

BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

| | | |
|--|---|---------------------------|
| Application of Pacific Gas and Electric |) | |
| Company for Authority, Among Other Things, |) | |
| to Increase Rates and Charges for Electric and |) | Application 12-11-009 |
| Gas Service Effective on January 1, 2014. |) | (Filed November 15, 2012) |
| (U 39 M) |) | |
| _____ |) | |
| |) | |
| And Related Matter. |) | Investigation 13-03-007 |
| _____ |) | |

ALLIANCE FOR NUCLEAR RESPONSIBILITY'S

OPENING COMMENTS ON ADMINISTRATIVE LAW JUDGE'S PROPOSED DECISION

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I. INTRODUCTION.

Pursuant to Rule 14.3 of the California Public Utilities Commission (“Commission” or “CPUC”) Rules of Practice and Procedure, the Alliance for Nuclear Responsibility (“A4NR”) respectfully submits its comments to the Proposed Decision (“PD”) of Administrative Law Judge Thomas R. Pulsifer in Pacific Gas and Electric Company’s 2014 General Rate Case Application 12-11-009 and the Commission’s consolidated Investigation 13-03-007. The portions of the PD which address issues raised by A4NR contain legal errors and material factual omissions which require correction. As acknowledged in PG&E’s Opening Brief, “A4NR’s recommendations are primarily non-financial disputes.”¹

II. THE PD MISSTATES COMMISSION LEGAL AUTHORITY.

The PD erroneously relies on flawed PG&E legal assertions to summarily dispense with A4NR’s recommendations that the Commission exercise greater oversight of PG&E’s seismic reviews and transfer of spent nuclear fuel (“SNF”) to dry casks at the Diablo Canyon Nuclear Power Plant:

- *As noted by PG&E, this Commission lacks jurisdiction to oversee or manage seismic study activities conducted under NRC authority.*²
- *The Commission does not have jurisdiction to oversee or manage seismic study activities conducted under NRC jurisdiction.*³
- *We decline to impose the condition ... as a means of indirectly compelling PG&E to take actions regarding the transfer of spent fuel to dry cask storage that we do not have legal authority to directly order.*⁴

¹ PG&E Opening Brief, p. 6-55, footnote 191.

² PD Section 6.3.1.14.1., p. 403.

³ PD Section 6.3.1.14.3., p. 404.

In reaching this constrained view of Commission authority, the PD appears to embrace PG&E's self-serving perspective that everything that happens at Diablo Canyon involves the radiological safety that federal preemption insulates from Commission regulation. Such a perspective requires a willful disregard for the landmark delineation of state authority over nuclear power plants articulated by a unanimous U.S. Supreme Court in *Pacific Gas and Electric Co. v. State Energy Resources Conservation & Dev. Comm'n*, (1983) 461 U.S. 190:

*(T)he states exercise their traditional authority over the need for additional generating capacity, the type of generating facilities to be licensed, land use, **ratemaking**, and the like. The above is not particularly controversial.*⁵ (emphasis added by A4NR)

Indeed, acceptance of PG&E's expansive view of the unlimited parameters of federal pre-emption would cast doubt on any exercise of Commission discretion over the Diablo Canyon-related portion of PG&E rates. Unsurprisingly, given its source, this blinkered logic would foreclose any review of the reasonableness of ratepayer-funded expenditures at Diablo Canyon because every such expenditure can be connected to activities conducted "under NRC authority" or "under NRC jurisdiction." Such an outcome would be absurd. Nothing in the federal Atomic Energy Act⁶ suggests that state rate regulators should adopt a blank check or rubberstamp approach to authorizing expenditures at nuclear power plants simply because of federal regulation of the operation of such plants. Insisting upon the reasonableness of such expenditures, clearly a "traditional authority" of the Commission, is a far cry from trespassing

⁴ PD Section 6.3.1.14.4., p. 405.

⁵ *Pacific Gas and Electric Co. v. State Energy Resources Conservation & Dev. Comm'n*, *supra*, 213.

⁶ 42 U.S.C. §§ 2011 *et seq.*

on the exclusive jurisdiction of the NRC. The several nuclear disallowances recommended in the PD exemplify this awareness.

