

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Joint Application of Southern California Edison Company (U338E) and San Diego Gas & Electric Company (U902E) for the 2009 Nuclear Decommissioning Cost Triennial Proceeding to Set Contribution Levels for the Companies' Nuclear Decommissioning Trust Funds and Address Other Related Decommissioning Issues.

Application 09-04-009
(Filed April 3, 2009)

Application of Pacific Gas and Electric Company in its 2009 Nuclear Decommissioning Cost Triennial Proceeding (U39E).

Application No. 09-04-007
(Filed April 3, 2009)

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E)
REPLY COMMENTS IN RESPONSE TO COMMENTS OF DIVISION
OF RATEPAYER ADVOCATES OPPOSING THE SETTLEMENT
AGREEMENT AND ACCOMPANYING MOTION
FILED DECEMBER 18, 2009**

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1. OVERVIEW

1.1 Introduction

Pursuant to Rule 12.2 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission or CPUC), Pacific Gas and Electric Company (PG&E) hereby files these Reply Comments in response to the Comments of the Division of Ratepayer Advocates (DRA), filed January 19, 2010, opposing the Settlement Agreement (Settlement) and Motion for Approval of the Settlement (Motion), filed December 18, 2009, by PG&E, Southern California Edison Company ("SCE"), San Diego Gas & Electric Company ("SDG&E"), and The Utility Reform Network ("TURN") [collectively referred to as "the Settling Parties"]. These Reply Comments supplement the Reply Comments filed jointly by all Settling Parties and focus primarily on DRA's objection to the Settlement's funding of a \$9 million annual contribution for

Diablo Canyon decommissioning. In Section 6, PG&E also briefly responds to DRA's claim that the Settlement outcome should have used an alternative escalation rate for the burial cost of low level radioactive waste (LLRW).

1.2 The Settlement Is Reasonable in Light of the Whole Record, Consistent with Law, and in the Public Interest.

The criteria for Commission approval of settlements are stated in Rule 12.1(d), formerly Rule 51.1(e), as follows:

The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

While the Rule 12.1(d) criteria for approving a settlement are that it be reasonable in light of the whole record, consistent with law, and in the public interest "whether contested or uncontested," the Commission has a somewhat tougher standard of review to meet these criteria for contested as opposed to "all-party" settlements.

Since the Settlement is contested by DRA and Fielder, it does not meet the Commission's criteria for an all-party settlement. (See Decision (D.) 92-12 -019, Re San Diego Gas and Electric Company, 46 CPUC2d 538, 554 (1992).) For over a decade, the Commission has made clear that its standard of review for a contested settlement is "somewhat more stringent" than its standard of review for an all-party settlement. (D.94-04-088, Re Natural Gas Procurement and System Reliability Issues, 54 CPUC2d 337, 343 (1994).) For a contested settlement, the Commission's standard of review is as follows:

Here, we consider whether the settlement taken as a whole is in the public interest. In so doing, we consider individual elements of the settlement in order to determine whether the settlement generally balances the various interests at stake as well as to assure that each element is consistent with our policy objectives and the law. (*Id.*)

In clarifying the role that consideration of individual elements plays in its overall evaluation of a settlement, the Commission has stated that:

We consider individual settlement provisions in our assessment of settlements but, in light of strong public policy favoring settlements, we do not base our conclusion on whether any single provision is the optimal result. Rather, we determine whether the settlement as a whole produces a just and reasonable outcome. (D.05-12-025, mimeo, p. 7, Re Pacific Gas and Electric Company, 2005 Cal. PUC LEXIS 532, *11 (2005).)

The Commission's analysis of a contested settlement and its individual elements is facilitated where, as here, there is a formal evidentiary record providing information that is tested by sworn testimony and cross-examination. (54 CPUC2d at 343-44.) A significant factor in determining whether a contested settlement is reasonable in light of the whole record is the extent to which the settlement is "supported by parties representing all various affected interests in this proceeding." (D.04-12-015, mimeo, p. 45, Re Southern California Gas Company, 2004 Cal. PUC LEXIS 574, *66 (2004).) In every respect, the Settlement in this 2009 NDCTP meets the Commission's legal standard for contested settlements.

First, while the Settlement is not supported by all active parties, it is supported by parties representing all affected interests in this proceeding. TURN supports the Settlement in the interests of public utility customers consistent with TURN's charter to represent the interests of residential and small commercial customers. The utilities support the Settlement in the interests of their shareholders and, more broadly, interests of customers, employees, and the public interest, as well. PG&E believes that over 95% of the total lines of transcript consist of either testimony of the Settling Parties' witnesses or questions, commentary, or argument by the Settling Parties' attorneys.

Second, the Settlement is supported by a comprehensive and detailed record. Because the Settlement was reached after the close of hearings, the formal evidentiary record is complete and has been thoroughly tested through sworn testimony and cross-

examination. Moreover, the Settling Parties Motion to approve the Settlement, augmented by the Joint Reply Comments and these supplemental Reply Comments, address every issue in this phase of the proceeding raised by the parties in opposition to the Settlement, and the Settlement itself provides sufficient definition to satisfy the criteria of Rule 12.1(a).

Third, and finally, the Settlement as a whole produces a just and reasonable outcome. DRA takes exception to a particular result on Diablo Canyon trust funding. While PG&E certainly believes that this outcome, standing alone, is reasonable, the test is not whether the Settlement reaches the “mid-point” of a litigation hazard analysis on every single issue that contributes to the overall outcome. All of the issues that comprise the overall outcome in the Settlement must be considered. Taken together, they are consistent with the entire record as summarized in the Motion, and the Settling Parties agree that their broad range of interests is served by the overall Settlement outcome.

1.3 DRA provides no persuasive arguments for finding the PG&E portion of the Settlement unreasonable.

DRA argues that it will show that the Settlement is unreasonable in light of the whole record, inconsistent with law, and against public interest and public policy. (DRA Comments, p. 2). DRA’s arguments consist of three parts: specific objections to Settlement provisions involving PG&E; specific objections to Settlement provisions involving SCE/SDG&E; and a more generic argument pertaining to Commission review of contested settlements.

As to PG&E, DRA’s principal complaint is that PG&E would be receiving “more money than it would be entitled to in its application” and that it should not be permitted to “bring new issues into the proceeding or seek to formulate new Commission policy.” (DRA Comments, p. 2). These claims, which pertain solely to the funding of the Diablo Canyon decommissioning trusts, however, are misguided. The Settlement’s revenue requirement for Diablo Canyon is far less than the numerical amount PG&E originally

requested (\$23 million) and, as more fully explained below, the settled outcome of \$9 million of annual funding for Diablo Canyon fully conforms with Commission policy, applicable law, and the extensive record in this proceeding. Moreover, DRA can hardly complain that the issue of an appropriate contingency rate is “new,” when DRA itself explicitly asked in its protest that the Commission in this NDCTP address whether the utilities “have made all reasonable efforts to conservatively establish an appropriate contingency factor.” See Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge, June 15, 2009, citing DRA’s protest at p.6. Both the issue of an appropriate contingency, as well as employee termination costs, were clearly within the scope of the proceeding to “examine all underlying forecasts and assumptions to estimate the future costs of decommissioning the various nuclear generating stations.” Id. at p. 9.

Although DRA’s argument on this matter spans thirteen pages (DRA Comments, pp. 4-16), boiled down, DRA’s argument against PG&E relies on the faulty proposition that the Commission may only change assumptions, estimates and projections so as to lower the utility’s decommissioning cost estimates from those initially proposed by the utility, never the other way around. Such a position would undermine one of the principal purposes of a consolidated proceeding involving all utilities in the first place; i.e., to have a coordinated and consistent state policy towards decommissioning so as to reach an equitable funding result over time. It also does not recognize that the Commission has an independent interest, in accordance with State law, to ensure that funding levels *are adequate and equitable to customers over time*. If one were to accept DRA’s argument, the results of NDCTP hearings and testimony could never adjust assumptions that were too optimistic or cost estimates that failed to adequately reflect costs. This untenable position is not only flawed as a matter of public policy, but is also clearly inconsistent with prior Commission precedents involving decommissioning trust funding, which have made upward adjustments to the utility-proposed assumptions, even

where the result is a higher level of contributions than the utility originally requested. Here, in contrast, it should be noted that the settlement outcome of \$9 million per year of contributions is *less* than PG&E's initial request of \$23 million.

Moreover, DRA is wrong as to the standard that it seeks to apply in evaluating this portion of the Settlement. DRA argues that "each element of the settlement must be demonstrated to be reasonable" and the Settlement should be rejected because it only provides one "non-monetary" benefit for customers and "[does] not adopt a middle position between the applications and TURN's litigation position." (DRA Comments, p. 3). DRA also says the standard of review for a contested settlement is different than for an all-party settlement (DRA Comments, p. 3) and that no litigation resources will be saved by the Settlement (DRA Comments, p. 2).

