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TO PARTIES OF RECORD IN RULEMAKING 23-01-007:

This is the proposed decision of Administrative Law Judge Ehren D. Seybert. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's August 10, 2023 Business Meeting. To confirm when the item will be heard, please *see* the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ MICHELLE COOKE

Michelle Cooke

Acting Chief Administrative Law Judge

MLC:jnf

Attachment

Decision PROPOSED DECISION OF ALJ SEYBERT (Mailed 7/5/2023)

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

**DECISION ADDRESSING FUNDING FOR THE
DIABLO CANYON INDEPENDENT SAFETY COMMITTEE**

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DECISION ADDRESSING FUNDING FOR THE DIABLO CANYON INDEPENDENT SAFETY COMMITTEE

Summary

The decision increases the compensation provided to members of the Diablo Canyon Independent Safety Committee (DCISC or Committee), and makes certain updates to the annual advice letter process used to review and update DCISC member compensation. In addition, this decision directs Pacific Gas and Electric Company to track the DCISC's 2023-2024 operational costs associated with assessing the potential for extended operations at Diablo Canyon Nuclear Power Plant in the Diablo Canyon Transition and Relicensing Memorandum Account.

This proceeding remains open.

1. Background

The Diablo Canyon Nuclear Power Plant (Diablo Canyon) is located in coastal San Luis Obispo County, and consists of two reactors that have been operating since 1985 (Unit 1) and 1986 (Unit 2) with a combined generation capacity of 2,240 megawatts (MW). The plant is owned and operated by Pacific Gas and Electric Company (PG&E), and the units are currently licensed by the United States Nuclear Regulatory Commission to operate until November 2, 2024 (Unit 1) and August 26, 2025 (Unit 2).

In Decision (D.) 88-12-083, the Commission adopted a settlement agreement creating the Diablo Canyon Independent Safety Committee (DCISC or Committee) as an independent, three-member committee responsible for monitoring and assessing the operations of Diablo Canyon and for suggesting recommendations for its safe operation.¹ Over the past 34 years, the Commission

¹ D.88-12-083, App. C, Att. A, Section I.1.

has repeatedly affirmed the importance of the DCISC's safety oversight role while approving updated procedures and annual funding levels.²

On September 2, 2022, Governor Newsom signed Senate Bill (SB) 846 (Stats. 2022, Ch. 239), which allows for the extension of the operation of Diablo Canyon beyond the current retirement dates, for up to five additional years, under specific conditions as provided. SB 846 also charges the DCISC with undertaking certain tasks concerning possible extended operations at Diablo Canyon, in addition to the existing duties and responsibilities set forth in prior Commission decisions. Lastly, SB 846 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."³

1.1. Procedural Background

In D.22-12-005, the Commission executed the following tasks in accordance with SB 846: (1) ordering PG&E to take any actions that would be necessary to preserve the option of extended operations at Diablo Canyon, (2) establishing cost-tracking mechanisms for actions associated with continued and extended operations of Diablo Canyon, and (3) invalidating Ordering Paragraphs 1 and 14 of D.18-01-022.

On January 20, 2023, the Commission issued the instant Order Instituting Rulemaking (OIR) to continue to execute tasks and consider specific criteria related to the potential extension of operations at Diablo Canyon. Opening

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

³ Public Utilities (Pub. Util.) Code Section 712.1(d). All section references are to the California Pub. Util. Code, unless otherwise specified.

comments on the OIR were filed on February 15, 17, and 21, 2023. Reply comments were filed on March 6 and 7, 2023.

On March 13, 2023, PG&E filed a Joint Prehearing Conference Statement on behalf of itself and the Alliance for Nuclear Responsibility (A4NR); Alliance for Retail Energy Markets (AREM); California Community Choice Association (CalCCA); California Energy Storage Alliance (CESA); Californians for Green Nuclear Power (CGNP); CALifornians for Renewable Energy (CARE); Coalition of California Utility Employees (CUE); County of San Luis Obispo (SLO County); the Public Advocates Office at the California Public Utilities Commission (Cal Advocates); DCISC; Direct Access Customer Coalition (DACC); Green Power Institute (GPI); Northern Chumash Tribal Council (NCTC); San Luis Obispo Mothers for Peace (SLOMFP); The Utility Reform Network (TURN); Women's Energy Matters (WEM); and the Small Business Utility Advocates (SBUA).

