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Electric Company®**

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May 24, 2005

**Advice 2666-E**  
(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.

**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 13, 2005**, which is 20 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, 4<sup>th</sup> Floor  
San Francisco, California 94102  
Facsimile: (415) 703-2200  
E-mail: [jjr@cpuc.ca.gov](mailto:jjr@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](mailto:PGETariffs@pge.com)

**Effective Date**

In compliance with General Order 96-A, PG&E requests that this advice filing become effective on **June 23, 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 J. Cherry/AWS*  
Director - Regulatory Relations

Attachments

**ATTACHMENT 1  
Advice 2666-E**

**Cal P.U.C.  
Sheet No.**

**Title of Sheet**

**Cancelling Cal  
P.U.C. Sheet No.**

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23456-E	Preliminary Statements--Part DZ--Department of Energy Litigation Balancing Account	New
23457-E	Table of Contents--Preliminary Statements	22726-E
23458-E	Table of Contents--Rate Schedules	22727-E

# 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) #: **2666-E**

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 AL<sup>1</sup>: \_\_\_\_\_

Resolution Required?  Yes  No

Requested effective date: **06/23/2005**

No. of tariff sheets: **3**

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 proposed<sup>1</sup>: **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 20 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**

<sup>1</sup> Discuss in AL if more space is needed.



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 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 18, 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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**PG&E Gas and Electric Advice  
Filing List  
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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  
Bartle 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  
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Enron Energy Services  
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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  
Semptra  
Semptra 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