As stated in subsection 1.1 above, PG&E agrees with DRA that the Commission's standard of review for a contested settlement is somewhat more stringent than its standard of review for an all-party settlement. PG&E also agrees somewhat with DRA, in that the Settlement will result in only limited savings of litigation resource (i.e., issues have been narrowed, but hearings did take place and post-hearing briefing is still necessary). However, PG&E strongly disagrees with the implication that such post-hearing Settlements are not to be encouraged, as well as with DRA's misguided interpretations of the decisions it cites.

First, the test is whether a contested settlement "generally balances the various interests at stake" (D.94-04-088, mimeo, p. 8, emphasis added), not whether it reflects a "middle position." DRA's misreading of the Commission's test leads DRA into an inappropriate numerical analysis of TURN's litigation position and objectives as compared to the Settlement outcome, as if the Commission is bound to approve only those contested settlements that meet some mathematical test by falling somewhere in the middle of the range of litigation positions for each individual issue.

Such an approach ignores the merits of reviewing the evidence and arguments contained in the record, as well as a broader ratepayer interest to reach a fair and equitable funding result over time. For example, it is hardly clear that ratepayer interests are well served by adopting a cost estimate that is too low in this proceeding, only to have those cost estimates substantially increased in the next proceeding. The tension between creating lower rates and creating an equitable rate over time has been identified by the Commission and the State Legislature and has been highlighted by the participation in past proceedings by the Redwood Alliance and in the current proceeding by Intervenor Scott L. Fielder (“Fielder”).

The Commission should review whether a contested settlement generally balances the various interests at stake, but that is a far cry from saying a contested settlement is unreasonable solely because it does not come out about halfway between the bookends of the utility’s request and some other recommendation. This is especially true when a party that actively contested the utilities’ position on behalf of ratepayers (i.e., TURN) now supports the Settlement as being in the interest of customers. For example, in D. 07-11-018, Order Denying Rehearing of Decision 07-03-044, the Commission stated its policy encouraging settlements (in that case a contested post-hearing settlement); specifically acknowledged the overlap between DRA and TURN in representing customer interests; and affirmed its earlier GRC decision approving a PG&E-DRA GRC settlement that had been contested by TURN:

This policy position [favoring settlements] has been articulated by Commission on settlements since the Diablo Canyon settlement. Further, we noted in Finding of Fact No. 39: “The Settlement Agreement is supported by parties that fairly represent the affected interests.” [footnote omitted.] As explained by DRA and PG&E:

TURN and Aglet represent the interests of residential and small commercial customers of California’s utility companies ... but in a revenue requirement proceeding such as the 2007 GRC, the interests of residential and small commercial customers are

indistinguishable from the interests of all customers represented by DRA. DRA is statutorily mandated to represent the interests of PG&E's customers ... and the [s]ettlement balances the various interests at stake in this proceeding, including the interests of TURN's and Aglet's constituents. (Mimeo, pp 6-7)

Second, DRA is wrong when it says that each individual element must be considered, in effect, on a stand-alone basis. The Commission has made quite clear that Settlements are evaluated as a whole, even if individual issues are analyzed as part of that process. In PG&E's last GRC (D. 07-03-044), the Commission explained this distinction:

...[W]e will review the Settlement's resolution of every contested issue, with careful consideration given to each issue raised by Aglet, ANR/SC, and TURN. The purpose of our issue-by-issue review is not to second guess the Settlement outcome for every individual issue, but to assess whether the Settlement as a whole is reasonable in light of the entire record, consistent with applicable law, and in the public interest. (D.07-03-044, mimeo at p.13.)

In the specific context of decommissioning proceedings and decommissioning settlements, the Commission has expressed a policy favoring settlements, a liberal standard for their approval, and its disinclination to "piecemeal" a settlement, recognizing that cost estimates and funding requirements are adjusted every three years. In the last NDCTP, the Commission evaluated PG&E's contested settlement as follows:

The Commission does not unravel a settlement unless there is significant problem with the outcome as a whole—in which case the settlement would fail the public interest test discussed elsewhere. This settled outcome is within the range of plausible litigation outcomes. (D. 07-01-003, mimeo, p. 28)

The Commission undoubtedly took into account the fact that had it "piecemealed" that settlement, any of the settling parties could have withdrawn, as would be the case here. ["We cannot isolate a [single] element within the settlement—and if we try, we would

thereby abrogate the other parties' tradeoffs within the settlement," mimeo at p. 26.] Given the calibration that occurs triennially in decommissioning funding, the Commission applied a proper standard when it stated it would not "unravel a settlement unless there is a significant problem with the outcome as a whole" and approved a contested settlement that fell within "the range of plausible litigation outcomes." *Id.* Here, the Commission should be similarly reluctant to "piecemeal" this Settlement, especially given the overlapping provisions (e.g., the review panel) involving all utilities.

In sum, therefore, PG&E responds that the Motion and the Joint Reply Comments and these supplemental Reply Comments, together with the voluminous evidentiary record and the Settlement itself, allow the Commission to adequately "consider individual elements of the settlement in order to determine whether the settlement generally balances the various interests at stake as well as to assure that each element is consistent with our policy objectives and the law." (D.94-04-088, 54 CPUC2d at 343.) As more fully explained below, the settled outcome of \$9 million of annual funding for Diablo Canyon fully conforms to Commission policy, applicable law, and the extensive record in this proceeding.

2. The \$9 million funding for Diablo Canyon is fully supported by the record in this proceeding, prior Commission decisions involving nuclear decommissioning funding, and the law.

As to the TURN-PG&E agreement to provide for a \$9 million annual contribution for Diablo Canyon decommissioning, the following sections will show, as summarized above, that DRA's arguments are misguided in the following two ways.

First, DRA has incorrectly characterized the record in this proceeding, which provides clear support for the position that a higher contingency factor than 25% should be applied to Diablo Canyon and that some amount should be included in the cost estimate to reflect employee termination costs. DRA claims that these are both "new"

issues. (DRA Comments, p. 2.) However, they both fit within the defined scope of the proceeding – which included the determination of a reasonable decommissioning cost estimate – and both issues were identified and addressed during the course of the proceeding. The Commission clearly has a sufficient record to conclude, based on prior Commission precedent and the law, that the appropriate contingency factor for Diablo Canyon should remain at 35% and that the Diablo Canyon cost estimates should be increased to reflect employee termination costs.

Second, by procedurally seeking to hold PG&E to the assumptions and projections initially set forth in its Application, DRA has misconstrued past Commission precedent and the law, especially that precedent pertaining to decommissioning proceedings. While DRA asserts that projections and assumptions presented by the utility cannot be adjusted after hearings so as to *increase* decommissioning funding levels, Commission precedent provides otherwise. DRA’s misguided approach results from its failure to acknowledge the Commission’s independent obligation to balance its aspirations to keep rates low, with its other objectives to provide assurance that decommissioning funding is adequate and that future customers are not saddled unreasonably with an unfair share of decommissioning costs.

PG&E has also included an additional section, responding to a myriad of secondary arguments raised by DRA. These secondary arguments, PG&E will readily demonstrate, are adequately addressed by its previous showings that the record, Commission precedent and the law all support PG&E’s position and the Settlement outcome.

Before addressing each of these points, however, PG&E provides the following summary table which shows, based on updated trust fund balances, what trust funding for Diablo Canyon would be required based on the criteria set forth in the Application and, as modified, based on (1) a 35% overall contingency rather than a 25% contingency and (2) the inclusion of \$135 million for employee termination costs. As this data shows, if

PG&E had prevailed on *either* a 35% contingency or funding for employee termination costs, PG&E's funding (and hence, PG&E's revenue requirement) would have been greater than the settlement outcome of \$9 million.

	Application 12/31/2008 Balances	Application 12/31/2009 Balances	Application* 12/31/2009 Balances	Application* 12/31/2009 Balances \$135 million of termination costs	Application* 12/31/2009 Balances 35% Contingency	Application* 12/31/2009 Balances* 35% Contingency \$135 million of termination costs
DCPP Unit 1	10.939	3.383	3.450	8.686	8.674	13.910
DCPP Unit 2	12.077	2.275	2.684	8.071	9.788	15.176
Total	23.016	5.658	6.134	16.757	18.462	29.086
<p>* Amounts in these columns are adjusted from PG&E Application assumptions, by using liquidated trust fund balances, PG&E labor escalation for 2009-2011, SCE labor escalation for years after 2011, and a 5 year equity ramp-down.</p>						

3. The record provides support for an argument by PG&E that its decommissioning cost estimates should have been adjusted by a 35% contingency and by an additional sum to reflect employee termination costs.

DRA attacks PG&E's position on both procedural and substantive grounds. First, it argues that procedurally DRA was given inadequate notice that these issues might be raised by PG&E, arguing that PG&E should have formally stated its position by amending its application or filing supplemental testimony. On this procedural point DRA argues:

If in fact PG&E needed the extra \$9 million, PG&E should have amended its application or filed supplemental testimony to justify its request. As a result of this fatal procedural error, the modification was never entered on the record and therefore did not allow parties to provide testimony or conduct cross-examination for such an arbitrary increase.

