



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED

6-08-16
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Application of Pacific Gas and Electric Company)
For Authority, Among Other Things, to Increase)
Rates and Charges for Electric and Gas Service)
Effective January 1, 2017 (U 39 M))
_____)

Application 15-09-001
(Filed September 1, 2015)

**MOTION TO EXCLUDE
BY ALLIANCE FOR NUCLEAR RESPONSIBILITY**

Pursuant to Rules 11.1 and 13.6 of the Commission's Rules of Practice and Procedure¹ and the terms of Appendix E to the *Assigned Commissioner's Ruling and Scoping Memo* issued in this proceeding,² Intervenor Alliance for Nuclear Responsibility ("A4NR") hereby files this Motion to Exclude objecting to the consideration of certain portions of the prefiled testimony proffered by Applicant Pacific Gas & Electric Company ("PG&E") and the receipt of such testimony into the evidentiary record of this proceeding. For the reasons stated below, A4NR submits that the proffered testimony constitutes unqualified legal conclusions and opinions, sponsored by witnesses with no apparent training or experience in the law, and should therefore be excluded from the evidentiary record as improper evidence. Exclusion of this improper evidence will serve the Commission's and the public interest in judicial economy by obviating the need for parties to (a) cross-examine PG&E's witnesses with respect to the qualifications of the witnesses to render legal opinions and/or (b) otherwise address the credibility, weight and sufficiency the Commission should assign to the proffered improper testimony. In the alternative, the Commission could permit the proffered testimony into the evidentiary record, but in doing so should make clear that the subject matters addressed by the testimony are contestable and constitute lay opinions that may be addressed through cross-examination of PG&E's witnesses and/or the contrary testimony and/or legal argument submitted of other parties. This Motion is based upon the argument and law presented in this Motion, the materials attached in the appendix to the Motion, and the verification attached to the Motion.

¹ All references to a "Rule" in this motion, unless otherwise specified, are to the Commission's Rules of Practice and Procedure.

² See *Assigned Commissioner's Ruling and Scoping Memo*, Docket Application 15-09-001, December 1, 2015 ("*Scoping Memo*"), at Appendix E, page 2.

A. The Proffered Testimony A4NR Seeks to Exclude from the Evidentiary Record

A4NR moves to exclude the following proffered testimony served by PG&E in its prefiled exhibits as improper evidence and to have such testimony excluded and stricken from the exhibits considered during the upcoming evidentiary hearings in this proceeding:

1. From Exhibit PG&E-5, at page 3-4, line 20: “is outside the scope of the 2017 GRC”, and the same language as cited in Exhibit PG&E-24, at page 1-10, line 34;
2. From Exhibit PG&E-24, at page 1-10, lines 23-24: “The issues raised by TURN and A4NR are outside the scope of and not relevant to the issues to be addressed in this proceeding or in the next GRC which will set rates for the period 2020-2022.”;
3. From Exhibit PG&E-24, at page 1-11: Question and Answer 14;
4. From Exhibit PG&E-24, at page 3-10: Question and Answer 19;
5. From Exhibit PG&E-24, at page 3-11, lines 5-10: “This issue is not within the scope of the GRC and has nothing to do with PG&E’s expense and capital forecasts for DCP for the period 2019-2019. For several of these items, A4NR is inappropriately asking the Commission to establish a new, continuing process for addressing NRC safety and operations issue that are subject to the exclusive jurisdiction of the NRC.”;
6. From Exhibit PG&E-24, at page 3-11, lines 19-20: “The Picker letter makes this a moot issue in addition to being outside the scope of and irrelevant to the GRC proceeding.”;
7. From Exhibit PG&E-24, at page 3-24, lines 27-28: “Those subjects are clearly not related to ratemaking and are subject to NRC exclusive safety jurisdiction.”;
8. From Exhibit (PG&E-5) [Workpapers], at page WP 3-291, last paragraph: “, including assessments of spent fuel storage,”; and,
9. All other proffered testimony making reference to the materials that are the subject to this Motion.³

A4NR objects to the entry, consideration and receipt of the foregoing testimony proffered by PG&E since each of the cited materials conveys and constitutes legal opinion and/or reaches conclusions as to matters of law. While legal opinions are not *per se* inadmissible, the cited portions of PG&E’s prefiled