The Commission may, in its discretion, find reasons not to adopt A4NR's recommendations regarding enhanced Commission oversight of PG&E's Diablo Canyon seismic reviews and transfer of SNF to dry casks, but lack of legal authority is not one of them.

III. §§ 451 AND 701 SURELY PREVENT UTILITY WASTEFULNESS.

The Commission's responsibilities under Cal. Pub. Util. Code §§ 451 and 701 to assure that utility rates are just and reasonable command a higher level of alertness to PG&E's slow pace of dry cask loading. The PD would countenance a result where PG&E is authorized to complete the remaining five (of seven) concrete pads for dry cask storage, but then slow-walk their utilization. Under PG&E's A.12-11-009 scenario, at license expiry in 2025 more than half of the pad capacity remains vacant and 73 of the potential 138 casks are undeployed.⁷ The looming dysfunction for ratepayers, should the plant close then with so many used fuel assemblies still in the SNF pools, has become clearer in PG&E's still pending 2012 Nuclear Decommissioning Cost Triennial Proceeding ("NDCTP"), A.12-12-012.

Prudent management of the financial risk inherent in forecasting long-term decommissioning costs argues for reducing uncertainty when possible, and inter-generational equity concerns compel that the transfer of SNF to dry casks be borne by the customers who received electricity from DCP. While hope for direct delivery to the U.S. Department of Energy

⁷ A4NR Reply Brief, p. 7. In response to Recommendation R13-2 of the Commission-established Diablo Canyon Independent Safety Committee ("DCISC") regarding the pace of transfer to dry casks, PG&E announced plans for a slight acceleration during the DCISC's February 12, 2014 public meeting.

("DOE") from the wet pools may have been an underpinning of PG&E's SNF strategy at some prior time, no party in the 2012 NDCTP disputed the likelihood that every Diablo Canyon fuel assembly will ultimately be placed in a dry storage cask before DOE ever performs its contractual obligation. Each canister loaded while the plant is still operating is one less canister left to be funded from the Nuclear Decommissioning Trust, and the prospect that post-shutdown customers will be responsible for absorbing any funding shortfalls.

The ability to incur, and thus limit, this expenditure while Diablo Canyon is still operating distinguishes the cost of SNF transfer to dry casks from other decommissioning costs. The potential for cost recovery from ongoing breach of contract litigation with DOE bolsters the argument for accelerating this transfer, since uncertainty can only grow the further the transfer event is pushed into the future. This uncertainty extends to both the likelihood and the proportion of recovery from DOE of SNF storage costs. Given the exceptionally higher security costs PG&E attributes to wet storage compared to dry, a demonstrable effort to mitigate damages by transferring SNF to dry casks might actually enhance the likelihood of full cost recovery from DOE for breach of contract.

Even in the unlikely event of no recovery from DOE, the cost of SNF transfer to dry casks is best fixed early and then paid by customers who benefitted from Diablo Canyon's operation. The highest priority for Nuclear Decommissioning Trust assets should be decommissioning costs which cannot be fixed until after the plant has stopped operating, because no other way exists to assign these costs to customers who received Diablo Canyon electricity (and paid into the Trust). Assuming that the cost of transferring SNF to dry casks will escalate at a lower rate than the earnings rate of Trust assets, and that as a result this cost can be economically deferred, is

needlessly speculative and inconsistent with prudent financial management. PG&E witness Loren Sharp testified in A.12-12-012 that the GRC is the appropriate Commission proceeding for evaluating PG&E's spent fuel practices.⁸

IV. THE PD MISREADS *Entergy Nuclear Vermont Yankee, LLC v. Shumlin*.

Although the specific case is not mentioned by name, the PD appears to base its apprehension about “*indirectly compelling PG&E to take actions regarding the transfer of spent fuel to dry cask storage that we do not have legal authority to directly order*”⁹ on the decision of the Second Circuit U.S. Court of Appeals in *Entergy Nuclear Vermont Yankee, LLC v. Shumlin* (2013) 733 F.3d 393. Without being distracted by the question of whether a Second Circuit case can be considered controlling law in California, A4NR recommends that the Commission carefully examine it. Even a light reading will identify two distinguishing features, both of which the *Entergy Nuclear Vermont Yankee LLC* court afforded considerable significance, which simply are not present in the Commission's potential engagement with the pace of Diablo Canyon's SNF transfer to dry casks:

- Each of the two statutes for which the *Entergy Nuclear Vermont Yankee, LLC* court found impermissible motivation

*shifted decision-making responsibility for approving the continued operation of Vermont Yankee from the [Vermont Public Service] Board, whose decisions were subject to review by the Vermont Supreme Court, to the Vermont Legislature, where no judicial review of its action—or inaction—would be available.*¹⁰

⁸ A.12-12-012 Transcript (Sharp – PG&E) pp. 917, 936.

