Decision 07-01-003 January 11, 2007

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)

(See Appendix A (Service List) for Appearances.)

FINAL OPINION ON THE TRIENNIAL REVIEW OF NUCLEAR DECOMMISSIONING TRUSTS AND RELATED DECOMMISSIONING ACTIVITIES FOR SOUTHERN CALIFORNIA EDISON COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY, AND PACIFIC GAS AND ELECTRIC COMPANY

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FINAL OPINION ON THE TRIENNIAL REVIEW OF NUCLEAR DECOMMISSIONING TRUSTS AND RELATED DECOMMISSIONING ACTIVITIES FOR SOUTHERN CALIFORNIA EDISON COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY, AND PACIFIC GAS AND ELECTRIC COMPANY

I. Summary

This decision adopts an all-party settlement for Southern California Edison Company (Edison) and San Diego Gas & Electric Company (SDG&E) which resolves all issues in a Joint Application (A.) 05-11-008. We also adopt a separate settlement for Pacific Gas and Electric Company (PG&E) in A.05-11-009 which resolves all ratemaking issues exclusive of the issues litigated by PG&E and a customer-intervenor, Scott Fielder. We decline to create an Independent Board of Consultants to oversee or advise on the decommissioning of Humboldt Unit 3. We do, however, provide guidelines applicable to all three applicants concerning the necessity to ensure that the utilities employ sufficient well-trained and experienced personnel to plan and direct the complex task of decommissioning a retired nuclear generating facility. We do not adopt Fielder's proposals concerning the storage costs of radioactive waste materials or contingency factors. We do, however, direct the parties to perform in-depth analyses of storage costs and contingencies for the next triennial proceedings for all three utilities.

II. Requests

A. Edison and SDG&E

In A.05-11-008, Edison & 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%;

(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 Policy Act of 2005; and

(5) authorize Edison to continue to use the tax benefits associated with deducting SONGS Unit 1 Nonqualified Trust amounts consistent with Ordering Paragraph 9 of Decision (D.) 03-10-015, including the tax benefits that may arise in connection with any transfer of funds from Edison's SONGS Unit 1 Nonqualified Trust to Edison's SONGS Unit 1 Qualified Trust as provided for in Internal Revenue Code Section 468A(f), to continue SONGS Unit 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 uncollectibles, to its nuclear decommissioning trust funds for SONGS Units 2 & 3;

(2) the use of $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) amending SDG&E's Trust Agreements to clarify that transfers of Nonqualified Trust assets to the Qualified Trusts 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) transferring funds from SDG&E's SONGS Nonqualified Trust to the corresponding SONGS Qualified Trust; and

(5) SDG&E to continue to use the tax benefits associated with deducting SONGS Unit 1 Nonqualified Trust amounts consistent with Ordering Paragraph 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 Unit 1 Nonqualified Trust to SDG&E's SONGS Unit 1 Qualified Trust as provided for in Internal Revenue

Code Section 468A(f) to continue SONGS Unit 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; and

(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.

III. Procedural History

Notice of these two applications appeared in the Commission's Daily Calendar on November 16, 2005. The Commission preliminarily categorized

them as ratesetting in Resolution ALJ 176-3162, dated November 18, 2005. The January 18, 2006 scoping ruling confirmed the categorization as ratesetting, and the need for hearings. The scoping ruling also consolidated the applications. Testimony was served by the Division of Ratepayer Advocates (DRA), the Federal Executive Agency (FEA), The Utility Reform Network (TURN), and Scott Fielder, a customer-intervenor, (Fielder). All parties served timely rebuttal and other supplemental testimony as allowed or required by the assigned Administrative Law Judge (ALJ). The two settlements were admitted as Exhibits 18 and 19 at evidentiary hearings.[1] These settlements resolved all issues for Edison and SDG&E in A.05-11-008 and resolved all issues except those litigated by PG&E and Fielder in A.05-11-009. This decision adopts the proposed transcript corrections requested in PG&E's June 5, 2006 Motion to Propose Transcript Corrections. Parties filed Opening Briefs or Comments on the Settlements on June 23, 2006, and Replies on July 14, 2006. The record is composed of all documents that were filed and served on parties. It also includes all testimony and exhibits[2] received at hearing.

IV. Scope and Issues

The first purpose of these proceedings is to establish just and reasonable rates to adequately fund the nuclear decommissioning trusts in place for the

[1] Exs. 18 and 19 have been updated and replaced in the formal files to include signature attachments and other minor edits or corrections. As no party objected to these changes, the exhibits are received in the record as modified. Edison filed a further correction and clarification on August 31, 2006 which we used in this decision.

[2] There were 110 exhibits received into evidence—many were large multi-chaptered documents sponsored by several witnesses.

benefit and protection of ratepayers. Secondly, we verify that Edison, SDG&E, and PG&E are in compliance with all prior decisions applicable to decommissioning. Finally, these proceedings determine whether the costs expended to-date to decommission SONGS Unit 1 and Humboldt Unit 3 were reasonable and prudent. To the extent necessary, these proceedings examined 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 relevant changes to Internal Revenue Code Section 468A; and other relevant data, policies or laws and regulations. These proceedings included 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 supplemented its application and explicitly addressed consideration of an Independent Board of Consultants to oversee the decommissioning of Humboldt Unit 3. Finally, we considered 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.