On March 15, 2023, the assigned Administrative Law Judge (ALJ) issued a ruling denying the DCISC party status in the proceeding.

A prehearing conference was held on March 17, 2023, to address the scope of issues, categorization, schedule of the proceeding, and other procedural matters.

On April 6, 2023, the assigned Commissioner issued a Scoping Memo and Ruling (Scoping Memo) dividing the first phase of the proceeding into two tracks: Track 1, which is the subject of this decision, is narrowly scoped to consider DCISC funding issues in accordance with Section 712.1(d). Track 2 will consider whether operations at Diablo Canyon should be extended, the development of extended operations cost recovery mechanisms and processes,

and whether and how to allocate the associated benefits of extended operations, among other issues.⁴

On April 28, 2023, the assigned ALJ issued a ruling requesting party comment on the DCISC funding issues being considered in Phase 1: Track 1 of this proceeding (Phase 1: Track 1 Ruling). Opening comments (OC) and reply comments (RC) on the Phase 1: Track 1 Ruling were filed by PG&E, A4NR, WEM, and SBUA on May 22, 2023 and May 31, 2023, respectively.

1.2. Submission Date

This matter was submitted on May 31, 2023, upon the filing of reply comments.

2. Issues Before the Commission

As set forth in the Scoping Memo, this decision considers whether the DCISC has sufficient funding to implement the duties and responsibilities set forth in Section 712.1, and whether any additional actions are needed by the Commission to address any funding shortfalls and potential changes to the cost recovery process for the DCISC's operations.

3. DCISC Member Compensation

The Commission, in Resolution E-3152, determined that compensation for DCISC members is "to be set at levels commensurate with fees paid by PG&E for comparable services," and directed PG&E to file an advice letter and report on April 1 of each year to provide a report on the commensurate fees PG&E pays for comparable services along with any updates to the DCISC member compensation levels.⁵ Committee member compensation levels have been revised three times since the DCISC's creation: Commission Resolution E-3608

⁴ The Track 2 decision(s) are scheduled to be considered in Q4 2023. (See Scoping Memo at 15.)

⁵ Resolution E-3152, Findings Nos. 2 and 7.

revised the DCISC member compensation by replacing the meeting appearance flat fee of \$500 with an hourly fee. PG&E Advice Letter 3677-E-A, approved by the Commission's Energy Division with an effective date of April 1, 2011, revised the annual retainer, hourly meeting fee, and the hourly fee for work performed outside of Committee meetings in excess of 40 hours per year. Lastly, PG&E Advice letter 5797-E-A, approved by the Commission's Energy Division with an effective date of May 8, 2020, increased the hourly fee from \$250 per hour to \$260 per hour, with an associated increase to the annual retainer from \$10,000 to \$10,400.⁶

The DCISC's member compensation was most recently approved at the existing 2020 DCISC compensation levels, as follows:⁷

- An annual retainer of \$10,400;
- An hourly fee of \$260 for attendance at Committee meetings;
- An hourly fee of \$260 for Committee work performed outside of Committee meetings in excess of 40 hours per year; and
- Reimbursement of expenses incurred in performance of Committee work.

3.1. Party Comments

Given the high professional stature and significant public responsibilities of DCISC members, A4NR asserts the current level of member compensation is unlikely to accomplish the Commission's objective in Resolution E-3152 (*i.e.*, that

⁶ See PG&E Advice Letter 6926-E at 1-2, available at: https://www.pge.com/tariffs/assets/pdf/adviceletter/ELEC_6926-E.pdf (last accessed June 6, 2023). Advice Letter 6926-E was approved by the Commission's Energy Division on May 30, 2023, with an effective date of April 26, 2023.

⁷ *Ibid.*

“DCISC member compensation be set at levels commensurate with fees paid by PG&E for comparable services”) and may be inconsistent with the requirements of Section 712.1(d). Based on this assertion, A4NR recommends DCISC member compensation be based on the “Level V High” hourly rate used by the Commission’s intervenor compensation program for nuclear engineering experts, along with any future cost of living adjustments adopted by the Commission, which would increase the current hourly rate from \$260 to \$315.⁸ WEM supports A4NR’s proposed increase.⁹ PG&E continues to support the current rates as reasonable, but does not oppose an increase in member compensation if the Commission deems it appropriate.¹⁰ SBUA believes the current level of DCISC member compensation is sufficient to attract qualified experts, but supports additional, ongoing evaluation.¹¹

Concerning the review process for DCISC member compensation, SBUA asserts the current annual advice letter process would be improved by having a third-party (rather than PG&E) recommend the appropriate compensation levels, and recommends the review take place through a Tier 3 advice letter filing or a new proceeding. In addition, SBUA notes the DCISC’s expenses, including hours worked, do not appear to be monitored, reported, or audited. To help inform appropriate compensation levels going forward, SBUA recommends the Commission require the DCISC to submit an annual account of hours worked and expenses claimed for review and stakeholder feedback.¹² PG&E continues to

⁸ A4NR OC at 1-2.

