

Comments – Proposed Guidance Amendment – June 2022

From: Calvin Gluck <calvin@gluck.cc>
Sent on: Saturday, June 18, 2022 3:10:50 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Please eliminate the 50% recovery requirement

Yes! We need to save any and all nuclear power production.

“the eligibility criteria should be revised to eliminate the requirement that an applicant (Applicant) for credits (Credits) under the Civil Nuclear Credit (CNC) Program not recover more than 50 percent of a Nuclear Reactor’s cost from cost-of-service regulation or regulated contracts.”

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Regards,
Calvin Gluck
+1-214-505-8992
W7KYG Amateur Radio Volunteer

From: Carl Wurtz <cwurtz@cgnp.org>

Sent on: Saturday, June 18, 2022 4:42:36 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

CC: Huff, Kathryn <kathryn.huff@nuclear.energy.gov>

Subject: [EXTERNAL] Resource Adequacy Credit (RAC) proposal - Diablo Canyon Power Plant

Dear Dr. Huff and Colleagues,

With recent interest in extending the life of Diablo Canyon Power Plant, Californians for Green Nuclear Power (CGNP) has become aware that, due to a consequence of cost-of-service compensation based on Return-On-Equity (ROE), the plant will no longer be profitable after it has been fully depreciated in 2025.

Though electricity in every state is regulated by different mechanisms and frameworks, it is typically an investment made by either a city or an investor-owned utility, where profitability is the #1 priority. Nuclear plants are unique among power plants, however, in that their abundant, carbon-free generation not only benefits owners and customers, but society at large. Public support of nuclear plants is thus an investment that will reap benefits long into the future – including pollution-free operation, safety, reliability, small land-use footprint, and many others.

The Missing Piece of the Clean Energy Puzzle

In recent years, climbing temperatures have pushed California's CAISO grid to the limit, making its reliability vulnerable to fluctuations in generation from wind and solar farms. Recently, multiple studies (Stanford/MIT, Brattle Group, others) have emphasized Diablo Canyon's essential role in maintaining grid reliability – yet for that role, PG&E remains inadequately compensated.

As an alternative to closing Diablo Canyon in 2025, we propose using funding from the Civil Nuclear Credit (CNC) program to award nuclear plants a "Resource Adequacy Credit" (RAC) - one modeled on the zero-emission credits (ZECs) which have proven successful at extending the lives of other U.S. plants. In California, its purpose would be to compensate PG&E for the reliability benefits Diablo Canyon brings to California's grid. They include:

- 24/7/365 operation
- Grid inertia, a critical component of maintaining a precise frequency of 60 Hz on California's AC grid
- Ancillary services, including phase, frequency, and voltage correction
- Uranium fuel – a fuel available from multiple sources, one that is easily stored onsite, and one that offers unparalleled price stability
- Fuel security – with refueling only needed every eighteen months, capacity factors in excess of 90% are possible

Though CGNP is not authorized to act as an agent for Pacific Gas & Electric Corporation, publicly available information reveals that the plant, with a credit based on a percentage of marginal sales of energy, could be operated profitably and with significant savings for electricity customers. Some figures:

Diablo Canyon Power Plant

Typical Annual generation:[i]

18,000,000,000 kWh
Annual Production:[i]
16,284,422,576 kWh
Hours Connected to Load:[i]
8,335
Capacity Factor (2020):
95.08%

Maximum Proposed (RAC):
\$1,500,000,000
Per kWh: \$.083
Per MWh: \$83.33

Total Expenses - Operations & Maintenance (2020)[i]: \$522,299,522
[i] 2020 Federal Energy Regulatory Commission (FERC) Form 1

CGNP is a non-profit, 501(c)(3) organization of nuclear and civil engineers, students, physicists, and people from all walks of life who recognize the important role nuclear energy must play in preventing climate change. With no financial interest in keeping the plant open, we only attempt to prevent a tremendous clean energy resource from being prematurely and unnecessarily torn down.

Please let us know if you feel such a program would be an effective means of achieving the goals of the CNC program. Since PG&E made its decision to shut down Diablo Canyon in 2016, we have logged thousands of hours of work and submitted thousands of pages of expert testimony to prevent its closure. Though PG&E's application was accepted in 2018, it has since realized, together with Gov. Newsom and CAISO grid engineers, the value Diablo Canyon brings to grid reliability in our state. Finally, we are confident stakeholders can work together to craft a solution that is favorable to all.

Sincerely,

Carl Wurtz
President
Californians for Green Nuclear Power

From: Adam Peck <peck.adams@gmail.com>
Sent on: Saturday, June 18, 2022 9:20:11 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Response to Proposed CNC Amendment

To whom it may concern:

The CNC is a very specific piece of legislation that is intended to ensure that America's baseload carbon free nuclear fleet continues to operate and supply the US with 20% of its baseload power carbon free to mitigate the effects on climate change. The federal government has been slow to recognize the importance of this industry and role it plays and even with this criteria we observe the failure of the legislation to maintain Palisades nuclear plant operational. The request from the Governor's office of California is very simple - ensure DCPD can be eligible for this program. DCPD is shutting down due to policies of the state that result in it being economically non-viable including Community Choice Aggregation, Renewable first dispatch, and Once Through Cooling Legislation all of which required historical decisions that placed DCPD in the current position it is in. To enable DCPD to be eligible for the CNC is the goal of the state government and the federal government and that includes a significant one time cost of all the work associated with License Renewal. To make CNC application applicable for DCPD I would recommend very specific wording that includes costs associated with license renewal or specify DCPD in the language. Reading the proposed language it feels as though the DOE is working actively to prevent DCPD from being eligible. Please consider that in your word choice.

DOE seeks comments on all elements of this proposed Guidance Amendment. In addition, DOE seeks comment on the following specific questions:

1. If DOE revises the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market, should DOE revise the Guidance for a future award cycle, or amend the Guidance for the first award cycle?

The guidance should be revised for all cycles including both the current and future cycle.

2. If DOE amends the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market for the first award cycle, should DOE extend the deadline for submission of certification applications and sealed bids, currently July 5, 2022?

No, the current date should be maintained at July 5th. Any extension delays the precipitation of the decision of the future of DCPD, delays make the result if license renewal is expected more costly and difficult to occur.

R/
Adam Peck

From: Rod Adams <rod@nucleationcapital.com>
Sent on: Saturday, June 18, 2022 11:18:39 AM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Response to Proposed Guidance Amendment
Attachments: CNC proposed amendment comment.pdf (24.27 KB)

June 18, 2022

Dear DOE NE:

I support the proposed Guidance Amendment to revise the eligibility criteria for the Civil Nuclear Credit program to eliminate the requirement that an applicant not recover more than 50% of a nuclear reactor's cost from cost-of-service regulation or regulated contracts.

I further support amending the Guidance for the first award cycle.

The DOE should extend the submission deadline to July 5, 2022 in order to give applicants that were not eligible under initial criteria the opportunity to prepare and submit a certification application if the proposed amendment has now made them eligible.

Sincerely,

Rod Adams

Managing Partner, Nucleation Capital
Publisher, Atomic Insights
Host and producer, the Atomic Show podcast

June 18, 2022

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I support the proposed Guidance Amendment to revise the eligibility criteria for the Civil Nuclear Credit program to eliminate the requirement that an applicant not recover more than 50% of a nuclear reactor's cost from cost-of-service regulation or regulated contracts.

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Sincerely,

Rod Adams
Managing Partner, Nucleation Capital
Publisher, Atomic Insights
Host and producer, the Atomic Show podcast

From: Cameron Christensen <cameronchristensen89@gmail.com>
Sent: Saturday, June 18, 2022 12:42 AM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Response to Proposed Guidance Amendment

I believe the proposed guidance amendment is appropriate given the stated goal of the Civil Nuclear Credit Program to support continued operation of US civilian nuclear power reactors. The specific peculiarities of the California energy market should not preclude the opportunity for Diablo Canyon's owners to apply for the credit program.

The guidance, if revised, should apply to the first award cycle. Should Diablo Canyon's owners apply and be granted money from the credit program, they will likely seek to renew the operating licenses for the two reactors which are currently set to expire in 2024 and 2025. The process of applying for and being granted a renewed operating license by the Nuclear Regulatory Commission is a time consuming process requiring multiple licensing submittals and hearings before the Advisory Committee On Reactor Safeguards. Allowing Diablo Canyon's owners to apply in the first award cycle would improve the likelihood that the license renewal process would be sufficiently completed prior to the expiry of the current operating licenses.

The deadline for application should only be extended, in the context of the proposed guidance amendment, if requested by Diablo Canyon's owners or another interested party (e.g. the Office of the Governor of California). Extending the deadline sua sponte would unnecessarily delay the bid review and credit-granting process.

Respectfully,

Cameron Christensen

From: <rylandwatts@gmail.com>
Sent on: Sunday, June 19, 2022 10:06:09 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] CNC Guidance Amendment

Hello,

I am an electrical engineer whom works in a utility directly adjacent to P&GE, and I am writing to agree with the CNC guidance amendment presented by the DOE.

Back in August of 2020, I was watching the SCADA system as load shed was implemented and de-energized thousands of homes around my city. It was very unnerving to see circuits being dropped all around me, knowing there was nothing I could do about it. As a distribution engineer for the power company, keeping the lights on is what gives me pride in my work and I really don't want to see that happen again.

Operating a power grid requires redundancy for reliability. Losing a large nuclear power plant will dramatically increase the probability of a load shed event if not replaced with the same type of generation that is just as reliable.

The nuclear plant might not be as competitive nowadays as solar and wind on the energy market. However, in extreme grid conditions a nuclear plant becomes critical source of power for when solar and wind are no longer available. Losing a solar or wind generator doesn't necessarily mean that the sun isn't shining or wind isn't blowing. The transmission lines that feed those power plants could have relayed to lockout. Having additional sources like a nuclear power plant will help stabilize the grid during these events. We have to design for reliability and N-1 contingencies into both the grid and the markets associated with it. This design will most likely make solar and wind (without associated energy storage) less economically beneficial for generation owners, but that is the reality of the grid's needs.

Keeping nuclear power plants competitive will require some intervention into the power markets with this new technology of solar and wind. Reliability means having contingencies designed and planned out well in advance of real time operations. We need to keep this in mind even with our push towards lower carbon emission technologies. To truly replace a nuclear power plant, a new generator needs to provide all the benefits as a nuclear plant does to the grid to be competitive. This means we have to factor in the consistency of a nuclear power plant into its cost recovery versus other technologies.

I support the DOE proposal as it will allow for nuclear plants to remain online despite recent market forces. I do not believe the energy market has truly priced in the benefits that nuclear power has over solar and wind power sources. I think this proposed amendment can help steer our markets towards valuing reliability and low carbon emissions, instead of only valuing low carbon emissions from sources of power.

Best,

Ryland Watts, B.S.E.E.
rylandwatts@gmail.com

From: BRIAN CAM <briancam2470@gmail.com>

Sent on: Monday, June 20, 2022 4:35:52 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] feedback: Public comments on a proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program

Dear NE Communications <necommunications@nuclear.energy.gov>,

Please APPROVE proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program AS SOON AS POSSIBLE. If it is possible for Palisades MI and Diablo CA Nuclear Plants to continue Operation past their PREMATURE CLOSURE DATES, ANY REGULATION and money necessary should be immediately changed and money appropriated. DOE needs to take control of the usa Grid Structure in this time of WAR and astronomical rising Energy Costs! This is a matter of national survival. Question: IS DOE on WAR-Footing? Allowing Palisades Nuclear to be PREMATURELY CLOSED and replaced by valuable Fossil Fuels and 4 MTONS/ yr Extra EMISSIONS, PROVES Biden administration is NOT on "WAR FOOTING"! BUT Seems intent on LOSING in EU, Ukraine and surrendering Taiwan to Putin Russia Ally, China#1! Reference: 2022-03-10-->>Energy Secretary Jennifer Granholm publicly called on oil and natural gas producers in the United States to boost output while the country is on a "war footing." <https://nypost.com/2022/03/10/were-on-a-war-footing-biden-official-demands-energy-firms-boost-supply/>

Thank you

Brian Campbell
Cambridge MA

From: Orlando Lassus <orlando_lassus@hotmail.com>

Sent on: Monday, June 20, 2022 10:04:52 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed guidance amendment for the Civil Nuclear Credit Program

Concerning your request for public comments on the subject guidance:

The eligibility criteria should be revised to eliminate the requirement that a nuclear reactor applying for credits under the program not recover more than 50 percent of its cost from cost-of-service regulation or regulated contracts.

The revised eligibility criteria should apply to applications and bids as soon as practicable.

In short, the DOE's guidance should be structured to put as many nuclear plants as possible on firm financial footing as soon as possible.

From: Jonah Bennett <jonahbenn@yahoo.com>
Sent on: Monday, June 20, 2022 3:42:38 AM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Public Comment - Jonah Bennett

I support the proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program. Nuclear power is an indispensable part of mitigating climate change, and any actions taken to allow existing plants to safely operate for longer periods of time are perhaps the quickest and easiest way to guarantee low-carbon, green, and sustainable power generation.

From: Mike Kesow <mkesow@outlook.com>
Sent on: Monday, June 20, 2022 11:24:58 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Response to Proposed Guidance Amendment

To whom it may concern:

I support the proposed guidance amendment to the Civil Nuclear Credit (CNC) Program to modify the “50 percent or more of total revenue” requirement to a “material amount.”

In addition, comments on the specific questions:

1. If DOE revises the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market, should DOE revise the Guidance for a future award cycle, or amend the Guidance for the first award cycle?

Comment: The revised guidance should apply to all cycles, including the first.

2. If DOE amends the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market for the first award cycle, should DOE extend the deadline for submission of certification applications and sealed bids, currently July 5, 2022?

Comment: Yes, the deadline should be extended if the requirements are modified.

Michael Kesow

Response to Proposed Guidance Amendment

To whom it may concern:

I support the proposed guidance amendment to the Civil Nuclear Credit (CNC) Program to modify the “50 percent or more of total revenue” requirement to a “material amount.”

In addition, comments on the specific questions:

1. If DOE revises the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market, should DOE revise the Guidance for a future award cycle, or amend the Guidance for the first award cycle?

Comment: The revised guidance should apply to all cycles, including the first.

2. If DOE amends the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market for the first award cycle, should DOE extend the deadline for submission of certification applications and sealed bids, currently July 5, 2022?

Comment: Yes, the deadline should be extended if the requirements are modified.

Michael Kesow

From: USNEF <comments@usnuclearenergy.org>

Sent on: Monday, June 20, 2022 5:49:46 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

CC: comments@usnuclearenergy.org

Subject: [EXTERNAL] Request for comment!

The DOE needs to do everything possible to continue the operation of our U.S. nuclear power facilities! YOU should promote YOUR record of nuclear production . . . the single largest generation of "Carbon Free Energy".

The DOE should fund our US Nuclear Energy 501 c-3 non-profit foundation to promote the grassroots education of nuclear energy!

E.g. our education about the NuScale failsafe SMR. SEE:

<https://www.usnuclearenergy.org/advanced-reactors-NUSCALE.html> You asked for COMMENT this is a darn good one!

From: Nathan Riachy <nlriachy@yahoo.com>

Sent on: Tuesday, June 21, 2022 2:30:48 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Comment on the proposed Guidance Amendment for the CNC

I believe you should do everything in your effort to include the Diablo Canyon Power Plant in your new program.

From: K V <kellyvanburen@gmail.com>
Sent on: Tuesday, June 21, 2022 1:41:02 AM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Fwd: Response to Proposed CNC Amendment

Department of Energy:

The request from the Governor's Office of California is clear. They are striving to keep Diablo Canyon open. Reading the criteria I am unsure which power plant the CNC was intending to keep open or why the criteria was created in such a restrictive manner. I would urge you to consider revising the criteria in line with the Governor's request. I would also urge that you do so for the first award cycle as time is not on Diablo Canyon's side. DCP's closure is due to a long history of non-nuclear friendly decisions which put insurmountable road blocks in the way of relicensing. Now that the political tides have turned, the finances do not allow for the owner/operator to invest in the relicensing process. If the DOE is actually interested in retaining the power plants that are in existence, I would urge the criteria be less restrictive.

Thank you,
Kelly Van Buren

From: Hannah Smay <hannahs@nirs.org>

Sent on: Tuesday, June 21, 2022 11:17:16 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Letter for consideration on proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program

Attachments: Diablo-Canyon_sign-on_2022-06 (1).pdf (216.65 KB)

Hello,

Please find attached a letter relevant to the current comment period regarding the proposed Guidance amendment for the CNC. Over 170 organizations, including Beyond Nuclear, North American Water Office, Food & Water Watch, Institute for Policy Studies Climate Policy Program, Nuclear Energy Information Service (NEIS), Center for Biological Diversity, International Marine Mammal Project of Earth Island Institute, Nuclear Information and Resource Service (NIRS) and more sent a letter to Secretary of Energy Jennifer Granholm opposing the misuse of the Department of Energy's Civil Nuclear Credit program (CNC) to dismantle the fossil-free phaseout and just transition plan for the Diablo Canyon Nuclear Power Plant.

The CNC was created by the bipartisan Infrastructure Investment and Jobs Act (IIJA) to mitigate potential greenhouse gas emissions (GHG) increases due to the closure of unprofitable nuclear reactors that operate in competitive electricity markets. The letter explains how applying the CNC program to Diablo Canyon would violate the letter and intent of the law. The nuclear power plant is not eligible for funds under the CNC program because it does not meet the basic requirements of the IIJA, nor those of the CNC program guidance DOE published to implement the program.

The express language of the IIJA would make the application of the CNC to utility-operated reactors illegal.

Thank you for your consideration,

Hannah Smay
Nuclear Information and Resource Service

Hannah Smay (she/her/hers)
Shoshone and Bannock lands (<https://native-land.ca/>)
Digital Organizer
Nuclear Information and Resource Service
www.nirs.org

June 21, 2022

Secretary Jennifer Granholm
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585
The.Secretary@hq.doe.gov

Dear Secretary Granholm:

The one-hundred seventy-nine organizations signed below are extremely concerned about recent statements and media reports indicating that the Department of Energy (DOE) is negotiating with California Governor Gavin Newsom to misuse the Civil Nuclear Credit program (CNC) to dismantle the fossil-free phaseout and just transition plan for the Diablo Canyon Nuclear Power Plant.

The CNC was created by the bipartisan Infrastructure Investment and Jobs Act (IIJA) to mitigate potential greenhouse gas emissions (GHG) increases due to the closure of unprofitable nuclear reactors that operate in competitive electricity markets. Diablo Canyon is not eligible for funds under the CNC program because it does not meet the basic requirements of the IIJA, nor those of the CNC program guidance DOE published to implement the program less than three months ago:

- Diablo Canyon is not closing because it is unprofitable – its owner, Pacific Gas & Electric (PG&E) operates it as part of its regulated utility and recovers all of its costs plus a regulated rate of return on investment through its regulated electricity rates.
- Diablo Canyon is closing because PG&E determined in 2016 that doing so would enable it to meet California's renewable energy standard (RES) and emissions standards more rapidly and cost-effectively.
- There will be no emissions increases due to Diablo Canyon's closure because state law mandates the California Public Utilities Commission (CPUC) and, by extension, PG&E to ensure that outcome.
- As a result of CPUC orders and state legislation, PG&E and other utilities and load-serving entities in California must, between 2021 and 2026, procure over 22,000 MW of renewable energy and electricity storage. This is several times more generation and capacity than is needed to replace Diablo Canyon, as well as several fossil fuel power plants that are also retiring. The vast majority will be online before the reactors at Diablo Canyon retire in 2024 and 2025.

- President Biden's June 6 executive order¹ lifting the embargo on solar panel imports from Southeast Asia while the US expands domestic supply chain manufacturing will enable solar installations in California to proceed as planned, to meet CPUC's procurement targets and the state RES.

There is no legitimate basis for DOE to entertain Gov. Newsom's request to modify the rules of the CNC program to subsidize Diablo Canyon and vacate its planned phaseout². Extending Diablo Canyon's operation would require much more than modifying the CNC program guidelines and would, in fact, violate the express meaning and intent of the IJA.

Diablo Canyon's closure will do much more for California's climate goals, local communities, and economic and environmental justice than the CNC program. The phaseout plan which California is implementing is a model DOE should promote instead of seeking to preempt it. The basis for the plan points to how phasing out nuclear power plants along with fossil fuel generation can help accelerate emissions reductions, the growth of the renewable energy economy, and a just and equitable transition for workers and communities.

Diablo Canyon Phaseout Agreement

In 2016, PG&E published a report concluding that the continued operation of Diablo Canyon's 2,200 MW of inflexible baseload generation would cause severe congestion on the high-voltage transmission system as solar generation in California grows under the state's renewable energy standard and community choice aggregation programs.³ This would force PG&E to export or curtail solar generation because Diablo Canyon's reactors cannot adjust their output quickly enough to relieve overloaded transmission lines. PG&E determined that retiring Diablo Canyon 1 and 2 when their licenses expire in 2024 and 2025 would mitigate the transmission bottleneck, lower consumer costs, and enable the utility to achieve 55% renewable energy by 2031, exceeding the then-existing state RES target.

Upon reaching this conclusion, PG&E entered into a settlement with IBEW Local 1245⁴ (which represents 500 Diablo Canyon workers) and several environmental organizations, including Friends of the Earth, Natural Resources Defense Council, Environment California, and the Alliance for Nuclear Responsibility. The settlement resolved years of expensive, protracted legal

¹<https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/06/fact-sheet-president-biden-takes-bold-executive-action-to-spur-domestic-clean-energy-manufacturing/>

²https://static.ewg.org/upload/pdf/calif_letter_to_DOE.pdf?_ga=2.66025198.19902243.1653860374-927036638.1653860374

³ LaCount, Robert. *Joint Proposal for the Orderly Replacement of Diablo Canyon Power Plant with Energy Efficiency and Renewables*. M. J. Bradley & Associates. June 21, 2016.

https://www.pge.com/includes/docs/pdfs/safety/dcpp/MJBA_Report.pdf

⁴ Dalzell, Tom. "Diablo Canyon: A Just Transition for Workers and the Environment." UC Berkeley Labor Center. November 30, 2018.

<https://laborcenter.berkeley.edu/diablo-canyon-just-transition-workers-environment/>

and regulatory disputes over relicensing, seismic disaster risks, coastal ecosystem protection, and cooling system impacts.

Costs of Revoking the Settlement and Extending Diablo Canyon License Could Be Considerable

In order for Diablo Canyon to operate beyond the planned retirement dates, several things would need to take place:

- PG&E would either need to win the assent of the settlement parties or pay them compensatory damages.
- PG&E may be required to reimburse its ratepayers for substantial costs they have already borne for implementation of the phaseout and just transition plan.
- PG&E will need to submit a relicensing application and supplemental environmental impact statement to the U.S. Nuclear Regulatory Commission and endure a protracted administrative law process due to challenges by intervenors.
- PG&E will need to apply for water permits and approvals from the Coastal Commission and Water Resources Board, as well as a lease extension from the State Lands Commission.

The latter would entail large investments to convert Diablo Canyon's once-through-cooling (OTC) system to mechanical draft cooling towers, a capital cost likely to exceed \$1 billion. The Coastal Commission granted PG&E an exemption from that requirement in 2016 as a result of the phaseout agreement and PG&E's decision to retire the reactors in 2024 and 2025. A decision to continue operation of Diablo Canyon could also result in PG&E incurring financial liability for the incremental damage the plant's cooling system has caused to California's coastal waters over the intervening years.

In total, PG&E's up-front expenses to abandon the settlement agreement and continue operating Diablo Canyon would exceed \$1 billion and could approach \$2 billion or more.

It would be nonsense for DOE to consider expending such a large share of the \$6 billion appropriation for the CNC program merely to extend the operation of one nuclear power plant for what has been suggested as only a short duration of a few years.⁵ Awarding CNC funds to PG&E for Diablo Canyon would be arbitrary, capricious, and wasteful in the extreme, especially due to the overwhelming evidence that Diablo Canyon does not meet the eligibility criteria in the plain language of the IJA and the guidance DOE issued for the CNC program.

⁵ Gov. Newsom's Cabinet Secretary, Ana Matosantos, in her May 23, 2022 letter to Secretary Granholm, says, "the state is evaluating a temporary delay of the planned retirement" of Diablo Canyon, implying a period of extended operation significantly shorter than the 20 years typically authorized through NRC's relicensing process. Even so, PG&E would have to submit a relicensing application for any continued operation because the current licenses expire, respectively, on November 2, 2024, and August 26, 2025.
https://static.ewg.org/upload/pdf/calif_letter_to_DOE.pdf?_ga=2.66025198.19902243.1653860374-927036638.1653860374.