Commission rules and policy are clear that the Commission must not adopt settlements that resolve new issues. The denial for this particular issue is straightforward and simple. The “Resolution [of settlement issues] should be limited to the issues in that proceeding.” (DRA Comments, p. 5.)

PG&E does not quarrel, as a general matter, with DRA’s assertion that the Commission should discourage the raising of “new issues” in a settlement. However, neither the appropriate contingency factor nor the appropriate costs to include in decommissioning estimates are new issues. DRA is also wrong when it asserts, as a procedural matter, the Commission is constrained to the assumptions made by the utility in its application, unless amended (PG&E separately addresses this latter contention in Section 4, below).

Second, DRA argues that even if this procedural hurdle is surmounted, the record provides no support for PG&E’s position. DRA alleges:

But, the procedural defect is not the only reason why this provision of the settlement agreement should be rejected. Substantively, the Commission should reject the extra money because it is not needed. (DRA Comments, p. 5.)

Earlier, DRA made essentially the same point:

Rule 12.1 requires all terms of a settlement to be reasonable in light of the whole record. There is no support on the record to justify the need for the extra \$9 million per year for PG&E.... (DRA Comments, p. 4)

In fact, there is an extensive record on both the issue of contingency for Diablo Canyon and the issue of employee termination costs, providing ample notice to DRA, even before hearings, of the possibility that the Commission would adopt *both* a 35% contingency (rather than a 25% contingency) and the inclusion of some amount of employee termination costs.

3.1 Contrary to DRA’s claims, the extensive record, when considered in conjunction with Commission precedent, provides substantial support for retaining at least a 35% cost contingency for Diablo Canyon

Because of the extensive record and past precedent relating to an appropriate contingency factor for Diablo Canyon the following discussion is divided into two parts. The first part addresses the substantial record regarding contingency factors, showing this is hardly a “new issue” and the second part addresses why at least a 35% contingency rate for Diablo Canyon is appropriate given the Commission’s historical guidance, the record on contingency and comparisons that have been made between the detail included in Diablo Canyon and SONGS decommissioning estimates.

3.1.1 The issue of an appropriate contingency factor percentage was expressly made an issue in this proceeding and there is substantial record pertaining to this issue

As noted in Section 1.2 above, far from being a “new” issue, as DRA alleges, the issue of an appropriate contingency factor was raised by DRA in its protest of the utilities’ applications, and subsequently identified as an issue in the scoping memo. Almost immediately, Fielder initiated questions concerning the adequacy of a 25% contingency factor. In his extensive deposition of Kerry Rod spanning nearly an hour and a half, which was made an exhibit in this proceeding, Fielder extensively questioned Kerry Rod on the underlying rationale for his recommendation of a 25% contingency. (Exh. PG&E-7, see especially pp. 22- 53). Subsequently, in his prepared testimony, Fielder objected to the lowering of the contingency from 35% to 25%, focusing especially on Diablo Canyon, *and stating that the utilities should be required to recalculate their cost estimates accordingly.* (Exh. Fielder-1, p. 7 L:9-13, also see footnote 4, p.8.) The Fielder testimony pointed out that in the last three decommissioning cost proceedings, the estimated cost of decommissioning Diablo Canyon had increased dramatically, even as the contingency percentage was being reduced. (Exh. Fielder-1, p. 7 ,L24 to p.8, L11) He further noted the cost increases that have occurred over time in

the Humboldt decommissioning estimates from \$30,000,000 in 1978 to \$499,000,000 today. (Exh. Fielder-1, p. 7 L:17-21.) As to the last NDCTP cost cycle, Fielder noted:

In the last three years the estimated cost of decommissioning Humboldt Bay rose \$149,000,000 nearly eclipsing the Humboldt Bay plants' contingency factor in the three year period. (Exh. Fielder-1, p. 7 L: 21-23)

In rebuttal, PG&E certainly put DRA and others on notice that it was concerned with its level of funding relative to SONGS, and that Fielder had made a good point regarding escalating cost estimates:

Q 33 Can decommissioning cost estimates for Diablo Canyon be directly compared to decommissioning cost estimates for SONGS?

A 33 No. SONGS is on land that SCE does not own in fee and this imposes substantially higher decommissioning costs on them. (PG&E, in contrast, now owns the entire fee interest in Diablo Canyon.) There are also many other differences between the two facilities. Nevertheless, PG&E notes that SCE and SDG&E currently maintain funds for decommissioning SONGS that are collectively around 50% larger than our own funds, even though the two plants are similar in size and will be decommissioned at the same time. Moreover, in this cycle, SCE and SDG&E are collectively requesting funding levels that are substantially greater than the levels requested by PG&E. This concerns PG&E in several respects. First, PG&E has reviewed the study performed for SONGS and believes that it is very thorough and was competently done. Therefore, even though TLG, Inc. forecasts decommissioning costs throughout the industry and is a leading expert, PG&E will carefully examine the reasons for the differences in the two studies after the completion of this NDCTP to determine whether increases in decommissioning cost estimates are appropriate for Diablo Canyon. Secondly, although Diablo Canyon is very different than Humboldt Unit 3, PG&E has long-term experience with using forecasts to estimate the cost of decommissioning Humboldt Unit 3. Over time, those cost estimates for Humboldt Unit 3 have increased substantially, as assumptions and conditions have changed and the cost estimates have been refined. Cost increases from earlier estimates could also occur at Diablo Canyon. PG&E, therefore, recommends against making any reduction to its relatively modest funding request for Diablo Canyon. (Exh. PG&E-4, p. 1-13, L:27-p. 1-14, L18.)

Subsequently, at the hearings, PG&E’s attorney clarified, in various objections and through questions directed to pre-filed direct testimony included with its Application (See PG&E-WP-2, Chapter 4, Technical Position Paper For Establishing An Appropriate Contingency Factor for Inclusion in the Decommissioning Revenue Requirements, April 2009, By Kerry Rod, PG&E), that while the utilities had recommended a conservative (err on the high side) estimate of “contingency,” they had applied a narrow engineering definition. (Tr.138:9-27, SCE/Morales.). PG&E’s technical position paper had made clear that this contingency did not reflect many uncertainties (highlighted below) that have driven up costs over time – most notably in the section of what is called “Financial Risks”(See Section 4.2):

4.0 TECHNICAL DISCUSSION

4.1 Contingency - What it is - What it is not

The cost elements in a decommissioning cost estimate are based upon ideal conditions where activities are performed within the defined project scope, without delays, interruptions, inclement weather, tool or equipment breakdown, craft labor strikes, waste shipment problems, burial facility waste acceptance criteria changes, changes in the anticipated plant shutdown conditions, etc. However, as with any major project, events occur that are not accounted for in the base estimate. Therefore, a contingency factor is applied per Financial Aspects of Engineering (Reference 8.5).

A contingency factor is meant to account for the difference between the base cost and unforeseen costs. The base cost estimate defines the project scope and accounts for the known and reasonably anticipated costs of decommissioning. A contingency factor, by contrast, is intended to account for any unforeseen costs within the defined project scope; i.e., events that may occur in the field during implementation of the work, and which are not accounted for in the base cost estimate. For example, the breaking of a drill, the mechanical failure of heavy equipment, late deliveries of supplies and equipment, the flooding of a trench, and industrial accidents are all unforeseen events that increase the cost of decommissioning activities. Such costs increases are deemed to be within the scope of the project because they occur during the conduct of an activity that is included in the base estimate. At the same time, they are unforeseeable because no one can predict when equipment will break, an

accident will occur, or when the weather will cause delays (Reference 8.2). Contingency is a cost allowance for field-related problems that are likely to occur per testimony of Thomas S. LaGuardia for various fossil fueled power plants (Reference 8.12).

It is important to note that contingency factors do not compensate for all the risks that could increase decommissioning costs. Instead, contingency factors reflect only one type of risk – the specific risks of increased costs resulting from conditions at the project site after the commencement of the decommissioning work. Contingency factors do not reflect other factors that could possibly increase costs, such as escalation rates for low-level radioactive waste disposal and other costs and factors not related to specific project conditions (Reference 8.3).

Because of the uncertainty in contamination levels, waste disposal costs and other costs associated with decommissioning, the base cost estimate is required to apply an “adequate” contingency factor per NRC’s “Draft Guidance on Financial Assurance for Decommissioning Planning Proposed Rule” (Reference 8.7).

There is a general misconception about the use and role of contingency within decommissioning estimates, in that it is sometimes incorrectly viewed as a “safety factor”. Safety factors provide additional security and address situations that may never occur. In contrast, contingency dollars are expected to be fully expended throughout the program. They also provide assurance that sufficient funding is available to accomplish the intended tasks. An estimate without contingency, or from which contingency has been removed, can disrupt the orderly progression of the work and jeopardize a successful conclusion to the decommissioning process (Reference 8.3).