⁹ PD, Section 6.3.1.14.4., p. 405.

¹⁰ *Entergy Nuclear Vermont Yankee, LLC v. Shumlin, supra*, 427.

The court noted that such a review would have likely encompassed questions of federal preemption, but that “[U]nlike an administrative agency’s denial of an exemption from a generally applicable law, which would be entitled to a judicial audience, a legislature’s failure to enact a special law is itself unreviewable.”¹¹

- The court also viewed Vermont’s status as part of a deregulated electricity market as depriving the state of the economic rationale which the Supreme Court had upheld in *Pacific Gas and Electric Co. v. State Energy Resources Conservation & Dev. Comm’n*:

As to the second goal of containing costs, Vermont argues that the economic rationale relied on by the Pacific Gas Court applies with equal force here... However, this argument is also not persuasive in light of Vermont Yankee’s status as a merchant generator. Increases in the prices Vermont Yankee charges for its power would not be borne directly by a captive audience of retail consumers, as was the case for California residents in Pacific Gas. Instead, Vermont Yankee is ‘a merchant generator, which means that it sells power on the open wholesale market.’¹²

Nor can the California Energy Commission (“CEC”) recommendation regarding the pace of SNF transfer to dry casks, which A4NR urges the Commission to formally embrace, accurately be portrayed as inconsistent with NRC regulation of the manner in which SNF is stored in pools and dry casks. As the CEC most recently stated in its 2013 Integrated Energy Policy Report:

Transfer spent fuel to dry casks as expeditiously as possible. *To reduce the volume of spent fuel packed into Diablo Canyon’s storage pools (and consequently the radioactive material available for dispersal in the event of an accident or sabotage), PG&E should, as soon as practicable, and while maintaining compliance with Nuclear Regulatory Commission spent fuel cask and pool storage requirements, transfer spent fuel from the pools into dry casks and report to the Energy Commission on its progress until the pools have been returned to open racking arrangements.*¹³ (emphasis added by A4NR)

¹¹ *Id.*, p. 415.

¹² *Id.*, pp. 417 – 418, citation omitted.

¹³ CEC, 2013 Integrated Energy Policy Report, as adopted January 15, 2014, pp. 170 – 171.

This same NRC-compliance caveat (“*while maintaining compliance with NRC cask and pool spent fuel storage requirements*”) is prominently featured in the SNF transfer recommendation the CEC’s 2008 AB 1632 Report, its 2009 Integrated Energy Policy Report, and its 2011 Integrated Energy Policy Report.

V. THE PD IGNORES CAL. PUB. RES. CODE §§ 25300 – 25307.

The statutory framework for inter-agency cooperation in establishing state policy on a subject like the transfer of SNF to dry casks is not difficult to discern. Specifying one of its objectives as “*to encourage cooperation among the various state agencies with energy responsibilities,*”¹⁴ the California Legislature created an “*integrated energy policy report*” process conducted every two years by the CEC and requiring consultation with the CPUC, the Office of Ratepayer Advocates, the Air Resources Board, the Independent System Operator, and a host of other agencies.¹⁵ “*To assure collaborative development of state energy policies, these agencies shall make a good faith effort to provide data, assessment, and proposed recommendations for review,*” according to the statute.¹⁶

After adoption, the CEC is required to provide the report to the CPUC, the Office of Ratepayer Advocates, the Air Resources Board, the Electricity Oversight Board, the Independent System Operator, the Department of Water Resources, the California Consumer Power and

¹⁴ Cal. Pub. Res. Code §25300(e).

¹⁵ Cal. Pub. Res. Code §25302(e).

