



**Pacific Gas and
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May 25, 2005

**Advice 2666-E-A
(Pacific Gas and Electric Company ID U 39 E)**

Public Utilities Commission of the State of California

**Subject: Establish Preliminary Statement for the Department of Energy
Litigation Balancing Account**

PG&E hereby submits for filing a new addition to its electric tariff sheets: Preliminary Statement Part DZ — *Department of Energy Litigation Balancing Account (DOELBA)*. The affected tariff sheets are listed on the enclosed Attachment 1. Advice 2666-E-A is a supplemental filing, which supersedes Advice 2666-E (filed on May 24, 2005).

Purpose

The purpose of this advice filing is to request the Commission's approval to establish a balancing account to track the incremental legal costs and proceeds associated with PG&E's lawsuit against the United States Department of Energy (DOE) associated with the DOE's breach of contract resulting from its failure to take delivery of spent nuclear fuel from PG&E's Diablo Canyon and Humboldt Bay nuclear power plants. The purpose of this ratemaking mechanism is to track the costs and proceeds associated with the DOE litigation and ensure the proper crediting and allocation of such costs and proceeds for the benefit of ratepayers between the Diablo Canyon and Humboldt Bay nuclear power plants. PG&E proposes to debit the costs of the litigation in the DOELBA and credit the proceeds once they are received. The net balance in the DOELBA would be credited to ratepayers once the litigation has concluded. This will ensure that the benefits of the net litigation proceeds are provided to customers.

Background

The DOE litigation was initiated by PG&E by a complaint filed against DOE in the Federal Court of Claims on January 22, 2004. PG&E has alleged that DOE breached its contract with PG&E under which DOE agreed to accept delivery of, and take title to, the spent nuclear fuel from PG&E's Diablo Canyon and Humboldt

Bay nuclear power plants beginning on January 31, 1998. PG&E was required to enter into these contracts with DOE as a condition of its Nuclear Regulatory Commission licenses. The federal framework applicable to all nuclear plants provides that the federal government shall establish a national repository (now planned to be located at Yucca Mountain in Nevada) for long-term storage of spent nuclear fuel.

The Federal Court of Claims has already determined that DOE breached the spent fuel contracts in cases involving other nuclear utilities. Given these developments in other cases, it appears that the issue of DOE's liability to PG&E for breach of contract has been effectively resolved; the issue left to be litigated in the PG&E lawsuits is the amount of damages that PG&E is entitled to recover as a result of the DOE breach. PG&E has asserted, among other things, that it will need to build dry cask storage facilities for spent nuclear fuel at Diablo Canyon and Humboldt Bay as a result of the failure of DOE to take the spent fuel on time and that the cost of designing, constructing and operating these facilities as well as other damages should be recoverable.

If PG&E is successful in recovering the costs of the dry cask storage facilities (and other damages) from DOE, it proposes to credit such proceeds, net of incremental litigation costs incurred as of January 22, 2004, back to customers. Resolution E-3912 ordered that any DOE litigation compensation received by PG&E shall be returned to ratepayers.

DOELBA should be established for the following reasons:

1. The DOELBA is needed so that the Commission can specify the appropriate method for crediting the proceeds of the litigation and allocating the proceeds between the ratemaking mechanisms for Diablo Canyon and Humboldt Bay. The appropriate allocation is uncertain at this time and will depend upon the rationale adopted by the court in its award of damages. The balancing account will provide a regulatory vehicle for sorting out the allocation of proceeds and establishing the proper crediting mechanisms (which may be different for Diablo Canyon, e.g., credit to base rates, than it will be for Humboldt Bay, e.g., credit to decommissioning trust). PG&E proposes to file an advice letter with the Commission recommending an appropriate crediting and allocation method, after the litigation is concluded and the proceeds are recovered.

2. PG&E is pursuing the case for the benefit of ratepayers and should be given a strong incentive to vigorously pursue the case to maximize the proceeds. In its approval of AL 2624-E, the Commission has allowed PG&E to net its litigation costs from the proceeds in order to give PG&E such an incentive. PG&E only proposes to record its incremental costs associated with the litigation, e.g., costs of outside counsel, expert witnesses and document/discovery services.

