

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ID#4258

RESOLUTION E-3912

FEBRUARY 24, 2005

R E S O L U T I O N

Resolution E-3912. Pacific Gas and Electric Company requests authority to disburse \$35.9 million from the Humboldt Bay Power Plant Unit 3 Nuclear Decommissioning Master Trusts for a dry cask storage system to enable 2006 decommissioning work. Request is approved.

By Advice Letter 2565-E, filed on October 12, 2004.

SUMMARY

This Resolution approves PG&E's request to disburse \$35.9 million in funds from its Humboldt Bay Power Plant Unit 3 (HBPP Unit 3) Nuclear Decommissioning Master Trusts (Trust) to expend on a dry cask storage system referred to as the Independent Spent Fuel Storage Installation (ISFSI) for spent nuclear fuel. Key elements of the resolution are summarized below.

- **The ISFSI enables early decommissioning for HBPP Unit 3 beginning in 2006.**
- **Initial funding for the proposed ISFSI project has already been established in Commission proceedings.**
- **PG&E is participating in nuclear waste storage litigation with the Department of Energy (DOE) and may receive some compensation. However, PG&E expects the litigation to continue for many years.**
- **ORA requests that the Commission deny PG&E's request to disburse funds from the decommissioning trust until after PG&E recovers its spent fuel costs from DOE. ORA's request is denied because waiting for recovery of such costs from DOE before starting on the project could delay the project potentially for many years.**

BACKGROUND

D.03-10-104 approved a decommissioning plan for HBPP to commence in 2006.

Humboldt Bay Power Plant, Unit 3 (HBPP Unit 3) was a 65-megawatt nuclear reactor that began commercial operation in 1963, ceased operation in 1976, and was placed in safe storage custodial mode in 1988 pending decommissioning. Full decommissioning was anticipated to begin in 2015, but in 2003, the Commission approved an alternate decommissioning plan to commence in 2006, which provides superior cost benefits. (D. 03-10-014)

PG&E requests authorization to disburse funds from the HBPP Trust to fund an ISFSI.

PG&E requests authorization to disburse \$35.9 million from the HBPP Unit 3 Trust to fund an Independent Spent Fuel Storage Installation (ISFSI). The fund expenditures are for a Nuclear Regulatory Commission (NRC) license review, fabrication, construction, and loading activities of an onsite, dry cask storage system. This project is a necessary first step to enable the 2006, early decommissioning of Humboldt Bay Unit 3.

The decommissioning trust funds were established in D. 85-12-022 to allow PG&E "to recover from its ratepayers the cost of decommissioning the prudently constructed plant at Humboldt Bay Power Plant Unit 3." The liability to decommission HBPP Unit 3 is funded by trust assets having a market value of \$221 million and a liquidation value¹ of \$199 million, as of December 31, 2003.

The ISFSI will be constructed in full compliance with existing NRC regulatory requirements and the current application amendment with the NRC, which adjusts for the project's seismic design. The local Citizens Advisory Board, which represents organizations such as Redwood Alliance and Surfriders, supports the ISFSI project. PG&E proposes to establish and maintain separate accounting to record the costs of the ISFSI and related transactions with the Trust to permit cost monitoring. ISFSI cost review will be conducted under the next Nuclear Decommissioning Cost Triennial Proceeding (NDCTP).

¹ Liquidation value reflects the amount available after taxes.

NOTICE

Notice of Advice Letter (AL) 2565-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 Section III-G of General Order 96-A.

PROTESTS

ORA requests that the Commission deny PG&E's request to disburse funds from the decommissioning trust until after PG&E recovers its spent fuel costs from DOE.

On November 1, 2004, the Office of Ratepayer Advocates (ORA) filed a timely protest to Advice Letter 2565-E, objecting to the disbursement of funds from the Trust. The ORA argues that PG&E should be attempting to recover funds from the U. S. Department of Energy (DOE) to cover the cost of ISFSI installation, since the Yucca Mountain waste repository has been delayed and since other nuclear utilities are pursuing similar compensation. ORA recommends that the Commission reject PG&E's advice letter and deny PG&E's request to disburse funds from the trusts until after PG&E recovers its spent fuel storage costs of approximately \$5 million from the DOE.

The federal government settled a suit with a nuclear plant owning utility for delayed nuclear waste storage.

ORA states that the federal government recently settled a lawsuit with another nuclear utility, Exelon, regarding spent nuclear fuel storage costs, while other utilities with nuclear generators are pursuing similar compensation through court action. According to *California Energy Markets*, (August 13, 2004) the federal government recently "agreed to pay Exelon \$80 million for cost associated with storing spent nuclear fuel while the proposed nuclear waste repository at Yucca Mountain in Nevada remains unavailable." Also, "Exelon will continue to receive annual payments for temporary storage....".

PG&E is participating in nuclear waste storage litigation.