¹⁶ *Id.*

Conservation Financing Authority, and the Department of Transportation.¹⁷ As the statute further provides,

For the purpose of ensuring consistency in the underlying information that forms the foundation of energy policies and decisions affecting the state, those entities shall carry out their energy-related duties and responsibilities based upon the information and analyses contained in the report. If an entity listed in this subdivision objects to information contained in the report, and has a reasonable basis for that objection, the entity shall not be required to consider that information in carrying out its energy-related duties.¹⁸

In the years between its biennial integrated energy policy reports, the CEC is directed to perform a review to “update analyses ... or to raise energy issues that have emerged since the release of the integrated energy policy report.”¹⁹ One such “review” was the CEC’s AB 1632 Report in 2008, which had been required by the Legislature’s enactment of Cal. Pub. Res. Code §25303(c):

In the absence of a long-term nuclear waste storage facility, the commission shall assess the potential state and local costs and impacts associated with accumulating waste at California’s nuclear powerplants. The commission shall further assess other key policy and planning issues that will affect the future role of nuclear powerplants in the state. The commission’s assessment shall be adopted on or before November 1, 2008, and included in the 2008 energy policy review adopted pursuant to subdivision (d) of Section 25302.

The CEC’s AB 1632 Report was unequivocal in its recommendation regarding SNF:

¹⁷ Cal. Pub. Res. Code §25302(f).

¹⁸ *Id.* Cal. Pub. Res. Code §25307(a) provides for gubernatorial review of the CEC report, specifying that “If the Governor disagrees with one or more recommendations in the integrated energy policy report, the Governor shall, in each instance, indicate the reason for disagreement and shall specify the alternate policy the Governor finds appropriate.”

¹⁹ Cal. Pub. Res. Code §25302(d).

*PG&E and SCE should return their spent fuel pools to open racking arrangements as soon as feasible, while maintaining compliance with NRC cask and pool spent fuel storage requirements, and report to the Energy Commission on their progress in doing so.*²⁰

The CEC's 2009 Integrated Energy Policy Report noted that the utilities had not yet reported plans to pursue the AB 1632 Report's recommendation on transfer of spent fuel to dry casks.²¹ With no perceptible movement by either PG&E or SCE on the issue, the 2011 Integrated Energy Policy Report was emphatic:

*In light of the accidents and/or plant shutdowns following earthquakes at Fukushima Daiichi (2011), Kashiwazaki-Kariwa (2007), and at the North Anna nuclear plant (August 23, 2011) and other considerations, the Energy Commission, **in consultation with the CPUC**, (emphasis added by A4NR) recommends the following:*

*To reduce the volume of spent fuel packed into storage pools, and consequently the radioactive material available for dispersal in the event of an accident or sabotage, PG&E and SCE, as soon as practicable, should transfer spent fuel from pools into dry casks, while maintaining compliance with NRC spent fuel cask and pool storage requirements and report to the Energy Commission in the 2012 IEPR Update on their progress.*²²

In determining the reasonableness of PG&E's refusal – in planning the construction of five additional concrete pads for dry casks as well as for sizing the 2015-16 transfer of SNF to dry casks -- to accept nearly six years of consistent CEC SNF recommendations, the Commission should consider that:

- a policy favoring accelerated transfer was formally recommended by the CEC in 2008 and reiterated in the 2009, 2011, and 2013 integrated energy policy reports;

²⁰ CEC, "An Assessment of California's Nuclear Power Plants: AB 1632 Report," adopted November 20, 2008, p. 15.

²¹ CEC, "2009 Integrated Energy Policy Report, Final Commission Report, December 2009," p. 117.

²² CEC, "CEC, 2011 Integrated Energy Policy Report, 2011," pp. 203 – 204.

- neither the Commission nor its staff have ever indicated any differing opinion regarding these recommendations, let alone an “*objection*” as provided for in §25302(f);
- neither of the two Governors serving during the time these recommendations were made have ever indicated any disagreement with them as provided for in §25307(a); and
- the 2011 recommendation purports to have been made “*in consultation with the CPUC.*”

VI. THE PD ERRS IN FINDING NO EVIDENTIARY BASIS TO TRANSFER \$4.84 MILLION IN LTSP COSTS TO THE DCSSBA ADOPTED IN D.12-09-008.

