

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the Diablo Canyon Independent Safety Committee for California Public Utilities Commission Approval of a Restated Charter to Govern the Composition, Responsibilities, and Operations of the Committee.

Application 06-10-024
(Filed October 24, 2006)

**FINAL OPINION GRANTING AUTHORITY TO CHANGE THE CHARTER OF
THE DIABLO CANYON INDEPENDENT SAFETY COMMITTEE****A. Summary**

This decision grants the requested authority to restate the charter to govern the composition, responsibilities, and operations of the Diablo Canyon Independent Safety Committee (Safety Committee). The request was unopposed and the proceeding is closed.

B. Background

The Commission created the Safety Committee in Decision (D.) 88-12-083, 30 CPUC2d 189, as one part of the overall settlement of the ratemaking issues for the Diablo Canyon Nuclear Generating Station (Diablo Canyon), which is owned and operated by Pacific Gas and Electric Company (PG&E). The settlement agreement established the Safety Committee as an independent, three-member committee responsible for monitoring the safety of PG&E's operation of Diablo Canyon and making recommendations for its safe operation. Its budget is paid from PG&E's revenues and is thus charged to the ratepayers. (D.88-12-083, see App. C, Paragraph 16.) A statement setting the qualifications and procedures for

appointment of members to the Safety Committee, and defining the scope of the Committee's operations and responsibilities was attached to the Settlement Agreement and approved by the Commission. (D.88-12-083, App. C, Att. A.)

The role, efficacy, or the continued operations of the Safety Committee are not at issue in this proceeding. The Safety Committee cites in its application four occasions¹ where the Commission has affirmed its continued operations but, as a result of various actions in those decisions, the Safety Committee believes that its charter needs certain revisions.

C. Procedural History

Notice of this application appeared in the Commission's Daily Calendar on October 25, 2006. There were no protests. PG&E filed a timely response indicating that it did not oppose the application. The Commission preliminarily categorized the application as ratesetting in Resolution ALJ 176-3182, dated November 9, 2006. There was no scoping ruling to confirm the categorization as ratesetting, and the determination that no hearings were needed. This decision affirms the initial categorization and that hearings are not required. The record in this proceeding is composed of all documents filed and served on parties.

D. Scope and Issues

The purpose of this proceeding is to determine whether the proposed changes to the safety Committee charter are reasonable and in the public interest.

¹ D.90-04-008, 36 CPUC2d 146; D.91-10-020, 41 CPUC2d 475; D.97-05-088, 72 CPUC2d 560; and D.04-05-055, mimeo., dated May 27, 2004.

E. Standard of Review

The applicant alone bears the burden of proof to show that the proposed changes to the Safety Committee's charter are reasonable and in the public interest.

F. Proposed Charter Provisions

The Safety Committee requests that the Commission authorize the following:

1. Changes in the nomination and appointment of Safety Committee members and the required qualifications for nominees in Paragraphs I.B.1 and I.B.3 of the Restated Charter, with consistent changes made in Paragraphs I.B.(2) and I.D.(1). (Source: D.04-05-055.)
2. Procedures to avoid conflicts of interest and comply with the Political Reform Act (Government Code Section 81000, et seq.), provided for in Paragraphs I.C.(1) and I.C.(2) of the Restated Charter. (Some of which originally were included in D.88-12-083, App. D.)
3. Paragraph I.C.(3), added to provide no person may serve as a member of the Safety Committee if he or she has a prior history of supporting or opposing PG&E as a witness or intervenor in nuclear licensing or CPUC proceedings associated with Diablo Canyon. (Source: a requirement of objectivity and independence as stated by the Commission's president in 1989 when the initial list of candidates were nominated for appointment to the Safety Committee.)
4. Paragraph II.D of the Restated Charter, addressing the protection of confidential information, amended to provide greater clarity.
5. Paragraph II.E.(1), addressing compensation for Safety Committee members, expanded to include details of members' compensation and procedures for adjusting such

compensation, as implemented pursuant to Commission Resolutions E-3152 and E-3608.

6. Paragraph II.E.(2), which addresses the Safety Committee's annual budget and its funding through PG&E rates, revised to reflect Resolution E-3152 and D.97-05-088.
7. Implementation of Public outreach by the safety Committee by adding a new Paragraph II.F to the Restated Charter. (Source: D.04-05-055.)

All of the requested changes are shown in Exhibit C to the application as a "red-line" version comparing the original charter to the proposed revised charter. We adopt Exhibit B to the application as the revised charter: it is a final version incorporating the red-line changes illustrated in Exhibit C and discussed herein.

G. Discussion

In our review of the proposed changes to the Safety Committee charter we are first concerned with whether the changes are, in fact, reflecting changes or clarifications made by the Commission in other proceedings. This assures us that the changes are legitimate reflections of the Safety Committee's authority and obligations. The second concern is that the changes do not intentionally or unintentionally expand or constrict the operations of the Safety Committee beyond its defined role and authority.