V. 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.[3] However, with respect to Phase 1 SONGS 1 decommissioning work, the Commission in D.99-06-007 adopted a ratemaking settlement that included a presumption that the utilities' conduct is reasonable in performing Phase 1 SONGS 1 decommissioning work if the scope of the work completed and the most recently approved SONGS 1 decommissioning cost estimate bound the costs incurred. (Settlement § 4.2.2.2.c., at 86 CPUC2d 604, 620.)

In order for the Commission to consider the proposed settlements in these proceedings as being in the public interest, the Commission must be convinced that the parties had a sound and thorough understanding of the applications and all of the underlying assumptions and data included in the record. This level of understanding of the applications and development of an adequate record is necessary to meet our requirements for considering any settlement, as discussed below. The disputed issues for PG&E are resolved in this decision based on the evidence in the record.

VI. Discussion of Settlements

A. Standard for Approval of a Settlement

Rule 51.1(a)[4] provides:

> Parties to a Commission proceeding may stipulate to the resolution of any issue of law or fact material to the proceeding, or may settle

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

[4] The Commission adopted a revised Rule 51, as Rule 12, effective September 13, 2006, which does not materially differ from the substance of the old rule. Parties settled under then-applicable Rule 51, which we cite herein.

> on a mutually acceptable outcome to the proceeding, with or without resolving material issues. Resolution shall be limited to the issues in that proceeding and shall not extend to substantive issues which may come before the Commission in other or future proceedings.
>
> Rule 51.1(e) has, as a further requirement:
>
> 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. (Emphasis added.)

In short, we must find the settlement comports with Rule 51.1(e) which requires a settlement to be "reasonable in light of the whole record, consistent with law, and in the public interest." We address below whether the settlements meet these three requirements.

B. Reasonable in Light of the Whole Record

We have reviewed the evidence in the record, considered the scope and thoroughness of the review by all active parties, especially DRA, TURN, and FEA (for SDG&E's interests). In particular, DRA, TURN, and FEA conducted detailed examinations. Having reviewed the prepared testimony of all parties, we find that the proposed settlements are both within the range of reasonable findings if the applications had been fully litigated. Therefore we can find the settlements to be reasonable in light of the whole record. The items contested between PG&E and Fielder are considered separately in this decision: however, absent Fielder's objections, the settlement by PG&E with DRA and TURN is otherwise reasonable in light of the whole record.

C. Consistent With Law

Nothing in either settlement is inconsistent with the law, and the settlement process was consistent with Rules 51 *et seq*. Therefore we can find the settlements to be consistent with applicable law.

D. In the Public Interest

There was no guarantee that litigation of the issues raised by the parties would have resulted in any adjustment to the decommissioning revenue requirements as significant as proposed in the two settlements which are acceptable to all parties. The settlements saved time and resources, and achieved results within the range of reasonable litigation outcomes. The need for decommissioning funding was not at issue in this proceeding—that was determined when the funds were established in compliance with state and federal requirements. Therefore, since there is an uncontested need for funding future decommissioning costs and the funding in the settlements is consistent with the record, we find the settlements for decommissioning funding to be in the public interest. Similarly, the need for actual decommissioning activities for SONGS Unit 1 and Humboldt Unit 3 were uncontested. The settlements on the reasonableness of actual costs are consistent with the record; therefore we find the settlements for decommissioning funding to be in the public interest.

E. Uncontested Settlement

A further standard is articulated in *San Diego Gas & Electric* 46 CPUC 2d 538 (1992), and applies to all-party settlements. As a precondition to approving such a settlement, the Commission must be satisfied that:

1. The proposed all-party settlement commands the unanimous sponsorship of all active parties to the proceeding.

2. The sponsoring parties are fairly representative of the affected interests.
3. No settlement term contravenes statutory provisions or prior Commission decisions.
4. Settlement documentation provides the Commission with sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.

We can answer all four requirements in the affirmative for Edison and SDG&E's ratemaking settlement. Questions 2 through 4 are true for PG&E's contested settlement.

VII. Settlement Provisions

A. Edison and SDG&E

Pursuant to the proposed Settlement Agreement, Appendix B and Appendix C, Edison and SDG&E filed on July 14, 2006 an update to the settlement contributions and the overall revenue requirements, using May 31, 2006, Decommissioning Trust Fund liquidation values (rather than March 31, 2006), because the May 31, 2006 values were not yet available when the parties entered into the Settlement. The settling parties had an opportunity to review this update and have made no objection. We will therefore rely on this and later updates in evaluating the proposed settlement. In the July 14, 2006 update, Edison and SDG&E provided new contributions and revenue requirements.[5] Edison subsequently discovered certain errors in its July 14, 2006 calculations of the settlement amounts. First, the settling parties agreed to a 21% contingency

[5] The contribution is the amount placed into the trust fund. The revenue acquirement includes other related costs as well as the contribution.

factor, in lieu of the requested 35% contingency factor, which was not used in the calculation of the settlement amounts. Second, the settlement amounts needed to correctly reflect the pro-ration of the 2006 contribution for Palo Verde Nuclear Generating Station Unit 3 at May 31, 2006, rather than March 31, 2006, as a result of updating the Decommissioning Trust Fund liquidation values. Third, the settlement amounts need to correctly reflect the correct SONGS escalation factors, which were not updated to the escalation factor update agreed to in the settlement. We commend the settling parties for diligently reviewing the settlements and for recognizing the need for corrections. On August 31, 2006, Edison and SDG&E filed a motion requesting the Commission accept further corrections and clarifications to the settlements. We grant the motion and receive the corrections. The other settling parties have agreed with the following corrections to the settlement:

Edison's Qualified Nuclear Decommissioning Trust Funds Allocation of Contributions and Revenue Requirement **Updated Appendix B ($000)**						
	SONGS 2	SONGS 3	Palo Verde 1	Palo Verde 2	Palo Verde 3	Total
Contribution	$16,984	$10,797	$5,067	$5,663	$3,728	$42,239
Revenue Requirement	$17,185	$10,925	$5,127	$5,773	$3,773	$42,739

SDG&E's Qualified Nuclear Decommissioning Trust Funds Allocation of Contributions and Revenue Requirement **Updated Appendix C ($000)**			
	SONGS 2[6]	SONGS 3	Total
Contribution	$5,290	$4,060	$9,350
Revenue Requirement	$5,364	$4,117	$9,481

[6] This includes qualified and non-qualified trust amounts.

The key terms of the Settlement Agreement were summarized in the June 23, 2006 Joint Statement for Edison and SDG&E[7] as follows:

> (A) the March 2006 25-year Global Insight forecast for projected pre-tax rate of returns for the years 2007 through 2029 to be assumed for the equity and bond portions of the decommissioning trust assets,
>
> (B) the March 2006 25-year Global Insight forecast to be assumed for escalation rates,
>
> (C) May 31, 2006, Decommissioning Trust Fund liquidation values,
>
> (D) a 60% holding in equities in the Qualified Trusts as of the presumed date of January 1, 2007, provided that the Commission approves a maximum allocation of 60% equities, and [Edison] SCE's/SDG&E's Nuclear Decommissioning Trust Investment Committee approves an allocation of 60% equities, for the Qualified Trusts, and
>
> (E) for SCE, a 21% contingency factor on all components of the Palo Verde decommissioning cost estimate, except estimated low-level radioactive waste ("LLRW") burial costs, to which no contingency factor is applied.
>
> Appendix B and C of the Settlement Agreement contain an exemplar table identifying the allocation of the Revenue Requirement and trust contribution for SCE and SDG&E for SONGS 2&3, and, for SCE, Palo Verde with the modifications described in subsections (A), (B), (D) and (E) above, … SCE and SDG&E agreed in the Settlement Agreement to file an update of Appendix B and C with their reply brief on July 14, 2006 in this docket that reflects the May 31, 2006 Decommissioning Trust Fund liquidation values (and a reduced percentage of equities for the Qualified Trusts if the 60% allocation is

[7] Joint Statement of Southern California Edison Company (U 338-E), San Diego Gas & Electric Company (U 902-E), Division of Ratepayer Advocates, Federal Executive Agencies and The Utility Reform Network in support of Settlement (Joint Statement for Edison and SDG&E).

not approved by the Nuclear Decommissioning Trust Committee). The Settlement Agreement requests that the Commission find the allocations exemplified in Appendices B and C and the corresponding update to be submitted on July 14, 2006 to reflect May 31, 2006 Decommissioning Trust Fund liquidation values (and a reduced percentage of equities for the Qualified Trusts if the 60% allocation is not approved by the Nuclear Decommissioning Trust Committee), to be reasonable.

- SCE and SDG&E should be authorized to:
  - Raise the Qualified Trust's maximum equity percentage to 60%,
  - Raise the cap on investment management fees to 30 basis points, and
  - Raise the annual compensation retainer for non-company members of the Nuclear Decommissioning Trust Committee to $12,000.
- SCE and SDG&E should be authorized to amend their respective Decommissioning Trust Agreements to clarify that transfers of assets to the Qualified Trusts (including transfers from the Nonqualified Trusts), 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.
- The Commission should approve the transfer of funds to the corresponding SONGS and Palo Verde Qualified Trusts (including transfers from the Nonqualified Trusts), as may be permitted pursuant to Internal Revenue Code Section 468A(f), as amended by the Energy Policy Act of 2005, as authorized by the Internal Revenue Service.
- SCE and SDG&E should be authorized 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 SCE's/SDG&E's SONGS 1 Nonqualified

Trusts to SCE's/SDG&E's SONGS 1 Qualified Trusts as provided for in Internal Revenue Code Section 468A(f), to continue SONGS 1 decommissioning work.

• SDG&E should be authorized to apply $2.79 million of the overcollection in its Nuclear Decommissioning Adjustment Mechanism as a 12-month amortization to the nuclear decommissioning rate effective January 1, 2007, to offset the impact of the increase in the Nuclear Decommissioning revenue requirement in 2007.

• As part of the next NDCTP, SCE and SDG&E will evaluate and address in their application and opening testimony: (1) whether any SONGS 1 decommissioning trust funds are not anticipated to be needed at that time for remaining SONGS 1 Decommissioning Work; and (2) whether any such funds can and should be transferred to SONGS 2&3 Decommissioning Trusts for use to fund SONGS 2&3 decommissioning, contingent upon a favorable ruling from the IRS allowing the transfer, if necessary, and any necessary approvals by the Nuclear Regulatory Commission or other agencies.

