

Diablo Canyon Suit Settling

Judge Expected to Approve \$21 Million Payment by PG&E's Board

By DEE ZIEGLER
Daily Journal Staff Reporter

A San Francisco Superior Court judge is expected today to approve a \$21 million settlement of a suit charging Pacific Gas & Electric Co.'s board of directors with poorly supervising construction of the Diablo Canyon Nuclear Power Plant.

Slated for completion in 1975 at a cost of \$450 million, the power plant in San Luis Obispo began commercial operations 10 years too late and cost more than \$5.8 billion.

PG&E shareholders blamed the board of directors for breaching their fiduciary duties and wasting corporate assets.

Attorneys on all sides are calling the proposed settlement one of the largest ever negotiated in a shareholder derivative suit.

Under the proposal, \$21 million (paid from the board officers' and directors' insurance coverage) would be placed in an escrow account for PG&E. Out of this, up to \$3 million would be paid in attorneys fees and costs.

Any fees approved by Judge Daniel Hanlon today would be divided among the plaintiffs attorneys.

The dollar figure of the settlement is called "extremely high" in a memorandum submitted by the board's attorney, David Heilbron of McCutchen, Doyle, Brown & Enersen. It is especially high since the defendants are "confident they did nothing wrong" and have no liability, Heilbron said.

"They have agreed to this settlement solely to avoid years of litigation, and the cost and time and anguish it would entail," he wrote.

Similar suits over electric utilities and their nuclear power plants have produced a \$4 million settlement in Cincinnati, a \$5.75 million settlement in Indiana and a \$12.5 million settlement in Long Island,



PG&E COUNSEL — The "extremely high" settlement should be approved, argue counsel Weyman Lundquist, left, and David Heilbron, even though PG&E directors are "confident they did nothing wrong."

N.Y. None of those plants is operating, according to a memorandum submitted by Weyman Lundquist, an attorney representing a committee in charge of Diablo Canyon Case for PG&E.

In contrast, the Diablo Canyon facility is operating and is capable of producing \$4 million of revenue each day it runs at full power. It has been running at about 74 percent capacity, wrote Lundquist, a partner at Heller, Ehrman, White & McAuliffe in San Francisco.

"Indeed at \$4 million per day, the revenues from Diablo Canyon operations quickly dwarf any settlement that is even theoretically possible in this case," Lundquist stated in urging Hanlon to approve the settlement.

Among the five firms of plaintiffs attorneys are several known nationally for their shareholder derivative litigation: William S. Lerach of San Diego's Mäberg, Weiss, Bershad, Specthrie & Lerach and attorneys from Greenfield &

Chimicles of Haverford, Pa., which is serving as lead counsel.

Liaison counsel is Warren M. Green of Sausalito's Green & McLorg. The other plaintiffs counsel are from Wolf, Haldenstein, Adler, Freman & Herz in New York and Barack, Rodos & Bacine of San Diego.

Their suit, *Pacific Gas & Electric Co. Shareholder Derivative Litigation*, 893849, was filed in September 1988 as the consolidation of four similar actions.

The civil litigation followed regulatory and licensing disputes that had embroiled the nuclear power plant in controversy for years.

In 1972, when the power plant was already under construction, it was learned that the Hosgri earthquake fault lay beneath it.

Amid outcry surrounding the discovery, the plant was redesigned under orders from the Atomic Energy Commission.

In 1979, an accident at the Three Mile Island plant in Pennsylvania prompted the Nuclear Regulatory Agency to put a moratorium on licenses for nuclear power plants. When the moratorium was lifted in 1981, PG&E discovered that the design consultant had switched plans for Diablo Canyon's two power-generating units, which increased the delays and cost overruns.

The plant was finally licensed and began operation in 1986.

A year later, what is now the division of ratepayer advocates for PG&E recommended that customers not be billed for about \$1.2 billion of the construction costs.

A settlement was reached in 1988 that disallowed \$2 billion of PG&E's costs from being passed on to customers.

Soon after, the four derivative suits were filed in San Francisco Superior Court.

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