PG&E indicated that: "... [given] the Commission's statements affirming its belief that there is a continued need for the [Safety Committee] and PG&E's desire for clear and efficient operation of the [Safety Committee], PG&E does not oppose the Application." (Response, p. 2.) PG&E further correctly footnoted that "... pursuant to the Atomic Energy Act of 1954, as amended, the United States Nuclear Regulatory Commission [NRC] has sole jurisdiction over public

health and safety issues arising as a result of the operation of a commercial nuclear power plant.” This decision in no way intends to change the relationships between the Safety Committee on the one hand and PG&E, the NRC or this Commission on the other: its sole function is to correctly conform the Safety Committee charter with our prior decisions.

The first decision, D.88-12-083, which authorized the Safety Committee, required the members of the Committee to be "persons with knowledge, background, and experience in the field of nuclear power facilities" as quoted in D.90-04-008, where the Commission denied petitions of the San Luis Obispo Mothers for Peace and Rochelle Becker. At that time the Commission found the Safety Committee was operational and had competent members. The proposed changes in this application reflect the statements of then-president G. Mitchell Wilk, when nominating the first members, whereby the Commission emphasized the need for objective and independent committee members. It is reasonable that this be reflected in a statement on Conflicts of Interest, as proposed in the new section I.C.(3) of the charter, therefore, these revisions should be adopted.

In D.91-10-020 the Commission denied another petition of the San Luis Obispo Mothers for Peace, Life on Planet Earth, and Rochelle Becker, in which the petitioners requested suspension of performance-based pricing for Diablo Canyon power and disbandment of the Independent Safety Committee, asserting that the Safety Committee was ineffective. This decision emphasized the Commission's conclusion that the Safety Committee was beneficial and affirmed its continued authorization of the Safety Committee. The application does not otherwise cite to this decision to support specific revisions proposed in this proceeding.

In D.97-05-088 the Commission supplanted the 1988 Diablo Canyon ratemaking settlement (D.88-12-083) with a new ratemaking mechanism. Relevant to the Safety Committee, the Commission ordered that it would continue in existence:

The entire Diablo Canyon settlement adopted in D.88-12-083 and modified by D.95-05-043 is of no force and effect as of the date this decision becomes final. However, the Diablo Canyon Independent Safety Committee shall remain in effect under the terms and conditions of Appendix C, Attachment A to the Diablo Canyon settlement decision D.88-12-083, until further order of the Commission. Funding for the Committee shall be established at its current level under the terms of Appendix C for 1996 at \$673,077 and adjusted upward at 1.5% annually until further order of the Commission. (Ordering Paragraph 10.)

The proposed revisions derived from this decision include provisions for conflicts (Section I. C.(2).) and fees and expenses (Section II. E.(2).). After reviewing these proposed revisions, we find them to be consistent with our intent and the authority granted to the Safety Committee, and therefore, these revisions should be adopted.

We have reviewed the proposed changes to Paragraph II-D and agree with the Safety Committee that the revised language provides greater clarity on protecting confidential information, therefore these revisions should be adopted.

In D.04-05-055, with an extensive discussion (over 20 pages), the Commission considered and adopted significant new guidance and conditions for the Safety Committee. PG&E's application originally included a proposal to eliminate the Safety Committee. This decision instead adopted a ratemaking settlement; a major provision of the settlement was its Appendix C: *Stipulation Agreement Among Pacific Gas and Electric Company, San Luis Obispo Mothers For*

Peace, Diablo Canyon Safety Committee, Office of Ratepayer Advocates, Energy Commission, and The Utility Reform Network (Stipulation). The parties proposed this stipulation as a part of the overall settlement of the application. As a result of the adoption of the settlement and the Stipulation, there several new terms and conditions we made applicable to the Safety Committee. These are now reflected in the proposed revisions to the charter which include an appointment process for committee members (Section I.B.), terms of appointment (Section I.D.), and a new function whereby the Safety Committee undertakes public outreach (Section I.F.). After reviewing these proposed revisions, we find them to be consistent with our intent and the authority granted to the Safety Committee, and therefore, these revisions should be adopted.

H. Assignment of Proceeding

John Bohn is the assigned Commissioner and Douglas M. Long is the assigned ALJ. (*See* Rule 5(l).)

I. Comment on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

Findings of Fact

1. The Safety Committee is an independent, three-member committee responsible for monitoring the safety of PG&E's operation of Diablo Canyon and making recommendations for its safe operation.
2. The Commission has previously adopted new practices and expectations for the Safety Committee without concurrently restating the Safety Committee charter to reflect these changes.

3. The proposed restated Safety Committee charter incorporates changes or clarifications necessitated by, and previously authorized by, the Commission.

Conclusions of Law

1. The changes to the Safety Committee charter are reasonable in light of the whole record, because they reflect the actions of the Commission that changed the practices and expectations of the Safety Committee.

2. The changes to the Safety Committee charter are in the public interest, because they reflect the latest authority and obligations of the Safety Committee, as adopted by the Commission.

3. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The modified Diablo Canyon Independent Safety Committee charter, Exhibit B to the application, and attached hereto as Attachment 1, is adopted.

2. No hearings are required for this proceeding.

3. Application 06-10-024 is closed.

This order is effective today.

Dated _____, at San Francisco, California.