

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**12-21-11
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December 21, 2011

Agenda ID #10938
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 10-01-022.

This is the proposed decision of Administrative Law Judge (ALJ) Robert Barnett. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Robert Barnett at rab@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC:lil

Attachment

Decision **PROPOSED DECISION OF ALJ BARNETT** (Mailed 12/21/2011)

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. (U39E)

Application 10-01-022
(Filed January 29, 2010)

- Mark D. Patrizio and Jennifer K. Post, Attorneys at Law for Pacific Gas and Electric Company, Applicant.
- Rashid A. Rashid, Attorney at Law, for the Division of Ratepayer Advocates, Protestant.
- Mathew Freedman, Attorney at Law, for The Utility Reform Network, Protestant.
- Rochelle Becker, for the Alliance for Nuclear Responsibility, Sierra Club, Cal PIRG and the Environment Research and Policy Center, Protestant.
- Stephan C. Volker, Attorney at Law, for CALifornians for Renewable Energy, Inc., Protestant.

**DECISION GRANTING MOTION TO DISMISS
THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY**

Summary

This decision grants a motion to dismiss this application without prejudice.

Background

In this application Pacific Gas and Electric Company (PG&E) had requested that the Commission find that it is cost effective and in the best interest of PG&E’s customers to preserve the option to operate the Diablo Canyon

Nuclear Power Plant (Diablo Canyon) for an additional 20 years beyond the expiration of the current operating licenses for Units 1 and 2, which are 2024 and 2025, respectively. In turn, PG&E requests authority to recover in rates the costs to obtain the state and federal approvals related to renewal of the Diablo Canyon operating licenses (the License Renewal project). PG&E estimates the total cost of the License Renewal project at \$85 million.

A prehearing conference was held on April 14, 2010; an evidentiary hearing was set for October 11, 2010. Following discovery and the filing by interested parties of testimony, PG&E, Division of Ratepayer Advocates (DRA), and The Utility Reform Network (TURN) reached a settlement in principle of all issues in this proceeding and notified the Commission and parties of the settlement. In light of that proposed settlement, the previously scheduled hearing on the application did not go forward on October 11, 2010. Instead, on November 16, 2010, PG&E, DRA, and TURN filed a joint motion seeking approval of the settlement. A hearing on the proposed settlement was set for April 13, 2011.

While the parties were preparing for the April hearing on the settlement, a massive earthquake and tsunami hit Japan creating a crisis at the Fukushima Dai-ichi nuclear power plant. On March 16, 2011, Administrative Law Judge (ALJ) Barnett issued his "Ruling Taking Hearing Off Calendar," "to be reset on motion of the parties." On April 14, 2011, CALifornians for Renewable Energy, Inc. (CARE) filed a motion to dismiss PG&E's application. PG&E filed its opposition to CARE's motion on April 29, 2011. A hearing on the motion was set for July 7, 2011.

On June 9, 2011, PG&E and TURN (the Joint Parties) requested that the Commission suspend the proceedings in this docket until PG&E has completed

the seismic studies for the Diablo Canyon. When the seismic studies are completed and submitted to Nuclear Regulatory Commission (NRC), the Joint Parties propose that PG&E file a motion to restart the proceedings and schedule a prehearing conference to evaluate next steps. DRA does not oppose the motion.

The Alliance for Nuclear Responsibility, Sierra Club, CALPIRG and Environment California Research and Policy Center (collectively A4NR) request the Commission to reject the motion of PG&E and TURN to suspend proceedings and grant the motion of CARE to dismiss the application.

Motion to Suspend Proceedings

In response to concerns about the seismic safety characteristics of Diablo Canyon, PG&E has asked the NRC to delay the final issuance of the plant's license renewal until seismic studies in the area are completed and the results are reported to the NRC. On May 31, 2011, the NRC agreed with PG&E's request, providing a revised license renewal schedule that will allow PG&E to finish these important studies and for the NRC to consider the results of the studies before final action is taken on the license renewal application.

