



FILED
03/07/19
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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company in the 2018 Nuclear Decommissioning Cost Triennial Proceeding. (U39E.)

Application 18-12-008

Application of Pacific Gas and Electric Company for Authorization to Establish the Diablo Canyon Decommissioning Planning Cost Memorandum Account (U39E).

Application 18-07-013

RULING OF ASSIGNED COMMISSIONER AMENDING SCOPING MEMO CONSOLIDATING PROCEEDINGS AND MODIFYING PROCEEDING SCHEDULE

This ruling amends the Scoping Memo issued on February 14, 2019 to include additional concerns raised by Mothers for Peace and Alex S. Karlin through public comment to the California Public Utilities Commission (the Commission). This ruling also consolidates proceedings Application (A.)18-12-008 and A.18-07-013 and modifies the schedule as set forth below.

1. Background

On February 2, 2019 Mothers for Peace sent an email to Governor Gavin Newsom copying Commissioner Michael Picker¹ expressing safety concerns as to Unit 1 of the Diablo Canyon Nuclear Power Plant (DCPP). On February 20, 2019, Alex S. Karlin sent a letter to the Commission² raising concerns as to function, costs, and useful life of the Diablo Canyon Independent Safety Committee (DCISC). This ruling amends the scope of the proceeding to include the issue of embrittlement raised by Mothers for Peace and

¹ E-mail to President Michael Picker dated February 4, 2019 attached hereto as Attachment 1.

² Letter from Alex S. Karlin dated February 20, 2019 attached hereto as Attachment 2.

the issue concerning the function and sunset of the DCISC raised by Alex S. Karlin in public comment. Pacific Gas & Electric Company (PG&E) is to provide supplemental testimony consistent with this ruling.

2. Supplemental Testimony

As stated above, the Commission has received public comment from Mothers for Peace (Attachment 1) and Alex S. Karlin (Attachment 2) raising concerns regarding safety and decommissioning for DCP. The Commission has a responsibility to consider these concerns, and in order to do so we need additional information from PG&E. PG&E is directed to provide additional testimony responding to the public comment attached to this ruling, including responses to the questions set forth below no later than March 15, 2019. The intervenors will have adequate time to address the supplemental testimony in their testimony to be served on July 15, 2019.

a. Mothers for Peace Public Comment

- i. Respond generally to issues raised by Mothers for Peace February 4, 2019 e-mail (also dated February 2, 2019).
- ii. Has the Nuclear Regulatory Commission (NRC) issued an exemption or other approvals concerning waiver or deferral of embrittlement testing for DCP Unit 1? If the NRC has provided a determination or correspondence addressing this issue include documentation from NRC as an attachment with the supplemental testimony.
- iii. Are there any safety concerns as to embrittlement that could lead to a premature shut down of Unit 1, and if so, how has PG&E addressed such safety concerns?
- iv. Mothers for Peace public comment includes the following statement, “[t]he degree of embrittlement at Unit One can be easily and cheaply tested while the reactor is shut down for refueling.” Could the embrittlement at Unit 1 be tested consistent with this statement during the refueling period for Unit 1? Does PG&E intend to test Unit 1 during the refueling shut down?

b. Alex Karlin Public Comment

- i. Address the issues raised in Alex S. Karlin’s letter generally.
- ii. Alex S. Karlin states in his letter that “the DCISC currently has no legal authority to undertake any decommissioning activities or expenditures.” PG&E is to explain and provide the authority under which the DCISC is taking on activities to assess decommissioning activities, including posting information seeking a consultant to assess decommissioning activities.
- iii. Alex S. Karlin states “...the DCISC is attempting to prolong its lifespan past 2025.” His letter continues with, “[n]either its [DCISC] charter, composition, knowledge, skills, nor experience empower the DCISC to review and/or advise [on] decommissioning.” Address each of these issues.
- iv. Does the DCISC have authority to expend ratepayer funds to review decommissioning activities (including hiring staff for this purpose)? If ratepayer funds are being expended by PG&E to review decommissioning activities, provide the costs incurred to date or to be incurred and where such approval has been provided by the Commission. We note any approval for decommissioning activities must be reviewed and authorized in the Nuclear Decommissioning Cost Triennial Proceeding.
- v. What are the estimated costs to ratepayers if the DCISC were to extend beyond 2025?

