

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LEGAL DIVISION

San Francisco, California
Date: December 16, 2004
Resolution No. L-315

R E S O L U T I O N

RESOLUTION AUTHORIZING A ONE-TIME DEVIATION FROM THE PROCESS FOR APPOINTING MEMBERS TO THE DIABLO CANYON INDEPENDENT SAFETY COMMITTEE ESTABLISHED BY COMMISSION DECISIONS D.88-12-083, D.97-05-088, AND D.04-05-055, AND APPROVING THE FORWARDING TO THE CALIFORNIA ENERGY COMMISSION OF THE NAMES AND INFORMATION FOR ALL QUALIFIED CANDIDATES REMAINING FROM THE ATTORNEY GENERAL'S APPOINTMENT PROCESS OF EARLIER THIS YEAR, AND FOR THE INCUMBENT MEMBERS PREVIOUSLY APPOINTED BY THE CALIFORNIA ENERGY COMMISSION, FOR A TRUNCATED TERM OF 1 ½ YEARS EFFECTIVE JANUARY 1, 2005.

SUMMARY

On March 1, 2004, the Commission issued a News Release seeking applications for a forthcoming July 1, 2004 membership vacancy on the Diablo Canyon Independent Safety Committee ("DCISC"). The appointment to this vacancy was to be made by the Attorney General of the State of California. Nine applications were received for this position. The Commission forwarded the names of the three most qualified of these applicants, plus the name of the then-sitting DCISC member whose position was being vacated. The Attorney General's Office timely selected one of these applicants for that position to serve a normal three-year term on the DCISC.

However, because of a lapse in the normal appointment procedure, and in order to re-regularize the annual appointment process applicable to DCISC membership, there is presently a need to appoint another member to the DSISC, to a truncated term that will end on June 30, 2006. The appointment to this position is to be made by the California Energy Commission ("CEC").

This Resolution approves Legal Division's request for a one-time deviation from the process established by Commission Decisions D.88-12-083, D.97-05-088, and D.04-05-055, pursuant to which the Commission will forward to the CEC the names and information for all qualified candidates remaining from the Attorney General's appointment process earlier this year and for the CEC-appointed incumbent member, for the CEC's consideration to fill a DCISC membership position for a truncated term that will end on June 30, 2006.

BACKGROUND

In D.88-12-083, the Commission adopted a settlement agreement between Pacific Gas and Electric Company ("PG&E"), the Division of Ratepayer Advocates, and the Attorney General of the State of California. That settlement agreement included the establishment of an Independent Safety Committee made up of persons with knowledge, background, and experience in the field of nuclear power plants.

Appendix C of Attachment A to D.88-12-083 ("Appendix C") set up the composition and scope of operations of the DCISC. The DCISC consists of three members, one each appointed by the Governor of the State of California, the Attorney General and the Chairman of the CEC, respectively, serving staggered three-year terms. Under the protocol, this Commission has the responsibility to solicit applications for vacancies on the DCISC, to review the qualifications of the applicants, and to recommend qualified applicants to the appointing authorities. Originally, PG&E as well as the Dean of the School of Engineering at the University of California, Berkeley, participated in the selection process, but earlier this year, pursuant to a stipulation of the parties filed in Docket Nos. A.02-11-017 and I.03-01-012, the Commission, in D.04-05-055, modified the procedure for making appointments to the DCISC.

The DCISC reviews Diablo Canyon nuclear plant's operations for the purpose of assessing the safety of operations and offering any recommendations for safe operation. Neither the DCISC nor its members have any responsibility or authority for plant operations, nor do they have authority to direct PG&E personnel.

Since 2000, the appointing authorities have allowed the selection process to slip from the regular annual procedure contemplated by Appendix C. This was partly due to requests by PG&E and San Luis Obispo Mothers for Peace

("SLOMFP") to modify D.88-12-083 to change the structure of the DCISC. As a result, for several years, there have been sitting DCISC members whose terms have technically expired, but who have continued to serve because of the absence of replacements.

