

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

March 27, 2003

Agenda ID #1987
Ratesetting

TO: PARTIES OF RECORD IN APPLICATION 99-09-006

This is the proposed decision of Administrative Law Judge (ALJ) Patrick, previously designated as the principal hearing officer in this proceeding. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. This matter was categorized as ratesetting and is subject to Pub. Util. Code § 1701.3(c). Pursuant to Resolution ALJ-180 a Ratesetting Deliberative Meeting to consider this matter may be held upon the request of any Commissioner. If that occurs, the Commission will prepare and mail an agenda for the Ratesetting Deliberative Meeting 10 days before hand, and will advise the parties of this fact, and of the related ex parte communications prohibition period.

The Commission may act at the regular meeting, or it may postpone action until later. If action is postponed, the Commission will announce whether and when there will be a further prohibition on communications.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

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Decision **PROPOSED DECISION OF ALJ PATRICK** (Mailed 3/27/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC
COMPANY in the 1999 Annual Transition Cost
Proceeding.

Application 99-09-006
(Filed September 1, 1999)

(See Appendix A for a list of appearances.)

**OPINION ADOPTING ESTIMATE FOR HUNTERS POINT POWER
PLANT SITE REMEDIATION FOR INCLUSION IN THE TRANSITION
COST BALANCING ACCOUNT**

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APPENDIX A – Service List

**OPINION ADOPTING ESTIMATE FOR HUNTERS POINT POWER PLANT
SITE REMEDIATION FOR INCLUSION IN THE TRANSITION COST
BALANCING ACCOUNT**

I. Summary

The Commission approves Pacific Gas and Electric Company's (PG&E) estimate of approximately \$65.1 million net present value (NPV) for the future decommissioning and site remediation of Hunters Point Power Plant (HPPP). This estimate will replace both the non-environmental and environmental decommissioning estimates currently being amortized through rates in the Transition Cost Balancing Account (TCBA).¹

This decision does not prescribe site remediation measures or dictate clean-up levels. These matters will be determined by the Lead Agency and other regulatory agencies in a public forum when decommissioning actually occurs.

While recovering decommissioning costs based on estimates may sometimes be less desirable than recovering the actual costs, we believe PG&E's cost estimate is adequate for ratemaking purposes. As demonstrated in the volumes of evidence presented in this proceeding, PG&E's environmental decommissioning cost estimate is based on industry-accepted practices to determine the amount of remediation expected to be required at HPPP, and the regulatory requirements expected to apply to those activities once they commence.

¹ The 1996 General Rate Case (GRC) adopted estimate of these costs is currently being recovered through the TCBA pursuant to D.97-11-074.

We note that Decision (D.) 98-10-029 approved the request of PG&E to withdraw its request to sell the HPPP. This approval was found to be consistent with Pub. Util. Code § 363(c). We also approved an agreement between PG&E and the City and County of San Francisco (CCSF) that set out steps for closing the HPPP.

II. Procedural Summary

The active parties in this phase of the proceeding are the CCSF, Office of Ratepayer Advocates (ORA), and Southeast Alliance for Environmental Justice (SAEJ).

On November 23, 1999, Assigned Commissioner Josiah L. Neepor issued a Scoping Memo and Ruling categorizing this proceeding as a ratesetting proceeding and designating Administrative Law Judge (ALJ) Bertram Patrick as the principal hearing officer. The issue of HPPP site remediation cost was bifurcated so that it could be addressed separately from other matters related to PG&E's 1999 ATCP. Prehearing conferences related to HPPP were held on June 7 and July 5, 2000. Evidentiary hearings were held on August 14-16, 2000. Opening briefs were filed on September 28, 2000 and reply briefs were filed on October 19, 2000, by CCSF, ORA, PG&E, and SAEJ, and this matter was submitted for decision.

III. Background

In January 1998, PG&E applied to the Commission to sell four fossil-fueled plants, including HPPP.² Subsequently, PG&E amended its application to withdraw HPPP from the power plant auction in accordance with an agreement

² A.98-01-008.

with CCSF. Pursuant to this agreement, PG&E agreed to (1) withdraw HPPP from the auction; (2) permanently shut down the plant as soon as it is no longer needed for reliability; (3) begin decommissioning the plant and remediating the site within one year of shutting the plant down; and (4) restrict any other party from using the site for purposes of power generation. This agreement made PG&E responsible for non-environmental as well as environmental costs of decommissioning HPPP. The agreement was approved by the Commission in D.98-10-029.

