

BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric)	
Company for Compliance Review of Utility)	
Owned Generation Operations, Electric Energy)	
Resource Recovery Account Entries, Contract)	Application 15-02-023
Administration, Economic Dispatch of Electric)	(Filed February 27, 2015)
Resources, Utility Retained Generation Fuel)	
Procurement, and Other Activities for the Period)	
January 1 through December 31, 2014.)	
(U 39 E))	
_____)	

**ALLIANCE FOR NUCLEAR RESPONSIBILITY'S
MOTION TO COMPEL DISCOVERY**

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Date: June 15, 2015

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I. INTRODUCTION.

Pursuant to Rule 11.3 of the California Public Utilities Commission (“Commission” or “CPUC”) Rules of Practice and Procedure, the Alliance for Nuclear Responsibility (“A4NR”) respectfully submits this motion to compel the response of Pacific Gas and Electric Company (“PG&E”) to the data requests described below. A4NR and PG&E met and conferred by telephone on June 9, 2015 and were unable to resolve their differences on the matter.

II. WHAT A4NR REQUESTED.

Following the direction of Administrative Law Judge Stephen Roscow at the May 8, 2015 Prehearing Conference,¹ counsel for A4NR and PG&E met and conferred on May 16, 2015 regarding discovery requests A4NR had made on March 23, 2015 and April 20, 2015. A4NR’s requests concerned advice PG&E had received since January 1, 2014 related to Diablo Canyon seismic issues from retired U. S. Nuclear Regulatory Commission (“NRC”) Regional Administrator Elmo Collins.² In response to PG&E’s request at the May 16, 2015 meet-and-confer session for “*more specific*” questions, A4NR propounded new requests that same day. At issue in this Motion are the six questions and PG&E responses which are attached as Appendix A to this Motion.

III. DISCUSSION.

In each instance, PG&E has arbitrarily narrowed the question which A4NR actually asked. Where A4NR asks if Mr. Collins, during the relevant time period, has expressed any

¹ Transcript, p. 25, ln. 12 – p. 27, ln. 15.

² *Id.*, p. 19, ln. 6 – p. 21, ln. 3.

written (Question 1) or verbal (Question 3) opinion to PG&E “*regarding seismic issues at Diablo Canyon,*” PG&E confines its answers to “*the seismic activities whose costs are being recorded in the Diablo Canyon Seismic Studies Balancing Account*” in order to answer in the negative.

Where A4NR asks whether the Diablo Canyon Nuclear Safety Oversight Committee has considered “*seismic issues in any way*” (Question 5), PG&E limits its answer to “*the status of the seismic studies whose costs are being recorded in the Diablo Canyon Seismic Studies Balancing Account.*”

PG&E’s insinuation that A4NR “*seeks information that is beyond the scope of this proceeding*” unilaterally deprives A4NR of its right under Rule 10.1 to relevant subject matter that is either itself admissible evidence or reasonably calculated to lead to the discovery of admissible evidence. As indicated in the Declaration of Rochelle Becker, attached as Appendix B to this Motion, A4NR is informed by high-ranking past and present NRC personnel that Mr. Collins has advised PG&E **not** to pursue Diablo Canyon relicensing because of seismic concerns. More information about the advice Mr. Collins provided PG&E is directly relevant to evaluating the reasonableness of “*the seismic activities whose costs are being recorded in the Diablo Canyon Seismic Studies Balancing Account.*” Were the efforts for which PG&E is seeking cost recovery appropriately targeted or conducted in a manner which addressed the seismic issues of concern to Mr. Collins? Or were such efforts devoted to less consequential matters?

PG&E will have ample opportunity to object to the admissibility of any evidence proffered by A4NR which PG&E believes is beyond the scope of this proceeding. Using such a pretext to foreclose discovery is grossly premature and contrary to Rule 10.1.

IV. CONCLUSION.

For the reasons stated herein, the Commission should direct PG&E to respond immediately to Questions 1, 2, 3 4, 6, and 7 in Appendix A to this Motion. Pursuant to Rule 11.3(a), a proposed ruling to grant the requested relief is attached as Appendix C.