3. The CPUC recently issued Resolution E-3912, authorizing the disbursement of funds from the Humboldt decommissioning trust for purposes of pursuing initial decommissioning activities. In its Finding of Fact 12, the Commission stated that should pending litigation result in a settlement, all recovered funds should be deposited into the Humboldt Bay Nuclear Decommissioning Trust. This advice letter and the proposed balancing account are in compliance with and implement that finding.

Protests

Anyone wishing to protest this filing may do so by sending a letter by **June 14, 2005**, which is 21 days from the date of this filing. The protest must state the grounds upon which it is based, including such items as financial and service impact, and should be submitted expeditiously. Protests should be mailed to:

IMC Branch Chief – Energy Division
California Public Utilities Commission
505 Van Ness Avenue, 4th Floor
San Francisco, California 94102
Facsimile: (415) 703-2200
E-mail: jjr@cpuc.ca.gov and jn@cpuc.ca.gov

Protests also should be sent by e-mail and facsimile to Mr. Jerry Royer, Energy Division, as shown above, and by U.S. mail to Mr. Royer at the above address.

The protest should be sent via both e-mail and facsimile to PG&E on the same date it is mailed or delivered to the Commission at the address shown below.

Pacific Gas and Electric Company
Attention: Brian Cherry
Director, Regulatory Relations
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, California 94177
Facsimile: (415) 973-7226
E-mail: PGETariffs@pge.com

Effective Date

In compliance with General Order 96-A, PG&E requests that this advice filing become effective on **June 24, 2005**, which is 30 days from the date of this filing.

Notice

In accordance with General Order 96-A, Section III, Paragraph G, a copy of this advice letter is being sent electronically and via U.S. mail to parties shown on the

attached list. Address changes should be directed to Rose de la Torre at (415) 973-4716. Advice letter filings can also be accessed electronically at:

<http://www.pge.com/tariffs>

Brian K. Cherry
Director - Regulatory Relations

Attachments

cc: Service List for A. 04-07-032

CALIFORNIA PUBLIC UTILITIES COMMISSION

ADVICE LETTER FILING SUMMARY ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No. **Pacific Gas and Electric Company (ID U39)**

Utility type:

ELC

GAS

PLC

HEAT

WATER

Contact Person: Anita Smith

Phone #: (415) 973-2467

E-mail: aws4@pge.com

EXPLANATION OF UTILITY TYPE

ELC = Electric

GAS = Gas

PLC = Pipeline

HEAT = Heat

WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: **666-E-A**

Subject of AL: Establish Preliminary Statement for the Department of Energy Litigation Balancing Account

Keywords (choose from CPUC listing):

AL filing type: Monthly Quarterly Annual One-Time Other _____

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #: _____

Not applicable

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: Not applicable

Summarize differences between the AL and the prior withdrawn or rejected AL¹: _____

Resolution Required? Yes No

Requested effective date: **06/24/2005**

No. of tariff sheets **1**

Estimated system annual revenue effect (%): TBA

Estimated system average rate effect (%): TBA

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting). TBA

Tariff schedules affected: New Preliminary Statement, Only

Service affected and changes proposed¹: New Preliminary Statement, Only

Pending advice letters that revise the same tariff sheets: N/A.

Protests and all other correspondence regarding this AL are due no later than 5 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:

CPUC, Energy Division

Attention: Tariff Unit

505 Van Ness Ave.,

San Francisco, CA 94102

jjr@cpuc.ca.gov and jnj@cpuc.ca.gov

Pacific Gas and Electric Company

Attn: Brian K. Cherry

Director, Regulatory Relations

77 Beale Street, Mail Code B10C

P.O. Box 770000

San Francisco, CA 94177

E-mail: PGETariffs@pge.com

¹ Discuss in AL if more space is needed.