⁹ WEM RC at 1.

¹⁰ PG&E RC at 1-2.

¹¹ SBUA OC at 3-4.

¹² *Id.* at 4-5; *also*, SBUA RC at 1-2.

support the current annual advice letter review process, while WEM does not oppose the current process.¹³

3.2. Discussion

As noted above, compensation to DCISC members is currently based on levels commensurate with fees paid by PG&E for comparable services. In reaching this determination, the Commission found the DCISC's functions "are similar in part to those performed by the persons who oversee PG&E's Nuclear Decommissioning Trust Funds, and in part to those performed by skilled technical consultants."¹⁴ In its most recent evaluation of DCISC member compensation, PG&E reports outside member compensation for the Nuclear Facilities Decommissioning Master Trust Committee includes a \$12,000 annual retainer plus \$500 per meeting fee, with a historic average of two meetings held per year. Compensation for consultants to the Nuclear Safety Oversight Committee (NSOC) ranges from \$250 - \$300 per hour.¹⁵

Beyond highlighting the high professional stature and public responsibilities of DCISC members, A4NR does not provide any evidence to support its assertion that current DCISC compensation levels are inadequate or explain why the 'Level V High' nuclear engineering expert category better reflects the range of duties and functions the DCISC performs, as compared to the current benchmarking methodology. A4NR's proposed increase is also at odds with the fact that the current DCISC members have extensive knowledge,

¹³ PG&E OC at 1; WEM OC at 1.

¹⁴ Resolution E-3152 at 3.

¹⁵ See PG&E Advice Letter 6926-E, Attachment 1.

experience, and history in the field of nuclear power facilities and nuclear safety issues, and all three members have sought reappointment multiple times.¹⁶

Nevertheless, in recognition of the increased workload stemming from SB 846,¹⁷ and based on our review of compensation to the Nuclear Facilities Decommissioning Master Trust Committee and NSOC, we find some modest increase in DCISC member compensation is warranted. We adopt a new DCISC member hourly fee of \$270 for attendance at Committee meetings and work performed outside of Committee meetings in excess of 40 hours per year, along with an associated annual retainer of \$10,800. This adopted increase is still well within the range of compensation PG&E pays for comparable services.

Similarly, SBUA does not provide a convincing argument in support of its recommendation to have a third-party update DCISC member compensation through a Tier 3 advice letter or new proceeding. While PG&E currently conducts the initial review of DCISC member compensation, the review itself is based on the current fees PG&E pays to outside nuclear energy consultants, as well as updated fees approved in the Nuclear Decommissioning Cost Triennial Proceeding.¹⁸ Further, the underlying cost comparisons used in PG&E's evaluation are made available for stakeholder review and protest through PG&E's annual advice letter filing. As noted above, DCISC member compensation levels have been updated three times in the last thirty years; requiring one or more Commission resolutions or a new proceeding would involve a significant increase in Commission and party resources to address an issue that has historically been uncontested.

¹⁶ See Commission Resolution E-5213; *also*, A4NR OC at Exhibit B.

¹⁷ DCISC's February 17, 2023 comments on the OIR at 4-7.

¹⁸ See D.07-01-003; *also*, PG&E Advice Letter 6926-E, Attachment 1.

However, in order to promote additional transparency and stakeholder feedback within the annual review process, we adopt the following changes: first, PG&E's annual DCISC member compensation advice letter must be submitted as a Tier 2, rather than a Tier 1, filing. Second, prior to submitting its annual DCISC compensation advice letter, PG&E shall provide the DCISC an opportunity to comment on PG&E's proposed member compensation levels, and PG&E shall include a summary of any feedback provided by the DCISC as part of its advice letter filing.

In addition, we clarify that the DCISC financial records are already subject to inspection and audit by PG&E and the Commission,¹⁹ and are available to the public upon request.²⁰ Interested stakeholders may request this information directly from the DCISC.

