



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Application of Pacific Gas and Electric Company)
For Approval of the Retirement of Diablo Canyon) Docket A.16-08-006
Power Plant, Implementation of the Joint Proposal) (Filed August 11, 2016)
And Recovery of Associated Costs Through)
Proposed Ratemaking Mechanisms)
(U-39-E))
_____)

Protest of the Alliance for Nuclear Responsibility

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Pursuant to Rules 1.4(a)(2) and 2.6 of the Commission’s Rules of Practice and Procedure, the Alliance for Nuclear Responsibility (“A4NR”) files this protest to the above-captioned application filed by Pacific Gas & Electric Company (“PG&E”). A4NR is a signatory to the *Joint Proposal* which is the subject of this application.¹ Above all else, A4NR strongly supports PG&E’s decision to retire the Diablo Canyon Nuclear Power Plant (“DCNPP”). Notwithstanding its support for the retirement of DCNPP and most of the provisions of the *Joint Proposal*, A4NR seeks the modification of the community impacts mitigation program as proposed by PG&E and opposes the rate relief requested by PG&E related to the recovery of PG&E’s costs of pursuing license extensions for the DCNPP units. A4NR’s opposition to the rate recovery of PG&E’s costs of pursuing the DCNPP license extensions causes A4NR to style this filing as a “protest,” although A4NR largely supports the application and the underlying *Joint Proposal*. In addition, A4NR takes no position on the procurement authorizations sought by PG&E in the instant application.

A. Introduction and Summary

A4NR is a nonprofit public benefit corporation incorporated and organized under the laws of the State of California and its principal place of business is located in Grover Beach, California. A4NR’s Executive Director is Rochelle Becker and a large portion of A4NR’s supporters are residential customers of PG&E. A4NR’s principal purpose is to educate the California public regarding alternative energy resources which are available to provide energy to California energy consumers. A4NR has long

¹ See *Application, Attachment A, “Joint Proposal of Pacific Gas and Electric Company, Friends of the Earth, Natural Resources Defense Council, Environment California, International Brotherhood of Electrical Workers Local 1245, Coalition of Utilities Employees and Alliance for Nuclear Responsibility to Retire Diablo Canyon Nuclear Power Plant at Expiration of the Current Operating Licenses and Replace It with a Portfolio of GHG Free Resources”*, dated June 20, 2016 (“*Joint Proposal*”).

advocated phasing out California's nuclear power generation and finding a long-term, permanent solution for the storage of highly radioactive waste materials produced by such generation. A4NR is authorized by its bylaws and supporters to participate in rate proceedings before the California Public Utilities Commission on these issues. A4NR's participation in such proceedings is directed towards assuring retail electric rates only reflect the prudent and reasonable costs of utility nuclear power operations and are otherwise just and reasonable. A4NR has intervened in numerous Commission proceedings in pursuit of these purposes.

As stated above, A4NR supports PG&E's decision to retire DCNPP Units 1 and 2 upon the expiration of their current operating licenses in 2024 and 2025, respectively.² Additionally, A4NR generally supports the replacement of DCNPP energy and capacity using resources that do not emit greenhouse gases. A4NR does not intend to take any position, however, on the merits of the specific three-tranche procurement process by which PG&E would replace DCNPP energy and capacity or the ratemaking mechanisms through which PG&E would be compensated for the costs of the replacement resources PG&E might procure.³

By the instant application, PG&E seeks the Commission's approval of DCNPP's retirement and the related contingent provisions of the *Joint Proposal*. In sum, A4NR intends to take the following positions on the specific authorities being requested in the application:

1. A4NR supports the employee retention and severance proposals;
2. A4NR supports the community impacts mitigation program, but will seek an extension of PG&E's obligation to continue existing emergency planning activities, including maintenance of the public warning sirens and funding of community and statewide emergency planning functions, for a period extending beyond the expiration of the DCNPP Part 50 operating licenses; and,
3. A4NR opposes the rate recovery of any costs related to PG&E's pursuit of federal and state license and permit extensions which would have allowed PG&E to operate DCNPP Units 1 and 2 beyond 2024 and 2025.

The reasoning behind A4NR's positions and the showing A4NR intends to make in support of its positions are set forth in greater detail below.

² The *Application* indicates DCNPP Unit 2 could be retired on December 31, 2024, in the event the State Water Resources Control Board does not grant PG&E's request to continue the use of marine waters for once-through cooling at Unit 2 beyond that date. See *Application*, at pp.14, 17; also, *Joint Proposal* at Section 6.2, pp.15 to 16.