IV. Estimated Cost of Decommissioning HPPP

In accordance with D.98-10-029 and D.97-11-074, PG&E presented updated site-specific cost estimates for the decommissioning of HPPP. PG&E requests approval to replace both the non-environmental and the environmental decommissioning estimates currently being amortized in the TCBA with these new site-specific cost estimates.

A. PG&E's Estimate

PG&E retained Stone and Webster Engineering Corporation (SWEC) to perform a site-specific non-environmental decommissioning cost analysis. In addition, PG&E also retained IT Corporation (IT) to revise the previous Phase II Environmental Site Assessment (ESA), and to reflect the limitation on the use of the site for power generation by evaluating potential future land uses consistent with current land use policies and zoning ordinances. In its original testimony, PG&E planned to dismantle the HPPP site and restore the bulk of the site to an industrial/commercial level. However, in its supplemental testimony PG&E adopted the recommendation of CCSF, that the entire site be restored to a residential level cleanup and adjusted its estimate accordingly.

PG&E requests the Commission to adopt the cost estimates set forth below:

Summary of Estimated Costs

Project Phase	Total NPV of Estimated Cost
1. Non-environmental Decommissioning	\$39,296,760
2. Environmental Decommissioning	<u>25,768,625</u>
3. Total for Decommissioning	\$65,065,385

Based on these cost estimates, and what has been accrued as of June 30, 1999, PG&E recommends that the following debits be recorded in the TCBA:³

Summary of Net Debits to the TCBA

	Environmental	Non-Environmental	Total
1. Updated Estimate	\$25,768,625	\$39,296,760	\$65,065,385
2. Accrual as of June 30, 1999	<u>2,698,613</u>	<u>13,892,980</u>	<u>16,591,593</u>
3. Estimate Exceeds Accrual	\$23,070,012	\$25,403,780	\$48,473,792

³ In its final true-up, PG&E will reflect actual accruals collected during the period between filing the decommissioning estimate and receiving Commission approval to replace the estimates in the TCBA with site-specific estimates. (PG&E, Ex. 39, p. 1-19.)

B. Position of CCSF

According to CCSF, there is at least \$1 million to be saved in PG&E's non-environmental decommissioning estimate. CCSF argues that the level of uncertainty in PG&E's non-environmental decommissioning estimate is at least 25%-35%, based on the "allowance for indeterminates" of 10% or 20% applied to each factor and an overall contingency of 15%. CCSF believes that given the long-time period before remediation will occur, it is possible that the costs of cleanup will differ significantly from the amounts authorized by the Commission.

CCSF argues that given the current ratemaking framework and the need to predict costs which will not be incurred for at least five years, the only way to increase certainty is through additional investigations, including soil and groundwater sampling. However, CCSF acknowledges that such additional sampling could increase the cost estimate but would not necessarily resolve all uncertainties.

C. Position of SAEJ

SAEJ criticizes PG&E's estimate as uncertain and not based on a thorough, informed analysis. SAEJ argues that beyond a screening evaluation, no risk assessment has been done for bay sediments adjacent to the site; for purposes of soil and groundwater contamination the site has not been "fully characterized;" soil sampling sites were too far apart; seasonal variations were not taken into account when groundwater sampling was done; responsibility of offsite-sources for groundwater contamination at HPPP had not been evaluated for possible financial recovery from third parties; and, the cost of removal of subsurface structures did not allow for remediation to a 10-foot depth to meet residential level clean-up standards. Therefore, SAEJ contends that adoption of

PG&E's estimate by the Commission would shortchange the needed cleanup and create a de facto remediation goal for HPPP that will endanger future residents at the site.

D. Position of ORA

ORA has concerns regarding the uncertainty as to the level of remediation to be undertaken, the timing of the remediation effort, and the specific activities associated with the remediation. Although ORA recognizes that SAEJ would advocate for the most thorough cleanup possible, irrespective of price, ORA has concerns about this approach. ORA believes further hearings are necessary to address, among other things, the appropriate level of remediation of the property. In the meantime, ORA recommends that PG&E's original estimate for an industrial level cleanup be adopted.