³ A4NR points out that it does not seek to exclude PG&E’s criticisms of A4NR’s recommendations found in PG&E’s rebuttal testimony. This should not be construed as an admission on A4NR’s part that those criticisms are well-taken. Many of PG&E’s criticisms are based on misrepresentations and mischaracterizations of A4NR’s positions and testimony, but A4NR is content to demonstrate the degree to which PG&E’s criticisms are ill-founded or misdirected through the hearing and briefing processes. It is only the improper legal opinions PG&E attempts to sneak into the record as “evidence” to which A4NR objects through this Motion.

testimony are not sponsored by witnesses with any apparent expertise or training in the law. In order to obviate the need to test the foundation or credibility of the proffered testimony and/or the weight the Commission might assign to that testimony, the Commission should exclude it from the evidentiary record and direct PG&E to make its legal arguments in briefs rather than through witnesses unqualified to assert legal opinions. By doing so, the Commission can prevent the devotion of hearing time and the resources of the parties to examining and contesting the proffered testimony, without precluding PG&E from making its legal arguments in a proper form and at the proper time. In the event the Commission invokes Rule 13.6(a) and is willing to consider the proffered testimony that is the subject of this Motion as part of the evidentiary record, the Commission should make clear that the opinions proffered by PG&E's witnesses constitute lay opinions contestable through cross-examination of the PG&E witnesses and/or by the introduction of contrary evidence and/or legal argument of the other parties.

B. Argument in Support of the Motion to Exclude

The specific proffered testimony which are the subject of this Motion constitute legal opinions beyond the asserted and apparent qualifications of the witnesses attesting to them. In considering this Motion, the Commission should take notice that none of the witnesses responsible for the objectionable portions of Exhibits PG&E-5, PG&E-24, or (PG&E-5) has any apparent legal training or expertise.⁴ The statements of qualifications provided for PG&E witnesses Wan, Harbor and Maggard are entirely devoid of any references to any legal training, experience or expertise any of these witnesses may have that would indicate their opinions as to matters of law are credible and should be accorded any weight *as evidence*. Given the absence of any claim any of these witnesses may assert that they are qualified to attest to matters of law, the Commission should disqualify these witnesses from providing testimony constituting legal opinions and their proffered legal opinions should be excluded from the evidentiary record.

It is the exclusive province of the Commission, and not the witnesses appearing before it, to determine what matters are within the scope of the proceedings brought before it. The Commission's Presiding Officers have exercised their procedural authority to define matters germane to this general rate case by issuing the *Scoping Memo*. (See Public Utilities Code Section 1701.1(b); see also, Rule 7.3(a).) In defining the scope of this proceeding, the Presiding Officers have identified as justiciable and triable matters:

⁴ See Exhibit PG&E-13, page CDH-1 (Cary D. Harbor), page SAM-1 (Stephanie A. Maggard), and page FW-1 (Fong Wan).

- “the traditional scope of issues in this proceeding revolve around the extent that the needs and costs identified by PG&E are just and reasonable and should be reflected in rates”;⁵
- “the question of whether PG&E’s risk management, safety culture, governance and policies, and investments will result in the safe and reliable operation of its facilities and services. * * *. The alignment of the utility’s interests with those of the public around safety is a significant tool that is available to the Commission”;⁶
- “all matters raised in PG&E’s application, or which may be reasonably inferred from the application, are within the scope of this proceeding”;⁷ and,
- “affirmative proposals and recommendations concerning subjects that are relevant to this GRC but are not covered by the PG&E’s application or testimony.”⁸