³ Section 2.1 of the *Joint Proposal* indicated A4NR would take no position regarding the procurement of or ratemaking for replacement resources. See *Joint Proposal*, Section 2.1, at pp.4 to 5.

B. Nature of Protest and A4NR's Proposed Showing in Support of Its Protest

1. Employee Retention and Severance Program

A4NR supports PG&E's proposal to implement a DCNPP employee retention and severance program.⁴ Although dates certain have been set for the retirement of the DCNPP units, it is imperative that an experienced and qualified workforce remain in place through DCNPP's remaining operating life. This will help to ensure safe and reliable operation of the plant until the units are actually retired. At this point in time, A4NR does not intend to present its own independent showing regarding the need for the employee retention and severance program, but rather will rely on the evidence PG&E intends to submit regarding this program and file briefs in support of the program.

2. Community Impacts Mitigation Program

A4NR strongly supports PG&E's proposal to provide funding to San Luis Obispo County in order to mitigate the decline in the economic benefit DCNPP has historically provided to the local communities.⁵ This proposal is consistent with 2016 Senate Bill 968 (Monning) providing for an assessment of the impacts the retirement of DCNPP will have on state and local jurisdictions and, thereafter, the Commission's consideration of the manner in which adverse impacts can be ameliorated.⁶

As part of its community impacts mitigation program, PG&E is proposing "to continue existing emergency planning activities, including maintenance of the public warning sirens and the funding of community and state wide emergency planning functions until the termination of Diablo Canyon's 10 CFR Part 50 license, subject to CPUC approval and funding in decommissioning rates."⁷ PG&E's ongoing support of these activities is of critical and obvious importance to public safety: at present, PG&E provides some ninety percent (90%) of the funding for the County of San Luis Obispo Office of Emergency Services. The public warning systems and emergency planning functions funded through PG&E's proposed community impacts mitigation program will assure that local agencies with first-response and disaster-recovery responsibilities are properly alerted to and equipped to deal with events potentially leading to the release of radiologically hazardous materials both onsite and offsite, which in turn might pose threats to life

⁴ See *Application*, at pp.9 to 10; also, *Joint Proposal*, Section 3, at pp.9 to 10.

⁵ See *Application*, at pp.10 to 11; also, *Joint Proposal*, Section 4, at pp.10 to 11.

⁶ The bill was passed by both chambers of the State Legislature as an urgency measure and, as of the date and time of the filing of this Protest, was pending signature by the Governor.

⁷ *Joint Proposal*, Section 5.4.1, at pp.12-13; see also, *Application*, at p.11.

and property in the local area. A4NR agrees with PG&E's proposal to maintain these systems and functions beyond the cessation of DCNPP's power operations, continuing through DCNPP's decommissioning period.

The DCNPP Part 50 operating licenses were issued by the Nuclear Regulatory Commission ("NRC") and govern PG&E's operation of the DCNPP reactors. The licenses will be surrendered upon certification to and by the NRC that PG&E has complied with all of the requirements imposed under federal law governing the decommissioning of the plant and the radiological safety of the site post-decommissioning. But PG&E holds a separate NRC license for the DCNPP Independent Spent Fuel Storage Installation ("ISFSI"), which is comprised of the equipment and facilities used to store lethally radioactive fuel assemblies pending the removal of those assemblies to a permanent waste repository.⁸ A4NR is informed and believes the separate ISFSI license would allow PG&E to continue storing radiologically hazardous materials at the DCNPP site well beyond the time when the Part 50 license is surrendered. This leaves open the possibility that some event resulting in a catastrophic release of these materials could occur well beyond the time during which PG&E proposes to maintain the public warning system and fund the agencies with which PG&E coordinates local and state wide emergency planning functions. A4NR intends to submit evidence demonstrating it would be prudent and relatively low cost to continue PG&E's maintenance of the public warning system and funding of emergency planning functions until the later of (1) the surrender of the DCNPP Part 50 license or (2) the surrender of the DCNPP ISFSI license. The costs of A4NR's proposal would be funded as part of plant decommissioning and recovered through decommissioning rates in the same manner proposed by PG&E for other community impacts mitigation measures.

3. The Costs of License Extension

PG&E proposes to recover \$52.7 million of costs incurred in support of its pursuit of DCNPP license extensions beyond 2024-2025 through an eight-year amortization reflected in generation rates.⁹ A4NR protests the recovery of any of these costs on the following grounds.

a. The Regulatory History of License Renewal Costs

PG&E originally sought to recover "the costs to obtain the state and federal approvals related to renewal of the Diablo Canyon operating licenses" so as "to preserve the option to operate Diablo Canyon

⁸ See *Joint Proposal*, Section 6.4, at p.16.

