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

Application of Pacific Gas and Electric
Company to Recover the Costs Associated
with Renewal of the Diablo Canyon Power
Plant Operating Licenses

Application No. 10-01-022

U 39 E

**OPPOSITION OF
PACIFIC GAS AND ELECTRIC COMPANY
TO THE MOTION TO DISMISS APPLICATION OF
CALIFORNIANS FOR RENEWABLE ENERGY, INC. (CARE)**

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Dated: April 29, 2011

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On April 14, 2011, CALifornians for Renewable Energy, Inc. (“CARE”) filed a Motion to Dismiss the application Pacific Gas and Electric Company (“PG&E”) filed in this docket to recover the costs associated with pursuing renewal of the Diablo Canyon Nuclear Power Plant (“Diablo Canyon”) Operating Licenses (“Motion to Dismiss”). PG&E requests that the Commission deny CARE’s Motion to Dismiss.^{1/}

I. BACKGROUND

PG&E filed its Application of Pacific Gas and Electric Company to Recover Costs Associated with Renewal of the Diablo Canyon Power Plant Operating Licenses on January 29, 2010 (the “Application”). As described in that Application, PG&E sought authority to recover in rates the costs associated with PG&E’s pursuit of the necessary operating license renewals, permits, and other regulatory approvals necessary to maintain the option to operate the Diablo Canyon units beyond the dates on which their current operating licenses expire. While consideration of PG&E’s Application was pending, PG&E was able to reach a settlement with DRA and The Utility Reform Network (“TURN”). A settlement conference was held in this

^{1/} The Division of Ratepayer Advocates (“DRA”) has authorized PG&E to represent that DRA opposes CARE’s Motion to Dismiss and requests that the Commission keep the proceeding open.

proceeding on October 18, 2010. Thereafter, a Settlement Agreement was executed on November 15, 2010, and submitted by PG&E, DRA, and TURN on November 16, 2010 (the “Settlement Agreement”).

The Settlement Agreement provides for recovery in rates of up to \$80 million in costs associated with the license renewal project. (This amount reflected a negotiated reduction from the \$85 million forecasted by PG&E and proposed in the Application.) The Settlement Agreement also requires PG&E to include, in all PG&E General Rate Cases for the period between now and 2024 and in any applications filed by PG&E between now and 2024 in which PG&E seeks approval for new capital projects or annual Operations and Maintenance expenditures at Diablo Canyon in excess of \$20 million (excluding the Nuclear Decommissioning Cost Triennial Proceeding), updated cost-effectiveness analyses and listings of any known unquantified risks that may significantly impact the economics of Diablo Canyon operations.

By ruling dated January 28, 2011, Administrative Law Judge Barnett set consideration of the Settlement Agreement for hearing. The ruling specifically stated that there are two issues to be resolved in the proceeding that require a hearing:

1. Whether the Settlement Agreement should be adopted? and
2. Whether funding should be authorized before seismic studies are completed?

The hearing on those two issues was set for April 13, 2011. However, in light of the tragic events in Japan, Administrative Law Judge Barnett issued a ruling on March 16, 2011, taking the hearing off calendar “to be reset on motion of the parties.”

II. CARE’S MOTION TO DISMISS

In its Motion to Dismiss, CARE points to PG&E’s recent communication with the Nuclear Regulatory Commission (“NRC”), in which PG&E acknowledges the public concern

caused by the tragic accident at Japan's Fukushima Daiichi nuclear plant. For the Commission's reference, PG&E is attaching to this Opposition a copy of the April 10, 2011 letter PG&E sent to the NRC's Commissioners and Staff (Attachment 1). That is the communication described in PG&E's April 11, 2011 press release on which CARE's Motion to Dismiss relies.

III. OPPOSITION TO MOTION TO DISMISS

In light of the tragic events in Japan, the public and those in the energy sector who own or operate nuclear plants want to know more about the seismic characteristics surrounding all nuclear power plants in this country, including Diablo Canyon. As PG&E has emphasized throughout this proceeding, seismic issues are an operational focus at Diablo Canyon. PG&E is constantly collecting and analyzing seismic data as part of its Long-Term Seismic Program. If PG&E learns anything that may impact the safe operation of the plant, PG&E will address the issue immediately and promptly share that information with the NRC for its independent assessment and review. (The NRC's principal focus is to ensure that no nuclear plant, including Diablo Canyon, is permitted to continue operating if doing so poses a threat to public safety.) Public safety, and the safety of the people working at the plant, have always been and will continue to be the focus of these efforts.

PG&E is also working on three-dimensional seismic studies of the area around Diablo Canyon. However, completion of those studies will take time. As the attached April 10, 2011 letter to the NRC explains: "Presuming PG&E obtains all necessary permits, PG&E expects the 3-D seismic studies to be completed, and intends to issue a report addressing the results of those studies, as soon as possible after completing the analysis of the data and no later than December 2015." That letter also states that "PG&E believes it prudent to complete these studies and issue a report addressing the results prior to issuance of a consistency certification and/or renewed operating licenses, if approved." The letter ends with a request by PG&E that the NRC "delay

final processing of the [license renewal application] such that the renewed operating licenses, if approved, would not be issued until after PG&E has completed the 3-D studies and submitted a report to the NRC addressing the results of those studies.”