4. DCISC's 2023-2024 Budget

The DCISC's annual budget covers all of the DCISC's operational costs, including member compensation, travel expenses, contracting fees, staff salaries, and audit expenses.²¹ Funding for the DCISC's budget is provided through PG&E's cost-of-service rates, established through PG&E's General Rate Case (GRC), with the current formula set by D.97-05-088 at the 1996 funding level (*i.e.*, \$673,077) plus a 1.5% increase each year.²² Pursuant to recently approved changes to the DCISC's charter, any unspent and uncommitted funding from the prior year is to be credited back to PG&E's ratepayers.²³

¹⁹ Resolution E-3152 Finding 5.

²⁰ As required by the California Public Records Act, Government Code Section 7920 *et seq.*

²¹ Resolution E-3152 at 4.

²² D.04-05-055 at 99-100; *also*, SBUA OC at 2-3.

²³ DCISC's February 17, 2023 opening comments at 4.

For 2023, the funds made available to meet the DCISC's cost of operations total approximately \$1,006,115, while an estimated \$86,000 will remain unspent from the DCISC's funding allocation for the year 2022.²⁴ Based on the additional responsibilities set forth in SB 846, which were not considered at the time the Commission adopted the current funding formula, the DCISC indicates it may experience a funding shortfall sometime during the third quarter of 2023.²⁵

4.1. Party Comments

Parties agree it is fair to characterize any DCISC costs in excess of PG&E's 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, as defined by the current federal license periods, into extended operations).²⁶

To address the anticipated 2023-2024 funding shortfall, PG&E and A4NR recommend using the DCISC's remaining 2022 balance (\$86,000) as well as recording excess costs in the Diablo Canyon Transition and Relicensing Memorandum Account (DCTRMA).²⁷ WEM asserts any work the DCISC performs related to assessing safety considerations in advance of extended operations should be tracked in the DCTRMA and funded solely through government funding streams.²⁸ Similarly, SBUA recommends prioritizing the use of government funding streams, in the following order: any federal funding

²⁴ *Ibid.*

²⁵ March 13, 2023 Joint Prehearing Conference Statement at 9-10.

²⁶ A4NR OC at 2; PG&E OC at 1-2; SBUA OC at 5; WEM OC at 1.

²⁷ Prehearing Conference Reporters' Transcript at 16:15-20:9; PG&E OC at 2; A4NR OC at 2.

²⁸ WEM OC at 1.

through the Department of Energy's Civil Nuclear Credit Program;²⁹ government funding provided by Assembly Bill 180;³⁰ the loan provided for under SB 846;³¹ PG&E ratepayer funding; and ratepayer funding from all load-serving entities (LSEs).³²

PG&E and A4NR support the proposed funding process, outlined in the Phase 1: Track 1 Ruling, whereby the DCISC would send an invoice to PG&E with an estimate of any funding shortfall through the end of 2023 (and 2024), with the invoice submitted at least three months in advance of when additional funding may be needed. Any unused funds from the DCTRMA would be returned to PG&E during the first quarter of 2025.³³

Regarding the tracking of costs, PG&E states it is not aware of whether any changes would be needed to the DCISC's accounting books or records to be able to track the additional 2023-2024 funding.³⁴ WEM asserts the DCISC should estimate and track all work on transition-related activities, so that it can be recorded in the DCTRMA and funded through government funding streams.

²⁹ The Infrastructure Investment and Jobs Act, signed November 15, 2021, appropriates \$6 billion dollars for fiscal years 2022 - 2026 to establish the Civil Nuclear Credit Program for the purpose of preventing closures of nuclear power plants. PG&E submitted its application under the Civil Nuclear Credit program on September 2, 2022. (See D.22-12-005, footnote 17.)

³⁰ Assembly Bill 180 authorizes up to \$75 million to retain future availability of electric generating facilities that are pending retirement. (See Stats. 2022, ch. 44, Section 23, Provision 3(e).)

³¹ SB 846 makes available up to \$1.4 billion to extend operations of Diablo Canyon, subject to certain conditions being met. (See Public Resources Code Section 25548.3.)

³² SBUA OC at 7-10.

³³ PG&E OC at 2; A4NR OC at 3.

³⁴ PG&E OC at 2; WEM OC at 1.