⁹ See *Application*, pp.3, 13.

Power Plant for an additional 20 years beyond the expiration of the current operating licenses for Units 1 and 2” by special application filed with the Commission in 2010.¹⁰ Based on a projected benefit of between \$3.5 billion to \$85 billion, PG&E proposed to pursue the DCNPP license extensions at an estimated cost of \$85 million.¹¹

Although the Commission apparently anticipated that it would be intimately involved in the review of both the license renewal feasibility study results and the decision as to whether PG&E should seek a license renewal for DCNPP, the *Renewal Cost Application* was filed *after* PG&E had already filed its application with the Nuclear Regulatory Commission to extend the DCNPP operating licenses.¹² A4NR had warned the Commission that this would in fact happen: A4NR previously and specifically objected to the funding of the license renewal feasibility study on the ground that such funding would be used by PG&E as a *de facto* authorization pursuant to which the company would make its filing with the NRC, without any prior review by the Commission of the more important resource-planning decisions implicated by license renewal.¹³

During the pendency of the *Renewal Cost Application*, PG&E entered into a settlement with the Division of Ratepayer Advocates (“DRA”) and The Utility Reform Network (“TURN”).¹⁴ Although DRA and TURN had opposed the application on various grounds, including their substantial doubts as to the veracity

¹⁰ See *Application of Pacific Gas and Electric Company to Recover the Costs Associated with Renewal of the Diablo Canyon Power Plant Operating Licenses*, docketed as A.10-01-022, January 29, 2010 (“*Renewal Cost Application*”), at p.1. The *Renewal Cost Application* was filed at the direction of the Commission as provided in PG&E’s Test Year 2007 General Rate Case. The Commission’s rate case decision authorized PG&E to perform, and recover the \$17 million cost of, a “license renewal feasibility study” and directed PG&E thereafter to file an application addressing “whether license renewal is cost effective and in the best interest of ratepayers.” See *Opinion Authorizing Pacific Gas and Electric Company’s General Rate Case Revenue Requirement for 2007-2010*, Decision 07-03-044 in Application 05-12-002, *et al.* (“*PG&E Test Year 2007 General Rate Case*”), printed opinion at p.103. In reaching its conclusions with respect to the conduct and funding of the license renewal feasibility study, the Commission essentially agreed with PG&E that the study would set the stage for an early review, *i.e.*, in the PG&E 2010 general rate case and/or as part of the 2014 Long-Term Procurement Plan proceeding, of whether DCNPP should remain in the PG&E resource portfolio or be retired and replaced.

¹¹ *Ibid.*

¹² See *Renewal Cost Application*, at p.3, where PG&E states the NRC application was filed on November 23, 2009, following authorization by PG&E management to proceed. PG&E explained its hurry to file the NRC application as being prompted by a need to receive a final decision from the NRC by 2014. PG&E claimed this was important from a timing perspective because PG&E would need some time “to support energy planning decisions in the event the NRC denies PG&E’s license renewal application, requiring replacement of Diablo Canyon’s energy and capacity with alternate resources.” *Ibid.*

¹³ See *PG&E Test Year 2007 General Rate Case*, printed opinion at p.98.

¹⁴ See *Joint Motion of Pacific Gas and Electric Company, the Division of Ratepayer Advocates and The Utility Reform Network for Approval of Settlement Agreement*, Application 10-01-022, November 16, 2010 (“*Joint Motion re Settlement*”).

of PG&E's economic analysis of DCNPP's future value to consumers, the settlement proposed that PG&E should (1) proceed with the NRC license-renewal application and (2) record the costs related to license renewal, subject to (3) the provision of updated cost-effectiveness analyses and risk analyses as part of PG&E's next general rate case.¹⁵ The required analyses were intended to "assure" the Commission "that continued operation [of DCNPP] remains in the best interest of PG&E's customers."¹⁶ A4NR opposed the settlement on various grounds, including that PG&E had failed the preconditions set by the Commission in *PG&E Test Year 2007 General Rate Case*, which included the requirement that PG&E submit various information for Commission review *prior to filing for license renewal before the NRC*.¹⁷ A4NR further disputed whether the analyses required of PG&E under the settlement would be comprehensive since the settlement failed to mention the pending mitigation requirements expected under the State Water Resources Control Board's regulations limiting the use of marine waters for power plant cooling. A4NR also argued PG&E should be required, prior to being authorized to proceed with the DCNPP license extensions, to complete pending studies related to DCNPP's seismic setting and related safety and reliability concerns as required under newly enacted Public Resources Code Sections 25303(a)(8) and 25303(c).¹⁸