Past dismantling and decommissioning experiences have shown that problems are likely to occur and may have a cumulative impact. Fossil-fueled and nuclear power plants share some of the same potential problems leading to the need for contingency in cost estimates. These problems areas include (Reference 8.12):

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Table 4-1 Typical Decommissioning Problem Areas

Problem Area	Consequence
Schedule Slippages	Leading to crew overtime payments and/or project extensions
Weather Delays	Loss of productivity, overtime, slippages
Labor Strikes	Loss of productivity, slippages
Worker Injuries	Production interruptions, additional safety training, worker compensation claims, possible increased insurance premiums
Material Shipping	Rescheduling of activities, inefficiencies in production, out-of-scope backcharges from subcontractors
Equipment Breakdown	Rescheduling of activities, inefficiencies in production, out-of-scope backcharges from subcontractors
Regulatory Inspections	Insurance inspectors, Occupational Safety and Health Act (OSHA) inspectors, federal and state EPA inspectors, state building inspectors
Hazardous Materials	Special handling requirements beyond planned requirements

4.2 Financial Risks

In addition to the routine uncertainties addressed by contingency, another cost element that is sometimes necessary to consider when bounding decommissioning costs relates to financial risk. Examples can include changes in work scope, pricing, job performance, and other variations that could conceivably, but not necessarily, occur. Consideration is sometimes necessary to generate a level of confidence in the estimate, within a range of probabilities. TLG Services, Inc. (TLG) considers these types of costs under the broad term “financial risk.” Included within the category of financial risk are (TLG Cost Study P01-1513-002, Reference 8.8):

- *Transition activities and costs: ancillary expenses associated with eliminating 50% to 80% of the site labor force shortly after the cessation of plant operations, added cost for worker separation packages throughout the decommissioning program, national or company-mandated retraining, and retention incentives for key personnel.*

- *Delays in approval of the decommissioning plan due to intervention, public participation in local community meetings, legal challenges, and national and local hearings.*
- *Changes in the project work scope from the baseline estimate, involving the discovery of unexpected levels of contaminants, contamination in places not previously expected, contaminated soil previously undiscovered (either radioactive or hazardous material contamination), variations in plant inventory or configuration not indicated by the as-built drawings.*
- *Regulatory changes, e.g., affecting worker health and safety, site release criteria, waste transportation, and disposal.*
- *Policy decisions altering national commitments, e.g., in the ability to accommodate certain waste forms for disposition, or in the timetable for such.*
- *Pricing changes for basic inputs, such as labor, energy, materials, and burial. Some of these inputs may vary slightly, e.g. -10% to +20%; however, burial could vary from -50% to +200% or more.*

It has been TLG's experience that the results of a risk analysis, when compared with the base case estimate for decommissioning, indicate that the chances of the base decommissioning estimate being too high is a low probability, and the chances that the estimate is too low is a much higher probability. This is mostly due to the pricing uncertainty for low-level radioactive waste burial, and to a lesser extent due to schedule increases from changes in plant conditions and to pricing variations in the cost of labor (both craft and staff). *This cost study, however, does not add any additional costs to the estimate for financial risk since there is insufficient historical data from which to project future liabilities.* Consequently, the areas of uncertainty or risk are revisited periodically and addressed through repeated revisions or updates of the base estimate. (Emphasis added.)

These same limitations on the recommended contingency percentage – i.e., that it did not cover many types of risks – were expressed by utility witnesses during the hearings. For example, testimony in the hearings showed it did not cover uncertainties in financial assumptions (such as cost escalation, severance, or projected earnings). (Tr. 200:24-28, PG&E/Sharp); it does not attempt to reflect changes in regulation that could increase decommissioning costs (Tr.139:15-20, SCE/Morales.); and, it does not

encompass changes in scope that could occur if there was unanticipated contamination, now or in the future. (Tr.139:21-24, SCE/Morales.) In fact, as explained by Witness Morales, the contingency does nothing more than reflect engineering and contracting events that cannot be predicted with certainty, but nevertheless are actually expected to occur. (Tr.17:1-8; Tr.138:9-16, SCE/Morales; Tr. 200:20-24, PG&E/Sharp).)

Given this testimony, it should come as no surprise to DRA that the Commission may have been persuaded, whether by PG&E or Fielder, that a greater than 25% contingency to reflect these “other risks” was now appropriate. While PG&E fully acknowledges that it recommended a 25% contingency initially and never formally changed its recommendation during hearings, it should have been clear during the hearings that PG&E had real concerns about the recommended percentage’s adequacy and that the definition that had been applied by Mr. Rod may have been more limited than what the Commission envisioned. As the following exchanges demonstrate, DRA is misguided when it argues PG&E now is “attempting to mislead” the Commission, as PG&E was clearly reserving its options in this area:

20 Q Mr. Rod's conclusion is that, or was that a 25
21 percent contingency factor was within the range of
22 industry-recognized engineering practices. Is that your
23 understanding of his conclusion?

24 A Yes.

25 Q Now, his contingency factor proposal of 25
26 percent did not cover inflation and price escalation
27 during decommissioning, correct?

28 A That's correct.

1 Q The 25 percent contingency factor that Mr. Rod
2 proposed be used did not cover changes in industry, in
3 the industry itself?

4 A It does not cover changes in regulation or
5 changes in scope.

6 Q Thank you.

7 Could you give me an example of a change in
8 regulation or a change in scope that would be outside
9 the parameters of Mr. Rod's 25 percent contingency
10 factor?

11 A Sure. While we were going through
12 decommissioning of moving the fuel up at Humboldt we had
13 already had a prearranged and approved process for how
14 we were going to move our fuel from the reactor to spent
15 fuel into the casks that we called multiple purpose
16 containers. And the NRC changed their inspection
17 guideline on what was required for review of those fuel
18 elements before we moved them at the last couple of
19 months prior to our executing that activity. So that's
20 a change in the process beyond what we were approved and
21 agreed with at the last minute.

22 Q Did that raise the cost? I mean did that NRC
23 change have an impact economically?

24 A Yes, it did.

25 Q Do you in your mind separate out engineering
26 contingency factors from overall contingency factors?

27 A In my mind what Kerry's work did was identify
28 an overall contingency factor that does not include

1 regulation, changes in scope, or money escalation.
2 That's how I would characterize his conclusion....

15 Q Does PG&E object to using a 35 percent
16 contingency factor as the overall contingency factor to
17 be applied to the base decommissioning cost estimate for
18 Diablo Canyon Units 1 and 2?

19 A No.

TURN's attorney immediately recognized Mr. Sharp's equivocation in responding to Fielder's recommendation of a higher contingency factor of 35%. His resulting questions to Mr. Sharpe, along with ongoing exchange with PG&E's attorney, and the ALJ, gave everyone in the hearing full notice that PG&E was reserving its options:

22 BY MR. FREEDMAN:

23 Q Good afternoon, Mr. Sharp, Mr. Griffiths.

24 WITNESS GRIFFITHS: A Good afternoon.

25 Q I'd like to follow up on a question that you
26 were asked by Mr. Fielder. He asked if you, I guess
27 this would be Mr. Sharp, whether you objected to the use
28 of a 35 percent contingency factor. Do you recall that?

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1 WITNESS SHARP: A I recall that.

2 Q Are you changing your testimony?

3 A No, I'm not.

4 Q Is PG&E requesting that the Commission adopt a
5 35 percent contingency factor?

6 MR. BUCHSBAUM: Objection. I'm not sure this
7 witness is in a position to make that decision at this
8 point.

9 MR. FREEDMAN: Your Honor, this witness was asked
10 the question about the contingency factor and he
11 answered specifically on this point.

12 ALJ DARLING: He answered that he personally did
13 not object, I think was the answer.

14 WITNESS SHARP: That is correct.

15 ALJ DARLING: If you want to ask if he has
16 authority to bind the company, that would be another
17 question.

18 MR. FREEDMAN: Q Is there another witness whose
19 testimony addresses the issue of the contingency factor
20 for Diablo?

21 WITNESS SHARP: A I don't believe there's a
22 scheduled witness.

23 Q Are you the most appropriate witness to ask
24 questions about the contingency factor to?

25 A Any guidance from my legal staff I would --

26 MR. BUCHSBAUM: I think he is, yes.

27 MR. FREEDMAN: Q So my request stands. Is PG&E
28 modifying its proposal in this proceeding with respect

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1 to the contingency factor?

2 MR. BUCHSBAUM: The witness can answer.

3 WITNESS SHARP: A In my opinion the -- from what
4 I'm aware of the process, the proceedings in the 2005

5 asked that the companies perform a study to determine
6 the rate that would be recommended that all three plants
7 be applied with to ensure commonality between the three
8 sites. We did that as a request from the Commission to
9 ensure that we had a commonality in contingency, and
10 that number was done, and the answer provided was 25
11 percent.