Respectfully submitted,

By: /s/ John L. Geesman

JOHN L. GEESMAN
DICKSON GEESMAN LLP

Date: June 15, 2015

Attorney for
ALLIANCE FOR NUCLEAR RESPONSIBILITY

Appendix A

A4NR QUESTIONS and PG&E RESPONSES

**PACIFIC GAS AND ELECTRIC COMPANY
2014 Energy Resource Recovery Account Compliance Review
Application 15-02-023
Data Response**

PG&E Data Request No.:	A4NR_003-01		
PG&E File Name:	ERRA-2014-PGE-Compliance_DR_A4NR_003-Q01		
Request Date:	May 26, 2015	Requester DR No.:	003
Date Sent:	June 8, 2015	Requesting Party:	Alliance for Nuclear Responsibility
PG&E Witness:	Cary Harbor, Kent Ferre	Requester:	John Geesman

QUESTION 1

23. Between January 1, 2014 and March 23, 2015, did retired NRC Regional Administrator Elmo Collins express any opinion in writing to PG&E regarding seismic issues at Diablo Canyon?

ANSWER 1

PG&E objects to this data request insofar as it seeks information that is beyond the scope of this proceeding. Notwithstanding this objection, PG&E responds as follows:

Since January 1, 2014 Mr. Collins has not expressed any opinion in writing to PG&E regarding the seismic activities whose costs are being recorded in the Diablo Canyon Seismic Studies Balancing Account, including the AB 1632 seismic studies or the LTSP studies, including the 50.54(f) seismic hazard re-evaluation. Mr. Collins is a member of PG&E's Diablo Canyon Nuclear Safety Oversight Committee (NSOC). The NSOC reports since Mr. Collins has been a member have briefly addressed the status of these studies. PG&E's responses to questions 28 and 29 (which PG&E numbers as questions 6 and 7 of this set of data requests), provide information regarding these NSOC reports.

**PACIFIC GAS AND ELECTRIC COMPANY
2014 Energy Resource Recovery Account Compliance Review
Application 15-02-023
Data Response**

PG&E Data Request No.:	A4NR_003-02		
PG&E File Name:	ERRA-2014-PGE-Compliance_DR_A4NR_003-Q02		
Request Date:	May 26, 2015	Requester DR No.:	003
Date Sent:	June 8, 2015	Requesting Party:	Alliance for Nuclear Responsibility
PG&E Witness:	Kent Ferre	Requester:	John Geesman

QUESTION 2

24. If the answer to Question 23 is affirmative, please provide copies of all documents and electronically stored information that contain or refer to such written communications from Mr. Collins.

ANSWER 2

PG&E objects to this data request insofar as it seeks information that is beyond the scope of this proceeding. Notwithstanding this objection, PG&E responds as follows:

Not applicable. As stated in response to Question 23, since January 1, 2014 Mr. Collins has not expressed any opinion in writing to PG&E regarding the seismic activities whose costs are being recorded in the Diablo Canyon Seismic Studies Balancing Account, including the AB 1632 seismic studies or the LTSP studies, including the 50.54(f) seismic hazard re-evaluation.

**PACIFIC GAS AND ELECTRIC COMPANY
2014 Energy Resource Recovery Account Compliance Review
Application 15-02-023
Data Response**

PG&E Data Request No.:	A4NR_003-03		
PG&E File Name:	ERRA-2014-PGE-Compliance_DR_A4NR_003-Q03		
Request Date:	May 26, 2015	Requester DR No.:	003
Date Sent:	June 8, 2015	Requesting Party:	Alliance for Nuclear Responsibility
PG&E Witness:	Kent Ferre	Requester:	John Geesman

QUESTION 3

25. Between January 1, 2014 and March 23, 2015, did retired NRC Regional Administrator Elmo Collins express any verbal opinion to PG&E regarding seismic issues at Diablo Canyon?

ANSWER 3

PG&E objects to this data request insofar as it seeks information that is beyond the scope of this proceeding. Notwithstanding this objection, PG&E responds as follows:

Since January 1, 2014 Mr. Collins has not expressed any verbal opinion to PG&E regarding the seismic activities whose costs are being recorded in the Diablo Canyon Seismic Studies Balancing Account, including the AB 1632 seismic studies or the LTSP studies, including the 50.54(f) seismic hazard re-evaluation.

