

BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider)
Electric Procurement Policy Refinements)
Pursuant to the Joint Reliability Plan.)
_____)

R.14-02-001
(Filed February 5, 2014)

**ALLIANCE FOR NUCLEAR RESPONSIBILITY'S MOTION
TO COMPEL DISCOVERY FROM PG&E**

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I. INTRODUCTION.

Pursuant to Rule 11.3 of the California Public Utilities Commission (“Commission” or “CPUC”) Rules of Practice and Procedure, the Alliance for Nuclear Responsibility (“A4NR”) respectfully submits this motion to compel the response of Pacific Gas and Electric Company (“PG&E”) to the data requests described below. A4NR and PG&E met and conferred in person on April 17, 2014 and were unable to resolve their differences.

II. BACKGROUND.

On March 11, 2014, A4NR submitted 12 requests to PG&E¹ concerning studies of operating the Diablo Canyon Nuclear Power Plant (“Diablo Canyon”) in a load-following mode. Such a change in Diablo Canyon operations was publicly discussed at the February 12-13, 2014 public meeting of the Diablo Canyon Independent Safety Committee (“DCISC”), where DCISC consultant R. Ferman Wardell reported, “Suffice it to say they [PG&E] do have a very active program to look at it.”² PG&E’s April 16, 2014 responses to A4NR confirm that PG&E has performed internal studies or contracted with others to study operating either or both units at Diablo Canyon in a load-following mode,³ and that it has plans for future studies as well.⁴

¹ A4NR’s questions and PG&E’s responses are attached as Appendix A to this motion.

² Mr. Wardell’s comments are accessible at 2:27:15 on the videotape of the DCISC’s February 12, 2014 session archived at <http://www.slo-span.org/media.php?slo=1#DCISC>

³ PG&E Answer 5.

⁴ PG&E Answer 9.

A4NR requested copies of all documents and electronically stored information relating to such studies and PG&E's evaluations thereof.⁵ Without identifying any rationale for why such information should be considered confidential or subject to privilege, PG&E answered A4NR's request with a blanket response:

*PG&E objects to this question insofar as it seeks production of confidential or privileged information. PG&E has not identified any non-confidential/non-privileged documents or electronically stored information responsive to this request.*⁶

With respect to A4NR's request for all documents and electronically stored information relating to plans for future studies,⁷ PG&E responded with an identical rebuff.⁸

Additionally, A4NR requested copies of all documents and electronically stored information relating to PG&E's participation in a December 12, 2013 DCISC fact-finding meeting with PG&E on prospective operation of Diablo Canyon as a load-following plant.⁹ PG&E provided copies of two preliminary agendas and a 19-page powerpoint presentation, identifying them as "the non-confidential/non-privileged documents that PG&E has identified as responsive to this request"¹⁰ and explaining that "(a)ny confidential information included in the documents has been redacted."¹¹ Three of the eight lines on the powerpoint slide entitled

⁵ A4NR Question 6.

⁶ PG&E Answer 6.

⁷ A4NR Question 10.

⁸ PG&E Answer 10.

⁹ A4NR Question 4.

¹⁰ PG&E Answer 4, p. 1.

¹¹ *Id.*

“Presentation Agenda” are redacted, and three of the powerpoint slides are entirely redacted except for the PG&E logo and (in two instances) page number on each slide.¹²

A4NR also asked PG&E whether it had communicated with the California Independent System Operator (“CAISO”)¹³ or the CPUC staff¹⁴ about the possible operation of either or both units at Diablo Canyon in a load-following mode. Rather than answer the question “yes” or “no,” PG&E instead responded with the ambiguous “PG&E has not identified any communications with ...” either the CAISO or the CPUC staff.¹⁵

III. DISCUSSION.

Operating Diablo Canyon in a load-following mode would indisputably impact the reliability assessments that are the subject of this proceeding, and PG&E has acknowledged that such a prospect is under active consideration. PG&E does not contend that the information sought by A4NR would not be admissible or lead to admissible evidence. Nor does PG&E claim that responding to A4NR’s requests would be burdensome, expensive, or intrusive. Rather than afford A4NR the discovery rights provided by Rule 10.1, PG&E objects for unspecified reasons that Questions 6 and 10 seek “confidential or privileged information;”¹⁶ it uses the same unexplained “confidential information” paintbrush to excessively redact a

¹² PG&E Answer 4, “Nuclear Power and California’s Evolving Energy Market Increased Need for More Flexible Generation,” powerpoint presentation pp. 3, 16 – 18.

¹³ A4NR Question 7.

¹⁴ A4NR Question 11.

¹⁵ PG&E Answers 7 and 11.

¹⁶ PG&E Answers 6 and 10.

powerpoint presentation;¹⁷ and it resorts to coy word games to avoid straight answers about communications with CAISO and CPUC staff.¹⁸

Regarding its “confidential or privileged information” claims, PG&E does not even attempt to meet the burden of proof specified by the Commission in D.6-06-066.

Acknowledging the necessity of transparency, (“We are a public agency that regulates public utilities, and most of our business must be conducted in the open.”¹⁹), the Commission provided useful guidance in D.6-06-066 for what is expected from parties seeking to have information designated as confidential:

- *a party seeking confidential treatment ... shall bear the burden of proving that its information deserves such treatment.* (D.06-06-066 Ordering Paragraph 3)
- *Boilerplate assertions of a need for confidentiality are not appropriate. Rather the producing party must cite the legal basis for confidential protection, along with facts showing the consequences of release.* (D.06-06-066 Ordering Paragraph 3)
- *No data that is already publicly available may be characterized or treated as confidential. Information an IOU has furnished to an affiliated company²⁰ is publicly available.* (D.06-06-066 Ordering Paragraph 7)

¹⁷ PG&E Answer 4.

¹⁸ PG&E Answers 7 and 11.

¹⁹ D.6-06-066, Conclusion of Law 10.

²⁰ The extent to which the information has been shared with PG&E’s holding company parent would render it “publicly available” under the standard specified in D.6-06-066.

PG&E's claims cannot survive even the most lenient application of the D.6-06-066 criteria. Under the parallel requirements the Commission has developed to govern advice letter filings, PG&E's effort would similarly fail. As specified in General Order 96-B,

A person requesting confidential treatment under this General Order bears the burden of proving why any particular document, or portion of a document, must or should be withheld from public disclosure. Any request for confidential treatment of information must reference the specific law prohibiting disclosure, the specific statutory privilege that the person believes it holds and could assert against disclosure, the specific privilege the person believes the Commission may and should assert against disclosure, or the specific provision of General Order 66-C (or its successor) or other Commission decision that authorizes a document to be kept confidential.²¹

Nor should PG&E's semantic parsing be allowed to obfuscate the answers to A4NR Questions 7 and 11. Either PG&E has communicated about Diablo Canyon load-following with CAISO and the CPUC staff, or it hasn't. A4NR is entitled to a direct response to a straight-forward question.

V. CONCLUSION.

A4NR's data requests fall squarely within the parameters of the discovery permitted by Rule 10.1, and PG&E has made no claim that the burden, expense, or intrusiveness of those requests clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. For the reasons stated herein, the Commission should direct PG&E to respond immediately to A4NR's Questions 6 and 10; provide unredacted copies of pages 3, 16,

²¹ GO 96-B, § 9.2 Burden of Establishing Confidentiality.

17 and 18 of the powerpoint provided in response to Question 4; and answer Questions 7 and 11 with a simple “yes” or “no.” Pursuant to Rule 11.3, a proposed ruling is attached to this motion as Appendix B.

Respectfully submitted,

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