12 Your question is more along the line of the
13 specific application of a 35 percent to Diablo Canyon.
14 We're certainly a ways away from execution of the
15 timeframe of Diablo Canyon. We have a little bit of
16 questions that we will look at like things like
17 ~~de~~termination [sic] costs that are not included, and we
18 will address those in the next triennial proceeding.

19 So I will tell you that I don't have any
20 strong objections to including a 35 percent. Although
21 as asked by the process, what we would have done in the
22 study, the study was provided a 25 percent
23 recommendation.

24 MR. FREEDMAN: Q Does PG&E object to using a 50
25 percent contingency factor?

26 A I believe that would be too high.

27 Q Why?

28 A It is not in the process of the norm of where

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1 we are at in the industry experience.

2 MR. BUCHSBAUM: Objection. If we're going to use
3 contingency factor, please define whether it's the

4 contingency factor as used by Mr. Rod or a general
5 contingency factor to account for changes that aren't
6 included within the contingency factor. The record is
7 going to be unclear without that.

8 MR. FREEDMAN: My question goes to the same basis
9 that Mr. Sharp was asked about whether he would be
10 willing to -- whether he would object to a 35 percent
11 contingency factor.

12 ALJ DARLING: I think it referred back to Mr.
13 Fielder's question, which was specifically defined to me
14 as related to Mr. Rod's recommendation.

15 WITNESS SHARP: Is there a question here? I'm not
16 sure.

17 ALJ DARLING: I'm not sure. There's vagueness
18 here.

19 MR. BUCHSBAUM: Well, there's a vagueness in the
20 sense that there's factors that are not included within
21 the normal definition of contingency that one might want
22 to add as a percentage that wouldn't normally come
23 within the definition of contingency as used by Mr. Rod,
24 which was the purpose of my --

25 ALJ DARLING: Right. And I guess maybe I
26 misunderstood. I thought we had a continuity of use of
27 that term as reflecting contingency rate as developed by
28 using the same criteria as developed by Mr. Rod.

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1 MR. BUCHSBAUM: Rod. Okay. If that's clear --

2 ALJ DARLING: And, Mr. Freedman, if that is not

3 correct, then you need to clarify that for the record
4 now.

5 MR. FREEDMAN: No. That is correct, your Honor.

6 ALJ DARLING: Okay.

7 MR. BUCHSBAUM: So you're using it exactly as Mr.
8 Rod used it as opposed to any contingency to account for
9 financial risk and risks associated with changes in
10 regulation and all of those kinds of things. I just
11 want to make clear what we're talking about.

12 MR. FREEDMAN: Yes.

13 MR. BUCHSBAUM: Okay. That's fine.

14 MR. FREEDMAN: Q So was there any specific
15 information in your testimony or in your workpapers that
16 would lead you to not -- that would cause you not to
17 object to the use of a higher contingency factor?

18 WITNESS SHARP: A Can you rephrase that again?

19 Q Is there any material in your testimony or
20 workpapers that would serve as the basis for the
21 selection of a higher contingency factor than PG&E has
22 recommended in this case?

23 A My understanding of the line item percentages
24 that TLG has done for the different areas when they did
25 the initial analysis, there are a variety of contingency
26 percentages for each line item. There are a few that
27 are much higher than 25 percent, and there are a number
28 that are lower than 25 percent. So to go to a number

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1 like 35 percent would not be warranted based upon the

2 knowledge of what's in those line item details.

3 That's why I would articulate that, you know,
4 25 percent as an overall contingency should be
5 applicable, but I do understand the differences between
6 the values of our fund and SONGS fund. I understand the
7 potential challenges that could occur for regulations
8 changes, but so far that's not covered by the
9 contingency. So I'm trying to answer your question, but
10 I'm not quite sure how to articulate a response as
11 asked.

12 MR. FREEDMAN: Thank you.

3.1.2 The record evidence, combined with Commission precedent, support retaining at least the 35% contingency factor for Diablo Canyon that was previously adopted by the Commission

In the last NDCTP the Commission did not narrowly define the term “contingency” and, accordingly, there appears to have been a “disconnect” between the 25% recommendation of Kerry Rod, and the percentage that should be applied to Diablo Canyon. Given the stated intention of the Commission and the record evidence, there is substantial justification for retaining (or even increasing) the 35% contingency that applied to Diablo Canyon in the last NDCTP.

Specifically, the Commission contemplated in D. 07-01-003 that the contingency percentage should cover more than just *engineering-type* costs that were anticipated to occur (essentially the Kerry Rod definition). In particular, the Commission explained the term contingency as follows:

A contingency has an effect in early years of acting like an accelerated funding by over-accruing contributions in addition to its intended purpose of protecting against errors and unforeseen costs in decommissioning estimates.” (D 07-01-003, mimeo pp.27-28.)

In a footnote, the Commission then quotes the dictionary for an appropriate meaning:

“Contingency: (1) A future event or circumstance which is possible but cannot be predicted with certainty. (2) A provision for such an event or circumstance. (3) The absence of certainty in events. (Compact Oxford English Dictionary, online.)” Mimeo, at p. 28, Fn. 14.

By this explanation (and the quoting of the standard dictionary definition of the term contingency), the Commission clearly intended a broad definition of the term, and certainly one that tried to take financial risks (of the type described in Kerry Rod’s report, but not reflected in the contingency factor) into account.

However, contrary to the Commission’s apparent intent, the record as discussed above shows that the contingency estimate, as provided by the utilities, is narrowly prescribed. As explained by witnesses Sharp and Morales, the term contingency as determined by the Kerry Rod study represents increase in costs that can be expected to occur (such as those due to weather, strikes, unavoidable delays, etc.). (See Tr.137:9-139:24, SCE/Morales). Simply put, the Commission appeared to contemplate that the utility’s recommended contingency percentage would also provide a safety factor to guard against changes in scope, regulation, errors and other changes that either could not be foreseen or fully predicted. (Id., Fn 14, p. 27.) Instead, the record shows that the utilities’ proposed contingency explicitly does not account for these kinds of risks. (See Section 3.1.1, above.)

As to the risk of increased scope, the evidence shows that PG&E’s Diablo Canyon cost estimates are more likely to be subject to future increases than are SCE’s SONGS estimates. (See Tr. 206:12-18, 209: 3-11, PG&E/Griffiths and Sharp; also see Exh. PG&E-4, p. 1-13, L:27-p. 1-14, L18.) One significant driver of increased scope could result from an increase in LLRW. The SONGS estimate of LLRW assumes a quantity that is approximately five times PG&E’s Diablo estimates, leaving much more exposure in this regard for PG&E. (Exh. SCE-5A, p.20; Tr. 153:19 -154:23, SCE/Morales See

also Tr. 195:12 to Tr.197:4, PG&E/Griffiths and Sharp.) PG&E's decommissioning plan assumes only removal of foundation to three feet below grade. (Tr. 206:12-18; 256:22-26, PG&E/Griffiths and Sharp.)

As to the risk of errors (or "corrections"), there is also additional risk associated with the Diablo study. (See Tr.183:5-10; Tr.185:3-15, PG&E/Griffiths and Sharp.) This difference has justified a different level of contingency in the past, and was specifically noted by the Commission in D. 03-10-014, in approving a 35% contingency for Diablo as compared to a 25% contingency for SONGS. The SONGS cost estimate is twice the Diablo Canyon estimate and while much of the difference is explained by different regulatory and contractual requirements, SCE has also undertaken a far more detailed, site-specific analysis. In addition, as discussed below in D.03-10-014, SCE has applied experience gained from its own decommissioning process at SONGS. Many of these detailed differences are spelled out in Ex. SCE-5A at pp. 13-24 and 31-38. These factors also are suggestive of the need to apply a higher contingency to the Diablo Canyon estimate.

Further supporting a broader definition and a higher rate than 25% is the Commission's guidance in the last NDCTP, after accepting PG&E's recommendation of a 35% contingency for Diablo Canyon, rather than the 40% contingency recommended by Fielder :

We will accept the settlement but in the next proceeding we direct all parties to conduct a thorough and complete research and analysis, and then err on the conservative (high estimate) side, when forecasting a contingency factor.

This guidance followed a history of Commission decisions (summarized below) involving contingency factors and Diablo Canyon decommissioning funding that offer further support for retaining at least a 35% contingency.

In the first decommissioning decision for Diablo Canyon dated March 6, 1987 (D. 87-03-029), the Commission established a CPUC jurisdictional revenue requirement of just over \$53 million by applying a 50 percent contingency factor to the Diablo Canyon cost estimate. (24 CPUC 2d 15,21.) The CPUC was convinced at the time that increasingly stringent nuclear plant regulations and the rising costs of nuclear plant waste disposal were going to add to the cost of decommissioning nuclear plants. (FOF 12, Supra.) The Commission concluded that its method assured an equitable treatment of present and future ratepayers and that a reasonable reserve would be available in the case of premature retirement. (FOF 16, Id, p.22.)

