

February 1, 2023

Mr. Siva Gunda, Vice Chair
California Energy Commission
715 P Street
Sacramento, CA 95814

TRANSMITTED BY EMAIL

Re: A4NR Comments on 21-ESR-01 Workshop held on January 20, 2023.

Dear Vice Chair Gunda:

On behalf of my client, the Alliance for Nuclear Responsibility (“A4NR”), I submit these comments on your January 20, 2023 Lead Commissioner Workshop’s overview of the Energy Commission’s preliminary reliability analysis for Senate Bill 846. Insofar as the Energy Commission reliability report originally scheduled for December 2022 appears to have been delayed, it is not clear that the concerns expressed in A4NR’s November 8, 2022 comments on your October 28, 2022 workshop have been or will be addressed. I ask that you consider those earlier comments as if they were repeated again in this letter.

1. The Energy Commission assessment of “the prudence of extending Diablo Canyon”¹ must be sufficiently thorough.

A striking feature of the staff presentation at the January 20 workshop was the repeated reference to examining “prudence” questions surrounding the potential extended operation of the Diablo Canyon Nuclear Power Plant (DCNPP). The words “prudent” or “imprudent” appear in SB 846 four times:

- the Energy Commission is tasked in Public Resources Code § 25233.2 (c) with making a determination by March 1, 2023 “whether extending operations of the Diablo Canyon powerplant to at least 2030 is **prudent** to ensure reliability in light of any potential for supply deficiency, and is consistent with the emissions reduction goals of Section 454.53 of the Public Utilities Code;”
- the Legislature finds and declares in Public Resources Code § 25548 (b) that “it is the policy of the Legislature that seeking to extend the Diablo Canyon powerplant’s operations for a renewed license term is **prudent**, cost effective,

¹ Docket: 21-ESR-01, TN # 248455, “SB 846 - Diablo Canyon Extension and CERIP Presentation,” pp. 45 – 49.

and in the best interests of all California electricity customers. The Legislature anticipates that this stopgap measure will not be needed for more than five years beyond the current expiration dates;”

- the Legislature additionally finds and declares in Public Resources Code § 25548 (f) that all “relevant state agencies” and PG&E “must act quickly and in coordination to take all actions necessary and **prudent** to extend Diablo Canyon powerplant operations;”
- and Public Resources Code § 25548.3 (c) (5) (C) identifies, as an event “that would trigger a suspension or early termination” of the \$1.4 billion General Fund loan agreement, a “determination by the Public Utilities Commission that an extension of the Diablo Canyon powerplant is not cost effective or **imprudent**, or both.”

The March 1 deadline for the Energy Commission’s determination requires, at a minimum, the careful assembly of an analytic framework that can be revisited throughout 2023 as additional information becomes available. The placeholder wording articulated on a “preliminary” basis at the January 20 workshop (“Staff conclude that it would be prudent to continue to pursue Diablo Canyon extension until necessary resources are online or assessment of viable alternatives is clearly established”²) is unlikely to prove satisfactory without a robust commitment to ongoing, evidence-based assessment. Endorsing “continue to pursue” is no more dispositive than the Legislature’s embrace of “seeking to extend” in § 25548 (b). Considerably more is rightfully expected of the Energy Commission’s analyses.

2. The Energy Commission should acknowledge the highly contingent nature of DCNPP’s availability after the 2024/25 license expirations.

The attached January 24, 2023 letter to PG&E from the Nuclear Regulatory Commission (“NRC”) staff declines to initiate or resume review of PG&E’s previously withdrawn license renewal application, and also indicates that there must be an opportunity for public hearings on any **new application** PG&E submits. Additionally, the NRC staff’s letter defers to March 2023 a response to PG&E’s request for an exemption from the deadline in 10 CFR 2.109(b), which provides that if a nuclear power plant licensee files a sufficient license renewal application “**at least 5 years before the expiration** of the existing license, the existing license will not be deemed to have expired until the application has been finally determined.”

² *Id.*, p. 48.

Each of these NRC developments might delay the start of any extended operations period for DCNPP, as well as the commencement of the potential funding under the Department of Energy (“DOE”) Civil Nuclear Credit program that ostensibly serves as the basis for SB 846 and the \$1.4 billion General Fund loan to PG&E. DOE has tied the start of the four-year DCNPP Award Period to the completion of the “the Final Environmental Impact Statement prepared for the Selected Nuclear Reactor by the NRC.”³ PG&E said in a public presentation to the NRC on December 8, 2022 that it did not expect the NRC to have completed its process until 2026 or 2027 (already *past* the existing license expiration dates), and this was an estimate it made *prior* to the NRC staff’s January 24, 2023 letter.

The Energy Commission’s March 1, 2023 prudency determination should evaluate the likelihood of DCNPP availability if relicensing of each Unit is not completed before expiration of its current license. The analysis should also address the potential impacts on DCNPP availability if PG&E is not successful in obtaining a waiver from 10 CFR 2.109(b). Even if PG&E obtains a waiver, what new provisions for payment of DCNPP costs will be necessary to enable operation during the interim period *before* an NRC decision on the relicensing applications?

3. Better understanding of the prospects for General Fund repayment may also jeopardize the post-2024/25 availability of DCNPP.

