



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Application of Pacific Gas and Electric  
Company in its 2009 Nuclear  
Decommissioning Cost Triennial  
Proceeding

A.09-04-007  
(Filed April 3, 2009)

**PROTEST  
OF THE DIVISION OF RATEPAYER ADVOCATES**

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May 9, 2009

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**PROTEST  
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Pursuant to Rule 2.6 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the Division of Ratepayer Advocates (DRA) files this Protest to Pacific Gas and Electric Company's (PG&E) 2009 Nuclear Decommissioning Costs Triennial Proceeding (NDCTP) Application (A.) 09-04-007.

**I. BACKGROUND**

The purpose of this proceeding is to establish just and reasonable rates to adequately fund the nuclear decommissioning trusts in place for the benefit and protection of ratepayers, to verify that PG&E is in compliance with all prior decisions applicable to decommissioning, and to determine whether the costs expended to date by PG&E were reasonable and prudent.<sup>1</sup>

PG&E filed its application on April 3, 2009, and the application was calendared on April 8, 2009. PG&E seeks decommissioning annual revenue requirements of \$11.088 million for Diablo Canyon Trust Unit 1, \$12.241 million for Diablo Canyon Trust Unit 2, and \$16.982 million for Humboldt Bay Unit 2 for 2010-2012. PG&E also requests \$9.218 million in annual revenue requirements for Humboldt Bay Unit 3 SAFSTOR O&M costs in 2010 and attrition for 2011 and 2012. PG&E's total requested annual revenue requirement is approximately

\$49.528 million, \$49.732 million and \$49.942 million respectively for 2010, 2011, and 2012.

PG&E also requests a finding that its activities with respect to licensing, design, fabrication, and construction of the Independent Spent Storage Installation (ISFSI) and associated activities were reasonable and prudent.

During PG&E's last NDTCP, the Commission issued Decision (D) 07-01-003, which adopted an all-party settlement and provided several directives for PG&E in the instant proceeding. In D.07-01-003, the Commission directed PG&E to demonstrate, in the instant proceeding, that it has made all reasonable efforts to retain and utilize sufficient qualified and experienced personnel to effectively, safely, and efficiently pursue any physical decommissioning related activities for the nuclear generation facilities under its control.<sup>2</sup> The Commission also ordered PG&E to demonstrate that it has made all reasonable efforts to conservatively forecast the cost of Low Level Radioactive Waste (LLRW) Storage.<sup>3</sup> Finally, PG&E was ordered to demonstrate that it has made all reasonable efforts to conservatively establish an appropriate contingency factor for inclusion in the decommissioning revenue requirements.<sup>4</sup> DRA will determine if, and to what extent, PG&E has complied with the Commission's directives.

## II. ISSUES

DRA is conducting discovery at this time. While DRA has identified some issues listed below, it respectfully requests the right to identify additional issues at

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(continued from previous page)

<sup>1</sup> D.07-01-003, p.7.

<sup>2</sup> D.07-01-003, Ordering Paragraph # 6.

<sup>3</sup> *Id.*, Ordering Paragraph # 7.

<sup>4</sup> *Id.*, Ordering Paragraph # 8.

the Prehearing Conference (PHC). The Commission should set for hearing, at the minimum, the following issues:

- Decommissioning cost estimates for Humboldt Bay Unit 3: The Commission must determine whether these expenses are reasonable. The Commission must also determine whether PG&E's 'true-up' contribution to, or withdrawal from, the decommissioning trusts is reasonable.
- Decommissioning cost estimates for Diablo Canyon: The Commission must determine whether PG&E's estimated costs for decommissioning Diablo Canyon Units 1 and 2 are reasonable.
- LLRW burial cost assumptions: The Commission must determine whether \$252 per cubic foot for General Waste and \$2,916 per cubic foot for Class B and C waste are reasonable and comply with prior Commission orders.
- Escalation assumptions and possible contingency on escalation: PG&E's escalation factor averages escalation assumptions for labor, materials, contract labor, burial costs and other categories. PG&E proposes an overall contingency of 25% for both Diablo Canyon and Humboldt. While PG&E does not propose to change the contingency factor for Humboldt, it requests a decrease for Diablo Canyon.
- Trust fund estimates and rate of return assumptions: The Commission must determine whether PG&E's annual equity turnover rate, which averages the historic equity rates from 2005 through 2008, is reasonable. DRA will update and examine the trust fund estimates for Diablo Canyon and Humboldt Bay, particularly the forecasted rate of return.
- Rate of return assumptions: The Commission must determine the reasonableness of PG&E's forecasted rates of return of 8.5% and 4.1%, respectively, for trust assets and fixed incomes.