3. Consolidation of Proceedings

On March 4, 2019 PG&E filed a Motion to Consolidate A.18-07-013 with A.18-12-008. PG&E asserts that the additional information to be provided in accordance with the Administrative Law Judge’s (ALJ’s) February 6, 2019³ ruling in A.18-07-008 overlaps significantly with the scope of A.18-12-008. PG&E argues that this creates an “unnecessary burden on all parties and is inefficient.

³ ALJ’s Ruling Directing Parties to Provide Additional Information; Deferring Issuance of a Decision Pending Determination by the Nuclear Regulatory Commission on Request for “Specific Exemption” and Modifying Procedural Schedule, dated February 6, 2019.

We agree that there is a potential for the same issues to be litigated in both proceedings as there is significant overlap in information necessary to resolve both proceedings. This ruling therefore grants PG&E’s Motion to Consolidate A.18-07-013 and A.18-12-008.

4. Modification of Proceeding Schedule

The proceeding schedule is modified as set forth below.

Event	Date
PG& to provide supplemental testimony addressing the following: <ul style="list-style-type: none"> - Spent Fuel Transfer Plan and Interactions with CEC - <u>Response to Mothers for Peace comments on embrittlement as to DCPD Unit One</u> - <u>Response to Alex S. Karlin comments regarding DCISC</u> 	March 15, 2019
Summary status update as to any matters in PG&E’s Bankruptcy related to DCPD and HBPP; <u>and NRC Opinion on Bankruptcy-Related Questions posed in 2/6/19 Ruling and 2/14/19 Scoping Memo and Ruling if received by this date (if not received provide a status update and file within 2 business days of receipt from NRC).</u>	March 15, 2019 [Additional status updates every 90 days]
Parties to meet and confer to address 2018/2015/2012 cost comparison information	<u>April 2019</u>
Workshops to discuss Development of DCE, Milestone Proposal, and Spent Fuel Management (SFM) Plans [PG&E to provide at Least 10-day notice of all workshops- including notice that Commission decisionmakers may be present for workshops.]	<u>April 1-2, 2019 DCE Development and Milestone Framework Proposal</u> (SFM Plans Workshop to be scheduled in latter half of April or first week of May)

<u>PG&E Supplemental Testimony addressing questions about decommissioning planning activities in 2/6/2019 Ruling in A.18-07-013</u>	<u>April 15, 2019</u>
<u>HBPP 2018 true up for reasonableness review</u>	<u>June 1, 2019</u>
HBPP Site Tour [PG&E to provide at least 10-day notice of tour and include that Commission decisionmakers may be present for tour]	3 rd Quarter 2019
<u>PG&E update on request for specific exemption from NRC regulations restricting access to NDT for decommissioning planning</u> [Intervenors will have 15 days from the date filed in this proceeding to provide comment on PG&E's update and any determination issued by the NRC]	<u>July 2019</u>
<u>Intervenor Testimony Addressing All Issues [except response to PG&E Update on Request for Specific Exemption from NRC Regulations Restricting Access to NDT for Decommissioning Planning]</u>	July 15, 2019
Rebuttal Testimony	August 15, 2019
Discovery Cut Off Deadline	September 9, 2019
Evidentiary Hearings	September 23-27, 2019
Post-Hearing Opening Briefs	October 23, 2019
Post-Hearing Reply Briefs	November 20, 2019

IT IS RULED that:

1. The scope of the proceeding is amended as set forth in this ruling.
2. Application (A.)18-12-008 and A.18-07-013 are hereby consolidated.
3. The proceeding schedule is modified as set forth in this ruling.

Dated March 7, 2019, at San Francisco, California.

