

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**I.D.# 11296
RESOLUTION E-4499
June 7, 2012**

R E S O L U T I O N

Resolution E-4499. Confirmation of a candidate for appointment by the Chair of the California Energy Commission (CEC) to the Diablo Canyon Independent Safety Committee (Safety Committee) for a three-year term beginning July 1, 2012.

PROPOSED OUTCOME: The Commission ratifies the President's selection of Dr. Peter Lam for consideration by the Chair of the CEC for reappointment to the Safety Committee.

ESTIMATED COST: None.

As required by Decision (D.) 07-01-028 dated January 25, 2007.

SUMMARY

This resolution ratifies the Commission President's selection of Dr. Peter Lam as a candidate for reappointment to the Diablo Canyon Independent Safety Committee (Safety Committee) for a three-year term commencing on July 1, 2012. The appointing authority is the Chair of the California Energy Commission (CEC).

BACKGROUND

The Safety Committee independently monitors the operations of Pacific Gas and Electric Company's Diablo Canyon Power Plant.

The Commission created the Safety Committee in Decision (D.)88-12-083 as part of the overall settlement of the ratemaking issues for the Diablo Canyon Power Plant (DCPP) which is owned and operated by Pacific Gas and Electric Company (PG&E). The Safety Committee is an independent three-member committee responsible for monitoring the safety of PG&E's

operation of DCCP. The Safety Committee's budget is paid out of PG&E's revenues and charged to PG&E's ratepayers (D.88-12-083, Appendix C, Paragraph 16). D.88-12-083 established the qualification and procedures for appointment of members to the Safety Committee and defined the scope of the Committee's operations and responsibilities (D. 88-12-083, Appendix C, Attachment A).

The Safety Committee consists of three members, one each appointed by the Governor of California, the California Attorney General, and the Chair of the CEC, respectively, serving staggered three-year terms.

D.07-01-028 approved changes to the Safety Committee nomination process.

On October 24, 2006, the Safety Committee submitted Application 06-10-024, to propose a restated charter. The Commission adopted the restated charter in D.07-01-028 dated January 25, 2007.

Section 1.B of the restated charter concerns appointments of the Committee members. It states that candidates for the Committee membership shall be selected from those applicants responding to an open request for applications. The incumbent member whose term is about to expire shall be deemed an additional candidate if he or she consents. The Commission shall provide for public comment on the applicants' qualifications and potential conflicts of interest. The President of the Commission shall review the applicants' qualifications, experience, and background, including any conflict of interest, together with any public comments, and shall propose as candidates to the appointing authority only persons with knowledge, background, and experience in the field of nuclear power plants and nuclear safety issues. The Energy Division shall prepare and circulate for public comment, and place on the Commission's public agenda a resolution ratifying the President's selection of candidates and an incumbent member.

An open request for applications to fill the July 1, 2012 vacancy on the Safety Committee was posted on the Commission's website. Dr. Peter Lam, the incumbent member of the Safety Committee whose term is expiring on July 1, 2012, consented to reappointment for another term. No other responses to the open request for applications were received.

In accordance with the nomination process approved in D.07-01-028, an announcement was posted on the Commission's website on January 17, 2012 seeking applications for the July 1, 2012 vacancy on the Safety Committee.¹ The candidate filling this vacancy will be appointed by the Chair of the CEC.

The open request for applications asked that applications be submitted to the Energy Division by February 29, 2012. No applications were received. By letter dated February 16, 2012 to the Commission's Energy Division, Dr. Peter Lam confirmed his willingness to continue to serve as a member of the Safety Committee.² Dr. Lam included a synopsis of his professional experience and technical activities with his letter. Dr. Lam had previously been appointed to the Safety Committee for a three-year term beginning July 1, 2009 by the Chair of the CEC.

Comments were received in support of Dr. Lam's reappointment.

On March 16, 2012 an announcement inviting comments on Dr. Lam as a candidate for reappointment to the Safety Committee was posted on the Commission's website.³ A summary of Dr. Lam's qualifications was included with the announcement.

On March 17, 2012, comments in support of Dr. Lam's reappointment were submitted by Dr. Robert J. Budnitz, Dr. Lam's colleague on the Safety

¹ A link to the announcement posted on the Commission's website was sent to the service list in A.10-01-014 and A.10-01-022 to assure that parties interested in issues relating to DCPD were aware of the announcement. A.10-01-014 addresses PG&E's request for funding of seismic studies at Diablo Canyon. A.10-01-022 addresses PG&E's request for funding its DCPD relicensing application at the Nuclear Regulatory Commission.