4.2. Discussion

Since there is general agreement that the additional costs the DCISC expects to incur in 2023-2024 are associated with transition-related activities, and since the Commission in D.22-12-005 established the DCTRMA to track transition-related and relicensing costs at Diablo Canyon so that these costs could be recovered through government funding streams, as opposed to being recovered from utility ratepayers, it is reasonable to record all of the DCISC's 2023-2024 work related to the potential extension of operations to the DCTRMA. To clarify, this includes all of the DCISC's work related to the potential extension of operations at Diablo Canyon and any associated funding shortfall, on a going forward basis through November 2024,³⁵ and not just the additional costs in excess of PG&E's GRC forecast for 2023 and 2024. To this end, the DCISC is instructed to estimate and record all future costs associated with assessing the potential for extended operations at Diablo Canyon, and PG&E is directed to record these costs in the DCTRMA. PG&E shall hold a meeting with the DCISC, in coordination with Energy Division staff, as soon as practicable to ensure the transition-related costs are being recorded in sufficient detail.

SBUA appears to misunderstand the design and purpose of the DCTRMA. As explained above, the costs recorded in this account are intended to be recovered through government funding streams, and not PG&E ratepayers, as asserted by SBUA.³⁶ While we believe the DCISC's work related to the potential extension of operations at Diablo Canyon is consistent with "other expenses associated with the extension of the operating periods and current expiration

³⁵ Based on the current federal license period for Diablo Canyon Unit 1.

³⁶ SBUA OC at 7-8.

dates” under the SB 846 loan agreement,³⁷ as noted in D.22-12-005, review of the recorded costs in this account will occur outside of formal Commission processes.³⁸

For 2023, the DCISC shall send an invoice to PG&E as soon as practicable with an estimate of the costs associated with assessing the potential for extended operations at Diablo Canyon through the end of 2023, including any anticipated funding shortfall for the year. The DCISC shall send a similar invoice to PG&E at the beginning of 2024 with an estimate of the DCISC’s transition-related activities through 2024. All of these costs will be tracked and recorded in the DCTRMA, with any unspent and uncommitted funds to be returned to PG&E during the first quarter of 2025. Any costs attributable to normal DCISC business as usual operations, or that are not otherwise eligible for recovery in the DCTRMA, shall continue to be provided through PG&E’s cost-of-service rates, with unspent and uncommitted funds returned to PG&E and applied as a credit to its cost-of-service rates.

5. DCISC’s Budget During Extended Operations

A separate decision in this proceeding will address the potential extension of operations at Diablo Canyon (*i.e.*, operations past the current federal license periods, which end on November 2, 2024 (Unit 1) and August 26, 2025 (Unit 2)).³⁹ In advance of this decision, the Phase 1: Track 1 Ruling asked parties how the DCISC should be funded, and whether any changes would be needed to the DCISC’s current funding formula in the event operations at Diablo Canyon were extended. In addition, the Phase 1: Track 1 Ruling asked whether any immediate

³⁷ Public Resources Code Section 25548.3(c)(3).

³⁸ D.22-12-005 at 16-17.

³⁹ PG&E February 21, 2023 opening comments on the OIR at 12.

changes are needed to the DCISC's charter to support work during extended operations.

5.1. Party Comment

With the exception of post-shutdown costs and costs precluded under Section 712.8(f)(1),⁴⁰ parties generally agree the financial responsibility for DCISC costs during extended operations should be allocated to customers of all Commission-jurisdictional LSEs.⁴¹ PG&E indicates it is still developing the cost recovery methodology for annual recovery of the costs to operate Diablo Canyon during the period of extended operations (to be considered in Track 2 of this proceeding), but intends to include the forecast costs for the DCISC in that cost recovery proposal and to recover DCISC costs as costs of operations through the Diablo Canyon Extended Operations Balancing Account (DCEOBA).⁴² WEM agrees the DCEOBA should be used to track costs during extended operations.⁴³ SBUA supports prioritizing cost recovery through government funding streams, in addition to other Commission-authorized cost tracking accounts.⁴⁴

Concerning the DCISC's budget during extended operations, PG&E supports use of the existing funding methodology, noting the "responsibilities

⁴⁰ Section 12.8(f)(1) states, in part, that "[t]he reasonable costs incurred to prepare for the retirement of Diablo Canyon Power Plant Units 1 and 2 shall be recovered on a fully nonbypassable basis from customers of all load-serving entities subject to the commission's jurisdiction in the operator's service territory, as determined by the commission, except that the reasonable additional costs associated with decommissioning planning resulting from the license renewal applications or license renewals shall be recovered on a fully nonbypassable basis from customers of all load-serving entities subject to the commission's jurisdiction in the state."

