

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
ENERGY DIVISION

ID# 11168
RESOLUTION E-4480
April 19, 2012

R E S O L U T I O N

Resolution E-4480. Pacific Gas and Electric Company's (PG&E) Uranium Purchase Agreement with BHP Billiton for Diablo Canyon Power Plant.

PROPOSED OUTCOME:

- (1) Approves PG&E's request for Commission approval of a contract to purchase uranium for its Diablo Canyon Power Plant (DCPP) from BHP Billiton.
- (2) ESTIMATED COST: Based on comparison to PG&E's approved Nuclear Fuel Procurement Plan, PG&E's new contract with BHP Billiton should not increase PG&E's revenue requirements above what would be expected for procurement of uranium during the contract period. The actual contract prices and terms are confidential. The notational value of this contract on a full term commitment of uranium is \$146.8 million.

By Advice Letter 3931-E filed on October 21, 2011.

SUMMARY

This Resolution approves PG&E's request for Commission review and approval of a contract to purchase uranium for Diablo Canyon Power Plant (DCPP) from BHP Billiton. This review is in accordance with the process established in the Nuclear Fuel Procurement Plan, a part of PG&E's Conformed 2006 Long-Term Procurement Plan, which was approved by the CPUC in Resolution E-4177, dated June 26, 2008.

The protest of Women's Energy Matters is denied.

BACKGROUND

The suppliers of uranium ore are limited.

The first steps in the nuclear fuel cycle are the mining and milling of uranium, which is the primary fuel for nuclear power plants. Uranium ore is mined in open pits or underground. The uranium is extracted from the crushed ore in processing plants using various chemical methods. The end product is a uranium oxide compound U_3O_8 , commonly called yellowcake because of its color. U_3O_8 is part of the nuclear fuel cycle for a nuclear power plant.

Currently there are six major suppliers for uranium concentrates worldwide: Cameco (Canada), Areva (Spain), Uranium One (Canada and Russia), Rio Tinto (Britain), Kazatomprom (Kazakhstan), and BHP Billiton (Australia). Many of these suppliers maintain offices in the United States to supply the U.S. nuclear industry. There are also several small suppliers of uranium concentrates that supply uranium for domestic use in China, Japan, Iran, India, and Brazil.

BHP Billiton is one of the world's largest mining and diversified resources company.

Broken Hills Proprietary (BHP) started out in 1885 with a small zinc, lead, and silver mine in Broken Hills in western New South Wales, Australia. It subsequently expanded into mining of iron ore, copper, diamonds, oil and gas, silver, lead, zinc, and other natural resources.

Billiton started out in 1860 with a tin mine in Billiton Island off the eastern coast of Sumatra Indonesia. It also subsequently expanded into mining and production of aluminum, chrome and manganese ores, nickel, and titanium minerals.

In 2001 BHP and Billiton merged into one diversified resources company with headquarters in Melbourne, Australia. The company now has a significant position in mining and marketing uranium. BHP Billiton also has corporate centers in London, Johannesburg, and Houston, and offices in Perth, Santiago, Singapore, Shanghai, and The Hague.

PG&E's approved Nuclear Fuel Procurement Plan includes guidelines for pursuing activities which were outside the scope of the Plan.

In June 2008, the Commission issued Resolution E-4177, which approved PG&E's Conformed 2006 Long-Term Procurement Plan. PG&E's Nuclear Fuel Procurement Plan, which is covered by the approved Procurement Plan, includes guidelines for pursuing activities outside the scope of the plan. The Nuclear Fuel Procurement Plan approved activities and services related to the purchase of uranium ore, as well as conversion to the gaseous UF₆, and uranium enrichment for up to 15 years forward for deliveries beginning no later than 2016. In cases where PG&E pursues a transaction outside the scope of the Nuclear Fuel Procurement Plan, PG&E needs to follow an expedited advice letter process to obtain Commission pre-approval of a specified transaction. Since PG&E is pursuing a long-term uranium contract with BHP Billiton for a time period beyond the scope of its approved Nuclear Fuel Procurement Plan, PG&E filed AL 3931-E on October 21, 2011.

NOTICE

Notice of AL 3931-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with General Order 96-B.

PROTESTS

On November 10, 2011 the Women's Energy Matters (WEM) filed a timely protest to PG&E's Advice Letter 3931-E.

On November 21, 2011 PG&E replied to WEM's protest. ¹

¹ WEM's protest was sent electronically on November 10, 2011, but the protest was not received by Energy Division and PG&E until November 14, 2011 due to a computer error. On November 15, 2011 Energy Division informed WEM and PG&E that it intended to consider WEM's protest, and that PG&E had 5 business days from that date to submit a reply to the protest (see General Rule 7.4.4 of G.O. 96-B).

In its protest, WEM raised several issues that PG&E claims are outside the scope of AL 3931-E.

