

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Southern California Edison Company and San Diego Gas & Electric Company for the 2005 Nuclear Decommissioning Cost Triennial Proceeding to Set Contribution Levels for the Companies' Nuclear Decommissioning Trust Funds and Address Other Related Decommissioning Issues.

Application 05-11-008
(Filed November 10, 2005)

Application of Pacific Gas and Electric Company in its 2005 Nuclear Decommissioning Cost Triennial Proceeding.

Application 05-11-009
(Filed November 10, 2005)

**SCOPING MEMO AND RULING
OF ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE**

Pursuant to Article 2.5 of the Commission's Rules of Practice and Procedure (Rules),¹ this Scoping Memo and Ruling addresses issues, schedule, and other matters necessary to scope these proceedings.

1. Background

By Notice dated December 2, 2005, the Commission set a prehearing conference, held on January 5, 2006, to determine parties, create the service lists, identify issues, consider the schedule, and address other matters as necessary to proceed with these applications.

¹ The Commission's Rules are available on the Commission's website, (<http://www.cpuc.ca.gov/>), click on "Laws, Rules, Procedures."

A. Edison and SDG&E

In a Joint Application, (A.) 05-11-008, Edison and SDG&E request the Commission:

- (1) find the \$298 million (100% share, 2004\$) cost of San Onofre Nuclear Generating Station (SONGS) Unit 1 decommissioning work completed between January 1, 2002 and June 30, 2005 is reasonable;
- (2) find the updated \$309 million (100% share, 2004\$) SONGS Unit 1 decommissioning cost estimate for the remaining work is reasonable;
- (3) find the updated \$3,131 million (100% share, 2004\$) SONGS Units 2 & 3 decommissioning cost estimate is reasonable;
- (4) raise the Qualified Trust maximum equity percentage to 60 percent;
- (5) raise the cap on investment management fees to 30 basis points;
- (6) raise annual compensation retainer for non-company members of the Nuclear Decommissioning Trust Committee to \$12,000; and
- (7) allow a maximum 20% allocation of the total fixed income portfolio in the Qualified Trust to high yield bonds rated B or higher by Standard and Poors or B2 or higher by Moodys.

In addition, Edison requests the Commission:

- (1) find the updated \$739 million (Edison's share, 2004\$) Palo Verde decommissioning cost estimate is reasonable;
- (2) authorize rate recovery of its increased contribution of \$57.8 million to its Nuclear Decommissioning Trust Funds for SONGS Units 2 & 3 and for Palo Verde Nuclear Generating Station Units 1, 2, & 3 (Palo Verde) through the Nuclear Decommissioning Cost Charge;
- (3) authorize Edison to amend its Decommissioning Trust Agreements (Trust Agreements) to clarify that transfers of nonqualified nuclear decommissioning trust (Nonqualified

Trust) assets to the qualified nuclear decommissioning trust (Qualified Trust), pursuant to Internal Revenue Code Section 468A(f), as amended by the Energy Policy Act of 2005, are permissible under the Trust Agreements, and to submit such amendments as may be required for Commission approval via advice letter filing;

- (4) approve the transfer of funds from Edison's SONGS and Palo Verde Nonqualified Trusts to the corresponding SONGS and Palo Verde Qualified Trusts, pursuant to Internal Revenue Code Section 468A(f), as amended by the Energy Act of 2005; and
- (5) authorize Edison to continue to use the tax benefits associated with deducting SONGS 1 Nonqualified Trust amounts consistent with Ordering Paragraph No. 9 of D.03-10-015, including the tax benefits that may arise in connection with any transfer of funds from Edison's SONGS 1 Nonqualified Trusts to Edison's SONGS 1 Qualified Trusts as provided for in Internal Revenue Code Section 468A(f), to continue SONGS 1 decommissioning work.