⁴¹ PG&E OC at 2; WEM OC at 2-3; A4NR RC at 1-2; SBUA RC at 2.

⁴² PG&E OC at 2.

⁴³ WEM OC at 3.

⁴⁴ SBUA OC at 10-12.

set forth in Senate Bill 846 are aligned with the comparable services used for evaluating compensation.”⁴⁵ Aside from the costs for additional studies during the 2023-2024 timeframe, SBUA also believes current funding amounts to be adequate.⁴⁶ A4NR does not provide a specific recommendation for how the DCISC’s annual budget amount should be determined during the period of extended operations, but points to the declining number of DCISC recommendations in recent years, prior unspent budgeted amounts, and the enactment of Section 712.1(d) as indicators that more is expected of the DCISC.⁴⁷

5.2. Discussion

To the extent the Commission approves extended operations at Diablo Canyon, and noting the exceptions above, we agree with parties that the financial responsibility for DCISC costs during extended operations should be allocated to customers of all jurisdictional LSEs. This conclusion is consistent with the requirement in SB 846 to allocate financial responsibility for extended operations at Diablo Canyon to all Commission-jurisdictional LSEs.⁴⁸

Since cost recovery during potential extended operations at Diablo Canyon will be considered as part of Track 2 in this proceeding, and since the Commission has yet to determine whether extended operations will be approved, we find it is premature to consider how the DCISC should be funded during extended operations. This issue will be taken up as part of the Phase 1:

⁴⁵ PG&E OC at 3.

⁴⁶ SBUA OC at 13-15.

⁴⁷ A4NR OC at 4-7.

⁴⁸ In lieu of traditional rate-based return on investment, SB 846 authorizes PG&E to recover in rates a volumetric payment equal to \$6.50 (2022 dollars) for each megawatt-hour generated by Diablo Canyon during the period of extended operations, to be borne by customers of all Commission-jurisdictional LSEs. An additional \$6.50 (2022 dollars) volumetric payment fee is to be borne only by customers in PG&E’s service territory. (See Section 712.8(f)(5).)

Track 2 decision(s) in 2023, or will be further considered as part of Phase 2 of the proceeding.

Concerning the DCISC's budget amount during extended operations, we have limited record in this proceeding to be able to determine whether further adjustments may be needed to the current funding methodology. Generally, we would expect the DCISC's operational costs to decline back toward GRC-funded levels in 2024, following the DCISC's evaluation of seismic or other safety upgrades that may be associated with the potential for extended operations at Diablo Canyon. Further, and as noted by A4NR, the DCISC has consistently operated well below its authorized budget in prior years, with refunds totaling approximately one-fifth of the amounts made available to the DCISC in the 2017 - 2022 period.⁴⁹ However, since SB 846 includes some additional ongoing responsibilities, any estimate of the DCISC's budget during extended operations would benefit from further record development. As such, additional information concerning DCISC's forecast costs and associated activities during Diablo Canyon extended operations may be presented and considered in Phase 2 of this proceeding.

6. Amendments to the DCISC Charter

As part of the Phase 1: Track 1 Ruling, parties were asked whether amendments are needed to the DCISC's charter to address the DCISC's budget during extended operations and, if so, the timing for implementing such amendments.⁵⁰

⁴⁹ A4NR OC at 6.

⁵⁰ Phase 1: Track 1 Ruling at 5.

6.1. Party Positions

Party responses to this question are varied. PG&E states it is not aware of any changes required to the DCISC's existing charter.⁵¹ Citing the DCISC's new responsibilities and potential updates to the DCISC's funding process, as well as the need for further stakeholder review, WEM and SBUA recommend any changes to the DCISC's charter be considered in a separate track or Phase 2 of this rulemaking.⁵² A4NR supports changes to the DCISC's charter through an advice letter filing following this decision. While A4NR recognizes there is more urgency with respect to the DCISC's 2023-2024 budget, it is unclear to A4NR what considerations would justify delayed implementation of changes to the charter that might be needed to support extended operations.⁵³

6.2. Discussion

As discussed above, we largely defer questions concerning funding for the DCISC during extended operations. Amending the DCISC's charter to reflect changes in funding amounts and sources during Diablo Canyon extended operations, prior to the Commission's final decision on whether extended operations should be approved, would result in unnecessary complexity and potential confusion.