PG&E responded to the ORA protest on November 8, 2004, stating:

"(i)n the 1990's , several utilities commenced litigation under the Nuclear Waste Policy Act when it became clear that the DOE would not be able to take delivery of spent nuclear fuel beginning in 1998. While not a named party, PG&E has been an active participant, including as an *amicus curiae* in several matters. Although one U.S. Court of Appeals has determined that the DOE breached the standardized spent fuel contracts, another court has questioned whether it has."

PG&E expects nuclear waste repository litigation to continue for many years.

PG&E states further that it has been reviewing the value of the Exelon settlement and this review takes place in the context of the pending litigation to assess its prospects. PG&E expects the litigation to continue for many years. PG&E explains that any recovery from the ongoing litigation with the DOE will be returned to ratepayers. Finally, PG&E comments, "the local community, including its political representatives, are supporting the dry cask storage alternative as opposed to leaving the spent fuel in the spent fuel pool at the plant."

DISCUSSION

The initial funding for the proposed ISFSI project for HBPP Unit 3 has been already established in Commission proceedings.

The Commission approved disbursement of \$10.5 million for initial ISFSI activities under PG&E's 1999 General Rate Case (D. 00-04-026) and Resolution E-3737. The ISFSI was included in the decommissioning cost estimate filed in PG&E's 2002 NDCTP), Application 02-03-020. The Commission approved 2006, early decommissioning for HBPP Unit 3 in D. 03-10-014.

ORA's request is denied because waiting for compensation from DOE before starting on the project could delay the project potentially for many years and impose some costs on ratepayers from delayed decommissioning.

The ISFSI is a prerequisite to early decommissioning, because it moves the spent nuclear fuel from its current location in a spent fuel pool adjacent to the reactor and then provides onsite storage to enable dismantlement of the plant. The cost of the ISFSI will offset future decommissioning spending when full decommissioning of HBPP Unit 3 commences. As cited in PG&E's 1999 GRC

D.00-02-046 (mimeo p. 385), "major savings could be achieved by the early decommissioning of Humboldt Bay Unit 3, approximately \$4.5 million per year in avoided O&M costs (in 1997 dollars) could be realized for the 10-year period 2006 through 2015, and possibly longer if PG&E is forced to continue storing fuel after 2015."

Deferral of ISFSI funds will delay the 2006 decommissioning of HBPP Unit 3.

The status of the Yucca Mountain waste repository remains unresolved, despite the DOE expected opening in 2010. ORA proposes to defer using trust funds for an ISFSI until litigation with DOE is resolved regarding the delays of securing a national storage site. We concur with PG&E and believe that this litigation could easily continue beyond the 2006 date, when the Commission has approved decommissioning to begin for HBPP Unit 3. In addition, PG&E responded to the Energy Division that the fabrication for the dry cask storage could require as many as 124 weeks, which could constrain the project timing and affect the expected cost savings of the 2006 decommissioning.

PG&E's request provides the following summary of proposed expenditures:

	<i>Description</i>	Amount (Millions)
1.	NRC Review Fees	\$ 1.5
2.	Cask Storage Fabrication	\$ 24.5
3.	Cask Storage Vault Construction	\$ 4.4
4.	Cask Loading Activities	\$ 5.5
	Total	\$ 35.9

PG&E's request for funding the ISFSI should be approved.

It is reasonable to approve the expenditure of HBPP Unit 3 decommissioning trust funds to proceed with the ISFSI project rather than wait for pending litigation to be resolved or wait until a nuclear waste repository is available. Should pending litigation result in a settlement, all recovered funds shall be deposited into the HBPP Unit 3 Trust.

We approve PG&E's request to expend nuclear decommissioning trust funds in the amount of \$35.9 million for the licensing, fabrication, installation and loading

activities of the ISFSI at Humboldt Bay Power Plant, Unit 3. Reasonableness review of the ISFSI established at Humboldt Bay Power Plant, Unit 3 will commence in the next NDCTP upon completion of the project. ORA's protest 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, the draft resolution was issued for comment to all parties no later than 30 days prior to being considered by the Commission.

FINDINGS

1. PG&E filed AL 2565-E on October 12, 2004 requesting authority to disburse \$35.9 million from the Humboldt Bay Power Plant Unit 3 Nuclear Decommissioning Master Trusts for a dry cask storage system to enable 2006 decommissioning work. ORA protested PG&E's advice letter.
2. The HBPP Unit 3 was a 65-megawatt nuclear reactor that began commercial operation in 1963, ceased operation in 1976, and was placed in safe storage custodial mode in 1988 pending decommissioning.
3. Full decommissioning was anticipated to begin in 2015, but in 2003, the Commission approved an alternate decommissioning plan to commence in 2006, which provides superior cost benefits.
4. Installation of an ISFSI is a necessary first step to enable the 2006, early decommissioning of Humboldt Bay Unit 3 because it will move the spent nuclear fuel from its current location in a spent fuel pool adjacent to the reactor to enable dismantlement of the plant.
5. PG&E estimates that an ISFSI will cost \$35.9 million. This amount includes costs of the NRC license review and fabrication, construction, and loading activities of an onsite, dry cask storage system.

