

August 24, 2022

Honorable Toni Atkins, President Pro Tempore
California State Senate
1021 O Street, Room 8518
Sacramento, CA 95814

Honorable Anthony Rendon, Speaker
California State Assembly
1021 O Street, Room 8330
Sacramento, CA 95814

SUBJECT: *Maintaining the Diablo Canyon retirement agreement will protect the strength and integrity of California's robust regulatory programs for protecting public health, the environment, the power supply, and the economy*

Dear Senate President Atkins and House Speaker Rendon:

As counsel to San Luis Obispo Mothers for Peace ("SLOMFP"), I write to urge you to take all steps necessary to preserve decisions by State regulatory agencies and the State legislature to approve the historic 2016 agreement between Pacific Gas & Electric Company ("PG&E"), environmental organizations, and labor, to retire the twin Diablo Canyon nuclear reactors when their original operating licenses expire in November 2024 (Unit 1) and August 2025 (Unit 2). We respectfully submit to you that to override and renege on those decisions – as currently proposed in pending legislation – would seriously undermine public confidence in the integrity of the State's regulatory processes, without achieving the stated goals of the proposed legislation.

As you know, the basis for the 2016 proposed retirement agreement was an engineering study prepared for PG&E 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 wind and solar generation. The CPUC accepted proposed settlement 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 State entities responsible for ensuring resource adequacy and transmission system reliability in California – the California Public Utilities Commission ("CPUC") or the California Independent System Operator ("CAISO") – has issued findings that would contradict their previous conclusions that Diablo Canyon may retire as scheduled. PG&E -- the utility with the same responsibilities – has not done so either.

Not only does the Diablo Canyon retirement agreement protect the climate and the State's energy economy, but it resolves longstanding public health and environmental risks by ending the operation of a polluting and dangerously earthquake-vulnerable nuclear plant. Closing the reactors on schedule will 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). In addition, closing the reactors on schedule will 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 agreement also protects workers from the economic harm of a sudden shutdown and ensures adequate funding for safe decommissioning.

For fifty years, SLOMFP has advocated before State and federal regulators for safety and environmental protection in the operation of Diablo Canyon. After PG&E proposed the settlement agreement for State approval, SLOMFP supported the proposed settlement by actively participating in relevant State regulatory proceedings before the CPUC, the State Lands Commission and the California Energy Commission. The all-volunteer organization mustered time and raised substantial funds to present legal briefs and expert testimony on the significant safety and environmental risks that would be resolved by retiring Diablo Canyon. SLOMFP invested in the regulatory process because its members had confidence in the integrity and competence of those agencies to carry out their responsibilities. And that confidence was rewarded by a set of decisions that not only approved the settlement, but committed the State to even greater reductions in greenhouse gas ("GHG") emissions than would be achieved by continuing to run Diablo Canyon.

Now, the integrity of the State's regulatory system is jeopardized by a legislative proposal to abandon those well-considered and well-supported regulatory decisions in an instant, without any demonstration of error in those decisions. Indeed, the proponents of the legislation have completely disregarded those decisions. As a result, if the legislation is passed, it will fatally undermine the credibility of the State's regulatory processes for environmental and economic protection. It will also send a message to every California citizen that it is pointless to participate in State regulatory proceedings on complex and important environmental and economic issues, because the regulators' decisions will receive no protection from capricious interference by other branches of the State government.

Worse, upending the retirement agreement will have real and adverse impacts on citizens and the environment. The significant risks posed by Diablo Canyon's operation to public health and safety and the environment could continue for years, or even decades.¹ The GHG reductions achieved by the retirement agreement 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. As a result, the long-term rate of reduction of GHG emissions would decrease in comparison to the reduction rate that will be achieved under the retirement agreement. And as a short-term fix, running Diablo Canyon has never prevented power outages in the past; nor could it be expected to play that role in the future.

¹ While proponents of the legislation mention time frames of three to ten years, U.S. Nuclear Regulatory Commission ("NRC") licensing regulations would allow PG&E to seek a license renewal term that could be as long as twenty additional years. *See* 10 C.F.R. § 54.31(b).

Moreover, it is not at all clear that the NRC will allow PG&E to operate past the closure dates of 2024 and 2025, or that it will finish its license renewal review by then. If PG&E seeks to operate Diablo Canyon past 2024 and 2025, it must re-apply to the NRC for renewal of its operating licenses. Even for noncontroversial applications, NRC's license renewal review takes years. And NRC's review of the Diablo Canyon license renewal application is likely to take several years, given the significant safety and environmental issues that must be resolved – including the following:

- 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;²
- safety and environmental risks posed by continuing to operate Diablo Canyon with aging equipment, including the embrittled pressure vessel;³
- the adequacy of PG&E's facilities for storing highly radioactive spent (*i.e.*, used) reactor fuel, which are now near capacity; and
- the adequacy of PG&E's costs for decommissioning the reactors and managing spent fuel.

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 an environmental decision-making process under the National Environmental Policy Act ("NEPA").⁴

² Issues that must be addressed in such a cost-benefit review include: 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?

³ 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; YouTube video of discussion of May 18-19 Fact-Finding Report, <https://www.youtube.com/watch?v=g93Un6DnRuI&t=77s>.

⁴ While PG&E and the NRC may seek to rely on safety and environmental determinations made in the original license renewal proceeding, enough time has passed since that proceeding was ended that all supposedly-resolved issues would need to be examined afresh, with an opportunity for public involvement.

If the NRC's review goes on past 2024 and 2025, the Diablo Canyon reactors will have to shut down pending the NRC's decision. As a result, the proposed legislation's purpose of allowing continued operation of Diablo Canyon past 2024 and 2025 would be defeated.

While the NRC has the authority to excuse PG&E from those deadlines under the "timely renewal" doctrine in 10 C.F.R. § 2.109, to do so it would have to exempt PG&E from the regulation's requirement to submit a license renewal application at least five years before the license's expiration date. And to grant that exemption, the NRC would need to determine that no significant safety or environmental issues were outstanding. 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). 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). Again, this very important environmental review would be quite time-consuming and must precede any decision to allow Diablo Canyon to continue to operate.

As an organization long-dedicated to the protection of the climate, public safety, and the environment from the risks posed by Diablo Canyon's operation, SLOMFP will use every available legal process to ensure that PG&E and the NRC comply with federal laws applicable to license renewal, including the Atomic Energy Act and NEPA. While the legislature may be able to override the careful, thorough, and time-consuming decisions of State agencies with the stroke of a pen, they cannot rush the deliberations of federal regulatory agencies or federal courts on the significant safety and environmental issues that would be raised by an attempt to re-license Diablo Canyon for an extended period of operation.

Therefore, we urge you not to take the futile and destructive action of abandoning the Diablo Canyon retirement agreement. Please continue to protect public health, the environment, our power supply, and the California economy -- and avoid destroying the credibility of your regulatory system -- by continuing and renewing your previous support for the agreement.

Sincerely,



Diane Curran

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