**PACIFIC GAS AND ELECTRIC COMPANY
2014 Energy Resource Recovery Account Compliance Review
Application 15-02-023
Data Response**

PG&E Data Request No.:	A4NR_003-04		
PG&E File Name:	ERRA-2014-PGE-Compliance_DR_A4NR_003-Q04		
Request Date:	May 26, 2015	Requester DR No.:	003
Date Sent:	June 8, 2015	Requesting Party:	Alliance for Nuclear Responsibility
PG&E Witness:	Kent Ferre	Requester:	John Geesman

QUESTION 4

26. If the answer to Question 25 is affirmative, please identify the dates of any such verbal communications from Mr. Collins and the names of any PG&E employees who were present when such verbal opinions were expressed.

26. If the answer to Question 25 is affirmative, please provide copies of all documents and electronically stored information that contain or refer to such verbal communications from Mr. Collins.

ANSWER 4

PG&E objects to this data request insofar as it seeks information that is beyond the scope of this proceeding. Notwithstanding this objection, PG&E responds as follows:

Not applicable. As stated in response to question 25, since January 1, 2014 Mr. Collins has not expressed any verbal opinion to PG&E regarding the seismic activities whose costs are being recorded in the Diablo Canyon Seismic Studies Balancing Account, including the AB 1632 seismic studies or the LTSP studies, including the 50.54(f) seismic hazard re-evaluation.

**PACIFIC GAS AND ELECTRIC COMPANY
2014 Energy Resource Recovery Account Compliance Review
Application 15-02-023
Data Response**

PG&E Data Request No.:	A4NR_003-06		
PG&E File Name:	ERRA-2014-PGE-Compliance_DR_A4NR_003-Q06		
Request Date:	May 26, 2015	Requester DR No.:	003
Date Sent:	June 8, 2015	Requesting Party:	Alliance for Nuclear Responsibility
PG&E Witness:	Cary Harbor	Requester:	John Geesman

QUESTION 6

28. Has the Diablo Canyon Nuclear Safety Oversight Committee (“NSOC”) considered seismic issues in any way between January 1, 2014 and March 23, 2015?

ANSWER 6

PG&E objects to this data request insofar as it seeks information that is beyond the scope of this proceeding. Notwithstanding this objection, PG&E responds as follows:

The Diablo Canyon Nuclear Safety Oversight Committee (NSOC) conducts an independent review of station performance and operations to determine if the station is being operated and maintained in a manner that promotes nuclear safety. The three NSOC reports prepared by the NSOC since Mr. Collins has joined the NSOC have contained very limited discussions regarding the status of the seismic studies whose costs are being recorded in the Diablo Canyon Seismic Studies Balancing Account, including the AB 1632 seismic studies or the LTSP studies, including the 50.54(f) seismic hazard re-evaluation.

PACIFIC GAS AND ELECTRIC COMPANY
2014 Energy Resource Recovery Account Compliance Review
Application 15-02-023
Data Response

PG&E Data Request No.:	A4NR_003-07		
PG&E File Name:	ERRA-2014-PGE-Compliance_DR_A4NR_003-Q07		
Request Date:	May 26, 2015	Requester DR No.:	003
Date Sent:	June 8, 2015	Requesting Party:	Alliance for Nuclear Responsibility
PG&E Witness:	Cary Harbor	Requester:	John Geesman

QUESTION 7

29. If the answer to Question 28 is affirmative, please provide copies of all documents and electronically stored information that contain or refer to such NSOC consideration of seismic issues.

ANSWER 7

PG&E objects to this data request insofar as it seeks information that is beyond the scope of this proceeding. Notwithstanding this objection, PG&E responds as follows:

The three reports prepared by the Diablo Canyon Nuclear Safety Oversight Committee (NSOC) since Mr. Collins joined the NSOC contain very limited discussions regarding the status of the seismic studies whose costs are being recorded in the Diablo Canyon Seismic Studies Balancing Account, including the AB 1632 seismic studies or the LTSP studies, including the 50.54(f) seismic hazard re-evaluation. Attachment 1 to this data response reproduces these discussions in their entirety (see document, "ERRA-2014-PGE-Compliance_DR_A4NR_003-Q07Atch01.pdf").

Document Title: **Diablo Canyon Power Plant Nuclear Safety Oversight Committee, Report of Site Visit (July 14-17, 2014)**

Major Projects

NSOC reviewed progress and plans for Fukushima related actions, *** seismic activities ***, ***

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Seismic Activities – Seismic related activities are generally on-track and overall results appear to be enveloped by the current plant design bases. The report to the CPUC is on- track for submittal by early August and the required submittal to the NRC in March 2015 is on-track as well. The studies being done as part of the CPUC report provide significantly more data to support conclusions relating to seismic activity and site specific vulnerabilities such as shear wave velocities.