However, the DCISC's charter should be amended to reflect the changes adopted in Section 2 (DCISC Member Compensation) and Section 3 (DCISC's 2023-2024 Budget). These limited amendments constitute ministerial changes that are appropriate for advice letter review and disposition. Therefore, PG&E

⁵¹ PG&E OC at 3.

⁵² WEM OC at 3-4; SBUA OC at 15.

⁵³ A4NR OC at 7.

shall file a Tier 2 advice letter within 45 days of the effective date of this decision to implement these changes.

7. Other Issues

In addition to the funding issues above, A4NR recommends limits be established on the number of terms a member of the DCISC would be eligible to serve. Specifically, A4NR recommends a limit of two three-year terms for DCISC members, modeled on the seven-year limit the United States Nuclear Regulatory Commission applies to assignments of its resident safety inspectors to a particular plant.⁵⁴

SBUA asserts the Commission should allow a thorough review and critique of the DCISC's work products and recommendations, which could be achieved by having the DCISC file all work products in a new docket. SBUA also recommends the DCISC be granted more authority to veto or stop certain work proposed by PG&E, or seek emergency action from the Commission, if there is a safety concern.⁵⁵ In reply, PG&E states the federal government maintains complete control over the safety and "nuclear" aspects of energy generation through the Atomic Energy Act.⁵⁶

7.1. Discussion

The issues raised by A4NR and SBUA are outside the limited scope of Track 1 of this proceeding and therefore are not addressed by this decision. In addition, SBUA's recommendations ignore the active consideration of the DCISC's reports and recommendations in this proceeding and, as noted by PG&E, appear to misunderstand the DCISC's role and the Commission's

⁵⁴ A4NR OC at 8 and Exhibit B.

⁵⁵ SBUA OC at 15-16.

⁵⁶ PG&E RC at 4.

jurisdiction over nuclear safety.⁵⁷ The question of whether DCISC members should have term limits may be considered in Phase 2 of this proceeding.

8. Comments on Proposed Decision

The proposed decision of ALJ Ehren D. Seybert in this matter was mailed to the parties in accordance with Section 311 of the Pub. Util. Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

9. Assignment of Proceeding

Karen Douglas is the assigned Commissioner and Ehren D. Seybert is the assigned ALJ in this proceeding.

Findings of Fact

1. At the time of this decision, the federal licenses for Diablo Canyon Unit 1 and Unit 2 are set to expire on November 2, 2024 and August 26, 2025, respectively.

2. In Resolution E-3152, the Commission determined that DCISC compensation shall be set at levels commensurate with fees paid by PG&E for comparable services.

3. PG&E currently updates DCISC member compensation through an annual Tier 1 advice letter filing.

4. Current approved DCISC member compensation includes an annual retainer of \$10,400; an hourly fee of \$260 for attendance at Committee meetings; an hourly fee of \$260 for Committee work performed outside of Committee

⁵⁷ As noted in D.18-01-022, "while this Commission has broad authority over PG&E and Diablo Canyon (including non-nuclear safety), the Commission's authority over *nuclear* safety is less clear." (See D.18-01-022 at 13.)

meetings in excess of 40 hours per year; and reimbursement of expenses incurred in performance of Committee work.

5. Outside member compensation for the Nuclear Facilities Decommissioning Master Trust Committee includes a \$12,000 annual retainer plus a \$500 fee per meeting, while compensation for consultants to the NSOC ranges from \$250-\$300 per hour.

6. A4NR does not explain why the 'Level V High' hourly rate by the Commission's intervenor compensation program for nuclear engineering experts better reflects the range of duties and functions the DCISC performs, as compared to the current benchmarking methodology.

7. Current DCISC members have extensive knowledge, experience, and history in the field of nuclear power facilities and nuclear safety issues, and each member has sought reappointment to the DCISC multiple times.

8. The underlying cost comparisons used in PG&E's annual advice letters updating DCISC member compensation, along with PG&E's recommendations, are made available for stakeholder review and protest.

9. DCISC member compensation levels have been updated three times since the Commission created the DCISC.

10. Significant Commission and party resources could be incurred if the annual adjustments to DCISC member compensation were considered through Commission resolutions or new proceedings.

11. 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.

12. Due to the additional responsibilities set forth in SB 846, the DCISC indicates it may experience a funding shortfall during the third quarter of 2023.