In the meantime, however, the NRC proceeding will be continuing. PG&E will be expending resources and incurring legitimate and reasonable expenses to address all of the safety and environmental information needed to be presented to the NRC, to the California Coastal Commission (to satisfy the Coastal Zone Management Act and the California Coastal Act) and to the other state and local agencies from which permits may be necessary for Diablo Canyon to continue operating beyond its current license terms.

In light of PG&E’s request to the NRC that *final processing* of the Diablo Canyon license renewal application be held until after the 3-D seismic studies have been completed and a report addressing the results of those studies has been submitted to the NRC, any concerns CARE may have about the continuing safety of Diablo Canyon Nuclear Power Plant during any extended license period will have been considered by the NRC with the results of the 3-D seismic studies in hand. In addition, during the time that the 3-D seismic studies are being done and the report prepared, considerably more will be learned about the events in Japan and that knowledge will be available to regulators, nuclear plant operators and safety professionals.

There is insufficient justification to dismiss PG&E’s Application and require the parties to start over at some future time. The Application was appropriately filed, fully supported with testimony and data, and was the subject of discovery and negotiation which led to the Settlement Agreement among PG&E, DRA, and TURN. That Settlement Agreement is reasonable and in the ratepayers’ best interests and, coupled with PG&E’s express request of the NRC to delay the final processing of any license renewal application at the NRC until the results of the 3-D studies

are fully known, addresses all reasonable concerns about the safety of the ongoing operations at Diablo Canyon Nuclear Power Plant during any license renewal period. As a result, the Motion to Dismiss filed by CARE should be denied and this proceeding should remain as it is, with the evidentiary hearing off calendar but subject to being “reset on motion of parties” or at the Commission’s direction.

IV. CONCLUSION

For the reasons explained above, PG&E requests that the Motion to Dismiss of Californians for Renewable Energy, Inc. be denied.

Respectfully submitted,

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By: _____ /s/
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Dated: April 29, 2011

ATTACHMENT 1



**Pacific Gas and
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April 10, 2011

PG&E Letter DCL-11-047

US Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, DC 20555-0001

Docket No. 50-275, OL-DPR-80

Docket No. 50-323, OL-DPR-82

Diablo Canyon Units 1 and 2

Request for Deferral of Issuance of Diablo Canyon Power Plant Renewed Operating Licenses

Dear Commissioners and Staff:

By Pacific Gas and Electric Company (PG&E) Letter DCL-09-079, "License Renewal Application," dated November 23, 2009, PG&E submitted an application to the Nuclear Regulatory Commission (NRC) for the renewal of Facility Operating Licenses DPR-80 and DPR-82, for Diablo Canyon Power Plant (DCPP) Units 1 and 2, respectively. The application included the license renewal application (LRA), and Applicant's Environmental Report – Operating License Renewal Stage.

As you know, the Commission's review of the LRA includes consideration of whether license renewal is consistent with the Coastal Zone Management Act (CZMA). The agencies responsible for performing the coastal consistency review for DCPP are San Luis Obispo County and the California Coastal Commission. In light of recent events at the Fukushima Daiichi Power Plant, and the considerable public concern regarding the need to assure the seismic safety at DCPP, PG&E has decided it is most prudent to have completed certain seismic studies at DCPP prior to issuance of the coastal consistency certification and the renewed NRC operating licenses, if approved.

The seismic studies referenced above are the seismic studies approved and funded by the California Public Utilities Commission (CPUC), including 3-D seismic studies recommended by the California Energy Commission (collectively referred to in this letter as the "3-D seismic studies"). The CZMA and the California Coastal Act, and their implementing regulations, do not necessarily require the 3-D seismic studies to be completed prior to issuance of the coastal consistency certification or that a coastal development permit be obtained in connection with license renewal. Nonetheless, as noted above, PG&E believes it prudent to complete these studies and issue a report addressing the results prior to issuance of a consistency certification and/or renewed operating licenses, if approved.

The CPUC approved PG&E's application for funding to perform the 3-D seismic studies on August 16, 2010. PG&E estimates that implementation of the 3-D seismic studies and investigations will occur over a minimum three-year period, which started in 2010. However, because this task will require the acquisition of all necessary State of California permits for seismic sources that exceed the 2-kilojoule energy limit, compliance with the California Environmental Quality Act, conducting data collection over the defined off-shore survey area, and data interpretation and integration, it is possible for the completion date for the studies to be delayed. In any event, presuming PG&E obtains all necessary permits, PG&E expects the 3-D seismic studies to be completed, and intends to issue a report addressing the results of those studies, as soon as possible after completing the analysis of the data and no later than December 2015.

PG&E therefore requests that the Commission delay the final processing of the LRA such that the renewed operating licenses, if approved, would not be issued until after PG&E has completed the 3-D seismic studies and submitted a report to the NRC addressing the results of those studies. PG&E would appreciate a Commission response to this letter granting this request on the docket for the License Renewal Application, Docket No. 50-275, OL-DPR-80, Docket No. 50-323, OL-DPR-82.

Please contact Mr. Terence L. Grebel, License Renewal Project Manager, at (805) 545-4160 with any questions about this letter.

Executed on April 10, 2011.

Sincerely,



John T. Conway
Senior Vice President - Energy Supply and Chief Nuclear Officer

jjp/223-9809

cc: Elmo E. Collins, NRC Region IV Regional Administrator
Nathanial B. Ferrer, NRC Project Manager, License Renewal
Kimberly J. Green, NRC Project Manager, License Renewal
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Diablo Distribution