In the second decision reviewing Diablo Canyon funding, (D.95-12-055), the Commission continued its policy of recognizing the inherent uncertainty in forecasting future nuclear decommissioning costs. In this proceeding, the Commission reduced PG&E's overall 50 percent contingency to 40 percent, recognizing that the studies contingency factor had already recognized an additional 20 percent to account for assumed underestimates of certain costs and that PG&E had added a 25% contingency to cost escalation. (Supra.,612.) As a result of the 1996 GRC, PG&E's funding was reduced to \$34.4 million a year. (Id., p.643)

Again in Decision 00-02-046, 4 CPUC 3d 315 (the "1999 GRC"), the Commission rejected contentions that would have resulted in no funding for the Diablo plants. In D. 00-02-046, the Commission ultimately adopted a revenue requirement of approximately \$24 million (after end of the year adjustments), applying both a cost escalation uncertainty contingency of 25 percent and a cost estimate contingency of 40 percent to cover engineering, financial, regulatory and industry uncertainties. The Commission noted that the 40% contingency covered difficulties in estimating burial costs, as well as other uncertainties in the legal, regulatory and business environment. (Supra., p.488.)

The next decommissioning decision, and the first NDCTP decision involving PG&E --- D. 03-10-014 (the “2003 NDCTP”) --- modified PG&E’s proposed estimates and resulted in no funding for Diablo Canyon. Among other determinations, the Commission reduced the contingency for Diablo Canyon from 40 percent to 35 percent. In so doing, the Commission noted that SCE had utilized its decommissioning experience to refine its estimate for SONGS 2&3, thereby reducing its contingency to 21%, and that while PG&E had access to this information, its estimate had not been refined to the same level as SCE’s. (D.03-10-014, *mimeo*, p. 24.) The Commission, in that NDCTP, also eliminated the additional 25 percent contingency on escalation rates, noting (incorrectly) that the utilities were not requesting one. *Id.*, *mimeo* at p.18.¹ The result of all these modifications was that PG&E’s annual revenue requirement was reduced to zero, as of the effective date of the decision.

The last NDCTP adopted a settlement that resulted in essentially no funding for Diablo Canyon (the actual contributions for 2007-2009 were \$1.279 million per year) and, as discussed above, that settlement was based on maintaining a 35% contingency factor against Fielder’s complaints that the factor was too low. (See D. 07-01-003, *mimeo* at pp. 27-28.) The Commission then asked for a thorough study that would err on the high side. Given all this history and the record evidence summarized above, and, notwithstanding PG&E’s initial recommendation of 25%, a “plausible litigation outcome” may well have resulted in a contingency factor of at least 35% for Diablo Canyon.

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¹ PG&E had requested a 20% contingency for escalation, reduced from the 25% contingency that had been adopted in 00-02-046 (*Mimeo*, p. 15, fn 7).

3.2 Contrary to DRA’s assertions the record evidence shows that PG&E’s cost estimates included no amounts for employee termination costs and that such costs, in accordance with the State’s decommissioning law, should be included in decommissioning estimates

As to the issue of employee termination, there was similar notice to DRA that this could become an issue during briefing. TURN propounded publicly available data requests to PG&E and SCE seeking to compare the decommissioning cost estimates for Diablo Canyon and SONGS. This was done because the cost estimates for SONGS were substantially higher than those for Diablo Canyon. PG&E too, became concerned about these cost estimate differences, noted them in its rebuttal, and sought to understand them.

SCE, in their rebuttal testimony, identified employee termination costs as one factor resulting in a difference in the estimates. PG&E also agreed in a subsequent data response that it had not included those costs. That data response was entered into evidence by TURN and resulted in follow up questioning by both TURN and PG&E. In a proceeding intended to adopt a common approach towards decommissioning costs (see D. 05-05-028, discussed below), once again it should come as no surprise to DRA that this discrepancy could have been pursued by PG&E in briefing.

DRA, however, claims as a matter of fact that PG&E included employee termination costs in its decommissioning cost estimates, stating:

The Joint Utilities are deceiving the Commission into believing that PG&E had not considering including employee termination costs, when clearly PG&E’s own testimony in October, 2009 states that PG&E had indeed included such termination costs. (DRA Comments, p. 10)

As evidence of this “deception,” DRA quotes the response of Mr. Sharp to questioning by TURN, but includes only a portion of Mr. Sharpe’s response. (DRA Comments, pp. 10-11.) The portion omitted (bolded below) makes clear that PG&E’s current decommissioning cost estimates did not include termination costs (Tr.235, PG&E/Sharp):

16 Q The first issue that is raised here in the
17 first line of the answer has to do with staffing costs
18 related to termination and reassignment. Why did PG&E
19 not include these staffing-related costs into the study
20 estimate?

21 A Typically many of the estimates that are done
22 in the industry do not carry this level of detail in
23 them. It is not a routine activity. So it was included
24 as I engaged with TLG. **It is an item in the last**
25 **triennial I believe they called financial risk.² It is**
26 **certainly one we are considering. My personal opinion**
27 **is it is probably an appropriate cost, but it is not in**
28 **the estimate today. (underline added)**

In addition to the Sharp testimony, PG&E's response to TURN's data request makes clear that it did not include employee termination costs in its cost estimates. TURN in its request had cited SCE's rebuttal testimony that identified "important staffing related costs related to termination and reassignment" (p.17) as having been "ignored" in PG&E's study, and asked "whether this was true?" In its response entered into the record, PG&E acknowledged those costs had not been included:

Staffing costs related to termination and reassignment---These costs have not been included in the cost estimate (Exh. TURN-20, p.1).

The facts, therefore, clearly show that PG&E's cost estimates for Diablo Canyon did not include termination costs. On the other hand, SCE included \$180 million of such

² Recall that earlier in this brief we have shown that "financial risks" are not included in the 25% contingency factor. Perhaps DRA's misreading of this section of the transcript is attributable to this misunderstanding.

costs in its estimate for SONGS. (Ex. SCE-5A, pp.16-17.) Since Diablo Canyon is a similar size plant to SONGS, the Commission could reasonably find, pending a more accurate estimate of termination costs in the next NDCTP, that PG&E should have a similar cost estimate.³

There is further support for including some amount in the PG&E estimate from TURN witness Lacy. He recognized that employee termination costs are appropriately borne by the ratepayers benefitting from the power. As such, they are appropriately included within the decommissioning cost estimates. He stated that there was no basis for having one utility in the state including such costs in their estimates and the other utility not including such costs. (Tr.635:12-20, TURN/Lacy.)

Finally, in 1988 amendments to the Nuclear Facilities Decommissioning Act of 1985 there is further justification for including these costs as part of decommissioning funding. Those amendments added “reasonable job protection costs” to the definition of decommissioning costs:

Decommissioning nuclear facilities causes electric utility employees to become unemployed through no fault off their own, and these employees are entitled to reasonable job protection the costs of which are properly includable in the costs of decommissioning. (PUC §8322(g), as added by Stats 1988, Ch 1560, Sec 5)

Those amendments also directed the Commission to allow recovery in rates of costs associated with finding comparable alternative employment opportunities for those employees. (Section 8330 of the PUC Code, as added by Stats 1988, Ch 1560, Sec 5.)

These amendments, therefore, provide further support for PG&E’s position that its decommissioning cost estimate should be increased to reflect employee termination costs.

³ PG&E’s estimate of \$135 million is based on a pro-rating of SCE’s \$180 million estimate, to reflect the relative size of the SONGS/Diablo Canyon workforce. The Commission could have taken official notice of the relative size of the workforces through public documents. As with other uncertain projections and assumptions, this estimate could be updated in the next NDCTP.

4. The Commission may make upward adjustments in decommissioning cost estimates from those presented in the utility's original filing

DRA's assessment of Commission policy with regards to making upward cost adjustments errs because it evaluates decommissioning funding as providing a benefit to the utility, when in reality it provides a benefit to future customers who would otherwise be saddled with the future costs of decommissioning. There should be no dispute that prudently incurred decommissioning costs are recoverable from customers. The only question is from whom. The Commission has long recognized this distinction and it is the reason why the Commission in the past has adjusted utility assumptions in ways that would increase decommissioning funding, after hearings are completed, as compared to assumptions originally proposed by the utility. Before turning to Commission precedent that has modified the utility's original assumptions, so as to increase funding, these reply comments first turn to an overall review of past decommissioning precedent.

4.1 The Commission has established assurance as its most important funding objective and has expressed a strong preference towards ensuring that the decommissioning burdens are appropriately placed on the ratepayers benefiting from the related power generation.

The Commission has long endorsed policies that seek to place the burden of future decommissioning costs, including an appropriate "assurance" element, on customers during the period that the nuclear plant is operable. Recognizing that assumptions for funding are inherently uncertain, the Commission also has repeatedly stated that it would err on the conservative (high funding) side. While PG&E recognizes that the Commission tempers this "conservatism" by a desire to maintain reasonable rates and to not confer an unjustified windfall on future customers, the Commission's generally conservative approach towards funding, as described below, also supports the Settlement outcome, especially since there has been virtually no decommissioning funding for Diablo Canyon for the last six years.

