

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**ID #8659
RESOLUTION E-4258
July 30, 2009**

R E S O L U T I O N

Resolution E-4258. Pacific Gas and Electric Company's [PG&E] Nuclear Decommissioning Trust funds for Humboldt Bay Power Plant (HBPP) Unit 3. PROPOSED OUTCOME: (1) approves PG&E's request for Commission general authorization to gain access to Interim Disbursement funds from the Humboldt Bay Power Plant Unit 3 Nuclear Decommissioning Trusts (Trusts); (2) denies without prejudice PG&E's request seeking Commission approval of a modified procedure for reviewing and determining the reasonableness of HBPP Unit 3 decommissioning expenditures and refers this matter to A.09-04-007, PG&E's Nuclear Decommissioning Cost Triennial Proceeding. ESTIMATED COST: none.

By Advice Letter 3444-E filed on March 27, 2009.

SUMMARY

This Resolution approves PG&E's request for general authorization to gain access to Interim Disbursement funds from the Humboldt Bay Power Plant Unit 3 Nuclear Decommissioning Trusts (Trusts) so that it may comply with the requirements of the Trust. Interim Disbursements are limited to 90% of the forecast of decommissioning costs approved by the CPUC. The general authorization provided in this Resolution is not an approval of any specific disbursements from the Trust. Approval of specific, actual disbursements will be sought by PG&E via subsequent advice letters. This Resolution withholds approving a modified procedure for reviewing and determining the reasonableness of HBPP Unit 3 decommissioning expenditures and refers this matter to A.09-04-007, PG&E's 2009 Nuclear Decommissioning Cost Triennial Proceeding [NDCTP] for disposition.

BACKGROUND

PG&E intends to start full final decommissioning of HBPP Unit 3 in June, 2010.

HBPP Unit 3 is a 65 megawatt boiling water reactor that began commercial operations in 1963, ceased operation in 1976, and was placed in safe storage (SAFSTOR) custodial mode in 1988 to await final decommissioning. Under SAFSTOR the plant is in a 'mothball' condition with adequate assurance for public safety. In Decision (D).03-10-014 the Commission approved a decommissioning plan to commence decommissioning HBPP Unit 3 in 2006 (later extended to 2009). PG&E states in AL 3444-E that it intends to start decommissioning of HBPP Unit 3 in June 2010.

The decommissioning trust funds were established in D.85-12-022 to allow PG&E "to recover from its ratepayers the cost of decommissioning the prudently constructed plant at HBPP Unit 3."

The liability to decommission HBPP Unit 3 is funded by trust assets currently having a market value of \$316 million, as of March 31, 2009. This is the gross amount available, before taxes, to pay for nuclear decommissioning projects. Market value of the Trust funds has been shrinking recently due to the general decline in the value of U.S. stock markets. Funds for the Trusts were collected from PG&E's ratepayers from 1988 through 1991 by D.85-12-022 and from 2003 through 2009 by D.03-10-014 and D.07-01-003, which respectively approved PG&E's annual revenue requirements for its decommissioning trusts.

As noted earlier the Commission has previously approved early decommissioning of HBPP in D.03-10-014. The initial decommissioning cost estimate, in D.85-12-022, was \$42 million. The estimated cost has since been regularly revised and updated. PG&E's current estimate in A. 09-04-007 [its 2009 NDCTP] is about \$500 million.

PG&E requests general authorization to gain access to Interim Disbursement funds.

Amended Section 2.01[7] of the Trusts, on Interim Disbursements, states

...One year prior to the time decommissioning of a Plant... is estimated to begin, the Company shall apply for CPUC approval of the *estimated* cost and schedule for decommissioning each Plant...Upon

approval of the cost and schedule for decommissioning each Plant ...the CPUC shall authorize Interim Disbursements from the applicable Fund to pay Decommissioning Costs. Interim Disbursements shall be limited to 90% of the *forecast* of Decommissioning Costs approved by the CPUC. [Emphasis added].

HBPP Unit 3 has undergone early preliminary decommissioning activities to prepare it for the final phase of decommissioning. These preparatory works have been completed to date. PG&E has revised its anticipated starting date of full decommissioning to June 2010 and seeks general authorization for Interim Disbursements from the Trusts fund. PG&E is not seeking authorization for a *specific* disbursement from the Trusts at this time. It requests general authorization to gain access to Interim Disbursement funds to comply with Section 2.01[7] of the Trusts. According to PG&E, it will seek approval of specific funding requests through subsequent advice letters, and each such funding request will be within 90% of the latest approved forecast.

PG&E's NDCTP is the forum for approval of estimated decommissioning costs.