• SCE and SDG&E agree that if SCE and SDG&E, respectively, receive money from the DOE in settlement of their DOE spent fuel litigation within three years of the effective date of this Agreement, SCE and SDG&E will seek a favorable ruling from the IRS to deposit certain monies received from the DOE into their respective decommissioning trust accounts. After receiving a favorable ruling from the IRS, SCE and SDG&E will deposit the money received from the DOE (less external litigation costs) that is associated with funds required for work included in the decommissioning cost estimates (but not money associated with current SONGS 2&3 operations or off-site storage of SONGS 1 used fuel at Morris, Illinois) into their respective appropriate decommissioning trust accounts. SCE and SDG&E will each file an Advice Letter within 120 days of the date of deposit of the funds into the decommissioning trusts to update their respective annual contributions accordingly.

• The Commission should adopt as reasonable: (i) the $298 million (100% share, 2004$) cost of SONGS 1 Decommissioning Work completed between January 1, 2002 and June 30, 2005, and (ii) the

updated $309 million (100% share, 2004$) SONGS 1 decommissioning cost estimate for Remaining Work.

• The Commission should adopt as reasonable the updated decommissioning cost estimates for SONGS 2&3 and Palo Verde set forth by SCE and SDG&E in the Joint Application (other than the revision to the Palo Verde decommissioning cost estimate, reflecting a reduction in the contingency factor for non-LLRW burial components of the cost estimate from 35% to 21%).

• SCE will provide, as part of its tax testimony in the next NDCTP, a memorandum account that would track the time value of money associated with any net overpayment of estimated income tax payments of its Nuclear Decommissioning Trusts. This memorandum account will compare the estimated tax payments actually made with the amounts required to be paid in each quarterly period based upon the tax returns as filed. An interest rate equal to the assumed after-tax rate-of-return underlying the annual contribution authorized for each trust account will be applied to this difference for the period outstanding. These interest amounts will be cumulated and constitute the balance in this memorandum account. It will be subject to review and reduce the revenue requirement to be authorized in the next proceeding. (June 23, 2006 Joint Statement, pp. 4-8, footnotes omitted.)

The parties assert that in reaching this settlement, they "compromised strongly held views"; and that in all other respects, the settlement comports with the Commission's requirements for adoption of a settlement.

Key Comparisons of Settlement with Applications			
	Application	Settlement	Difference
Edison's Trust Contributions	$57.8 million	$42.2 million	$15.6 million -27%
SDG&E's Trust Contribution	$12.05 million	$9.35 million	$2.7 million -22.4%
SONGS 1 Costs	$298 million (100%)	$298 million (100%)	0
SONGS 1 Forecast	$309 million (100%)	$309 million (100%)	0
Palo Verde Forecast	$738.852 million	$696,003 million	$42.849 million -5.8%

Qualified Trust Equity Percentage	60% max.	60% max.	0
Investment management Fee	30 Basis points max.	30 Basis points max.	0
Committee Retainer	$12,000 p.a.	$12,000 p.a.	0

The Commission does not unravel a settlement unless there is significant problem with the outcome as a whole—in which case the settlement would fail the public interest test discussed elsewhere. This settled outcome is within the range of plausible litigation outcomes. Except for SONGS Unit 1, these plants are not in active decommissioning: in fact, they are operational and are even subject to proceedings which may extend the service life by replacing the steam generators. (See D.05-12-040.) We are therefore less concerned now about under-funding than we will be as these plants approach retirement. Our overriding concern with decommissioning is to ensure that the trust funds are sufficient to retire the plants pursuant to a reasonable plan and that the funds are recovered equitably from customers throughout the plants' service lives. We find the settlement applicable to Edison and SDG&E to be reasonable.

B. PG&E

The key terms of PG&E's Settlement Agreement were summarized as follows:

a. $13.234 million in 2007 for Humboldt Unit 3 SAFSTOR, an additional amount for attrition of $155,000 beginning January 1, 2008 and, an additional $16,000 beginning January 1, 2009.

b. Beginning in 2007, for a 3-year period, $1.827 million for Diablo Unit 1 trust fund and $0 for the Diablo Unit 2, annually.

c. Beginning in 2007, for a 3-year period, $11.915 million for Humboldt Unit 3 trust fund.

d. Requests that the CPUC approve a transfer of funds from the Diablo Unit 2 Trust to the Diablo Unit 1 Trust. The transfer will

be calculated based on and/or subject to a) the authorized trust contribution revenue for Diablo Unit 1; b) PG&E's 2007 Ruling Amount Update; c) the amount of excess funds in the Diablo Unit 2 Trust; and d) the approval of the CPUC, Nuclear Regulatory Commission and the Internal Revenue Service.

e. Additional safeguards for the decommissioning trusts (Settlement, para. 12).

f. Additionally, the following modeling assumptions were used in the settlement:

1. Low level radioactive waste Class A Burial Rate: $248 per cubic foot (In 2004 dollars)
2. Diablo Unit 2 Decommissioning Start Date: 2024
3. Humboldt Unit 3 Decommissioning Start Date: 2009
4. Diablo Contingency Factor: 35%
5. Humboldt Unit 3 Contingency Factor: 25%
6. Burial Escalation: 7.5%
7. Non-Burial Escalation: As presented in PG&E's A.05-11-009 Prepared Testimony filed November 10, 2005, including calculation methodology
8. Trust fund balance: Update as of December 31, 2005
9. Equity Turnover Rate (Qualified): 23.65%
10. Equity Turnover Rate (Non-Qualified): 24.49%
11. Pre-Tax, Before Fees Return on Equity: 8.5%
12. Pre-Tax, Before Fees Return on Fixed Assets: 5.8%
13. DCPP Equity/Bond Allocation: 57%/43% (Subject to Commission approval)
14. DCPP Equity Ramp Down: 1-Year Delay, Begin in 2020
15. Transfer of Humboldt Non-Qualified trust balance and associated tax benefits to Humboldt Qualified