² Section I.B of the restated charter adopted in D.07-01-028 sets forth that up to three qualified candidates selected from those responding to the open request for applications be provided by the Commission's President to the appointing authority as alternatives to the reappointment of Safety Committee member whose term is expiring. The restated charter provides that the incumbent, if he or she consents, shall be considered an additional candidate. The restated charter does not require that the incumbent submit an application.

³ A link to the announcement was also sent to the service lists in A.10-01-014 and A.10-01-022. See footnote 1 above.

Committee. On March 23, 2012, the Alliance for Nuclear Responsibility (A4NR) also submitted comments in support of Dr. Lam's reappointment. No other comments were received.

Dr. Budnitz stated in comments that Dr. Lam has outstanding qualifications, noting his experience as a member of the U.S. Nuclear Regulatory Commission's (NRC) Atomic Safety and Licensing Board, and international reputation in nuclear safety engineering. Dr. Budnitz stated that Dr. Lam is "100-percent impartial in his judgments" and especially effective in interacting with the public. Dr. Budnitz pointed out that Dr. Lam was elected Chairman of the Safety Committee by the other committee members.

In comments supporting Dr. Lam's reappointment, A4NR highlighted Dr. Lam's statements following the Fukushima tragedy at the CEC's Integrated Energy Policy Report hearings held after the 2011 tsunami in Japan. According to A4NR, Dr. Lam demonstrated his "post-Fukushima thinking and caused him to re-evaluate his previous assumptions about safety and probability" in his statements at the CEC.⁴

The President of the Commission has selected Dr. Lam as a candidate for reappointment to the Safety Committee.

The Commission's President, Michael Peevey, has reviewed Dr. Lam's qualifications, experience and background, and responses to the March 16, 2012 announcement inviting comments on Dr. Lam's reappointment. President Peevey has chosen to provide to the Chair of the CEC, Dr. Lam's name as a candidate for reappointment to the Safety Committee for a three-year term beginning July 1, 2012.

The purpose of this resolution is to evaluate and ratify President Peevey's selection in accordance with Section I.B of the restated charter adopted in D.07-01-028.

⁴ A4NR included quotes from Dr. Lam's statements made at the CEC hearings to support its comments.

NOTICE

Notice of this resolution was made by publication in the Commission's Daily Calendar. A copy of the draft resolution was sent to the service list for the draft resolution which includes those submitting comments on Dr. Lam's qualifications, the Chair of the CEC, and Dr. Lam. A copy of the draft resolution was also sent to the service lists in PG&E's A.10-01-014 and A.10-01-022.

DISCUSSION

Dr. Lam's qualifications are included in the appendix to this resolution.

Dr. Lam is qualified to be reappointed to the Safety Committee.

The restated charter adopted in D.07-01-028 requires that candidates for appointment to the Safety Committee be persons with knowledge, background and experience in the field of nuclear power facilities and nuclear safety issues who demonstrate they have no conflict of interest.⁵

Dr. Lam is an incumbent member of the Safety Committee, having been appointed to a three-year term beginning July 1, 2009 by the Chair of the CEC. He served as an Administrative Judge of the NRC from 1990 until 2007 where he adjudicated nuclear safety issues. Prior to his judicial appointment at the NRC, Dr. Lam worked in managerial and technical capacities in the nuclear energy business for 20 years. Dr. Lam has published numerous technical papers and reports in national and international publications addressing nuclear reactor operations, design,

⁵ Conflicts of interest are set forth in Section I.C of the restated charter. They establish limits on income and gifts from PG&E or an affiliated company, and investments in PG&E or an affiliate for Safety Committee members. They also prohibit members of the committee from attempting to use their position to influence action of the committee in which they have a financial interest. Safety Committee members are required to file a Statement of Economic Interest in the same manner as designated Commission employees. No person shall serve on the Safety Committee who has a prior history of supporting or opposing PG&E as a witness or intervenor in nuclear licensing or Commission proceedings associated with Diablo Canyon.

and safety. He earned a PhD in nuclear engineering from Stanford University in 1971.

Dr. Lam has no conflicts of interest that would preclude his continuing to serve on the Safety Committee.⁶ His qualifications show that he has knowledge, background, and experience in the field of nuclear power plants and nuclear safety issues. The comments received from the public support Dr. Lam's reappointment to the Safety Committee.

President Peevey's selection of Dr. Lam as a candidate for reappointment to the Safety Committee is ratified.

President Peevey's selection of Dr. Lam as a candidate for reappointment to the Safety Committee for a three-year term beginning July 1, 2012 is ratified. The President's selection shall be provided to the Chair of the CEC.

COMMENTS

Public Utilities Code section 311 (g) (1) generally requires resolutions to be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly, the draft resolution was served on parties and issued for public review and comment no later than 30 days prior to a vote of the Commission.