SDG&E requests the Commission authorize or approve:

- (1) rate recovery of SDG&E's increased contributions of \$12.05 million, excluding franchise fees and uncollectible, to its nuclear decommissioning trust funds for SONGS 2 & 3;
- (2) apply \$5.523 million of the over collection in SDG&E's Nuclear Decommissioning Adjustment Mechanism as a 12-month amortization to the nuclear decommissioning rate effective January 1, 2007;
- (3) amend SDG&E's Trust Agreements to clarify that transfers of Nonqualified Trust assets to the Qualified Trusts pursuant to Internal Revenue Code Section 468A, as amended by the Energy Policy Act of 2005, are permissible under the Trust Agreements, and to submit such amendments as may be required for Commission approval via advice letter filing;
- (4) transfer of funds from SDG&E's SONGS Nonqualified Trust to the corresponding SONGS Qualified Trust; and

- (5) allow SDG&E to continue to use the tax benefits associated with deducting SONGS 1 Nonqualified Trust amounts consistent with Ordering Paragraph No. 9 of Commission D.03-10-015, including any tax benefits that may arise in connection with any transfer of funds from SDG&E's SONGS 1 Nonqualified Trust to SDG&E's SONGS 1 Qualified Trust as provided for in Internal Revenue Code Section 468A(f) to continue SONGS 1 decommissioning work.

B. PG&E

In a separate application, A.05-11-009, PG&E requests the Commission to authorize the collection, through Commission-jurisdictional electric rates, of the following amounts in 2007 through 2009 for decommissioning of Diablo Canyon and Humboldt Unit 3:

- (1) \$9.491 million and \$0 for the Diablo Canyon Nuclear Decommissioning Trusts for Units 1 and 2, respectively (the 2005 revenue requirement is \$0);
- (2) \$14.621 million for the Humboldt Unit 3 Nuclear Decommissioning Trust (the 2005 revenue requirement is \$18.443 million);
- (3) increase revenue requirements to cover the costs of operating and maintaining (O&M) the Humboldt Unit 3 site in a safe condition (SAFSTOR). Specifically, PG&E is requesting SAFSTOR revenue requirements of \$13.232 million in 2007 from the authorized amounts of \$10.836 million for 2005. PG&E is also requesting attrition for SAFSTOR expenses for 2008 and 2009.
- (4) continue overall decommissioning revenue requirement levels currently in effect for 2005 through 2006, but to apply \$12.376 million as revenue requirements attributable to SAFSTOR expenses, while contributing the remainder (after any applicable taxes) to the decommissioning trusts;
- (5) find that PG&E's activities with respect to two completed decommissioning projects – involving asbestos removal and

plant systems and structures radiological characterization –
were reasonable and prudent.

2. Categorization

Applicants proposed that these proceedings be categorized as ratesetting. The Commission preliminarily categorized these matters as ratesetting in Resolution ALJ 176-3162, dated November 18, 2005. The categorization of these proceedings is determined herein to be ratesetting. This is the Assigned Commissioner’s Ruling on category, and appeals, if any, must be filed and served within 10 days. (*See* Rule 6.4.)

3. Hearing and Record; Restrictions on Ex Parte Communications

Applicants proposed that these proceedings might include hearings. The Commission preliminarily determined that these matters would require hearings. (*See* Resolution ALJ 176-3162.) This Scoping Memo adopts a schedule that includes formal hearings. (*See* Rules 6(a)(3) and 6.1(a).) In a ratesetting proceeding involving hearings, ex parte communications are permitted only if consistent with certain restrictions, and are subject to reporting requirements. (*See* Rules 7(c) and 7.1.)

The record will be composed of all documents filed and served on parties. It will also include testimony and exhibits received at hearing.

Parties shall use the procedures contained in Resolution ALJ-164 to seek resolution of discovery disputes.²

² This Resolution may be accessed via the following link:
http://www.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/2538.doc.

4. Consolidation

Applicants suggested that the two proceedings should not be consolidated because any efficiencies could be extracted by close coordination. They argue that the similarities are more superficial than real. On the other hand, there are likely administrative efficiencies in consolidation. The previous triennial proceedings were not consolidated but they addressed many common issues, most recurring here, including, e.g., expected financial market performance. There are also new tax issues arising from the Energy Policy Act of 2005, common to both applications. Additionally, conducting seriatim hearings could complicate ensuring all necessary evidence is appropriately included in two separate records. All Commission decisions must be based on the record applicable to the relevant issues for each applicant and no material harm will likely result by consolidating the two applications. We will therefore consolidate the proceedings pursuant to Rule 55.³ As deemed appropriate and efficient by the Principal Hearing Officer, these applications may be addressed in either separate or combined decisions to expeditiously resolve the issues.