6. The liability to decommission HBPP Unit 3 is funded by trust assets having a market value of \$221 million and a liquidation value of \$199 million, as of December 31, 2003.
7. The Commission approved disbursement of \$10.5 million for initial ISFSI activities under PG&E's 1999 General Rate Case (D. 00-04-026) and Resolution E-3737.
8. The ISFSI was included in the decommissioning cost estimate filed in PG&E's 2002 Nuclear Decommissioning Cost Triennial Proceeding where the Commission approved early, 2006 decommissioning for HBPP Unit 3.
9. The cost of the ISFSI will offset future decommissioning spending when full decommissioning of Humboldt Unit 3 commences.
10. The federal government recently agreed to settle litigation with another nuclear plant owning utility to pay for costs associated with storing spent nuclear fuel while the proposed nuclear waste repository at Yucca Mountain remains unavailable.
11. Should pending litigation result in a settlement, all recovered funds shall be deposited into the HBPP Unit 3 Trust.
12. It is reasonable to approve the expenditure of HBPP Unit 3 decommissioning trust funds to proceed with the ISFSI project rather than wait for pending litigation to be resolved or wait until a nuclear waste repository is available.
13. Reasonableness review of the ISFSI for Humboldt Bay Power Plant, Unit 3 will commence in the next NDCTP upon completion of the project.

THEREFORE IT IS ORDERED THAT:

1. The request of the Pacific Gas and Electric Company to disburse \$35.9 million from the Humboldt Bay Power Plant Unit 3 Nuclear Decommissioning Master Trusts for a dry cask storage system requested in Advice Letter 2565-E is approved.

2. Reasonableness review of the ISFSI for Humboldt Bay Power Plant, Unit 3 will commence in the next Nuclear Decommissioning Cost Triennial Proceeding upon completion of the project.
3. ORA's protest is denied.
4. Any compensation received by PG&E from the nuclear waste repository litigation with DOE shall be returned to ratepayers.
5. Advice Letter 2565-E is approved, effective February 24, 2005.

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 February 24, 2005; the following Commissioners voting favorably thereon:

STEVE LARSON
Executive Director

January 25, 2005

ID #4258
Draft Resolution E-3912
Commission Meeting: February 24, 2005

TO: PARTIES TO PACIFIC GAS AND ELECTRIC CO. ADVICE LETTER (AL)
2565-E

Enclosed is draft Resolution E-3912 of the Energy Division. It will be on the agenda at the Commission's February 24, 2005 meeting. The Commission may then vote on the resolution or it may postpone a vote until later. Only when the Commission acts does the resolution become binding on the parties.

Parties may submit comments on draft Resolution E-3912.

An original and two copies of the comments, with a certificate of service, should be submitted to:

Jerry Royer
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Fax: 415-703-2200
Email: jjr@cpuc.ca.gov

An electronic copy of comments should be submitted to:

Don Lafrenz at dlf@cpuc.ca.gov; and
Anne Premo at awp@cpuc.ca.gov

Any comments on draft Resolution E-3912 must be received by the Energy Division by February 10, 2005. Those submitting comments must serve a copy of their comments on 1) the entire service list attached to the draft Resolution, 2) all Commissioners, and 3) the director of the Energy Division, on the same date that the comments are submitted to the Energy Division.

Comments shall be limited to five pages in length plus a subject index listing the recommended changes to the draft Resolution, a table of authorities and an appendix setting forth the proposed findings and ordering paragraphs.

Comments shall focus on factual, legal or technical errors in the proposed draft Resolution. Comments that merely reargue positions taken in the advice letter or protests will be accorded no weight and are not to be submitted.

Replies to comments on draft Resolution E-3912 may be filed (i.e., received by the Energy Division) on February 17, 2005, and shall be limited to identifying misrepresentations of law or fact contained in the comments of other parties. Replies shall not exceed five pages in length, and shall be filed and served as set forth above for comments.

Late submitted comments or replies will not be considered.

Gurbux Kahlon
Program Manager
Energy Division

Enclosure: Service List
Certificate of Service

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of draft Resolution E-3912 on all parties in these filings or their attorneys as shown on the attached list.

Dated January 25, 2005 at San Francisco, California.

Jerry Royer

NOTICE

Parties should notify the Energy Division, Public Utilities Commission, 505 Van Ness Avenue, Room 4002, San Francisco, CA 94102 of any change of address to insure that they continue to receive documents. You must indicate the Resolution number on the list on which your name appears.

Brian Cherry, Director, Regulatory Relations
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177
Email: RxDd@pge.com

Dana Appling, Director
Office of Ratepayer Advocates
501 Van Ness Ave.
San Francisco, CA 94102
Email: dsa@cpuc.ca.gov