

Attachment 3

Letter from PG&E, August 31, 2005
Comments on Staff's September 9, 2005 Staff Report



**Pacific Gas and
Electric Company™**

Kathleen B. Jones

Mailing Address
P.O. Box 7442
San Francisco, CA 94120

Street/Courier Address
Law Department
77 Beale Street
San Francisco, CA 94105

(415) 973-4297
Fax: (415) 973-0516
Internet: KAB7@pge.com

August 31, 2005

Roger Briggs
Executive Officer
Regional Water Quality Control Board,
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Re: September 9, 2005 Informational Presentation on DCPD Mitigation Measures

Dear Mr. Briggs:

Pacific Gas and Electric Company ("PG&E") recently received a copy of the Staff Report for Item Number 15 at the Regional Board's upcoming meeting on September 9, 2005 ("Staff Report"), and a copy of *Diablo Canyon Power Plant, Independent Scientist's Recommendations to the Regional Board Regarding "Mitigation" for Cooling Water Impacts* (July 27, 2005) (the "Recommendations"). This letter (commenting generally on the Staff Report) and the attached report from Triangle Economic Research ("TER") (primarily commenting on the Recommendations) constitute PG&E's preliminary response to the Recommendations and the Staff Report.¹ We respectfully ask that these materials be provided to the Board Members in advance, and that PG&E be given equal time at the September 9 meeting to present its views on these important subjects.

At the outset, we would like to point out that there are a number of statements and inferences in the Staff Report with which PG&E agrees. Specifically:

1. We agree that the best means to resolve the outstanding NPDES permitting matters is through a reasonable settlement of the thermal and Clean Water Act § 316(b) issues. This has been our position in the past, and continues to be so now.
2. We agree that it will be difficult as a practical matter to resolve the matter until the potential impact of the Coastal Commission's site access requirements for the proposed Conservation Easement area are known. PG&E will do its best to develop a Coastal Commission access plan that is as protective of natural resources as possible.

¹ As explained below, PG&E reserves its adjudicatory hearing rights with respect to these materials.

3. We agree that the pending judicial challenges to EPA's Phase II regulations could complicate a near-term resolution of the § 316(b) permitting issues.
4. We agree that there is no feasible technological alternative (such as wet or dry cooling towers, offshore intake structures and fine mesh screens) for DCPD's existing cooling water intake structure.
5. We agree that the Recommendations and Triangle Economic Research's Benefits Valuation Study (2005) should be peer reviewed, and are working with Board staff to have that accomplished.

On the other hand, we strongly disagree with many of the Staff Report's assertions regarding the appropriate means of valuing the entrainment impacts. The details of our concerns are set forth in the attached TER report, and in our comments on the draft TWG Recommendations submitted in February 2005 and provided to you by Board Staff. TER is uniquely qualified both to perform the Benefits Valuation Study and to comment on the Recommendations. Dr. Desvousges, the senior author of both reports, has conducted pioneering research in the valuation of natural resources for the past 25 years. He is an internationally recognized expert in the field and has published extensively in the peer-reviewed literature. In summary, our primary areas of disagreement are:

1. The Staff Report and the Recommendations wrongly equate habitat replacement costs ("HRC") with the economic value of reducing I&E effects. Under standard economic theory and EPA's Phase II regulations, costs simply cannot be equated to value, for the reasons explained in TER's attached report. In the case of the DCPD, the Recommendations' improper reliance on HRC as a valuation methodology results in a gross overstatement of the true economic value of I&E reductions.
2. The Staff Report wrongly claims that EPA did not reject HRC as a valuation methodology in the Phase II regulations. In fact, EPA evaluated HRC and expressly decided not to use it because of "limitations and uncertainties regarding the application of this methodology." 69 Fed. Reg. 41624 (July 9, 2004). Also, in EPA's *Guidelines for Preparing Economic Analyses*, which are expressly cited as guidance governing § 316(b) benefit valuation studies, EPA concluded that: "Alternative approaches that estimate the total value of ecosystems based on the cost of the entire ecosystem or its embodied energy have received considerable attention as of late. However, the results of these studies should not be incorporated into benefit assessments. The methods adopted in these studies are not well-grounded in economic theory, nor are they typically applicable to policy analysis." Guidelines at 92 (2000). Since EPA has rejected HRC as a valuation methodology, it cannot be used under the Phase II regulations as either a quantitative or a qualitative benefit assessment tool.