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Pluses:

- Seismic evaluations on-track overall with potential to improve margins

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Post - Fukushima Actions

***. NSOC also found the seismic re-evaluations *** to be on-track. ***

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Changes to TS or license amendments relating to nuclear safety

DCL-14-041

Response Update to Request for Information Pursuant to 10 CFR 50.54(f)
Regarding Recommendation 2.3 Seismic - Unit 1

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Document Title: Diablo Canyon Power Plant Nuclear Safety Oversight Committee, Report of Site Visit (November 17-20, 2014)

Executive Summary

The following activities and operational events occurred at the site since the previous NSOC site visit:

- Completed and communicated the results of the Advanced Seismic Studies

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Regulatory Services (Cyber Security and Post-Fukushima)

The site has recently completed the enhanced seismic studies and has made wide, public distribution of the information including town hall meetings. The study showed that the Shoreline fault could be somewhat more capable than previously thought. This condition resulted in an updated Prompt Operability Assessment. This assessment concluded that there is a basis for operability of station equipment. The completion of the Senior Seismic Hazard Advisory Committee (SSHAC) report in response to the NRC 50.54(f) letter is due March 2015. The seismic source and ground motion reports appear to be on-track. The workshops conducted for SSHAC were open for public observation.

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Pluses

- Seismic source and ground motion reports appear to be on-track to support the 50.54(f) letter response. Workshops that were open to public observation and open houses represent positive activities to keep the public informed regarding seismic safety at Diablo Canyon

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Changes to TS or license amendments relating to nuclear safety

...		
9/10/14	DCL-14-081	Central Coastal California Seismic Imaging Project, Shoreline Fault Commitment

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Document Title: *Diablo Canyon Power Plant Nuclear Safety Oversight Committee, Report of Site Visit (February 9-12, 2015)*

Organizational Effectiveness & Safety Culture

*** As mentioned later in the report, *** the results from recent advanced seismic studies all have the potential to uncover issues with regulatory impact. ***

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Regulatory Services

*** A number of regulatory related activities (e.g., continuing seismic-related calculations, ***) have the potential to challenge the site throughout 2015; therefore it is considered important to fill the key vacancies with highly experienced candidates as soon as possible.

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Appendix B

Declaration of Rochelle Becker

Declaration of Rochelle Becker

Under penalty of perjury, I, Rochelle Becker, declare as follows:

1. My name is Rochelle Becker. I am the Executive Director of the Alliance for Nuclear Responsibility.
2. I first met Art Howell—then newly appointed as the NRC’s Region IV Administrator, succeeding Elmo Collins—when he was introduced to me at an NRC SONGS proceeding in southern California. I first emailed Art Howell relating to Diablo Canyon on March 28, 2013 to congratulate outgoing Region IV administrator Elmo Collins on his retirement and to ask Mr. Howell about the nature of a “requalification” inspection at Diablo Canyon. On April 3, 2013 Mr. Howell responded that the requalification referred to operators and not the facility.
3. On October 13, 2014 I sent an email to Mr. Howell to reacquaint myself to him, which begins:

Rochelle Becker <rochellea4nr@gmail.com> Mon, Oct 13, 2014 at 4:49 PM
To: Art Howell <arthowell79@gmail.com>

Hi Art

I saw media on the recent OIG report on SONGS steam generators and the need for a LAR -- you and Elmo were mentioned. This reminded me we never got a chance to meet and I had heard you were ill, so I thought I'd write and see how your retirement is going? Do you stay in contact with Elmo?

As you have likely seen there is increasing interest in Diablo seismic issues and PG&E's in big trouble with state and feds over the San Bruno gas explosion, judge-shopping and record destroying. If you ever come to SLO, please do let me know.

4. In the ensuing email exchange, Mr. Howell and I made plans to speak by phone the following day at 2 p.m. Mr. Howell then added this exchange to the email chain that evening:

Art Howell <arthowell79@gmail.com> Mon, Oct 13, 2014 at 9:26 PM
To: Rochelle Becker <rochellea4nr@gmail.com>

Thank you. I'm sure you have heard by now that there is a high probability that PG&E will not reactivate their application for license renewal?