The 2009 NDCTP is currently underway with a decision expected in early 2010. In A. 09-04-007 PG&E introduces updated HBPP Unit 3 nuclear decommissioning cost studies for Commission review. PG&E states that the CPUC-approved costs will then provide the basis for determining the authorized amount of interim disbursements.

PG&E proposes a modified reasonableness review procedure for decommissioning costs associated with HBPP Unit 3.

In AL 3444-E, PG&E also requests that the Commission adopt a new procedure for review of HBPP Unit 3 decommissioning activities and costs. To date, PG&E's authorized expenditures on HBPP Unit 3 early decommissioning activities have been reviewed for reasonableness in the NDCTP, upon completion of each specific project. PG&E submits that this procedure should be modified for the HBPP Unit 3 final decommissioning stage.

PG&E specifically requests that if the scope of work and costs incurred for HBPP Unit 3 are within the cost estimate approved in the 2009 NDCTP, such costs and

associated activities will be presumed reasonable, without the need for subsequent review in an NDCTP.

PG&E's AL 3444-E was rejected, without prejudice, by the Energy Division.

In a disposition letter dated May 27, 2009, pursuant to Section 7.6.1 of GO 96-B, the Energy Division rejected PG&E's AL 3444-E on the grounds that an advice letter is not the proper vehicle to litigate its requests and that the requested reliefs were within the scope of the active 2009 NDCTP, A.09-04-007.

PG&E requests reconsideration of Energy Division's disposition of AL 3444-E.

On May 29, 2009, PG&E requested the Commission to review the Energy Division's disposition of its advice letter, pursuant to Rule 7.7.1 of General Order 96-B. PG&E specifically requested that the Commission adopt a resolution authorizing its first request [general authorization to access the Interim Disbursement funds from the Trusts] and move the second request [the approval of a modified procedure for reviewing the reasonableness of expenditures] to its 2009 NDCTP, A.09-04-007.

In its May 29 letter, PG&E further states its concern that delays in receiving authorization to start making interim disbursements would significantly impact its decommissioning activities and risk delays and cost increases. Finally, PG&E's letter clarifies its intent that its Interim Disbursement request in the instant advice letter is for 90% of decommissioning costs as actually approved in the 2005 NDCTP, D.07-01-003. Subsequent requests for interim disbursements, PG&E states, will be within 90% of the then-current CPUC-approved forecasts. In other words, as HBPP Unit 3's decommissioning costs are updated by the Commission in subsequent NDCTPs, PG&E's specific disbursement requests through subsequent advice letter filings would be within 90% of the latest approved decommissioning costs for HBPP Unit 3.

We will address these issues in the Discussion section.

NOTICE

Notice of AL 3444-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

Advice Letter 3444-E was timely protested by the law firm Fielder, Fielder & Fielder [Fielder] on April 7, 2009 and by the Division of Ratepayer Advocates [DRA] on April 16, 2009. PG&E responded to the Fielder protest on April 14, 2009 and that of the DRA on April 23, 2009. On April 20, 2009, Fielder filed a rebuttal to PG&E's reply to their protest letter. The rebuttal is contrary to General Order 96B, Section 7.4.3 that states, "The protestant may not reply to the utility's reply" and will be disregarded.

Southern California Edison Company [SCE] filed a clarification letter to expound on the reasonableness standard approved by the CPUC, in various Decisions, with regard to the San Onofre Nuclear Generating Station Unit 1 [SONGS 1] which PG&E references in its advice letter and the April 14, 2009 response to the Fielder protest.

Fielder states that PG&E's proposed method for reviewing and determining HBPP Unit 3 decommissioning expenditures will eliminate reasonableness reviews of decommissioning costs in the future.

PG&E requests that "if the scope of work and the actual costs for decommissioning projects are within the approved 2009 NDCTP cost estimates..., the costs and associated activities will be presumed reasonable, without the need for subsequent review in an NDCTP." PG&E asserts that this presumption of reasonableness standard will eliminate the need for unnecessary reasonableness reviews and serve as an efficient way of reviewing decommissioning expenditures.

Fielder finds the above request an invitation to eliminate reasonableness reviews of decommissioning costs and requests its rejection. Fielder states that the request conflicts with the Nuclear Facility Decommissioning Act of 1985 [the Act]. The Act was created to control decommissioning costs, and, limiting costs that ratepayers are responsible for paying to those which are reasonably and prudently incurred. [PUCODE Section 8322(b)]. Fielder states that the Act requires the Commission to conduct reasonableness reviews of decommissioning costs and only allows the Commission to authorize excess decommissioning costs that are reasonably and prudently incurred.

Fielder concludes that a procedural change that would eliminate reasonableness reviews so long as the cost is bounded by the utility's decommissioning *estimate* is unauthorized by the Act and should be denied.

