



ALLIANCE FOR NUCLEAR RESPONSIBILITY

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April 7, 2020

Senator Dianne Feinstein
331 Hart Senate Office Building
Washington, DC 20510

Senator Kamala Harris
112 Hart Senate Office Building
Washington, D.C. 20510

Representative Salud Carbajal
1431 Longworth House Office Building
Washington, DC 20515

Re: New Concerns at the Diablo Canyon Nuclear Power Plant

Dear Senator Feinstein, Senator Harris, and Representative Carbajal:

As you may be aware, the COVID-19 pandemic has caused significant reductions in scope of the inspections and maintenance work ordinarily performed at nuclear power plants during their scheduled refueling outages. Fortunately, the next refueling outage will not take place at Diablo Canyon until early October, but that timing is unlikely to avoid the planning criteria developed by the North American Electric Reliability Council for pandemics: “A pandemic will strike in at least two waves, each lasting six to eight weeks. The first wave will peak in three to four weeks. The second wave will be three to six months after the first and will likely be stronger than the first. There may also be a third wave with characteristics similar to the second.”¹

The Alliance has carefully monitored PG&E’s operation of Diablo Canyon for many years, and asks each of you to demand enhanced scrutiny of PG&E’s decision-making from the U.S. Nuclear Regulatory Commission in light of the unique safety and financial headwinds confronting the company. Since filing for bankruptcy in January 2019:

- PG&E has reached a plea agreement with the Butte County District Attorney that “acknowledges and accepts criminal responsibility for causing the Camp Fire,”² and will plead guilty to 84 counts of involuntary manslaughter and one count of unlawfully causing a fire. In entering this plea, PG&E is admitting that the company engaged in criminal negligence.³ Under California law, criminal negligence “involves more than

¹ North American Electric Reliability Council, “Electricity Sector Influenza Pandemic Planning, Preparation, and Response Reference Guide,” accessible at:

<https://www.nerc.com/comm/CIPC%20Security%20Guidelines%20DL/NAERC200701.pdf#search=pandemic%20guidance>

² March 23, 2020 Form 8-K, pages 3-4 of attached Plea Agreement.

³ Judicial Council of California, Criminal Jury Instructions 2017, Instruction 581- Involuntary Manslaughter: Murder Not Charged, p. 330.

ordinary carelessness, inattention, or mistake in judgment.”⁴ A person acts with criminal negligence, when: 1. He or she acts in a reckless way that creates a high risk of death or great bodily injury; AND 2. A reasonable person would have known that acting in that way would create such a risk. In other words, a person acts with criminal negligence when the way he or she acts is so different from the way an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.⁵

- PG&E has acknowledged soaring above-market costs at Diablo Canyon of \$410 million in 2018, \$1.168 billion in 2019, and \$1.258 billion in 2020,⁶ at the same time that its loss of generation customers snowballed. What had been an 82% market share within its service territory in 2017 has dwindled to 43% in 2020.⁷ PG&E said in 2017 that if its market share dropped to 44% it could only justify 26% of Diablo Canyon’s output,⁸ dumping the rest in the wholesale market and triggering curtailments of renewable generation.

These circumstances combine with PG&E’s bankruptcy to create considerably heightened risk at Diablo Canyon during the pandemic. The plant’s upside-down economics and approaching retirement put a premium on reduction of costs wherever possible. Downsizing the scope of inspections and maintenance planned for the October refueling outage could carry catastrophic consequences at a time when PG&E’s past misconduct justly deprives it of public trust. I urge each of you to advise the NRC in writing that it would be inappropriate to make use of its Notice of Enforcement Discretion procedure⁹ at Diablo Canyon, and that any PG&E-requested emergency or exigent license amendments must receive the most rigorous public review.

Sincerely,

/s/

Rochelle Becker
Executive Director

⁴ *Id.*

⁵ *Id.* In 2016, a federal jury found PG&E guilty of six felony counts—five willful violations of the Natural Gas Pipeline Safety Act of 1968 and one count of corruptly obstructing the federal investigation into the 2010 fatal pipeline explosion in San Bruno, in violation of 18 U.S.C. § 1505.

⁶ California Public Utilities Commission case A.18-12-009, Exhibit 253, p. 1; Exhibit 256, p. 3, line 12.

⁷ California Public Utilities Commission case A.18-12-009, Exhibit 254, p. 1; Exhibit 256, p. 5, lines 18 – 19, 25.

⁸ California Public Utilities Commission case A.18-12-009, Exhibit 256, p. 6., lines 12 – 13, citing A.16-08-006, PG&E Opening Brief, p. 15.

⁹ Nuclear Regulatory Commission Enforcement Manual, Appendix F, accessible at <https://www.nrc.gov/docs/ML1919/ML19193A023.pdf>