Finding of Fact 188 overlooks multiple indications in the evidentiary record of the need for the Commission to provide closer oversight to the LTSP, which integration with the process established by D.12-09-008 for the much larger AB 1632 seismic studies (e.g., review of study design and results by the Commission’s Independent Peer Review Panel and annual cost recovery through the ERRA compliance process) would accomplish. Evidence of the need for such a transfer:

- the admission in PG&E’s surrebuttal testimony: “As A4NR notes in its testimony, one of the data needs that will not be addressed in the current GMC²³ SSHAC is improved methodologies for characterization of hard rock sites.”²⁴

²³ GMC is an acronym for “ground motion characterization” in the SSHAC process.

²⁴ Exhibit 229, p. 6.

- PG&E’s acknowledged reduction of its ground motion characterization budget by one-third,²⁵ deferring actual data gathering and compelling a continued dependence upon modeling simulations with disputed applicability to Diablo Canyon site conditions.
- the admission in PG&E’s surrebuttal testimony that until at least 2018, it will rely on *“existing methods with broad uncertainty to account for limitations of currently available methods.”*²⁶
- the indication in PG&E’s testimony that the Diablo Canyon capital budgeting environment in which seismic retrofit measures will be evaluated is severely tightening: *“Beginning in 2017, PG&E expects to see a gradual ramp down in capital spending and forecasts that base annual capital spending will stabilize at or below \$100 million per year in 2009 constant dollars.”*²⁷
- the acknowledgement in PG&E’s rebuttal testimony:

*With spending requirements of this magnitude in the inherent uncertainty, PG&E can no longer balance safety needs, reliability, NRC uncertainty, and cost recovery as it has in the past. Decision-making surrounding cost associated with these projects versus safely operating the plant has become a distraction of tradeoffs that in the end could compromise safety.*²⁸
- the contrast between the PG&E surrebuttal testimony’s claim that *“Diablo Canyon is the only plant in the country that has continuously updated its seismic hazard,”*²⁹ and Chief

²⁵ Exhibit 274, p. 1.

²⁶ Exhibit 229, p. 6. PG&E’s surrebuttal testimony offered a similar explanation for the other major deficiency in its ground motion assessment: *“The other data gap not being addressed is physical limits on the ground motions. The current SSHAC will use conservative assumptions to address this item.”* *Id.*

²⁷ Exhibit 24, p. 3-35.

²⁸ *Id.*, p. 3-58.

²⁹ Exhibit 229, p. 4.

Nuclear Officer Ed Halpin's admission on cross examination that he had not been told that the U.S. Government Accountability Office reported that the Diablo Canyon seismic hazard assessment has not been updated since 1988.³⁰

- the findings of Report No. 6 of the Commission's Independent Peer Review Panel concerning PG&E's ground motion characterization efforts,³¹ for which A4NR's September 27, 2013 Motion for Official Notice remains pending.

VII. THE PD ERRS IN FINDING NO EVIDENTIARY BASIS TO CONDITION APPROVAL OF \$45.7 MILLION IN SNF-RELATED COST RECOVERY.

Finding of Fact 189 overlooks the Commission's authority under Rule 13.9 and Cal. Evid. Code §452 to take official notice of each of the afore-mentioned CEC reports, which were extensively discussed in A4NR's Opening Brief and Reply Brief. Beside the legal reasons discussed in Section V of these comments, the testimony of PG&E Chief Nuclear Officer Ed Halpin provides additional basis for the Commission to adopt A4NR's recommendation:

- Mr. Halpin testified that he had read the AB 1632 Report in 2012, but that he was not familiar with the recommendation to return the spent fuel pools to open racking arrangements;³²
- Mr. Halpin testified that he was not familiar with how PG&E was complying with the recommendation;³³

³⁰ Transcript (Halpin – PG&E), p. 3156.

³¹ These findings are discussed in A4NR's Reply Brief, pp. 4 – 7.

³² Transcript (Halpin – PG&E), p. 3142.

