



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

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Application of Pacific Gas and Electric
Company for Approval to Recover the Costs
Associated with Renewal of the Diablo
Canyon Power Plant Operating Licenses.

Application No. 10-01-022

(U 39 E)

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E) MOTION TO STRIKE
"REBUTTAL TESTIMONY OF ROCHELLE BECKER REPRESENTING THE
ALLIANCE FOR NUCLEAR RESPONSIBILITY, SIERRA CLUB, CALPIRG
AND ENVIRONMENT CALIFORNIA RESEARCH AND POLICY CENTER"**

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Dated: October 11, 2010

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

Application of Pacific Gas and Electric
Company to Recover the Costs Associated
with Renewal of the Diablo Canyon Power
Plant Operating Licenses.

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Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission (“CPUC” or “Commission”), Pacific Gas and Electric Company (PG&E) moves to strike the “Rebuttal Testimony of Rochelle Becker on Behalf of the Alliance for Nuclear Responsibility, Sierra Club, CALPIRG and Environment California Research and Policy Center” (referred to as “A4NR Document”) on the grounds that the testimony is improper rebuttal, is outside the scope of this proceeding and is too speculative to be considered by the Commission.

I. THE COMMISSION SHOULD STRIKE A4NR’S TESTIMONY

A. The Commission Should Strike the A4NR Document as Improper Rebuttal Testimony.

The revised procedural schedule for this proceeding called for intervenor direct testimony to be filed in this case on August 17, 2010 and for rebuttal testimony to be filed on September 17, 2010. A4NR did not file any testimony on August 17, 2010, the date for intervenor testimony. Instead, on September 17, 2010, A4NR made its first

submission. The document is called “rebuttal” testimony, but it is not. In fact, the document is not testimony at all; it is a pleading. No statement of qualifications was submitted indicating the expertise of the witness to testify to the matters addressed in the document. In fact, the A4NR Document was signed as a pleading rather than sponsored as testimony, with the last page indicating that it was “Respectfully submitted” by Rochelle Becker.

Even assuming the document is testimony, rather than a pleading, it should have been filed as direct testimony addressing an issue identified in the scoping memo issued by the Commission, “should funding for PGE’s license renewal application be resolved before the seismic studies recommended by the CEC are completed,” (Assigned Commissioner’s Scoping Memo and Ruling at p. 2) and it should have been filed on August 17, 2010, along with other intervenor testimony, allowing PG&E an opportunity to respond to its points in rebuttal testimony.

Accordingly, the Commission should strike the A4NR document as improper rebuttal testimony.

B. The Commission Should Strike Portions of the A4NR Document As Outside the Scope of this Proceeding.

Even were the Commission to allow the pleading filed by A4NR to be “deemed” to be testimony, and even were the Commission to ignore the fact that the “testimony” was filed one month late, the A4NR document (at pp. 3-13) addresses issues that are outside the scope of this proceeding. The Assigned Commissioner’s Scoping Memo and Ruling dated June 23, 2010, included within the scope of the issues to be addressed in this proceeding whether funding for PG&E’s license renewal application should be resolved before the seismic studies recommended by the CEC are completed. (Scoping Memo, at 2.) Other than what can only be described as a generalized warning to the

Commission that it should not fund PG&E's license renewal application, A4NR's testimony does not address this issue.

First, the A4NR Document seems to rely on the fact that certain seismic issues have been raised in the context of the Nuclear Regulatory Commission (NRC) and the California Coastal Commission (Coastal Commission) review of the federal license renewal application to support its position that this Commission should not authorize funding for PG&E's federal license renewal application. The fact that these issues have been raised and will be addressed by the NRC and the Coastal Commission in the context of the federal application is irrelevant to the Commission's consideration of whether PG&E's customers should fund the federal license renewal application process itself. The issues identified by the NRC and the Coastal Commission will be addressed by those agencies and the ultimate resolution of those issues by those agencies is irrelevant to the decision before the Commission in this Application. Accordingly, the Commission should strike pp. 3-6 of the A4 NR document.

Second, the A4NR Document opines that one of the studies that PG&E completed in response to the recommendation of the CEC, the "lessons learned" study addressing the impact of a large earthquake on the Kashiwazaki-Kariwa Nuclear Power Station (KKNPS) in Japan, is inadequate. (A4NR Document at pp. 6-11) Again, the adequacy of PG&E's KKNPS lessons learned study is irrelevant to the Commission's consideration of whether PG&E's customers should fund the license renewal application prior to completion of the seismic studies recommended by the CEC. The very study referenced is one that was recommended by the CEC and is complete.

Rochelle Becker's opinion and speculation regarding the adequacy of the study is simply not relevant to the Commission's decision on this application. "While it is true that evidence in administrative hearings is generally not subject to the restrictive rules that govern admission in trials, it must be both 'relevant and reliable.'" *Fisch v. Garrapata Water Co., Inc.*, No. 01-04-059, 2001 Cal. PUC LEXIS 413 at *101-102 (May

14, 2001) (finding no adverse impacts on property values where the only evidence to the contrary consisted mostly of speculation). Ms. Becker's opinions regarding the adequacy of the study are neither relevant nor reliable. Accordingly, the Commission should strike pp. 6-11 of the A4NR Document.

Third, the A4NR Document provides its version of the history of Diablo Canyon as part of what can only be characterized as a rhetorical scolding of the Commission's prior decisions. The legislative dialogue presented is a public document. Indeed, A4NR has already submitted a number of documents addressing the history of Diablo Canyon in *ex parte* filings, all of which can be referenced, if necessary, by the Commission. There is simply no factual testimony presented here; this portion of the A4NR document is solely a pleading. It is not proper testimony and should be stricken.

The Commission has at its disposal the public documents A4NR selectively references, none of which addresses the issue before the Commission today – which is whether it is in the best interests of PG&E's customers for the Commission to authorize for recovery in rates the cost of pursuing the federal and state approvals necessary to operate Diablo Canyon for an additional 20 years. Accordingly, the Commission should strike pp. 11-13 of the A4NR document.

II. CONCLUSION

The only question before the Commission in PG&E's application is whether it is cost effective and in the best interests of PG&E's customers to fund in rates the cost of pursuing the federal and state processes necessary to preserve the option to operate Diablo Canyon for an additional 20 years beyond the current license periods. PG&E has presented overwhelming evidence that it is in the best interests of its customers to retain the ability to operate this low-cost, carbon-free generation resource. Nothing in the A4NR

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department, 77 Beale Street - B30A, San Francisco, CA 94105.

I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On the 11th day of October, 2010, I served a true copy of:

**PACIFIC GAS AND ELECTRIC COMPANY’S (U 39 E) MOTION TO STRIKE
“REBUTTAL TESTIMONY OF ROCHELLE BECKER REPRESENTING THE
ALLIANCE FOR NUCLEAR RESPONSIBILITY, SIERRA CLUB, CALPIRG
AND ENVIRONMENT CALIFORNIA RESEARCH AND POLICY CENTER”**

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for A.10-01-022.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 11th day of October, 2010 at San Francisco, California.

/s/
DONNA LEE

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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CPUC DOCKET NO. A1001022

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