



**FILED**

04/28/23

12:45 PM

R2301007

**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 ON PHASE 1: TRACK 1 ISSUES**

**Summary**

This ruling invites parties to submit comments regarding the Diablo Canyon Independent Safety Committee (DCISC) funding issues being considered in Phase 1: Track 1 of this proceeding. Comments in response to this ruling may be filed and served by May 22, 2023. Reply comments may be filed and served by May 31, 2023.

**1. Background**

In Decision (D.) 88-12-083, the California Public Utilities Commission (Commission) adopted a settlement agreement establishing the DCISC as an independent, three-member committee responsible for monitoring and assessing the operations of Pacific Gas and Electric Company's (PG&E) Diablo Canyon nuclear power plant (Diablo Canyon or DCP), and for suggesting any recommendations for its safe operation.<sup>1</sup> Over the past 34 years, the Commission has repeatedly affirmed the importance of the DCISC's safety oversight role,

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<sup>1</sup> D.88-12-083, Appendix C, Attachment A, Section I.1.

while approving updated procedures and annual funding levels.<sup>2</sup> Funding for the DCISC's operations is provided through PG&E's cost-of-service rates, with the current formula set by D.97-05-088 at the 1996 funding level plus a 1.5 percent increase each year.<sup>3</sup> Pursuant to recently approved changes to the DCISC's charter, any unspent and uncommitted funding from the prior year is to be credited to PG&E's ratepayers.<sup>4</sup>

Senate Bill (SB) 846, signed into law by Governor Newsom on September 2, 2022, establishes and continues the DCISC, and requires the DCISC to undertake certain tasks concerning possible extended operations at Diablo Canyon in addition to the existing duties and responsibilities set forth in prior Commission decisions. SB 846 also requires the Commission to "ensure the funding of the Independent Safety Committee for Diablo Canyon to attract qualified experts during the period of extended operations of the Diablo Canyon powerplant."<sup>5</sup>

The Commission, in Resolution (Res.) E-3152, determined that the DCISC's member compensation is to be set at levels commensurate with fees paid by PG&E for comparable services, and directed PG&E to file a report and advice letter on April 1st of each year to update the DCISC's member compensation levels.<sup>6</sup> The DCISC's member compensation was most recently approved through Energy Division's disposition of PG&E's Advice Letter (AL) 6586-E on May 9, 2022.

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<sup>2</sup> See, generally, D.90-04-008, D.91-10-020, D.97-05-088, D.04-05-055, and D.21-09-003.

<sup>3</sup> D.97-05-088 at 64.

<sup>4</sup> See Energy Division's disposition of PG&E's AL 6361-E on December 9, 2021.

<sup>5</sup> Public Utilities Code Section 712.1(d).

<sup>6</sup> Res. E-3152 Findings 2 and 7.

For the year 2023, the funds made available to meet the DCISC's costs of operations total approximately \$1,006,115, while an estimated \$86,000 will remain unspent from the DCISC's funding allocation for the year 2022.<sup>7</sup> Based on the current 2023 budget, as well as the additional responsibilities set forth in SB 846 (which were not considered in D.97-05-088), the DCISC indicates it may experience a funding shortfall during the third quarter of 2023.<sup>8</sup>

## **2. Questions for Parties**

This ruling invites parties to provide comments on the following topics and questions concerning funding for the DCISC. Comments in response to this ruling may be filed and served by May 22, 2023. Reply comments may be filed and served by May 31, 2023.

1. DCISC Member Compensation: Are changes needed to the annual advice letter process currently used to review and update the DCISC member compensation levels? If so, please explain why the existing review process is insufficient and how it should be modified.
2. DCISC's 2023-2024 Budget:
  - a. During the prehearing conference (PHC) held on March 17, 2023, PG&E agreed it would be fair to characterize the DCISC's costs in excess of PG&E's general rate case (GRC) forecast for 2023 and 2024 as costs associated with transition-related activities (*i.e.*, activities in connection with transitioning Diablo Canyon from existing operations into extended operations, or the period of time beyond the current federal license periods).<sup>9</sup> Does any party disagree that the additional costs the DCISC expects to incur in 2023 and 2024 are associated with activities in connection

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<sup>7</sup> DCISC Opening Comments at 4.