13. Parties broadly agree that it is fair to characterize DCISC costs in excess of PG&E's 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, as defined by the current federal license periods, into extended operations).

14. D.22-12-005 established the DCTRMA to track transition-related and relicensing costs at Diablo Canyon so that these costs could be recovered through government funding streams, instead of utility ratepayers.

15. The Commission is expected to consider whether to approve extended operations at Diablo Canyon through a separate decision in this proceeding by the end of 2023.

16. There is limited record in this proceeding concerning the DCISC's forecast costs and associated activities during potential extended operations at Diablo Canyon.

17. The scope of Phase 1: Track 1 of this proceeding is limited to funding for the DCISC.

Conclusions of Law

1. Pub. Util. Code Section 712.1(e) charges the DCISC with undertaking certain tasks concerning possible extended operations at Diablo Canyon, in addition to the existing duties and responsibilities set forth in prior Commission decisions.

2. Pub. Util. Code Section 712.1(d) requires the Commission ensure the funding of the DCISC is sufficient to attract qualified experts during the period of extended operations at Diablo Canyon.

3. In recognition of the increased workload stemming from SB 846, and based on current Nuclear Facilities Decommissioning Master Trust Committee and

NSOC member compensation levels, it is reasonable to increase the DCISC hourly fee to \$270 for attendance at Committee meetings and work performed outside of Committee meetings in excess of 40 hours per year, along with a corresponding increase to the annual retainer of \$10,800.

4. In order to promote additional transparency and stakeholder review, it is reasonable for PG&E's annual DCISC member compensation filing to be filed as a Tier 2 advice letter, and to include any feedback from the DCISC concerning PG&E's proposed compensation levels as part of the Tier 2 advice letter filing.

5. It is reasonable for the DCISC to record all 2023-2024 work related to the potential extension of operations at Diablo Canyon to the DCTRMA.

6. The DCISC should estimate and record all future costs associated with assessing the potential for extended operations at Diablo Canyon so that these costs can be accurately tracked in the DCTRMA.

7. It is reasonable for the DCISC to send an invoice to PG&E as soon as practicable with an estimate of the 2023 DCISC operational costs associated with DCISC's assessment of the potential extension of operations at Diablo Canyon, including any anticipated shortfall for the year, and to send a similar cost estimate and invoice early next year for associated 2024 costs.

8. Any unspent and uncommitted funds from the DCTRMA should be returned to PG&E during the first quarter of 2025.

9. Any DCISC costs that are not directly associated with the DCISC's evaluation of potential extended operations at Diablo Canyon should continue to be provided through PG&E's cost-of-service rates, with unspent and uncommitted funds returned to PG&E to be applied as a credit to its cost-of-service rates.

10. It is premature to determine how the DCISC should be funded during potential extended operations at Diablo Canyon.

11. Changes to update DCISC member compensation levels, and use of the DCTRMA to track the DCISC's 2023-2024 costs to assess the potential extension of operations at Diablo Canyon, constitute ministerial changes that are appropriate for advice letter review and disposition.

12. PG&E should be directed to file a Tier 2 advice letter within 45 days of the effective date of this decision to implement the changes adopted herein.

O R D E R

IT IS ORDERED that:

1. Compensation to members of the Diablo Canyon Independent Safety Committee (DCISC) is updated as follows: Each member shall receive an annual retainer of \$10,800; each member shall receive an hourly fee of \$270 for attendance at DCISC meetings; each member shall receive an hourly fee of \$270 for DCISC work performed outside of Committee meetings in excess of 40 hours per year; and each member shall receive reimbursement of expenses in performance of DCISC work.

2. Pacific Gas and Electric Company shall submit its annual update to the Diablo Canyon Independent Safety Committee (DCISC) member compensation levels as Tier 2 advice letter filings, and shall include as part of the filings a summary of any feedback provided by the DCISC on the proposed member compensation levels.

3. Diablo Canyon Independent Safety Committee costs related to the assessment of the potential extension of operations at Diablo Canyon Nuclear Power Plant shall be tracked and recorded in the Diablo Canyon Transition and Relicensing Memorandum Account, following the procedures described herein.

4. Pacific Gas and Electric Company shall file a Tier 2 advice letter within 45 days of the effective date of this decision to implement the changes adopted in this decision.

5. Rulemaking 23-01-007 remains open.

This order is effective today.

Dated _____, at San Francisco, California.