- Humboldt Bay cost study: The Commission must determine the reasonableness of the Humboldt Bay Decommissioning Cost Study, as prepared by TLG Services.
- Humboldt Bay Unit 3 pre-decommissioning activities: The Commission must determine the reasonableness of PG&E's early decommissioning projects for Humboldt Bay Unit 3
- Interim disbursement of funds from the Humboldt Bay Unit 3 Trusts and establishing a procedure for reviewing and determining the reasonableness of Humboldt Bay Unit 3: PG&E filed Advice Letter 3444-E requesting the Commission to approve its request for an interim disbursement from the Humboldt Bay Unit 3 Trusts and to establish a procedure for reviewing and determining the reasonableness of its decommissioning activities. DRA protested the Advice Letter on the grounds that these issues should be litigated within the instant proceeding because the requested relief was beyond the scope of an Advice Letter and within the scope of the instant proceeding. (See Attachment 1). The Commission should include this issue within the scoping memo of the instant proceeding.

### **III. CONSOLIDATION OR COORDINATION WITH SCE/SDG&E'S APPLICATION**

Southern California Edison Company (SCE) and San Diego Gas and Electric Company (SDG&E) simultaneously filed their NDTCP application, A.09-04-009, with PG&E. Since there are common issues of fact and law in both PG&E's and the joint SCE /SDG&E NDCTP applications, the Commission should consolidate these applications. In the previous NDCTP proceeding, the Commission consolidated the applications, because it found conducting seriatim hearings could complicate ensuring all necessary evidence was appropriately included in two separate records. And indeed, the consolidation resulted in a more

efficient litigation of the previous NDCTP. Therefore, the Commission should again consolidate the applications of both PG&E and SCE/SDG&E.

#### **IV. CATEGORIZATION, NEED FOR HEARING AND SCHEDULE**

DRA agrees with PG&E that the instant proceeding be categorized as “ratesetting.” DRA also agrees with PG&E that hearings will be necessary.

PG&E has proposed an aggressive schedule for this proceeding. DRA must address the numerous issues listed above for PG&E, as well as those for SDG&E and SCE, and cannot file its testimony in approximately thirty days. Other parties, such as Scott Fielder, have also expressed concern with the aggressive schedule proposed by PG&E and have asked the Commission to extend the Testimony filing date.<sup>5</sup> DRA proposes that the Commission adopt a timeline similar to that provided by the Commission in the previous NDTCP. In the previous NDTCP, the Commission adopted a schedule that provided approximately three months between the PHC and intervenor testimony. The Commission should again allocate the same timeframe for parties to submit testimony. Below is DRA’s proposed schedule, which will allow adequate review of the issues:

##### **DRA’s Proposed Schedule**

August 28, 2009	Intervenor Testimony
September 21, 2009	Rebuttal Testimony
October 12, 2009	Evidentiary Hearings Begin (3-5 days)
November 9, 2009	Opening Briefs
November 23, 2009	Reply Briefs

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<sup>5</sup> See PHC Statement of Intervenor Scott L. Fielder (Filed May 4, 2009).

**V. CONCLUSION**

DRA respectfully recommends that the proceeding be categorized as ratesetting, set for hearing, and that the scope of the proceeding include, but not be limited to, the issues identified in this protest.

Respectfully submitted,

/s/ Rashid Rashid

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Rashid Rashid

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May 8, 2009

# ATTACHMENT



## **DRA**

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**Dana S. Appling, Director**

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April 16, 2009

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**Subject: Protest to PG&E's Advice Letter 3444-E**

### **I. Background**

The Division of Ratepayer Advocates (DRA) protests Pacific Gas and Electric's (PG&E) Advice Letter 3444-E requesting approval 1) for an Interim Disbursement of Funds from the Humboldt Bay Power Plant 3 (HBPP Unit 3) and 2) to establish a procedure for reviewing and determining the reasonableness of HBPP Unit 3 decommissioning expenditures. PG&E's requested relief are both within the scope of the active NDTCP proceeding, A.09-04-007, and therefore should be litigated therein. Additionally, General Order (GO) 96-B prohibits PG&E from making these requests as they deal with policy questions. And, it would be both logical and efficient for the above issues to be resolved together with similar issues in A.09-04-007. Therefore, DRA requests that the Commission reject the current advice letter request and move the issues to A.09-04-007.