E. Response of PG&E.

PG&E argues that CCSF and SAEJ are under the misimpression that the purpose of this proceeding is to address a decommissioning remediation plan for HPPP. According to PG&E, not only are CCSF's and SAEJ's recommendations outside the scope of this proceeding, they are premature and lack the evidentiary basis needed to determine the level of remediation at HPPP since a remediation plan has neither been developed nor presented to the governing regulatory agencies for consideration. Nevertheless, PG&E agrees that a full remedial action plan, as a matter of law, must and will in due course be presented to the appropriate regulatory agency, and the public will have ample opportunity throughout the remediation planning process to participate and voice their concerns. (California Health and Safety Code, Sections 25356 et seq.)

Addressing CCSF's contention that PG&E's non-environmental decommissioning cost estimate should be reduced by \$1 million, PG&E points

out that CCSF bases this proposed reduction on the claim that PG&E could reduce its costs by applying “generally accepted practices to improve cost-effectiveness.” However, when asked how this million dollar savings estimate was arrived at, CCSF states that it “performed no detailed quantification” and from the few alleged findings of possible inflated estimates listed in its testimony, CCSF “draws the conclusion that other costs may be inflated as well.” PG&E submits that this kind of speculation is inappropriate.

Regarding ORA’s proposed reduction to PG&E’s non-environmental decommissioning cost estimate of \$170,933 based on its belief that PG&E’s cost estimates of transporting and disposing of asbestos waste are overstated by this amount, PG&E points out that ORA’s recommendation fails to take into consideration the need to remove not only the asbestos-containing materials, but the materials that became contaminated through the removal process. PG&E contends that its estimate appropriately includes these expanded volumes in its cost estimate for transporting and disposing of asbestos waste.

PG&E reiterates that the main purpose of the Phase II ESA was to develop a reasonable approach to any required remediation and to estimate the costs of the approach for ratemaking purposes. A reasonable approach was defined as being a cost-effective approach having a high likelihood of being accepted by regulatory agencies having jurisdiction over the remediation process. PG&E readily agrees that complete site characterization involving more sampling may be needed to develop the ultimate remediation plan accepted by agencies for HPPP, but PG&E believes that effort is not needed now to develop a cost estimate for ratemaking purposes.

Further, PG&E points out that the preparation of the Phase II ESA is consistent with the guidelines established by the American Society for Testing

and Materials (ASTM) for accelerated site characterization for confirmed or suspected petroleum releases. PG&E also points out that guidelines issued by the United States Environmental Protection Agency for remedial investigations, feasibility studies and data quality objectives were used, and the San Francisco Bay Regional Water Quality Control Board Basin Plan was also used. And, generally accepted industry, state, and federal regulatory standards were also employed. PG&E submits that this same preparation methodology was used to prepare Phase II ESAs for PG&E's Wave 1 and Wave 2 power plant divestitures, which were uncontested and adopted by the Commission.⁴ Accordingly, PG&E disputes the claims of both CCSF and SAEJ that additional testing would significantly change the cost estimate presented by PG&E.

F. Discussion

The purpose of this phase of the ATCP is to adopt an estimate of HPPP decommissioning costs for ratemaking purposes. As with all cost estimates adopted in ratemaking proceedings, the actual costs will likely differ from those forecasted. While the estimate would reflect the best information available, it would not dictate the eventual remediation plans that will be required for HPPP.

As all the parties have pointed out, the task of developing a specific cost estimate for work to be done 5-10 years in the future is inherently difficult. In this case, neither PG&E nor any of the parties can say with certainty when the decommissioning will commence. This fact alone creates significant uncertainty

⁴ PG&E's Wave 1 Divestiture (Application 96-11-020) and Wave 2 Divestiture (A.98-01-008) proceedings sought Commission approval of PG&E's planned divestitures and ratemaking treatment associated with these divestitures. See D.97-12-107 and D.99-04-026.

regarding the cost of this project. This uncertainty is exacerbated by the likelihood that environmental clean-up standards applicable to this project will change in the interim.

CCSF, SAEJ and ORA all criticize PG&E's estimate as being too uncertain and recommend that it not be adopted either because: (1) it does not reflect an adequate investigation; or (2) it is premature to adopt an estimate for decommissioning when the activity will not commence for at least five years.