Consistent with the steps PG&E has taken at the NRC, the Joint Parties request that the Commission suspend these proceedings until the seismic studies are completed and have been submitted to the NRC. They argue that administrative efficiency would be best served by simply suspending the proceedings as they currently stand until such time as the results of the permitted seismic studies are complete and have been submitted to NRC. At that time, PG&E will file a motion with the Commission to schedule a prehearing conference to restart the proceedings. The parties can then evaluate whether the settlement agreement should go forward or whether other steps, such as

submitted supplemental testimony or holding evidentiary hearings are appropriate. No party would be prejudiced by such a process and administrative efficiency would be served.

On June 7, 2011, the Atomic Safety and Licensing Board (ASLB) of the NRC issued their "Notice of a 52 Month Delay and Order Requiring Status Reports." The ASLB has effectively halted the license renewal process and ordered PG&E to submit monthly reports through at least the year 2015, in which they must anticipate their timetable:

1. To complete the 3-D seismic studies;
2. To issue the reports addressing the results of the 3-D seismic studies;
3. To obtain the Coastal Zone Management Act (CZMA) or coastal consistency certification(s); and
4. The dates of the significant interim milestones on the critical path(s) to the completion of the 3-D seismic studies, the CZMA certifications, and issuance of the reports concerning same. (US Nuclear Regulatory Commission, Atomic Safety and Licensing Board, Docket Nos. 50-275-LR and 50-323-LR, ASLBP No. 10-900-01-LR-BD01, June 7, 2011.)

PG&E expects the seismic studies to be completed and a report issued no later than December 2015, but any actual delay may be less than 52 months.

With a final seismic studies report expected in December 2015, there is no reason to keep this proceeding open. PG&E would have us suspend this proceeding until it completes its advanced seismic studies, but offers no substantial reason to suspend rather than close this proceeding. PG&E may reopen the proceeding on motion when the time is ripe for reopening.

Pub. Util. Code § 1701.5.(a)&(b) supports this outcome. Those sections provide as follows:

§ 1701.5.(a) Except as specified in subdivision (b), in a ratesetting or quasi-legislative case, the commission shall resolve the issues raised in the scoping memo within 18 months of the date the scoping memo is issued, unless the commission makes a written determination that the deadline cannot be met, including findings as to the reason, and issues an order extending the deadline. No single order may extend the deadline for more than 60 days.

§ 1701.5.(b) Notwithstanding subdivision (a), the commission may specify in a scoping memo a resolution date later than 18 months from the date the scoping memo is issued, if that scoping memo includes specific reasons for the necessity of a later date and the commissioner assigned to the case approves the date.

Pursuant to § 1701.5(a), the Commission issued Decision 11-12-010, extending the statutory deadline to resolve this proceeding to February 21, 2012 so as to address these pending motions that arise due to new developments. To suspend this proceeding would required us to issue an order every 60 days from February 21, 2012. This is an unnecessary burden with no practical purpose. A motion to reopen this proceeding serves the same purpose. We therefore grant the motion to dismiss.

Categorization and Need for Hearings

In Resolution ALJ 176-3249 dated February 25, 2010, the Commission preliminary categorized this application as Ratesetting and preliminarily determined that hearings were necessary. Because this decision addresses a motion to dismiss, a public hearing is not necessary.

Comments on Proposed Decision

The proposed decision of ALJ Barnett in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments

were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on ____, and reply comments were filed on ____ by ____.

Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Robert Barnett is the assigned ALJ in this proceeding.

Findings of Fact

1. PG&E's Diable Canyon Power Plant license renewal application is in suspense until at least December 2015.
2. It serves no useful purpose to keep this proceeding open.
3. PG&E may reopen this proceeding by motion.

Conclusion of Law

The motion to dismiss should be granted.

O R D E R

IT IS ORDERED that:

1. The motion to dismiss this application without prejudice is granted.
2. Pacific Gas and Electric Company is authorized to file a motion to reopen this application when it deems it proper.
3. No evidentiary hearings are necessary.
4. Application 10-01-022 is closed.

This order is effective today.

Dated _____, at San Francisco, California.