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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

**E-MAIL RULING GRANTING, IN PART, AND DENYING, IN PART,
SAN LUIS OBISPO MOTHERS FOR PEACE'S MOTION TO COMPEL**

Dated June 26, 2023, at San Francisco, California.

/s/ EHREN D. SEYBERT

Ehren D. Seybert
Administrative Law Judge

From: Seybert, Ehren <ehren.seybert@cpuc.ca.gov>

Sent: Monday, June 26, 2023 10:16 AM

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Subject: SB 846 OIR, R.23-01-007: E-Mail Ruling Granting, In Part, and Denying, In Part, San Luis Obispo Mothers for Peace's Motion to Compel

On June 16, 2023, San Luis Obispo Mothers for Peace (SLOMFP) filed a motion to compel further responses and production from Pacific Gas & Electric Company (Motion). In its Motion, SLOMFP also requests permission to file a reply to responses, and to shorten the time for filing response and reply papers. Lastly, in the event the Motion is granted, SLOMFP requests it be permitted to serve any supplemental testimony on or before July 14, 2023.

Later that same day, the assigned Administrative Law Judge (ALJ) issued an e-mail ruling granting SLOMFP's request to file a reply to responses, and setting a deadline of June 22, 2023 for responses to the Motion, and a deadline of June 23, 2023 for SLOMFP's reply to responses.

In accordance with the ALJ's e-mail ruling, Pacific Gas and Electric Company (PG&E) filed a response to the Motion on June 22, 2023. SLOMFP filed a reply to the response on June 23, 2023.

Questions 1-7 and 27-28

Questions 1-7 and 27-28 pertain to nuclear safety. Specifically, Questions 1-5 request documents and responses with respect to embrittlement. Question 6 requests communications regarding Diablo Canyon Nuclear Power Plant's (Diablo Canyon's) compliance with Upper Shelf Specifications. Question 7 asks for PG&E's submissions and applications to the United States Nuclear Regulatory Commission (NRC) for license renewal, from January 2001 to present. Question 27 concerns studies conducted by PG&E on the environmental impact of ongoing operations of Diablo Canyon. Question 28 concerns documents and responses on the integrity of the Diablo Canyon reactor vessels.

SLOMFP asserts these questions are relevant to issues of safety and costs, as well as prudence. PG&E asserts the NRC has exclusive jurisdiction over nuclear safety, and as such information related to nuclear safety is irrelevant and inadmissible in this proceeding. Further, PG&E asserts the Diablo Canyon site is an existing facility under the California Environmental Quality Act, pursuant to Senate Bill (SB) 846 (Stats. 2022, Ch. 239), and that the NRC will review the environmental impacts of license renewable as required by the National Environmental Policy Act. In reply, SLOMFP reiterates its position that responses to Questions 1-7 are relevant to the potential costs of Diablo Canyon extended operations.

Federal law and prior Commission decisions and rulings are clear that the NRC has jurisdiction over nuclear safety, and that state action in this arena is preempted. (See 42 U.S.C Section 2021(c); Decision (D.)10-08-003 at 13; D.05-11-026 at 14-15; D.97-05-088, 1997 Cal. PUC LEXIS 453 at *84; August 31, 2004, *Administrative Law Judge's Ruling Granting and Denying Motions to Strike* in Application (A.)04-01-009). Accordingly, this proceeding will not consider regulation and enforcement of nuclear safety at Diablo Canyon. However, the Commission *is* required to consider whether NRC's conditions of license renewal involve expenditures that are "too high to justify incurring." (California Public Utilities (Pub. Util.) Code §712.8(c)(2)(B)). As indicated in the April 6, 2023 *Assigned Commissioners Scoping Memo and Ruling* in this proceeding (Scoping Memo), since it is unlikely the NRC will issue a renewed license before December 31, 2023, it is within the scope of this proceeding to consider "cost data associated with...NRC's *potential* conditions of license renewal, and any incremental operating costs resulting from these upgrades." (Scoping Memo at 8-9, emphasis added). Consideration of this cost information is not only required by SB 846, but is squarely within the Commission's purview to ensure just and reasonable rates. (Pub. Util. Code §451).

PG&E appears to suggest the evaluation of the costs associated with nuclear safety compliance amounts to second-guessing the NRC's safety-based oversight. (PG&E Response at 7). PG&E overstates its case. The purpose of allowing parties in this proceeding to question PG&E's Diablo Canyon safety-related calculations is not to second-guess the NRC, but rather to better understand the range of costs that could result from one or more potential conditions of NRC's license renewal.

For the foregoing reasons, SLOMFP's request to compel further responses to Questions 1-7 and 27-28 is granted. Question 28 subpart 3 asks PG&E to "Identify other vessels, in other plants, of similar

composition and age, and possibly in the same heat.” Since this question concerns plants outside of PG&E’s operation and control, PG&E is only required to answer this question to the extent known.