Starting this year, the process for nomination and selection of DSICS members began to be put back on track. On March 1, 2004, the Commission advertised and received nine applications for a three-year term as a member of the DCISC effective July 1, 2004. Pursuant to the procedure as originally outlined in Appendix C, the Commission forwarded to the Attorney General's Office the names of the three most qualified of these applicants, plus the name of the then-sitting DCISC member whose position was being vacated. The Attorney General's Office made an appointment to fill this position in a timely manner.

In order to re-establish the normal appointment and selection process on a going-forward basis, the Governor's Office should have an appointment to a position for three years starting July 1, 2005, and the CEC should have should have an appointment to a position for three years starting July 1, 2006. However, the CEC missed the opportunity to appoint a new member to a normal three-year term starting July 1, 2003.

To attempt to rectify this process, representatives of the Governor's Office, the Attorney General's Office, and the CEC (collectively, "the appointing authorities"), together with representatives of the DCISC, PG&E, SLOMFP, and the Commission, met on August 31, 2004, and again in a conference call on October 26, 2004, to discuss, among other topics, a one-time process whereby the CEC would have the opportunity to select an additional nominee from the remaining applicants for the July 2004 position.

As a result of these discussions, the appointing authorities have agreed that, the CEC should appoint a new DCISC member as quickly as possible, but that this new DCISC member should have a truncated term of 1½ years, instead of a regular three-year term. To effectuate this agreement in a timely manner, the appointing authorities agreed that the names and information for those qualified candidates remaining from the Attorney General's appointment process of earlier this year, and for the CEC-appointed incumbent member, should be forwarded to the CEC for a selection to be made by January 1, 2005, or as soon as possible thereafter.

During the discussions in these meetings, fearing discontinuity and a possible dearth of institutional memory and experience in the new members, PG&E representatives did not support the idea of an abridged term for a CEC appointment. However, all other parties to the discussions did support this approach for the expeditious re-establishment of the normal appointment and selection process for DCISC membership.

By this resolution, Legal Division requests that the Commission authorize a one-time deviation from the process established by Commission Decisions D.88-12-083, D.97-05-088, and D.04-05-055 and that the Commission forward the names and information for all qualified candidates remaining from the Attorney General's appointment process earlier this year, and for the CEC-appointed incumbent member, to the CEC for appointment of a new DCISC member for a truncated term of 1 ½ years, effective January 1, 2005.

DISCUSSION

Under the process established pursuant to D.88-12-083, the Commission initiated a search for candidates for membership on the DCISC through an open request for nominees. A list of three candidates to be forwarded to the appropriate appointing authority was then jointly selected by the President of the Commission, the Dean of Engineering of UC Berkeley ("Dean"), and PG&E. The DCISC member whose term was expiring was deemed to be an additional nominee.

However, D.04-05-055 modified this approach. Under the new procedure adopted in D.04-05-055, PG&E and the Dean are excluded from the nominating process. The President of the Commission prepares a list of the three qualified candidates from among the applicants. The names on this list are then forwarded to the appropriate appointing authority, but are also subject to an opportunity for public comment prior to selection by the appointing authority.

Under the one-time process for the appointment by the CEC of a DCISC member to a truncated term of 1 ½ years effective January 1, 2005, which is recommended by Legal Division, the appointment of this new member will not be in compliance with D.04-05-055. Legal Division nevertheless believes that it is reasonable for the Commission to authorize a deviation in this one particular instance in order to quickly re-establish the staggered term requirement of D.88-12-083 and D.04-05-055.

The representatives of all three appointing authorities endorse this approach, as does the staff of the DCISC. Also, the representative of SLOMFP, the one public interest group that has been consistently active in participating in the activities of the DCISC, has indicated her assent to this one-time deviation from the Commission's established process. Only PG&E is not in support of this proposal. Notwithstanding PG&E's concerns, this Commission considers that it is more important to quickly re-regularize the process for appointing members to the DCISC than to strictly follow the process established in D.04-05-055, which will necessarily delay the selection of a short-term CEC appointment by several months.