CNC Funding for Diablo Canyon Would Violate Economic and Environmental Justice Principles

Misusing the CNC program to fund Diablo Canyon's extended operation would also betray the Biden administration's commitments to climate and environmental justice. CPUC orders and state law authorize implementation of the phaseout plan, which includes a just transition program for power plant workers and the host community that could and should be a model for the entire country.

Under the phaseout plan, as authorized by state law⁶ and approved by the CPUC,⁷ Diablo Canyon workers are being provided with economic support through the closure of the plant in 2025 and local governments are being provided transitional revenue payments to protect the tax base. PG&E ratepayers have already been paying for these programs since 2018. To ensure an adequate skilled workforce at Diablo Canyon until it closes, workers are being provided annual salary bonuses (averaging \$34,000 per employee per year), and those who serve until the reactors' retirement will receive severance payments of \$115,000 each. On average, workers will receive \$353,000 in bonuses and severance by 2025 to support themselves and their families through their employment transition. In addition, PG&E will offer its nuclear workers the option of retraining and continued employment in the 10- to 20-year radiological decommissioning project at Diablo Canyon, another expense for which ratepayers are paying. The phaseout plan also includes stable property tax payments to municipalities through 2025 despite the rapidly depreciating value of the power plant, amounting to \$50 million in transitional revenue for local governments over seven years.

In total, PG&E customers have already been charged upwards of \$200 million for these just transition costs. If DOE were to grant Diablo Canyon Civil Nuclear Credits, would the award also include reimbursing ratepayers for the costs they have incurred?

Unraveling such a model agreement would not only undermine the goal of building a just and equitable clean energy economy, it would also exacerbate environmental justice impacts. In its first report in May 2021, the White House Environmental Justice Advisory Council identified "procurement of nuclear power" in a list of "Types of Projects That Will Not Benefit" environmental justice communities.⁸ The operation of nuclear power plants, and the entire nuclear fuel chain from uranium mining to waste disposal, entails severe environmental justice impacts. Subsidizing the continued operation of Diablo Canyon would undermine the

⁶ California Senate Bill 1090, enacted September 18, 2018.

https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1090

⁷ CPUC Decision 18-01-022 (January 11, 2018).

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M205/K423/205423920.PDF>

CPUC Decision 18-11-024 (November 29, 2018).

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M246/K081/246081285.PDF>

⁸ https://www.epa.gov/sites/default/files/2021-05/documents/whejac_interim_final_recommendations_0.pdf

Biden-Harris administration's entire case for advancing the transition to a clean energy economy and violate commitments to environmental justice.

Closing Diablo Canyon Meets California's Climate Goals

Subsidizing Diablo Canyon's continued operation would also undermine the very climate rationale for the CNC program: to mitigate GHG emissions. The criteria of the CNC funds requires that the closure of eligible nuclear power plants would result in a documented increase in GHG emissions. Diablo Canyon does not meet this requirement because the phaseout agreement includes a firm commitment by PG&E to meet California's GHG reduction targets and to exceed the state's RES. That commitment is reinforced by CPUC orders, as well as state legislation enacted in 2018 requiring that the retirement of Diablo Canyon not contribute to increases in GHG emissions:

(b) The commission shall ensure that integrated resource plans are designed to avoid any increase in emissions of greenhouse gases as a result of the retirement of the Diablo Canyon Units 1 and 2 powerplant.⁹ (emphasis added)

In order to meet that goal, the CPUC ordered PG&E to ensure the GHG-free phaseout of Diablo Canyon through comprehensive system planning. State legislation and CPUC orders will guarantee both adequate electricity supply and phaseouts of both Diablo Canyon and 3,700 MW of fossil fuel power plants. Between 2021 and 2026, California will bring online over 22,000 MW of new renewable energy and storage capacity, many times more electricity than the retiring nuclear reactors provide.

The CPUC has publicly attested to this in a recent op-ed by the agency's interim deputy executive director for Energy & Climate Policy, Peter Skala:

It is highly inaccurate to suggest that the State plans to replace Pacific Gas and Electric Company's (PG&E) Diablo Canyon Nuclear Power Plant mostly with Wyoming coal-fired generation. In fact, the State has ordered an unprecedented amount of new clean energy procurement—11.5 gigawatts—to replace the retirement of Diablo Canyon (along with other aging gas plants that are retiring). This includes wind, solar, batteries, geothermal, and long duration storage that will be online starting in 2023.¹⁰ (emphasis added)

⁹ Energy Storage Targets - Publicly Owned Utilities - AB 2514

<https://www.energy.ca.gov/data-reports/reports/energy-storage-targets-publicly-owned-utilities>

Assembly Bill 2514 (2010)

http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_2501-2550/ab_2514_bill_20100820_amended_sen_v90.html

¹⁰

<https://capitolweekly.net/letter-to-the-editor-cpuc-responds-to-inaccurate-commentary/?fbclid=IwAR2hi6TqKPBUwRmnuVju5YJhsX1MWrbQRioc52os0XhaIvVRHH2xmCwawcl>

The CPUC stated this clearly when it issued the June 2021 order requiring utilities and load-serving entities to procure 11,500 MW of capacity by 2026—including 2,500 MW of firm renewable capacity¹¹ by 2025, specifically to account for the retirement of Diablo Canyon.¹²

The California Public Utilities Commission (CPUC) ... today approved a historic decision ordering utilities to procure 11,500 megawatts (MW) of new electricity resources to come online between the years 2023 and 2026, enough to power approximately 2.5 million homes, with all of the resources procured coming from preferred resources, such as distributed energy resources (including energy efficiency and demand response), renewables, and zero-emitting sources. This represents the largest capacity procurement ordered at a single time by the CPUC, and is the largest requiring only clean resources.

Today's decision facilitates the integration of high amounts of renewables required to meet the state's renewable and clean energy goals and ensure reliability. The decision is a foundational investment in meeting the state's goal of 100 percent clean electricity by 2045.

The resources required to come online in the years 2023 through 2026 are needed to respond to more extreme weather events, while replacing electricity generation from more than 3,700 MW of retiring natural gas plants and 2,200 MW from Pacific Gas and Electric Company's retiring Diablo Canyon Power Plant. At least 2,500 MW of zero-emitting resources were ordered specifically to replace generation from Diablo Canyon, which is in addition to capacity already procured over the past several years for the same purpose. The CPUC has been planning to replace power from Diablo Canyon for many years through modeling, workshops, extensive public input, and earlier decisions. In 2019, the CPUC ordered significant amounts of new renewables and storage, which will result in a tenfold increase in batteries coming online this summer and next summer. (emphasis added)

The words of CPUC Commissioner Clifford Rechtschaffen demonstrate the commission's intent in issuing the order:

¹¹ Defined as renewable generation sources that can operate at an average annual capacity factor of at least 80%, such as geothermal power stations. This tranche of the procurement will entail projects with a total capacity greater than Diablo Canyon's, generating at least as much electricity on an annual basis.

¹²

<https://www.cpuc.ca.gov/news-and-updates/all-news/cpuc-orders-clean-energy-procurement-to-ensure-electric-grid-reliability>

The procurement we ordered is equal to output of four large nuclear power plants or 20 natural gas plants. Included is solar, wind, geothermal, and long duration storage—pumped hydro facilities or other emerging technologies that can store energy for eight hours or longer. Our actions today will ensure that we can keep the lights on during periods of greatest demand, even as we retire Diablo Canyon and other natural gas plants. (emphasis added)

The 11,500 MW procurement plan will be on top of more than 10,500 MW of renewable energy and storage capacity already mandated by previous CPUC orders, state legislation, and California's RES:

- A 2019 CPUC order resulting in 3,710 MW of renewable energy and storage between 2021 and 2023.¹³
- State legislation enacted in 2010 requiring 1,325 MW of battery storage by 2023.¹⁴
- CPUC orders requiring another 1,500 MW of storage capacity to mitigate wildfire risks.¹⁵
- 4,000 MW of renewables to comply with the 2024 RES target.

As a result of these measures, California will have added more than 18,500 MW of new renewable energy and storage capacity by the time Diablo Canyon unit 1 retires in 2024, and over 20,000 MW when Diablo Canyon unit 2 retires in 2025. Over 70% of that capacity will be in the form of renewable generation, including 2,500 MW of firm renewable capacity specifically to replace Diablo Canyon.

Furthermore, retirement of Diablo Canyon will enable further GHG reductions by freeing up existing pumped hydro storage capacity, which will displace additional fossil fuel generation. PG&E's 1,212 MW Helms pumped storage plant has been dedicated to providing "spinning reserve" backup capacity for Diablo Canyon since it was built in 1984. Doing so has enabled PG&E to reduce reliance on fossil fuel generation as the spinning reserve for the nuclear power plant, a secondary source of emissions resulting from reactor operation in many parts of the country. Once Diablo Canyon retires, most if not all of Helms' capacity will be available to provide zero-emissions peaking power, voltage support, and other grid reliability services.

¹³ CPUC. "Status Update on Procurement in Compliance with D.19-11-016 (IRP Procurement Order)." August 2021.

https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltp/ed_staff_review_of_feb2021_data_in_compliance_with_d1911016.pdf

¹⁴ Energy Storage Targets - Publicly Owned Utilities - AB 2514

<https://www.energy.ca.gov/data-reports/reports/energy-storage-targets-publicly-owned-utilities>

Assembly Bill 2514 (2010)

http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_2501-2550/ab_2514_bill_20100820_amended_sen_v90.html

¹⁵

<https://www.cpuc.ca.gov/news-and-updates/all-news/cpuc-orders-clean-energy-procurement-to-ensure-electric-grid-reliability>

Despite this overwhelming record, some have argued that extending Diablo Canyon's operation is nevertheless necessary because California solar projects may be delayed by a U.S. Department of Commerce tariff embargo on imported solar panels. If there had been any basis for this concern, President Biden's June 6, 2022 executive order lifting the embargo and tariffs on imported solar panels has resolved it.¹⁶

In addition, the Bureau of Ocean Energy Management (BOEM) announced on May 26, 2022, that it will hold an auction for offshore wind leases in California, projected to result in 4,500 MW of renewable capacity—more than twice Diablo Canyon's capacity and generating approximately the same amount of electricity each year.¹⁷ Rather than expend billions of CNC dollars to unravel the Diablo Canyon phaseout plan, DOE should work with California and the Department of the Interior to accelerate the development of these offshore wind projects and California's industrial infrastructure and workforce development.

In conclusion, Diablo Canyon does not qualify for the CNC. Awarding CNC funds to Diablo Canyon would be a massive failure on all fronts and for all parties. It would damage the integrity and conflict with the purpose of DOE's CNC program. It would interfere with the policies and plans to enact California's climate and RES goals. Critically, it would undo a major success that is the just transition outlined in the joint proposal approved by the CPUC.

We urge you to follow through with the Biden administration's commitment to environmental justice and climate action and honor the agreement to close Diablo Canyon. Bailing out old nuclear power plants is not the way to spark the energy transition we need to save the climate, create good jobs, build a strong economy, and advance environmental justice.

Sincerely,

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¹⁶

<https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/06/memorandum-on-presidential-determination-pursuant-to-section-303-of-the-defense-production-act-of-1950-as-amended-on-solar-photovoltaic-modules-and-module-components/>

¹⁷ Department of the Interior. "Biden-Harris Administration Proposes First-Ever California Offshore Wind Lease Sale" May 26, 2022.

<https://www.doi.gov/pressreleases/biden-harris-administration-proposes-first-ever-california-offshore-wind-lease-sale>

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Radio Free Maine
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Black Hills Clean Water Alliance
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ECAN-Erwin Citizens Awareness Network,
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Appendix: Planned Additions of Renewable Energy and Storage Capacity to Replace Diablo Canyon Units 1&2 and Reduce Power Sector GHG Emissions (2021-2026)

Dates	Capacity (MW)	Sources/Eligible Sources	Authorization
2021-2023	3,968 MW <ul style="list-style-type: none"> 2021: 1,771 MW 2022: 720 MW 2023: 1,477 MW 	93.5% Renewables + Storage <ul style="list-style-type: none"> 3,259 MW = Battery Storage and Hybrid Renewables/Storage¹⁸ 289 MW = Solar (289 MW) 162 MW = biomass(2 MW), geothermal (14 MW), wind (128 MW), and demand response (18 MW) 258 MW = Sutter Natural Gas Plant (existing plant, no long-term contracts) Imports limited to 20% of procured capacity 	CPUC Decision 19-11-016 ¹⁹
2023	1,325 MW	Energy Storage	Assembly Bill 2514 (2010) ²⁰
2021-2023	1,500 MW	Energy Storage	CPUC orders ²¹
2024	4,000 MW	Renewable Energy	RES and other state policies
2023-2026	11,500 MW <ul style="list-style-type: none"> 2023: 2,000 MW 2024: 6,000 MW 2025: 1,500 MW 2026: 2,000 MW 	Renewable Energy and Storage, including <ul style="list-style-type: none"> 2,500 of firm renewable generation (80% capacity factor) 1,000 MW of 	CPUC Decision 21-06-035 ²²
TOTAL	22,293 MW	98.8% Renewables + Storage 1.2% existing gas generation	

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https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/ed_staff_review_of_feb2021_data_in_compliance_with_d1911016.pdf

¹⁹ CPUC Decision 19-11-016 (November 7, 2019).

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M319/K825/319825388.PDF>

²⁰ Energy Storage Targets - Publicly Owned Utilities - AB 2514

<https://www.energy.ca.gov/data-reports/reports/energy-storage-targets-publicly-owned-utilities>

Assembly Bill 2514 (2010)

http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_2501-2550/ab_2514_bill_20100820_amended_sen_v90.html

²¹ <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M389/K478/389478892.PDF>

²² CPUC Decision 21-06-035 (June 24, 2021).

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M389/K603/389603637.PDF>

Annual and Cumulative Additions of Capacity (2021-2026)

Source	2021	2022	2023	2024 ²³	2025 ²⁴	2026	TOTAL
Renewables	179	117	136	5,000 ²⁵	1,500	1,000	7,932
Storage	745	302	2,422	1,500		1,000	5,969
Hybrid Renewables + Storage	562	300	2,249 ²⁶	5,000 ²⁷			8,111
Demand Response	13	1	5				18
Fossil Fuel	258						258
TOTAL Fossil-Free Capacity	1,499	720	4,812	11,500	1,500	2,000	22,031
Cumulative Fossil-Free Capacity	1,499	2,219	7,031	18,531	20,031	22,031	

²³ Planned closure of Diablo Canyon unit 1 on November 2, 2024

<https://www.nrc.gov/info-finder/reactors/diabl1.html>

²⁴ Planned closure of Diablo Canyon unit 2 on August 26, 2025 <https://www.nrc.gov/info-finder/reactors/diab2.html>

²⁵ Includes 4,000 MW of aggregate renewable energy standard resources from 2021-2024, as well as 1,000 MW of the 2,500 of firm renewable energy sources the CPUC ordered by 2025 in Decision 21-06-035 (June 24, 2021).

²⁶ Includes 2,000 MW of unspecified renewables, storage, and hybrid renewables+storage resources, per Decision 21-06-035.

²⁷ Includes 5,000 MW of unspecified renewables, storage, and hybrid renewables+storage resources, per Decision 21-06-035.

From: paul van Linden Tol <vanlindentolpaul@gmail.com>

Sent: Tuesday, June 21, 2022 2:46 PM

To: NE Communications <necommunications@nuclear.energy.gov>; Nuclear NY <nuclear-ny@googlegroups.com>

Subject: [EXTERNAL] In support of the amendment for the civil Nuclear Credit Program

I wholeheartedly support the proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program. The revision of the eligibility criteria to eliminate the requirement that a nuclear reactor applying for credits under the CNC Program not recover more than 50 percent of its cost from cost-of-service regulation or regulated contracts will be a welcome and much needed change. Hopefully this revision also will affect the eligibility of reactors who may apply in the first round of awards or in subsequent rounds of awards.

Respectfully yours,

Paul van Linden Tol, M.S.in information Science
890 E. 7th Street. #BR,
Brooklyn NY. 11230

From: Lance DeLaura <lld1@sbcglobal.net>

Sent on: Wednesday, June 22, 2022 1:18:58 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL]

I believe and support the notion that the department of Energy should revise the eligibility criteria to eliminate the requirement that a nuclear reactor applying for credits under the CNC Program not recover more than 50 percent of its cost from cost-of-service regulation or regulated contracts, including cost of maintaining units to continue to operate safely and efficiently.

From: crissy benyo <benyoassova@gmail.com>

Sent on: Wednesday, June 22, 2022 1:40:49 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Comment

I believe and support the notion that the department of Energy should revise the eligibility criteria to eliminate the requirement that a nuclear reactor applying for credits under the CNC Program not recover more than 50 percent of its cost from cost-of-service regulation or regulated contracts, including cost of maintaining units to continue to operate safely and efficiently.

From: Jeff Benyo <benyoranch@gmail.com>

Sent on: Wednesday, June 22, 2022 12:57:09 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed change to civil nuclear credit program

I believe and support the notion that the department of Energy should revise the eligibility criteria to eliminate the requirement that a nuclear reactor applying for credits under the CNC Program not recover more than 50 percent of its cost from cost-of-service regulation or regulated contracts, including cost of maintaining units to continue to operate safely and efficiently.

Thank you for your time

Jeff Benyo

From: Jason Benyo <jason_peter_thomas@msn.com>

Sent on: Wednesday, June 22, 2022 3:47:31 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Civil nuclear credit program

Hello ,

I believe and support the notion that the department of Energy should revise the eligibility criteria to eliminate the requirement that a nuclear reactor applying for credits under the CNC Program not recover more than 50 percent of its cost from cost-of-service regulation or regulated contracts, including cost of maintaining units to continue to operate safely and efficiently.

Thank you,
Jason Peter

From: Crissy Benyo <crisco0420@yahoo.com>
Sent on: Wednesday, June 22, 2022 1:40:04 AM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] CNC

I believe and support the notion that the department of Energy should revise the eligibility criteria to eliminate the requirement that a nuclear reactor applying for credits under the CNC Program not recover more than 50 percent of its cost from cost-of-service regulation or regulated contracts, including cost of maintaining units to continue to operate safely and efficiently.

From: travis marks <trav.marks@hotmail.com>

Sent on: Wednesday, June 22, 2022 3:29:02 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Hello

I believe and support the notion that the department of Energy should revise the eligibility criteria to eliminate the requirement that a nuclear reactor applying for credits under the CNC Program not recover more than 50 percent of its cost from cost-of-service regulation or regulated contracts, including cost of maintaining units to continue to operate safely and efficiently.

Thank You,

Travis Marks
Atascadero, CA

From: Katie R <katielrios28@gmail.com>
Sent on: Wednesday, June 22, 2022 3:19:49 AM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Nuclear Power Plant- Diablo

To whom it may concern,

I believe and support the notion that the department of Energy should revise the eligibility criteria to eliminate the requirement that a nuclear reactor applying for credits under the CNC Program not recover more than 50 percent of its cost from cost-of-service regulation or regulated contracts, including cost of maintaining units to continue to operate safely and efficiently.

Thank you.

Sincerely,

Katie Rios, Paso Robles

From: Scott Lathrop <lathrop@yttnorthernchumash.org>
Sent on: Wednesday, June 22, 2022 8:56:05 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Proposed CNC Guidance Amendment
Attachments: Letter to DOE (yttNCN) 6.20.22.pdf (210.38 KB)

Please find attached our Tribe Comments in support of the proposed Amendment.

Respectfully Submitted,

Scott R. Lathrop, Chief Executive Officer
lathrop@yttnorthernchumash.org
1-805-801-8401



Ytt Northern Chumash Nonprofit

June 20, 2022

Via Email – rfi-cnc@nuclear.energy.gov

Subject: Response to Proposed Guidance Amendment

The yak tityu tityu yak tilhini Northern Chumash Tribe strongly recommends the approval of the proposed guidance amendment as submitted.

Diablo Canyon Nuclear Power Plant is in our ancestral homelands it provides reliable carbon-free baseload electricity to California that is essential to maintaining the State's grid reliability currently and more so in the future.

Specific Comments:

1. First Award Cycle vs. Future Cycle – Revised guidance should apply to to the **First Award Cycle**. Currently, the plant is on a schedule to be closed in the year 2024, any delay in the implementation of the new guidance will only serve to assure its closure in 2024. It is essential that the current or future operator be able to access the program as soon as possible.
2. Extension of Application Deadline – Short response **Yes!**
The earliest DOE could possibly approve the amendment would be June 28th only leaving 4-days for an operator to apply. The deadline must be Extended.

Respectfully Submitted,

Scott R. Lathrop, Chief Executive Officer
lathrop@yttnorthernchumash.org
1-805-801-8401

Board Members:

Scott R. Lathrop, CEO
Shane Goldman, President
Wendy Lucas, Vice President
Kelsey Shaffer, Secretary
Arturo Cabada Jr., Treasurer
Susana C. Mata, Director
Sean Morris, Director

Mona Tucker, Tribal Liaison

501 (c) 3 Non-Profit
California # C3326701
Federal # 27-4006315

PO Box 13938
San Luis Obispo, Ca. 93406

From: Bonnie <51940@aeroinc.net>
Sent on: Wednesday, June 22, 2022 5:57:21 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] CNC PROGRAM

NO! NO! NO!...A THOUSAND TIMES, "NO"!

NO MORE NUCLEAR.

NUCLEAR IS DEATH – PERIOD.

No more nuclear "programs", etc.

Get rid of ALL things nuclear.

From: Kyle Davis <ksdavis10@gmail.com>
Sent on: Thursday, June 23, 2022 1:18:47 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Public comment

I believe and support the notion that the department of Energy should revise the eligibility criteria to eliminate the requirement that a nuclear reactor applying for credits under the CNC Program not recover more than 50 percent of its cost from cost-of-service regulation or regulated contracts, including cost of maintaining units to continue to operate safely and efficiently.

--

Kyle Davis
Owner/Broker
Capco Mortgage Inc.
805-434-8420
NMLS 692611
DRE 01776611

From: Jeff Skov <jmskov@earthlink.net>
Sent on: Thursday, June 23, 2022 2:00:27 AM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Response to Proposed Guidance Amendment
Attachments: Response to Proposed Guidance Amendment.pdf (110.5 KB)

My comments in response to your document, "U.S. Department of Energy, Proposed Guidance Amendment for the Civil Nuclear Credit Program, June 17, 2022," are attached. Thank you for the opportunity to comment. Please contact me if you have questions or desire additional information.

I would appreciate acknowledgement of receipt of the attached. Thank you.

Jeff.
Jeffrey M. Skov, BSME, MBA, JD
San Luis Obispo, California, USA

Response to Proposed Guidance Amendment

By Jeffrey M. Skov, BSME, MBA, JD

Introduction

Your document, "U.S. Department of Energy, Proposed Guidance Amendment for the Civil Nuclear Credit Program, June 17, 2022," requested comments on a "proposed amendment (Guidance Amendment) to the Guidance for the Civil Nuclear Credit Program dated April 19, 2022 (Guidance)." Thank you for providing the opportunity to comment. My comments are provided below.

As an initial matter, I note that I am an employee of Pacific Gas and Electric Company (PG&E) at the Diablo Canyon Power Plant (DCPP). However, these comments are provided strictly in my capacity as a member of the public and do not necessarily represent the views of PG&E.

However, I also note and acknowledge the statement in your June 17, 2022, document that "[t]he Guidance as revised by the Guidance Amendment is drafted to be generic, that is to treat all potentially eligible Nuclear Reactors fairly and on equal terms." The employer of any particular commenter should therefore not affect the perceived merit of his or her comments or the weight they receive.

That said, the extent to which a particular commenter's input *may be* self-serving with respect to (1) livelihood or (2) adequacy of standard of living should also not decrease the perceived merit of his or her comments or the weight they receive. Livelihood—termed "pursuit of happiness" by the nation's founders—has been deemed an unalienable right here since the inception of the republic, July 4, 1776. The great lessons-learned document from World War II—the Universal Declaration of Human Rights—which America subscribed—establishes in its Article 25 that an adequate standard of living is likewise an unalienable American right. Acknowledging and preserving these rights, through equal, thorough, reasoned consideration of each commenter's input, regardless of any hint or suspicion of a self-serving bias, would seem important—and especially so in these recent times of hyper-partisan, faction-steeped, I'll-mind-my-business-and-I'll-mind-your-business-too, nigh fanaticism. I hope you agree.