Key Comparisons of Settlement with Applications

	Application	Settlement	Difference
PG&E's Diablo 1 & 2 Trust Contributions	$9.491 million	$1.827 million	$7.664 million -80.75 %
Humboldt 3 Trust Contribution	$14.621 million	$11.915 million	$2.706 million -18.5%
Humboldt 3 forecast SAFSTOR 2007	$13.232 million	$13.234 million	$0.002 million

VIII. Independent Board of Consultants

The scoping ruling required PG&E to supplement its application to address Ordering Paragraph 7 in D.00-02-046,[8] for the consideration of an "Independent Board of Consultants" to oversee the decommissioning of Humboldt Unit 3:

> 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.)

The issue was in the scoping ruling and PG&E was required to supplement its prepared testimony, as a result of Fielder's timely protest. PG&E proposed in its supplemental testimony that no committee was necessary. Fielder formerly represented the Redwood Alliance, which he asserts is

[8] D.00-02-046 in PG&E's test year 1999 general rate case, A.97-12-020.

essentially defunct at this time. He pursued the issue of an Independent Board of Consultants as an interested customer.

A. PG&E's Position

PG&E opposes an Independent Board of Consultants. PG&E argues first that it plans to contract for the decommissioning of Humboldt Unit 3 with established firms that have appropriate experience in decommissioning work. Second, PG&E asserts that subsequent decommissioning activities for Humboldt Unit 3 are "rather straight forward . . . with little room for deviation."[9] PG&E suggests that the Nuclear Regulatory Commission determines all requirements for radioactive material disposal and site release for other use. Therefore, there is only limited discretion for PG&E and its contractors.

PG&E argues it applies economical and efficient methods to ensure prudent decisionmaking and oversight of decommissioning expenditures. PG&E's current practice is to maintain separate accounting orders to record the costs of the dry cask storage activities and related transactions with the decommissioning trusts. This separate accounting facilitates monitoring by the Commission staff. PG&E also proposes community outreach on the decommissioning effort.

PG&E points out that it must submit an updated decommissioning cost estimate for any remaining decommissioning activities in subsequent triennial reviews. In addition, PG&E must submit a comparison of the most recently completed Humboldt Unit 3 decommissioning work, and the costs incurred, to the previous forecast of Humboldt Unit 3 decommissioning cost estimate. PG&E

[9] Ex. 6, p. 7-3.

must persuasively demonstrate that material variances are reasonable. PG&E is therefore opposed to an Independent Board of Consultants that it believes would not be cost effective and would add to decommissioning expenses payable by the trusts. (See Ex. 6, pp. 7-2 – 7-4.)

B. Fielder's Position

Fielder cites to Pub. Util. Code §§ 1091 – 1102 which provides for a construction project board of consultants and argues that decommissioning is very similar to large-scale construction in that decommissioning is also a complex project. (Fielder Reply Brief, p. 2, and footnote 1.) Fielder suggests the Diablo Canyon Independent Safety Committee (Diablo Safety Committee) also serves as a model, at least for budgetary purposes.[10] Fielder argues that PG&E's estimates for Humboldt's decommissioning are inflated and that without an independent board, PG&E will be deemed prudent while spending too much. Additionally, Fielder argues that intervenors, including DRA, lack the expertise to effectively challenge PG&E's cost estimates or actual decommissioning costs in the triennial reviews.

C. Discussion

We agree in principle with Fielder on the necessity to ensure that PG&E uses sufficient well-trained and experienced personnel to plan and direct the complex task of decommissioning a retired nuclear generating facility. PG&E is primarily an operating gas and electric distribution utility and not primarily an architect-engineer continuously engaged in complex construction and removal

[10] Created as part of the ratemaking settlement for Diablo Canyon in D.88-12-083. (30 CPUC 2d, 189.)

projects. This is also true for Edison and SDG&E; therefore our findings, below, are applicable to them as well, on the need for engaging and using sufficient well-trained and experienced personnel suitable to decommissioning a retired nuclear generating facility.

The Diablo Safety Committee is not an appropriate model: it is an after-the-fact investigative body that may be an incentive for safe operations (or deterrent to unsafe operations) but it does not immediately affect or control operating decisions.

> The Diablo Canyon Independent Safety Committee ("DCISC") was established as a part of a settlement agreement entered into in June 1988 between the Division of Ratepayer Advocates of the California Public Utilities Commission ("PUC"), the Attorney General for the State of California, and Pacific Gas and Electric Company ("PG&E") concerning the operation of the two units of PG&E's Diablo Canyon Nuclear Power Plant ("Diablo Canyon"). The agreement provided that:
>
> An Independent Safety Committee shall be established consisting of three members, one each appointed by the Governor of the State of California, the Attorney General and the Chairperson of the California Energy Commission, respectively, serving staggered three-year terms. The Committee shall review Diablo Canyon operations for the purpose of assessing the safety of operations and suggesting any recommendations for safe operations. Neither the Committee nor its members shall have any responsibility or authority for plant operations, and they shall have no authority to direct PG&E personnel. The Committee shall conform in all respects to applicable federal laws, regulations and Nuclear Regulatory Commission ("NRC") policies.
> (http://www.dcisc.org/general_information/general_information.html - the Diablo Safety Committee's website, emphasis added.)