However, CCSF, SAEJ and ORA have differing views on the reasonableness of PG&E's \$65.1 million estimate. CCSF and ORA argue that PG&E's estimate is too high and reflects a self serving propensity to overestimate costs. On the other hand, SAEJ is concerned that PG&E's estimate is too low, it will shortchange the needed cleanup, and costs could skyrocket. In fact, SAEJ recommends that PG&E's estimate should be increased by 25% if the Commission should choose to impose a one-way balancing account and cost cap. According to SAEJ, the 25% contingency factor reflects the United States Protection Agency's determination as to the potential variation expected in remediating hazardous waste sites.⁵

We believe that these criticisms are both unpersuasive and impractical in light of the assumptions underlying PG&E's cost estimate and the nature of this proceeding. While recovering decommissioning costs based on estimates may sometimes be less desirable than recovering the actual costs, we believe PG&E's cost estimate is adequate for ratemaking purposes. As demonstrated in

⁵ In light of SAEJ's contention, the contingency factors used by PG&E in its non-environmental estimate appear reasonable, contrary to CCSF's argument.

the volumes of evidence presented in this proceeding, PG&E's environmental decommissioning cost estimate is based on industry-accepted practices to determine the amount of remediation expected to be required at HPPP, and the regulatory requirements expected to apply to those activities once they commence.

Furthermore, as stated by PG&E, the Supplemental Risk Assessment, and the Phase I and II studies on which it relies, are based on an analysis of the physical site, the records associated with the site, comprehensive sampling of soil (191 samples) and groundwater (32 samples), and screening-level sampling of sediments (10 samples). The methodologies used in analyzing this site for purposes of developing a cost estimate for environmental decommissioning incorporate existing state and federal regulations, as well as generally accepted practices in the industry. These same methodologies were used and approved in the development of environmental decommissioning cost estimates for PG&E's Wave 1 and 2 divested power plants.

We believe that CCSF, SAEJ, and ORA, have overlooked the fact that there already is an estimate for HPPP decommissioning currently being amortized through rates in the TCBA, and the purpose of this proceeding is to true-up that estimate, rather than formulate a decommissioning plan for HPPP.

Furthermore, we are not persuaded by CCSF's and SAEJ's arguments that further sampling and investigation is necessary at this point. We are also not persuaded by ORA's argument that further hearings are necessary to determine the level of cleanup. CCSF will most likely be the Lead Agency, and CCSF with the support of SAEJ will ensure a residential level cleanup, when it occurs. The purpose of this proceeding is to develop as solid a ratemaking estimate as possible for an activity that will necessarily commence in future

years. Furthermore, it is unreasonable to delay or refuse to true-up an existing estimate because the activity will occur sometime in the future. Thus, we adopt PG&E's estimate as reasonable for purposes of truing up the decommissioning estimate, because the estimate has been prepared in accordance with accepted industry standards.

V. Ratemaking Treatment

A. Background.

Prior to the transition period, both environmental and non-environmental decommissioning cost estimates had been included in base rates and were being collected over time. Pursuant to Pub. Util. Code § 367, and D.97-11-074, decommissioning costs that the utility would retain became a transition cost that had to be collected during the rate freeze. In 1997 and 1999, the Commission approved PG&E's site-specific cost estimates to remediate assumed environmental contamination at each divested power plant site and authorized recovery through the TCBA.⁶

In 1998, the Commission adopted this same ratemaking methodology for HPPP decommissioning costs, when it adopted the agreement between PG&E and CCSF on the future of HPPP. The Commission said:

PG&E's proposal for treatment of decommissioning, remediation, and site restoration is based on the treatment we adopted for these types of costs in D.97-11-074 and is consistent with SB 1589. Specifically, the amortization of decommissioning costs should occur through the mechanism of the TCBA, rather than "in the CTC." We will follow D.97-11-074, and approve PG&E's proposal to the

⁶ See D.97-12-107, mimeo., p. 9 for Wave 1 and D.99-04-026, mimeo., p. 43 for Wave 2.

extent it is consistent with that decision. (D.98-10-029, mimeo., pp. 9-10.)

The methodology PG&E has followed in this proceeding to estimate and recover decommissioning costs is exactly the same as that adopted for other power plants and already approved for HPPP. Although the HPPP is slated to be closed, rather than divested per se, the cost recovery of decommissioning costs is similar to that of divested plants.

B. PG&E's Proposal

PG&E's primary recommendation is that its environmental and non-environmental remediation cost estimates be debited, net of accruals, to the TCBA.

