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

FILED
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| Application of Pacific Gas and Electric Company to Recover the Costs Associated With Renewal of the Diablo Canyon Power Plant Operating Licenses (U 39 E ) | Application No. 10-01-022 |

**MOTION TO DISMISS APPLICATION OF CALIFORNIANS FOR RENEWABLE ENERGY, INC. (CARE)**

Pursuant to Rule 11.1[1] and 11.2[2] of this Commission's Rules of Practice and Procedure, CAlifornians for Renewable Energy, Inc. ("CARE") hereby moves to dismiss the Application of Pacific Gas and Electric Company to Recover the Costs Associated With Renewal of the Diablo Canyon Power Plant Operating Licenses.

## Introduction

According to PG&E's April 11, 2011 Press Release [included below] "PG&E [] formally asked the Nuclear Regulatory Commission (NRC) today to delay final action on

[1] 11.1. (Rule 11.1) Motions.
(a) A motion is a request for the Commission or the Administrative Law Judge to take a specific action related to an open proceeding before the Commission.
(b) A motion may be made at any time during the pendency of a proceeding by any party to the proceeding. A motion may also be made by a person who is not a party if it is accompanied by a motion, pursuant to Rule 1.4, to become a party.
(c) Written motions must be filed and served. The Administrative Law Judge may permit an oral motion to be made during a hearing or conference.
(d) A motion must concisely state the facts and law supporting the motion and the specific relief or ruling requested.
(e) Responses to written motions must be filed and served within 15 days of the date that the motion was served, except as otherwise provided in these Rules or unless the Administrative Law Judge sets a different date. Responses to oral motions may be made as permitted by the Administrative Law Judge.
(f) With the permission of the Administrative Law Judge, the moving party may reply to responses to the motion. Written replies must be filed and served within 10 days of the last day for filing responses under subsection (e) unless the Administrative Law Judge sets a different date. A written reply must state in the opening paragraph that the Administrative Law Judge has authorized its filing and must state the date and the manner in which the authorization was given (i.e., in writing, by telephone conversation, etc.).
(g) Nothing in this rule prevents the Commission or the Administrative Law Judge from ruling on a motion before responses or replies are filed.

[2] 11.2. (Rule 11.2) Motion to Dismiss.
A motion to dismiss a proceeding based on the pleadings (other than a motion based upon a lack of jurisdiction) shall be made no later than five days prior to the first day of hearing.

the utility's on-going license renewal application until PG&E submits the findings to the commission" going on to further explain:

> "In the wake of the tragic accident at Japan's Fukushima Daiichi nuclear plant, we know that many of our customers and government partners are concerned and want to know more about the seismic characteristics surrounding the Diablo Canyon Nuclear Power Plant," said John Conway, PG&E's Senior Vice President of Energy Supply and Chief Nuclear Officer. "Because we live in a seismically active region, PG&E takes care in all its operations, especially at Diablo Canyon, to analyze and address seismic risks. In the aftermath of the Japanese earthquake and the resulting tsunami, we are working even more closely with various governmental permitting agencies to accelerate the plant's advanced seismic research." Conway added, "As PG&E works toward this objective, we are asking the Nuclear Regulatory Commission to withhold issuance of PG&E's renewed operating licenses, if approved, until after this research is completed and the findings are submitted to the commission."

In light of the magnitude 9 earthquake and the disaster at the Fukushima Dai-Ichi nuclear power station in Japan CARE respectfully moves that the Commission dismiss the PG&E *Application of Pacific Gas and Electric Company to Recover the Costs Associated With Renewal of the Diablo Canyon Power Plant Operating Licenses.* This is a "Application requesting 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 Diablo Canyon Power Plant ("Diablo Canyon" or "DCPP") 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 (referred to as the "License Renewal project"). PG&E estimates the total cost of the License Renewal project at $85 million."[3]

## Background

[3] January 29, 2010 Application at page 1 *See* http://docs.cpuc.ca.gov/efile/A/113320.pdf

In 2006, the California legislature enacted AB 1632 (Blakeslee, Chapter 722, Statutes of 2006), which was codified as Public Resources Code 25303. AB 1632 directed the CEC to: (1) *assess the potential vulnerability* of California's largest base load power plants, Diablo Canyon and San Onofre Nuclear Generating Station*, to a major disruption due to a major seismic event* or plant aging; (2) *assess the impacts of such a major disruption on* system reliability, *public safety*, and the economy; (3) *assess the costs and impacts from nuclear waste accumulating at these plants;* and (4) evaluate other major issues related to the future role of these plants in the state's energy portfolio.

Like Diablo Canyon in Japan spent fuel from nuclear power plants are not reprocessed but are being stored at the plant site. Because unprocessed spent fuel rods are stored onsite at Diablo Canyon this is an area of special safety concern during a seismic event that remains un-analyzed for these modes of failure demonstrated by the disaster at Japan's Fukushima Daiichi nuclear plant.

The requirement that PG&E first complete the seismic studies recommended by CEC as authorized by AB 1632 can first be traced to CPUC Decision D.07-03-044:

> We will require PG&E to submit by no later than June 30, 2011, an application on whether to pursue license renewal. The application shall include PG&E's license renewal study and shall address (1) whether renewal of the licenses is cost effective and in the best interests of PG&E's ratepayers, (2) the *CEC's AB 1632 assessment*, and (3) any legislative framework that may be established for reviewing the costs and benefits of license renewal. As stated previously, it is our intent that the proceeding in 2011 will result in a decision on whether to pursue license renewal based on circumstances at that time, and that the results of the proceeding will be incorporated into the CEC's 2013 IEPR and the Commission's 2014 LTPP.[] [*emphasis* added]

Absent PG&E's obligation to fully develop all AB 1632 assessment related issues which were specifically linked to the PG&E's rate case D.07-03-044, the Commission will not be able to adequately and appropriately exercise its authority to fund and oversee Diablo Canyon's license extension.