Shortly before the evidentiary hearings on the settlement were to be convened, the Tohoku seismic-tsunami event occurred, resulting in the catastrophic failure of the Fukushima Daiichi nuclear units, and the Commission was presented with competing motions as to how to proceed to disposition of the *Renewal Cost Application*. Two of the settling parties (PG&E and TURN) proposed suspending the matter until the completion of the ongoing seismic studies required by state law and, relatedly, under NRC schedule revisions for the pending license-renewal application.¹⁹ Those opposed to the settlement moved for an outright dismissal. In arguing for dismissal, A4NR noted that the need to complete the DCNPP seismic studies prior to the filing of any application with the NRC should have been apparent to PG&E long before the disastrous Fukushima Daiichi failures. As a result, A4NR questioned the prudence of the costs

¹⁵ *Id.*, at p.4

¹⁶ *Id.*, at p.6. The proposed three-party settlement also reflected a compromise on the costs to be recovered through rates, reducing PG&E's requested \$85 million estimate to \$80 million, with reasonableness reviews to be applied to any cost overruns. *Ibid.*

¹⁷ See *Comments of the Alliance for Nuclear (sic), Sierra Club, CalPIRG and Environment California Research and Policy Center Opposing the Settlement Agreement*, Application 10-01-022, December 14, 2010.

¹⁸ *Ibid.* See also, *Testimony of Rochelle Becker [etc.]*, Application 10-01-022, February 18, 2011.

¹⁹ The NRC by this time had suspended, at PG&E's request, PG&E's license-renewal application pending completion of the same seismic studies. See *Decision Granting Motion to Dismiss the Application of Pacific Gas and Electric Company*, Decision 12-02-004 in Application 10-01-022, February 1, 2012, printed opinion at p.3.

PG&E had incurred to date in the pursuit of license renewal and recommended the Commission bar the recovery of those costs through rates rather than proceed any further.²⁰ Because the time at which completion of the seismic studies was uncertain and hardly imminent, the Commission chose to dismiss the application, subject to a future motion by PG&E to reopen the proceeding “when the time is ripe.”²¹

b. The Legal Implications of the Foregoing Regulatory History

The foregoing history has several legal ramifications for PG&E’s request to recover its costs of pursuing the DCNPP license extensions. First, even to this day, PG&E has yet to comply with the Commission’s order in *PG&E Test Year 2007 General Rate Case*, viz., that PG&E should, upon completion of the license renewal feasibility study, demonstrate to the Commission “*whether license renewal is cost effective and in the best interest of ratepayers.*”²² While the Commission approved expenditures of \$17 million for the license-renewal feasibility study, this approval was limited by the terms of PG&E’s own characterization of that study as a precursor to further filings: the Commission’s approval clearly intended only to facilitate further regulatory oversight of PG&E’s resource-planning and -procurement activities. A4NR identified as a seminal issue in the *Renewal Cost Application* whether, by filing for license renewal with the NRC without first giving the Commission a chance to review the results of the license renewal feasibility study, PG&E had jumped the proverbial gun. In bringing this issue to the forefront of the case, A4NR noted that even the three settling parties, PG&E included, had agreed PG&E should be required to file updates of the cost-effectiveness and economic analyses submitted in the *Renewal Cost Application*. Intervening events, including the dismissal of the *Renewal Cost Application*, rendered the three-party settlement in the *Renewal Cost Application* moot, but, equally important, left PG&E without the Commission’s express authorization that PG&E could continue to incur costs related to license renewal and recover those costs through rates. Any contrary conclusion would require the Commission to find that the filing of the *Renewal Cost Application* was itself an idle act. Such a finding would be ridiculous and PG&E,

²⁰ See *The Alliance for Nuclear Responsibility, Sierra Club, CalPIRG, Environment California Research and Policy Center Opposition to PG&E and TURN’s Motion to Suspend Proceedings Pending Completion of Seismic Studies*, Application 10-01-022, June 17, 2011, at pp.1 and 10. This repeated the focal grounds upon which A4NR originally protested the *Renewal Cost Application*. See *Protest of the Alliance for Nuclear Responsibility, Sierra Club, CalPIRG, Environment California Research and Policy Center to Pacific Gas and Electric Company’s Application to Recover the Costs Associated with Renewal of the Diablo Canyon Power Plant Operating Licenses*, Application 10-01-022, March 10, 2010.

