



ALLIANCE FOR NUCLEAR RESPONSIBILITY

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July 23, 2020

Eileen Sobeck
Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Transmitted by e-mail

**RE: Request to sever the Diablo Canyon Nuclear Power Plant
compliance date waiver from the Draft OTC Policy Amendment
scheduled for consideration at the SWRCB September 1, 2020 meeting.**

Dear Ms. Sobeck:

The Alliance for Nuclear Responsibility (“A4NR”) strongly urges you to remove the gratuitous compliance waiver bestowed upon PG&E’s Diablo Canyon Nuclear Power Plant from the recommended Draft OTC Policy Amendment coming before the Board at its September 1, 2020 meeting.

Because of its around-the-clock operation, the entrainment impact on marine organisms from extending Diablo Canyon’s Unit 2 compliance date for an additional eight months in 2025 will significantly exceed the aggregated amounts attributable to the current 1 – 3-year extensions contemplated for the four, seldom operated, Southern California peaking plants.¹ Yet the 2021 – 2023 “grid reliability” rationale for the Southern California extensions is clearly inapplicable to the 2025 Diablo Canyon extension. Instead, the March 18, 2020 Draft Staff Report explains that the Diablo Canyon waiver is in response to a request from PG&E just two months earlier that “will address a previously-known discrepancy while implementing the terms of an agreement approved by the CPUC to retire Diablo Canyon.”² The Draft Staff Report characterizes this waiver as “administrative” in nature.

¹ Based upon Table 2 of the SWRCB’s 2010 Final Substitute Environmental Document.

² March 18, 2020 SWRCB Draft Staff Report, page 7.

As a member of the SWRCB's Review Committee for nuclear-fueled power plants established under Section 3.D(3) of the OTC Policy, and as a member of the subcommittee³ tasked by the Review Committee to submit written comments to the SWRCB in 2014, let me say that the approach taken by the March 18, 2020 Draft Staff Report to the Diablo Canyon waiver is an extremely inappropriate means by which to amend an important state policy. As noted in the first sentence of the subcommittee's 2014 comments, "the Subcommittee ... finds that there is no basis for an exemption from the once-through-cooling (OTC) Policy for Diablo Canyon Power Plant ..."⁴ The fact that neither the subcommittee nor the Review Committee appear to have been consulted in the development of the compliance waiver recommendation should constitute a red flag.

Similarly, notwithstanding the March 18, 2020 Draft Staff Report's oblique reference to "(b)aseline support for grid reliability" stemming from the Diablo Canyon waiver,⁵ there is simply no discussion of modifying the 2024 Diablo Canyon compliance date anywhere in the referenced January 23, 2020 SACCWIS⁶ Report. In fact, beginning with its 2016 – 2017 Transmission Plan, the California Independent System Operator has assumed (and planned for) a 2024 retirement date for Diablo Canyon in each of its past four annually adopted transmission plans.⁷

A4NR was one of the co-sponsors of the 2016 Joint Proposal for the retirement of Diablo Canyon that is mentioned in the March 18, 2020 Draft Staff Report. Section 6.2 of the Joint Proposal addressed PG&E's plan to request an amendment of the OTC Policy, noting that "The Parties will review the amendment request and reserve the right to oppose it or seek additional conditions." Rather than uphold its contractual commitment to advance review and discussion by the Joint Proposal signatories, PG&E unilaterally dispatched its lobbyist to seek the Unit 2 compliance date extension.

The January 17, 2020 written request from PG&E's director of state agency relations to the SWRCB staff, unsurprisingly (given its lack of external review), contains several material misrepresentations:

³ As noted in its written comments, the subcommittee was comprised of representatives from the California Energy Commission, the California Public Utilities Commission, the Center for Energy Efficiency and Renewable Technologies and the Alliance for Nuclear Responsibility.

⁴ https://www.waterboards.ca.gov/water_issues/programs/ocean/cwa316/rcnfpp/docs/subbechcom_111314.pdf

⁵ March 18, 2020 Draft Staff Report, p. 19.

⁶ SACCWIS is an acronym for the joint-agency Statewide Advisory Committee on Cooling Water Intake Structures that was established under Section 1.I. of the OTC Policy to "advise the State Water Board on the implementation of this Policy to ensure that the implementation schedule takes into account local area and grid reliability." The SACCWIS is comprised of representatives of the California Energy Commission, the California Public Utilities Commission, the California Independent System Operator, the California Coastal Commission, the California State Lands Commission, the California Air Resources Board, and the SWRCB.

⁷ California Independent System Operator, 2016 – 2017 Transmission Plan, page 14; 2017 – 2018 Transmission Plan, page 16; 2018 – 2019 Transmission Plan, page 18; and 2019 – 2020 Transmission Plan, page 21.