The *Scoping Memo* is definitive, as a matter of law, as to what is and is not within the scope of the proceeding. (See Public Utilities Code Section 1701.1(b), *supra*.) The testimony of PG&E’s witnesses on such matters, enumerated in Part A of this Motion as Items 1 through 7, are therefore, in addition to being beyond the asserted and apparent expertise of the witnesses, superfluous to the prosecution of this matter. Furthermore, contrary to the opinions of PG&E witnesses Wan, Harbor and Maggard, PG&E’s pursuit of the Diablo Canyon Nuclear Power Plant license extensions is clearly within the scope of this general rate case since the forecasted operating life of the plant is an important assumption upon which PG&E’s proposed Test Year 2017 revenue requirement is based. As A4NR witness Geesman proffers in his prefiled testimony,⁹ PG&E’s assumption that the Diablo Canyon Nuclear Power Plant units will be retired in 2024 and 2025 is not credible based on all of the facts and circumstances known to him, and therefore results in an unduly high and unreasonable level of annual depreciation expense chargeable to PG&E’s customers during the test year. His prefiled testimony goes on to proffer competing facts and assumptions, *viz.*, that PG&E (1) is pursuing Diablo Canyon Nuclear Power Plant license renewals, (2) should be assumed to be doing so in good faith, and (3) can be expected to be successful in its efforts. The adoption of the facts and

⁵ *Scoping Memo*, *id.*, at page 4.

⁶ *Scoping Memo*, *id.*, at page 7.

⁷ *Scoping Memo*, *id.*, at page 14. This omnibus provision references the *Scoping Memo*’s Appendix B, which identifies the issues of whether, *inter alia*: “The proposed revenue requirement for the electric generation function in 2017 is just and reasonable and the Commission should authorize PG&E to reflect the adopted revenue requirement in rates”; “The Diablo Canyon Seismic Studies Balancing Account should be closed and the costs associated with the Diablo Canyon Power Plant Long Term Seismic Program should be included in the generation revenue requirement”; “The forecast of depreciation reserve and expense and accompanying parameters * * * should be approved”; and, “The proposed attrition adjustments for 2018 and 2019 for the * * * electric generation functions should be approved.”

⁸ *Scoping Memo*, *id.*, at page 15.

⁹ See, e.g., Exhibit A4NR-2, at pages 26 to 29, Answers 31 to 33.

assumptions posed by A4NR witness Geesman will result in a lower, more reasonable Test Year 2017 revenue requirement, a matter clearly within the bounds of this proceeding's subject matters as identified in the *Scoping Memo*. Along these lines, PG&E witness Clarke specifically concedes the dramatic difference resulting from the application of PG&E's license-renewal assumption versus A4NR's competing assumption by including a direct comparison of the annual depreciation expense under both assumptions in his proffered rebuttal testimony.¹⁰ Not only are the legal opinions as to the proper scope of this proceeding proffered by PG&E witnesses Wan, Harbor and Maggard unqualified and superfluous, those opinions are erroneous by PG&E's own admission.

Turning to the proffered testimony of PG&E witness Harbor regarding the preemptive authorities of the Nuclear Regulatory Commission, the Commission should exclude his opinions as legal matters beyond the range of his expertise.¹¹ Clearly, opinions as to which matters are within the jurisdiction of the Nuclear Regulatory Commission or, obversely, within the residual, adjacent, concurrent, and vital jurisdiction of agencies of the State of California constitute legal opinions. Nothing within the witness' statement of qualifications suggests that he is an expert on the Supremacy Clause of the United States Constitution or on the seminal case reserving the jurisdiction of the State over the economic regulation of nuclear facilities owned and operated by public utilities.¹²

In this regard, the matter of whether the Commission may lawfully impose conditions on the rate recognition of the costs of the Independent Spent Fuel Storage Installation ("ISFSI") project or exclude any specific costs associated with PG&E's practices related to the storage and handling of spent nuclear fuel is a matter for legal argument in briefs. Even if the Commission were inclined to hear the witness' opinions and beliefs as to whether the ratemaking treatment of the storage and handling of spent nuclear fuel was within the exclusive jurisdiction of the Nuclear Regulatory Commission, he would not be qualified to address, and would likely be prevented by PG&E counsel from addressing, whether PG&E's failure to contest either the Commission's (a) prior imposition of ratemaking conditions on ISFSI project costs or (b) prior assertion of jurisdiction over the reasonableness of the costs of PG&E's storage and handling of spent

¹⁰ See Exhibit PG&E-24, at page 11-74, Table 11-6, line 17, indicating annual depreciation accruals for Diablo Canyon Nuclear Power Plant net investment in production-related plant as of December 31, 2014, would be \$62,039,521 under the A4NR facts and assumptions, compared to \$155,941,133 under PG&E's, as shown in Exhibit PG&E-10, at page 11-3, Table 11-1, line 32.