There is an inherent conflict between the roles of consultants authorized by a regulator and managers who must account for their actions to a regulator. A

consultant is "a person who provides expert advice professionally" whereas, a manager is "a person who manages an organization, group of staff."[11] A manager may get conflicting advice from various sources and must make a decision on which advice is best for the circumstances.

If the Commission were to authorize an Independent Board of Consultants, we would have to very clearly delineate: the selection criteria; role and obligations of the board; the mechanical operations of the board; the process to quickly resolve disagreements between PG&E and the board; and, no doubt, numerous other details. Fielder does not provide us with any of these details, and under cross-examination, the sponsoring witness could not suggest any of the details for a viable Independent Board of Consultants framework for us to consider.[12] We do not consider §§ 1091 *et seq*. to be sufficient detailed operating guidelines to integrate a board with PG&E's management. Section 1098, for example, describes an after-the-fact review, including quarterly reports comparing actual to forecast results. These provisions suggest that such a board advises the Commission and does not control or advise PG&E prior to actual activities (for either new construction or dismantling major structures).

In order to satisfy the Commission, the utility must demonstrate that its actions can be deemed "reasonable and prudent." The Commission has found:

> The term 'reasonable and prudent' means that at a particular time any of the practices, methods, and acts engaged in by a utility follows the exercise of reasonable judgment in light of facts known

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[11] Compact Oxford English Dictionary, online, http://www.askoxford.com/?view=uk.

[12] The Reply Brief however relies extensively on the analogy of a construction project board as cited to §§ 1091 *et seq*.

> or which should have been known at the time the decision was made. The act or decision is expected by the utility to accomplish the desired result at the lowest reasonable cost consistent with good utility practices. Good utility practices are based upon cost effectiveness, reliability, safety, and expedition.
>
> A 'reasonable and prudent' act is not limited to the optimum practice, method, or act to the exclusion of all others, but rather encompasses a spectrum of possible practices, methods, or acts consistent with the utility system needs, the interest of the ratepayers and the requirements of governmental agencies of competent jurisdiction. (24 CPUC 2d, 486.) (Emphasis added.)

Defining reasonable and prudent as good utility practices is a tautology. To properly manage the decommissioning process, to be reasonable and prudent, by using good utility practices, as required by this Commission, a utility must show (in this narrow instance) that it sought and used personnel who possessed the available and necessary skills, experience and knowledge to perform the task. So to reasonably undertake decommissioning a nuclear generating plant, PG&E (as well as Edison and SDG&E) must employ properly trained experts who have experience relevant to decommissioning a nuclear plant to plan and perform the decommissioning. People with this skill set and experience may or may not be on the typical electric utility's staff. Therefore we expect PG&E to demonstrate in all subsequent decommissioning-related proceedings that throughout the decommissioning of Humboldt (and later for Diablo) it sought out and acquired the services of well-trained and experienced personnel appropriate to the tasks. We expect PG&E to identify, and aggressively pursue employing, the right people for the job. We need not care whether these people are employees of PG&E or contractors: that is an operating decision best resolved by the utility. Edison and SDG&E are also obliged as an integral part of good utility practices

to demonstrate that in decommissioning SONGS Unit 1 that they engaged the right people for the job.[13]

D. Conclusion

An Independent Board of Consultants would obscure PG&E's overriding obligation to properly manage its decommissioning obligations. We are not competent, nor are our processes timely, to referee complex technical disagreements between PG&E's staff and an outside board on decommissioning issues. By contradistinction, the Nuclear Decommissioning Trust Funds' management committees are composed of utility officers and Commission-approved outside experts that explicitly have the responsibility to manage the trust funds' investments. Further, The Diablo Safety Committee does not operate the plant or consult on its management and therefore it is not a good model to justify the Independent Board of Consultants.

The proposed Board of Independent Consultants would not supplant and assume PG&E's responsibilities for decommissioning Humboldt Unit 3. Therefore, it is far preferable that PG&E must demonstrate in subsequent triennial reviews that it engaged as either employees, contractors, or consultants, people trained to plan and perform a decommissioning, and who have experience applicable to decommissioning a nuclear plant. We also find that this obligation applies to Edison and SDG&E in subsequent triennial reviews of decommissioning activities.

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[13] This discussion focuses narrowly on the desired skills and experience of certain necessary decommissioning personnel and is not an all-encompassing discussion of the total obligations that comprise reasonable and prudent managerial actions for decommissioning a nuclear power plant.

IX. Waste Storage Facilities and Cost

PG&E forecast its decommissioning costs for low level radioactive waste disposal and storage relying on facilities currently in use, but which may be closed to it when PG&E requires actual storage service. Fielder proposes that costs are likely to be much higher for any new storage facility. For low level radioactive waste, PG&E projected the cost of burial disposal at $248 per cubic foot (c.f.) but Fielder argued it should be set at $509 per c.f. as previously approved by the Commission (D.00-02-046 at p. 379, and cited in Fielder's Opening Brief, p. 1). Fielder estimates this would increase overall decommissioning cost for each plant by approximately $50,000,000 to $1,000,000,000. (Opening Brief, p. 1, and pp. 5-7.)