Questions 8 and 10-11

Question 8 seeks a copy of the executed loan agreement with the Department of Water Resources (DWR) pursuant to SB 846 and Assembly Bill 180. Question 10 seeks a copy of the executed \$1.4 billion loan under the United States Department of Energy (DOE) Civil Nuclear Credit (CNC) program, while Question 11 seeks a copy of any written responses made by PG&E to requests for additional information by the DOE regarding its application to the CNC program.

SLOMFP asserts these questions are relevant to the prudence and analysis under the phrase “too high to justify” in SB 846. PG&E asserts the loan agreement with the DWR will not be recovered by ratepayers, and that the broader terms and conditions of the DWR loan agreement and final executed DOE CNC agreement do not have any bearing on this proceeding. PG&E also states it is unclear whether SLOMFP is referring to the DWR loan agreement or the DOE CNC program award in Question 10, and notes an executed version of the DOE CNC grant award does not exist. Lastly, PG&E responds that the Commission previously considered and rejected similar requests for information in the Scoping Memo.

PG&E’s arguments conflict with the requirement that PG&E include, as part of its May 19, 2023 testimony, information on costs to be recovered through the loan provided by the DWR and from the DOE CNC program. As stated in the Scoping Memo, since costs that are not recovered through government funding streams may be borne by utility ratepayers, the source of funding is pertinent to the question of whether relicensing expenditures are “too high to justify.” (Scoping Memo at 9). Further, while the Scoping Memo directs PG&E to produce to parties, who execute a non-disclosure agreement, its September 2, 2022 application for certification by the DOE as an eligible bidder in the DOE CNC program, it does not consider or preclude other related requests for information. Therefore, Questions 8 and 10-11 are relevant to the scope of this proceeding.

SLOMFP never clarifies whether Question 10 is in reference to loan agreement with the DWR or the DOE CNC program award; however, since Question 8 already asks for the DWR loan agreement, and since the executed version of an agreement addressing the DOE CNC grant award does not currently exist, Question 10 appears moot. In reply, SLOMFP submits that PG&E should still be required to produce any terms and conditions of the award. It is not clear how PG&E would produce the terms and conditions of the award without a final agreement and, in any case, this is a new request relative to what is currently stated in Question 10. The request in Question 11 for PG&E responses to requests for additional information by the DOE remains relevant, even in the absence of a final executed agreement.

For all these reasons, SLOMFP’s request to compel further responses to Questions 8 and 11 is granted. SLOMFP’s request to compel further responses to Question 10 is denied.

Question 24

Question 24, as initially requested, seeks all reports, analysis, calculations, data, modeling, and studies prepared by PG&E concerning sources of generation and load from 2015 onward. SLOMFP asserts this information pertains to issues of cost, prudence, and reliability, and to “know what PG&E has considered” in deciding to expend funds for the extension of operations at Diablo Canyon. (Motion at 7). In response, PG&E states Question 24 is overly broad, unduly burdensome, and would take PG&E

months to produce the volumes of documents requested. In reply, SLOMFP amends its request in Question 24 to include only the most recent reporting for each category.

Question 24 is overly expansive and vague, covering broad categories of potential generation and load costs and quantities, as well as numerous generation and storage technologies. SLOMFP does not adequately justify why this information is pertinent to this proceeding and, even with the amendment in SLOMFP's reply, it is unlikely PG&E would be able to produce a response within the timeframe required for a final decision in this proceeding. Therefore, SLOMFP's request for responses to Question 24 is denied.

Questions 12-16 and 26

Questions 12-16 concern modeling results related to loss of load expectations; generating units and their fuel types in the summer peak and off-peak load flow models that were either redispatched or their generation backed down to accommodate the output of Diablo Canyon; information stemming from the 2012-2013 California Independent System Operator (CAISO) Transmission Plan; and information on transmission projects for the PG&E Control Area. Question 26 concerns all analysis prepared by CAISO from 2015 onward on load and reserve margins. In its reply to PG&E's response, SLOMFP withdraws these questions from its motion to compel; therefore, these questions are deemed moot.

PG&E is directed to provide responses to Questions 1-8, 11, and 27-28 in SLOMFP's Motion as they become available, with a deadline of July 3, 2023, to produce all responses. All other requests for responses in SLOMFP's Motion are denied or deemed moot.

Regarding SLOMFP's request to serve any supplemental testimony, it is concerning that SLOMFP waited until May 25, 2023, to issue its first data request. SLOMFP joined the proceeding on February 21, 2023, while the issues and schedule for this proceeding were set forth in the Scoping Memo on April 4, 2023. If SLOMFP had submitted its data request sooner there might not be a need for supplemental testimony. In considering the breadth of information requested, and in order to be fair to the other parties in this proceeding, I will permit SLOMFP to serve supplemental testimony addressing PG&E's responses to the questions approved in the ruling by or before July 10, 2023. Barring any potential delays from PG&E, extensions of this deadline will not be considered.

It is so ruled.

THE DOCKET OFFICE SHALL FORMALLY FILE THIS RULING.

Ehren D. Seybert (he/him/his)
Administrative Law Judge
California Public Utilities Commission
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