²¹ *Id.*, printed opinion at pp.4 to 5, citing Public Utilities Code Section 1705(a).

²² See footnote 9, *supra*.

by filing the *Renewal Cost Application* in the first place, is estopped from arguing otherwise.²³ Thus, PG&E's request to recover its costs of license renewal involves past costs that had never previously been authorized for rate recovery and violates the spirit and the letter of the Commission's prior rate orders which set forth important preconditions to the recovery of license-renewal costs. PG&E's request is therefore barred under the legal doctrines of *res judicata*, collateral estoppel and the prohibition against retroactive ratemaking.

c. Ratemaking Policy for Major Capital Expenditures

Assuming *arguendo* that the Commission should consider whether to grant PG&E rate recovery for the DCNPP license-renewal costs in the instant proceeding, the Commission should not permit PG&E to reflect those costs in rates in the absence of a compelling demonstration establishing the reasonableness of those costs. A4NR submits PG&E's averments and proposed case-in-chief fail to demonstrate the prudence of its activities or the reasonableness of its license-renewal costs, and that the requested rate relief therefore should be denied.

Public Utilities Code Section 463.5 provides a "safe harbor" for the costs of electric plant exceeding \$50 million "where the commission either has established a maximum reasonable cost pursuant to Section 1005.5 or has adopted an estimate of the reasonable costs in any proceeding." Where an electric utility proceeds with a project whose costs exceed \$50 million under the aegis of a Commission-approved cost or estimate, the Commission is not required to undertake a reasonableness review of the project's recorded costs. In the case of the DCNPP license-renewal costs PG&E seeks to recover in this proceeding, the Commission has never established a maximum reasonable cost or adopted an estimate of the reasonable costs for relicensing DCNPP. Thus, PG&E proceeded to invest in license renewal fully and knowingly at risk to reasonableness review under the terms of Public Utilities Code Section 463(a), which mandates that the Commission:

"disallow expenses reflecting the direct or indirect costs resulting from any unreasonable error or omission relating to the planning, construction, or operation of any portion of the corporation's plant which cost ... more than fifty million dollars (\$50,000,000), including any expenses resulting from delays caused by any unreasonable error or omission."

²³ Not to hoist PG&E by its own petard, but PG&E acknowledged that there should be consequences if it failed to receive this Commission's authorizations in advance of any NRC filing. Denying that it would ever defy the Commission's orders with respect to this filing obligation, PG&E provided this self-admonition: "the Commission 'has ample means to deal with PG&E's failure to comply with the Commission's order to file an application, if that should ever come to pass.'" *PG&E Test Year 2007 General Rate Case*, printed opinion at p.104 (footnote omitted), citing PG&E's opening comments on a pending proposed decision.

In this context, “planning” includes “activities related to ... certification, project organization, and site selection, including the investigation and interpretation of environmental factors such as seismic conditions and other external factors affecting the construction, operation and safety of the plant.” (Public Utilities Code Section 463(c)(1).) Further, as used in Section 463(a), “omission” includes “any failure to act or to provide direction which causes an avoidable (i) increase in the time required to bring the plant to full commercial operation ... or (iv) change of ... schedule, or program.” Through its participation in this proceeding, A4NR intends to make a showing demonstrating that the Commission must invoke its authorities described in Public Utilities Code Section 463(a) in order to fulfill the Commission’s obligations, to set just and reasonable rates. (See Public Utilities Code Sections 451, 454, 701, 728, and 747.)

PG&E knew well in advance of filing its NRC application that the costs of pursuing DCNPP license renewals would be considerably in excess of \$50 million. PG&E itself estimated the reasonable costs of the license-extension project to be \$85 million, and agreed with DRA and TURN to limit cost recovery to \$80 million in the absence of further Commission orders authorizing even greater amounts. Ostensibly, the *Renewal Cost Application* might have brought the planned expenditures under the aegis of Public Utilities Code 463.5.²⁴ But the simple fact remains that the *Renewal Cost Application* failed to reach any substantive disposition and its dismissal left PG&E without any of the protections afforded under Public Utilities Code Sections 463.5 and 1005.5. To date, the Commission has only authorized PG&E to recover the \$17 million costs of studying the feasibility of seeking DCNPP license extensions and, notwithstanding the filing of the failed *Renewal Cost Application*, the Commission has never authorized PG&E to proceed with the DCNPP license-renewal project, let alone to incur costs in excess of \$50 million for the project.