DRA argues that the NDCTP is the place where decommissioning procedural mechanisms are litigated.

DRA states that the Commission has specifically identified the following function to be within the scope of NDCTP review, namely "to review and modify as necessary all ratemaking *mechanisms* applicable to nuclear decommissioning costs." [A.05-11-009, Scoping Memo, June 2002].

DRA argues that AL 3444-E requests a modification to the current reasonableness review procedure for HBPP Unit 3 which DRA believes is significant in that it asks the Commission to establish a ratemaking mechanism that involves reaching a conclusion on determining the reasonableness of decommissioning activities. Such modifications, according to DRA, have always been made during the course of the NDCTP *application* process and PG&E has not provided a compelling reason why this process should be streamlined in an advice letter.

DRA asserts that PG&E's request to modify a review process violates GO 96-B.

GO 96-B states that the advice letters should "neither be controversial nor raise important policy questions" [Section 5.1]. DRA states that PG&E's request to modify the current reasonableness review procedure is controversial and implicates an important policy question. DRA recommends the matter be resolved in a proceeding where evidentiary hearings and briefs are afforded to parties.

PG&E requests that its modified reasonableness review procedure for decommissioning costs associated with HBPP Unit 3 be deferred to its 2009 NDCTP.

PG&E initially rebutted both DRA's and Fielder's protests regarding its proposal for a modified reasonableness review procedure, but now stipulates that this issue be moved to its 2009 NDCTP.¹

¹ PG&E's Request for Review of Energy Division Disposition of Advice Letter 3444-E, dated May 29, 2009.

DRA initially argued that the issue of general authorization for Interim Disbursements should be deferred to PG&E's 2009 NDCTP, but now stipulates that it no longer opposes PG&E's request if certain findings are adopted by the Commission in this resolution.

DRA does not oppose PG&E's request for general authorization of Interim Disbursements if the following findings are adopted by the Commission:

- 1) Advice Letter 3444-E was filed to comply with the provisions of Section 2.01(7) of the HBPP Unit 3 Nuclear Decommissioning Trusts.
- 2) In Advice Letter 3444-E, PG&E is not requesting Commission authorization for any actual fund disbursements.
- 3) PG&E states that it will continue to make advice letter filings for all specific disbursements from the Trusts.

PG&E agrees with the findings.

DISCUSSION

PG&E's request for general authorization to access Interim Disbursement funds for HBPP Unit 3 is approved.

PG&E's request for general authorization to access Interim Disbursement funds for HBPP Unit 3 is intended primarily for PG&E to comply with Section 2.01[7] of the Trusts. PG&E clarifies that it does not seek specific authority for any actual fund disbursement, but will seek specific disbursements through advice letter filings to the Commission.

We approve PG&E's request for general authorization for Interim Disbursements as it appears that such an authorization by the Commission is necessary for PG&E to comply with specific provisions in the Trust. PG&E makes clear that it does not seek actual disbursements of any funds from the Trust via the instant advice letter, and none is provided via this resolution. The specific disbursements for decommissioning activities for HBPP Unit 3 shall be filed via advice letters as stipulated by PG&E and DRA. The general authorization provided through this resolution should not be interpreted by PG&E or any other party as an endorsement of any specific activities or costs as outlined in the

subsequent advice letters. The proposed activities proposed in those filings will undergo a careful review and evaluation before they are approved.

PG&E's proposal for modified reasonableness procedure for the review of decommissioning costs associated with HBPP Unit 3 should be addressed in its 2009 NDCTP [A.09-04-007].

We agree with DRA and Fielder that PG&E's proposal for a modified reasonableness procedure should be addressed in PG&E's 2009 NDCTP. Modifications to the existing method of determining reasonableness for decommissioning costs is inappropriate for an advice letter filing and should have the benefit of formal intervenor input that is afforded in a formal proceeding. Moreover, PG&E now supports moving this issue to its NDCTP, as indicated in its May 29, 2009 letter.

COMMENTS

Public Utilities Code section 311(g) (1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

FINDINGS

1. PG&E filed AL 3444-E on March 27, 2009 requesting general authorization for Interim Disbursement of funds from the Humboldt Bay Power Plant Unit 3 [HBPP Unit 3] Nuclear Decommissioning Trusts and approval of a method for review of decommissioning expenditures.
2. Advice Letter 3444-E was filed to comply with the provisions of Section 2.01(7) of the HBPP Unit 3 Nuclear Decommissioning Trusts.