As its secondary recommendation, PG&E supports use of the Hazardous Substance Mechanism (HSM) to recover the environmental decommissioning costs. According to PG&E, this recovery mechanism would allow recovery of the actual costs incurred to remediate the site to whatever level the regulatory agencies require, and would thus vitiate the parties concerns over the cost estimates presented in this case. However, since the parties do not significantly dispute PG&E's non-environmental decommissioning cost estimate, PG&E proposes that these costs be debited, net of all accruals, to the TCBA.

C. Position of CCSF

CCSF acknowledges that the ratemaking treatment for HPPP proposed by PG&E is the same treatment adopted by the Commission in D.97-11-074, D.98-07-092, and D.98-10-029 for PG&E's plants sold at auction. However, CCSF argues that these decisions do not consider the issues raised in this proceeding by CCSF and others.

CCSF urges the Commission to set aside previous ratemaking treatment and adopt a one-way balancing account for HPPP environmental and non-environmental costs. According to CCSF, a one-way balancing account and reasonableness review is necessary for several reasons. First, the Commission must ensure that ratepayers are not adversely impacted by PG&E's propensity to overestimate decommissioning costs. Second, if PG&E is permitted to retain funds not used for decommissioning, it will have a perverse incentive to cut corners on the cleanup. Third, under PG&E's proposal, ratepayers would not receive the benefits of any recovery of insurance proceeds or third-party contributions related to environmental cleanup costs at HPPP. Finally, under PG&E's proposal, PG&E has a financial incentive to delay cleanup, according to CCSF.

D. Position of SAEJ

SAEJ recommends that funding for HPPP remediation be provided through the HSM, and any funding not submitted to the HSM be placed in a one-way balancing account.

SAEJ contends that in spite of the efforts by PG&E to characterize the site, significant uncertainties remain regarding the scope and extent of cleanup required to achieve residential standards. According to SAEJ, studies conducted by the United States Environmental Protection Agency have found that even after full characterization and a feasibility study, cleanup costs for a site can vary by an average of 25%. Because of perceived uncertainties related to PG&E's estimate, SAEJ believes that as the HPPP cleanup goes through regulatory review, the costs could skyrocket.

Therefore, SAEJ, argues that unless a proper mechanism is employed to allocate ratepayer money, either ratepayer money may be wasted or the

remediation may be inadequate as PG&E tries to protect its shareholders. For this reason, SAEJ believes the HSM should be employed in this case.

E. Position of ORA.

ORA believes that additional proceedings are necessary to ensure that ratepayers receive the benefit of the remediation they pay for. Also, ORA argues that because the Commission has never ordered a residential level of remediation for HPPP or any other decommissioned facility, the previously applicable accounting methodologies, ratepayer protections, cost estimates, incentives and obligations must be reviewed, prior to undertaking the actual remediation. And, because of the substantial uncertainty that ORA perceives with regard to PG&E's estimate, ORA joins CCSF in recommending that a one-way balancing account be established. Additionally, ORA would impose a cost cap, presumably, equal to the amount of PG&E's original estimate based on a commercial/industrial level cleanup standard, which estimate ORA recommends be approved in this proceeding.

F. Response of PG&E.

PG&E responds that CCSF has provided no evidence that a one-way balancing account, or any other ratemaking treatment, is necessary to avert PG&E from either delaying or cutting costs of decommissioning. PG&E argues that CCSF provides no reason why these perverse incentives would be more likely to exist with the decommissioning of HPPP than at the other plants. PG&E points out that the Commission has acknowledged time and time again, it is appropriate for ratemaking to encourage utility cost savings by providing profit incentives. And one of the purposes of regulation of natural monopolies is to simulate the cost-cutting incentives provided by competition. According to PG&E, the HPPP decommissioning costs are no different from the many

categories of costs covered by the Commission's ratemaking mechanisms and CCSF's alleged "Imprecise Nature of the Costs" argument is no reason to adopt a one-way balancing account.

Further, PG&E argues that the circumstances at Humboldt Bay Power Plant (Humboldt), where PG&E proposed a one-way balancing account for decommissioning costs, are not analogous to HPPP.

With regard to using the HSM, as recommended by SAEJ, PG&E agrees that it is an appropriate recovery mechanism for environmental decommissioning costs. Actually, PG&E's preference is for all of its decommissioning costs to be recovered at the time they are incurred, rather than have to rely on the adoption of a cost estimate developed several years before the costs are incurred. Although not originally contemplated in this proceeding, PG&E agrees that actual environmental decommissioning costs could be recovered through the HSM, if the mechanism is available, rather than through the TCBA prior to the end of the rate freeze.