Comments

I fully support the proposed amendment. It is consistent with the underlying statute and serves to loosen the eligibility criteria facing potential Nuclear Reactor applicants. The latter is important because it will hopefully prolong the number of nuclear power reactors in service. Unlike fossil-fueled power plants, nuclear power reactors generate no carbon dioxide as a byproduct. This is critical in light of the following:

- *Right now we are facing a man-made disaster of global scale, our greatest threat in thousands of years: climate change. If we don't take action, the collapse of our civilisations and the extinction of much of the natural world is on the horizon.* – Sir David Attenborough, COP24, Katowice, 2018
- *What I hope we achieve at this conference is that we realise that we are facing an existential threat. This is the biggest crisis humanity has ever faced. First we have to realise this and then as fast as possible do something to stop the emissions and try to save what we can save.* – Greta Thunberg, COP24, Katowice, 2018

- *[We face] the single most important moral choice in the history of humanity.* – Al Gore, COP24, Katowice, 2018
- *We're running out of time. To waste this opportunity would compromise our last best chance to stop runaway climate change. It would not only be immoral, it would be suicidal.* – António Guterres, COP24, Katowice, 2018

In the case of DCP, all these pronouncements came *after* the 2016 decision to close the plant. They therefore constitute new information relative to that decision. Men and women of good will everywhere, including those in the Newsom administration in California, the Biden administration in Washington D.C., and on the board and in management at PG&E, would be loath to ignore this new information, especially when the global consequences—to humanity and to the planet—are so well-founded scientifically, so stark, and so dire.

Responses to your two specific questions are as follows:

1. If DOE revises the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market, should DOE revise the Guidance for a future award cycle, or amend the Guidance for the first award cycle?

DOE should amend the Guidance for the first award cycle. To do so would be reasonable and consistent with the intent of the proposed amendment.

2. If DOE amends the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market for the first award cycle, should DOE extend the deadline for submission of certification applications and sealed bids, currently July 5, 2022?

DOE should extend the deadline for submission. This is reasonable and appropriate since the current date, July 5, 2022, is less than two weeks away and those two weeks include the Independence Day holiday. However, please do not extend the due date more than, say four to six weeks. Remember, "we are facing a man-made disaster of global scale, our greatest threat in thousands of years" (Sir David Attenborough).

Please let me know if you have questions, or need any additional information or clarification.

Thank you again for the opportunity to comment.



Jeffrey M. Skov
San Luis Obispo, California, USA
June 22, 2022

From: G Baranek <gbaranek1@gmail.com>

Sent on: Friday, June 24, 2022 12:11:18 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Cmc program

I believe and support the notion that the department of Energy should revise the eligibility criteria to eliminate the requirement that a nuclear reactor applying for credits under the CNC Program not recover more than 50 percent of its cost from cost-of-service regulation or regulated contracts, including cost of maintaining units to continue to operate safely and efficiently.

From: Luke Bender <lukebender2@gmail.com>

Sent on: Friday, June 24, 2022 12:05:44 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] public comments on a proposed Guidance amendment for the Civil Nuclear Credit

I believe and support the notion that the department of Energy should revise the eligibility criteria to eliminate the requirement that a nuclear reactor applying for credits under the CNC Program not recover more than 50 percent of its cost from cost-of-service regulation or regulated contracts, including cost of maintaining units to continue to operate safely and efficiently.--

Luke Bender

From: Chris Cartland <c.cartland@gmail.com>

Sent on: Friday, June 24, 2022 12:08:08 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Response to Proposed Guidance Amendment

I support the Proposed Guidance Amendment for the Civil Nuclear Credit Program. The change will help California meet clean energy goals, specifically with the Diablo Canyon Power Plant. I urge the U.S. Department of Energy to adopt the amendment.

From: Jennifer Gallagher <jenngallagher@icloud.com>

Sent on: Friday, June 24, 2022 2:13:35 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL]

I believe and support the notion that the department of Energy should revise the eligibility criteria to eliminate the requirement that a nuclear reactor applying for credits under the CNC Program not recover more than 50 percent of its cost from cost-of-service regulation or regulated contracts, including cost of maintaining units to continue to operate safely and efficiently.

From: DK Koenig <dkkoenig113@gmail.com>
Sent on: Friday, June 24, 2022 5:10:12 AM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Civil Nuclear Credit (CNC) Program

To who this may concern,

I believe and support the notion that the department of Energy should revise the eligibility criteria to eliminate the requirement that a nuclear reactor applying for credits under the CNC Program not recover more than 50 percent of its cost from cost-of-service regulation or regulated contracts, including cost of maintaining units to continue to operate safely and efficiently

From: Jordan Loy <w.jordan.loy@gmail.com>
Sent on: Friday, June 24, 2022 1:20:48 AM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Diablo Canyon

I believe and support the notion that the department of Energy should revise the eligibility criteria to eliminate the requirement that a nuclear reactor applying for credits under the CNC Program not recover more than 50 percent of its cost from cost-of-service regulation or regulated contracts, including cost of maintaining units to continue to operate safely and efficiently.

W. Jordan Loy

From: Robert Searfoss <rlsinatlanta@yahoo.com>
Sent on: Friday, June 24, 2022 1:27:34 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Please extend comment period

Why so short in the first place?

This note from Robert Searfoss

From: Michael Roche <mbroche02@gmail.com>

Sent on: Friday, June 24, 2022 5:27:55 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Diablo Canyon

The Federal Government and the State of California should do everything possible to enable Diablo Canyon to continue safe operation beyond its current shutdown dates.

Our leaders need to look to Germany's experience shutting down their nuclear plants prematurely and the severe impacts that action has caused.

We must learn from others mistakes.

Thank you.

From: Greg Adams <gregadams5847@att.net>

Sent on: Friday, June 24, 2022 4:36:40 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Extension of comment period for Nuclear Credit program.

To Whom it may concern,

Please extend the comment period for the Nuclear Credit Program. This is an important program and the changes proposed need to be given a full vetting by all invested parties.

Thank you,

Greg Adams

From: David Baldwin <davidb@ua403.org>
Sent on: Friday, June 24, 2022 2:38:46 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Response to Proposed Guidance Amendment
Attachments: Diablo Letter to DOE.doc (208.5 KB)

Please see attached letter from Plumbers & Steam Fitters Local 403 regarding Diablo Canyon Power Plant

Thank you,

David Baldwin
Business Manager
Plumbers & Steam Fitters Local 403
San Luis Obispo California



Plumbers, Pipefitters and Refrigeration Fitters Local Union No. 403

3710 Broad St. San Luis Obispo, CA 93401
Phone: (805) 543-2416 Fax: (805) 541-0251 Local403@ua403.org

June 24, 2022

U.S Department of Energy

Re: Proposed Amendment to the Guidance for The Civil Nuclear Credit Program

Plumbers and Steam Fitters Local 403, was chartered by the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada more than 80 years ago. Local 403 covers the geographic area of San Luis Obispo County on the central coast of California. The Diablo Canyon Nuclear Power Plant lies along the pacific ocean within San Luis Obispo county.

Through a partnership with Pacific Gas and Electric Company and the various contractors at Diablo Canyon Power Plant, Local 403 operates both apprenticeship and journeyman training programs that produce and maintain a pool of highly skilled Pipe Fitters, Pipe Welders and HVAC technicians here on the central coast of California. These piping professionals are among the highest skilled in the industry. This relationship with PG&E at Diablo Canyon not only ensures a reliable source of power for California, but also provides an important pathway for California residents who wish to enter into a career in the skilled piping trades. These middle wage careers in piping and the other building trades are crucial to the overall health of our communities here in California.

Additionally, once these apprentices reach journey level they are able to employ their skills in the area if they wish, or travel out into the surrounding communities and across the country building our schools, government buildings and vital infrastructure. The U.A. and Local 403 are dedicated to training the nations piping professionals to supply the workforce needs of tomorrow. If we are to maintain this commitment and if we are to ensure adequate, reliable and carbon free power for California, we must continue to safely operate and maintain the Diablo Canyon Power Plant. Local 403 supports Diablo Canyon's continued leading role in our regional and state economies and we strongly urge the adoption of California Governor Newsom's proposed amendments that will ensure stability to California's energy supply without increasing carbon emissions.

Thank you,

David M. Baldwin
Business Manager
Plumbers & Steam Fitters Local 403
3710 Broad Street
San Luis Obispo Ca. 93401

From: General President <generalpresident@UANET.ORG>
Sent on: Friday, June 24, 2022 2:25:53 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Response to Proposed Guidance Amendment
Attachments: DOE-CNC Program_UA Comments 6-24-22.pdf (730.33 KB)

Good Morning,

Please see the attached comments of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO regarding the DOE's Proposed Guidance for its Civil Nuclear Credit Program. If possible, we would appreciate confirmation that this submission has been received.

Thank you for your attention in this matter.

Mark McManus, General President
United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry
of the United States and Canada



Founded 1889

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada

Three Park Place • Annapolis, Maryland 21401
(410) 269-2000 • Fax (410) 267-0262 • <http://www.ua.org>

Mark McManus
General President

Patrick H. Kellett
General Secretary-Treasurer

Michael A. Pleasant
Assistant General President

General Office File Reference: GP

June 24, 2022

VIA ELECTRONIC MAIL (rfi-cnc@nuclear.energy.gov)

U.S. Department of Energy
Office of Nuclear Energy
1000 Independence Ave. SW
Washington, D.C. 20585

Re: Response to Proposed Guidance Amendment – Civil Nuclear Credit Program

These comments are submitted on behalf of the 359,000 members of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (“UA” or “United Association”) in response to the U.S. Department of Energy’s (“DOE”) request for comment regarding a proposed amendment to the Program Guidance the DOE issued in April 2022 on implementation of the Civil Nuclear Credit (“CNC”) Program.¹

I. Introduction

The UA appreciates the DOE’s willingness to consider adjustments to this vital Program in response to stakeholder feedback and urges the DOE to adopt the Proposed Guidance Amendment in a manner consistent with the specific recommendations set forth below. The UA previously submitted comments to the DOE expressing its strong support for the CNC Program in response to the Department’s RFI regarding the establishment of the Program.² In those comments, the UA demonstrated the essential role that nuclear power will play in achieving our country’s transition to a clean energy economy.

II. Essential Role of Nuclear Power

Nuclear power is a highly reliable form of power generation that results in virtually zero greenhouse gas (GHG) emissions. Indeed, since nuclear power plants provide a substantial amount of firm, baseload energy, they are essential for ensuring the resilience and reliability of our electrical supply systems. These attributes of nuclear power will be increasingly important going forward, because they can be used to offset the

¹ U.S. DEP’T OF ENERGY, *Proposed Guidance Amendment for the Civil Nuclear Credit Program* (June 17, 2022), https://www.energy.gov/sites/default/files/2022-06/Proposed%20CNC%20Guidance%20Amendment%206.17.2022_0.pdf (“Proposed Guidance Amendment”).

² UNITED ASSOCIATION, *Response to RFI Regarding Establishment of a Civil Nuclear Credit Program* (Mar. 8, 2022), available at <https://www.regulations.gov/comment/DOE-HQ-2022-0006-0093>.





inherent limitations of intermittent sources of renewable generation, including wind and solar power.³ In this regard, energy systems experts across the country are increasingly sounding the alarm regarding the need to invest in and deploy significant amounts of dispatchable, emissions-free sources of energy to meet increasing electricity demand and to offset the limitations of variable renewables.⁴ Nuclear power is one of the few energy sources capable of filling this role and, therefore, is indispensable to keeping the nation's lights on.⁵

Moreover, nuclear power plants are also incredibly important economic engines for the communities in which they are located. Nuclear plants not only create *more* jobs per-megawatt than most other sources of energy—they create *good, family-sustaining* jobs. In terms of quantity, these facilities can create up to a *1,000 percent more jobs* than leading renewable sources because they require large, industrial processes. Furthermore, the jobs produced by these facilities are exactly the types of good-paying, highly skilled jobs that President Biden is strongly promoting as part of his Administration's broad economic agenda.

Unfortunately, as power utilities begin retiring numerous fossil-based power plants across the country, American workers will suffer devastating losses of good, middle-class jobs that are increasingly hard to create. However, the skills those workers have developed over the course of their careers can be applied to the work performed at nuclear power plants. These plants are therefore deserving of public support for economic reasons as well as a matter of sound energy policy. In sum, preserving our nation's existing fleet of nuclear reactors is essential for realizing our clean energy goals and remains one of the few options available for creating good, middle-class jobs for working families.

III. Specific Reforms Needed in DOE's Civil Nuclear Credit Program

The factors set forth above fully demonstrate that the assistance being provided through the CNC Program must be made available to all financially struggling reactors that satisfy the statutory criteria for eligibility. Although the Bipartisan Infrastructure Law (BIL) requires participating reactors to “compete[] in a competitive electricity market,” the statute otherwise does not reference “cost-of-service regulations.”⁶ As such, the DOE initially proposed considering a range of factors when determining whether a nuclear reactor is participating in a “*competitive electricity market*” for purposes of the statute's eligibility criteria.⁷ The

³ See N.Y. INDEP. SYS. OPERATOR (NYISO), *2021-2030 Comprehensive Reliability Plan*, at 40-47 (Dec. 2021) (explaining that New York will require at least 32 gigawatts of dispatchable, zero-emission generating capacity in 2040 to achieve the state's clean energy goals and maintain the reliability of the state's electrical grid).

⁴ *Id.*; see also Katherine Blunt, *America's Power Grid Is Increasingly Unreliable*, WALL STREET J. (Feb. 18, 2022 10:06 AM ET), <https://www.wsj.com/articles/americas-power-grid-is-increasingly-unreliable-11645196772>

⁵ See Joanne Liou, INT'L ATOMIC ENERGY AGENCY, *Nuclear and Renewables: Modelling Tool to Evaluate Hybrid Energy Systems* (Sep. 24, 2021), <https://www.iaea.org/newscenter/news/nuclear-and-renewables-modelling-tool-to-evaluate-hybrid-energy-systems> (“[N]uclear power plants are dispatchable sources of energy – they can adjust output accordingly to electricity demand.”).

⁶ See Infrastructure Investment and Jobs Act, Pub L. No. 117-58, § 40323(a)(1)(A), 135 Stat. 429, 1019 (2021).

⁷ See *Notice of Intent and Request for Information Regarding Establishment of a Civil Nuclear Credit Program*, 87 Fed. Reg. 8,570, 8,572-73 (Feb. 15, 2022).



Guidance the Department issued in April, however, proposed excluding any reactors from participating in the CNC Program that recover *more than 50 percent of their costs from cost-of-service regulation or regulated contracts*.⁸

However, a fair evaluation of all relevant factors in this context shows that DOE's position in this regard is overly restrictive and, in fact, is contrary to our nation's goal of expediting our transition to a clean energy economy as soon as possible. While these plants constitute an essential power source, there are numerous, substantial and unavoidable costs that nuclear reactors face in maintaining operations, including required expenditures for plant modernization and licensing—costs which may not be recoverable under a cost-of-service regulation.

Therefore, circumstances could logically arise where the continued operation of a nuclear reactor would result in substantial economic loss even though the reactor is recovering 50 percent or more of its costs from a cost-of-service regulation. The DOE's initial, multifactor approach towards determining whether a reactor is participating in a "competitive electricity market" was flexible enough to anticipate this possibility and afforded such a reactor an opportunity to nevertheless make the case that it should be eligible for assistance under the CNC Program.

As outlined above, this approach is consistent with the imperative that when administering the CNC Program the DOE should allow all reactors that are financially struggling and able to satisfy the statutory criteria the ability to submit applications for assistance. The above-referenced language in the April Guidance, however, would very likely result in nuclear reactors being excluded from participation in this Program that nonetheless satisfy all the statutory criteria—and do so at a time when this power source is more critical than ever.

In this context, the United Association strongly supports the adoption of the proposal contained in the June 17, 2022 Proposed Guidance Amendment, which proposes to eliminate the following language from the April Guidance:

Notwithstanding the amount of revenue a Nuclear Reactor receives as a result of clearing in energy, capacity or ancillary services markets, or through bilateral agreements, a Nuclear Reactor for which an Applicant recovers more than 50 percent of the Nuclear Reactor's cost from cost-of-service regulation or regulated contracts will not be deemed to compete in a competitive electricity market.⁹

Further, although the DOE has stated that the above change is the only change it is considering at this time, the UA also strongly supports the other proposals mentioned in the Proposed Guidance Amendment. Specifically, the Guidance should be revised to clarify that the term "*operating losses*" includes all costs that are not recovered through cost-of-service ratemaking and to explicitly state that impacts on the reliability of the electrical grid will be considered when certifying reactors for participation in the CNC Program.

⁸ U.S. DEP'T OF ENERGY, *U.S. Department of Energy Guidance for the Civil Nuclear Credit Program*, at 11 (Apr. 19, 2022), <https://www.energy.gov/sites/default/files/2022-05/US%20DOE%20CNC%20Guidance-%20April%202022.pdf> ("April Guidance").

⁹ *Id.*



Regarding this latter proposal, one of the statutory conditions for certification is a finding that air pollutants would increase if the reactor were to cease operations.¹⁰ The reality is that insofar as nuclear power is an essential form of zero-emissions, baseload power, and one of the few viable options available for producing such power—other, dirtier forms of energy, such as fossil-fuel plants, will likely need to be constructed or kept online to maintain the reliability of our electrical grids if nuclear plants are allowed to cease operations.

Wind and solar sources simply cannot be developed, sited and constructed fast enough to avoid this result; moreover, those energy sources lack the reliability required of dispatchable energy sources. These exact dynamics are currently unfolding across the country, as shown by the fact that three states which recently had nuclear reactors cease operations subsequently observed a rise in their greenhouse gas emissions.¹¹

The use of nuclear power plants to maintain grid reliability is therefore directly related to the statutory requirement that reactors are only eligible for assistance through the CNC Program if their operation results in fewer air pollutants. For these reasons, the United Association strongly supports the proposals contained in the Proposed Guidance Amendment issued by the DOE on June 17, 2022 and described above.

Moving forward, it is critical that DOE keep the reliability of our electrical grids at the forefront of its attention when administering the CNC Program. This should be readily apparent given the dangerous and highly disruptive power outages that have been arising with increased frequency across the country in recent years. On this point, it should also be stressed that inadequate supply and resulting power outages tends to harm those who can least afford it, namely the poor, elderly and working families.

The importance of the baseload power provided by nuclear power plants will only grow as the share of electricity produced by intermittent renewables increases. Thus, the success of our clean energy future not only requires that the generating capacity of existing nuclear plants be preserved, but also that steps be taken *now* to plan, site and construct a new generation of advanced nuclear reactors.

Thank you for your attention in this matter. If we can provide any additional information on this program, please do not hesitate to contact me.

Respectfully submitted,

Mark McManus
General President

MM:ail

¹⁰ Infrastructure Investment and Jobs Act, *supra* note 6, at § 40323(c)(2)(A)(ii)(II).

¹¹ Benjamin Storrow, *3 states with shuttered nuclear plants see emissions rise*, POLITICO (Feb. 17, 2022 5:09 PM EST), <https://www.politico.com/news/2022/02/17/3-states-with-shuttered-nuclear-plants-see-emissions-rise-00009034>.

From: David Sweet <davidpsweet@hotmail.com>

Sent on: Friday, June 24, 2022 6:04:54 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

Dear rfi-cnc@nuclear.energy.gov rfi-cnc@nuclear.energy.gov,

The CNC was created by the bipartisan Infrastructure Investment and Jobs Act (IIJA) to mitigate potential greenhouse gas emissions (GHG) increases due to the closure of unprofitable nuclear reactors that operate exclusively in competitive electricity markets. The express language of the IIJA would make the application of the CNC to utility-operated reactors illegal. Extending Diablo Canyon's operation would require much more than modifying the CNC program guidelines and would, in fact, violate the express meaning and intent of the IIJA.

- Diablo Canyon is not closing because it is unprofitable. Its owner, Pacific Gas & Electric (PG&E) operates it as part of its regulated utility and recovers all of its costs plus a regulated rate of return on investment through its regulated electricity rates.
- Diablo Canyon is closing because PG&E determined in 2016 that doing so would enable it to meet California's renewable energy standard (RES) and emissions standards more rapidly and cost-effectively.
- There will be no emissions increases due to Diablo Canyon's closure because state law mandates the CPUC and PG&E to ensure that outcome.

The inclusion in the proposed guidance amendments of capital and legal/regulatory costs that a PUC had decided are not prudent or recoverable through approved electricity rates is especially outrageous. IIJA requires that the subsidy only be awarded to reactors that show they are able to operate with lower or no subsidies after CNC expires. In the case of Diablo Canyon NPP in California, the costs that PG&E would incur to continue operating Diablo Canyon include up to \$2 billion in capital projects and regulatory and licensing approvals. Those expenses would normally be spread out over 20 years or more, not incurred in just the 4-year period of the CNC program. If taxpayers bear all of those costs, it would unjustly enrich PG&E shareholders and violate the express intent of the law.

Furthermore, allocating credits to cover the potentially enormous costs suggested by California Governor Newsom would violate the intent of the IIJA, where it specifies that, "To the maximum extent practicable, the Secretary shall use the amounts made available for credits under this section to allocate credits to as many certified nuclear reactors as possible." The "transition" costs for Diablo would consume such a large share of the program's resources for just two reactors (neither of which are certified nuclear reactors) that it would deplete the CNC program of funds that could be applied in the phase 2 solicitation.

Diablo Canyon's closure will do much more for California's climate goals, local communities, and economic and environmental justice than the CNC program. The phaseout plan which California is implementing is a model DOE should promote instead of seeking to preempt it. The proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program violates the law. Do not award illegal credits to Diablo Canyon NNP.

Sincerely,
David Sweet
4810 NE Sandy Blvd Apt 101
Portland, OR 97213

From: Don Thompson <thompson_don@comcast.net>

Sent on: Friday, June 24, 2022 6:07:47 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

Dear rfi-cnc@nuclear.energy.gov rfi-cnc@nuclear.energy.gov,

The CNC was created by the bipartisan Infrastructure Investment and Jobs Act (IIJA) to mitigate potential greenhouse gas emissions (GHG) increases due to the closure of unprofitable nuclear reactors that operate exclusively in competitive electricity markets. The express language of the IIJA would make the application of the CNC to utility-operated reactors illegal. Extending Diablo Canyon's operation would require much more than modifying the CNC program guidelines and would, in fact, violate the express meaning and intent of the IIJA.

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- Diablo Canyon is closing because PG&E determined in 2016 that doing so would enable it to meet California's renewable energy standard (RES) and emissions standards more rapidly and cost-effectively.
- There will be no emissions increases due to Diablo Canyon's closure because state law mandates the CPUC and PG&E to ensure that outcome.

The inclusion in the proposed guidance amendments of capital and legal/regulatory costs that a PUC had decided are not prudent or recoverable through approved electricity rates is especially outrageous. IIJA requires that the subsidy only be awarded to reactors that show they are able to operate with lower or no subsidies after CNC expires. In the case of Diablo Canyon NPP in California, the costs that PG&E would incur to continue operating Diablo Canyon include up to \$2 billion in capital projects and regulatory and licensing approvals. Those expenses would normally be spread out over 20 years or more, not incurred in just the 4-year period of the CNC program. If taxpayers bear all of those costs, it would unjustly enrich PG&E shareholders and violate the express intent of the law.

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Diablo Canyon's closure will do much more for California's climate goals, local communities, and economic and environmental justice than the CNC program. The phaseout plan which California is implementing is a model DOE should promote instead of seeking to preempt it. The proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program violates the law. Do not award illegal credits to Diablo Canyon NNP.

Sincerely,
Don Thompson
11 Blackstone St Apt 7
Cambridge, MA 02139

From: Joshua Boswell <josh@reachcentralcoast.org>

Sent on: Friday, June 24, 2022 6:00:33 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

CC: Melissa James <melissa@reachcentralcoast.org>

Subject: [EXTERNAL] Response to Proposed Guidance Amendment - REACH

Attachments: REACH Central Coast - Response to Proposed Guidance Amendment.pdf (1.18 MB)

To whom it may concern,

Please find attached comments from REACH in response to the Department's request for comment on the proposed guidance amendment for the Civil Nuclear Credit Program. Thank you for your consideration and we would be happy to answer any questions.

Best regards,

Josh Boswell

June 24, 2022

The Honorable Dr. Kathryn Huff
Assistant Secretary for Nuclear Energy
Office of Nuclear Energy
U.S. Department of Energy
1000 Independence Ave, SW
Washington, DC 20585

Subject: Response to Proposed Guidance Amendment

Dear Assistant Secretary Huff:

Thank you for the opportunity to provide comments as the Department of Energy considers implementation of the Civil Nuclear Credit Program.