³³ *Id.*

- Mr. Halpin testified that he was not familiar with whether the recommendation has played any role in determining PG&E’s pace of withdrawal of spent fuel from the pools and transfer to dry casks;³⁴ and
- Mr. Halpin testified that construction of the additional pads would enable the possibility of accelerating such a transfer,³⁵ but that planning starts years in advance in order to have casks fabricated and spent fuel off-load campaigns integrated into other DCP work.³⁶

VIII. THE COMMISSION SHOULD EXPLAIN WHY IT STRUCK A4NR’S TESTIMONY.

The PD’s “*there is no evidentiary basis*”³⁷ slapdown of A4NR’s retracted recommendation regarding disallowance of 50% of PG&E’s LTSP funding request – not merely the SSHAC portion, as Finding of Fact 187 erroneously states³⁸ – smells of overkill when applied to a recommendation which has already been forcibly withdrawn. As A4NR previously pointed out in its Opening Brief,

*PG&E’s successful motion to strike those portions of A4NR’s testimony which documented PG&E misfeasance in the LTSP’s response to discovery of the Shoreline Fault forces A4NR, for lack of sufficient evidence, to withdraw its recommendation that 50% of LTSP costs be absorbed by shareholders.*³⁹

³⁴ *Id.*

³⁵ *Id.*, pp. 3140 – 3141.

³⁶ *Id.*, pp. 3139, 3141.

³⁷ PD Finding of Fact 187.

³⁸ A similar error appears in PD Section 6.3.1.14 and Section 6.3.1.14.1, pp. 401 – 403.

³⁹ A4NR Opening Brief, p. 16.

A4NR continues to take exception⁴⁰ to the striking of that portion of its testimony – without explanation -- which documented misfeasance in PG&E’s 2010-13 conduct of its LTSP, and requests that the Commission review the ruling pursuant to Rule 13.6(c) in deciding this proceeding on the merits. As the Commission made clear in adopting the Order which instituted I.13-03-007:

*The purpose of this investigation is to allow the Commission to consider proposals other than PG&E’s, and to enable the Commission to enter orders on matters for which the utility may not be the proponent. This companion investigation will also afford parties an opportunity and forum to provide evidence on issues of interest to the Commission.*⁴¹

In response, A4NR served 38 pages of testimony with nine appendices in the sincere belief that the manner in which PG&E has conducted its LTSP in the recent past would be “of interest to the Commission” in determining how the LTSP should be funded in the 2014 GRC cycle. ALJ Pulsifer chose to strike all but six pages of this proffered testimony, cursorily explaining:

*We also had a pending motion to strike rebuttal testimony for the Alliance for Nuclear Responsibility. I’ve reviewed the motion to strike filed by PG&E. I’ve reviewed the response by Alliance. And based on review of that, I’m going to grant the motion to strike in part.*⁴²

As acknowledged in A4NR’s Reply Brief, A4NR does not dispute the Commission’s unfettered discretionary authority to use its scarce hearing resources however it chooses. But striking testimony clearly within the scope of I.13-03-007, without offering any basis for such

⁴⁰ This concern was also raised in A4NR’s Opening Brief and Reply Brief.

⁴¹ I.13-03-007, pp. 1-2.

⁴² Transcript, pp. 829 – 830.

action, arbitrarily deprived A4NR of the opportunity the Commission had provided to be heard.

Doing so deserves an explanation.

IX. RECOMMENDED CHANGES TO THE PD NARRATIVE.

- pp. 402 – 403:

*We decline to grant the request of A4NR that 50% of PG&E's 2014 forecast of SSHAC **LTSP** costs be disallowed as advocacy costs. **After its testimony was stricken, A4NR withdrew this recommendation for lack of evidentiary support.** We agree with PG&E's explanation that the previous treatment of NEI costs is not analogous to the LTSP and the SSHAC process which covers consultant costs associated with technical seismic studies and peer reviews, and include no lobbying, advertising or other advocacy costs. As noted by PG&E, this Commission lacks jurisdiction to oversee or manage seismic study activities conducted under NRC authority.*

- pp. 403 – 404:

*We ~~decline to~~ adopt the proposal of A4NR to remove \$4.84 million in LTSP costs from this GRC and transfer the costs to the DCSSBA, a balancing account adopted in D.12-09-008. We find ~~no~~ **this a reasonable approach to improving oversight of** basis for removing the LTSP costs from this GRC and subjecting them to the treatment in the ERRA proceeding which would result in an unnecessary and unreasonable expenditure of Commission utility and third-party resources.*