Although PG&E completed the Commission-authorized feasibility study, PG&E failed the Commission’s direction to bring the study results before the Commission prior to filing an application with the NRC for the DCNPP license extensions. Thereafter, PG&E has utterly failed to demonstrate that it managed the license-renewal project in a way that would have resulted in either the project’s successful completion or its most timely, and least costly, termination. In the absence of such a demonstration, Public Utilities Code Section 463(a) requires the Commission to disallow those costs and exclude them from rates.

As the Commission considers the lack of evidence supporting the reasonableness of the license-extension costs PG&E seeks to recover, A4NR submits there are additional material facts demonstrating

²⁴ Indeed, PG&E invoked the principles and effect of Public Utilities Code Section 463.5 in its application. See *Renewal Cost Application*, at p.13.

PG&E should never have pursued the DCNPP license renewals in the first place or, if it did, that it should have proceeded only at minimal cost.

In its Test Year 2007 General Rate Case, PG&E characterized the need for the Commission to review the results of the feasibility study as a matter of some urgency. In arguing against delaying the study to a later date as proposed by A4NR, PG&E vehemently argued the study needed to be completed no later than 2010, some fifteen years before the expiration of the current DCNPP operating licenses. The Commission agreed, finding the study results should be reviewed in PG&E's 2010 general rate case, but no later than in the resource analyses to be undertaken in the 2014 Long-Term Procurement proceeding.²⁵ Although PG&E filed its *Renewal Cost Application* in 2010, PG&E ultimately agreed the disposition of the application should reflect the need to update the economic analyses assessing DCNPP's value as a long-term resource. Thus, the "value" of the "option" to keep DCNPP in PG&E's resource mix has never been settled but, to the contrary, has always been and remained up until the date of the execution of the *Joint Proposal* a matter of intense controversy. Additionally, it was not until after the cataclysmic Tohoku event that PG&E finally abandoned its consistent and continual dismissal of the importance of completing the seismic studies required by state law as a precursor to spending ratepayer money on license renewal – years late, PG&E accepted the dismissal of the *Renewal Cost Application* pending the completion of those studies. Yet, without any authority from the Commission to invest in license renewal, PG&E continued to spend tens of millions of dollars on the DCNPP license extensions while simultaneously refusing to discuss the prudence or economics of the DCNPP license-renewal option. In doing so, PG&E ignored requests from two Commission Presidents for updates and indicated as recently as its 2017 general rate case that the subject was simply not open for public discussion.²⁶ PG&E finally broke regulatory silence in June 2016 by executing the *Joint Proposal* and providing it to the Commission. PG&E's prolonged indecision regarding DCNPP's operating life neither evidences nor supports reasonably drawn inferences that the license-renewal option had unassailable value or that PG&E was even reassessing the original economic analyses filed in the *Renewal Cost Application*.

In support of the instant application, PG&E asserts that the confluence of various factors led it to the decision to retire DCNPP and, thereafter, to negotiate and execute the *Joint Proposal*. A4NR applauds the decision to retire DCNPP and therefore largely supports the *Joint Proposal*. But A4NR submits the

²⁵ See footnote 11, *supra*.

²⁶ See, e.g., Application 15-09-001, Exhibit PG&E-5 (Harbor), at page 3-4, line 20, and Exhibit PG&E-24, at page 1-10, line 34.

factors PG&E now cites as justifying the decision to retire DCNPP have been in full evidence and increasingly compelling for many years. In PG&E's Test Year 2007 general rate case, A4NR foretold PG&E's decision to retire DCNPP, citing the inexorable factors to which PG&E now capitulates, and reiterated its prediction in the *Renewal Cost Application*. Utilities frequently complain that Commission reasonableness reviews involve nothing more than "second-guessing," but here, PG&E was clearly "outguessed" and its decade-long dismissal of important events and factors PG&E now admits are dispositive is compelling evidence that PG&E committed errors and omissions which led to avoidable, unnecessary, unreasonable, and imprudent costs which should be disallowed pursuant to Public Utilities Code Section 463(a).

