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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Implementing Senate Bill 846
Concerning Potential Extension of
Diablo Canyon Power Plant
Operations.

Rulemaking 23-01-007

**ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING
COMMENTS SERVED AS TESTIMONY ON STATUTORY
INTERPRETATION AND ISSUES OF POLICY, AND
INCORPORATING CERTAIN REPORTS INTO
THE RECORD OF THIS PROCEEDING**

Summary

This ruling invites parties to submit comments served as testimony on questions of statutory interpretation and policy that are being considered in Phase 1: Track 2 of this proceeding. Comments structured as opening testimony may be served by June 7, 2023; reply comments structured as rebuttal testimony may be served by June 30, 2023. In addition, this ruling makes available to parties and incorporates into the record of this proceeding the following reports, included as Attachments A-E to this ruling: A.) the Diablo Canyon Independent Safety Committee's (DCISC's) *Report on Fact-Finding Meeting with DCPD on November 8, 9 and 10, 2022*; B.) the DCISC's *Report on Fact-Finding Meeting with DCPD on December 6-7, 2022*; C.) the DCISC's *Report on Fact-Finding Meeting with DCPD on January 31 and February 1, 2023*; D.) the California Energy Commission's (CEC's) March 2023 report, entitled *Diablo Canyon Power Plant Extension – Final Draft CEC Analysis of Need to Support Reliability*; and E.) the CEC's and the

Commission's February 2023 report, entitled *Joint Agency Reliability Planning Assessment – SB 846 Quarterly Report and AB 205 Report*.

1. Background

Senate Bill (SB) 846 (Stats. 2022, Ch. 239) allows for the extension of the operation of the Diablo Canyon nuclear power plant (Diablo Canyon) beyond the current retirement dates, up to five additional years under specific conditions as provided. In establishing new retirement dates for Diablo Canyon, several of the conditions that must be considered by the Commission are set forth in Public Utilities (Pub. Util.) Code Section 712.8(c)(2)(B) through (E).

Section 712.8(c)(2)(B) through (E) state:¹

- (B) The commission shall review the reports and recommendations of the Independent Safety Committee for Diablo Canyon described in Section 712.1. If the Independent Safety Committee for Diablo Canyon's reports or recommendations cause the commission to determine, in its discretion, that the costs of any upgrades necessary to address seismic safety or issues of deferred maintenance that may have arisen due to the expectation of the plant closing sooner are too high to justify incurring, or if the United States Nuclear Regulatory Commission's conditions of license renewal require expenditures that are too high to justify incurring, the commission may issue an order that reestablishes the current expiration dates as the retirement date, or that establishes new retirement dates that are earlier than provided in subparagraph (A) of paragraph (1), to the extent allowable under federal law, and shall provide sufficient time for orderly shutdown and authorize recovery of any outstanding uncollected costs and fees.
- (C) If the loan provided for by Chapter 6.3 (commencing with Section 25548) of Division 15 of the Public Resources

¹ All Section references are to the Pub. Util Code, unless otherwise specified.

- Code is terminated under that chapter, the commission may issue an order that reestablishes the current expiration dates as the retirement date, or that establishes new retirement dates that are earlier than provided in subparagraph (A) of paragraph (1), and shall provide sufficient time for orderly shutdown and authorize recovery of any outstanding uncollected costs and fees.
- (D) If the commission determines that new renewable energy and zero-carbon resources that are adequate to substitute for the Diablo Canyon powerplant and that meet the state's planning standards for energy reliability have already been constructed and interconnected by the time of its decision, the commission may issue an order that reestablishes the current expiration dates as the retirement date, or that establishes new retirement dates that are earlier than provided in subparagraph (A) of paragraph (1), and shall provide sufficient time for orderly shutdown and authorize recovery of any outstanding uncollected costs and fees.
 - (E) Any retirement date established under this paragraph shall be conditioned upon continued authorization to operate by the United States Nuclear Regulatory Commission. If the United States Nuclear Regulatory Commission does not extend the current expiration dates or renews the licenses for Diablo Canyon Units 1 or 2 for a period shorter than the extended operations authorized by the commission, the commission shall modify any orders issued under this paragraph to direct a retirement date that is the same as the United States Nuclear Regulatory Commission license expiration date.