By way of background, REACH is a nonprofit, economic impact organization with a mission to increase economic prosperity on the Central Coast of California through big thinking, bold action and regional collaboration. The north star of our work is collaboration with business, education, government and nonprofit partners to create 15,000 good paying jobs in the region by 2030 and establish the Central Coast as a place where current and future generations have the opportunity to thrive. The economic and energy transition of Diablo Canyon — our region's largest private employer — has been a key pillar of our regional work.

Earlier this week we submitted a letter (attached) to Governor Newsom outlining perspectives from the Central Coast community as the state and federal government consider potential decisions that would affect the future of Diablo Canyon. We appreciate the opportunity to share this context as it relates to the Department of Energy's program.

First, Central Coast stakeholders are organized, engaged and stand ready to work with the federal and state government on this important issue. As the Department considers implementation of this program, it is important that the federal and state government consult, coordinate and partner with affected communities to navigate these complex issues and enhance clarity and certainty to enable long-term economic planning.

Second, we recommend that the Department ensure that implementation is closely coordinated and paired with other federal efforts and resources to support the short and long-term energy potential of sites under this program. The Central Coast is seeking to embrace its evolving role as an energy hub, and is eager to partner with the Department to build a bridge to a renewables future. Vital work is already progressing across federal and state agencies and in our region to plan for our state and nation's long-term energy goals, including the upcoming auction of the Morro Bay Wind Energy Area near Diablo Canyon. Planning for the long-term future of the Diablo Canyon industrial site is also well underway, including the release last month of a community vision to establish a Central Coast Clean Tech Innovation Park as a hub of offshore wind, battery storage, desalination and R&D in renewable energy, marine sciences and marine aquaculture under



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the leadership of Cal Poly. The Department of Energy can play a key role in supporting a public-private partnership effort to advance this long-term vision and our nation's climate, energy, innovation and green jobs goals.

Thank you for the opportunity to provide comments on this important issue for our region. We look forward to working with the Department of Energy to address short-term energy needs while working to develop a long-term partnership to advance our clean energy future.

Sincerely,

A handwritten signature in black ink that reads "Melissa James".

Melissa James
President/CEO

REACH

melissa@reachcentralcoast.org



June 21, 2022

The Honorable Gavin Newsom
Governor of California
State Capitol
Sacramento, CA 95814

Subject: Charting a Roadmap for the Future of Diablo Canyon

Dear Governor Newsom:

As the state considers the future of Diablo Canyon, I am writing to share perspectives and context from the Central Coast on this important site for our region's economy, energy ecosystem and community. Charting the future of this site raises complex questions as well as unique opportunities for our region, state and country to collaborate to advance clean energy innovation. We stand ready to work with state, federal and other partners to support these discussions and develop a long-term roadmap for the future of Diablo Canyon.

By way of background, REACH is a nonprofit economic impact organization founded by the business and civic community with a mission to increase economic prosperity on the Central Coast of California. The economic and energy transition of Diablo Canyon — our region's largest private employer — has been a key pillar of our regional work. Diablo Canyon is an economic engine for the Central Coast and energy powerhouse for California and we recognize the important role that Diablo Canyon operated by Pacific Gas and Electric (PG&E) has played in contributing to the state's carbon-free power and our nation's energy ecosystem. As a region, we are embracing and evolving our role as an energy hub of the future as we prepare to support the deployment of the state's largest offshore wind site off of Morro Bay and the development of world-leading energy storage and solar projects and other forms of clean energy innovation.

The current situation provides a unique opportunity to forge a public-private partnership bringing together regional, state, federal, industry and other stakeholders around a short-, mid-, and long-term roadmap for Diablo Canyon so that it can continue to play a leading role in our region's economy and our state's energy ecosystem.

As you consider extending the operating life of Diablo and the critical role the Central Coast region plays in supporting the short- and long-term energy goals for California, please consider the following three requests:

1. **Central Coast stakeholders are organized, engaged and stand ready to work with you on this important issue; please consider working with our region in how these plans take shape.** We recognize that charting the immediate future of this site raises important and complex policy, regulatory, technical and logistical questions. How we collectively navigate the current discussions, engage the community on the rationale behind any proposed changes and chart the future of this site will have important implications for the economic future for the Central Coast region as well as our nation's overall energy future. It is important that these issues be addressed thoughtfully and in close



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coordination and consultation with the Central Coast community, which has been very active in a variety of forums related to both the 585-acre industrial site and the 12,000 acres of surrounding lands. We appreciate the crucial economic role that Diablo Canyon will continue to have in our community and for its highly skilled workforce.

At the same time, clarity in the decision-making process, on the future of the site, and through endorsement of a long-term roadmap is essential to remove uncertainty and enable our region to plan for future reuse and economic stability. The uncertainty caused by the changing timelines around Diablo Canyon also calls for a clear explanation on how any changes in the near term fit into a broader roadmap and vision as we seek to bring online offshore wind and other innovative renewables, plus their associated jobs and equitable economic benefits, on the Central Coast.

2. **Please consider investing in both the short- and the long-term energy potential of the Central Coast region.** We must invest now in the future of this unique industrial site so that it can lead the next chapter of our state and nation's energy independence and resilience, not for years but for decades to come. Diablo Canyon offers unrivaled energy, water resilience and blue economy assets: high-power transmission lines connecting to the state's electricity grid, extensive existing facilities, proximity to the offshore wind development coming to the Morro Bay Wind Energy Area, existing desalination capabilities, a harbor, and a world-class energy workforce.

Last month we released a community vision alongside a broad coalition of stakeholders that outlines a long-term future for Diablo Canyon as a **Central Coast Clean Tech Innovation Park**. This concept envisions a strong public-private partnership model to develop a hub for offshore wind, battery storage, desalination and R&D in renewable energy, marine sciences and marine aquaculture under the leadership of Cal Poly (see Attachment). This vision was developed through a year of intensive community dialogue and endorsed by local, state and federal elected officials. This community initiative builds on and complements planning efforts through the Diablo Canyon Decommissioning Engagement Panel convened by PG&E and the strategic vision this community advisory body has developed for the site.

The decisions and investments required to build a bridge to this future are needed now, given the significant timelines associated with the state and nation's energy transformation. Diablo Canyon is a critical lynchpin in meeting our state and nation's long-term renewable energy goals. Short-term action should be complemented by long-term planning and investment to accelerate clean energy innovation, and that work must begin at Diablo Canyon in partnership with a wide swath of community stakeholders.

3. **Please consider the conservation of the 12,000 acres of Diablo Canyon lands independent of plant operations.** The Diablo Canyon lands hold cultural and ecological significance in our community, and they shall be conserved as soon as feasible. Extensive community dialogue and planning has already taken place to preserve the unique natural resources and cultural heritage of the 12,000 acres of Diablo Lands, including the yak titʻu titʻu yak tiłhini Northern Chumash (ytt Northern Chumash) Land



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Back Strategy in collaboration with other conservation stakeholders. The goal of this planning is to preserve cultural heritage while providing land stewardship and secure managed and sustainable public access consistent with the state's Tribal Land Transfer Policy. These conservation efforts are a vital complement to this site's contribution to our clean energy future and were overwhelmingly supported by voters in the 2000 Dream Initiative, a San Luis Obispo County-wide advisory measure.

Our community has worked diligently to plan for the social, cultural, environmental and economic future of this important site with a goal to ensure it remains an engine for our economy, a hub of our energy ecosystem, and a centerpiece of our community. As critical discussions and decisions are being made on how to utilize this important state energy asset, we appreciate the opportunity for the Central Coast perspective to be included in how we support the state's energy future. We stand ready to work with the state and federal government and other stakeholders to support short-term energy needs while also proactively partnering to chart a long-term roadmap for Diablo Canyon. We look forward to meeting with your team to begin this important work.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melissa James'.

Melissa James
President/CEO
REACH
melissa@reachcentralcoast.org

cc:

The Honorable Eleni Kounalakis, Lieutenant Governor
The Honorable John Laird, Senator
The Honorable Jordan Cunningham, Assemblyman
David Hochschild, Chair, California Energy Commission
Dee Dee Myers, Director, Governor's Office of Business and Economic Development
The Honorable Dianne Feinstein, US Senator
The Honorable Alex Padilla, US Senator
The Honorable Salud Carbajal, US Congressman
The Honorable Jennifer Granholm, Secretary of Energy
Gina McCarthy, National Climate Advisor
Amanda Lefton, Director, Bureau of Ocean Energy Management

Cal Poly should lead Diablo Canyon's next chapter

An open letter advancing our vision for a world-class clean tech innovation park



To California Central Coast residents, clean energy champions and innovators, and anyone interested in advancing an abundant, sustainable energy future:

Where the Diablo Canyon Power Plant sits on California's Central Coast, we see a new future as a hub of clean energy innovation. We see a research and development campus where industry and academia can hatch and collaborate on emerging renewable technologies. We see an expansion of existing desalination capabilities, a harbor for blue economy activity, a community center for Chumash heritage education and celebration, and a critical platform for enabling California to harness the wind energy right off our coast.

This is no idle daydream. One year ago, stakeholders spanning government, higher education, business, labor, tribal and conservation organizations [came together](#) to pursue a shared vision for the future of Diablo Canyon's 585-acre industrial area. We've spent the last 12 months expanding the coalition and crystallizing the vision.

We've convened top experts in large-scale redevelopment and nuclear decommissioning, consulted national renewable energy researchers and industry leaders, explored suitable possibilities, weighed challenges and devised a conceptual site plan for a mixed-use innovation park supporting research, education and commercial enterprise. We've built strong consensus around what all the experts agree is a generational opportunity.

Put simply, this unique industrial site offers unrivaled energy assets for pioneering the next chapter of our state and nation's energy independence and resilience. With high-power transmission lines (500 kV and 230 kV) connecting to the state's electricity grid, extensive existing facilities, and proximity to the [offshore wind development](#) coming to the waters off our coast, this site can accelerate global clean-energy innovation — all while creating jobs and economic benefit for Central Coast residents and retaining the vast surrounding lands for conservation and tribal stewardship.

From our collective due diligence through the last year, we firmly believe that Cal Poly San Luis Obispo, with support from public-private partnerships and investments, can be the catalyst for this vision.

Cal Poly is a trusted community partner that contributes significantly to the region's economy, community and social fabric. It's also a widely regarded applied research powerhouse, with access to the extensive resources of the 23-campus California State University system and an established national network of donors, supporters and industry partners. Complemented by a combination of commercial enterprise and state- and federally funded research labs, the university's lauded Learn by Doing ethos can enhance and propel the vision of a hands-on center of innovation and collaboration. With an extensive history of capital project execution, stewardship and partnerships with Pacific Gas and Electric, Cal Poly is ideally poised as the logical successor entity to usher in an extraordinary new era for Diablo Canyon and the Central Coast.

The Central Coast is already a leading nexus of renewable energy, with massive utility-scale solar farms, the world's largest battery storage plant under development in Morro Bay and the West Coast's largest offshore wind energy area slated for lease auction this fall, among other projects. Add in a substantial skilled energy workforce and energy-exporting legacy, and the Central Coast is positioned as a primary player in the nation's clean-energy future.

Details big and small need to be hashed out. Among them: synchronizing development of future-use activities with the plant decommissioning; ensuring local businesses and workers are employed in the multi-billion dollar decommissioning process to the maximum extent possible; and remaining flexible to evolution as industry partners, regulatory processes, and investment come together.

May 3, 2022

But the clock is ticking. With strong community alignment behind Cal Poly, we are proactively seeking the long-term partnerships and investments needed to realize the vision of a climate-change innovation hub that supports good-paying, future-oriented jobs for our skilled workforce.

The Central Coast is already playing a pivotal role in driving our state's sustainable economy forward, and we invite you to join us in unlocking the potential of this bold vision.

Sincerely,

U.S. Representative Salud Carbajal
24th District, U.S. House of
Representatives

Assemblyman Jordan Cunningham
35th District, CA State Assembly

Supervisor Bruce Gibson
Board Chair, County of San Luis Obispo

Kaila Dettman
Executive Director, The Land
Conservancy of San Luis Obispo County

Vice Mayor Carlyn Christianson
City of San Luis Obispo

Mayor John Headding
City of Morro Bay

Mayor Caren Ray Russom
City of Arroyo Grande

Glenn Morris
CEO, Santa Maria Valley Chamber of
Commerce

Jane Swanson
President, Mothers for Peace

Senator John Laird
17th District, CA State Senate

Jeffrey D. Armstrong
President, Cal Poly

Melissa James
President/CEO, REACH

Joshua Medrano
Executive Secretary & Treasurer,
Tri-Counties Building and Construction Trades
Council

Mayor Jeff Lee
City of Grover Beach

Mayor Ed Waage
City of Pismo Beach

Mayor Heather Moreno
City of Atascadero

Nicole Moore
Interim CEO, South County Chambers of
Commerce

Chuck Davison
CEO, Visit SLO CAL

From: Mike Hartley <mike@calpipes.org>
Sent on: Friday, June 24, 2022 6:52:46 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
CC: Cindy Breninger <cindy@calpipes.org>; Aaron Stockwell <astockwell@UANET.ORG>
Subject: [EXTERNAL] Response to Proposed Guidance Amendment
Attachments: Civil Nuclear Credit Program Comments on Proposed Guidance Amendment 22.pdf
(169.02 KB)

Good Morning,

Please see the attached comments of the California State Pipe Trades Council regarding the DOE's Proposed Guidance for its Civil Nuclear Credit Program. If possible, we would appreciate confirmation that this submission has been received.

Thank you for your attention in this matter.

Mike Hartley
Executive Director
California State Pipe Trades Council
1121 L Street, Suite 207 | Sacramento, CA 95814



**CALIFORNIA STATE
PIPE TRADES COUNCIL**
PUBLIC, LABOR AND GOVERNMENTAL RELATIONS

1121 L Street, Suite 207
Sacramento, CA 95814
T: 916.446.7311 F: 916.446.3520
www.calpipes.org

June 24, 2022

VIA ELECTRONIC MAIL

U.S. Department of Energy
Office of Nuclear Energy
1000 Independence Ave. SW
Washington, D.C. 20585
rfi-cnc@nuclear.energy.gov

**Re: Civil Nuclear Credit Program: Comments on Proposed Guidance
Amendment**

I am writing on behalf of the California State Pipe Trades Council in response to the U.S. Department of Energy's ("DOE") request for comment regarding a proposed amendment to the Program Guidance the DOE issued in April 2022 on implementation of the Civil Nuclear Credit ("CNC") Program.¹ The California State Pipe Trades Council represents thousands of plumbers and pipe fitters in local unions across the state of California. The Council strongly supports the CNC program, but joins with the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO ("UA" or "United Association") in expressing serious concerns with the language in the Program Guidance the DOE is now proposing to delete.

In particular, the California State Pipe Trades Council opposes the language in the CNC Program Guidance that would exclude reactors from participating in the CNC program if they recover *more than 50 percent of their costs from cost-of-service regulation or regulated contracts*.² Unfortunately, this language in the Program Guidance has the potential to exclude the Diablo Canyon nuclear reactor in California and force its premature shutdown.

As a zero-emissions baseload fuel source, maintaining the Diablo Canyon nuclear power plant serves an important role achieving California's emission reduction goals and ensuring a reliable power grid. The Diablo Canyon nuclear plant provides reliable, carbon free energy that cannot be readily replaced. Solar and wind energy are intermittent and lack the needed reliability

¹ U.S. DEP'T OF ENERGY, *Proposed Guidance Amendment for the Civil Nuclear Credit Program* (June 17, 2022), https://www.energy.gov/sites/default/files/2022-06/Proposed%20CNC%20Guidance%20Amendment%206.17.2022_0.pdf ("Proposed Guidance Amendment").

² U.S. DEP'T OF ENERGY, *U.S. Department of Energy Guidance for the Civil Nuclear Credit Program*, at 11 (Apr. 19, 2022), <https://www.energy.gov/sites/default/files/2022-05/US%20DOE%20CNC%20Guidance-%20April%202022.pdf> ("April Guidance").

to meet California's energy grid requirements. Energy storage capabilities are rapidly increasing in California, but remain in their infancy on the utility scale. As California strives to reduce its greenhouse emissions while maintaining grid reliability, nuclear energy remains a critical component of that goal.

The premature shutdown of Diablo Canyon would impair California's greenhouse gas reduction goals by not only substantially delaying the replacement of gas power plants that are currently needed to provide grid reliability, but also requiring gas peaker plants to run longer and more often. Indeed, a recent study of three states that shut down nuclear reactors recently found that those states subsequently reported a rise in greenhouse gas emissions.³ Ensuring that Diablo Canyon can participate in the CNC Program Guidance will ensure that California does not lose this important, dependable carbon-free energy resource.

The premature shutdown of Diablo Canyon will also eliminate good-paying, middle-class jobs, that are not easily replaced. The transition from traditional industrial power plants to solar and wind power plants has resulted in significant job losses as those facilities require less than a tenth of the workforce to maintain and operate. Diablo Canyon, in contrast, provides employment to a large, skilled, well-paid workforce while at the same time meeting our carbon reduction goals.

Accordingly, the California State Pipe Trades Council urges the DOE to eliminate the cost-of-service regulation provision from the Program Guidance as overly restrictive and inconsistent with California's greenhouse gas reduction goals. Nuclear reactors such as Diablo Canyon face numerous unavoidable costs in maintaining operations, including required expenditures for plant modernization, security and licensing. Because these costs may not be recoverable under the proposed cost-of-service regulation, this puts the continued operation of plants such as Diablo Canyon at risk.

Moreover, nothing in the Bipartisan Infrastructure Law (BIL) requires limiting participation in the Program because of costs recovered from cost-of-service regulation or regulated contracts. In determining whether a nuclear reactor is participating in a "*competitive electricity market*" for purposes of the statute's eligibility criteria, the DOE should consider a range of factors, rather than setting a hard and fast threshold based on one specific factor. This was the approach initially proposed by the DOE.⁴ We urge the DOE to go back to this multi-factor approach in order to provide nuclear power plants the opportunity to make a case for eligibility for assistance under the CNC program notwithstanding the percentage of costs recovered from cost-of-service regulation or regulated contracts.

In addition, the California State Pipe Trades strongly supports revising the term "*operating losses*" in the CNC Program Guidance to clarify it includes all costs that are not recovered through cost-of-service ratemaking and to explicitly state that impacts on the

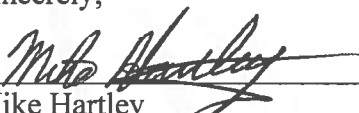
³ Benjamin Storrow, *3 states with shuttered nuclear plants see emissions rise*, POLITICO (Feb. 17, 2022 5:09 PM EST), <https://www.politico.com/news/2022/02/17/3-states-with-shuttered-nuclear-plants-see-emissions-rise-00009034>.

⁴ See *Notice of Intent and Request for Information Regarding Establishment of a Civil Nuclear Credit Program*, 87 Fed. Reg. 8,570, 8,572-73 (Feb. 15, 2022).

reliability of the electrical grid will be considered when certifying reactors for participation in the CNC Program. This is particularly important in California, which leads the nation in solar energy and is one of the leaders in wind energy. Both of these energy sources are intermittent and put tremendous stress on grid reliability – stress that Diablo Canyon helps alleviate with zero-carbon energy. The Proposed Guidance Amendment mentions this proposed clarification, but it is not clear that the DOE is intending to adopt it. We urge the DOE to accept this recommendation.

We appreciate your consideration of these comments. The intent of the CNC Program is to ensure that nuclear reactors that provide important, reliable, zero-carbon energy and good paying clean energy jobs, such as Diablo Canyon, do not prematurely close. The continued operation of Diablo Canyon reduces the use of gas peaker plants and allows the state to transition away more quickly from power plants with high greenhouse gas emissions.

Sincerely,



Mike Hartley

Executive Director

California State Pipe Trades Council

From: Alan Wojtalik <alan_wojtalik@hotmail.com>

Sent on: Friday, June 24, 2022 7:19:23 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

Dear rfi-cnc@nuclear.energy.gov rfi-cnc@nuclear.energy.gov,

The CNC was created by the bipartisan Infrastructure Investment and Jobs Act (IIJA) to mitigate potential greenhouse gas emissions (GHG) increases due to the closure of unprofitable nuclear reactors that operate exclusively in competitive electricity markets. The express language of the IIJA would make the application of the CNC to utility-operated reactors illegal. Extending Diablo Canyon's operation would require much more than modifying the CNC program guidelines and would, in fact, violate the express meaning and intent of the IIJA.

- Diablo Canyon is not closing because it is unprofitable. Its owner, Pacific Gas & Electric (PG&E) operates it as part of its regulated utility and recovers all of its costs plus a regulated rate of return on investment through its regulated electricity rates.

- Diablo Canyon is closing because PG&E determined in 2016 that doing so would enable it to meet California's renewable energy standard (RES) and emissions standards more rapidly and cost-effectively.

- There will be no emissions increases due to Diablo Canyon's closure because state law mandates the CPUC and PG&E to ensure that outcome.

The inclusion in the proposed guidance amendments of capital and legal/regulatory costs that a PUC had decided are not prudent or recoverable through approved electricity rates is especially outrageous. IIJA requires that the subsidy only be awarded to reactors that show they are able to operate with lower or no subsidies after CNC expires. In the case of Diablo Canyon NPP in California, the costs that PG&E would incur to continue operating Diablo Canyon include up to \$2 billion in capital projects and regulatory and licensing approvals. Those expenses would normally be spread out over 20 years or more, not incurred in just the 4-year period of the CNC program. If taxpayers bear all of those costs, it would unjustly enrich PG&E shareholders and violate the express intent of the law.

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Sincerely,
Alan Wojtalik
3723 Green Oak Court
Baltimore, MD 21234

From: Stephen Dutschke <sdutschke@gmail.com>

Sent on: Friday, June 24, 2022 7:08:55 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

Dear rfi-cnc@nuclear.energy.gov rfi-cnc@nuclear.energy.gov,

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Sincerely,
Stephen Dutschke
4306 Darbrook Rd
Louisville, KY 40207

From: Tracey katsouros <traceycsmallwood@gmail.com>

Sent on: Friday, June 24, 2022 7:19:20 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

Dear rfi-cnc@nuclear.energy.gov rfi-cnc@nuclear.energy.gov,

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Sincerely,
Tracey katsouros
1322 Harwich Dr
Waldorf, MD 20601

From: Kathleen Bentley <kbentley@sagallaw.com>

Sent on: Friday, June 24, 2022 8:49:21 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

Dear rfi-cnc@nuclear.energy.gov rfi-cnc@nuclear.energy.gov,

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Sincerely,
Kathleen Bentley
9502 Ridgely Ave
Parkville, MD 21234

From: Abigail Gindele <agindele@gmail.com>

Sent on: Saturday, June 25, 2022 1:27:07 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

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Sincerely,
Abigail Gindele
229 Clinton St
Portsmouth, NH 03801

From: Elizabeth Butler <littlegrove1110@gmail.com>

Sent on: Friday, June 24, 2022 9:23:02 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates Law

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Sincerely,
Elizabeth Butler
1110 S Alves St
Henderson, KY 42420

From: Kellie Smith <kelf.nh@live.com>

Sent on: Saturday, June 25, 2022 1:25:10 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

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Sincerely,
Kellie Smith
13 Brandy Lane
Deering, NH 03244

From: Sholey Argani <sargani@comcast.net>

Sent on: Saturday, June 25, 2022 12:30:23 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

Dear rfi-cnc@nuclear.energy.gov rfi-cnc@nuclear.energy.gov,

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Sincerely,
Sholey Argani
417 Lincoln Ave
Takoma Park, MD 20912

From: Terry Vollmer <livetv814@gmail.com>

Sent on: Saturday, June 25, 2022 3:13:44 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

Dear rfi-cnc@nuclear.energy.gov rfi-cnc@nuclear.energy.gov,

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Sincerely,
Terry Vollmer
2629 Roseland Terrace
Maplewood, MO 63143

From: Nikki Wojtalik <nwojtalik@hotmail.com>

Sent on: Saturday, June 25, 2022 2:05:52 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

Dear rfi-cnc@nuclear.energy.gov rfi-cnc@nuclear.energy.gov,

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Sincerely,
Nikki Wojtalik
3723 Green Oak Ct.
Parkville, MD 21234

From: Michael Iltis <mgiltis@hotmail.com>

Sent on: Saturday, June 25, 2022 9:14:10 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

Dear rfi-cnc@nuclear.energy.gov rfi-cnc@nuclear.energy.gov,

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Sincerely,
Michael Iltis
2784 Marshall Parkway
Madison, WI 53713

From: Ellen Atkinson <jeanne184490@gmail.com>

Sent on: Saturday, June 25, 2022 3:07:36 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

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Furthermore, allocating credits to cover the potentially enormous costs suggested by California Governor Newsom would violate the intent of the IIJA, where it specifies that, "To the maximum extent practicable, the Secretary shall use the amounts made available for credits under this section to allocate credits to as many certified nuclear reactors as possible." The "transition" costs for Diablo would consume such a large share of the program's resources for just two reactors (neither of which are certified nuclear reactors) that it would deplete the CNC program of funds that could be applied in the phase 2 solicitation.

Diablo Canyon's closure will do much more for California's climate goals, local communities, and economic and environmental justice than the CNC program. The phaseout plan which California is implementing is a model DOE should promote instead of seeking to preempt it. The proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program violates the law. Do not award illegal credits to Diablo Canyon NNP.

Sincerely,
Ellen Atkinson
1117 Stratford Rd
Lynchburg, VA 24502

From: Theodore Voth <tedvoth3@uwalumni.com>

Sent on: Saturday, June 25, 2022 5:34:04 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

Dear rfi-cnc@nuclear.energy.gov rfi-cnc@nuclear.energy.gov,

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Sincerely,
Theodore Voth
17 N 7th St Apt 2
Madison, WI 53704

From: Irene Gnemi <gnemii19@gmail.com>

Sent on: Saturday, June 25, 2022 5:07:29 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

Dear rfi-cnc@nuclear.energy.gov rfi-cnc@nuclear.energy.gov,

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Sincerely,
Irene Gnemi
PO Box 440
Newburg, MO 65550

From: Russell Novkov <rnovkov@gmail.com>

Sent on: Saturday, June 25, 2022 12:58:02 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

Dear rfi-cnc@nuclear.energy.gov rfi-cnc@nuclear.energy.gov,

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Sincerely,
Russell Novkov
602 Sawyer Ter Apt 308
Madison, WI 53705

From: Lynette Brooks <lerkbrooks@yahoo.com>
Sent on: Saturday, June 25, 2022 5:16:32 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Response to Proposed Guidance Amendment"
Attachments: CNC comments.docx (12.75 KB)

I am writing to oppose changing the CNC program eligibility specifically so that Diablo Canyon qualifies. This changes the meaning of the program from what it was originally intended. Diablo Canyon does not need the money to remain competitive, they need the money to extend the life of the plant beyond what it was designed for. The plant is already having maintenance issues, and has been planning for the shutdown for years. In addition, those of us living nearby have been told for years that an old nuclear power plant near earthquake faults would be shut down. Changing the rules of the CNC program to allow this plant to continue operating is an affront to people who have planned on living safer lives because it is being shut down. Do not be swayed by the "clean energy" comments of Gov. Newsom and Pacific Gas and Electric. At the same time they are saying we need Diablo Canyon for clean energy, they are mounting a massive campaign against rooftop solar systems.

Lynette Brooks
2732 Houston Dr
Los Osos, CA 93402

U.S. Department of Energy
CNC Program

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Lynette Brooks
2732 Houston Dr
Los Osos, CA 93402

From: Stephanie Fairchild <sdfair71@frontier.com>

Sent on: Saturday, June 25, 2022 7:33:03 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

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Sincerely,
Stephanie Fairchild
1211 Foster Ave
Cambridge, OH 43725

From: Meredith Needham <pianohag@hotmail.com>

Sent on: Saturday, June 25, 2022 10:59:48 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

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Sincerely,
Meredith Needham
815 Burg St
Granville, OH 43023

From: Lucy Duff <lucyduff@comcast.net>

Sent on: Saturday, June 25, 2022 12:47:14 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

Dear rfi-cnc@nuclear.energy.gov rfi-cnc@nuclear.energy.gov,

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Sincerely,
Lucy Duff
9210 Fowler Ln
Lanham, MD 20706

From: Patrick Bosold <bosolds@lisco.com>

Sent on: Sunday, June 26, 2022 2:25:14 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

CC: Patrick and Ann Bosold <bosolds@lisco.com>

Subject: [EXTERNAL] Citizen comment on U.S. DOE's proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program

Dear US DOE CNC Program staff,

I am responding to an email I received on Monday, June 20, 2022 from NE Communications (necommunications@nuclear.energy.gov). This email said that the CNC is seeking public comments on a proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program. The email specifically asked for citizen/public feedback on whether the U.S. DOE's CNC Program should revise the eligibility criteria to eliminate the requirement that a nuclear reactor applying for credits under the CNC Program not recover more than 50 percent of its cost from cost-of-service regulation or regulated contracts.

I am opposed to ANY kind of public subsidy or support for nuclear power. I told this to my Representative and Senators in Congress, and the White House, when I stood in opposition to any subsidies of any kind, direct or indirect, to nuclear power while Congress was legislating the Bipartisan Infrastructure Law that proposed to provide six billion dollars in funding for the existing U.S. nuclear reactor fleet.

I may be a lone voice crying in the wilderness, but I'll say it anyway: do NOT revise your eligibility criteria for credits under the CNC program. Do NOT allow ANY nuclear reactor operator to recover more than 50 percent of its cost from cost-of-service or regulated contracts. In fact, do not allow any nuclear reactor operator to recover ANY of its costs from these contracts.

It is long past time for nuclear reactor technology to stand on its own and deliver on the promises made when I was a kid, to deliver "electric power too cheap to meter." They've never done it, and they never will. Even worse, this technology has been a disaster waiting to happen from its beginnings, and the disasters have indeed happened at Three Mile Island and elsewhere. Nuclear reactors are time bombs waiting to go off.

If the \$6 billion you're referencing must be used on the U.S. nuclear reactor complex, rather than be returned to the U.S. DOE and used to promote solar and wind energy installation and strengthening of the US electrical grid, then use the \$6 billion to start retiring all of these nuclear reactors and storing all of their highly radioactive waste in HOSS (hardened on-site storage) casks.

Sincerely,

Patrick Bosold
202 N. 5th St.
Fairfield, IA 52556

From: Charly Ray <charlydray@icloud.com>
Sent on: Sunday, June 26, 2022 4:05:42 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Diablo Canyon Power Station

There is no rational reason to close Diablo Canyon. In fact, planned closure of Diablo Canyon smacks of irresponsible management and ignorance-at a juncture when such carbon-free, dependable, secure, power sources are critical for our collective well-being.

In summary,

please provide for or facilitate the means to keep Diablo Canyon open —
permanently.

Regards

charlydray

From: Mark Cosgriff <cosgriff0@gmail.com>

Sent on: Saturday, June 25, 2022 11:36:18 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

Dear rfi-cnc@nuclear.energy.gov rfi-cnc@nuclear.energy.gov,

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Sincerely,
Mark Cosgriff
1180 Andrews Avenue
Lakewood, OH 44107

From: jessica turnansky <jturnansky@gmail.com>
Sent on: Sunday, June 26, 2022 1:45:21 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Response to Proposed Guidance Amendment

The DOE should not approve the Proposed Guidance Amendment to the Civil Nuclear Credit Program. Nuclear reactors carry exponentially greater risk as they age. There is no reason to prolong closure of aging plants that are unable to meet current eligibility criteria to compete in a competitive electricity market. Loosening this certification criteria and thereby delaying closure of these outdated plants is not only financially ill advisable, but needlessly unsafe as well.

There exist cleaner, safer, cheaper renewable alternatives that can more than carry the burden of these decaying nuclear reactors. The proposed guidance is unnecessary and reckless. We should work to alleviate, not elevate, these risks to ensure a safer future for all - both in the present and looking towards the future.

-Jessica Turnansky

From: <milawoff@aol.com>

Sent on: Saturday, June 25, 2022 11:55:16 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Response to Proposed Guidance Amendment

To Whom it May Concern:

I am an attorney in Washington State and I am writing to you about the Civil Nuclear Credit Program as it pertains to the Diablo Canyon Nuclear Power Plant. The CNC was created by the bipartisan Infrastructure Investment and Jobs Act (IIJA) to mitigate potential greenhouse gas emissions (GHG) increases due to the closure of unprofitable nuclear reactors that operate exclusively in competitive electricity markets. The express language of the IIJA would make the application of the CNC to utility-operated reactors illegal. Extending Diablo Canyon's operation would require much more than modifying the CNC program guidelines and would, in fact, violate the express meaning and intent of the IIJA.

This is yet one more instance of the government working for big business and NOT for the American people. It is important to note that Diablo Canyon is not closing because it is unprofitable. Its owner, Pacific Gas & Electric (PG&E) operates it as part of its regulated utility and recovers all of its costs PLUS a regulated rate of return on investment through its regulated electricity rates.

- Diablo Canyon is closing because PG&E determined in 2016 that doing so would enable it to meet California's renewable energy standard (RES) and emissions standards more rapidly and cost-effectively.

- There will be no emissions increases due to Diablo Canyon's closure because state law mandates the CPUC and PG&E ensure that outcome.

Nuclear power is not clean, nor is it safe. If you read the book, We Almost Lost Detroit by John Fuller, you would know that the nuclear industry is inherently dangerous. No private insurance is available to the nuclear industry and the public has to bear the costs of nuclear disasters, and the disposal of nuclear waste products.

Diablo Canyon's closure will do much more for California's climate goals, local communities, and economic and environmental justice than the CNC program. The phase-out plan which California is implementing is a model DOE should promote instead of seeking to preempt it. The proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program violates the law. Do not award illegal credits to Diablo Canyon NNP. The government must stop working as a shield for the nuclear industry.

Apparently, the disasters at Chernobyl and Fukushima have taught us nothing.

Cheryl C. Mitchell

24 W. Augusta Ave.

Spokane, WA 99205

Phone (509) 327-5181

email: MiLawOff@aol.com

From: Robert Duncan <rdun@sbcglobal.net>

Sent on: Sunday, June 26, 2022 9:59:04 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Challenges of climate change and Diablo Canyon

I urge the DOE to adopt the proposed guidance amendment to its CNC program, to help make the continued operation of the Diablo Canyon Power Plant (DCPP) possible. The clean energy of DCPP is critically needed due to several impending effects: (1) Drought's effect on hydro power. The ongoing drought is likely to get worse because of the northern expansion of Hadley Cells of atmospheric circulation caused by climate change. Reservoirs in California are already depleted so hydro power will very likely diminish before 2045. (4) Rising temperatures requiring more air-conditioning on hot sunny days. (3) Electric vehicle demand—PG&E is increasingly powering the transportation sector, with most people plugging their cars in at night during solar power lulls.

Thank you,

Robert C. Duncan, PhD.

Research Scientist in Physics at University of Texas, Austin (now retired)

From: Clifford <pokerbar@charter.net>
Sent on: Sunday, June 26, 2022 9:46:11 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Diablo canyon closure

So called 'clean energy' can not replace or significantly reduce the demand for energy in California, much less the other 49 states anytime in the next 10 plus years. It will be an unmitigated disaster for the residents of California to lose the power generated from Diablo nuclear power plant. However it is done it must be kept open and producing energy. It should be obvious to anyone with a smidgen of common sense that the closing of existing power generation in California will result in power outages across the state. Climate change proponents, ignorantly, would deprive the state and the nation of energy independence with the removal of existing energy sources with not even close options for filling the guaranteed shortage.

Keep the plant open and producing the cleanest energy in the state and nation.

Clifford R Felice pokerbar@charter.netm

From: Lisa Zure <creative7purpose@gmail.com>

Sent on: Monday, June 27, 2022 5:38:26 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Public Comment Re Proposed Guidance Amendment for Civil Nuclear Credit Program

To Whom It May Concern,

RE: DOE is seeking public comments on a proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program. We'd like your feedback on whether we should revise the eligibility criteria to eliminate the requirement that a nuclear reactor applying for credits under the CNC Program not recover more than 50 percent of its cost from cost-of-service regulation or regulated contracts.

Thank you for inviting me to comment on this proposed Guidance amendment. I AM NOT IN FAVOR OF REVISING THE ELIGIBILITY CRITERIA to eliminate the requirement that a nuclear reactor applying for credits under the CNC Program not recover more than 50 percent of its cost from cost-of-service regulation or regulated contracts. To be honest, I'm a little confused by the wording of this revision, however I AM NOT IN FAVOR of changing the eligibility requirement to allow nuclear reactors that provide less than 50% of power to their state to apply for this credit.

I feel there are many more viable and less toxic energy resources available. It does not make sense to me to spend tax dollars refurbishing aging nuclear plants. That money could be better spent to assist with the "safe" decommissioning of an outdated, inefficient, and dangerous design.

Furthermore, I do not feel that nuclear reactors should be cooled by the ocean or any of our water sources. Enough damage has been done.

Thank you,
Lisa Zure

From: Santa Lucia Sierra Club <sierraclub8@gmail.com>

Sent on: Sunday, June 26, 2022 9:26:29 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Re the proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program

To the Office of Nuclear Energy:

The Santa Lucia Chapter of the Sierra Club represents the Club's 3,000 members and supporters in San Luis Obispo County, home of the Diablo Canyon Nuclear Power Plant. We have been engaged with the many environmental issues around the power plant for the last forty years.

One of our primary concerns with the proposed about-face in the scheduled closure of Diablo Canyon and the amendment of the CNC to make it eligible for funds is the environmental destruction wrought by once-through cooling, outlawed by the state of California as of 2025, the year when all coastal power plants must cease the practice.

When PG&E considered the alternative to Diablo Canyon's cooling system and rejected it as infeasible, the cost of that replacement was estimated at upwards of \$6 billion, an estimate now more than a decade old.

This is one of the daunting obstacles faced by any attempt to extend the life of the power plant. Many more were discussed at a recent meeting of the Diablo Canyon Independent Safety Committee. That discussion is available at <https://youtu.be/WjTq-ybnaSY>.

We also share the concern that extending the life of the plant would significantly hinder California's attempt to transition to renewable energy. On the occasion of the 2016 announcement by the parties of the agreement to shutter the plant, the Natural Resources Defense Council noted that "A giant resource operating 24/7 is increasingly disconnected from the needs of the system." Or as PG&E put it: "As more solar generation comes on line over time, and when its output is at peak supply (e.g., in the middle of the day), there is less room on the electric system for energy from inflexible and large baseload resources such as Diablo Canyon."

The stated rationale for the request for an amendment to the CNC program -- that California needs the energy generated by Diablo Canyon in order to avoid blackouts and/or a surge in fossil fuel-generated electricity -- stands in contrast to the June 2021 statement of the California Public Utilities Commission: "The [clean energy] procurement we ordered is equal to the output of four large nuclear power plants or 20 natural gas plants. Included is solar, wind, geothermal, and long duration storage—pumped hydro facilities or other emerging technologies that can store energy for eight hours or longer. Our actions today will ensure that we can keep the lights on during periods of greatest demand, even as we retire Diablo Canyon and other natural gas plants."

A comparison of the full cost of continuing to operate and maintain the nuclear power plant versus the cost of replacing it with a portfolio mix of 75% renewable energy and 25% energy efficiency technologies has been studied (<https://www.utilitydive.com/news/anatomy-of-a-nuke-closure-how-pge-decided-to-shutter-diablo-canyon/421979/>).

Of those two options, the study found that renewables-plus-efficiency would cost \$12 billion. The option of keeping Diablo operational would cost \$17 billion. The conclusions of this study formed the

basis of PG&E's decision to shutter the plant. We commend it to your attention and note that even if all \$6 billion of the Civil Nuclear Credit Fund were to be allocated to Diablo Canyon, it would not suffice to cover the costs of its extended life.

Andrew Christie, Director
Santa Lucia Chapter of the Sierra Club
P.O. Box 15755
San Luis Obispo, CA 93406
(805) 543-8717

From: John Starkey <jstarkey@ans.org>
Sent on: Monday, June 27, 2022 5:05:10 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] ANS Comments on Proposed Guidance Amendment for CNC Program (Attached)
Attachments: 06.27.22 - ANS Comments on Proposed Changes to CNC Guidance.pdf (173.42 KB)

Good afternoon:

Please find attached comments from the American Nuclear Society on the proposed guidance amendment for the Civil Nuclear Credit Program.

Happy to answer any questions you may have.

Best,

John Starkey
Director of Public Policy
T: 907-360-2445
jstarkey@ans.org

June 27, 2022

U.S. Department of Energy
Office of Nuclear Energy
1000 Independence Ave. SW
Washington, DC 20585

Subject: **Comments from the American Nuclear Society on the Department of Energy's (DOE) Proposed Guidance Amendment for the Civil Nuclear Credit (CNC) Program**

Background

In November 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (IIJA). The act included the CNC program, which provides financial incentives for the continued operation of nuclear power plants projected to cease operations due to economic factors. The program would provide credits on a per megawatt-hour basis for "certified nuclear reactors," with the credits not exceeding the average projected annual operating loss. By definition, certified nuclear reactors must compete in a competitive electric market.

On April 19, 2022, DOE issued guidance for the CNC program. Among other things, the guidance requires that the reactor "...competes in a competitive electricity market," which can be done by showing that the reactor will receive 50 percent or more of total revenue from sources that are exposed to electricity market competition. The guidance further states that applicants that recover more than 50 percent of the cost of operation from cost-of-service regulation or regulated contracts will not be deemed to qualify for the CNC program. The deadline for applications for the first cycle of awards was established as May 19, 2022 (30 days after the guidance was issued). The deadline was subsequently extended to July 5, 2022.

On May 23, 2022, the office of the Governor of California requested revisions to the guidance, as summarized below.

1. Remove the limitation that a nuclear reactor is ineligible if it recovers more than 50 percent of its cost from cost-of-service regulation or regulated contracts.
2. Specify that operating losses include "costs not recovered through cost-of-service-ratemaking." Specifically, California seeks to recover transition costs for operation beyond the current license expiration dates.
3. Explicitly include grid reliability and support for state clean energy goals, as well as emissions reductions, as a rationale for payments under the CNC program.

On June 17, 2022, DOE invited public comment on proposed changes to the guidance. DOE proposes to change the 50 percent requirement (item 1) to one of receiving "a material amount of its total revenue from sources that are exposed to electricity market competition." DOE does not propose to make the change requested in item 2, stating that transition costs are already included in costs allowed by its guidance. DOE also does not propose to make any change pursuant to item 3, noting that the enabling legislation does not explicitly contemplate the additional rationales for awards under the CNC program.

In addition to comments on its proposed action, DOE seeks input on the following specific questions:

1. If DOE revises the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market, should DOE revise the Guidance for a future award cycle, or amend the Guidance for the first award cycle?
2. If DOE amends the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market for the first award cycle, should DOE extend the deadline for submission of certification applications and sealed bids, currently July 5, 2022?

Discussion

The intent of Congress in the IIJA was clear: to prevent currently-operating nuclear power reactors from shutting down for economic reasons and thereby leading to an increase of pollutants emitted by replacement energy sources. The IIJA provides for payments to operators of nuclear power plants to compensate for economic losses those owners would incur due to continued operation of the plants.

The CNC program is complicated by the fact that the country's 92 nuclear power reactors operate under different economic regulatory frameworks that are administered at the state level. The frameworks can be loosely categorized as either cost-of-service (traditional regulatory approach) or market ("competitive" market for generation). However, within those two categories, practices vary dramatically, and state mandates, regulations, and subsidies often favor some generation sources over others. Such is the case in California, where the state encourages intermittent renewable resources over carbon-free nuclear baseload power and carbon-emitting, fossil fuel-fired generation. During the last decade state agencies facilitated the planned shutdown of the two Diablo Canyon nuclear reactors in 2024 and 2025, respectively. The California framework is a mixture of the two approaches, with cost-of-service treatment for some generation sources and market for others. DOE is wrestling with how to provide guidance that is consistent with the IIJA and applicable to the nuances of all of the frameworks under which the country's nuclear power reactors operate.

It is increasingly clear that California made a serious mistake during the last decade when it decided to discontinue operations at Diablo Canyon in the hope that clean, affordable, reliable renewable energy sources would spring into being and address all of the state's electricity generation needs. A lack of regional hydropower due to the drought and the inherent unreliability of renewable resources have put California into a serious risk of blackouts even before Diablo Canyon shuts down. If the nuclear units go offline as planned in 2024 and 2025, the situation in California will be dire indeed. Notwithstanding the state's role in creating the problem, the federal government should take all available and legal actions to enable continued operation of Diablo Canyon, to the benefit of the U.S. citizens who live in or travel to California or rely on economic activity in the state. This includes appropriate adjustments to the guidance for implementing the IIJA.

Regarding the economic future of at-risk nuclear energy in U.S. electricity markets, the American Nuclear Society favors technology-neutral, performance-based energy and climate policies and market constructs that treat all carbon-free energy sources fairly and equally. Nuclear must be treated on a level playing field with other clean energy technologies.

Deep decarbonization and electrification of the U.S. economy will require the increased availability of firm, “dispatchable” zero-carbon energy technologies. Nuclear energy is the only energy source with a proven track record of producing firm, zero-carbon energy at the scale needed to meet decarbonization and electrification targets.

Comments

Regarding the proposed changes to the guidance, they do not go far enough. The letter of the IIJA states that a certified nuclear reactor (one eligible for aid) “competes in a competitive electricity market.” It is a fairly simple criterion, and one that does not require a determination of “materiality” (as the DOE is suggesting) or a quantitative measure of 50 percent of costs as was included in the original guidance. The DOE guidance should be as broad as possible within the wording of the act, in order to maximize the ability to meet the intent of the act for as many nuclear power reactors as possible. If a reactor competes in a competitive electricity market at all, regardless of the degree to which it does so, it should be deemed to be eligible.

Regarding DOE Question 1, DOE should amend its guidance for the first award cycle. Given the current and projected high prices of natural gas, there does not appear to be an imminent need to rush the program into operation. In this situation, it is more important to do it right than to do it fast. First amend the guidance to be as broadly applicable as possible, and thereby most capable of fulfilling the intent of the IIJA under the current circumstances.

Regarding DOE Question 2, DOE should extend the deadline to provide time for all potential applicants to apply under the revised guidance during the first cycle. That would be most consistent with the intent of the IIJA under the current circumstances.

Sincerely,

Craig H. Piercy

A handwritten signature in black ink, appearing to read "C. H. Piercy", with a stylized flourish at the end.

Executive Director/CEO
American Nuclear Society

Steven P. Nesbit

A handwritten signature in black ink, appearing to read "S. P. Nesbit", with a long horizontal line extending to the right.

Immediate Past President
American Nuclear Society

From: O'Hare, Kathleen M <kathleen.ohare@eversource.com>

Sent on: Monday, June 27, 2022 3:07:55 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Response to Proposed Guidance Amendment - Eversource Energy and United Illuminating Company

Attachments: Joint Eversource and UI Response to DOE Request for Public Comment FINAL (6.27.22).pdf (137.71 KB)

Good morning,

In response to the June 17, 2022 Proposed Guidance Amendment for the Civil Nuclear Credit Program, please see attached the joint comments of Eversource Energy and United Illuminating Company, two electric distribution companies in Connecticut.

Thank you,

Kathleen M. O'Hare

Counsel

Eversource Energy

107 Selden Street

Berlin, CT 06037

Tel: 914.282.0615

Fax: 860.665.5504

Email: kathleen.ohare@eversource.com



107 Selden Street, Berlin, CT 06037
P.O. Box 270, Hartford, CT 06141-0270



157 Church Street, P.O. Box 1564
New Haven, CT 06506-0901

June 27, 2022

Department of Energy
Office of Nuclear Energy
1000 Independence Ave. SW
Washington DC 20585
Email: rfi-cnc@nuclear.energy.gov

Re: Proposed Guidance Amendment for the Civil Nuclear Credit Program

June 27, 2022 Response to Proposed Guidance Amendment

These comments are jointly submitted by The United Illuminating Company and The Connecticut Light and Power Company doing business as Eversource Energy, both of whom are Connecticut-based electric distribution companies (the “EDCs”). These comments are submitted in response to the Proposed Guidance Amendment for the Civil Nuclear Credit Program (“CNC”) dated June 17, 2022 (the “Guidance Amendment”) issued by the Department of Energy’s Office of Nuclear Energy (the “Department”). The Department has requested comments on (1) all elements of its proposed Guidance Amendment; and (2) on two specific questions.

Question 1: If DOE revises the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market, should DOE revise the Guidance for a future award cycle, or amend the Guidance for the first award cycle?

The EDCs recommend that the Department revise the Guidance with respect to whether a Nuclear Reactor competes in a competitive electricity market for the first award cycle and for future award cycles. The EDCs support the removal of the requirement that a Nuclear Reactor receive 50 percent or more of total revenue from sources that are exposed to electricity market competition and the new language that requires a showing that “the Nuclear Reactor will receive *a material amount of its total revenue* from sources that are exposed to electricity market competition.”¹ The Department indicates that this will “provide a Nuclear Reactor with the opportunity to demonstrate that it has operating losses notwithstanding the percentage of cost-of-service revenues and market revenue.”