*While A4NR was not allowed to ~~participate in~~ **observe** one workshop for a portion of the SSHAC being conducted jointly with operators of two other western nuclear power plants, we conclude that the PG&E-specific workshops have been **fully adequately** transparent and open. PG&E pledged to work with its joint participants to open the remaining joint workshops to public participants.*

- p. 404:

*We ~~decline to~~ adopt A4NR's proposal. **We find it a reasonable approach to assure the proper integration of the AB 1632 seismic studies with the LTSP and the SSHAC process.** D.12-09-008 limits the IPRP role in reviewing the Assembly Bill (AB) 1632 seismic studies to review and comment on the seismic study plans and review and comment on the study results. IPRP members have already been invited to participate in the SSHAC process can provide comments through the existing framework. PG&E manages the LTSP subject to a NRC license commitment and is conducting the SSHAC*

~~process in response to NRC directives. The Commission does not have jurisdiction to oversee or manage seismic study activities conducted under NRC jurisdiction.~~

- p. 405:

~~We ~~decline~~ **find it reasonable** to ~~impose the condition, as proposed by A4NR,~~ **approval of PG&E's request for \$26.1 million to construct the remaining five pads at the IFSFSI and \$19.6 million for transfers of spent fuel to dry casks in 2015 and 2016 upon PG&E's filing with its next General Rate Case a satisfactory plan to comply with the prior direction of the California Energy Commission's AB 1632 Report and 2009, 2011, and 2013 Integrated Energy Policy Reports.** ~~to use the GRC process to condition rate recovery for nuclear operations as a means of indirectly compelling PG&E to take actions regarding the transfer of spent fuel to dry cask storage that we do not have legal authority to directly order. The federal court of appeals recently held such indirect attempts by states to regulate nuclear safety issues are preempted by federal law.~~~~

Pursuant to Rule 14.3(b), revised findings of fact and conclusions of law are attached as an Appendix to these Opening Comments.

X. CONCLUSION.

For the reasons stated herein, A4NR urges the Commission to make the changes in the PD which are identified in Section IX above and in the attached Appendix, with conforming changes to its Order.

Respectfully submitted,

By: /s/ John L. Geesman

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Date: July 8, 2014

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ALLIANCE FOR NUCLEAR RESPONSIBILITY

APPENDIX

Proposed Findings of Fact:

187. ~~There is no evidentiary basis to adopt the A4NR proposal to disallow 50% of PG&E's funding request for the Senior **Long Term Seismic Program (LTSP) Hazard Analysis Committee (SSHAC)** as 'advocacy' expenditures. **After its testimony was stricken, A4NR withdrew this recommendation for lack of evidentiary support.** ~~The SSHAC process covers consultant costs associated with technical seismic studies and peer reviews, and include no lobbying, advertising or other advocacy costs.~~~~

188. ~~There is no evidentiary basis~~ **It is reasonable** to adopt the A4NR proposal to remove \$4.84 million in LTSP costs from the GRC and transfer the costs to the balancing account adopted in D.12-09-008 as a ratemaking mechanism for seismic studies.

189. ~~There is no evidentiary basis~~ **It is reasonable** to adopt the A4NR proposal to place conditions on approval of PG&E's cost recovery of \$26.1 million to construct the remaining five pads at the ISFSI in 2014 and \$19.6 million to transfer spent fuel to dry cask storage in 2015 and 2016.

Proposed Conclusions of Law:

30. ~~This Commission lacks jurisdiction~~ has the legal authority to oversee ~~or manage~~ seismic study activities relating to Diablo Canyon ~~that are conducted under NRC authority. The federal court of appeals has held that indirect attempts by states to regulate nuclear safety issues are preempted by federal law.~~ **and to condition approval of cost recovery of \$26.1 million to construct the remaining five pads at the ISFSI in 2014 and \$19.6 million to transfer spent fuel to dry cask storage in 2015 and 2016 upon PG&E's submittal of a plan to expedite the transfer of spent fuel to dry casks while maintaining compliance with NRC cask and pool spent fuel storage requirements.**