¹¹ See Items 7 and 8 enumerated in Part A of this Motion.

¹² See *Pacific Gas & Electric Company v. State Energy Resource Conservation and Development Commission*, 461 U.S. 190 (1983), holding state statute regulating economic aspects of nuclear generating plants was not preempted by federal Atomic Energy Act of 1954; also, *U.S. Constitution*, Article VI, cl.2.

nuclear fuel waived his legal objections to the Commission's exercise of these prior regulatory orders. At least to this extent, the foundation for and range of his opinions as to this Commission's lawful ratemaking jurisdiction would be largely, if not wholly, related to the application of legal principles encompassing constitutional law, evidentiary law and administrative procedure. While A4NR is prepared to explore these matters through its cross-examination of the witness, A4NR hopes the Commission can foresee the pointlessness of a series of trial objections or answers constituting variations on the theme of "I don't know." In order to avoid wasting hearing time and the resources of the parties, the Commission should exclude the testimony proffered by PG&E witness Harbor as to the jurisdictional limits of this Commission's ratemaking authorities and leave those matters to the briefing of this case.

PG&E witness Harbor also proffers testimony indicating the Commission may not review the results of the ongoing seismic studies whose costs are currently collected through the Seismic Studies Balancing Account. This proffered testimony once again relies on the witness' opinion that review of the study results are within the exclusive jurisdiction of the Nuclear Regulatory Commission. A4NR reiterates that PG&E witness Harbor is simply not qualified to testify as to the boundaries between the federal authority over nuclear-related safety issues and this Commission's jurisdiction over economic matters.

In the first instance, the State's jurisdiction with respect to the seismic studies was defined by the State Legislature. (See Public Resources Code Section 25303(a)(8), which provides the Energy Commission shall, with the assistance of other state agencies, "determine the potential vulnerability, to a major disruption due to aging or a major seismic event, of large baseload generation facilities, of 1,700 megawatts or greater.")¹³ This determination was to include, *inter alia*, of "an analysis of the impact of a major disruption on system reliability, *public safety*, and the economy." (*Ibid.*, emphasis added.) The Energy Commission has observed the foregoing requirements and the Commission has issued appropriate rate orders funding the studies. PG&E witness Harbor purports to contest whether the State, the Energy Commission or this Commission may pursue the authorities described in Public Resources Code Section 25303. But the statutory authorities cited above clearly contemplate the Commission and as well as other state agencies will participate in and exercise oversight of the conduct and over the results of the study. This would encompass, as indicated in the proffered testimony of A4NR witness Geesman, this Commission's consideration as to whether the studies indicate the need for and costs of any additional

¹³ Added by 2006 Assembly Bill 1632 (Blakeslee), 2006 *Stats.* Ch.722, Section 1.

studies and/or additional plant upgrades to maintain plant safety at the very least, and the effects the costs of those upgrades may have on the resource's cost-effectiveness more generally.¹⁴

While the proffered testimony of PG&E witness Harbor indicates addressing any of these questions would stray into the preemptive jurisdiction of the Nuclear Regulatory Commission, that testimony fails to consider that the Commission is precluded, as a matter of law, from concluding that the directions of the Legislature as embodied in state statute are unconstitutional, which conclusively bars the Commission from agreeing with PG&E witness Harbor as to his putative legal conclusion. (See *California State Constitution*, Article III, Section 3.5.¹⁵) This glaring omission exposes the danger of permitting a lay witness without legal expertise to express legal opinions.¹⁶ The Commission should avoid the perils of incomplete and uninformed legal opinions by rejecting PG&E's attempt to clutter the evidentiary record with improper and unqualified legal opinions.¹⁷

Finally, in its disposition of this Motion, the Commission should consider that PG&E itself fully appreciates the distinction between admissible expert testimony and improperly submitted legal opinions. In responding to a data request propounded by A4NR, PG&E refused to allow Messrs. Wan or Harbor, or any other PG&E witness, to address the implications of Public Utilities Code Sections 463 and 1005.5 for the rate recovery of the considerable costs PG&E has incurred in the pursuit of extending the operating

¹⁴ See Exhibit A4NR-2, at pages 36 to 37.