- PG&E’s letter purports to merely be implementing a previously promised, but nowhere documented, correction by SWRCB staff of “an inaccurate compliance date.” Reference is made to the transcript of the May 4, 2010 adoption hearing, but that transcript confirms the SWRCB’s clarity in adopting the December 31, 2024 compliance date,⁸ and includes no mention of any concern about an “inaccurate compliance date” in testimony by PG&E’s very same lobbyist at the May 4, 2010 adoption hearing.
- PG&E’s letter falsely implies that “compliance date alignment” is a key step in implementing CPUC Decision 18-01-022, which approved the Joint Proposal. The CPUC decision is completely silent about the OTC Policy and the Diablo Canyon compliance deadline, and expressly contemplates Unit 2 retirement **by** 2025 rather than **in** 2025.
- PG&E’s letter claims that Diablo Canyon’s generation is a “significant benefit” to the state’s ongoing effort to combat global climate change, but given the high cost of electricity from Diablo Canyon (which PG&E projects to be \$1.258 billion above-market in 2020), the greenhouse gas displacement PG&E claims comes at a cost of \$157.25 - \$209.67 per million metric ton. The price paid in California’s cap-and-trade auction has never exceeded \$17.87 per million metric ton, meaning that if Diablo Canyon’s above-market cost was considered a carbon surcharge, it could be used to purchase between 8.8 and 11.7 times more carbon displacement elsewhere.
- PG&E’s letter also speaks of Diablo Canyon’s “disproportionately low level of impingement and entrainment impact,” but neglects to acknowledge that the plant’s exceptionally large cooling water flows caused the SWRCB’s 2010 environmental document to find significant entrainment impacts (an average 10.8% mortality effect) for nine taxa of rocky reef fish across an offshore area of roughly 93 square miles.

I attended each meeting of the SWRCB’s Review Committee for nuclear-fueled power plants and there was never any mention of “a previously-known discrepancy” or “an inaccurate compliance date” for Diablo Canyon. The SWRCB staff explained its reasoning for the Diablo Canyon compliance date at the Board’s December 1, 2009 workshop: “we changed the compliance date for the Diablo Canyon Power Plant. Our intent was that the nuclear plants would need to comply by the earliest relicensing dates, and we received some information that the final compliance date for the Diablo Canyon Power Plant Unit 1 had changed to November 2nd, 2024, so we changed the final compliance date for Diablo Canyon to December 31st, 2024.”⁹ The SWRCB transcript shows that the 2024 deadline was acknowledged by PG&E’s

⁸ May 4, 2010 SWRCB transcript, page 23, lines 5 – 7.

⁹ December 1, 2009 SWRCB transcript, page 27, lines 1 – 7.

lobbyist (without complaint) three separate times during the December 1, 2009 workshop.¹⁰ The SWRCB staff restated this rationale at the May 4, 2010 adoption hearing (“And the Diablo Canyon final compliance date was extended to 2024; that was to line up with the relicensing period.”¹¹), again with no objection voiced by PG&E.

The United States Supreme Court’s recent decision to uphold the immigration relief program known as Deferred Action for Childhood Arrivals invoked a governance standard that the SWRCB would be wise to heed:

Justice Holmes famously wrote that ‘[m]en must turn square corners when they deal with the Government.’ *Rock Island, A. & L. R. Co. v. United States*, 254 U. S. 141, 143 (1920). But it is also true, particularly when so much is at stake, that ‘the Government should turn square corners in dealing with the people.’ *St. Regis Paper Co. v. United States*, 368 U. S. 208, 229 (1961) (Black, J., dissenting). The basic rule here is clear: An agency must defend its actions based on the reasons it gave when it acted. This is not the case for cutting corners to allow DHS to rely upon reasons absent from its original decision.¹²

PG&E’s reputation as one of the most notorious corner-cutters and string-pullers in California history is well-established, but the SWRCB should not allow its widely heralded OTC Policy to be so easily subverted. A4NR urges that you withdraw the Diablo Canyon compliance date waiver from the recommended Draft OTC Policy Amendment, and respectfully requests that you reopen the comment period if necessary to enable this letter to become part of the record.

Sincerely,

/s/

Rochelle Becker
Executive Director

cc: Board Members
Jonathan Bishop, Chief Deputy Director

¹⁰ December 1, 2009 SWRCB transcript, page 124, line 7; page 124, line 18; and page 132, line 3.

¹¹ May 4, 2010 SWRCB transcript, page 23, lines 5 – 7.

¹² *Department of Homeland Security v. Regents of Univ. of Cal.*, 591 U. S. ___, ___ (2020) (slip op., at 17).