### **II. Discussion**

#### **A) Interim Disbursements Must Be Determined In PG&E's Current NDTCP Application**

PG&E seeks Commission approval for disbursements for HBPP Unit 3. However, the Commission must determine the estimated costs of and the schedule before it can approve Interim Disbursements.<sup>1</sup>

The instant advice letter is a premature request for the Commission to issue an order authorizing Interim Disbursements because the estimated costs have not been litigated. These costs will be litigated in the current NDTCP. PG&E itself states that the costs to

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<sup>1</sup> See Section 2.07 of the Trusts.

decommission HBPP Unit 3 will be approved in the current NDTCP proceeding.<sup>2</sup> In A.09-04-007, the Commission will approve the decommissioning costs and schedule for HBPP Unit 3, and at that point should simultaneously authorize Interim Disbursements. The Trusts simply do not allow the Commission to authorize disbursements without first approving the costs and schedule. Therefore, the issue of authorizing interim disbursements cannot be decided in this advice letter without first litigating the costs in the current NDTCP.

Furthermore, the amount to be disbursed is contingent on the amount of the costs, which can only be litigated in the current NDTCP. The cost and the disbursement amount are intertwined and it would be confusing both for the Commission and parties to deal with them separately. The Commission should therefore authorize interim disbursements in A.09-04-007 when it authorizes the associated costs, and not through the instant advice letter.

## **B) Procedural Mechanisms Are An Explicit Function Of The NDTCP Proceedings**

While the Commission resolves an array of issues every three years in PG&E's Triennial Review of Nuclear Decommissioning Trusts and Related Decommissioning Activities (NDTCP), the Commission has specifically identified the following function to be within the scope of review:

- To review and modify as necessary all ratemaking *mechanisms* applicable to nuclear decommissioning costs.” (A.05-11-009, Scoping Memo, June 10, 2002).

However, PG&E is requesting, via the instant advice letter, that the Commission approve a modification to the current reasonableness review procedure for HBPP costs. PG&E's request 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. The Commission has always made such modifications during the course of the NDTCP application process and PG&E has not provided a compelling reason as to why this process should be streamlined in an advice letter.

Furthermore, PG&E's request to modify a review process violates GO 96-B. GO 96-B specifically states that the requests in advice letters should “neither be controversial nor raise important policy questions.” However, PG&E's modification request is controversial and implicates an important policy question. Therefore, PG&E's request

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<sup>2</sup> See Advice Letter 3444-E, p.2.

should be resolved in a proceeding where evidentiary hearings and briefs are afforded to parties.

Additionally, the advice letter process does not provide a sufficient opportunity for parties to litigate the reasonableness of the proposed procedure. Parties must be afforded the opportunity to comment, conduct discovery, participate in evidentiary hearings, and file a brief in this matter. The Commission should therefore resolve this issue in A.09-04-007, which is the proper forum such resolution.

### **C) The Current NDTCP Proceeding Is The Ideal Place To Review PG&E's Requests**

The NDTCP is the proceeding where the Commission resolves any and all issues relating to the decommission trusts, including that of HBPP 3. Utilities file advice letters for non-controversial decommissioning items during periods where there is no active NDTCP proceeding. However, PG&E's request arrives at an opportune time when the Commission is actively litigating issues regarding HBPP 3. For the sake of efficiency and ease of litigating complex and similar issues together, the Commission should decide the above issues in the current NDTCP, A.09-04-007. Such consolidation will relieve the Commission and parties from the burden and confusion of litigating similar issues in two separate proceedings. PG&E has not offered any compelling reason as to why the Commission should not litigate all current issues relating to HBPP 3 together in a single proceeding.

### **III. CONCLUSION**

The Commission should reject AL 3444-E and attach the issues to the current NDTCP, A.09-04-007.

Sincerely,

/s/ DAVID ASHUCKIAN  
David Ashuckian, Deputy Director  
Division of Ratepayer Advocates

CC: Service List A.05-11-009



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### A09-04-007

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