A. Discussion

There is little certainty about low level waste disposal, except we know in July 2008 the Barnwell facility will no longer accept waste from Non-Atlantic Compact states, which excludes the California utilities. (Ex. 11, pp. 24-27; and Ex. 21, pp. 14-18.) PG&E proposes $248 per c.f., escalated based on prior triennial reviews. Fielder argues that it is much more likely in the future the waste storage rates will be higher than Barnwell's cost, rather than lower, therefore the allowance should at least be set at $509 per c.f. Fielder believes that a potential Southwestern Compact facility would have costs even higher than $509 per c.f. (Opening Brief, p. 5.)

The settling parties, PG&E, DRA, and TURN, offer no compelling counter-argument in their joint reply brief, except to point out firstly that DRA proposed a composite rate of $140 per c.f., which we find, the settlement notwithstanding, to be without merit considering the closure of Barnwell and the uncertainty of the future. The settling parties' second reason to oppose Fielder's

recommendation is the uncertainty of his estimate. This argument is two-edged and the perhaps sharper edge cuts against PG&E's proposed use of the unavailable but lower Barnwell costs: PG&E's proposal is lower than previous Southwestern Compact facility estimates for a now more uncertain future.

We know DRA's rate is too low. We know PG&E's rate is for a service that will not be available. Fielder's proposed rates are also speculative. Our obligation is to equitably collect sufficient money over the plants' service lives to adequately fund competently managed trust funds for reasonably managed and a well-planned decommissioning of nuclear generating plants when they are retired from service.

One option would be to split the difference: modify the settlement and substitute a mid-point of $378.50 between PG&E's estimate of $248 and Fielder's $509 proposal. A second more conservative approach would be to adopt Fielder's estimate for the most assurance that we do not under-fund the trusts. The ratepayers are ill served by any expedient but inaccurate estimate. We cannot isolate a storage cost component within the settlement—and if we try, we would thereby abrogate the parties' other trade-offs within the settlement. We can, however, accept the settlement for now, and look to the future to impress on PG&E, DRA, and all parties, including Edison and SDG&E, that no one's forecast was very persuasive. We have the benefit of some time before we need the trusts' proceeds for most of the plants and therefore we can rely on the current settlements until the next triennial review. For the next proceeding, we direct all parties to conduct a thorough and complete research and analysis, and then err on the conservative (high estimate) side, when forecasting waste storage costs. This finding is applicable to all three utilities. If there is no more certainty regarding western utilities' storage options during the next triennial review, then

we expect parties to conservatively estimate low level waste storage costs. The parties may also make any additional recommendations on the appropriate allowance for waste storage costs.

X. Contingency

The proposed settlement incorporates a 35% contingency factor for Diablo Canyon and 25% for Humboldt Unit 3.[14] Fielder proposes that we should modify the settlement and use a 40% factor relying primarily on two issues: (1) the adopted contingency has been declining from a high of 50% in 1987 (24 CPUC 2d 15, 20) to 40% in 1995 (63 CPUC 2d 571, 613-614) and now the settling parties propose 35%; and (2) because of the Barnwell closure, waste storage costs are much more uncertain. (It is not clear whether Fielder would trade-off his storage estimate for his increased contingency, but there is a "belt and suspenders" element to the cautious recommendation of both.) A declining contingency, if properly determined, could reflect the improved accuracy of the decommissioning estimates based on more industry experience and being closer to the need for decommissioning. A contingency has an effect in early years of acting like an accelerated funding by over-accruing contributions in addition to its intended purpose of protecting against errors and unforeseen costs in the decommissioning estimate.

Again we are faced with a choice of whether or not to piecemeal the settlement. We will accept the settlement but in the next proceeding we direct all parties to conduct a thorough and complete research and analysis, and then err

[14] Contingency: (1) A future event or circumstance which is possible but cannot be predicted with certainty. (2) A provision for such an event or circumstance. (3) The absence of certainty in events. (Compact Oxford English Dictionary, online.)

on the conservative (high estimate) side, when forecasting a contingency factor. The parties may also make any additional recommendations on the appropriate allowance for contingencies. This finding is applicable to all three utilities.

XI. PG&E's Settlement is Reasonable

The Commission does not unravel a settlement unless there is significant problem with the outcome as a whole—in which case the settlement would fail the public interest test discussed elsewhere. This settled outcome is within the range of plausible litigation outcomes. Except for Humboldt Unit 3, these plants are not in active decommissioning. We are therefore less concerned now about under-funding than we will be as Diablo Units 1 and 2 approach retirement. Our overriding concern with decommissioning is to ensure the trust funds are sufficient to retire the plants pursuant to a reasonable plan and that the funds are recovered equitably from customers throughout the plants' service lives. We find the settlement applicable to PG&E to be reasonable.

XII. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and Rule 14.2(a) of the Commission's Rules of Practice and Procedure (Rules). Comments were filed on November 20, 2006, by Edison and SDG&E, and separately by SDG&E, PG&E, DRA, and Fielder. Replies were filed by Edison and SDG&E, PG&E, and DRA on November 27, 2006. We have reviewed the comments and have made changes to the decision as appropriate.

XIII. Assignment of the Proceedings

Michael R. Peevey is the assigned Commissioner and Douglas M. Long is the assigned ALJ in these proceedings.

Findings of Fact

1. The Edison and SDG&E settlement is uncontested and resolves all disputed issues.

2. The PG&E settlement is uncontested except for the issues litigated by PG&E and Fielder.

3. The settlements resolve all of the disputed issues among the settling parties.

4. The active parties in the proceeding are representative of the stakeholders, and each has ably and vigorously pursued the interests of its constituency.