¹⁵ Article III, Section 3.5 of the California State Constitution provides in full:

"An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

- (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;
- (b) To declare a statute unconstitutional;
- (c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations."

¹⁶ This reasoning is equally compelling and apposite in the context of PG&E witness Harbor's argument that the State, the Energy Commission and this Commission are preempted as to matters related to the oversight of the costs of spent fuel handling and storage. In that context, the Legislature has provided, "[i]n the absence of a long-term nuclear waste storage facility," the Energy Commission "shall assess the potential state and local costs and impacts associated with accumulating waste at California's nuclear powerplants," as well as "other key policy and planning issues that will affect the future role of nuclear powerplants in the state." (Public Resources Code Section 25303(c).) Once again, whatever PG&E witness Harbor's view of these directions may be, the Commission has no authority to declare this statute to constitute a violation of the Supremacy Clause of the United States Constitution on his say-so.

¹⁷ A4NR expects its representations as to the relevance, application and effect of the legal principles cited in this Motion to be contested, at least in part, by PG&E. To the extent PG&E submits contrary legal arguments, A4NR agrees PG&E should be permitted to do so during the course of this proceeding. For the moment, however, the Commission only need address the purposes of this Motion which do not require the Commission to determine who is right or wrong on legal matters. Rather, this Motion is limited to addressing whether an unqualified witness should be permitted to provide legal opinions as part of his or her testimony.

licenses for the Diablo Canyon Nuclear Power Plant.¹⁸ By refusing to permit its witnesses to opine as to the application of these ratemaking principles and requirements to the costs of renewing the Diablo Canyon Nuclear Power Plant's operating licenses (concepts A4NR would consider to be closer to the expertise of a utility's ratemaking witnesses than scoping or jurisdictional matters), PG&E has conceded the existence of the boundary between matters constituting proper expert testimony and improper legal opinions beyond the bounds of their witnesses' expertise. PG&E should be forced to observe its own self-declared boundary as to the substantive matters its experts may address and those legal conclusions they cannot and will not.

For the foregoing reasons, the Commission should exclude the proffered testimony of PG&E witnesses Wan, Harbor and Maggard cited above so that the Commission and the parties will be saved the time and expense that would otherwise be devoted to contesting and trying their improper, unqualified, incomplete, uninformed, and erroneous legal opinions.

C. Procedural Alternative to Exclusion of Improper Evidence

The Legislature provides the Commission with some latitude to observe informalities in the conduct of its evidentiary hearings and the development of the record upon which the Commission's orders may be based.¹⁹ If the Commission chooses to do so, the Commission should indicate it is accepting the proffered testimony as mere lay opinions forming the basis of the witnesses' other opinions and recommendations and, in addition, carefully distinguish between the admission of the proffered testimony for this limited purpose and the exclusion of the testimony as expert legal opinions so as to preserve the substantial rights of the parties to this proceeding. (See also, Rule 13.6(a).)

If the Commission makes clear it is only receiving the otherwise objectionable testimony as lay opinions, A4NR's rights would be preserved since the proffered testimony can be contested through contrary and competing evidence and legal argument. Thus, A4NR could proceed by contesting the witnesses' lay opinions through all available means, including the contravening expert legal opinions of A4NR witness Geesman, who is a lawyer by training with over thirty years of legal experience – that experience includes his service as the Executive Director of the California Energy Commission at the very time that agency was

¹⁸ See *PG&E Response to A4NR Data Request 5.5.4 and 5.5.5*, attached to this Motion as an appendix. (Note: In converting the original PG&E Data Response into an attachment, the software used in the preparation of this Motion failed to integrate PG&E's pagination protocols and converted those protocols into simple page numbers (omitting the designation, "GRC-2017-PHI_DR_A4NR_005_Q05" from the bottom of the page that would have preceded the page number) In all other respects, the Attachment is an identical, true and correct representation of PG&E's data response as received by A4NR on or about February 2, 2016.)