**ATTACHMENT I
ADVICE 2666-E-A**

| Cal. P.U.C. Sheet No. | Title of Sheet | Cancelling Cal. P.U.C. Sheet No. |
|--------------------------|---|-------------------------------------|
| 23459-E | Preliminary Statements -- Part DZ -- Department of Energy Litigation Balancing Account | 23456-E |
| 23460-E | Table of Contents -- Preliminary Statements -- | 23457-E |
| 23461-E | Table of Contents -- Rate Schedules -- | 23458-E |



PRELIMINARY STATEMENT
(Continued)

DZ. DEPARTMENT OF ENERGY LITIGATION BALANCING ACCOUNT (DOELBA)

(N)

1. **PURPOSE:** The purpose of the DOELBA is to properly track, record and provide for the crediting to customers of any proceeds, net of costs, from PG&E's lawsuit against the Department of Energy (DOE) filed in the Federal Court of Claims on January 22, 2004, regarding the DOE's breach of spent fuel contracts. The purpose of this ratemaking mechanism is to track the incremental costs, e.g., costs of outside counsel, expert witness and document/discovery services, and proceeds associated with the DOE litigation and ensure the proper crediting and allocation of such costs and proceeds for the benefit of ratepayers between the Diablo Canyon and Humboldt Bay nuclear power plants.
2. **APPLICABILITY:** The positive DOELBA balance shall be credited to rates upon successful resolution of the DOE litigation and collection and receipt of proceeds. If PG&E's efforts in the DOE litigation are unsuccessful, the negative DOELBA balance shall be recovered in rates at the time the litigation is completed.
3. **REVISION DATE:** Disposition of the balance in the account shall be determined through the advice letter process. Consistent with the Commission's Resolution E-3912, the advice letter will request that the portion of the DOELBA balance, net of costs, attributable to damages associated with the Humboldt Bay nuclear power plant shall be deposited into the nuclear decommissioning trust for the Humboldt Bay nuclear facility and the portion of the DOELBA balance attributable to damages associated with the Diablo Canyon nuclear power plant, net of costs, shall be credited in the next applicable General Rate Case to the base rates associated with Diablo Canyon.
4. **DOELBA RATES:** This account does not have a rate component.
5. **TIME PERIOD:** The DOELBA will be created on June 24, 2005, and will expire after litigation is completed, proceeds have been received and the Commission has authorized the crediting or debiting of the DOELBA balance to the proper mechanism, that ensures the benefits of net litigation proceeds are provided to customers.
6. **DEPARTMENT OF ENERGY LITIGATION COST SUBACCOUNT (DOELC).** The DOELC subaccount is established in the DOELBA to record incremental litigation costs incurred or paid by PG&E on or after January 22, 2004, in connection with the DOE litigation.
7. **ACCOUNTING PROCEDURES:** PG&E shall maintain the DOELBA by making entries at the end of each month. Entries shall be reviewed and verified by the Commission in a proceeding designated by it or by the Energy Division as necessary. The monthly entries are as follows:
 - a. A credit entry equal to the litigation proceeds.
 - b. A credit or debit entry to reflect the balance in the DOELC sub account.
 - c. An entry equal to interest on the average balance in the account at the beginning of the month and the balance after the above entries, at a rate equal to one-twelfth the interest rate on three-month Commercial Paper for the previous month, as reported in the Federal Reserve Statistical Release H.15 or its successor.

(N)

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| Part CD | Kern Restoration and Operation Memorandum Account | 18509-E |
| Part CE | Baseline Balancing Account | 21587,21588-E |
| Part CF | Net Energy Metering Memorandum Account | 18831-E |
| Part CG | Utility Generation Balancing Account..... | 22715,22716-E |
| Part CH | Utility Retained Generation income Tax Memorandum Account | 20502-E |
| Part CI | Wholesale DWR/ISO Cost Memorandum Account..... | 20503-E |
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**PG&E Gas and Electric Advice
Filing List
General Order 96-A, Section III(G)**

ABAG Power Pool
Accent Energy
Aglet Consumer Alliance
Agnews Developmental Center
Ahmed, Ali
Alicantar & Elsesser
Anderson Donovan & Poole P.C.
Applied Power Technologies
APS Energy Services Co Inc
Arter & Hadden LLP
Avista Corp
Barkovich & Yap, Inc.
BART
Bartie Wells Associates
Blue Ridge Gas
Bohannon Development Co
BP Energy Company
Braun & Associates
C & H Sugar Co.
CA Bldg Industry Association
CA Cotton Ginners & Growers Assoc.
CA League of Food Processors
CA Water Service Group
California Energy Commission
California Farm Bureau Federation
California Gas Acquisition Svcs
California ISO
Calpine
Calpine Corp
Calpine Gilroy Cogen
Cambridge Energy Research Assoc
Cameron McKenna
Cardinal Cogen
Cellnet Data Systems
Chevron USA Production Co.
Childress, David A.
City of Glendale
City of Healdsburg
City of Palo Alto
City of Redding
CLECA Law Office
Constellation New Energy
Cooperative Community Energy
CPUC
Creative Technology
Cross Border Inc
Crossborder Inc
CSC Energy Services
Davis, Wright Tremaine LLP
Davis, Wright, Tremaine, LLP
Defense Fuel Support Center
Department of the Army
Department of Water & Power City

DGS Natural Gas Services
DMM Customer Services
Douglass & Liddell
Downey, Brand, Seymour & Rohwer
Duke Energy
Duke Energy North America
Duncan, Virgil E.
Dutcher, John
Dynegy Inc.
Ellison Schneider
Energy Law Group LLP
Energy Management Services, LLC
Enron Energy Services
Exelon Energy Ohio, Inc
Exeter Associates
Foster Farms
Foster, Wheeler, Martinez
Franciscan Mobilehome
Future Resources Associates, Inc
G. A. Krause & Assoc
Gas Transmission Northwest Corporation
GLJ Energy Publications
Goodin, MacBride, Squeri, Schlotz &
Hanna & Morton
Heeg, Peggy A.
Hitachi Global Storage Technologies
Hogan Manufacturing, Inc
House, Lon
Imperial Irrigation District
Integrated Utility Consulting Group
International Power Technology
Interstate Gas Services, Inc.
J. R. Wood, Inc
JTM, Inc
Kaiser Cement Corp
Korea Elec Power Corp
Luce, Forward, Hamilton & Scripps
Marcus, David
Masonite Corporation
Matthew V. Brady & Associates
Maynor, Donald H.
McKenzie & Assoc
McKenzie & Associates
Meek, Daniel W.
Mirant California, LLC
Modesto Irrigation Dist
Morrison & Foerster
Morse Richard Weisenmiller & Assoc.
Navigant Consulting
New United Motor Mfg, Inc
Norris & Wong Associates
North Coast Solar Resources
Northern California Power Agency

Office of Energy Assessments
Palo Alto Muni Utilities
PG&E National Energy Group
Pinnacle CNG Company
PITCO
Plurimi, Inc.
PPL EnergyPlus, LLC
Praxair, Inc.
Price, Roy
Product Development Dept
R. M. Hairston & Company
R. W. Beck & Associates
Recon Research
Regional Cogeneration Service
RMC Lonestar
Sacramento Municipal Utility District
SCD Energy Solutions
Seattle City Light
Sempra
Sempra Energy
Sequoia Union HS Dist
SESCO
Sierra Pacific Power Company
Silicon Valley Power
Simpson Paper Company
Smurfit Stone Container Corp
Southern California Edison
SPURR
St. Paul Assoc
Stanford University
Sutherland, Asbill & Brennan
Tabors Caramanis & Associates
Tansev and Associates
Tecogen, Inc
TFS Energy
Transwestern Pipeline Co
Turlock Irrigation District
U S Borax, Inc
United Cogen Inc.
URM Groups
Utility Cost Management LLC
Utility Resource Network
Wellhead Electric Company
Western Hub Properties, LLC
White & Case
WMA