The EDCs support this amendment which allows for more flexibility in the review of applications to recognize unique circumstances that certain Nuclear Reactors may present. This amendment will serve the congressional intent of preserving economically distressed nuclear reactors while protecting taxpayer dollars.

With respect to the calculation of operating losses, the EDCs had, on March 8, 2022, provided comments in response to the RFI Certification process that provided information to facilitate the

¹ Department Proposed CNC Guidance Amendment at 2 (issued June 17, 2022).

Department's review of a potential application by Dominion Energy Nuclear Connecticut, Inc. ("DENC"), which is the licensee of the Millstone Nuclear Power Station in Waterford, Connecticut (the "Facility"). These comments detailed the provisions of the 10-year Zero Carbon Emissions Generation Unit Power Purchase Agreements between the EDCs and DENC (the "Agreements"), which include a requirement that any "New Revenue Source" (which would include CNC Program revenues) be credited to the ratepayers of the EDC, either through a price reduction under the Agreements or a pass-through credit. Therefore, consistent with 42 U.S.C.A. § 18753(c)(1)(C)(ii), to the extent CNC Program credits are issued for the portion of the Facility subject to the Agreements, those credits will reduce the EDCs' net payment obligation under the Agreements and therefore the support payments made by the EDCs under the Agreements would not be included in the calculation of operating losses. The EDCs continue to recommend that the Department take into consideration the unique circumstances presented by the Agreements when reviewing the DENC application.

Question 2: If DOE amends the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market for the first award cycle, should DOE extend the deadline for submission of certification applications and sealed bids, currently July 5, 2022?

The EDCs recommend that Department extend the deadline for submission of certification applications and sealed bids if the Department amends the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market for the first award cycle. The extension of time will allow the Nuclear Reactor facilities to revise their applications to fit within the new guidance issued by the Department.

If the EDCs can provide any additional information that is helpful to the Department, please do not hesitate to contact the undersigned.

THE CONN. LIGHT AND POWER
COMPANY d/b/a EVERSOURCE ENERGY

Vincent P. Pace

Vincent P. Pace Esq.
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Berlin, CT 06037
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Vincent.Pace@eversource.com

THE UNITED ILLUMINATING
COMPANY



Leonard Rodriguez
Deputy General Counsel
Avangrid Networks, Inc.
180 Marsh Hill Rd., Orange, CT 06477
Telephone 203.499.2113
Leonard.rodriguez@avangrid.com

cc:

Mr. Ron Armstrong
Director – Power Asset Management
Dominion Energy Generation Marketing, Inc.
120 Tredegar Street
Richmond, VA 23219

From: Nicolas S. <nasnyder225@gmail.com>

Sent on: Monday, June 27, 2022 6:34:58 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Response to Proposed Guidance Amendment

I strongly oppose the Department of Energy's proposed amendment to the guidance of the Civil Nuclear Credit program. I view nuclear power as an unnecessary, archaic liability in the face of rising renewable energy adoption, particularly as renewable energy electricity generation costs have reduced greatly to the point that it grossly outcompetes nuclear. Excluding nuclear waste woes and the catastrophic consequences of a meltdown in a variety of scenarios, from an economic standpoint, eliminating measures to ensure cost-effectiveness is simply the wrong direction.

By relaxing the eligibility criteria for the CNC program, reactors that do not face financial challenges will be supported with funding siphoned from those reactors that do face financial hardship, for which the CNC program was intended. Additionally, in the case of Diablo Canyon, a plant closing due to an agreement between environmental groups, plant workers, and PG&E to phase out operations in favor of renewable energy replacements, misuse of this program means a regressive step in the face of multilateral compromise.

The CNC program, in general, is deeply misguided, shifting funds that should be spent on renewable energy into wasteful spending on uneconomical nuclear power. When something fails to yield its benefits due to mounting costs, the solution should not be to double down and allow greater inefficiency, it should be culled in favor of better options.

The Diablo Canyon Power Plant operations should remain in adherence to its closure agreement and the DOE's proposed amendment to the guidance for the Civil Nuclear Credit program, to intervene on behalf of unnecessary, uneconomical reactors, should not go forth.

The DOE should also not extend the application deadline beyond the due date of July 5th, which has already been delayed previously.

Nicolas Snyder

To: rfi-cnc@nuclear.energy.gov

Subject: Response to Proposed Guidance Amendment

I strongly oppose the Department of Energy's proposed amendment to the guidance of the Civil Nuclear Credit program. I view nuclear power as an unnecessary, archaic liability in the face of rising renewable energy adoption, particularly as renewable energy electricity generation costs have reduced greatly to the point that it grossly outcompetes nuclear. Excluding nuclear waste woes and the catastrophic consequences of a meltdown in a variety of scenarios, from an economic standpoint, eliminating measures to ensure cost-effectiveness is simply the wrong direction.

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The Diablo Canyon Power Plant operations should remain in adherence to its closure agreement and the DOE's proposed amendment to the guidance for the Civil Nuclear Credit program, to intervene on behalf of unnecessary, uneconomical reactors, should not go forth. The DOE should also not extend the application deadline beyond the due date of July 5th, which has already been delayed previously.

Nicolas Snyder

From: Nancy Bagot <Nbagot@epsa.org>
Sent on: Monday, June 27, 2022 7:01:20 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
CC: Nancy Bagot <Nbagot@epsa.org>
Subject: [EXTERNAL] EPSA - Response to Proposed Guidance Amendment
Attachments: EPSA Comments DOE CNCP Amendment 6.27.22.pdf (231.56 KB)

Please find attached a PDF document: Comments of the Electric Power Supply Association on Proposed Guidance Amendment for the Civil Nuclear Credit Program - June 27, 2022

For any assistance or questions, please contact me at nbagot@epsa.org.

Nancy E. Bagot
Sr Vice President
Electric Power Supply Association
(202) 349-0141 Office
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nbagot@epsa.org

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY

**Comments of the Electric Power Supply Association on
Proposed Guidance Amendment for the Civil Nuclear Credit Program**

Reference Number: DOE-HQ-2022-0006

June 27, 2022

I. INTRODUCTION

The Electric Power Supply Association (“EPSA”)¹ respectfully submits these comments in response to the Proposed Guidance Amendment for the Civil Nuclear Credit Program (“Guidance Amendment” or “Amendment”)² distributed as an invitation for public comment via email on June 20, 2022, by the United States Department of Energy (“Department” or “DOE”).³ The invitation requests feedback on whether the Department should revise the eligibility criteria set out in the April 2022 Guidance⁴ for the Civil Nuclear Credit (“CNC”) program. EPSA’s comments are intended to aid the Department in the development of a transparent, objective, and fair certification process which is consistent with the intent of Congress. EPSA opposes the Guidance Amendment as proposed, for either the first or any future award cycles, and thus also opposes extension of the deadline for submission of certification submissions and sealed bids, currently due July 5, 2022.

The proposed amendment addresses one issue – whether the eligibility criteria set out in the Guidance for the CNC Program should be revised to eliminate the requirement that an applicant not recover more than 50 percent of its cost from cost-of-service regulation or regulated contracts. This

¹ EPSA is the national trade association representing competitive power suppliers in the U.S. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. EPSA seeks to bring the benefits of competition to all power customers. This pleading represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

² U.S. Department of Energy Proposed Guidance Amendment for the Civil Nuclear Credit Program, (Issue date June 17, 2022).

³ Invitation for Public Comment: Civil Nuclear Credit Program (“Invitation”), distributed via email from NECommunications@nuclear.energy.gov on June 20, 2022.

⁴ U.S. Department of Energy Guidance for the Civil Nuclear Energy Credit Program (“Guidance”), (Issue date April 19, 2022).

proposed change responds to a letter from the Office of the Governor of California⁵ requesting that DOE revise the program guidance in three ways⁶ in order to address “the unique circumstances of [Diablo Canyon Power Plant]” which the letter describes as “slated for closure *in part* based on economic circumstances.”⁷ In the proposed Guidance Amendment, DOE explains that it declines to consider proposed changes with respect to two of the three requested revisions outlined in the Governor’s letter. The amendment does propose to revise the eligibility criteria language which defines that a nuclear reactor participates in a competitive electricity market. The revised language strikes the reference to the recovery of at least 50% of total revenue from sources exposed to electricity market competition. Rather, the amended guidance would require a reactor to show that it “will receive a material amount of its total revenue from sources that are exposed to electricity market competition.”⁸

EPSA submits the comments herein to oppose the change for eligibility in the First Award Cycle or any subsequent Award Cycles. Rather than effectuate Congress’s intent in the Bipartisan Infrastructure Law,⁹ this request, coming from one state to address the unique circumstances of one Nuclear Reactor in its jurisdiction, would contort a multi-billion-dollar federal program in order to ensure financial support for one Nuclear Reactor in the program’s First Award cycle which is scheduled to close for applications in eight days.

II. BACKGROUND

EPSA is a fuel- and technology-neutral organization committed to preserving and promoting well-functioning competitive wholesale electricity markets. Our members own and operate all types

⁵ Letter to DOE Secretary Jennifer Granholm Requesting Clarification to the Guidance issued by DOE for the First Round of the Civil Nuclear Credit Program Application, From the Office of the Governor, State of California, signed by Ana Motasantos, Cabinet Secretary (“CA Letter”), (dated May 23, 2022).

⁶ Guidance, p. 2, section (d).

⁷ CA letter, p. 2, emphasis added.

⁸ Amendment, p. 3.

⁹ The Infrastructure Investment and Jobs Act (“IIJA,” or “Bipartisan Infrastructure Law”), Public Law 117-58, (November 15, 2021), Section 40323.

of electric generation resources, including two nuclear power plants in the competitive Texas electricity market. Furthermore, EPSA supports efforts to combat climate change through transparent, open, and nondiscriminatory competitive markets¹⁰ in an affordable and reliable manner, such as an economy-wide price on carbon or a well-designed clean energy standard. These tools recognize the environmental benefits that all non-emitting generators, including nuclear, provide, and create revenue opportunities for those resources, thereby reducing the risk of closure of existing carbon-free resources.

In the absence of a national, market-based policy to address carbon emissions in the near-term, EPSA remains committed to competitive electricity markets which utilize fuel- and technology-neutral market mechanisms to procure and deliver energy, capacity, and ancillary services. While the CNC Program represents an out-of-market payment structure, EPSA acknowledges the intent of the program – as directed in the IIJA – is to provide federal credits to nuclear power plants located in competitive electricity markets that can show that they will cease operation due to economic factors. This focus strikes a balance between providing limited financial support to nuclear reactors that are truly at risk of closure and the preservation of vibrant competitive wholesale electricity markets that can, if designed properly, provide incentives to deploy the extensive resources necessary to meet the Administration’s clean energy and decarbonization goals.

III. COMMENTS

In the furtherance of the decarbonization goals of the U.S. Congress and the Administration, the IIJA established the CNC Program based on the threshold requirement that a Certified Nuclear Reactor must “compete in a competitive electricity market.”¹¹ However, the legislation did not

¹⁰ <https://epsa.org/about-epsa/our-principles/>

¹¹ IIJA, sec. 40323 (a)(1)(a).

specify the eligibility requirements to determine that a nuclear reactor may be deemed to compete in a competitive electricity market. The Department collected extensive comment from industry and stakeholders on this issue in response to a Notice of Intent and Request for Information.¹² Pursuant to that substantial input, the CNCP Guidance established certification requirements as indicated in the IIJA to establish that an applicant will compete in a competitive electricity market during the Award Period. The Guidance set up two distinct requirements: (1) that a reactor receive 50% or more of total revenue from sources exposed to electricity market competition and, (2) the disqualification of any reactor that recovers more than 50% of its costs through regulated cost-of-service rates or regulated contracts. Neither standard should be adjusted. The first regarding competition is already a low threshold to deem a resource “competitive,” but it is clear and quantifiable – to change it to a “material” finding creates a subjective standard that will inject uncertainty into the program. The second eligibility specification setting a cost-of-service threshold, while arguably overly high, ensures that eligible reactors are compared on similar grounds. Without this limitation, a mere “material” competitiveness finding could allow for certification of reactors that recover a significant portion of its costs from captive ratepayers, which is not the intention of the Program.

The existing criteria establishes an objective measurement for an applicant to demonstrate it faces economic pressure that may lead to its closure due to exposure to market risk and ensures a level playing field among applicants who rely on competitive markets for cost and revenue recovery. Nuclear reactors that are compensated through regulated cost-of-service rates or contracts face vastly lower levels of market risk and therefore should not be eligible to become a Certified Nuclear Reactor. To allow otherwise is inconsistent with the spirit of the Program, harms other

¹² Notice of Intent and Request for Information Regarding Establishment of a Civil Nuclear Credit Program, FedReg 87 FR 8570, (Published February 15, 2022).

applicants who seek program certification and available credits in either the same Award Cycle or those which come later, and inappropriately directs federal funds to correct the impacts of a poorly functioning centralized market and state policies.

Hence, the attempt to reform this extensive, multi-billion-dollar program to accommodate one particular Nuclear Reactor – Diablo Canyon Power Plant (“DCPP”) – is both adverse to the intent and foundation of the program and would create a lasting distortion impacting most, if not all, other potential applicants. Notably, as acknowledged by the California Governor’s office, DCPP could be eligible for the First Award Cycle which considers only those reactors that have already publicly announced their intention to cease operations permanently on or before September 30, 2026. As explained in the Guidance, limiting eligibility in the First Award Cycle directs credits to units most at risk of closure in the near term “while retaining Credits for future award cycles to assist as many additional Nuclear Reactors as possible that are projected to cease operation due to economic factors in a future period.”¹³ Thus, the level of awards granted in the first cycle will impact the amount and availability of awards for future cycles.

To contort the program to guarantee certification of a reactor that cannot pass what is in fact a minimal test for competitive status – a 50% threshold of revenue recovery – inappropriately and improperly tips the scales and harms all other applicants. In the DOE NOI-RFI seeking comments, the Department and many commenters acknowledge that economic factors may differ for existing nuclear reactors. Thus, the Guidance establishes a transparent and quantifiable test to support the finding that an applicant competes in a competitive market and thus faces certain verifiable market and economic risks. The California governor’s request that the Department address the recovery of particular sets of costs focuses on an inappropriate and irrelevant metric – the CNC program is to assess the overall economic status of a competitive market reactor. The program will not and should

¹³ Guidance, p. 10.

not focus on what individual costs are recoverable and which are not as it assesses the status of each applicant.

The proposed amendment not only loosens what is already a low-level threshold for this determination, but also establishes criteria which is overly subjective and open to interpretation. EPSA has grave concerns regarding the proposed language that an applicant show it receives “a material amount of its total revenue” from competitive sources to establish the Congressional direction that it competes in a competitive electricity market. While the 50% threshold established in the Guidance is not a strong “competitiveness indicator” in EPSA’s view, there is merit in the clarity and objectivity of the requirement. The proposed change creates a subjective demonstration which injects uncertainty and potentially unfairness into the program writ large. For instance, it is foreseeable that what is considered “material” could change from year to year as the applicant pool changes, creating an obfuscated and moving threshold for applicants in future award cycles – arguably Congress initiated this program to insert *additional* certainty into the market where resources are under economic distress in the market. The Department should not relax this requirement as requested by the California Governor’s office or as proposed in the amendment.

While a Certified Nuclear Reactor may receive some portion of its revenues through cost-of-service regulation, the congressional requirement that it competes in competitive electricity markets not only establishes a level of fairness regarding market and economic risk, but also protects federal taxpayers from subsidizing facilities which are already supported – or could be supported – by direct customers pursuant to regulated cost-of-service rates or contracts. Additionally, federal taxpayer protections should also apply to substituting federal funds for a poorly functioning centralized market or correcting the impacts of state policy choices that endanger the economic health of resources that provide reliability to the system and establish preferences that dictate winners and losers among state resources.

The “competitiveness test” included in the legislation and DOE’s Guidance establishes a threshold standard for federal economic support – which protects against the substitution of federal taxpayer funds for ratepayer obligations just because the money is available. The circumstances of DCPD indicate that this could be a motivational factor in the Governor’s request, as DCPD’s owner and operator has not indicated an inclination to pursue the federal credits in order to keep the plant open beyond the expiration of its Nuclear Regulatory Commission operating licenses which expire on November 2, 2024 (Unit 1) and August 26, 2025 (Unit 2). DCPD’s owner, Pacific Gas & Electric Company (“PG&E”), has ceased all efforts to renew DCPD’s operating licenses, citing California state policy preferences and legislation as the reason to retire these facilities – not any dire economic factor or stress.¹⁴ As indicated by numerous formal filings and correspondence, PG&E began the process of retirement several years ago. It is unclear whether the necessary efforts, processes, certifications, and licensing could be restarted at this point, or whether fuel or other operational assets could be procured on a timely basis.

To fundamentally alter the eligibility of the CNC Program at the behest of one state to support continued operation of one nuclear reactor that may not even seek certification for any available funding is a disservice to all concurrent or future applicants, and the taxpayers who are footing the bills. Further, the indication that the Department is willing to modify the eligibility

¹⁴ PG&E Letter DCL-16-066 to the U.S. Nuclear Regulatory Commission, Dockets 50-275, OL-PR-80; 50-323, OL-DPR-82, (June 21, 2016), “Based on discussions with various stakeholders involved in these state approval processes, PG&E has reached an agreement in principle not to proceed with license renewal for DCPD. In support of the state’s policy preference to meet California’s future electricity needs with renewable generation resources, energy efficiency, or storage, PG&E will continue to operate DCPD until expiration of the current operating licenses in 2024 and 2025, for Units 1 and 2 respectively.... PG&E therefore requests that the NRC suspend activity on the DCPD license renewal application.”

Joint Proposal of Pacific Gas and Electric Company, Friends of the Earth, Natural Resources Defense Council, Environment California, International Brotherhood of Electrical Workers Local 1245, Coalition of California Utility Employees and Alliance for Nuclear Responsibility to Retire Diablo Canyon Nuclear Power Plant at Expiration of the Current Operating Licenses and Replace it with a Portfolio of GHG Free Resources, (June 20, 2016). See p. 2, Para C: “After considering [many] factors...PG&E in consultation with the Parties has concluded that the most effective and efficient path forward for achieving California’s SB 350 [legislative] policy goal for deep reduction of GHG emissions is to retire Diablo Canyon at the close of its current operating license period and replace it with a portfolio of GHG free resources.”

requirements for the program to accommodate one unique circumstance – in the words of the California governor¹⁵ – will inject uncertainty regarding the program looking forward to future Award Cycles. The proposed amendment also thwarts the establishing principle of the program – to support nuclear reactors at risk of closure due to economic stress and duress, which is not the case in this circumstance based on all available information.

IV. CONCLUSION

We appreciate the opportunity to provide our input on the Proposed Guidance Amendment. For the reasons cited above, EPSA opposes the amended language for the CNCP Guidance, and thus also opposes the extension of the deadline for submission of certification applications and sealed bids for the First Award Cycle, which is currently July 5, 2022.

Respectfully submitted,

/s/ N.E. Bagot

Nancy E. Bagot
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June 27, 2022

¹⁵ CA Letter, p. 2, “I am writing to highlight some *circumstances that may be unique to DCP*P and to suggest a few minor adjustments to the April 2022 Guidance issued by DOE for this program to effectuate Congress’s intent and the Department’s objectives *while addressing the unique circumstances of DCP*P.” (Emphasis added.)

From: Joshua Vander Ryn <j.m.vanderryn@gmail.com>
Sent on: Monday, June 27, 2022 6:43:40 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Response to Proposed Guidance Amendment

Hi DOE,

I oppose the amendment to the Guidance for the Civil Nuclear Credit Program, relaxing eligibility requirements for nuclear power plants to apply for these funds. The core legislative intent of the CNC program is to support reactors that would close due to financial hardship. Including nuclear reactors that operate in regulated, rather than competitive, environments would severely undermine this purpose. PG&E's planned closure of Diablo Canyon is because it undermines California's renewable energy goals and not because of financial hardship.

The application deadline should not be extended past the due date that's already delayed: July 5th. Keeping Diablo Canyon open is estimated to require \$1-2 billion of CNC funds. The proposed amendment could result in waste of CNC program's funds that could be used for reactors that are in financial need.

Regards,

Joshua Van der Ryn

From: Burnett, Marsha <MJS2@IBEW1245.com>
Sent on: Monday, June 27, 2022 6:50:38 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
CC: Dean, Robert L., Jr. <RLDJ@IBEW1245.com>; Stern, Hunter <hls5@IBEW1245.com>
Subject: [EXTERNAL] Civil Nuclear Credit Program_IBEW Local 1245
Attachments: BD_IBEW1245_CNCP_DOE.ltr.pdf (260.89 KB)

On behalf of Local 1245 Business Manager Bob Dean, please find the attached letter with regards to Civil Nuclear Credit Program.

Thank you,
Bob Dean
Business Manager

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www.ibew1245.com



IBEW 1245
THE POWER IS IN OUR HANDS

BOB DEAN, BUSINESS MANAGER
CECELIA DE LA TORRE, PRESIDENT

June 27, 2022

Office of Nuclear Energy
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Re: Comments on DOE's Proposed Amendment to the Guidance for the Civil Nuclear Credit Program

The International Brotherhood of Electrical Workers, Local Union 1245 (IBEW 1245) respectfully submits these comments in response to the U.S. Department of Energy's June 17, 2022, proposed amendment to Guidance for the Civil Nuclear Credit (CNC) Program. IBEW 1245 represents over 29,000 members performing utility work in California, Nevada and other western states, including nearly 600 workers at Diablo Canyon Nuclear Power Plant in San Luis Obispo County, California.

IBEW 1245 welcomes the Department of Energy's efforts to support continued operation of U.S. nuclear reactors through the Civil Nuclear Credit Program. IBEW 1245 members have been working at Diablo Canyon since the units began operating and have done so safely and efficiently for nearly 40 years.

We note the request for comments identifies two specific questions:

1. If DOE revises the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market, should DOE revise the Guidance for a future award cycle, or amend the Guidance for the first award cycle?

IBEW 1245 supports DOE's proposed amendment to the Guidance to include the first award cycle, due to the unanticipated conditions surrounding Diablo Canyon's planned shutdown. Should Diablo Canyon extend operations beyond the established date for decommissioning, the plant will incur significant transition costs which are not recoverable through existing cost-of-service regulation. In this case, those costs, in effect, would be operating losses and should be recoverable under the Civil Nuclear Credit Program.

2. If DOE amends the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market for the first award cycle, should DOE extend the deadline for submission of certification applications and sealed bids, currently July 5, 2022.

IBEW 1245 recommends the deadline be extended.

Diablo Canyon operates in the public interest and Local 1245 supports continued operation of DCPD into the future as the right thing to do for California residents and its economy. The California Independent System Operator has forecast electricity shortfalls for this summer. [California governor floats 5-GW, \\$5.2B 'reliability reserve' amid possible electricity shortfalls | Utility Dive](#) Diablo Canyon is a vital part of California's clean energy future. As the largest generator of local, greenhouse gas-free power in the state, Diablo Canyon provides much of the critical, local baseload power that California needs to meet its climate goals. If Diablo Canyon were to close, the loss of the 2.2 GW of clean power produced there would inevitably cause a significant increase in greenhouse gas emissions and destabilize an already stressed grid. This occurred when the San Onofre Nuclear Operating Station in Southern California shut down suddenly several years ago.

Additionally, Diablo Canyon is a key economic driver in San Luis Obispo County, and thousands of residents and businesses depend on it as a source of quality jobs and revenue. More than 1,150 workers are employed at Diablo Canyon, making it one of the largest creators of jobs in the San Luis Obispo area. The plant's operation tax base helps fund everything from public safety to schools and plays a key role in the economic stability of the region.

On behalf of the 29,000-plus members of IBEW 1245, I appreciate your full consideration of these comments.

Respectfully,



Bob Dean
Business Manager

From: Diane Curran <dcurran@harmoncurran.com>
Sent on: Monday, June 27, 2022 7:17:53 PM
To: Secretary <the.secretary@hq.doe.gov>; NE Communications
<necommunications@nuclear.energy.gov>; rfi-cnc <rfi-cnc@nuclear.energy.gov>
CC: Jane Swanson (janeslo@icloud.com) <Jane Swanson (janeslo@icloud.com)>
Subject: [EXTERNAL] Response to Proposed Amendment to Guidance for Civil Nuclear Credit Program
Attachments: 2022.06.27 SLOMFP Letter to DOE Secy Granholm re Proposed Guidance Amendment.pdf
(1.03 MB)

Dear Secretary Granholm and Assistant Secretary Huff:

On behalf of San Luis Obispo Mothers for Peace ("SLOMFP"), a non-profit organization concerned with the dangers posed by Diablo Canyon and other nuclear reactors, nuclear weapons, and radioactive waste, I am submitting comments on the U.S. Department of Energy's ("DOE's") proposed amendment to the DOE's initial Guidance for the Civil Nuclear Credit Program ("CNC Program"). As you know, the proposed amendment to the DOE's guidance was requested by the Governor of California in order to enable the addition of Diablo Canyon to the CNC Program. As set forth in our comments, the proposed modification to the guidance is inconsistent with the plain language and intent of the governing statute, and would undermine its purposes.