3. In Advice Letter 3444-E, PG&E is not requesting Commission authorization for any actual fund disbursements.
4. HBPP Unit 3 is in a SAFSTOR custodial mode and is slated to begin decommissioning in June 2010.
5. D. 85-12-022 established the decommissioning trust funds to allow PG&E to recover from its ratepayers the cost of decommissioning the prudently constructed plant at HBPP Unit 3.
6. PG&E's proposed current estimate of the cost of decommissioning HBPP Unit 3 is about \$500 million; the market value of the trust funds as of March 31, 2009 is \$316 million.
7. Advice Letter 3444-E was timely protested by the law firm Fielder, Fielder & Fielder [Fielder] on April 7, 2009 and by the Division of Ratepayer Advocates [DRA] on April 16, 2009. PG&E responded to the Fielder protest on April 14, 2009 and that of the DRA on April 23, 2009.
8. Energy Division, by a disposition letter dated May 27, 2009, rejected AL 3444-E, without prejudice, recommending that the requests in the advice letter be adjudicated in the 2009 NDCTP, A.09-04-007.
9. PG&E replied to the disposition letter, on May 29, 2009, and modified its requests by asking for approval of the first issue [the interim disbursement from the HBPP Unit 3 Trusts] in a Resolution, and requesting that the second issue [the approval of a procedure for reviewing the reasonableness of expenditures] be deferred to its 2009 NDCTP.
10. The Nuclear Decommissioning Cost Triennial Proceeding [NDCTP] is where the Commission resolves issues relating to decommissioning trusts. A.09-04-007 is PG&E's 2009 NDCTP.
11. PG&E's request for general authorization to access Interim Disbursement funds for HBPP Unit 3 is approved so that it may comply with Section 2.01(7) of the HBPP Unit 3 Nuclear Decommissioning Trusts.

12. The general authorization for access to Interim Disbursement funds approved in this resolution is not an authorization for any actual or specific disbursement of funds.
13. PG&E will continue to make advice letter filings for all specific disbursements from the Trusts.
14. PG&E's proposal for a modified reasonableness procedure for the review of decommissioning costs associated with HBPP Unit 3 should be addressed in its 2009 NDCTP [A.09-04-007].

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company's [PG&E] request for general authorization for Interim Disbursements from the Humboldt Bay Power Plant Unit 3 (HBPP Unit 3) Nuclear Decommissioning Trusts is approved.
2. PG&E will seek specific disbursement from the Humboldt Bay Power Plant Unit 3 Nuclear Decommissioning Trusts via advice letter filings to the Commission.
3. A.09-04-007 will include in its scope PG&E's request seeking Commission approval of a modified procedure for reviewing and determining the reasonableness of HBPP Unit 3 decommissioning expenditures.
4. This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on July 30, 2009; the following Commissioners voting favorably thereon:

Paul Clanon
Executive Director

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



June 30, 2009

ID#8659
Resolution E-4258
July 30, 2009

TO: PARTIES TO PG&E ADVICE LETTER 3444-E

Enclosed is a draft Resolution E-4258 of Energy Division. It is in response to PG&E AL 3444-E and will appear on the agenda of July 30, 2009 Commission meeting. The Commission may vote on this Resolution at that time or may postpone a vote until a later meeting. When the Commission votes on a draft resolution, it may adopt all or part of it as written, amend or set it aside and prepare an alternative Resolution. Only when the Commission acts does the Resolution become binding on the parties.

All comments on the draft Resolution are due by July 17, 2009. Comments shall be served on parties as outlined below.

1. An original and two copies, along with a certificate of service to:
Honesto Gatchalian
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
2. Service List [see attached]
3. Massis Galestan
Energy Division
California Public Utilities Commission

505 Van Ness Avenue
San Francisco, CA 94102
Emil: mgm@cpuc.ca.gov

Comments shall be limited to five pages in length plus a subject index listing the recommended changes to the draft Resolution, a table of authorities, and an appendix setting forth the proposed findings and ordered paragraphs.

Comments shall focus on factual, legal, or technical errors in the proposed draft Resolution.

Replies to comments on the draft Resolution may be filed [i.e. received by the Energy Division] by July 24, 2009, and shall be limited to identifying misrepresentations of law or fact contained in the comments of other parties. Replies shall not exceed five pages in length and shall be filed and served as set forth above for comments.

Late submitted comments or replies will not be considered.

An accompanying declaration under penalty of perjury shall be submitted setting forth all the reasons for the late submission.

Please contact me at 415-703-1760 if you have any questions or need assistance.

Sincerely,

Massis Galestan
Energy Division
California Public Utilities Commission

Encl; Service List; Certificate of Service

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June 30, 2009

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CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of Draft Resolution E-4258 on all parties in these filings or their attorneys as shown on the attached list.

Dated June 30, 2009 at San Francisco, California.

Massis Galestan

NOTICE

Parties should notify the Energy Division, California Public Utilities Commission, 505 Van Ness Avenue, Room 4002, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the Resolution number on the service list on which your name appears.