WEM raised issues regarding international affairs of Kazakhstan and Australia, contamination of native lands, genocide, once-through cooling at power plants, events at Fukushima, policy reasons for closing nuclear plants in the U. S. and worldwide, process control systems, and earthquake faults. PG&E replied that these arguments raised by WEM are irrelevant to PG&E's contract for uranium supply for DCPD and should be disregarded as outside the scope of issues raised in the advice letter.

WEM criticizes the confidential treatment of the Long-Term Procurement Plan (LTPP) and the uranium contract contained in AL 3931-E.

In its protest, WEM expressed concerns about the confidentiality of PG&E's LTPP. In its reply to the WEM protest, PG&E stated that that it requested confidential treatment when it filed the LTPP in R.06-02-013. The administrative law judge approved PG&E's confidentiality designation in a May 2, 2007 ruling, which was subsequently adopted by the Commission in D.07-12-052. PG&E also explained why the terms and conditions of the contract contained in AL 3931-E were appropriately designated as confidential under General Order 66-C and disclosure would have a detrimental impact on PG&E's customers and future potential nuclear fuel purchases.

WEM argues that pending decisions potentially affecting the LTPP could alter PG&E's need for nuclear fuel.

In its protest WEM references two proposed decisions regarding Bundled Procurement Plans and System Plans and Rules in R.10-05-006, which would address WEM's proposals to replace nuclear power with other resources.

PG&E replied that the Commission already approved PG&E's LTPP in Resolution E-4177, dated June 26, 2008, which grants procurement authority to PG&E for the purchase of uranium services and nuclear fuel for DCPD. PG&E states that the contract agreement with BHP Billiton contained in AL 3931-E is consistent with the LTPP and "... is beneficial to PG&E's customers because it includes favorable and competitive terms."

WEM expressed concern that this uranium contract goes beyond the current operating licenses of DCP.

In its protest WEM asserted that the term of the uranium contract extends beyond the date of termination of the current operating license for DCP. However, the contract for supplies of uranium does not extend beyond the years of the current operating licenses for DCP, which expire in 2024 and 2025 for Units 1 and 2, respectively. PG&E replied that the contracts do go beyond the current LTPP timeframe, but the LTPP includes provisions for purchasing nuclear fuel services outside the scope of the LTPP. Consistent with those provisions, PG&E filed AL 3931-E seeking approval of the contract.

DISCUSSION

BHP Billiton has a proven track record of providing uranium to the nuclear power community both in the US and abroad.

BHP Billiton is an important and leading company in the mining and milling of uranium for the nuclear fuel industry. With several locations worldwide, BHP Billiton has committed substantial resources and assets to ensure the continuity and availability of uranium for nuclear fuel. BHP Billiton has worldwide expertise and a presence in many countries worldwide.

PG&E is pursuing a new contract for uranium concentrate beyond 2012.

To ensure a continued supply of nuclear fuel for its DCP units, PG&E is pursuing approval of a contract for purchase and delivery of uranium ore. Under this contract, deliveries of uranium concentrate would be from 2012 through 2024.

The Long-Term Procurement Plan provides guidelines for transactions outside the scope of the Plan. PG&E's AL 3931-E is in accordance with the guidelines of its Nuclear Fuel Procurement Plan for pursuing activities outside the scope of the Plan.

PG&E's approved Nuclear Fuel Procurement Plan covered targets for each of the nuclear fuel cycle segments for uranium ore, conversion to the gaseous hexafluoride, and uranium enrichment services from 2007 through 2016.

The Procurement Plan also provides guidelines for activities outside the scope of the approved Plan, stipulating that PG&E should submit advice letters to the Commission for expedited review and approval.

PG&E is entering into a contract with BHP Billiton for purchase and delivery of uranium concentrate for a delivery period 2012 through 2024. Since these years are beyond the scope of the currently-approved Procurement Plan, PG&E submitted advice letter (AL) 3931-E to the CPUC. The filing of this advice letter is appropriately within the guidelines set forth by the approved Procurement Plan.

The terms of the PG&E contract amendment for purchase and delivery of uranium concentrate with BHP Billiton are just and reasonable.

We have reviewed the contract amendment between PG&E and BHP Billiton for purchase and delivery of uranium concentrate, which was attached as a Confidential Appendix to AL 3931-E.

PG&E's contract with BHP Billiton addresses various scenarios and factors. When compared against PG&E's approved Nuclear Fuel Procurement Plan, we find PG&E's contract with BHP Billiton and its terms and conditions to be just and reasonable and provide a reliable and cost-effective long term supply of uranium concentrate for nuclear fuel for DCP.

In AL 3931-E, PG&E requested confidential treatment of the Appendices to the advice letter filing that contain pricing and terms of the contract.

AL 3931-E contains two appendices: Appendix A is a summary of the contract with BHP Billiton, and Appendix B is the contract amendment. PG&E requests that these two appendices be treated and maintained as confidential, under General Order 66-C and Public Utilities Code Section 583.