Good Evening

5. The following day, October 14, 2014, at 2 p.m., I spoke to Mr. Howell by telephone for approximately 20 minutes. Part of our conversation involved the relicensing of Diablo Canyon, based on his email of the prior evening stating that there was a good chance “PG&E will not reactivate their application for license renewal.” During the conversation he mentioned that Elmo Collins, Mr. Howell’s predecessor as NRC Region IV Administrator, had been hired as consultant by PG&E and that Mr. Collins had advised PG&E **not** to pursue their relicensing because of seismic concerns.

6. On October 27, 2014, after attending an NRC SONGS decommissioning meeting, I engaged in conversation with Victor Dricks (NRC Public Affairs Office, Region IV), Chip Cameron (NRC Facilitator), and Bill Maier (NRC Regional State Liaison Office). I mentioned that there were rumors that license renewal for Diablo was questionable and were increasing and Mr. Dricks said that PG&E’s consultant—Elmo Collins—had advised them not to pursue license renewal. This revelation came as no surprise to Mr. Cameron, only Mr. Maier seemed to have been unaware of the development.

7. On March 26, 2015 I sent Mr. Howell a link to a [San Francisco Chronicle](#) newspaper story that had appeared on March 25, 2015 regarding the NRC and seismic safety standards at the reactors.

Rochelle Becker <rochellea4nr@gmail.com> Thu, Mar 26, 2015 at 3:25 PM
To: Howell Art arthowell79@gmail.com

<http://www.sfchronicle.com/news/article/Feds-probe-PG-E-report-on-California-nuclear-6159405.php?t=bdde852ba500af33be&cmpid=twitter-premium>

The newspaper story begins with the paragraph:

Federal investigators have launched a probe into whether the Nuclear Regulatory Commission erred when it let Pacific Gas and Electric Co. change earthquake safety standards at the Diablo Canyon power plant without public hearings, The Chronicle has learned.

8. Mr. Howell responded by email:

arthowell79@gmail.com <arthowell79@gmail.com>
To: Rochelle Becker <rochellea4nr@gmail.com>

Fri, Mar 27, 2015 at 5:27 AM

I think I told you. There own consultant thinks the NRC should issue an order should be issued as to why Diablo's license should be modified, suspended or revoked. I know many people often think of the NRC S a monolith. I can assure it is not on the individual level, even if it is as a unit of government.

I understood Mr. Howell to be referring to PG&E's consultant, former NRC Region IV Administrator Elmo Collins.

9. On May 11, 2015 I sent Mr. Howell the transcript of the May 8, 2015 Prehearing Conference in A.15-02-023 and let him know that the Alliance had mentioned Mr. Collins based upon my October 2014 conversation with Victor Dricks and my earlier conversation with Mr. Howell.

10. Mr. Howell replied:

Art Howell <arthowell79@gmail.com>
Mon, May 11, 2015 at 3:34 PM
To: Rochelle Becker <rochellea4nr@gmail.com>

will read. I thought I told you Elmo told me similar things over the past 2 years!!

I declare that the foregoing statements of fact are true and correct to the best of my knowledge and that the statements of opinion expressed above are based on my best professional judgment.

/s/ Rochelle Becker

June 15, 2015

Appendix C

Proposed Ruling

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric)
Company for Compliance Review of Utility)
Owned Generation Operations, Electric Energy)
Resource Recovery Account Entries, Contract)
Administration, Economic Dispatch of Electric)
Resources, Utility Retained Generation Fuel)
Procurement, and Other Activities for the Period)
January 1 through December 31, 2014.)
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Application 15-02-023
(Filed February 27, 2015)

**[PROPOSED] RULING GRANTING THE MOTION TO COMPEL DISCOVERY
OF THE ALLIANCE FOR NUCLEAR RESPONSIBILITY**

Pursuant to Rule 11.3 of the Commission's Rules of Practice and Procedure, the Alliance for Nuclear Responsibility (A4NR) filed and served a Motion to Compel Discovery of the information identified in Appendix A to its Motion as Questions 1, 2, 3, 4, 6, and 7 concerning Pacific Gas and Electric Company's Diablo Canyon seismic activities.

IT IS HEREBY RULED that:

A4NR's Motion to Compel Discovery is granted.

DATE:

BY: _____

Administrative Law Judge