5. The proposed settlements' results are within the range of reasonable findings if the applications had been fully litigated on the parties' testimony.

6. An Independent Board of Consultants would interfere with PG&E exercising its obligations to efficiently and reasonably manage the decommissioning process.

7. Good utility practices would require a utility to engage a sufficient staff with appropriate expert training and experience to decommission a nuclear generation plant. This expert staff could be permanent staff, contractors or consultant staff.

8. Further detailed analysis and study is needed before the Commission can adopt reasonable future estimates for low level radiation waste storage.

9. Further detailed analysis and study is needed before the Commission can adopt reasonable future estimates for contingency factors in the decommissioning cost forecasts.

Conclusions of Law

1. Rules 51 *et seq.*, applicable during the pendency of this proceeding, should be used to review the settlement agreement.

2. The settlements for Edison and SDG&E meet the criteria of an uncontested settlement under Rule 51(f) and *San Diego Gas & Electric* 46 CPUC 2d 538 (1992).

3. The settlement for PG&E met the criteria for settlements under Rules 51 *et seq.* Rule 51.6 was satisfied by conducting an evidentiary hearing and the filing of briefs on the contested issues.

4. The settlements are reasonable in light of the whole record.

5. The settlements are in the public interest.

6. The costs incurred by Edison and SDG&E towards the decommissioning of SONGS Unit 1 were reasonable.

7. The costs incurred by PG&E towards the decommissioning of Humboldt Unit 3 were reasonable.

8. Under Rule 51.8, the adoption of the proposed settlements creates no precedent for subsequent triennial reviews of the nuclear decommissioning trust funds or the decommissioning activities of Edison, SDG&E, or PG&E.

9. The Settlements do not contravene or compromise any statutory provision or Commission decision, and are consistent with law.

10. It is reasonable to direct the parties to conduct and include detailed studies in subsequent triennial decommissioning review proceedings.

11. A.05-11-008 and A.05-11-009 should be closed.

FINAL ORDER

IT IS ORDERED that:

1. The attached settlement in Appendix B for Application (A.) 05-11-008 is adopted.

2. The attached settlement with updates in Appendix B for A.05-11-009 is adopted.

3. Southern California Edison Company (Edison) shall file a compliance advice letter with the Commission's Energy Division within 10 days of the effective date of this decision. It shall be served on the service list for this proceeding. The advice letter shall describe how Edison will implement the settlement as adopted in this decision, subject to Energy Division determining that the filing is in compliance with this order. Edison may consolidate the rate changes authorized in this decision with its Energy Resource Recovery Account forecast compliance filing in early 2007.

4. San Diego Gas & Electric Company (SDG&E) shall file a compliance advice letter with the Commission's Energy Division within 10 days of the effective date of this decision. It shall be served on the service list for this proceeding. The advice letter shall describe how SDG&E will implement the settlement as adopted in this decision and the tariffs will be effective on January 1, 2007, or the first day of the month following the effective date of this order, subject to Energy Division determining that the revised tariffs are in compliance with this order. SDG&E is authorized to apply $2.79 million of the overcollection in its Nuclear Decommissioning Adjustment Mechanism as a 12-month amortization to the nuclear decommissioning rate effective January 1, 2007, to offset the impact of the increase in the Nuclear Decommissioning revenue requirement in 2007.

5. Within 10 days of the effective date of this Decision, Pacific Gas and Electric Company (PG&E) shall file a separate compliance advice letter with the Commission's Energy Division, which shall include the revenue requirement described in the Settlement Agreement. Any resulting rate change shall be incorporated with the next available consolidated rate change following the effective date of this order, subject to Energy Division determining that the revised tariffs are in compliance with this order. The compliance advice letter shall be served on the service list for this proceeding. The compliance advice letter shall describe how PG&E will implement the settlement as adopted in this decision. In accordance with Item 6 of the Settlement Agreement, PG&E shall file a second compliance advice letter in the first quarter of 2007 to update the 2007-2009 revenue requirements that incorporate the December 31, 2006 nuclear decommissioning trust fund balances. The update will serve as the basis for the required IRS Schedule of Ruling Amounts for years 2007-2009. An adjustment to the Nuclear Decommissioning Adjustment Mechanism (NDAM) balancing account shall be made to address any difference in the revenue collected in rates and the annual revenue requirements, as described and updated in the compliance advice letters.

6. Edison, SDG&E, and PG&E shall serve testimony in their next triennial review of nuclear decommissioning trusts and related decommissioning activities that demonstrates they have made all reasonable efforts to retain and utilize sufficient qualified and experienced personnel to effectively, safely, and efficiently pursue any physical decommissioning related activities for the nuclear generation facilities under their control.

7. Edison, SDG&E, and PG&E shall serve testimony in their next triennial review of nuclear decommissioning trusts and related decommissioning

activities that demonstrates they have made all reasonable efforts to conservatively forecast the costs of low level radioactive waste storage.

8. Edison, SDG&E, and PG&E shall serve testimony in their next triennial review of nuclear decommissioning trusts and related decommissioning activities that demonstrates they have made all reasonable efforts to conservatively establish an appropriate contingency factor for inclusion in the decommissioning revenue requirements.

9. A.05-11-008 and A.05-11-009 are closed.

This order is effective today.

Dated January 11, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
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Commissioners

APPENDIX A: SERVICE LIST

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