/s/ MICHAEL PICKER

Michael Picker
Assigned Commissioner

ATTACHMENT 1

From: Swanson Lucy Jane <swanson.lucy@gmail.com>
Sent: Monday, February 04, 2019 11:12 PM
To: Picker, Michael <Michael.Picker@cpuc.ca.gov>
Subject: Safety issues Diablo Canyon nuclear plant

February 2, 2019

TO: Governor Newsom
CC: CPUC President Picker
RE: Safety issues at Diablo Canyon nuclear plant

Dear Governor Newsom:

San Luis Obispo Mothers for Peace (SLOMFP), a 501c3 nonprofit organization, has been the legal intervenor in matters regarding Diablo Canyon nuclear plant since 1973. We mailed a letter to you on December 26, 2018 regarding embrittlement of Diablo's reactor vessel in Unit 1 (copy attached). We have not yet heard back from you about our concerns-and we have other issues to share as well.

Pacific Gas & Electric Company (PG&E) filed for bankruptcy on January 29, and that certainly complicates safe operation.

Here are several of the key issues:

EMBRITTELEMENT: Since 2003 Diablo Canyon Unit One has a documented history of having a dangerously embrittled reactor vessel. Because the internal components of all nuclear reactors are subjected to intense heat, pressure, and radiation, critical metals and welds can lose their resiliency. Should a loss-of-coolant-accident necessitate emergency flooding of cooling water, embrittled components would shatter, leading to catastrophe. The degree of embrittlement at Unit One can be easily and cheaply tested while the reactor is shut down for refueling.

COMPONENT CRACKING: All reactor pressure vessels and other key components can crack over time. Unit One's age makes it imperative that remotely controlled ultrasound devices be deployed to inspect the reactor internally, which can be done relatively easily and inexpensively. In 2013, PG&E applied for and received permission to delay testing for cracking, and so the ultrasound test has not been conducted since 2005.

WASTE MANAGEMENT: It is essential to conduct a full evaluation of waste management issues at Diablo. PG&E's contract with the Holtec Corporation for dry cask storage ends in December of 2019. PG&E can and should extend a Request for Proposal to seek a more robust and longer-lived dry cask storage option.

PG&E has recently proposed keeping the remaining spent fuel in the storage pools until 2032. This proposal is completely unacceptable because the tightly packed spent fuel pools

are the plant components most vulnerable to terrorist attack. High-level radioactive waste would be better protected in improved dry cask storage. Given PG&E's pending bankruptcy, the company's financial and managerial competence to operate the Diablo Canyon nuclear plant safely is in question. San Luis Obispo Mothers for Peace calls on the Governor, the legislature, and the California Public Utilities Commission (CPUC) to exercise responsibility on behalf of the safety and welfare of the people of California. PG&E must test the Unit One reactor vessel for embrittlement and cracking during the upcoming refueling outage.

If PG&E and the Nuclear Regulatory Commission fail to take the precautionary actions described above, then the CPUC must exercise its powers to determine the energy sources that are in the best interests of the people of the state. The CPUC should rule that PG&E may no longer charge the rate-payers for operations at the Diablo Canyon nuclear plant. Renewable sources, complemented by increasing energy efficiency and conservation, are coming on line at such a rate that there are days when California must PAY neighboring states to siphon off excess energy to avoid overloading the grid.

The people of California deserve reliable and safe energy resources.

Sincerely;

San Luis Obispo Mothers for Peace

Board of Directors

Liz Apfelberg
Elizabeth Brousse
Elaine Holder Molly
Johnson Sherry
Lewis Linda Seeley
Jane Swanson

Jill ZamEk

CC: California Senator Bill Monning
California Assemblyman Jordan Cunningham
CPUC President Picker
U.S. Congressman Salud Carbajal

(END OF ATTACHMENT 1)

ATTACHMENT 2

February 20, 2019

Committee Members Budnitz, Peterson & Lam
Diablo Canyon Independent Safety Committee
857 Cass Street, Suite D
Monterey, CA 93940
dcsafety@dcisc.org

Subject: Comments Concerning “Potential Continuing Role for the Committee to Review Decommissioning-Related Matters.”

Dear Committee Members Budnitz, Peterson and Lam:

The Diablo Canyon Independent Safety Committee website states that the DCISC is “seeking to receive comments from member of the public concerning a potential continuing role for the Committee to review decommissioning-related matters following the cessation of electricity generating operations by the DCPD.” Given that the DCISC is a ratepayer funded entity, I am submitting my comments as a ratepayer, a resident of San Luis Obispo, and a former administrative judge with the U.S. Nuclear Regulatory Commission.

