
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



October 9, 2003

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

Decision 03-10-013 is being mailed without the Dissent of Commissioner Lynch.
The Dissent will be mailed separately.

Very truly yours,

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

ANG:sid

Attachment

Decision 03-10-013 October 2, 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**

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APPENDIX A – Service List

OPINION ADOPTING ESTIMATE FOR HUNTERS POINT POWER PLANT SITE REMEDIATION

I. Summary

The Commission adopts 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).¹ The appropriate ratemaking treatment for this cost estimate will be determined in PG&E's 2003 General Rate Case (GRC) application, A.02-11-017.

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 GRC adopted estimate of these costs is currently being recovered through the Transition Cost Balancing Account (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. Neeper 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

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.³ Accordingly, PG&E disputes the claims of both CCSF and SAEJ that additional testing would significantly change the cost estimate presented by PG&E.

³ 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.

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 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.⁴

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 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.

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.

⁴ 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.

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.⁵ And, 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. (See D.98-10-029, mimeo., pp. 9-10.)

B. Discussion

PG&E says that while recovery through the TCBA is appropriate, there is another ratemaking mechanism available that would strike the right balance between ratepayers and shareholder cost recovery risk.⁶ In its 2003 GRC application, A.02-11-017, PG&E has proposed a return to conventional ratemaking treatment for fossil decommissioning costs by including the environmental and non-environmental HPPP decommissioning cost estimates in its depreciation estimates.⁷ By virtue of being included in the depreciation reserve, the HPPP decommissioning estimates will be trued-up to actual costs. This alternative ratemaking mechanism fairly allocates the risk of over and/or underspending between ratepayers and shareholders and could be adopted as an alternative to TCBA ratemaking, according to PG&E.

We agree with PG&E's proposal to address the ratemaking treatment of the HPPP decommissioning cost estimate in its GRC. However, the parties are

⁵ See D.97-12-107, mimeo., p. 9 for Wave 1 and D.99-04-026, mimeo., p. 43 for Wave 2.

⁶ See PG&E's May 21, 2003 reply comments.

⁷ A.02-11-017, Exhibit 10-Revised, Chapter 11, pp. 11-17 through 11-20 and 11-37 through 11-38 and supporting workpapers at pp. 9-232 and 9-253 through 9-255.

reminded that we will reject any attempt to relitigate the HPPP decommissioning cost estimate in the GRC.

VI. 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 Hazardous Substance Mechanism (HSM) because a funding decision may adversely affect the environment.

We disagree. CEQA requirements only apply to a “project.”⁸ 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.⁹ 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.*

⁸ Cal, Pub. Res. Code § 21065.

⁹ 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).)

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 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.

VII. Comments on Proposed Decision

The proposed decision (PD) 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 May 16, 2003 by CCSF, ORA and SAEJ. Reply comments were filed on May 21, 2003 by CCSF and PG&E. We have reviewed the comments and reply comments and made changes to the PD where appropriate.

CCSF and ORA make much of the three-year passage of time occurring between the submission of the record in this proceeding and the issuance of the PD. And, we agree that some fairly dramatic events have unfolded over the past three years. But neither the passage of time nor these dramatic events have any significant affect on the scope of work and cost estimates to decommission HPPP. Nor has the passage of time changed the terms or policy underlying the Commission-approved agreement between PG&E and CCSF to decommission HPPP upon a determination by the California Independent System Operator (ISO) that HPPP generation is no longer necessary to support continued reliable electric service to San Francisco.

Accordingly, we reject CCSF's and ORA's bids for further Commission proceedings to address the "broader range of issues" associated with the decommissioning of HPPP. Most of the issues raised by CCSF will be addressed by the Lead Agency through the public participation framework set forth in the California Health and Safety Code, Chapter 6.8, Sections 25356, et seq. ORA's request for further hearings to address the appropriate level of remediation will also be addressed in the public participation framework. We note that the ALJ dismissed the early attempts of CCSF and ORA to expand this proceeding beyond the narrow issue of the HPPP decommissioning cost estimate by specifically noting that "this is not the proceeding for approval of a decommissioning plan for HPPP."¹⁰ We affirm the ALJ's ruling.

In its reply comments, PG&E suggests that we address the appropriate ratemaking treatment of the HPPP decommissioning cost estimates in PG&E's 2003 GRC (A.02-11-017). We agree with PG&E's proposal and have modified the PD accordingly.

VIII. 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.

¹⁰ February 4, 2000 Ruling, Ordering Paragraph 3.

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

3. 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.

4. 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. 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.

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

3. PG&E's estimate of HPPP decommissioning costs of \$65.1 million NPV has been shown to be reasonable for ratemaking purposes.

4. 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.

5. 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.

6. 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.

7. The appropriate ratemaking treatment of the HPPP decommissioning cost estimates should be decided in PG&E’s 2003 GRC.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company’s (PG&E) environmental and non-environmental decommissioning cost estimates totaling approximately \$65.1 million net present value for Hunters Point Power Plant (HPPP) are adopted.

2. The ratemaking treatment of the HPPP decommissioning cost estimates shall be addressed in PG&E’s 2003 General Rate Case (GRC) application, A.02-11-017.

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

4. Application 99-09-006 is closed.

This order is effective today.

Dated October 2, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

I reserve the right to file a dissent.

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

/s/ CARL W. WOOD
Commissioner

I will file a dissent.

/s/ LORETTA M. LYNCH
Commissioner

***** **SERVICE LIST** *****

Last Update on 26-FEB-2003 by: LIL

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Last Update on 26-FEB-2003 by: LIL

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Last Update on 26-FEB-2003 by: LIL

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APPENDIX A

***** **SERVICE LIST** *****

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(END OF APPENDIX A)