<sup>8</sup> March 13, 2023 Joint Prehearing Conference Statement at 9-10.

<sup>9</sup> PHC Reporters' Transcript at 16:15-17:13.

with transitioning Diablo Canyon from existing operations into extended operations? If so, why?

- b. During the PHC, the assigned Administrative Law Judge also discussed using the DCISC's remaining 2022 balance, as well as using the Diablo Canyon Transition and Relicensing Memorandum Account (DCTRMA), as potential options to address any DCISC funding shortfalls in 2023 and 2024.<sup>10</sup> Does any party disagree that the remaining 2022 balance and/or the DCTRMA should be considered as potential options for supplementing the DCISC's 2023 budget? Are there any other supplemental funding options, or broader changes to the DCISC's authorized budget, that should be considered for the 2023 and 2024 periods?
- c. If one or more additional funding options are approved (*i.e.*, funding in addition to PG&E's GRC forecast for 2023 and 2024), how should the additional funding amounts be estimated, and what should the process be for requesting and/or providing the additional funding amounts, as well as returning any unused funds?
  - i. For example, if the DCTRMA were used to cover any of the DCISC's operational costs above PG&E's GRC forecast for 2023, would it be sufficient for the DCISC to send an invoice to PG&E with an estimate of any funding shortfall through the end of 2023, with the invoice submitted at least three months in advance of when the additional funding may be needed? Would it be reasonable for the DCISC to return any unused funding from the DCTRMA during the first quarter of 2025?
- d. Are any changes needed to the DCISC's accounting books or records to be able to track the additional funding in question 2.c above?

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<sup>10</sup> *Id.* at 17:15-20:13.

3. DCISC's Budget During Extended Operations:

- a. If extended operations at Diablo Canyon (*i.e.*, operations beyond the current federal license periods) were approved, how should the DCISC's operations be funded during this period? Specifically, please consider whether PG&E ratepayers should continue to bear some or all of the cost of the DCISC's extended operations, or whether costs should be assigned to customers of other load serving entities (LSE). Please also consider the recent extension of the DCISC's safety oversight role until all spent fuel at Diablo Canyon has been moved from wet storage to dry storage.<sup>11</sup>
- b. Based on the answer to question 3.a above, please propose how the DCISC's operations should be funded, describing in detail the processes and methodologies to be used. For any costs that are proposed to be recovered from customers of all LSEs, could the DCP Extended Operations Balancing Account<sup>12</sup> be used?
- c. How should the DCISC annual budget amount be determined during the period of extended operations? Please consider both the existing funding formula (*i.e.*, the 1996 funding level approved in D.97-05-088, plus a 1.5 percent increase each year) in addition to the responsibilities set forth in SB 846.
- d. If amendments are needed to the DCISC's Charter to address the DCISC's budget during extended operations, should these amendments be considered through an AL filing following the Phase 1: Track 1 decision, or be deferred to a later time or different process (for example, through an AL filing following the Commission's Phase 1: Track 2 decision, or through a future phase of this proceeding or another proceeding).

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<sup>11</sup> See D.21-09-003 at 31 and 37-38.

<sup>12</sup> See D.22-12-005 at 11-19.

4. Additional Comments: Are there any other issues the Commission should consider regarding the funding of the DCISC's operations as it relates to the implementation of SB 846?

**IT IS RULED** that:

1. Interested parties may file and serve opening comments on the questions in this ruling by no later than May 22, 2023.
2. Interested parties may file and serve reply comments by no later than May 31, 2023.

Dated April 28, 2023, at San Francisco, California.

/s/ EHREN D. SEYBERT  
Ehren D. Seybert  
Administrative Law Judge