Legal and Energy Divisions have reviewed the requirements of D.04-05-055 and D.88-12-083 and the arguments for and against this one-time process that were presented at the August and October meetings. To work through the entire normal appointment process, including advertising, the solicitation of nominees, and preparations for public comment on an entirely new set of applicants, as well as providing time for the appointing authority to conduct interviews and review and consider such comments, will necessarily require approximately four months. Given that the Commission has a list of qualified candidates that it developed only a few months ago, it would be unduly time-consuming to utilize the specified process for a position that has a remaining term of only 1 ½ years starting this coming January. Further, to start the process from the beginning in this instance would further restrict the already truncated term of the needed DCISC member.

Accordingly, in order both to assure the maximum effectiveness of the new DCISC member who is to be appointed for a truncated term, as well as to re-establish the normal appointment and selection process for DCISC members on a going-forward basis, it is reasonable to deviate this one time from the selection process that this Commission established in D.04-05-055 and to forward to the CEC the names and information for all qualified candidates remaining from the Attorney General's appointment process earlier this year, and for the CEC's appointed incumbent member for a DCISC member to a truncated term of 1 ½ years effective January 1, 2005.

NOTICE AND COMMENTS

Draft Resolution L-315 was mailed on November 15, 2004 and posted on the Commission's Daily Calendar and served on the Service List for Docket Nos. A.02-11-017 and I.03-01-012, the proceedings in which D.04-05-055 was issued.

The Daily Calendar Notice, and Service List Notice provided, in accordance with Rule 77.7(c) of the Commission's Rules of Practice and Procedure, that comments concerning the Draft Resolution could be filed by December 6, 2004 and that reply comments could be filed by December 11, 2004.

Comments were filed on December 6, 2004 by the DCISC and by PG&E. The main substance of these comments has been incorporated into the text of this resolution.

FINDINGS

1. On March 1, 2004, under the requirements of D.88-12-083, the Commission sought applications for a July 2004 membership vacancy on the DCISC. Nine applications were received. The President of the Commission forwarded to the Attorney General's Office the three most qualified of these applicants, plus the name of the sitting DCISC member whose term was due to expire, for selection of a new DCISC member to a three-year term. The Attorney General's office chose one of these names for appointment to the open position on the DCISC.
2. D.04-05-055, dated May 27, 2004, changed the process of nomination of Committee members by eliminating the role of PG&E and the Dean of Engineering of the University of California from the process.
3. The CEC is entitled to appoint a new member to the DCISC. However, to preserve the staggered term requirements of D.88-12-083 and D.04-05-055, the term of that new member will necessarily be limited to 1 ½ years, starting January 1, 2005.
4. Because of the truncated term of this appointment to which the CEC is entitled, it is reasonable to expedite the process of appointing a DCISC member to fill this position.
5. There is not enough time to advertise for this position, to solicit applications, and prepare these applications for public comment in order to fill this position by January 2005.
6. Legal Division has requested the Commission to authorize a one-time deviation from the process established by Commission Decisions

D.88-12-083 and D.04-05-055, and to forward to the CEC the names and information for all qualified candidates remaining from the Attorney General's appointment process earlier this year, and for the CEC appointed incumbent member, for appointment by the CEC of a DCISC member for a truncated term of 1 ½ years effective January 1, 2005.

7. It is reasonable to approve the Legal Division's request in order to preserve the staggered terms requirement of D.88-12-083 and D.04-05-066, to assure the maximum effectiveness of the DCISC member to be appointed by the CEC for a truncated term, as well as to re-establish the normal appointment and selection process for DCISC members on a going-forward basis.

THEREFORE IT IS ORDERED THAT:

1. The request by Legal Division that Commission authorize a one-time deviation from the process established by Commission Decisions D.88-12-083 and D.04-05-055, and that the Commission forward to the CEC the names and information for all qualified candidates remaining from the Attorney General's appointment process earlier this year, and for the CEC appointed incumbent member, for appointment by the CEC of a DCISC member for a truncated term of 1½ years effective January 1, 2005 is approved.
2. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on December 16, 2004; the following Commissioners voting favorably thereon:

STEVE LARSON
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners