

July 26, 2022

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SUBJECT: *Abide by your well-considered decision to retire Diablo Canyon –
or be held to account under federal environmental law for reinstating
significant and unnecessary risks and costs of license renewal*

My client, San Luis Obispo Mothers for Peace (“SLOMFP”), is aware of news reports that Pacific Gas & Electric Corp. (“PG&E”) is considering whether to seek permission from the U.S. Nuclear Regulatory Commission (“NRC”) to operate the Diablo Canyon Nuclear Power Plant past its current expiration dates of November 2024 (Unit 1) and August 2025 (Unit 2) – thereby reversing PG&E’s 2016 decision to retire the Diablo Canyon reactors at the end of their license renewal terms. If PG&E takes that course, it must re-apply to the NRC for renewal of its operating licenses; and it must also obtain an exemption from an NRC regulation that would preclude it from operating Diablo Canyon past its expiration dates if the NRC has not approved license renewal.

As longstanding advocates for safety and environmental protection in the operation of Diablo Canyon, we write to urge you against taking such a course of action, because it would destroy the tremendous achievements of PG&E’s historic 2016 settlement agreement with environmental organizations, labor unions, and the California Public Utilities Commission (“CPUC”): retirement of a polluting and dangerously earthquake-vulnerable nuclear plant, coupled with a robust plan to increase California renewables by several times more generation and capacity than needed to replace Diablo Canyon. The Diablo Canyon retirement agreement, carefully considered and approved by the State legislature and California regulators, takes the most responsible and forward-looking steps to eliminating the significant environmental risks and impacts of Diablo Canyon’s operation, while at the same time increasing the State’s strong commitment to significant carbon reductions and accelerating the growth of California’s clean energy economy.

We also respectfully inform you that if PG&E goes forward with its attempt to revive Diablo Canyon by submitting a new license renewal application to the NRC, we will insist that you and the NRC fully comply with the requirements of the National Environmental Policy Act (“NEPA”) for complete public disclosure of your bases for abandoning your well-reasoned 2016 adoption of the retirement agreement. We will also demand a thorough analysis of the environmental impacts of your decision, and a weighing of the costs and benefits of going forward with it. We believe the NEPA process will show that abandonment of the 2016

retirement agreement would be a foolhardy step from all perspectives, including reducing environmental impacts, safety risks, greenhouse gas (GHG) emissions, and ratepayer costs.

PG&E should not abandon the 2016 retirement agreement. We urge you to stick by your 2016 commitment to close the Diablo Canyon reactors on their license expiration dates, because it would resolve extremely important and longstanding public concerns about safety risks, environmental protection, reducing GHG emissions, and power supply:

- Closing the reactors on schedule would greatly reduce the potential for a radiological disaster caused by an earthquake in the faults beneath and near the reactors: the Hosgri Fault (about 3.5 miles from the plant); and the Shoreline Fault (about 2,000 feet (600 meters) from the turbine building and only about 985 feet from the intake structure where cooling water is drawn from the Pacific Ocean).
- Closing the reactors on schedule would resolve significant environmental concerns about the impacts of Diablo Canyon's once-through cooling system on the marine environment and save PG&E the expense of installing cooling towers as previously required by the California Water Resources Control Board.
- The retirement agreement, as already implemented by CPUC orders and state legislation, has committed the State to even greater GHG emissions reductions than would be achieved by continuing to run Diablo Canyon. These achievements would be upended at great cost to customers and/or taxpayers if PG&E walked away from the retirement agreement. By propping up Diablo Canyon, the State would draw government resources from renewables and efficiency and would also discourage private investment in renewables and efficiency.

There is no justification for such an outcome. The basis for the 2016 joint proposal was your own engineering study by M. J. Bradley Associates, which concluded that continued operation of Diablo Canyon was inimical to California's renewable energy and emissions targets, because its inflexible baseload generation would result in excessive transmission congestion, higher costs to consumers, and curtailment of solar generation. The CPUC accepted the joint proposal on that basis, and has issued a series of orders based on its review of the full and well-developed post-settlement Integrated Resource Planning proceedings that were predicated on the planned retirement of Diablo Canyon. Neither of the entities responsible for ensuring resource adequacy and transmission system reliability in California – the CPUC and the California Independent System Operator ("CAISO") – has issued findings that would contradict their previous conclusions that Diablo Canyon may retire as scheduled.

Abandonment of the retirement agreement for a revised license renewal application would necessitate a complex and time-consuming review under the National Environmental Policy Act. It is our understanding that PG&E is being urged to abandon the 2016 retirement agreement so that it can keep operating Diablo Canyon continuously, even after the 2024 and 2025 expiration dates. But by repudiating the settlement's significant environmental and safety achievements, PG&E would reinstate the same significant safety and environmental concerns that plagued PG&E in the first license renewal proceeding. Once again, these concerns would demand detailed discussion in a revised license renewal application and a thorough review by the

NRC and by state entities, including preparation of an Environmental Impact Statement (EIS) and an opportunity for public hearings.

Some, but not all, of the critical issues that are likely to arise in the license renewal proceedings include:

- seismic risks and the significance of PG&E’s decision not to do 3-D seismic testing in light of the reactors’ impending retirement;
- thermal and entrainment/impingement impacts to marine life, including impacts of the time lag for constructing cooling towers that might be installed by now if PG&E had not entered the retirement agreement;
- the costs and benefits of energy alternatives (For instance, if Diablo Canyon operates for another ten years, what will the rate impacts be? And if so, how will continued operation affect the viability of renewable energy competitors? How will continued operation affect current investment commitments to new generation, energy efficiency and load management that were made with the goal of replacing Diablo Canyon?);
- safety and environmental risks posed by continuing to operate Diablo Canyon with aging equipment, including the embrittled pressure vessel;¹ and
- the adequacy of PG&E’s decommissioning cost estimates, including the increased cost of spent fuel management.

Based on the experience of the NRC’s review and administrative litigation of PG&E’s initial 2009 license renewal application, which took more than five years, it seems very unlikely that PG&E could obtain resolution of these issues before 2024 and 2025.

Further, PG&E would find it difficult to qualify for an exemption from NRC’s “timely renewal” regulation, 10 C.F.R. § 2.109, which requires that license renewal applications must be submitted at least five years before expiration of a current license in order to continue operating a nuclear plant indefinitely as long as a renewal application is pending. Before NRC could grant an exemption, the critical issues listed above must be addressed in detail in an EIS. At the very least, NEPA prohibits the NRC from declaring that any potentially significant environmental impacts are insignificant until after NRC has analyzed the issues, offered an opportunity for public comment, and responded to those comments. *Brodsky v. NRC*, 704 F.3d 113 (2nd Cir. 2013).

Here, the environmental issues related to earthquake-caused reactor accidents and environmental impacts to marine life and power supply alternatives are both complex and long-neglected because they were rendered irrelevant by the retirement agreement. Therefore, they would take a significant amount of time for the NRC and the public to investigate, analyze and address in a

¹ At meetings of the Diablo Canyon Independent Safety Committee, significant concern has been raised about the amount of inspections and maintenance that PG&E has suspended due to the expectation that the two reactors would close in the near future. See You-tube video of June 22, 2022 meeting, ; You-tube video of discussion of May 18-19 Fact-Finding Report, <https://www.youtube.com/watch?v=g93Un6DnRuI&t=77s>.

NEPA decision-making process. In addition, members of the public would be entitled to appeal NRC's exemption decisions to federal court, another time-consuming process that must be completed before the exemption can be finalized. *Brodsky*, 704 F.3d at 124; *Brodsky v. NRC*, 578 F.3d 175, 184 n.6 (2nd Cir. 2009).

Therefore, we urge you not to abandon the 2016 retirement agreement, including its strong provisions for avoiding and mitigating the adverse environmental effects that would have occurred if Diablo Canyon had been permitted to operate beyond its current license termination dates, and its robust carbon reduction and cost-saving measures.

Please do not hesitate to contact me if you have any questions about this letter.

Sincerely,



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Counsel to San Luis Obispo Mothers for Peace

Cc: Hon. Christopher T. Hanson, Chairman, NRC
Hon. Gavin Newsom, Governor of California
Hon. Ana Matosantos, Cabinet Secretary to Gov. Newsom
Hon. Jennifer Granholm, Secretary, U.S. Department of Energy
Hon. Dianne Feinstein, U.S. Senate
Hon. Alex Padilla, U.S. Senate
Hon. Salud Carbajal, U.S. House of Representatives