4.1.1 Recognizing uncertainties in decommissioning funding and estimation, OII 86 established Commission policy favoring assurance and an appropriate matching of decommissioning costs with associated power benefits.

The Commission established its policy towards decommissioning funding in a generic investigation completed in 1983 (OII 86: D. 83-04-013, 11 CPUC 2d 115). Several important determinations in that seminal decision pertain to the present funding issues.

First, the Commission established that assurance was the most important criteria in establishing a funding mechanism.

Finding of Fact No. 5 states:

The most important criterion for judging the adequacy of a financing mechanism is the assurance which the method provides that the funds collected will be available and sufficient to cover the cost of decommissioning. (11 CPUC 2d 115,141.)

Second, the Commission established an equity goal to charge ratepayers at any given time in relation to the net benefits they were receiving. In Finding of Fact No. 7, the Commission stated:

The decommissioning financing mechanism should be designed to ensure equitable treatment of ratepayers over time, considering the benefits, costs, and uncertainties of nuclear power plant operation. (Id.)

Finally, the Commission recognized the uncertainty in estimating decommissioning and the importance of flexibility. The Commission stated in Finding of Fact No. 6:

Because there are inherent uncertainties in estimating future decommissioning cost, adaptability of a financing mechanism the technical, regulatory and economic changes is critical. (Id.)

With these considerations in mind, the Commission established an external fund based on a level nominal annuity (i.e., a level annuity in nominal dollars which combined

with projected earnings on the fund would cover the ultimate cost of decommissioning). The Commission anticipated that by levelizing the annuity, the real cost to ratepayers of the annual payment would decline (in real terms) over time, and in so doing, would provide some of the insurance element that the Commission was seeking, should there be pre-mature shut-down. (Id.)

4.1.2 The Nuclear Facility Decommissioning Act of 1985 (Decommissioning Act) endorsed the policy objectives set forth by the Commission in OII 86 .

The Decommissioning Act endorsed Commission policies relating to assurance, flexibility, and equity, as provided in OII 86. It lists “assurance” as the first policy to be considered by the Commission in establishing a comprehensive framework for decommissioning. Pub. Util. Code §8322(f)(1). It also provides that payments to the fund should be structured so that “electric customers ... are treated equitably over time....” Pub. Util. Code §8322(f)(2). As the author of the law explained:

It is a fact of life that California utilities made a significant commitment to nuclear generation many years ago. The most responsible policy is to see that those who use the electricity pay their fair share of the reasonable costs, so that future generations are not saddled with the cumulative effects of these decisions. (Letter dated August 30, 1985, from Assemblywoman Gwen Moore to Governor George Deukmejian, recommending enactment).

Pub. Util. Code §8325(c) of the Act further provides that the Commission shall authorize the utility to collect sufficient revenues and rates for the utility to make the *maximum* contribution to the fund that is allowable as a deduction pursuant to §486A of the Internal Revenue Code. Given the inherent uncertainties in cost and funding assumptions, this latter provision, along with the expressed views of the author of the Act, strongly suggest a legislative intent (consistent with that of the Commission) to fund on a conservative basis (i.e., erring on the high side).

4.1.3 The Commission in subsequent decommissioning decisions has recognized the inherent uncertainty in cost and other funding assumptions and has expressed a general policy to be conservative ---- i.e., to err on the high end of funding.

Beginning in its first decommissioning decision involving Diablo Canyon (D. 87-03-029), the Commission established a policy seeking to provide equity among present and future ratepayers (“inter-temporal” equity) by using conservative assumptions. As already noted in Section 3.1.2, the Commission adopted funding of \$53 million per year in that first proceeding, recognizing uncertainties in assumptions and the need to establish a reserve in the case of premature decommissioning. (FOF 16, Id, p.22.)

In the second decision reviewing Diablo Canyon funding, (D.95-12-055, the “1996 GRC”), the Commission continued this approach of using conservative assumptions to reflect uncertainties. It stated:

Forecasts of economic activity and costs that out far into the future are always subject to substantial error. (63 CPUC 2d 570,612)

That decision stated the following:

In setting an annual nuclear decommissioning revenue requirement, our objective is to provide some insurance against the circumstance which would require significant rate increases in the future to retire a plant that has served an earlier generation of users. (Id., p.613.)

Again in Decision 00-02-046, 4 CPUC 3d 315 (the “1999 GRC”), the Commission repeated its observation that forecasting future decommissioning costs is both imprecise and speculative, and concurred with PG&E that the Commission should continue a conservative approach to funding. (Id., p.484.) The Commission noted the speculative nature of forecasts many years into the future and found that an annual payment to the trusts was appropriate given the continuing operation of Diablo Canyon for the benefit and convenience of ratepayers. (FOF 268 and 272, Id., p.549 CPUC 3d 315.) The Commission also found:

Current ratepayers are receiving the benefit of operation and output from the Diablo Canyon nuclear power plant; this operation and output causes continuing contamination of facilities and creation of LLRW that must be disposed of after the plant is shut down. (FOF 271, Surpa., p. 549)

In the most recently completed NDCTP, the Commission maintained its conservative approach in addressing uncertainty in cost assumptions. PG&E had initially requested approximately \$9.5 million of revenue requirements for Diablo Canyon, beginning in 2007. (D. 07-01-003., *mimeo*, p.5.) As a result of a settlement with TURN (and DRA), however, PG&E's request was again reduced – essentially to zero (the ultimate funding was \$1.3 million per year). This \$1.3 million was included in rates for the years 2007, 2008 and 2009. Significantly, the Commission reviewed two elements of the decommissioning cost studies that have been placed in dispute by Fielder: LLRW rates and contingency.

As to LLRW, the Commission stated:

We know DRA's rate is too low. We know PG&E's rate is for a service that will not be available. Fielder's proposed rates are also speculative. Our obligation is to equitably collect sufficient monies over the plant service lives to adequately fund competently managed trust for reasonably managed and a well planned decommissioning of nuclear plants when they are retired from service. (*mimeo* p.26)

The Commission then reluctantly adopted the settlement but directed that:

For the next proceeding . . . all parties [should] conduct a thorough and complete research and analysis, and then air on the conservative (high estimate) side, when forecasting way storage costs. (*mimeo* p. 27)

As to contingency, the Commission recognized that for Diablo the adopted contingency had been declining from a high of 50 percent in 1987 to 40 percent in 1995 and to 35 percent in the 2007 NDCTP. Again, it reluctantly accepted the settlement. However, as it did with LLRW, the Commission then directed the parties to “conduct a

thorough and complete research analysis, and then err on the conservative (high estimate) side, when forecasting a contingency factor.” *Supra.*, *mimeo* p. 28.

4.2 Contrary to DRA’s claims, the Commission has changed utility assumptions (from those originally proposed by the utility) so that decommissioning funding may be increased

In PG&E’s first decommissioning decision (D. 87-03-029), PG&E proposed that a 25% contingency be applied to the Diablo Canyon cost estimate. The Redwood Alliance, and their witness, proposed a 100% contingency. The Commission, after briefing where PG&E opposed the increase, adopted a 50% contingency, substantially greater than the 25% contingency that PG&E had requested. (See FOF 11 and 12, *Ibid.*).

In Decisions 03-10-014 and 03-10-015, the first coordinated NDCTP proceeding, the Commission similarly increased funding assumptions, beyond those proposed in the utility applications. As to burial costs (LLRW), SCE proposed \$87 and \$72.60 per cubic foot for Palo Verde and SONGS respectively (*mimeo*, p. 21), while PG&E estimated \$404 per cubic foot. The Commission adopted a common rate of \$200 per square foot, substantially increasing SCE’s decommissioning cost estimates.

Finally, in Decision 07-01-003, the Commission carefully considered altering PG&E’s settlement with TURN and DRA to increase the revenue requirement to reflect higher contingency factors and burial costs. Both the burial costs that were being considered as well as the contingency factors were higher than in PG&E’s application (*mimeo*, pp. 25-28). While the Commission ultimately decided not to “piecemeal the settlement” it directed the parties to complete thorough research and analysis on both issues and to err on the conservative side. The decision leaves no doubt that the Commission felt it was free to make upward adjustments to the utilities’ cost estimates.

All of these decisions should come as no surprise, as the Commission has emphasized assurance and equity among customers over time, in addition to keeping

rates low. (See discussion above). If the record evidence supports changing assumptions from those originally proposed the Commission would do so.