5. Compliance With Prior Decisions

PG&E, Edison, and SDG&E are responsible for ensuring that these applications are in compliance with all prior Commission decisions which may affect the decommissioning trusts or decommissioning activities within the scope of these proceedings. Accordingly, as discussed in the section on Scope and Issues, the applicants are required to demonstrate that they are in compliance

³ (Rule 55) *Consolidation*: "Proceedings involving related questions of law or fact may be consolidated."

with all relevant decisions, and more specifically D.03-10-014 and D.03-10-015, two of the last decisions for the nuclear decommissioning cost triennial proceedings. Additionally, PG&E must specifically supplement its application to address Ordering Paragraph 7 of D.00-02-046, for the consideration of an “Independent Board of Consultants” to oversee the decommissioning of Humboldt Bay Unit 3.⁴

6. Scope and Issues

The purpose of these proceedings is to establish just and reasonable rates to adequately fund the nuclear decommissioning trusts in place for the benefit and protection of ratepayers and to verify that PG&E, Edison, and SDG&E are in compliance with all prior decisions applicable to decommissioning. Further, these proceedings will determine whether the costs expended to-date to decommission Humboldt Unit 3 and SONGS 1 were reasonable and prudent. To the extent necessary, these proceedings will examine all underlying forecasts and assumptions to estimate the future costs of decommissioning the various nuclear generating stations; the costs and earnings associated with the decommissioning trust funds; the rate impacts of the Energy Policy Act of 2005, including all

⁴ “At least six months before the date that full scale decommissioning of Humboldt Bay Unit 3 begins, and no later than 30 days after any order of the Nuclear Regulatory Commission authorizing an on-site dry cask storage plan, PG&E shall file an application before this Commission to initiate consideration of the establishment of an Independent Board of Consultants to oversee the decommissioning of Humboldt Bay Unit 3. Until such time as an Independent Board of Consultants is established, PG&E shall continue outreach efforts to ensure that the Redwood Alliance and the Eureka community are kept informed about the status of the plant and decommissioning of it.” (*Mimeo.*, D.00-02-046, p. 543.) D.00-02-046 was for PG&E’s test year 1999 general rate case, A.97-12-020.

relevant changes to Internal Revenue Code Section 468A; and other relevant data, policies or laws and regulations. These proceedings will review and modify as necessary all ratemaking mechanisms applicable to nuclear decommissioning costs. These proceedings will also include the standard reasonableness review of managerial decisions and actions by PG&E, Edison, and SDG&E as they have pursued decommissioning either Humboldt Unit 3 or SONGS Unit 1. PG&E must supplement its application and explicitly address consideration of an Independent Board of Consultants to oversee the decommissioning of Humboldt Bay Unit 3. Finally, we will consider whether or not to grant the request by Edison and SDG&E to pre-approve the cost forecast for the remaining work to decommission SONGS Unit 1.

7. Standard of Review

The applicants alone bear the burden of proof to show that the rates they request are just and reasonable and the related ratemaking mechanisms are fair.

For the purposes of these proceedings and as used in the scope above, we define reasonableness for decommissioning expenditures consistent with prior Commission findings, i.e., that the reasonableness of a particular management action depends on what the utility knew or should have known at the time that the managerial decision was made.⁵

In order for the Commission to consider any possible proposed settlement in either or both of these proceedings as being in the public interest, the Commission must be convinced that the parties had a sound and thorough understanding of the application and all of the underlying assumptions and data

⁵ See for example, D.02-08-064, dated August 22, 2002, *mimeo.*, pp. 5-8.

included in the record. This level of understanding of the application and development of an adequate record is necessary to meet our requirements for considering any settlement.⁶

⁶ (Rule 51.1) *Proposal of Settlements or Stipulations* part (e): “The Commission will not approve stipulations or settlements, whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest.”

8. Schedule

Applications Filed	November 10, 2005
Protests	December 19, 2005
Prehearing Conference	Thursday, January 5, 2006
Scoping Memo	Wednesday, January 18, 2006
PG&E Supplemental Testimony	Tuesday, January 31, 2006
Interested Parties Serve Testimony	Friday, April 7, 2006
Parties Serve Rebuttal	Friday, April 28, 2006
Evidentiary Hearings	May 22 – May 26, 2006; May 31 – June 2, 2006 – if necessary
Concurrent Opening Briefs	June 23, 2006
Concurrent Reply Briefs and Projected Submission Date	July 14, 2006

9. Summary of Recommendations

All Interested Parties serving testimony in these proceedings shall include a table summarizing all proposed recommendations with citation(s) to the proposed exhibit(s) and work papers. All recommendations shall be listed in descending order of monetary impact. Parties should show in separate columns:

1. Sequential number of recommendation;
2. Short caption of recommendation;
3. Monetary impact, e.g., total value of an adjustment or cost reallocation;

4. Exhibit(s) page citation(s) for the primary discussion of the recommendation; and
5. Exhibit(s) page citation(s) for the primary presentation of the monetary impact.