Finally, the Commission should take into consideration that PG&E has previously eschewed the idea that the costs of license renewal should be capitalized. PG&E opposed TURN's recommendation in the Test Year 2007 General Rate Case that the costs of the license renewal feasibility study should be capitalized as a regulatory asset. Instead, PG&E argued the outcome of the study and any license-renewal application were uncertain and insisted that the costs should be expensed. The Commission adopted PG&E's view on the ground that schedule uncertainties could result in the buildup of an allowance for funds used during construction ("AFUDC") that would result in unreasonably higher costs.²⁷ As things turned out, PG&E, without any prior authorization from the Commission, unilaterally decided to capitalize the unapproved costs of its license-renewal activities and has since recorded some \$15.4 million of AFUDC against those costs.²⁸ Those accruals mounted as PG&E unreasonably delayed making any decision as to whether to pursue the DCNPP license-renewal application and PG&E should at the very least be held to account for the AFUDC buildup which now constitutes almost one-third of the costs of license renewal. Even in the absence of proof that the utility has unreasonably delayed the cancellation or abandonment of major capital projects, Commission policy, with only limited exceptions, has favored the disallowance of AFUDC for abandoned and incomplete projects and the Commission should apply that policy in this matter.

In PG&E's Test Year 2011 General Rate Case, the Commission had occasion to review its precedents denying utilities a rate of return on capital investments which never or no longer provided benefits to ratepayers.²⁹ PG&E itself has first-hand experience with the general proposition found in those

²⁷ See *PG&E Test Year 2007 General Rate Case*, printed opinion at pp.104 to 105.

²⁸ See *Pacific Gas & Electric Company: Retirement of Diablo Canyon Power Plant, Implementation of the Joint Proposal, and Recovery of Associated Costs through Proposed Ratemaking Mechanisms – Prepared Testimony*, Chapter 9 (Strickland), at p.9-8.

²⁹ See *Decision on Pacific Gas and Electric Company Test Year 2011 General Rate Increase Request*, Decision 11-05-018 in Application 09-12-020, May 5, 2011, printed opinion at pp.42 to 48. Accord, Public Utilities Code Sections

precedents, viz., that the AFUDC accrued against nuclear-related capital investments which fail to ever become “used and useful” plant-in-service will be disallowed.³⁰ Yet, in this case, other than to assert that its pursuit of the license-renewal project had value as an “option,” PG&E fails any demonstration that this “option value” delivered actual benefits to customers, e.g., the avoidance or deferral of higher cost resource acquisitions, which warranted the filing of the NRC application prior to this Commission’s express approval, or that this option value brought PG&E’s license-renewal project within the scope of any of the exceptions described in the precedents reviewed by the Commission, or that the recovery of AFUDC accrued against the license-renewal project costs is otherwise justified as a matter of law or public policy. To the contrary, A4NR submits public policy would demand that a utility, investing capital in a project without having first obtained prior Commission approval *in an instance where the Commission has ordered the utility to seek and obtain such approvals*, forego at least a rate of return, if not its entire investment, in such a project. Thus, A4NR protests PG&E’s proposal to recover its license-renewal costs and will recommend the Commission deny PG&E’s request for rate relief with respect to license-renewal costs. A4NR intends to cross-examine PG&E’s witnesses, present its own evidence, and file briefs on this issue.

d. Additional Grounds for Disallowing License Renewal Costs

A4NR is in the process of conducting discovery and interviewing potential witnesses. It is therefore possible A4NR will discover additional grounds supporting the exclusion of license-extension costs from rates. A4NR therefore respectfully reserves the right to submit those grounds for the Commission’s consideration during the course of this proceeding.

C. Categorization of Proceeding

A4NR agrees with PG&E and the Commission’s preliminary determination schedule that the instant application should be categorized as a ratesetting proceeding.³¹

451, 454, 463, 463.5, 701, 728, 747, 1005.5; see also, *Statement of Financial Accounting Standards No. 90*, “Regulated Enterprises – Accounting for Abandonments and Disallowances of Plant Costs,” December 1986.

³⁰ *Re Pacific Gas & Electric Company Net Plant Investment in Humboldt Bay Power Plant Unit 3*, Decision 85-08-046 in Application 83-09-049, August 21, 1985, 18 CPUC2d 592 (1985).

³¹ See *Application*, p.15; see also, accord, Commission *Resolution ALJ-176*, filed August 24, 2016, “Preliminary Determination Schedule,” printed opinion at p.2.

D. Request for Hearings

A4NR requests the Commission set evidentiary hearings on at least the issues related to (1) lengthening the duration of the community impacts mitigation program for a longer and more reasonable period of time, to wit, continuing PG&E's obligation to maintain the public warning system and to fund local and state emergency planning functions until the later of the NRC's acceptance of the surrender of either the DCNPP Part 50 license or the DCNPP ISFSI license, and (2) the rate recovery of license-extension costs. These issues require an examination of the relevant and salient facts bearing on their disposition and warrant evidentiary hearings. As PG&E states in its application, it is possible the parties may resolve their differences in the absence of hearings, but the Commission should, as indicated in its preliminary determination cited above, set hearings as a precaution and in order to facilitate the timely prosecution of this matter.