These comments are being submitted directly to you, Secretary Granholm and Assistant Secretary Huff, because of the gravity of the concerns raised by the proposed amendment regarding your agency's commitment to transparency and fairness, compliance with the rule of law, and rational policy-making to address climate change. We urge you not to allow the CNC Program to be weakened or mis-directed to serve the unreasonable and unsupported demands of a single supplicant in ways that will undercut rather than further cost-effective climate impact mitigation.

Sincerely,

Diane Curran, Counsel to SLOMFP

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(240)393-9285

June 27, 2022

As corrected June 28, 2022

Jennifer Granholm, Secretary
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The.Secretary@hq.doe.gov

Dr. Kathryn Huff, Assistant Secretary
Office of Nuclear Energy
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585
NECommunications@nuclear.energy.gov
Rfi-cnc@nuclear.energy.gov

SUBJECT: *Response to Proposed Amendment to Guidance for Civil Nuclear Credit Program*

Dear Secretary Granholm and Assistant Secretary Huff:

On behalf of San Luis Obispo Mothers for Peace (“SLOMFP”), a non-profit organization concerned with the dangers posed by Diablo Canyon and other nuclear reactors, nuclear weapons, and radioactive waste, I am submitting comments on the U.S. Department of Energy’s (“DOE’s”) proposed amendment to the DOE’s initial Guidance for the Civil Nuclear Credit Program (“CNC Program”).¹ The sole purpose of these proposed changes appears to be to grant a request by the Governor of California to allow the Diablo Canyon Nuclear Power Plant to participate in the CNC Program, for which it is completely unqualified, and which would be inconsistent with the plain language and purposes of the bipartisan Infrastructure Investment and Jobs Act (“IIJA”).²

Indeed, admission of Diablo Canyon to the CNC Program would undermine the purposes of the IIJA, by upending a settlement agreement by which Diablo Canyon’s life has been extended for several years beyond the time when the need for substantial capital investments would have raised California electric rates to intolerable levels, even as the plant’s inflexible operating characteristics impeded California’s ongoing transition to a low carbon electric sector based on other more efficient technologies. Further, admitting Diablo Canyon to the CNC Program would

¹ U.S. Department of Energy, Proposed Guidance Amendment for the Civil Nuclear Credit Program (June 17, 2022). (“Proposed CNC Program Guidance Amendment”). The Proposed CNC Guidance Amendment was posted at <https://www.energy.gov/ne/proposed-guidance-amendment-civil-nuclear-credit-program>.

The Proposed CNC Guidance Amendment would make changes to U.S. Department of Energy, Guidance for the Civil Nuclear Credit Program (April 19, 2022) (“CNC Program Guidance”). Notice of the availability of the CNC Program Guidance was published at 87 Fed. Reg. 24,291 (Apr. 25, 2022).

² See letter from Ana Matosantos, Cabinet Secretary to Governor Gavin Newsom, re: Request for clarification to the Guidance issued by DOE for the first round of the Civil Nuclear Credit Program application (May 23, 2022) (“Matosantos Letter”).

undo or undercut a range of State legislative and regulatory decisions facilitating the orderly retirement of Diablo Canyon and transition to much lower cost, cleaner and safer resources. Finally, DOE violated the Administrative Procedure Act and basic principles of fairness and transparency embraced by the Biden administration by failing to publish notice of the proposed Guidance Amendment in the Federal Register, and by providing an absurdly short comment period of seven days to those members of the public who happened to get an email about it or see it on DOE's website.

These comments are being submitted directly to you, Secretary Granholm and Assistant Secretary Huff, because of the gravity of the concerns raised by the proposed Guidance Amendment regarding your agency's commitment to transparency and fairness, compliance with the rule of law, and rational policy-making to address climate change. We urge you not to allow the CNC Program to be weakened or mis-directed to serve the unreasonable and unsupported demands of a single supplicant in ways that will undercut rather than further cost-effective climate impact mitigation.

Our concerns are set forth below, and in the attached letter to Secretary Granholm from Timothy Judson, Executive Director of Nuclear Information and Resource Service, on behalf of SLOMFP and 178 other organizations (June 21, 2022) ("Judson Letter") (Attachment A). We also refer you to the attached letter to Secretary Granholm from Natural Resources Defense Council and Friends of the Earth, urging her to reject Governor Newsom's request.³ In addition, we adopt the comments of Natural Resources Defense Council and Friends of the Earth on the proposed Guidance Amendment, filed today.

Given DOE's failure to comply with the APA or basic principles of fairness and transparency in notice-and-comment rulemaking in proposing the Guidance Amendment, we submit these comments under protest.

³ Letter to Hon. Jennifer Granholm from Ralph Cavanagh, Energy Co-Director of the Climate and Clean Energy Program of Natural Resources Defense Council and Erich Pica, Executive Director of Friends of the Earth re: Diablo Canyon Power Plant: Letter from California Governor's Office Dated May 23, 2022 (May 27, 2022) ("NRDC/FOE Letter") (Attachment B). Both the Judson Letter and the NRDC/FOE Letter set forth detailed reasons why the Secretary should decline Governor Newsom's request to misuse the Civil Nuclear Credit Program to dismantle the fossil-free phaseout and just transition plan for the Diablo Canyon nuclear power plant. For the same reasons, the proposed Guidance Amendment should be dropped and the DOE should maintain its guidance of April 19, 2022.

Our comments are as follows:

The Proposed Guidance Amendment is inconsistent with the IIJA, and therefore unauthorized.

It is well-established that federal agencies and reviewing courts “must follow [the] language” of federal statutes and “give it effect.” *Ind. Mich. Power Co. v. DOE*, 88 F.3d 1272, 1274 (D.C. Cir. 1996) (citing *Chevron U.S.A, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) and quoting *Wisconsin Elect. Power Co. v. DOE*, 778 F.2d 1, 4 (D.C. Cir. 1985)). Thus, DOE’s proposed guidance may not deviate from the plain language and intent of the IIJA.

As DOE recognizes, the IIJA implements “congressional intent of preserving economically distressed nuclear reactors while protecting taxpayer dollars.” Proposed Guidance Amendment at 3. Thus, as correctly observed by DOE in proposing the CNC Program, the IIJA requires that: “[t]o be eligible for certification, section 40323(a) of the [IIJA] requires that a nuclear reactor “competes in a competitive electricity market.” 87 Fed. Reg. at 8,572 (citing 42 U.S.C. § 18753(a)(1)(A)). This language establishes a clear and unequivocal threshold requirement for participation in the CNC Program.

Consistent with the plain language and intent of the IIJA, DOE’s current Guidance for the Civil Nuclear Program requires that an applicant demonstrate that it competes in a competitive electricity market by “showing that the Nuclear Reactor will receive 50 percent or more of total revenue from sources that are exposed to electricity market competition.” CNC Program Guidance, § V.2.

DOE now proposes to change that criterion to provide that an applicant can qualify by “showing that the Nuclear Reactor will receive a material amount of its total revenue from sources that are exposed to electricity market competition.” Proposed CNC Program Guidance Amendment at 3. To establish what is a “material amount,” the applicant will have “the opportunity to demonstrate that it has operating losses notwithstanding the percentage of cost-of-services revenues and market revenues.” *Id.* at 3.

In judging what is a “material amount,” and what constitute “operating losses” therefore, DOE now proposes to engage in a balancing test, using subjective judgment despite DOE’s oft-demonstrated lack of expertise in assessing the real costs of operating and building nuclear power plants. Such a balancing test is inconsistent with the IIJA, which sets a threshold eligibility requirement. The guidance should not give DOE flexibility to evade the threshold eligibility requirement of the IIJA.

This is especially important, given that review of applications apparently will be done behind closed doors, without public disclosure and analysis that otherwise would provide some measure of accountability and verification of the complex economic claims that go into determining whether real operating losses have occurred. In order to ensure compliance with the statute and fairness to the public and to competing applicants, the eligibility requirement should be a clear

threshold test, not a balancing test. The existing requirement to show that at least 50 percent of an applicant's income comes from sources that are exposed to electricity market competition satisfies that requirement, and thus should be retained.

Changing the existing guidance for Diablo Canyon is not justified.

We disagree strenuously with the California Governor's claim, cited in the Proposed Guidance Amendment at page 3, that Diablo Canyon presents "circumstances not contemplated in the Guidance" that justify relaxing the eligibility requirements for Diablo Canyon, *i.e.*, "where a Nuclear Reactor both receives cost-of-service rate recovery and also sells into an organized wholesale market, but nevertheless could still incur operating losses that threaten the ability of the Nuclear Reactor to continue operations." As stated in the NRDC/FOE Letter:

Although Diablo Canyon bids its output into the competitive wholesale market administered by the CAISO, the revenues it receives are netted against its authorized operating costs, and any negative balance is recovered through a dedicated charge paid by all PG&E customers. As a result, PG&E [Pacific Gas & Electric Co.] faces no competitive wholesale market risk with respect to the power generated by Diablo Canyon. And while the Governor's letter correctly indicates that PG&E has historically recovered less than Diablo Canyon's authorized operating costs from the wholesale market, at the elevated wholesale electricity prices of recent months the situation has reversed.⁴

Furthermore, Diablo Canyon has been the property of a regulated utility in the State of California since the 1980s, and PG&E has consistently recovered the costs of the reactors from California ratepayers. While it is selling part of its resources into the wholesale market it is not exposed to market risks for recovery of its costs.

Finally, it is important to recognize that the amended Guidance requested by the Governor of California is being requested for the purpose of revoking a decision of the CPUC to close Diablo Canyon by 2025 at the end of its current NRC operating licenses. In its 2016 filing to the CPUC, PG&E stated that: "As result of the rapidly changing California energy landscape, Diablo Canyon will not be needed at the end of the license period."⁵ PG&E also cited four specific circumstances why Diablo Canyon will not be needed. First, PG&E's cited declining retail sales due to increasing impacts from "the expansion of energy efficiency, increase in distributed generation especially privately-owned solar resources, and the growth of alternative energy

⁴ *Id.* at 2.

⁵ Application of Pacific Gas & Electric Co. for approval of the Retirement of Diablo Canyon Power Plant, Implementation of the Joint Proposal, and Recovery of Associated Costs Through Proposed Ratemaking Mechanisms at 5 (Aug. 11, 2016).

<https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M166/K001/166001245.PDF>

supplies, such as Community Choice Aggregation (CCAs).”⁶ According to PG&E, this “downward pressure on bundled electric sales reduces the need for electricity from Diablo Canyon.”⁷ Second, PG&E noted “a decreasing need for baseload generation” due to California’s increasing reliance on renewables, then required to reach at least 50% by 2030.⁸ Third, PG&E cited “[t]he challenge of renewable resource overgeneration caused by excess renewable energy supply in certain times of the day.”⁹ Finally, PG&E asserted that “the cost to operate Diablo Canyon may significantly increase after 2025 due to state and federal requirements.”¹⁰

Admission of Diablo Canyon to the CNC Program would also upend multiple additional decisions related to the CPUC’s decision to close Diablo Canyon at the end of its current operating license term:

- 2018 State legislation providing \$85 million to replace losses of local tax revenue, \$350 million for employee retention at the power plant and a requirement that greenhouse gas emissions would not increase as a result of Diablo’s closure;¹¹
- A subsequent 2018 CPUC decision to implement that legislation;¹²
- Forbearance of a 2010 California State Water Resources Control Board policy that would have required PG&E to install cooling towers or other significant measures to reduce marine impacts by at least 85% if the plant extends operation beyond 2025;¹³
- A decision by the California Lands Commission (of which then-Lt.Gov. Newsom was a board member) to end Diablo’s permit to use state coastal lands beyond 2025; and
- Multiple Integrated Resource Plan (“IRP”) proceedings at the CPUC that would ensure the reduction of greenhouse gases and the replacement of Diablo Canyon many times over with greenhouse gas-free resources.¹⁴

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 6.

⁹ *Id.*

¹⁰ *Id.*

¹¹ California Senate Bill 1090, enacted September 18, 2018.
https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1090

¹² CPUC Decision 18-01-022 (January 11, 2018).
<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M205/K423/205423920.PDF>

CPUC Decision 18-11-024 (November 29, 2018).
<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M246/K081/246081285.PDF>

¹³ See https://www.pgecorp.com/corp_responsibility/reports/2021/pl04_water.html.

¹⁴ CPUC. “Status Update on Procurement in Compliance with D.19-11-016 (IRP Procurement Order).” August 2021. <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy->

A potential decision by the Department of Energy to extend the life of Diablo Canyon beyond 2025 would not only upend the commitments cited above, but would continue and expand the onerous financial burden of paying for the exorbitant cost of this power plant – which is over \$1 billion a year. The imposition of these costs is particularly unjustified in light of the fact that the State is already in the process of transitioning to much lower cost, cleaner and safer resources.

Further, extending the life of Diablo Canyon beyond 2025 when the plant would need to make substantial capital investments to comply with the once-through-cooling system regulations, would increase the cost of operating Diablo Canyon by around \$400 million a year, starting in 2025, according to PG&E's testimony to the CPUC in the Diablo Canyon retirement proceeding in 2017.¹⁵ This cost would be in addition to the approximately half billion dollars per year in existing above-market stranded costs which already are being imposed on PG&E ratepayers.¹⁶

Amending the Criteria would be pointless because Diablo Canyon does not qualify for participation in the CNC Program under any of the other criteria.

In addition to Diablo Canyon's ineligibility to participate in the CNC Program, it fails to satisfy other important criteria for participation in the CNC Program.

First, an applicant to the CNC Program must show that the nuclear reactor "is projected to cease operations due to economic factors." 87 Fed. Reg. at 8,572, 8,573. But Diablo Canyon is not closing because it is unprofitable – one of Congress' key reasons for providing the CNC subsidy. Diablo Canyon's owner, PG&E, operates Diablo as part of its regulated utility and recovers all of its costs plus a regulated rate of return on investment through its regulated electricity rates.

Second, the IIJA is designed to help only economically-distressed reactors, the retirement of which would demonstrably lead to increases in greenhouse gas emissions. 87 Fed. Reg. at 8,570. But operation of Diablo Canyon is not necessary to avoid carbon emissions. As discussed in the Judson Letter at page 1, California state law requires the California Public Utilities Commission

[division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltp-irp-ed-staff-review-of-feb2021-data-in-compliance-with-d1911016.pdf](https://www.cpuc.ca.gov/division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltp-irp-ed-staff-review-of-feb2021-data-in-compliance-with-d1911016.pdf)

CPUC Decision 19-11-016 (November 7, 2019).

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M319/K825/319825388.PDF>

CPUC Decision 21-06-035 (June 24, 2021).

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M389/K603/389603637.PDF>

¹⁵ Response to Questions from Assigned Commissioner and Assigned Administrative Law Judge Ruling Confirming Scooping Memo Issues Date 11/22/2017, Exhibit number IOU-5 PDF p. 140, Pacific Gas and Electric Co., Southern California Edison Co. and San Diego Gas and Electric Co., Ruling Making R.17-06-026.

¹⁶ *Id.*

(“CPUC”) and PG&E to ensure that there will be no emissions increases due to Diablo Canyon’s closure.¹⁷

Third, the IIJA requires that the subsidy only be awarded to reactors that show they are able to operate with lower or no subsidies after CNC expires. 87 Fed. Reg. at 8,572, 8,574-75. In the case of Diablo Canyon, the costs that PG&E would incur to continue operating Diablo Canyon are estimated to amount to billions of dollars in capital projects and regulatory and licensing approvals. At meetings of the Diablo Canyon Independent Safety Committee, significant concern has been raised about the amount of inspections and maintenance that PG&E has suspended due to the expectation that the two reactors would close in the near future. *See* You-tube video of June 22, 2022 meeting, You-tube video; You-tube video of discussion of May 18-19 Fact-Finding Report, <https://www.youtube.com/watch?v=g93Un6DnRuI&t=77s>. Those expenses would normally be spread out over 20 years or more, not incurred in just the 4-year period of the CNC program. If taxpayers are forced to bear all of those costs, it would unjustly enrich PG&E shareholders and violate the express intent of the law.

Further, allocating credits to cover the potentially enormous costs suggested by California Governor Newsom would violate the intent of the IIJA, which requires that: “To the maximum extent practicable, the Secretary shall use the amounts made available for credits under this section to allocate credits to as many certified nuclear reactors as possible.” 42 U.S.C. § 18753(e)(3). The “transition” costs for Diablo would consume such a large share of the program’s resources for just two reactors (neither of which are certified nuclear reactors) that it would deplete the CNC Program of funds that could be applied in the phase 2 solicitation.

DOE violated the Administrative Procedure Act and basic principles of transparency and fairness by failing to publish the Proposed Guidance Amendment in the Federal Register and by failing to provide an adequate comment period.

While DOE had previously promulgated guidance by publishing a Federal Register notice and seeking public comment¹⁸, the proposed Guidance Amendment was not published in the Federal Register, and the online notice provided the absurdly short comment period of seven days. DOE now appears poised to substantially weaken the duly promulgated guidance, based on an impermissible interpretation of the IIJA. We protest DOE’s proposal to take action that so seriously departs from the plain language and purpose of the IIJA, without satisfying the basic requirements of the Administrative Procedure Act for publication in the Federal Register and a bare minimum of a ten-day comment period in “rare cases.”¹⁹

¹⁷ *See* Manning 2018, SB 1090.

¹⁸ *See* Notice of Intent and Request for Information Regarding Establishment of a Civil Nuclear Credit Program, 87 Fed. Reg. 8,570 (Feb. 15, 2022); Notice of Availability of Guidance for the First Award Period of the Civil Nuclear Credit Program, 87 Fed. Reg. 24,291 (Apr. 25, 2022).

¹⁹ *N.C. Growers’ Ass’n v. UFW*, 702 F.3d 755, 770 (4th Cir. 2012).

Conclusion

Secretary Granholm and Assistant Secretary Huff, we urge you to drop the Proposed Guidance Amendment for the CNC Program because it violates the law and would undermine the credibility and integrity of your agency's important work. Further, the record shows that Diablo Canyon's closure will do much more for California's climate goals, local communities, and economic and environmental justice than would be provided by including Diablo Canyon in the CNC Program. In fact, the phaseout plan which California is implementing is a model DOE should promote rather than seek to preempt. We urge you to abide by the plain language and intent of the IJJA, and refuse to award illegal credits to Diablo Canyon Nuclear Plant.

Sincerely,



Diane Curran

Counsel to San Luis Obispo Mothers for Peace

Cc: Jane Swanson, San Luis Obispo Mothers for Peace

ATTACHMENT A

June 21, 2022

Secretary Jennifer Granholm
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585
The.Secretary@hq.doe.gov

Dear Secretary Granholm:

The one-hundred seventy-nine organizations signed below are extremely concerned about recent statements and media reports indicating that the Department of Energy (DOE) is negotiating with California Governor Gavin Newsom to misuse the Civil Nuclear Credit program (CNC) to dismantle the fossil-free phaseout and just transition plan for the Diablo Canyon Nuclear Power Plant.

The CNC was created by the bipartisan Infrastructure Investment and Jobs Act (IIJA) to mitigate potential greenhouse gas emissions (GHG) increases due to the closure of unprofitable nuclear reactors that operate in competitive electricity markets. Diablo Canyon is not eligible for funds under the CNC program because it does not meet the basic requirements of the IIJA, nor those of the CNC program guidance DOE published to implement the program less than three months ago:

- Diablo Canyon is not closing because it is unprofitable – its owner, Pacific Gas & Electric (PG&E) operates it as part of its regulated utility and recovers all of its costs plus a regulated rate of return on investment through its regulated electricity rates.
- Diablo Canyon is closing because PG&E determined in 2016 that doing so would enable it to meet California's renewable energy standard (RES) and emissions standards more rapidly and cost-effectively.
- There will be no emissions increases due to Diablo Canyon's closure because state law mandates the California Public Utilities Commission (CPUC) and, by extension, PG&E to ensure that outcome.
- As a result of CPUC orders and state legislation, PG&E and other utilities and load-serving entities in California must, between 2021 and 2026, procure over 22,000 MW of renewable energy and electricity storage. This is several times more generation and capacity than is needed to replace Diablo Canyon, as well as several fossil fuel power plants that are also retiring. The vast majority will be online before the reactors at Diablo Canyon retire in 2024 and 2025.

- President Biden's June 6 executive order¹ lifting the embargo on solar panel imports from Southeast Asia while the US expands domestic supply chain manufacturing will enable solar installations in California to proceed as planned, to meet CPUC's procurement targets and the state RES.

There is no legitimate basis for DOE to entertain Gov. Newsom's request to modify the rules of the CNC program to subsidize Diablo Canyon and vacate its planned phaseout². Extending Diablo Canyon's operation would require much more than modifying the CNC program guidelines and would, in fact, violate the express meaning and intent of the IJA.

Diablo Canyon's closure will do much more for California's climate goals, local communities, and economic and environmental justice than the CNC program. The phaseout plan which California is implementing is a model DOE should promote instead of seeking to preempt it. The basis for the plan points to how phasing out nuclear power plants along with fossil fuel generation can help accelerate emissions reductions, the growth of the renewable energy economy, and a just and equitable transition for workers and communities.

Diablo Canyon Phaseout Agreement

In 2016, PG&E published a report concluding that the continued operation of Diablo Canyon's 2,200 MW of inflexible baseload generation would cause severe congestion on the high-voltage transmission system as solar generation in California grows under the state's renewable energy standard and community choice aggregation programs.³ This would force PG&E to export or curtail solar generation because Diablo Canyon's reactors cannot adjust their output quickly enough to relieve overloaded transmission lines. PG&E determined that retiring Diablo Canyon 1 and 2 when their licenses expire in 2024 and 2025 would mitigate the transmission bottleneck, lower consumer costs, and enable the utility to achieve 55% renewable energy by 2031, exceeding the then-existing state RES target.

Upon reaching this conclusion, PG&E entered into a settlement with IBEW Local 1245⁴ (which represents 500 Diablo Canyon workers) and several environmental organizations, including Friends of the Earth, Natural Resources Defense Council, Environment California, and the Alliance for Nuclear Responsibility. The settlement resolved years of expensive, protracted legal

¹<https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/06/fact-sheet-president-biden-takes-bold-executive-action-to-spur-domestic-clean-energy-manufacturing/>

²https://static.ewg.org/upload/pdf/calif_letter_to_DOE.pdf?_ga=2.66025198.19902243.1653860374-927036638.1653860374

³ LaCount, Robert. *Joint Proposal for the Orderly Replacement of Diablo Canyon Power Plant with Energy Efficiency and Renewables*. M. J. Bradley & Associates. June 21, 2016.

https://www.pge.com/includes/docs/pdfs/safety/dcpp/MJBA_Report.pdf

⁴ Dalzell, Tom. "Diablo Canyon: A Just Transition for Workers and the Environment." UC Berkeley Labor Center. November 30, 2018.

<https://laborcenter.berkeley.edu/diablo-canyon-just-transition-workers-environment/>

and regulatory disputes over relicensing, seismic disaster risks, coastal ecosystem protection, and cooling system impacts.

Costs of Revoking the Settlement and Extending Diablo Canyon License Could Be Considerable

In order for Diablo Canyon to operate beyond the planned retirement dates, several things would need to take place:

- PG&E would either need to win the assent of the settlement parties or pay them compensatory damages.
- PG&E may be required to reimburse its ratepayers for substantial costs they have already borne for implementation of the phaseout and just transition plan.
- PG&E will need to submit a relicensing application and supplemental environmental impact statement to the U.S. Nuclear Regulatory Commission and endure a protracted administrative law process due to challenges by intervenors.
- PG&E will need to apply for water permits and approvals from the Coastal Commission and Water Resources Board, as well as a lease extension from the State Lands Commission.

The latter would entail large investments to convert Diablo Canyon's once-through-cooling (OTC) system to mechanical draft cooling towers, a capital cost likely to exceed \$1 billion. The Coastal Commission granted PG&E an exemption from that requirement in 2016 as a result of the phaseout agreement and PG&E's decision to retire the reactors in 2024 and 2025. A decision to continue operation of Diablo Canyon could also result in PG&E incurring financial liability for the incremental damage the plant's cooling system has caused to California's coastal waters over the intervening years.