10. Briefs

To the fullest extent reasonably possible, parties shall use the same outline for briefs. This practice promotes understandability, consistency, and completeness. Parties should agree on a common outline for briefs before the conclusion of hearings, and shall bring any unresolved disputes to the attention of the Principal Hearing Officer before the end of hearings. Parties can also assist the Commission by preparing and submitting an up-dated summary of recommendations at the conclusion of hearing as an attachment to the opening brief. This up-date should add: a summary of the party's position on each issue, further references as appropriate (e.g., to exhibits, transcript pages), and any other information the party determines to be necessary and useful to present its position.

11. Final Oral Argument

A party in a ratesetting proceeding has the right to make a Final Oral Argument before the Commission if the Final Oral Argument is requested within the time and manner specified in the Scoping Memo or later ruling. (See Rule 8(d).)

Any party seeking to present a Final Oral Argument shall file and serve a motion with sufficient time for Commission consideration of the motion before the proposed Final Oral Argument.⁷ The motion shall state the request,

⁷ A specific date may or may not be set by a later ruling.

subject(s) to be addressed, amount of time requested, recommended procedure and order of presentations, and anything else relevant to the motion. The motion shall contain all the information necessary for the Commission to make an informed ruling on the motion, providing for an efficient, fair, equitable, and reasonable Final Oral Argument. If more than one party wishes the opportunity for Final Oral Argument, parties shall use their best efforts to present a joint motion, including a joint recommendation on procedure, order of presentations, and anything else relevant to the motion. A response to the motion may be filed.

If a final determination is subsequently made that no hearing is required, Rule 8(d) shall cease to apply, along with a party's right to make a Final Oral Argument.

12. Intervenor Compensation

The prehearing conference was held on January 5, 2006. A customer who intends to seek an award of compensation should file and serve a notice of intent to claim compensation no later than 30 days after this hearing. (See Pub. Util. Code § 1804(a)(1).)

13. Service and Service List

The official service list was created at the January 5, 2006 prehearing conference, and is now on the Commission's Web page. Electronic Service is now the standard in the recently modified *Rule 2.3 Service*, and the new *Rule 2.3.1 Service by Electronic Mail*. These rules were effective on March 24, 2005. All parties to these proceedings shall serve documents and pleadings using electronic mail whenever possible, transmitted no later than 5 p.m., on the date scheduled for service to occur. These rules govern service of documents only, and do not change the rules regarding the tendering of documents for filing. Documents for filing must be tendered in paper form, as described in Rules 2,

et seq. Additionally, all filings shall be served in hard copy (as well as e-mail) on the assigned Administrative Law Judge (ALJ).

14. Principal Hearing Officer

ALJ Douglas M. Long is the Principal Hearing Officer. (*See* Rule 5(l).)

IT IS RULED that:

1. The final categorization of these proceedings is ratesetting and hearings are required for the purpose of Article 2.5 of the Commission's Rules of Practice and Procedure (Rules).

2. Application 05-11-008 and Application 05-11-009 are consolidated. (*See* Rule 55.)

3. Ex parte communications are permitted with restrictions, and are subject to reporting requirements. (*See* Rules 7(c) and 7.1.)

4. The record shall be composed of all filed and served documents, plus testimony and exhibits received at hearing.

5. The issues and schedule are as set forth in the body of this ruling unless amended by a subsequent ruling or order of the Principal Hearing Officer.

6. Parties should begin discovery immediately.

7. Intervenors, including Division of Ratepayer Advocates, shall include in any testimony served in these proceedings a Summary of Recommendations as described in this ruling.

8. Parties shall use the same outline for briefs.

9. Parties shall follow the procedure stated in the body of this ruling in making any request for Final Oral Argument. (*See* Rule 8(d).)

10. An electronic Service Protocol is in effect. (*See* Rules 2.3 and 2.3.1.)

11. Administrative Law Judge Douglas M. Long is the Principal Hearing Officer. (*See* Rule 5(l).)

Dated January 18, 2006, at San Francisco, California.

/s/ GEOFFREY F. BROWN
Geoffrey F. Brown
Assigned Commissioner

/s/ DOUGLAS M. LONG
Douglas M. Long
Administrative Law Judge