E. Issues to Be Considered

A4NR accepts PG&E's enumeration of the issues posed by this application.³² A4NR believes the issues raised in this Protest are well within the scope of the issues identified by PG&E. If the Commission believes it would be necessary for the sake of clarity, A4NR submits the list of issues set forth in the forthcoming scoping memo should include the matters identified by A4NR above as warranting evidentiary hearings.

F. Proposed Schedule

A4NR is in the early stages of conducting discovery. A4NR's ability to prepare and serve testimony would be impaired in the event inadequate time for discovery were not accommodated by the schedule for this proceeding. PG&E's proposed schedule unreasonably requires intervenors to file testimony on October 28, 2016, a mere eleven weeks from the time PG&E made the application and supporting testimony available.³³ This date simply does not allow sufficient time in which A4NR can conduct any reasonable measure of discovery and therefore should be modified.³⁴

³² See *Application*, pp.16 to 18.

³³ See *Application*, p.18.

³⁴ A4NR served its first set of data requests on September 12, 2016, and expects responses on or about September 22nd. A4NR expects to serve subsequent data requests related to these responses within ten days thereafter, followed by responses ten days thereafter, leaving less than two weeks under PG&E's proposed schedule for A4NR to finalize its testimony based on the information provided by PG&E through discovery. This assumes A4NR can complete discovery through only two rounds of data requests, which is not entirely within A4NR's control.

A4NR believes it can prepare and serve its direct testimony on November 28, 2016, thirty days after the date proposed by PG&E. This date assumes, of course, PG&E's cooperation and diligence in responding to A4NR's discovery requests, and A4NR reserves the right to request extensions of time for the filing of its testimony in the event discovery disputes or circumstances arise warranting the allowance of additional time for A4NR to prepare its evidentiary showing. Under this change to the date for the filing of parties' testimony and based on the actual dates for the filing of protests, responses and replies to protests, A4NR proposes the following procedural schedule:

Date	Event
September 15, 2016	Protests and Responses filed
September 25, 2016	Reply to Protests filed
September 30, 2016	Prehearing Conference
November 28, 2016	ORA and Intervenor Testimony served
January 3-6, 2017	Evidentiary hearings
February 6, 2017	Opening Briefs filed
February 21, 2017	Reply Briefs filed
June 2017	Proposed Decision
July 2017	Final Decision

Importantly, A4NR's schedule would still allow for a final disposition of this matter, including allowing time for the taking of administrative and judicial appeals, within twelve (12) months of the filing of the application and earlier than December 31, 2017, the date set forth in the *Joint Proposal* for reconsideration of certain of the rights and obligations agreed upon by its signatories.³⁵ A4NR submits its schedule is reasonable and should be adopted in lieu of the schedule proposed by PG&E in the application.

G. Effect of the Application on A4NR

While approval of various aspects of the application will serve the public interest and the interests of A4NR and its members, the recovery of PG&E's costs of license extension costs through generation rates would result in the imposition of unjust and unreasonable rates in contravention of Public Utilities Code Sections 451, 454, 463, 463.5, 701, 728, 747, and 1005.5. Additionally, unless PG&E is required to continue the maintenance of the DCNPP public warning system and the funding of local and state emergency preparedness and planning agencies until such time when radiologically hazardous materials are finally and completely removed from the site, the public will be exposed to the exacerbation of the worst

³⁵ See *Joint Proposal*, Section 7.3, at p.18.

consequences of a catastrophic release of those materials into the environment and/or their migration beyond the site boundaries. A4NR's participation in these proceedings will be directed toward avoiding these results on behalf of its members and electric consumers. A4NR's intervention, and ultimately the relief A4NR is seeking, should be granted.

H. Communications and Service of Documents

A4NR requests that further communications regarding this matter be directed to its counsel and that documents filed in this matter be served as follows:

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Information only

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I. Summary

For the reasons set forth above, A4NR respectfully requests the Commission accept this protest, grant A4NR status as a party to this proceeding, and otherwise grant A4NR the procedural and substantive relief requested hereinabove.

Respectfully submitted,

/s/ Alvin S. Pak

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Encinitas, California
September 14, 2016