During the Legislature’s abbreviated consideration of SB 846, assurances were made that the \$1.4 billion General Fund loan would be fully offset by the DOE grant – “federal funds that we believe will offset the entirety of the loan that we are proposing,”⁴ in the words of Cabinet Secretary Ana Matosantos. As explained in a written statement issued by Senator John Laird when SB 846 was brought to the Senate floor, “The \$1.4 billion loan expenditure will be matched with \$1.4 billion in federal revenue, which limits the requirement of any ratepayer or taxpayer money for that purpose. By January the eligibility of that money will be established, and thus will allow for a status check at that time on this issue.”⁵ These assertions were undercut within a day of SB 846’s legislative enactment by PG&E’s September 2, 2022 application for only \$1.2 billion, and diminished further by DOE’s award of only \$1.1 billion on November 21, 2022. The extended timing now projected for receipt of grant funds exacerbates this problem.

Paragraph 7.a.i. of the October 18, 2022 loan agreement with PG&E anticipates a

³ [https://www.energy.gov/sites/default/files/2022-06/US DOE CNC Guidance-Revision 1-June 2022.pdf](https://www.energy.gov/sites/default/files/2022-06/US%20DOE%20CNC%20Guidance-Revision%201-June%202022.pdf), p. 41.

⁴ <https://www.assembly.ca.gov/media/assembly-utilities-energy-committee-20220826/video> at 1:04:12.

⁵ <https://sd17.senate.ca.gov/news/statement-state-sen-john-laird-d-santa-cruz-sb-846-dodd>

potential General Fund repayment in December 2027, but this would come only after the grant's four-year Award Period was followed by a one-year DOE Recapture Period. Based upon the afore-mentioned DOE written statement that the Award Period cannot begin until *after* the NRC has adopted a Final Environmental Impact Statement for the DCNPP license extension, and the NRC staff's January 24, 2023 refusal to initiate or resume review of PG&E's previously withdrawn license renewal application, a projected 2027 repayment appears undeniably impossible. The characterization of the General Fund loan during your October 28, 2022 workshop as "bridge funding"⁶ is not credible.

Of course, receipt of *any* DOE grant proceeds will be dependent upon DOE's after-the-fact verification that DCNPP operated at an economic loss during the four-year Award Period, whenever it commences. If the revenues DCNPP receives from the CAISO market continue to be correlated to the volatile price of natural gas, confidence in the accuracy of such projections likely diminishes as the four-year Award Period slides further into the future.

A strongarm provision in Paragraph 7.a.iii. of the October 18, 2022 loan agreement with PG&E attempts to force the Legislature into making the \$800 million second appropriation discussed in SB 846. If this appropriation is not made by September 30, 2023, then the first \$800 million (minus the amount of any second appropriation) received from DOE will be transferred from the loan repayment escrow "to PG&E for PG&E's use in accordance with the DOE award agreement." The Energy Commission should objectively assess, now that DOE has confirmed PG&E's eligibility for up to \$1.1 billion under the Civil Nuclear Credit program – the limited risk that the General Fund loan was intended to absorb under SB 846 – whether the DCNPP extension project would proceed in the absence of this second appropriation. Given the clearly reduced prospects for timely repayment, the Legislature could reasonably decline to expand the risk exposure of the General Fund.

The timing of specific funding needs for the DCNPP extension project is unclear. I have attached to these comments the projected expenditures spreadsheet obtained from a Public Records Act request to the Department of Water Resources. As you can see, each item is redacted except for the \$162.75 million in fees payable to PG&E thru December 2023.

⁶ Docket: 21-ESR-01, TN # 247345, "Transcript on 10-28-22 Lead Commissioner Workshop on Clean Energy Alternatives for Reliability - Session 1," p. 55, line 8.

Passive conversion of the \$1.4 billion General Fund “**loan**”⁷ – demonstrably underwater when compared to the prospective \$1.1 billion DOE repayment source, and likely to become more so if a second appropriation is made – into a de facto General Fund **grant** could also adversely affect DCNPP’s availability after 2024/25. Public Resources Code § 25548.3 (c) (5) identifies several “(e)vents that would trigger a suspension or early termination of the loan agreement.” These include a determination by the Department of Water Resources “that permitted timeframes are not viable to accomplish the purposes of this chapter,” or “that repayment is less likely than initially anticipated.” Under such circumstances, PG&E is required under § 25548.3 (c) (6) to repay “any unspent or uncommitted” loan proceeds and lender forgiveness of such amounts is forbidden.

Just as banking regulations attach a prudent lender standard to the availability of federal deposit insurance, Public Resources Code § 25548 (f) imposes a prudence requirement on PG&E and “all relevant state agencies” in their actions to extend DCNPP operations. Assuming that, if state agencies simply **wish** it to be, DCNPP **will** be available after 2024/25 may prove to be grossly imprudent planning as adverse post-SB 846 developments continue to accumulate.

Sincerely,

/s/ John L. Geesman

DICKSON GEESMAN LLP
Attorney for ALLIANCE FOR NUCLEAR RESPONSIBILITY

Attachments: January 24, 2023 NRC letter to Paula Gerfen, PG&E Chief Nuclear Officer;
PG&E forecast of disbursements (DWR Public Records Act response)

⁷ Public Resources Code § 25548.3 (a) states: “It is the intent of the Legislature to make available a one billion four hundred million dollar (\$1,400,000,000) **loan** from the General Fund ...” (emphasis added)