2. Questions for Parties

This ruling invites parties to provide comments on the following questions of statutory interpretation and policy. Comments structured as opening testimony may be served by June 7, 2023; reply comments structured as rebuttal testimony may be served by June 30, 2023. Comments should be complete and

be as specific and precise as possible. Legal arguments should be supported with citations.

1. Questions related to Pub. Util. Code Section 712.8(c)(2)(B):
 - a. How should “too high to justify” be defined and evaluated in the context of this section?
 - b. The DCISC’s most recent Fact Finding Reports (*See* Attachments A-C to this ruling) do not recommend any upgrades or additional actions to address seismic safety or issues of deferred maintenance. Do parties have any comments on these Fact Finding Reports or recommendations as they relate to the Commission’s obligations under Pub. Util. Code Section 712.8(c)(2)(B)?
 - c. Generally speaking, what are the types of activities the U.S. Nuclear Regulatory Commission (NRC) might include as potential conditions of license renewal? Please include examples and citations where relevant.
 - d. What are the potential upgrades, and associated costs or cost ranges, that might be needed to address deferred maintenance and NRC’s potential conditions license renewal at Diablo Canyon? In considering this question, parties may refer to Pacific Gas and Electric Company’s (PG&E’s) May 19, 2023 testimony,² as well as other relevant sources of information. Please provide citations where relevant.
 - e. Considering the answers above, please comment on whether the costs associated with potential upgrades necessary to address seismic safety, issues of deferred maintenance, or NRC conditions of license renewal at Diablo Canyon are “too high to justify.”
2. Questions related to Pub. Util. Code Section 712.8(c)(2)(D):
 - a. How should the Commission define the following terms: “new renewable energy” and new “zero-carbon resources,” “adequate to substitute for the Diablo

² See April 6, 2023, Assigned Commissioner’s Scoping Memo and Ruling (Scoping Memo) at 13.

Canyon powerplant,” and the “state’s planning standards for energy reliability”? As a starting point, parties may comment on whether the Commission should adopt the following potential definitions of those terms:

- i. New [resources]: for the purposes of this use case, new resources are those that are incremental to the [baseline resources](#) used in Commission Decision (D.) 19-11-016.
- ii. New renewable energy: new renewable energy refers to resources that are incremental to the D.19-11-016 baseline and are compliant with the state’s Renewable Portfolios Standard (RPS) program, per Public Resource Code Section 25741.
- iii. New zero-carbon resources: new zero-carbon resources are resources that are incremental to the D.19-11-016 baseline with zero on-site emissions, unless otherwise permissible for compliance with the RPS program.
- iv. State’s planning standards for energy reliability:
 - On a system-level, refers to the industry standard of planning electric system reliability. This is typically done based on loss-of-load expectation (LOLE) modeling analysis, using probabilistic tools such as the Commission’s Energy Resource Modeling section’s Strategic Energy and Risk Valuation Model (SERVM),³ to determine system reliability. The accepted standard used in such analysis is 0.1 LOLE, which translates to a probability of one loss of load event every ten years. This can then be used to inform

³ SERVM is a probabilistic system reliability planning and production cost model used to simulate hourly economic unit commitment including reserves and dispatch for individual generating units over all 8,760 hours of the study year. (See the January 20, 2023 Administrative Law Judge’s Ruling on Energy Division’s Phase 3 Proposals issued in R.21-10-002, Appendix B at 10-11.)

development of a planning reserve margin for use in planning and procurement exercises. There are multiple ways of evaluating system reliability. While some analyses may be tied directly to the 0.1 LOLE reliability standard, others may assess supply conditions against related elements such as average and extreme conditions to determine if a shortfall event could occur under those conditions.

