June 27, 2016

The Honorable Betty T. Yee, State Controller and Chair
California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA, 95825

Re: Calendar Item 96 on the agenda for the June 28, 2016 meeting;
PG&E’s Proposed New Lease at Diablo Canyon Nuclear Power Plant

Dear Chair Yee:

My client, the Alliance for Nuclear Responsibility (“A4NR”), supports the Joint Proposal and commends the other signatories for a truly historic achievement. A4NR declined, however, to endorse the joint letter to the State Lands Commission (“SLC”) and strongly disputes its legal analysis concerning CEQA and the Public Trust Doctrine. We urge the Commission to exercise its discretion to initiate a full EIR process and, using the information gathered, conduct an in-depth Public Trust analysis that is consistent with San Francisco Baykeeper, Inc. v. California State Lands Commission (2015) 242 Cal.App.4th 202.

The SLC staff report for Calendar Item 96 was not available until Thursday, June 23, and it materially varies from the agenda posted on June 16 in altering the identified “CEQA Consideration” for the new PG&E lease from “not a project” to “a categorically exempt project” in conformity with the disputed legal analysis in the joint letter. Cal. Gov. Code §§ 11125 and 11125.3 limit the ability of the SLC to take action on the new PG&E lease, and A4NR requests that any vote be deferred to a subsequent SLC meeting in light of the abbreviated review time afforded the public.

Even an abbreviated review, however, makes obvious that the claimed Class 1 categorical exemption is ill-founded. Approval of the new PG&E lease will extend the period of operation of the two Diablo Canyon reactors from an average of 32.9 years to 39.9 years, an increase of 21% beyond the August 27, 2018 expiration of Lease No. PRC 4307.1. By simple arithmetic, the extended period of the new lease will enable a 21% increase in the creation of spent nuclear fuel (aka radioactive waste) and a 21% increase in damage to marine organisms.¹

¹ The Resolution adopted on April 17, 2006 articulating SLC policy on once-through-cooling observes, “once-through cooling significantly harms the environment by killing large numbers of fish and other wildlife, larvae and eggs” and “also significantly adversely affects marine, bay and estuarine environments by raising the temperature of the receiving waters, and by killing and displacing wildlife and plant life ...”
It is beyond dispute that these significant effects on the physical environment will occur if the reactors operate for the proposed new lease term. More ominously, the new PG&E lease will increase the public’s exposure to potential reactor core-damaging seismic risk at Diablo Canyon by 21%. Whether this poses a “reasonable possibility” of significant effects on the environment requires careful evaluation of seismicity at Diablo Canyon, perhaps the SLC staff report’s largest shortcoming.

Seismic risk is a particular concern for Diablo Canyon’s Unit 1 reactor, which the Nuclear Regulatory Commission (“NRC”) identified in 2013 as the third-most embrittled reactor in the United States.\(^2\)

I was Governor Gray Davis’ last appointee to the California Energy Commission (“CEC”), filling the attorney position identified in Cal. Pub. Res. Code §25201. I served as the presiding member of the Commission’s Facilities Siting Committee from 2002 to 2008, helped issue nearly two dozen power plant licenses, and expended considerable time applying CEQA to electric generating facilities. Both the joint letter and the SLC staff report are understandably enchanted by the political optics of the Joint Proposal, but bear no resemblance whatsoever to California’s statutory and decisional law.

At a less delusional point in time, a previous SLC staff report on the proposed new PG&E lease, prepared for Calendar Item Informational 83 on the SLC’s February 9, 2016 meeting agenda, accurately summarized controlling law:

An exception to the general categorical exemption, however, applies where there is a “reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” (Cal. Code Regs., tit. 14, § 15300.2, subd. (c).)

The California Supreme Court has recently held that:

[A] party invoking the [unusual circumstances] exception may establish an unusual circumstance without evidence of an environmental effect, by showing that the project has some feature that distinguishes it from others in the exempt class, such as its size or location. In such a case, to render the exception applicable, the party need only show a reasonable possibility of a significant effect due to that unusual circumstance.

(Berkeley Hillside Preservation v. City of Berkeley (2015) 343 P.3d 834, 846.)

The DCPP’s nuclear fuel source and proximity to fault lines distinguish it from other power plants in California and, essential to the plant’s operation, is the DCPP cooling water system, with many components authorized under the CSCLC

\(^2\) http://pbadupws.nrc.gov/docs/ML1310/ML13108A336.pdf
leases. The DCPP is the only active nuclear power plant in California, supplying approximately 18,000 gigawatt-hours of electricity annually ...

The current SLC staff report omits this guidance in favor of far more vacuous language drawn from the joint letter, and refuses to even acknowledge the “unusual circumstances” presented by the state’s only operating nuclear plant: the sole source of additional high-level nuclear waste; California’s largest marine predator, in the words of the Coastal Commission staff recommendation to the State Water Resources Control Board;³ and by far the most lethal seismic risk in the United States. The CEC’s 2015 Integrated Energy Policy Report contains a jarring graph from the Electric Power Research Institute of the ground motion response spectrum acceleration reported by each U.S. nuclear plant, noting “the unique nature of the seismic analysis imposed upon” Diablo Canyon as the “most significant outlier” in the national nuclear fleet.⁴

The SLC staff report’s seismic discussion is breathtakingly inaccurate, choosing to recycle outdated PG&E nostrums and simply ignore the series of debunking reports issued by the Independent Peer Review Panel (“IPRP”) of state agencies assembled to review PG&E’s seismic work.⁵ Some of the more obvious examples:

- SLC staff report: “the Shoreline fault ... is approximately 25 kilometers in length ...”

  - IPRP Report No. 7: “Based on the new mapping ... the Shoreline fault is essentially a continuous feature from its intersection with the Hosgri fault, for a distance of 45 km.”

- SLC staff report: “PG&E believes that the Shoreline fault is segmented into northern, central, and southern segments and is not capable of jointly rupturing with the Hosgri fault. The significance is that larger fault lines produce larger earthquakes;⁶ gaps between fault segments act as barriers, lowering the intensity of possible earthquakes.”

  - IPRP Report No. 7: “the Shoreline fault is essentially a continuous feature from its intersection with the Hosgri fault ...” *** “With respect to seismic hazard, this investigation has shown that effectively, there is a direct connection between the two fault zones, with the intersection located at a graben that is structurally controlled by the Hosgri and Point Buchon fault zones. Furthermore, this graben

³ https://www.youtube.com/watch?v=VcqQtHBq6m8
⁶ PG&E testimony to the CPUC in 2015 asserted that “there is not a large increase in high-frequency ground shaking levels for sites located close to shallow crustal earthquakes for magnitudes above about magnitude 6.5 (M6.5).” A.14-02-008, PG&E-2, p. 7-4.
is located about 500 meters east of the main trace of the Hosgri fault zone, which is well within the upper limit of 5 km that is typically viewed as the maximum distance that earthquake ruptures can jump from fault to fault (e.g. Wesnousky, 2008). Based on this work, it appears that this study has provided the data necessary to address the question regarding if and how the two fault zones are connected, at least in the near surface.”

One minor recommendation the IPRP has is that PG&E simplify the naming nomenclature for the zone of faults currently referred to as the Point Buchon and Shoreline fault zones. Based on this work, it is apparent the Shoreline fault zone, the Point Buchon fault zone, and possibly the Shoreline seismicity lineaments are related structures.”

• SLC staff report: “... relying on the lack of intersection of surface traces between the two faults, PG&E concludes that the Shoreline and Hosgri faults do not connect ...”

✓ IPRP Report No. 7: “This new mapping shows that the Hosgri and Shoreline faults are essentially connected in the near-surface. As a result, seismic hazard models that do not consider the possibility of these faults linking no longer need to be considered ...”

Compounding its reliance on stale assessments, the SLC staff report cites a 2012 NRC conclusion that “rules out the possibility of joint rupture” of the Hosgri and Shoreline faults. The SLC staff report neglects to point out that this observation predated PG&E’s 2014 publication of new seismic imaging data, and that the NRC hedged its 2012 observation by directing PG&E to notify the NRC if, “during the collection of the data, new faults are discovered or information is uncovered that would suggest the Shoreline fault is more capable than currently believed.” PG&E did just that on September 10, 2014, admitting that “additional offshore seismic studies revealed that the Shoreline fault is longer by extending farther south than in the Shoreline Fault report (Reference 3), and therefore, more capable as described in the enclosure.” The SLC staff report’s continued reliance on Reference 3 is clearly misplaced.