3. Contrary to inferences in the Recommendations and Staff Report, TER's Benefits Valuation Study in fact values *all* fish species, including the forage species (using EPA's preferred trophic transfer analysis for valuing forage species). Zooplankton, phytoplankton and algal spores were not evaluated, and to our knowledge have never been evaluated in any I&E benefit valuation study. EPA is of the view that these species need not be evaluated because of their large populations and short generation times, and did not value such species in the Phase II rule. Indeed, the DCCP's Entrainment Technical Working Group, which included several of the Independent Scientists who directed the DCCP I&E Study, also concluded that such species, among others, did not need to be evaluated.

4. TER's Benefit Valuation Study utilized EPA's Phase II benefit assessment guidelines, and estimated the maximum commercial and recreational value of I&E reductions to be approximately \$1 million. Also based on EPA guidance, TER concluded that non-use values should not be monetized in this case because they likely are very low. The Recommendations estimated the value of I&E reductions to be in the range of \$10.6 million to \$26 million. The implication of the comparison of the TER and Recommendation approaches is that the non-use value of I&E reductions at DCCP is in the range of \$9.6 million to \$25 million. Not even the most aggressive advocates of non-use valuation would estimate non-use values to be in the range of 9 to 25 times more than the use values. Appropriate application of non-use economic principles in fact indicates that these values will be very low, since the effects are not on unique resources, but instead are only marginal impacts on species of renewable fish populations.

5. The Recommendations' application of the HRC methodology is also incomplete and inaccurate, resulting in overstatement of the reef size necessary to compensate for the alleged losses. As explained in the TER report, this analysis should have discounted future benefits (because the I&E effects are temporary, whereas the reef benefits are permanent), and accounted for uncertainty. Additionally, the Recommendations also do not account for the fact that the Phase II regulations only require entrainment reduction in the range of 60 to 90%, depending on site-specific conditions.

6. Even if the Recommendations' HRC approach were correctly applied, it would only result in a cost estimate for restoration measures that, under the § 316(b) regulatory framework, still must be compared to the value of I&E reductions in order to determine if the cost of restoration is significantly greater than the benefits. Comparing the Recommendations' \$10.6 million to \$26 million artificial reef construction cost to TER's \$1 million maximum benefit estimate conclusively demonstrates that the cost of reef construction is significantly greater than its benefits, and therefore inappropriate under the Phase II rules.

Mr. Roger Briggs
August 31, 2005
Page 4

In addition to the foregoing substantive concerns, we have significant procedural concerns regarding the presentation of the Recommendations to the Board as an informational update. As you know, the Board asked that the Recommendations be submitted for consideration in the pending adjudicatory hearing on the renewal of DCP's NPDES permit. Under the relevant statutes and regulations, including 23 CCR § 648(b), Cal. Evidence Code §§ 801 and 803, and Cal. Gov't. Code § 11513(b), when evidence is presented in an adjudicatory hearing, PG&E has the rights to pre-hearing discovery, to the cross-examination of witnesses and to the presentation of rebuttal evidence. However, the informational update format for this presentation does not allow for any of these due process rights. We are participating in this informational update to lessen the prejudice to PG&E that would result from not responding at all to the Staff's presentation, and are doing so on the express condition that PG&E's participation in the September 9 meeting, including the submission of these materials, will in no way limit its rights to conduct discovery, to examine and cross-examine witnesses, and to present rebuttal evidence on the record with respect to the Recommendations when the adjudicatory hearing on the permit resumes.

We look forward to hearing from you on these important issues, and to continuing to work together to resolve this matter. In the meantime, please call me should you have any questions.

Very truly yours,



Kathleen Burnett Jones
KBJ:kp

Enclosures

1. Review of Independent Scientists' Report with Consideration of Stratus Report (TER 2005)
2. Resume of Dr. William H. Desvousges

cc: Michael Thomas
Lori Okun
David Oatley
Paul Roller
Bryan Cunningham
William Manheim
Karl Lytz (Latham & Watkins)
William Desvousges (TER)