- On an individual resource-level, individual resources are counted using the reliability standards and rules established in the Commission's Integrated Resource Plan and Resource Adequacy proceedings. These rules sometimes overlap, and sometimes differ as resources are counted over a longer-term planning horizon.
- b. Is the baseline used in D.19-11-016 the correct starting point to consider new resources? If not, which baseline should the Commission consider when quantifying new resource additions (for example, should the Commission consider the baseline used in D.21-06-035?)
- c. What conclusions might the Commission draw from the CEC's March 2023 report (Attachment D), and the joint report of the CEC and Commission staff from February 2023 (Attachment E) to satisfy its obligations under Pub. Util. Code Section 712.8(c)(2)(D)? Specifically, does either report allow the Commission to conclude that new renewable energy and zero-carbon resources are adequate to substitute for the Diablo Canyon powerplant, meet the state's planning standards for energy reliability, and will be constructed and interconnected by the time of its decision? If so, how? If not, why?
- d. Notwithstanding the reports included as Attachment D and Attachment E, will new renewable energy and zero-carbon resources adequate to substitute for the

Diablo Canyon powerplant, and that meet the state's planning standards for energy reliability, be constructed and interconnected by the end of 2023? Factual statements must be supported by evidence.⁴

3. Sections 712.8(c)(2)(B) through (D) specify that, if the Commission establishes earlier retirement dates, then sufficient time should be provided for orderly shutdown and recovery of any outstanding uncollected costs and fees.
 - a. What is the length of time needed to support an orderly shutdown of Diablo Canyon and recovery of any outstanding and uncollected costs and fees? Please identify each action that is required, being as specific as possible, and include an estimated timeframe to complete each action.
4. Additional questions:
 - a. If the Commission directs and authorizes extended operations at Diablo Canyon, should one or more processes be established to monitor the associated utility ratepayer cost from, and reliability need for, continued operations at Diablo Canyon? If so, please consider the following:
 - i. The requirement for the Commission to consider the costs of NRC's conditions of license renewal.
 - ii. Setting aside NRC's conditions of license renewal, whether any other cost and/or reliability monitoring process(es) should be established. If so, please explain why, identifying the underlying purpose and statutory basis for any recommendation.
 - iii. How should the monitoring process(es) be designed and implemented, including any triggering events/thresholds and timing considerations? Please also consider whether the proposed structure

⁴ Note: Additional information concerning the construction and interconnection of "new renewable energy and zero-carbon resources" is anticipated to be included in the Phase 1: Track 2 June Ruling (*See* Scoping Memo at 14).

would be an efficient use of party and Commission resources.

- b. Should additional guidance be provided on the use of any surplus ratepayer funds PG&E receives for Diablo Canyon in 2024, beyond what is provided in Pub. Util. Code Section 712.8(t)(1)? Why or why not?
- c. Are there any other comments concerning interpretation of the requirements in Sections 712.8(c)(2)(B) through (E)?
- d. Are there any other comments concerning the reports and recommendations included as Attachments A-E to this ruling?

3. Incorporating Reports into the Record

This ruling makes available to parties and incorporates into the record of this proceeding the following reports, included as Attachments A-E to this ruling: A.) the DCISC's *Report on Fact-Finding Meeting with DCPD on November 8, 9 and 10, 2022*; B.) the DCISC's *Report on Fact-Finding Meeting with DCPD on December 6-7, 2022*; C.) the DCISC's *Report on Fact-Finding Meeting with DCPD on January 31 and February 1, 2023*; D.) the CEC's March 2023 report, entitled *Diablo Canyon Power Plant Extension – Final Draft CEC Analysis of Need to Support Reliability*; and E.) the CEC's and the Commission's February 2023 report, entitled *Joint Agency Reliability Planning Assessment – SB 846 Quarterly Report and AB 205 Report*.

IT IS RULED that:

1. Interested parties may serve comments structured as opening testimony in response to this ruling, its attachments, and the questions included in Section 2 by no later than June 7, 2023.
2. Interested parties may serve reply comments structured as rebuttal testimony by no later than June 30, 2023.

3. The reports included as Attachments A-E to this ruling are hereby incorporated into the record of this proceeding.

Dated April 20, 2023, at San Francisco, California.

/s/ EHREN D SEYBERT

Ehren D. Seybert
Administrative Law Judge

Attachments A - E