treated differently from other Diablo Canyon-

related expenses in the GRC forecast. A4NR disagrees with aspects of how PG&E is managing the SSHAC process and therefore asks the Commission to review PG&E's on-going management of the SSHAC process and the LTSP generally in the ERRA compliance proceeding.

PG&E opposes this proposal, arguing there is no basis to conclude that it has unreasonably administered the SSHAC process by conducting a Level 3 analysis rather than the Level 4. The NRC has issued guidance that a Level 3 analysis should be used. PG&E argues that this Commission has no basis, expertise or jurisdiction to overrule that definitive determination of reasonableness. PG&E argues that A4NR is apparently proposing an indirect way of regulating NRC regulatory matters which is impermissible under the law.

### **Discussion**

We adopt the proposal of A4NR to remove \$4.84 million in LTSP costs from the 2014 revenue requirement for purposes of this GRC and to transfer the LTSP costs to the DCSSBA, a balancing account adopted in D.12-09-008. As proposed by A4NR, the LTSP costs shall be subject to the same annual ERRA Compliance proceeding and Tier 3 Advice Letter provisions adopted for the DCSSBA in D.12-09-008. We find this disposition to be a reasonable approach to improving oversight of the LTSP costs.

While A4NR was not allowed to observe one workshop for a portion of the SSHAC being conducted jointly with operators of two other western nuclear power plants, we conclude that the PG&E-specific workshops have been adequately transparent and open. PG&E pledged to work with its joint participants to open the remaining joint workshops to public participants.

#### **6.3.1.14.3. Additional Layer of Review of SSHAC Process**

A4NR proposes that the SSHAC and LTSP activities be subjected to the “same review by the Commission’s Energy Division Director and Independent Peer Review Panel.” PG&E argues that the Commission should not attempt to formally interject the IPRP into the SSHAC process and doing so could disrupt progress to date and impair PG&E’s ability to complete the process in time to meet the NRC’s deadline.

#### **Discussion**

We adopt A4NR’s proposal. We find this disposition to be a reasonable approach to assure the proper integration of Assembly Bill (AB) 1632 seismic studies with the LTSP and the SSHAC process.<sup>72</sup>

<sup>72</sup> Assembly Bill (AB) 1632, codified as Public Resources Code Section 25303, directed the California Energy Commission (CEC) to assess the potential vulnerability of California’s largest baseload power plants, including Diablo Canyon Power Plant, to a major disruption due to a major seismic event and other issues. In response to AB 1632, in November 2008 the CEC issued its findings and recommendations in its AB 1632 Report, which was part of its 2008 Integrated Energy Policy Report Update.

#### **6.3.1.14.4. Conditions Related to the Rate of Spent Fuel Storage Into Dry Casks**

A4NR proposes that conditions be placed on approval of PG&E’s proposed cost recovery of \$26.1 million to construct the remaining five pads at the ISFSI in 2014 and \$19.6 million to transfer spent fuel to dry cask storage in 2015 and 2016.

A4NR proposes that PG&E’s proposal be approved only on the condition that PG&E file with its next GRC a satisfactory plan to comply with CEC recommendations regarding the transfer of spent fuel to dry cask storage in its AB 1632 Report. The specific recommendation in the AB 1632 Report was

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that: "PG&E and SCE should return their spent fuel pools to open racking arrangements as soon as feasible, while maintaining compliance with NRC cask and pool spent fuel storage requirements, and report to the Energy Commission on their progress in doing so." (AB 1632 Report at 15).

PG&E opposes this recommendation, arguing that under federal law, the CEC does not have legal authority to regulate nuclear safety issues. PG&E argues that A4NR is attempting to impermissibly use the ratemaking process to compel utility action on nuclear safety issues exclusively regulated by the NRC.

**Discussion**

We find it reasonable to grant the proposal of A4NR to direct PG&E to file with its next GRC a satisfactory plan to comply with CEC recommendations regarding the transfer of spent fuel to dry cask storage in its AB 1632 Report, and to approve PG&E's forecast of \$26.1 million to construct the remaining five pads at the ISFSI in 2014 subject to its compliance with this condition. Since we limit 2015 and 2016 revenue increases based on the attrition mechanism we approve in Section 12, A4NR's proposal is moot as it relates to 2015 and 2016 costs.

FINDINGS OF FACT:

A.12-11-009, I.13-03-007 ALJ/TRP/lil

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189. There is no evidentiary basis to adopt the A4NR proposal to disallow 50% of PG&E's funding request for the LTSP as "advocacy" expenditures. After its testimony was stricken, A4NR withdrew this recommendation for lack of evidentiary support.

190. It is reasonable to adopt the A4NR proposal to remove \$4.84 million in LTSP costs from this GRC and transfer the costs to the balancing account adopted in D.12-09-008 as a ratemaking mechanism for seismic studies.

191. It is reasonable to adopt the A4NR proposal to place conditions on approval of PG&E's cost recovery of \$26.1 million to construct the remaining five pads at the ISFSI in 2014. Since 2015 and 2016 revenue increases are limited to the attrition mechanism adopted in Section 12 of this decision, the A4NR proposal is moot as it relates to PG&E's proposed \$19.6 million to transfer spent fuel to dry cask storage in 2015 and 2016.

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195. In connection with the Long Term Seismic Program to study and update information on seismic hazards relevant to the safe operation of Diablo Canyon Power Plant, PG&E was to submit a draft report containing the most recent results of its seismic surveys to the Nuclear Regulatory Commission by mid-summer 2014. Depending on the results of the studies, the effects of any long-term seismic vulnerabilities may need to be addressed.



CONCLUSIONS OF LAW:

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30. In general recognition of the uncertainties regarding the long-term seismic vulnerabilities of Diablo Canyon Power Plant, the Commission retains the discretion to exercise its options as may be deemed necessary to protect ratepayers from unreasonable costs if Diablo Canyon was to no longer be operational.

31. This Commission has legal authority to oversee seismic study activities relating to Diablo Canyon and to condition approval of PG&E's cost recovery of

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\$26.1 million to construct the remaining five pads at the ISFSI in 2014 upon PG&E's submittal of a plan to expedite the transfer of spent fuel to dry casks while maintaining compliance with NRC cask and pool spent fuel storage requirements.

IT IS ORDERED:

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29. The Alliance for Nuclear Responsibility Proposals to limit recovery of Pacific Gas and Electric Company's (PG&E) nuclear operation costs, as detailed in Section 6 and in the applicable Conclusions of Law of this decision, is granted to the extent noted below.

a. PG&E is directed to transfer \$4.84 million in Long Term Seismic Plan (LTSP) Costs from its forecasted revenue requirement in this proceeding to the Diablo Canyon Seismic Study Balancing Account (DCSSBA) previously adopted in Decision (D.) 12-09-008. The LTSP costs shall be subject to the same Energy Resource Recovery Account Compliance proceeding and Tier 3 Advice Letter provisions adopted for the DCSSBA in D.12-09-008. PG&E shall file an Tier 1 advice letter to modify its existing DCSSBA tariff to reflect this authorization to include the costs for the LTSP. The tariff modification shall be for an effective date of January 1, 2014.

b. PG&E is directed file in its next General Rate Case a satisfactory plan to comply with California Energy Commission recommendations regarding the transfer of spent fuel to dry cask storage in its Assembly Bill 1632 Report. PG&E's forecast of \$26.1 million to construct the remaining five pads at the Independent Spent Fuel Storage Installation in 2014 is approved subject to and conditional on PG&E's compliance with this directive.

\$26.1 million to construct the remaining five pads at the ISFSI in 2014 upon PG&E's submittal of a plan to expedite the transfer of spent fuel to dry casks while maintaining compliance with NRC cask and pool spent fuel storage requirements.