Nor does the SLC staff report demonstrate any awareness of the continuing controversy over whether Diablo Canyon is in current compliance with its licensed seismic design basis, the so-called Double Design Earthquake (“DDE”). As the NRC has acknowledged since 2012, “using the DDE as the basis of comparison will most likely result in the Shoreline fault and the Hosgri earthquake being reported as having greater ground motion” than the plant’s Safe Shutdown

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7 Letter from Joseph M. Sebrosky, NRC Senior Project Manager for Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, to Edward D. Halpin, PG&E Senior Vice President and Chief Nuclear Officer, October 12, 2012, p. 4.
8 PG&E Letter DCL-14-081 from Edward D. Halpin, PG&E Senior Vice President and Chief Nuclear Officer, to NRC Commissioners and Staff, September 10, 2014, p. 2.
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Earthquake.\textsuperscript{9} The NRC senior resident inspector at Diablo Canyon who cited PG\&E for violation of its seismic design standard, and recommended the plant be shut down until compliance could be established, was subsequently transferred to an NRC position in Chattanooga, Tennessee.

Figure 56 from the CEC’s 2015 Integrated Energy Policy Report graphically displays the substantial exceedance of the DDE standard in the probabilistic seismic hazard assessment contained in PG\&E’s March 11, 2015 Seismic Hazard Re-evaluation Report.\textsuperscript{10} The CEC’s conclusion: “Presumably for this reason, and after a preliminary review of PG\&E’s PSHA study, the NRC directed PG\&E to undertake additional earthquake risk analysis and to submit the additional analysis by June 2017.”\textsuperscript{11} The SLC staff report’s failure to include any discussion of Diablo Canyon’s seismic license compliance is a significant oversight, especially in light of the even more troubling graphs included in IPRP Report No. 9 (Figures 5 and 6) showing large exceedances of the 1977 Hosgri and 1991 LTSP spectra when PG\&E’s data-sparse ground modeling is replaced by the conventional ergodic methodology.

Given that the $64.25 million ratepayer-funded studies that the IPRP was convened to review comprised the most expensive seismic re-evaluation of a nuclear plant ever performed in the US, the SLC staff report’s failure to address IPRP commentary is a substantial error. PG\&E’s current federal prosecution on safety-related and agency obstruction felony counts related to its natural gas business is unprecedented for any utility holder of an NRC operating license. The implications for the Diablo Canyon licenses of a potential criminal conviction are unclear. Under such circumstances, state government’s transactional trust-but-verify standard deserves to be applied with forensic intensity. It is abundantly obvious that has not happened here.

A4NR invites the SLC members to join with the Joint Proposal signatories in celebrating the onset of a new energy era. Of necessity, however, your admission to the festivities must be deferred until after you make a properly informed decision on whether to approve a new lease. It would be a grotesque abuse of your discretion to fail to initiate a full EIR process.

Sincerely,

John L. Geesman
Dickson Geesman LLP
Attorney for Alliance for Nuclear Responsibility

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\textsuperscript{9} Letter to Edward D. Halpin from Joseph M. Sebrosky, NRC Senior Project Manager for Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, October 12, 2012, p. 4. This remarkable statement was repeated by Dr. Cliff Munson, an NRC seismologist, in testimony at a 2013 CEC workshop. Docket No.13-IEP-1J, June 19, 2013, Transcript, p. 89,\textsuperscript{10} California Energy Commission, 2015 Integrated Energy Policy Report, p. 183.\textsuperscript{11} Id.
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Cc: The Honorable Gavin Newsom, Lieutenant Governor and Member  
The Honorable Michael Cohen, Governor’s Finance Director and Member  
Jennifer Lucchesi, Executive Officer

Attachment: CD-R disk entitled “Alliance for Nuclear Responsibility's submittal to the administrative record for Calendar Item No. 96 on the agenda for the June 28, 2016 meeting of the California State Lands Commission”