COMMENTS

My main comment is that the DCISC should have no role regarding decommissioning. The DCISC charter limits its mission to reviewing the operation of DCPD and therefore the DCISC has no legal authority or role to deal with decommissioning, which, by definition will occur after the “cessation of operations” of DCPD. See 10 C.F.R. Section 50.82(a)(3).

The DCISC charter limits its mission to operational issues, not decommissioning:

The [DCISC] shall review Diablo Canyon operations for the purpose of assessing the safety of operations and suggesting and recommendations for safe operations.¹

Operations cease at decommissioning. Thus, the DCISC automatically sunsets when Diablo Canyon stops operating (2025). The DCISC is not authorized to address decommissioning.

I reminded the DCISC of these limitations in its October 25, 2018 meeting. Unfortunately, the DCISC is now attempting to hire a new consultant to start covering decommissioning,² and is starting to delve into decommissioning.³ This is not within its legal authority and is ultra vires.

¹ CPUC D.88-12-083, App. C, Att. A, Section 1.1. (Emphasis added).

² The DCISC website states that it seeking to hire a technical consultant (who would be paid by the ratepayers) to “assist the Committee in the identification of decommissioning related activities.”

³ The DCISC website asks for public comment on its draft “DCISC Post-Shutdown Summary” which acknowledges that it addresses “Phases Following Cessation of Operations.” (Emphasis added).

Basically, the DCISC is attempting to prolong its lifespan past 2025. Neither its charter, composition, knowledge, skills, nor experience⁴ empower the DCISC to review and/or advise decommissioning in a way that best promotes the public interest.⁵ This unilateral “mission creep” will likely cost PG&E ratepayers at least an additional 18 million dollars and should not be allowed.⁶

REQUEST

I request that the DCISC refrain from any “potential continuing role” concerning “decommissioning-related matters” unless the DCISC charter is formally amended by the California Public Utilities Commission (CPUC) in a ratemaking case. The DCISC should withdraw its current advertisement seeking to hire a decommissioning consultant. Until that time, the DCISC should stick to its legally authorized mission and focus on DCPD operations.

As the DCISC is fully aware, the CPUC is currently engaged in two ratemaking proceedings that are likely to clarify whether ratepayers should pay for a decommissioning safety advisory panel, and, if so, what its composition should be and what role (if any) the DCISC should have. These are PG&E’s general ratemaking case A.18-12-009 and PG&E’s Nuclear Decommissioning Cost Triennial Proceeding A.18-12-008. **Attachment A** is a copy of my February 11, 2019 letter to the CPUC concerning these proceedings and DCISC’s ultra vires activities. The DCISC should await the resolution of these cases instead of trying to pre-empt the CPUC process.

CONCLUSION

The CPUC has the responsibility – in A.18-12-008 and A.18-12-009 – to review the situation thoughtfully and to charter an oversight entity with a mission and composition appropriate to the decommissioning of Diablo Canyon. It is a multi-billion dollar project that will take decades. The DCISC currently has no legal authority to undertake any decommissioning activities or expenditures.

Sincerely

Alex S. Karlin
askenvirolaw@gmail.com

cc: California Public Utilities Commission
Attachment: February 11, 2019 letter to CPUC

⁴ Operating a nuclear power plant is very different from decommissioning one. The members of the DCISC were not hired for – nor does the record show that they possess – “knowledge, skills or background” in decommissioning.

⁵ The DCISC is composed of 3 outsiders who are not stakeholders. It is not a suitable entity to serve as independent advisory board (on safety or any other matters) on the topic of decommissioning. See my January 10, 2019, letter to President Picker and the Commissioners regarding the need for an independent decommissioning advisory board.

⁶ DCISC currently costs ratepayers approximately \$900,000 per year. Given that the decommissioning of Diablo Canyon is likely to take 20 years or more after 2025, allowing the DCISC to add decommissioning to its mission will cost ratepayers an 18 million dollars for an entity not authorized nor designed to handle this task.

(END OF ATTACHMENT 2)