Since the PG&E contract with BHP Billiton contains pricing and terms and conditions for sensitive procurement information, disclosure of this information would not be in the public interest because it could have a detrimental impact on PG&E's customers and future potential nuclear fuel purchases. Accordingly, the Commission notes that Appendices A and B of AL 3931-E shall be maintained as confidential.

PG&E's request in AL 3931-E should not increase PG&E's revenue requirements above what would be expected for procurement of nuclear fuel materials and services during the contract period.

According to PG&E in AL 3931-E, "The Agreement pricing terms are favorable, consistent with the pricing approved by the Commission in the Nuclear Fuel Supply (sic Procurement) Plan and are competitive with the other suppliers of uranium concentrates."

Further, our review confirms that the pricing of PG&E's contract with BHP Billiton is consistent with what would be expected for procurement of uranium concentrate during the contract period based upon PG&E's approved Nuclear Fuel Procurement Plan. Thus, the contract should not increase PG&E's revenue requirements above what would be expected for procurement of uranium concentrates during the contract period.

The actual contract prices and terms are confidential.

The protest of WEM is denied.

Most of the issues raised by WEM are not relevant to PG&E's contract with BHP Billiton for uranium concentrate for DCPD and are outside the scope of AL 3931-E.

The confidential treatment of PG&E's contract agreement, which includes terms and pricing, are in accordance with General Order 66-C. We have reviewed the contract agreement and confirmed that it does not extend beyond the years of the current operating licenses for both units of DCPD. While there are pending decisions in a CPUC proceeding regarding extending the LTPP, which currently contains forecast pricing for fuel supply services through 2016, the contract agreement with BHP Billiton would be beneficial to PG&E's customers by providing for a long-term supply of uranium concentrate at favorable and competitive terms and pricing. As provided in the guidelines of the LTPP for pursuing contracts beyond 2016, PG&E appropriately filed AL 3931-E.

Accordingly, the protest of WEM is denied.

COMMENTS

Public Utilities Code section 311(g) (1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly, this draft resolution was mailed to parties for comments, and is placed on the Commission's agenda no earlier than 30 days from the date issued for comment.

FINDINGS AND CONCLUSIONS

1. PG&E filed AL 3931-E on October 21, 2011 requesting Commission review and approval of a long-term uranium concentrates contract with BHP Billiton for DCPD.
2. BHP Billiton is an Australian company, a leading world-wide vendor and supplier of uranium concentrate for nuclear fuel.
3. BHP Billiton has a proven track record of providing uranium concentrate for nuclear power plants, both in the U.S. and abroad.
4. To ensure a continued supply of nuclear fuel for its DCPD units, PG&E is requesting approval of a contract with BHP Billiton for the purchase and delivery of uranium concentrate beyond 2012.
5. PG&E's CPUC-approved Nuclear Fuel Procurement Plan anticipated activities and services related to the purchase of uranium ore for the time period 2007 through 2016.
6. The Long-Term Procurement Plan provides guidelines for PG&E's pursuing transactions outside the scope of the Plan.
7. Because PG&E is pursuing a long-term uranium contract with BHP Billiton for a time period beyond the scope of its approved Nuclear Fuel Procurement Plan, PG&E was required to file an advice letter for approval of the contract in accordance the guidelines established in that plan.
8. On October 21, 2011 PG&E filed AL 3931-E, seeking Commission review and approval for a uranium contract with BHP Billiton for a long-term period beyond 2012.

9. WEM protested AL 3931-E on November 10, 2011 raising issues regarding international affairs of Kazakhstan and Australia, contamination of native lands, genocide, once-through cooling at power plants, events at Fukushima, policy reasons for closing nuclear plants in the U. S. and worldwide, process control systems, and earthquake faults.
10. For the reasons discussed in the body of this resolution, the protest of WEM should be denied.
11. The PG&E contract agreement for purchase and delivery of uranium concentrate with BHP Billiton is just and reasonable when compared against PG&E's approved Nuclear Fuel Procurement Plan.
12. When compared against PG&E's approved Nuclear Fuel Procurement Plan, PG&E's contract agreement with BHP Billiton should not increase PG&E's revenue requirements above what would be expected for procurement of uranium during the contract period.
13. In accordance with the provisions regarding confidentiality under GO 66-C and Public Utilities Code Section 583, Appendices A and B of AL 3931-E that contain pricing and contract terms should be maintained as confidential because making them public could have a detrimental impact on PG&E's customers and future potential nuclear fuel purchases.

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company's (PG&E) request for Commission review and approval of the contract agreement with BHP Billiton for the long-term purchase and delivery of uranium concentrate for the Diablo Canyon Power Plant is approved.
2. Appendix A, the contract amendment summary, and Appendix B, the BHP Billiton contract attached to AL 3931-E shall be maintained as confidential.
3. The protest of WEM is denied.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on April 19, 2012; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director