¹⁹ See Public Utilities Code Sections 1701(a); accord, Rule 13.6(a).

the prevailing respondent (and PG&E was the losing appellant) in the seminal decision of the United States Supreme Court circumscribing the extent to which the Supremacy Clause of the United States Constitution preempts state regulation of commercial nuclear facilities.²⁰

D. Summary and Relief Requested

For the reasons stated above, A4NR respectfully moves the Commission to exclude the following proffered testimony served by PG&E in this proceeding:

1. From Exhibit PG&E-5, at page 3-4, line 20: “is outside the scope of the 2017 GRC”, and the same language as cited in Exhibit PG&E-24, at page 1-10, line 34;
2. From Exhibit PG&E-24, at page 1-10, lines 23-24: “The issues raised by TURN and A4NR are outside the scope of and not relevant to the issues to be addressed in this proceeding or in the next GRC which will set rates for the period 2020-2022.”;
3. From Exhibit PG&E-24, at page 1-11: Question and Answer 14;
4. From Exhibit PG&E-24, at page 3-10: Question and Answer 19;
5. From Exhibit PG&E-24, at page 3-11, lines 5-10: “This issue is not within the scope of the GRC and has nothing to do with PG&E’s expense and capital forecasts for DCCP for the period 2019-2019. For several of these items, A4NR is inappropriately asking the Commission to establish a new, continuing process for addressing NRC safety and operations issue that are subject to the exclusive jurisdiction of the NRC.”;
6. From Exhibit PG&E-24, at page 3-11, lines 19-20: “The Picker letter makes this a moot issue in addition to being outside the scope of and irrelevant to the GRC proceeding.”;
7. From Exhibit PG&E-24, at page 3-24, lines 27-28: “Those subjects are clearly not related to ratemaking and are subject to NRC exclusive safety jurisdiction.”;
8. From Exhibit (PG&E-5) [Workpapers], at page WP 3-291, last paragraph: “, including assessments of spent fuel storage,”; and,
9. All other proffered testimony making reference to the materials that are the subject to this Motion.

In the alternative, the Commission may admit the proffered testimony that is the subject of this Motion, subject to an admonition that the proffered testimony is admitted as the lay opinions of the sponsoring PG&E witnesses and is subject to the right of other parties to contest the weight and sufficiency

²⁰ See *Pacific Gas & Electric*, *supra*.

of those opinions either through cross-examination of the witnesses, briefing or the submission of contrary evidence.

Respectfully submitted,

/s/ Alvin S. Pak

Alvin S. Pak
Law Office of Alvin S. Pak
827 Jensen Court
Encinitas, California 92024
Telephone: 619.209.1865
Facsimile: 760.634.8403
Electronic Mail: Apak@AIPakLaw.com

Attorney for Alliance for Nuclear Responsibility

Encinitas, California
June 8, 2016

Appendix

Response of Pacific Gas & Electric Company to A4NR Data Requests 5.5.4 an 5.5.5

**PACIFIC GAS AND ELECTRIC COMPANY
2017 General Rate Case Phase I
Application 15-09-001
Data Response**

PG&E Data Request No.:		A4NR_005-Q05	
PG&E File Name:		GRC-2017-PhI_DR_A4NR_005-Q05	
Request Date	January 21, 2016	Requester DR No.:	005
Date Sent:	February 2, 2016	Requesting Party:	Alliance for Nuclear Responsibility
PG&E Witness:	Cary Harbor	Requester:	Alvin S. Pak

EXHIBIT REFERENCE: EXHIBIT PG&E-5

REQUEST NO. A4NR-5.5: For the purposes of these requests, the term “license” is intended to include licenses, permits, certificates, and/or any other authorities subject to the approval of or issuance by any governmental agency or its delegate.

QUESTION 5

5.5. In its response to A4NR Data Request 3.2, PG&E indicates that Base Year 2014 recorded results of operations, operating expenses and/or capital expenditures were adjusted to remove amounts directly or indirectly related to license renewals for the Diablo Canyon Nuclear Power Plant reactors and units. Please provide the amounts of these adjustments.

5.5.1. A4NR understands that the amounts removed from Base Year 2014 recorded results of operations, operating expenses and/or capital expenditures related to license renewals for the Diablo Canyon Nuclear Power Plant were transferred to a subaccount of PG&E's Construction Work-in-Progress accounts. Please provide the total end-of-year 2014 and 2015 amounts recorded as Construction Work-in-Progress related to license renewals for the Diablo Canyon Nuclear Power Plant and, as separately stated amounts, the total end-of-year 2014 and 2015 amounts related to any Allowance for Funds Used During Construction related to those amounts recorded as Construction Work-in-Progress.