G. Discussion

We are not persuaded that the ratemaking treatment previously adopted by the Commission in D.97-12-107 for HPPP should be changed because of the "substantial uncertainties" perceived by the parties opposing PG&E's proposal.

We believe that there are no circumstances at HPPP that would suggest a change in ratemaking policy for power plant decommissioning. As PG&E stated at length in its testimony, its ratemaking proposal in this proceeding is identical to the ratemaking treatment adopted for decommissioning costs for PG&E's other divested power plants. There is nothing about HPPP that would indicate a need to change that ratemaking treatment.

While parties suggest the adoption of a one-way balancing account to address alleged uncertainties in PG&E's cost estimate, they have not pointed to any factor that sets HPPP apart from the other plants that received the ratemaking treatment PG&E has proposed in this proceeding. In fact, PG&E's estimating process for power plant decommissioning costs has not changed. While the parties point to PG&E's proposal for a one-way balancing account for decommissioning costs at its Humboldt plant as support for their proposal in this proceeding, they mischaracterize the circumstances under which PG&E proposed such treatment. Humboldt contains a nuclear facility. As stated by PG&E, the reason it proposed a one-way balancing account for the decommissioning costs at Humboldt was because PG&E could not define the scope of remediation, given the many impediments to the separation of the fossil and nuclear assets. A Phase II type ESA, as was done at HPPP, was impossible at Humboldt. At HPPP, however, PG&E conducted a detailed environmental site assessment which provides a high degree of certainty for its cost estimates. Thus, we conclude that for HPPP, there is no evidentiary or policy reason for the Commission to change its existing ratemaking treatment for power plant decommissioning. Accordingly, the ratemaking treatment previously adopted for HPPP in D.97-12-107, should not be changed. Likewise, we reject PG&E's secondary recommendation to use the HSM to recover the environmental decommissioning costs. However, we will allow PG&E to seek recovery of future sediment remediation costs related to HPPP through the HSM since these costs are not included in PG&E's estimate.

H. California Environmental Quality Act (CEQA)

SAEJ argues that the Commission should require an environmental impact report (EIR) before any decision is made on funding not covered by the HSM because a funding decision may adversely affect the environment.

We disagree. CEQA requirements only apply to a “project.”⁷ A Commission decision on a proposed action is a project only if the activities may cause a direct physical environmental change or a reasonably foreseeable indirect physical change. The activities that must be considered include the whole of the underlying action undertaken, supported or authorized by a public agency that may affect the physical environment.⁸ If the agency’s approval is a necessary step and the activity has the potential to result in significant impacts to the physical environment, the activity must be treated as a project subject to CEQA. If however, agency action merely establishes its ability to take a later action that will affect the environment, but does not commit the agency to a definite course of action, that action is not a “project” subject to CEQA. (*See Kaufman & Broad v. Morgan Hill Unified School District*, (1992) 9 Cal.App.4th 464, citing to *Bozung v. Local Agency Formation Commission*, (1975) 13 Cal.3d 263; *Fullerton Joint Union High Sch. Dist. V. State Bd. Of Edu.* 32 C3d 779, 796 (1982).)

Contrary to the argument of SAEJ, the Commission’s adoption of a cost estimate will not preclude implementation of activities required by a regulatory

⁷ Cal, Pub. Res. Code § 21065.

⁸ 14 Cal Code Regs. § 15378; CEQA does not apply to actions that will have a legal, social, economic or other effect that does not cause a change in the physical environment. (14 Cal. Code Regs. § 15064(e).)

agency having permitting authority over the HPPP decommissioning activities. The Commission has never suggested otherwise. In fact, it has explicitly stated that this proceeding is not to establish a decommissioning plan for HPPP. (ALJ February 4, 2000, Ruling.) And, as the caption for this docket indicates, this proceeding was premised on recovery of decommissioning costs as transition costs through the TCBA.