FINDINGS AND CONCLUSIONS

1. D.88-12-083 created the Diablo Canyon Independent Safety Committee (Safety Committee).
2. The Safety Committee is an independent three-member committee responsible for monitoring the safety of PG&E's operation of the Diablo Canyon Power Plant.
3. D.07-01-028 adopted a restated charter for the Safety Committee including revised procedures for appointments of Safety Committee members.

⁶ By email to Energy Division staff dated April 10, 2012 Dr. Lam confirmed that he has no conflicts of interest as set forth in Section I.C of the restated charter.

4. On January 17, 2012 in accordance with D.07-01-028 an announcement was posted on the Commission's website seeking applications for the July 1, 2012 vacancy on the Safety Committee.
5. The Chair of the California Energy Commission (CEC) is the appointing authority for the July 1, 2012 vacancy on the Safety Committee.
6. Dr. Peter Lam, the incumbent member of the Safety Committee whose term expires on July 1, 2012 responded to the Commission's January 17, 2012 announcement, and consents to being a candidate for reappointment to the Safety Committee.
7. No other responses to the Commission's January 17, 2012 announcement were received.
8. The Commission invited comments on Dr. Lam's qualifications in an announcement posted on the Commission's website on March 16, 2012.
9. Comments in support of Dr. Lam's reappointment to the Safety Committee were submitted by Dr. Robert J. Budnitz, a Safety Committee member, on March 17, 2012, and by the Alliance for Nuclear Responsibility on March 23, 2012.
10. The Commission's President, Michael Peevey, has reviewed Dr. Lam's qualifications, experience and background and the comments received on Dr. Lam's qualifications.
11. President Peevey has chosen to provide to the Chair of the CEC, Dr. Lam's name as a candidate for reappointment to the Safety Committee for a three-year term beginning July 1, 2012.
12. Dr. Lam has knowledge, background, and experience in the field of nuclear power plants and nuclear safety issues, and is a qualified candidate for reappointment to the Safety Committee.
13. President Peevey's selection of Dr. Lam as a candidate for reappointment to the Safety Committee for a three-year term beginning July 1, 2012 should be ratified and provided to the Chair of the CEC.

THEREFORE IT IS ORDERED THAT:

President Michael Peevey's selection of Dr. Peter Lam as a qualified candidate for consideration by the Chair of the California Energy Commission for reappointment to the Diablo Canyon Independent Safety Committee for a three-year term beginning July 1, 2012 is hereby ratified.

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 June 7, 2012; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Appendix Qualifications of Dr. Peter Lam

Dr Lam is an incumbent member of the Diablo Canyon Independent Safety Committee, having been appointed by the honorable Karen Douglas, J.D., Chair of the California Energy Commission in June 2009. His term runs through June 30, 2012.

Dr. Lam served as an Administrative Judge of the United States Nuclear Regulatory Commission (NRC) from 1990 until his retirement in 2007. In this capacity Dr. Lam adjudicated safety issues in public proceedings mandated by the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974. These proceedings related to granting, suspending, revoking or amending licenses issued by the NRC, especially those involving nuclear power plants. His jurisdiction covered all of the existing 104 nuclear power plants, approximately 21,000 medical and material licensees, and nuclear waste storage in the United States. From 2002 to 2003, Dr. Lam sat on the Atomic Safety and Licensing Boards to conduct the public proceeding on the application of Pacific Gas and Electric Company to construct and operate an independent spent fuel storage installation at the Diablo Canyon Power Plant.

Prior to his judicial appointment at the NRC Dr. Lam worked in managerial and technical capacities in the nuclear energy business for 20 years. This included working as a nuclear engineer at General Electric on the design and analysis of boiling water reactors advanced fuels, and serving as a program manager at Argonne National Laboratory managing the research and development of advance fast reactor metal fuels. Dr. Lam also was a manager at Science Applications, Inc., and a consultant at NUS Corporation, consulting firms in the nuclear industry where he was involved in managing probabilistic risk assessments of operating nuclear reactors.

Dr. Lam has published 71 technical papers and reports in national and international journals and in company publications which focus on issues in nuclear transport theory, nuclear reactor fuel design, nuclear reactor operating experience, and nuclear reactor safety. Dr. Lam has also issued more than 110 judicial decisions resolving technical and legal issues on nuclear power plant operation and safety, nuclear waste disposal, and other civilian use of nuclear technology. Dr. Lam has presented lectures at international conferences held by the International Atomic Energy Agency, and chaired an IAEA working group to develop a technical treatise for the analysis and evaluation of operating experience of the world's nuclear power plants.

Dr. Lam earned a Ph.D. in nuclear engineering from Stanford University in 1971, an M.S. in nuclear engineering from Stanford University in 1968, and a B.S. in mechanical engineering from Oregon State University in 1967.

End of Appendix