5.5.2. Does PG&E have a forecast of operating expenses and/or capital expenditures for the years 2016 through 2019 directly or indirectly related to license renewals for the Diablo Canyon Nuclear Power Plant reactors and units that would be recorded to Construction Work-in-Progress? If so, please provide the year-by-year forecast of those operating expenses and/or capital expenditures and any associated Allowance for Funds Used During Construction for the same period.

- 5.5.3. Please identify the governmental agencies and proceedings before and in which PG&E is incurring operating expenses and/or capital expenditures for the years 2016 through 2019 directly or indirectly related to license renewals for the Diablo Canyon Nuclear Power Plant reactors and units that would be recorded to Construction Work-in-Progress.
- 5.5.4. Is it PG&E's current position that the operating expenses and/or capital expenditures related to license renewals for the Diablo Canyon Nuclear Power Plant reactors and units that would be recorded to Construction Work-in- Progress and any associated Allowance for Funds Used During Construction are not governed by the provisions of Public Utilities Code Section 463? If this is PG&E's position, please provide PG&E's reasoning for its position.
- 5.5.5. Is it PG&E's current position that the operating expenses and/or capital expenditures related to license renewals for the Diablo Canyon Nuclear Power Plant reactors and units that would be recorded to Construction Work-in- Progress and any associated Allowance for Funds Used During Construction are not governed by the provisions of Public Utilities Code Section 1005.5? If this is PG&E's position, please provide PG&E's reasoning for its position.

ANSWER 5

5.5 PG&E objects to this request and its subparts as they apply to the DCPD license renewal project. PG&E is not seeking cost recovery associated with the License Renewal project in the 2017 General Rate Case Application. PG&E will file a separate ratemaking application to address cost recovery for this project. As stated on Page 3-4 (Exhibit PG&E-5) of PG&E's direct testimony: "This exhibit does not include any costs associated with the License Renewal application process and does not assume operations of DCPD beyond the current license life for DCPD. The exhibit only includes costs that are forecast to occur for the period 2017-19. PG&E has not included any costs in this forecast associated with operations following the expiration of operating licenses in 2024 and 2025. The issue of whether PG&E should operate DCPD beyond 2024 and 2025 is not addressed in this exhibit and is outside the scope of the 2017 GRC. Additionally, project justifications included in this filing are bounded by the existing license period." Without waiving this objection, PG&E provides the following responses.

5.5. The 2014 adjustment to capital expenditures was \$5,856,832.

5.5.1 The end of year 2014 Construction Work in Progress amount for License Renewal was \$38,810,820 which includes cumulative AFUDC of \$9,862,326. The end of year 2015 Construction Work in Progress amount for License Renewal was \$47,974,254 which includes cumulative AFUDC of \$13,152,290.

5.5.2 The forecasted 2016 capital expenditures for License Renewal are \$15,396,415 which includes AFUDC of \$4,479,135. The forecasted 2017

capital expenditures for License Renewal are \$4,580,445 which includes AFUDC of \$1,693,166.

5.5.3 The Nuclear Regulatory Commission.

5.5.4 PG&E further objects to this request as it calls for a legal conclusion.

5.5.5 PG&E further objects to this request as it calls for a legal conclusion.

VERIFICATION BY AFFIDAVIT

I, John L. Geesman, hereby state that I have been engaged as an expert witness for and, in that capacity, am an authorized representative of the Alliance for Nuclear Responsibility with the authority to make this verification on its behalf. I have read the foregoing **MOTION TO EXCLUDE BY ALLIANCE FOR NUCLEAR RESPONSIBILITY** and attest that the matters stated therein are true and correct to the best of my knowledge, except as to matters stated on information and belief, and as to those matters I attest that I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my information, knowledge and belief.

Executed this 8th day of June, 2016, at Oakland, California.

/s/ John L. Geesman

John L. Geesman
Authorized Representative of and Expert Witness for
Alliance for Nuclear Responsibility