Under California Public Resources Code Section 21080(b)(8), CEQA does not apply to the establishment, modification, structuring, restructuring or approval or rates, tolls, fares, or other charges. This proceeding falls squarely within this statutory exemption. Not only is it inappropriate for the Commission to conduct a CEQA review in this ratemaking proceeding, it would be premature to conduct such a review without a decommissioning plan. As PG&E has stated over and over again, PG&E has not developed or presented a decommissioning plan for HPPP in this proceeding. Rather, PG&E has presented cost estimates for decommissioning HPPP in future years based on the best information available today. As with most cost estimates used to establish rates, the estimate to be adopted in this proceeding is based on future events. CEQA review is likely to be required when PG&E applies for its decommissioning permits, closer to the time that decommissioning actually occurs. At that time, the lead agency, likely CCSF, will initiate CEQA review, and SAEJ will have the opportunity to participate in that review. The Commission has not initiated such a review in this ratemaking proceeding.

SAEJ cites *Shawn v. Golden Gate Bridge Etc. District* (1976) 60 C.A.3d 699 to support its argument that the ratemaking exemption does not apply. That case does not support SAEJ's argument. It was decided in 1976. It does not discuss the ratemaking exemption for the simple reason that the ratemaking

exemption did not exist at the time the case was decided. Subsection (b)(8) of Section 21080, which contains the ratemaking exemption, was not a part of Section 21080 at that time. It was added to Section 21080 by Stats. 1978, ch. 356, effective July 5, 1978.

In summary, we conclude that this ratemaking proceeding is not a project under CEQA.

VI. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

VII. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Bertram D. Patrick is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The purpose of this proceeding is to update the previously adopted decommissioning cost estimates for HPPP currently being amortized through rates in the TCBA.

2. The decommissioning cost of HPPP is a transition cost and the Commission decided that transition costs should be estimated and accounted for in a net present value calculation to be recovered through the TCBA.

3. The Commission has adopted this methodology for recovery of decommissioning costs in the previous Wave 1 and Wave 2 power plant sales.

4. Although the HPPP is slated to be closed, rather than divested per se, the cost recovery of decommissioning costs is similar to that of divested plants.

5. PG&E's estimate of environmental and non-environmental decommissioning costs for HPPP is approximately \$65.1 million NPV.

6. PG&E's estimate was prepared in accordance with generally accepted industry, state, and federal regulatory standards, and the same methodology was used to prepare Phase II ESAs for PG&E's Wave 1 and Wave 2 power plant divestitures.

7. While PG&E includes the costs for bay sediment *testing* in its environmental cost estimate, it proposes to collect the cost for *remediation* of bay sediments through the HSM.

Conclusions of Law

1. PG&E's primary ratemaking proposal in this proceeding is identical to the ratemaking treatment adopted for decommissioning costs for PG&E's other divested plants. And, there are no circumstances regarding HPPP decommissioning that would suggest a change in ratemaking treatment as adopted for other power plants by the Commission.

2. PG&E's secondary proposal, to recover HPPP environmental decommissioning costs from the HSM, should be rejected.

3. The evidence fully supports the conclusion that PG&E's decommissioning estimate is based on sound industry-accepted practices to determine the amount of remediation expected at HPPP.

4. Since the purpose this proceeding is to adopt a cost estimate, not a remediation plan, further sampling and investigation is not necessary at this time.

5. PG&E's estimate of HPPP decommissioning costs has been shown to be reasonable and it conforms to accepted industry standards. Therefore, it should be adopted for inclusion in the TCBA for purposes of recovery of transition costs.

6. The Commission's decision in this proceeding does not prescribe site remediation measures or dictate clean-up levels that will eventually be required for HPPP.

7. Actual site remediation and clean-up levels for HPPP will be determined by the Lead Agency and other regulatory agencies in a public forum when decommissioning actually occurs.

8. As a ratemaking proceeding, this proceeding is not a "project" under CEQA, and the exemption under Pub. Res. Code § 21080(b)(8) applies to this proceeding.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company's (PG&E) environmental and non-environmental decommissioning cost estimate totaling approximately \$65.1 million for Hunters Point Power Plant (HPPP) is adopted for inclusion in the Transition Cost Balancing Account. There shall be no future true-up of this estimate for ratemaking purposes.

2. PG&E's secondary recommendation to recover HPPP environmental decommissioning costs from the HSM is denied.

3. PG&E may seek recovery of future sediment remediation costs related to HPPP through the Hazardous Substance Mechanism.

4. Application 99-09-006 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

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A9909011/A9909013

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A.99-09-006 ALJ/BDP/sid **APPENDIX A**

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