Such adjustments (whether downward or upward) are also consistent with the underlying premise for having a consolidated NDCTP proceeding in the first place. As noted above the Commission rejected PG&E's request to determine decommissioning costs in its general rate case, noting common issues as rates of return, escalation rates, low level radioactive waste disposal costs and contingency factors. (Decision 05-05-028, p. 2.) That decision noted the benefits of providing for consistency of assumptions across utilities --- a consistency that especially would support the finding that some level of termination costs should be included in PG&E's decommissioning costs. Even for contingency rates, where "the adopted values were not the same across the utilities," the Commission noted "they were set in a consistent manner" (i.e., by comparing the relative detail in the studies and the relative levels of risk that the studies might be too low). It stands to reason that, given the separate applications of the utilities, and the objective of the Commission in the consolidated proceeding to provide 'consistency,' there will adjustments from the utility's original assumptions, based on the "lessons learned" from comparing the utilities' funding approaches during the course of the proceeding.

5. The proceeding sections provide adequate support for the Commission to reject all of DRA's remaining allegations

In addition to the claims addressed above, DRA's claims raise a number of other objections that either have been fully answered or are otherwise without merit.

For example, DRA devotes a portion of its comments to objecting to the "Black Box" nature of the \$9 million per year Diablo Canyon funding settlement outcome. (DRA Comments, pp. 15-16.) DRA cites Commission concerns about transparency in such "black box" settlements, as such "settlements are secretive in nature and their

underlying assumptions are not disclosed.” (DRA Comments, p. 16.) Here, however, those concerns are misguided.

First, there is specific Commission precedent for adopting black box decommissioning funding settlements, such as the one proposed. For example, in D99-06-057, a decommissioning Settlement involving SCE and SDG&E was described as follows:

Under the terms of the Settlement, Proponents agreed to annual revenue requirements of \$25 million and \$5 million for SCE and SDG&E respectively. Proponents settled on these values. They did not settle on specific underlying assumptions. (mimeo, p. 19)

Second, and more importantly, the basis for arriving on a settlement number has been fully supported and explained. As shown in the table presented at the end of Section 2, PG&E would have been entitled to around \$5.5 million in annual funding if the assumptions presented in its Application had been used. If PG&E had prevailed on the two major adjustments it is proposing to its cost estimate--- to increase the contingency to 35% and to increase the total cost estimate by \$135 million to reflect termination costs --- the contribution would have been around \$29 million per year. These alternative funding scenarios, together with the factual and legal analysis contained herein, provide a transparent explanation for how litigants could have settled on the \$9 million funding amount

For the same reason, PG&E has also addressed DRA’s claims “there was no fair and reasonable give and take between PG&E and TURN with regards to the extra \$9 million” and that “the only benefit that TURN derives from the settlement is the proposed board of consultants.” (DRA Comments, p. 12.) As noted above, PG&E had strong arguments based on prior precedent that it should have received more than \$9 million on this item standing alone, so there was a dollar compromise. Furthermore, Commission precedent requires no such monetary balancing in settlements, only that the overall settlement fairly balances the interests of the parties. By ably representing customers,

and achieving important Commission objectives to provide consistency of approaches towards decommissioning cost estimates, TURN has fulfilled this balancing.

DRA also claims that PG&E is ignoring Decision 00-02-046, by disregarding the increase in the market value of the funds from the time of the application through the end of 2009. (DRA Comments, p. 13.) However, PG&E is not ignoring that increase, as the numbers presented in the table at the end of Section 2 reflect the increased market value of the funds at year-end 2009. PG&E is saying that even with the increase in end-of-the-year fund balances, the record supports the Settlement outcome based on the argument that a 35% contingency should have been maintained for Diablo Canyon and that decommissioning costs should have been adjusted upward to recognize employee termination costs.

Additionally, DRA cites D. 02-12-064 as a decision which declined to adopt “settlement provisions that did not rely on record evidence. (DRA Comments, p. 13.) There the settlement adopted provisions from reports that were not in evidence. (DRA Comments, p. 14.) Here, PG&E and TURN do not propose adopting any provisions from such a report. Rather, PG&E’s entire claim for funding is based on material that is in the record and that was discussed extensively in hearings, as the foregoing sections have demonstrated.

Similarly misguided, is DRA’s citation of D. 06-01-024, which rejected opening new issues after the record has closed. (DRA Comments, pp. 14-15.) The difference in SCE’s and PG&E’s treatment of termination costs was specifically addressed during discovery and the hearings, as was the possible disconnect between the Commission’s directions regarding contingency and Mr. Rod’s interpretation. Moreover, the issue of contingency was specifically made an issue in the proceeding by Intervenor Fielder.

DRA’s final argument – that PG&E’s funding violates PUC Code § 8322 --- essentially repeats its prior claims that “PG&E does not justify why some level of funding is needed” and that “the trusts are already funded.” (DRA Comments, pp. 16-

17.) However, PG&E has clearly shown why additional funding is required. Employee termination costs should be included in decommissioning funding for both PG&E and SCE. In addition, given Commission guidance from the last NDCTP, it is appropriate that PG&E retain its 35% contingency for Diablo Canyon.

6. The Settlement Outcome adopting a 7.5% escalation rate for LLRW burial costs is within the range of plausible litigation outcomes.

The DRA comments raise one last concern directed specifically at the Settlement outcome involving PG&E: DRA claims that PG&E’s use of a 7.5% burial rate “is improper.” (See DRA Comments, pp. 26-27.)

PG&E’s principal answer to this concern is that this litigation risk was considered as part of the trade-offs in reaching an overall settlement on both the specific dollar outcome for Diablo Canyon, as well as modeling adjustments for Humboldt.

If the Commission were to adjust assumptions (whether burial costs or otherwise) to reach a different result for Diablo Canyon than the Settlement outcome of \$9 million, it would in effect be rejecting the Settlement. Because the basis for settling on a \$9 million dollar amount has been fully explained above, and relates primarily to considerations involving contingency factors and employee termination costs, the burial cost escalation rate cannot be considered in isolation. Therefore, PG&E perceives this section of DRA’s Comments burial costs to be directed primarily at Humboldt modeling, which, under the Settlement, would determine funding based on the assumptions specified in the Settlement.

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As to the Humboldt settlement, our modeling reveals that based on the assumptions in the PG&E Application, updated to 2009 year end balances, the annual contribution to the funds would have been around \$13.8 million.⁴ PG&E agreed as part of the Settlement to adjust Humboldt funding using liquidation balances, five year ramp downs, and cost escalation assumptions asserted by TURN, even though TURN had not technically raised these issues with respect to Humboldt. This results, based on our modeling, in an approximately \$13.6 million in annual funding - a \$200,000 per year reduction. If PG&E had also applied a 6.7% burial escalation rate, this funding would have been reduced to around \$13 million per year.

Beyond being a relatively minor timing issue that should not be disturbed as part of an overall Settlement outcome (note that Humboldt is currently being decommissioned and costs that are not collected in this NDCTP are likely to be collected in the next one), the Settlement outcome of a 7.5% LLRW is well within the range of plausible litigation outcomes. While SCE did complete a study, and that study showed 6.93% as the mean, it also showed that there was a wide dispersion of data (See Tr.323-362, SCE/Hunt). Hunt also stated that this was a significant driver in lowering SCE's revenue requirements, both because of the volume of LLRW and the timing of its removal at the end of decommissioning (See Tr.323:28-336:6, SCE/Hunt).

PG&E's expert testified that the Commission had adopted a 7.5% rate for PG&E since D. 00-02-046 and that there had been no "break through" evidence supporting a lowering of the escalation rate, especially given the Commission's direction in the last NDCTP to "err on the conservative side" with respect to LLRW burial rates. Exh. PG&E-4, pp. 1-2 to 1-3. The 7.5% escalation is within the range of escalation rates recently experienced by Atlantic and Non-Atlantic compact members. (See PG&E Exh.-4, p. 1-2, L22-2.)

⁴ Note that this contribution is being made to the non-qualified trust so that a tax "gross-up" will be added to the corresponding revenue requirement.

TURN's expert discussed various scenarios, including the unavailability of burial sites, that could drive up costs, including the fact that California has not provided for a site (See Tr. 636:14-641:21, TURN/Lacy). He noted the only facility currently open to California generators was in Clive, Utah, and that the only LLRW waste that could be accepted there was the lowest level waste --- Class A. (Tr. 641:2-17, TURN/Lacy.)

In view of the foregoing the Commission should not "piecemeal" the Settlement by adjusting the Settlement outcome of a 7.5% burial escalation rate for Humboldt. While, given the uncertainties in making projections of escalation rates, the LLRW 7.5% escalation rate is clearly supportable on a stand alone basis as a "plausible litigation outcome," more importantly, that rate is part of an overall settlement. The Commission should follow its admonition in the last case --- "[w]e cannot isolate a [single] element within the settlement—and if we try, we would thereby abrogate the other parties' tradeoffs within the settlement (D. 07-01-003, mimeo at p. 26)" --- and not disturb this Settlement outcome.

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7. CONCLUSION

For the all the reasons stated above, including the reasoning summarized in Section 1 above, the Commission should adopt the Settlement without revision.

Respectfully Submitted,

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February 3, 2010

For
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