## Conclusion

Because as of April 11, 2011 PG&E is asking the Nuclear Regulatory Commission to withhold issuance of PG&E's renewed operating licenses, if approved, until after seismic studies are completed, with those findings then submitted to the NRC, and because D. 07-03-044 required that PG&E wait until receiving the outcome of seismic studies authorized by Assembly Bill (AB) 1632 prior to seeking approval from the Commission to file a license renewal application at the Nuclear Regulatory Commission ("NRC"), CARE respectfully requests that the Commission dismiss the application.

Respectfully Submitted,

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April 14th, 2011

http://www.pge.com/about/newsroom/newsreleases/20110411/pgampe_commits_to_finishing_3-d_seismic_studies_related_to_diablo_canyon_before_seeking_final_issuance_of_renewed_licenses.shtml

# News Releases

## *PG&E Commits to Finishing 3-D Seismic Studies Related to Diablo Canyon Before Seeking Final Issuance of Renewed Licenses* Utility Seeks to Address Public Concern Regarding Seismic Safety

**Release Date:** April 11, 2011
**Contact:** PG&E External Communications (415) 973-5930

AVILA BEACH, Calif. – Pacific Gas and Electric Company (PG&E) today announced that it plans to accelerate completion of advanced 3-D seismic studies related to the Diablo Canyon Nuclear Power Plant. PG&E also formally asked the Nuclear Regulatory Commission (NRC) today to delay final action on the utility's on-going license renewal application until PG&E submits the findings to the commission.

"In the wake of the tragic accident at Japan's Fukushima Daiichi nuclear plant, we know that many of our customers and government partners are concerned and want to know more about the seismic characteristics surrounding the Diablo Canyon Nuclear Power Plant," said John Conway, PG&E's Senior Vice President of Energy Supply and Chief Nuclear Officer. "Because we live in a seismically active region, PG&E takes care in all its operations, especially at Diablo Canyon, to analyze and address seismic risks. In the aftermath of the Japanese earthquake and the resulting tsunami, we are working even more closely with various governmental permitting agencies to accelerate the plant's advanced seismic research."

Conway added, "As PG&E works toward this objective, we are asking the Nuclear Regulatory Commission to withhold issuance of PG&E's renewed operating licenses, if approved, until after this research is completed and the findings are submitted to the commission."

"We recognize that many in the public have called for this research to be completed before the NRC renews the plant's licenses," said Conway. "We are being responsive to this concern by seeking to expeditiously complete the 3-D seismic studies and provide those findings to the commission and other interested parties so that they may have added assurance of the plant's seismic integrity."

PG&E is the only utility in the country that employs a seismic department staffed with experts. The scientific staff continually studies earthquake faults in the region of the power plant and global seismic events as part of the plant's comprehensive safety program. In November 2008, the United States Geological Survey, working in

partnership with PG&E's geosciences department, discovered the new shoreline fault zone and PG&E evaluated whether that new feature presented a safety risk to the plant. PG&E submitted its evaluation to the NRC under the commitment of its current operating licenses. PG&E's evaluation confirmed the plant has adequate safety margin to withstand maximum ground motions postulated to occur from faults in the region, including the shoreline fault.

PG&E plans to undertake high-energy offshore 3-D studies of the shoreline fault's deeper regions as soon as it obtains necessary permits from various regulatory agencies, including the State Lands Commission, California Coastal Commission and County of San Luis Obispo. To address public concern regarding the seismicity of the area surrounding Diablo Canyon, the utility seeks to expedite this permitting process so it can begin this phase of studies as soon as possible. PG&E also plans to conduct significant research along the Los Osos Valley and in the Irish Hills. The company will share the results with local jurisdictions in order to enhance their knowledge of the seismic characteristics of the region for their emergency planning and building standards requirements.

"Even after we have completed these advanced studies, our geoscientists will continue their ongoing seismic research to give us, our regulators and the public confidence that the plant remains safe," said Conway. "It is only by continuously demonstrating that public safety is our highest priority that we will continue to earn the right to supply clean, reliable and affordable power to millions of California homes and businesses."

Pacific Gas and Electric Company, a subsidiary of PG&E Corporation (NYSE:PCG), is one of the largest combined natural gas and electric utilities in the United States. Based in San Francisco, with 20,000 employees, the company delivers some of the nation's cleanest energy to 15 million people in Northern and Central California. For more information, visit http://www.pge.com/about/newsroom/.

## Verification

I am an officer of the Intervening Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 14th day of April 2011, at San Francisco, California.

Lynne Brown

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Lynne Brown Vice-President
CAlifornians for Renewable Energy, Inc.
(CARE)

## Certificate of Service

I hereby certify that I have this day served the foregoing document "*MOTION TO DISMISS APPLICATION OF CALIFORNIANS FOR RENEWABLE ENERGY, INC. (CARE)* under CPUC Docket Application 10-01-022. Each person designated on the official service list, has been provided a copy via e-mail, to all persons on the attached service list on April 14, 2011, for the proceeding, Application 10-01-022. Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 14th day of April 2011, at Soquel, California.

Michael E. Boyd

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