In total, PG&E's up-front expenses to abandon the settlement agreement and continue operating Diablo Canyon would exceed \$1 billion and could approach \$2 billion or more.

It would be nonsense for DOE to consider expending such a large share of the \$6 billion appropriation for the CNC program merely to extend the operation of one nuclear power plant for what has been suggested as only a short duration of a few years.⁵ Awarding CNC funds to PG&E for Diablo Canyon would be arbitrary, capricious, and wasteful in the extreme, especially due to the overwhelming evidence that Diablo Canyon does not meet the eligibility criteria in the plain language of the IJA and the guidance DOE issued for the CNC program.

⁵ Gov. Newsom's Cabinet Secretary, Ana Matosantos, in her May 23, 2022 letter to Secretary Granholm, says, "the state is evaluating a temporary delay of the planned retirement" of Diablo Canyon, implying a period of extended operation significantly shorter than the 20 years typically authorized through NRC's relicensing process. Even so, PG&E would have to submit a relicensing application for any continued operation because the current licenses expire, respectively, on November 2, 2024, and August 26, 2025.
https://static.ewg.org/upload/pdf/calif_letter_to_DOE.pdf?_ga=2.66025198.19902243.1653860374-927036638.1653860374.

CNC Funding for Diablo Canyon Would Violate Economic and Environmental Justice Principles

Misusing the CNC program to fund Diablo Canyon's extended operation would also betray the Biden administration's commitments to climate and environmental justice. CPUC orders and state law authorize implementation of the phaseout plan, which includes a just transition program for power plant workers and the host community that could and should be a model for the entire country.

Under the phaseout plan, as authorized by state law⁶ and approved by the CPUC,⁷ Diablo Canyon workers are being provided with economic support through the closure of the plant in 2025 and local governments are being provided transitional revenue payments to protect the tax base. PG&E ratepayers have already been paying for these programs since 2018. To ensure an adequate skilled workforce at Diablo Canyon until it closes, workers are being provided annual salary bonuses (averaging \$34,000 per employee per year), and those who serve until the reactors' retirement will receive severance payments of \$115,000 each. On average, workers will receive \$353,000 in bonuses and severance by 2025 to support themselves and their families through their employment transition. In addition, PG&E will offer its nuclear workers the option of retraining and continued employment in the 10- to 20-year radiological decommissioning project at Diablo Canyon, another expense for which ratepayers are paying. The phaseout plan also includes stable property tax payments to municipalities through 2025 despite the rapidly depreciating value of the power plant, amounting to \$50 million in transitional revenue for local governments over seven years.

In total, PG&E customers have already been charged upwards of \$200 million for these just transition costs. If DOE were to grant Diablo Canyon Civil Nuclear Credits, would the award also include reimbursing ratepayers for the costs they have incurred?

Unraveling such a model agreement would not only undermine the goal of building a just and equitable clean energy economy, it would also exacerbate environmental justice impacts. In its first report in May 2021, the White House Environmental Justice Advisory Council identified "procurement of nuclear power" in a list of "Types of Projects That Will Not Benefit" environmental justice communities.⁸ The operation of nuclear power plants, and the entire nuclear fuel chain from uranium mining to waste disposal, entails severe environmental justice impacts. Subsidizing the continued operation of Diablo Canyon would undermine the

⁶ California Senate Bill 1090, enacted September 18, 2018.

https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1090

⁷ CPUC Decision 18-01-022 (January 11, 2018).

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M205/K423/205423920.PDF>

CPUC Decision 18-11-024 (November 29, 2018).

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M246/K081/246081285.PDF>

⁸ https://www.epa.gov/sites/default/files/2021-05/documents/whejac_interim_final_recommendations_0.pdf

Biden-Harris administration's entire case for advancing the transition to a clean energy economy and violate commitments to environmental justice.

Closing Diablo Canyon Meets California's Climate Goals

Subsidizing Diablo Canyon's continued operation would also undermine the very climate rationale for the CNC program: to mitigate GHG emissions. The criteria of the CNC funds requires that the closure of eligible nuclear power plants would result in a documented increase in GHG emissions. Diablo Canyon does not meet this requirement because the phaseout agreement includes a firm commitment by PG&E to meet California's GHG reduction targets and to exceed the state's RES. That commitment is reinforced by CPUC orders, as well as state legislation enacted in 2018 requiring that the retirement of Diablo Canyon not contribute to increases in GHG emissions:

(b) The commission shall ensure that integrated resource plans are designed to avoid any increase in emissions of greenhouse gases as a result of the retirement of the Diablo Canyon Units 1 and 2 powerplant.⁹ (emphasis added)

In order to meet that goal, the CPUC ordered PG&E to ensure the GHG-free phaseout of Diablo Canyon through comprehensive system planning. State legislation and CPUC orders will guarantee both adequate electricity supply and phaseouts of both Diablo Canyon and 3,700 MW of fossil fuel power plants. Between 2021 and 2026, California will bring online over 22,000 MW of new renewable energy and storage capacity, many times more electricity than the retiring nuclear reactors provide.

The CPUC has publicly attested to this in a recent op-ed by the agency's interim deputy executive director for Energy & Climate Policy, Peter Skala:

It is highly inaccurate to suggest that the State plans to replace Pacific Gas and Electric Company's (PG&E) Diablo Canyon Nuclear Power Plant mostly with Wyoming coal-fired generation. In fact, the State has ordered an unprecedented amount of new clean energy procurement—11.5 gigawatts—to replace the retirement of Diablo Canyon (along with other aging gas plants that are retiring). This includes wind, solar, batteries, geothermal, and long duration storage that will be online starting in 2023.¹⁰ (emphasis added)

⁹ Energy Storage Targets - Publicly Owned Utilities - AB 2514

<https://www.energy.ca.gov/data-reports/reports/energy-storage-targets-publicly-owned-utilities>

Assembly Bill 2514 (2010)

http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_2501-2550/ab_2514_bill_20100820_amended_sen_v90.html

¹⁰

<https://capitolweekly.net/letter-to-the-editor-cpuc-responds-to-inaccurate-commentary/?fbclid=IwAR2hi6TqKPBUwRmnuVju5YJhsX1MWrbQRioc52os0XhaIvVRHH2xmCwawcl>

The CPUC stated this clearly when it issued the June 2021 order requiring utilities and load-serving entities to procure 11,500 MW of capacity by 2026—including 2,500 MW of firm renewable capacity¹¹ by 2025, specifically to account for the retirement of Diablo Canyon.¹²

The California Public Utilities Commission (CPUC) ... today approved a historic decision ordering utilities to procure 11,500 megawatts (MW) of new electricity resources to come online between the years 2023 and 2026, enough to power approximately 2.5 million homes, with all of the resources procured coming from preferred resources, such as distributed energy resources (including energy efficiency and demand response), renewables, and zero-emitting sources. This represents the largest capacity procurement ordered at a single time by the CPUC, and is the largest requiring only clean resources.

Today's decision facilitates the integration of high amounts of renewables required to meet the state's renewable and clean energy goals and ensure reliability. The decision is a foundational investment in meeting the state's goal of 100 percent clean electricity by 2045.

The resources required to come online in the years 2023 through 2026 are needed to respond to more extreme weather events, while replacing electricity generation from more than 3,700 MW of retiring natural gas plants and 2,200 MW from Pacific Gas and Electric Company's retiring Diablo Canyon Power Plant. At least 2,500 MW of zero-emitting resources were ordered specifically to replace generation from Diablo Canyon, which is in addition to capacity already procured over the past several years for the same purpose. The CPUC has been planning to replace power from Diablo Canyon for many years through modeling, workshops, extensive public input, and earlier decisions. In 2019, the CPUC ordered significant amounts of new renewables and storage, which will result in a tenfold increase in batteries coming online this summer and next summer. (emphasis added)

The words of CPUC Commissioner Clifford Rechtschaffen demonstrate the commission's intent in issuing the order:

¹¹ Defined as renewable generation sources that can operate at an average annual capacity factor of at least 80%, such as geothermal power stations. This tranche of the procurement will entail projects with a total capacity greater than Diablo Canyon's, generating at least as much electricity on an annual basis.

¹²

<https://www.cpuc.ca.gov/news-and-updates/all-news/cpuc-orders-clean-energy-procurement-to-ensure-electric-grid-reliability>

The procurement we ordered is equal to output of four large nuclear power plants or 20 natural gas plants. Included is solar, wind, geothermal, and long duration storage—pumped hydro facilities or other emerging technologies that can store energy for eight hours or longer. Our actions today will ensure that we can keep the lights on during periods of greatest demand, even as we retire Diablo Canyon and other natural gas plants. (emphasis added)

The 11,500 MW procurement plan will be on top of more than 10,500 MW of renewable energy and storage capacity already mandated by previous CPUC orders, state legislation, and California's RES:

- A 2019 CPUC order resulting in 3,710 MW of renewable energy and storage between 2021 and 2023.¹³
- State legislation enacted in 2010 requiring 1,325 MW of battery storage by 2023.¹⁴
- CPUC orders requiring another 1,500 MW of storage capacity to mitigate wildfire risks.¹⁵
- 4,000 MW of renewables to comply with the 2024 RES target.

As a result of these measures, California will have added more than 18,500 MW of new renewable energy and storage capacity by the time Diablo Canyon unit 1 retires in 2024, and over 20,000 MW when Diablo Canyon unit 2 retires in 2025. Over 70% of that capacity will be in the form of renewable generation, including 2,500 MW of firm renewable capacity specifically to replace Diablo Canyon.

Furthermore, retirement of Diablo Canyon will enable further GHG reductions by freeing up existing pumped hydro storage capacity, which will displace additional fossil fuel generation. PG&E's 1,212 MW Helms pumped storage plant has been dedicated to providing "spinning reserve" backup capacity for Diablo Canyon since it was built in 1984. Doing so has enabled PG&E to reduce reliance on fossil fuel generation as the spinning reserve for the nuclear power plant, a secondary source of emissions resulting from reactor operation in many parts of the country. Once Diablo Canyon retires, most if not all of Helms' capacity will be available to provide zero-emissions peaking power, voltage support, and other grid reliability services.

¹³ CPUC. "Status Update on Procurement in Compliance with D.19-11-016 (IRP Procurement Order)." August 2021.

https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltp/ed_staff_review_of_feb2021_data_in_compliance_with_d1911016.pdf

¹⁴ Energy Storage Targets - Publicly Owned Utilities - AB 2514

<https://www.energy.ca.gov/data-reports/reports/energy-storage-targets-publicly-owned-utilities>

Assembly Bill 2514 (2010)

http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_2501-2550/ab_2514_bill_20100820_amended_sen_v90.html

¹⁵

<https://www.cpuc.ca.gov/news-and-updates/all-news/cpuc-orders-clean-energy-procurement-to-ensure-electric-grid-reliability>

Despite this overwhelming record, some have argued that extending Diablo Canyon's operation is nevertheless necessary because California solar projects may be delayed by a U.S. Department of Commerce tariff embargo on imported solar panels. If there had been any basis for this concern, President Biden's June 6, 2022 executive order lifting the embargo and tariffs on imported solar panels has resolved it.¹⁶

In addition, the Bureau of Ocean Energy Management (BOEM) announced on May 26, 2022, that it will hold an auction for offshore wind leases in California, projected to result in 4,500 MW of renewable capacity—more than twice Diablo Canyon's capacity and generating approximately the same amount of electricity each year.¹⁷ Rather than expend billions of CNC dollars to unravel the Diablo Canyon phaseout plan, DOE should work with California and the Department of the Interior to accelerate the development of these offshore wind projects and California's industrial infrastructure and workforce development.

In conclusion, Diablo Canyon does not qualify for the CNC. Awarding CNC funds to Diablo Canyon would be a massive failure on all fronts and for all parties. It would damage the integrity and conflict with the purpose of DOE's CNC program. It would interfere with the policies and plans to enact California's climate and RES goals. Critically, it would undo a major success that is the just transition outlined in the joint proposal approved by the CPUC.

We urge you to follow through with the Biden administration's commitment to environmental justice and climate action and honor the agreement to close Diablo Canyon. Bailing out old nuclear power plants is not the way to spark the energy transition we need to save the climate, create good jobs, build a strong economy, and advance environmental justice.

Sincerely,

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301-270-6477

¹⁶

<https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/06/memorandum-on-presidential-determination-pursuant-to-section-303-of-the-defense-production-act-of-1950-as-amended-on-solar-photovoltaic-modules-and-module-components/>

¹⁷ Department of the Interior. "Biden-Harris Administration Proposes First-Ever California Offshore Wind Lease Sale" May 26, 2022.

<https://www.doi.gov/pressreleases/biden-harris-administration-proposes-first-ever-california-offshore-wind-lease-sale>

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Friends For Environmental Justice
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Martha Spiess, Chair
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Michigan Stop the Nuclear Bombs
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NMEAC
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Occupy Traverse City
Michael Paul, Group Administrator
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Straits Area Concerned Citizens for Peace,
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Ban Michigan Fracking
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Don't Waste Michigan
Alice Hirt, Co-Chair
Holland, MI

Don't Waste Michigan-Sherwood Chapter
Kathryn Barnes, Board of Directors, Don't
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MN350
Tee McClenty, Executive Director
Minneapolis, MN

Vote Climate
Jean Ross, Board President
Minneapolis, MN

Missouri

Mid-Missouri Peaceworks
Mark Haim, Director
Columbia, MO

Mississippi

MS Communities United for Prosperity
(MCUP)
Romona Taylor Williams, Executive
Director
Duck Hill, MS

North Carolina

NC Council of Churches
Susannah Tuttle, Program Director
Raleigh, NC

NC Interfaith Power & Light
Susannah Tuttle, Director
Chapel Hill, NC

New Hampshire

Seacoast Anti-Pollution League
Doug Bogen, Executive Director
Portsmouth, NH

New Jersey

Occupy Bergen County
Sally Jane Gellert, member
Woodcliff Lake, NJ

Bergen County Green Party
Patricia Alessandrini, Secretary
Teaneck, NJ

New Mexico

Alliance for Environmental Strategies
Rose Gardner, Co-founder
Eunice, NM

Concerned Citizens for Nuclear Safety
Joni Arends, Co-founder and Executive
Director
Santa Fe, NM

Multicultural Alliance for a Safe
Environment
Susan Gordon , Coordinator
Albuquerque, NM

Nuclear Watch New Mexico
Scott Kovac, Research Director
Santa Fe, NM

Taos Environmental Film Festival
Jean Stevens, Director
Ranchos de Taos, NM

Citizen Action New Mexico
David Mccoy, Executive Director
Albuquerque, NM

Citizens for Alternatives to Radioactive
Dumping (CARD)
Janet Greenwald, Coordinator
Dixon, NM

ComminGroundRising.org
Elaine Cimino, Director
Rio Rancho, NM

Nevada

Native Community Action Council
Ian Zabarte, Secretary
Las Vegas, NV

New York

Council on Intelligent Energy &
Conservation Policy
Michel Lee, Chair
Scarsdale, NY

Eco-Logic of WBAI-FM
Ken Gale, Producer
New York City, NY

Fossil Free Tompkins
Irene Weiser, Coordinator
Ithaca, NY

Hudson River Sloop Clearwater
Manna Jo Greene, Environmental Director
Beacon, NY

Indian Point Safe Energy Coalition
Marilyn Elie, Organizer
Cortlandt Manor, NY

Manhattan Project for a Nuclear-Free World
Mari Inoue, Co-founder
New York, NY

NYC Safe Energy Campaign
Ken Gale, Founder
New York City, NY

ResistSpectra
Marie Inserra, Member of Coordinator
Group
Peekskill, NY

Safe Energy Rights Group (SEnRG)
Nancy Vann, President
Peekskill, NY

Save the Pine Bush
Grace Nichols, Solidarity Coordinator
Albany, NY

Shut Down Indian Point NOW! (SDIPN!)
Paul Corell, Vice-Chair of SDIPN!
New York City, NY

Sisters of St. Dominic of Blauvelt, New
York
Sister Joan Agro, Congregational Secretary
Blauvelt, NY

Syracuse Peace Council
Carol Baum, Organizer
Syracuse, NY

Western New York Drilling Defense
Charley Bowman, Chair
Buffalo, NY

Western New York Environmental Alliance
John Whitney, Chairperson
Buffalo, NY

Yoga For Peace, Justice, Harmony With the
Planet: Amazing Amy - Eccentric Yoga
Entertainer
Amy Harlib
New York, NY

Coalition Against Nukes
Priscilla Star, Founder, Director
Sag Harbor, NY

Earthkeeper Health Resources
Amy Rosmarin, Executive Director
North Salem, NY

Grassroots Environmental Education
Patricia Wood
Port Washington, NY

Alliance for a Green Economy
Andra Leimanis Communications &
Outreach Director
Syracuse, NY

Citizens Campaign for the Environment
Adrienne Esposito, Executive Director
Farmingdale, NY

NYPIRG
Anne Rabe, Environmental Policy Director
Albany, NY

Ohio

National Nuclear Workers for Justice
(NNWJ)
Vina Colley, Co-founder
Portsmouth, OH

Portsmouth/Piketon Residents for
Environmental Safety and Security (PRESS)
Vina Colley, President
Portsmouth, OH

Protect Biodiversity in Public Forests
Gwen Marshall, Network Coordinator
Cincinnati, OH

Toledo Coalition for Safe Energy
Terry Lodge, Convenor
Toledo, OH

Ohio Green Party

Daryl M Davis, Member Ohio Green Party
State Central Committee
Cleveland, OH

Ohio Nuclear Free Network
Patricia Marida, Coordinator
Toledo, OH

Oklahoma

The Carrie Dickerson Foundation
Marilyn McCulloch, Executive Director
Tulsa, OK

Oregon

Oregon Conservancy Foundation (OCF)
Cathryn Chudy, Board Director
Boring, OR

Stop Nuclear WorkGroup
Bonnie McKinlay, Active Member
Portland, OR

Oregon Physicians for Social Responsibility
Kelly Campbell, Executive Director
Portland, OR

Pennsylvania

Citizen Power, Inc.
David Hughes, President
Pittsburgh, PA

Three Mile Island Alert
Maureen Mulligan, Planning Council
member
Lebanon, PA

South Dakota

Black Hills Clean Water Alliance
Lilias Jarding, Executive Director
Rapid City, SD

Tennessee

ECAN-Erwin Citizens Awareness Network,
Inc.
Linda Modica, President
Jonesborough, TN

Texas

Dallas Peace and Justice Center
Mavis Belisle, Co-Chair, Nuclear Free
World Committee
Dallas, TX

Energía Mía San Antonio, Texas
Alice Canestaro, Volunteer
San Antonio, TX

Peace Farm
Lon Burnam, Convener of the Board
Panhandle, TX

Turtle Island Restoration Network
Joanie Steinhaus, Gulf Program Director
Galveston, TX

SEED Coalition
Karen Hadden, Executive Director
Austin, TX

Terra Advocati
Timothy Duda, Director
San Antonio, TX

Utah

Uranium Watch
Sarah Fields, Program Director
Monticello, UT

Vermont

New England Coalition on Nuclear
Pollution, Inc.
Lorie Cartwright, Trustee
Brattleboro, VT

198 methods
Drew Hudson, Founder
Rochester, VT

Vermont Citizens Action Network
Chris Williams, President
Hancock, VT

Vermont Yankee Decommissioning Alliance
Debra Stoleroff, Steering Committee chair
Montpelier, VT

Washington

Heart of America NW
Peggy Maze Johnson, Board Member
Seattle, WA

Parallax Perspectives
Glen Anderson, Founder/Organizer
Lacey, WA

Seattle Fellowship of Reconciliation
Mary Hanson, Chair of SFOR
Seattle, WA

Build Back Better Fuels
John Alder, member
Spokane, WA

Waste Action Project
Greg Wingard, Executive Director
Seattle, WA

Wisconsin

Peace Action WI
Pamela Richard, Office Manager
Milwaukee, WI

Physicians for Social Responsibility
Wisconsin
Hannah Mortensen, Executive Director
Madison, WI

Appendix: Planned Additions of Renewable Energy and Storage Capacity to Replace Diablo Canyon Units 1&2 and Reduce Power Sector GHG Emissions (2021-2026)

Dates	Capacity (MW)	Sources/Eligible Sources	Authorization
2021-2023	3,968 MW <ul style="list-style-type: none"> 2021: 1,771 MW 2022: 720 MW 2023: 1,477 MW 	93.5% Renewables + Storage <ul style="list-style-type: none"> 3,259 MW = Battery Storage and Hybrid Renewables/Storage¹⁸ 289 MW = Solar (289 MW) 162 MW = biomass(2 MW), geothermal (14 MW), wind (128 MW), and demand response (18 MW) 258 MW = Sutter Natural Gas Plant (existing plant, no long-term contracts) Imports limited to 20% of procured capacity 	CPUC Decision 19-11-016 ¹⁹
2023	1,325 MW	Energy Storage	Assembly Bill 2514 (2010) ²⁰
2021-2023	1,500 MW	Energy Storage	CPUC orders ²¹
2024	4,000 MW	Renewable Energy	RES and other state policies
2023-2026	11,500 MW <ul style="list-style-type: none"> 2023: 2,000 MW 2024: 6,000 MW 2025: 1,500 MW 2026: 2,000 MW 	Renewable Energy and Storage, including <ul style="list-style-type: none"> 2,500 of firm renewable generation (80% capacity factor) 1,000 MW of 	CPUC Decision 21-06-035 ²²
TOTAL	22,293 MW	98.8% Renewables + Storage 1.2% existing gas generation	

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https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/ed_staff_review_of_feb2021_data_in_compliance_with_d1911016.pdf

¹⁹ CPUC Decision 19-11-016 (November 7, 2019).

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M319/K825/319825388.PDF>

²⁰ Energy Storage Targets - Publicly Owned Utilities - AB 2514

<https://www.energy.ca.gov/data-reports/reports/energy-storage-targets-publicly-owned-utilities>

Assembly Bill 2514 (2010)

http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_2501-2550/ab_2514_bill_20100820_amended_sen_v90.html

²¹ <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M389/K478/389478892.PDF>

²² CPUC Decision 21-06-035 (June 24, 2021).

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M389/K603/389603637.PDF>

Annual and Cumulative Additions of Capacity (2021-2026)

Source	2021	2022	2023	2024 ²³	2025 ²⁴	2026	TOTAL
Renewables	179	117	136	5,000 ²⁵	1,500	1,000	7,932
Storage	745	302	2,422	1,500		1,000	5,969
Hybrid Renewables + Storage	562	300	2,249 ²⁶	5,000 ²⁷			8,111
Demand Response	13	1	5				18
Fossil Fuel	258						258
TOTAL Fossil-Free Capacity	1,499	720	4,812	11,500	1,500	2,000	22,031
Cumulative Fossil-Free Capacity	1,499	2,219	7,031	18,531	20,031	22,031	

²³ Planned closure of Diablo Canyon unit 1 on November 2, 2024

<https://www.nrc.gov/info-finder/reactors/diabl1.html>

²⁴ Planned closure of Diablo Canyon unit 2 on August 26, 2025 <https://www.nrc.gov/info-finder/reactors/diab2.html>

²⁵ Includes 4,000 MW of aggregate renewable energy standard resources from 2021-2024, as well as 1,000 MW of the 2,500 of firm renewable energy sources the CPUC ordered by 2025 in Decision 21-06-035 (June 24, 2021).

²⁶ Includes 2,000 MW of unspecified renewables, storage, and hybrid renewables+storage resources, per Decision 21-06-035.

²⁷ Includes 5,000 MW of unspecified renewables, storage, and hybrid renewables+storage resources, per Decision 21-06-035.

ATTACHMENT B



May 27, 2022

The Honorable Jennifer Granholm
Secretary of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Re: Diablo Canyon Power Plant: Letter from
California Governor's Office Dated May 23, 2022

Dear Secretary Granholm,

We write in response to the letter sent to you this week on behalf of California Governor Gavin Newsom, by the Governor's Cabinet Secretary, Ana Matosantos.

The Governor's letter requests what it characterizes as "a few minor adjustments" to the Department of Energy's April 2022 Guidance for prospective applicants under the Civil Nuclear Credit Program adopted by Congress in Section 40323 of the Infrastructure Investment and Jobs Act of 2021, Public Law 117-58, codified at 42 U.S.C. § 18753 (2022).

Respectfully, the submission by the Governor is not in the nature of "clarification," but rather a request that the Department disregard the statutory criteria for the Civil Nuclear Credit Program adopted by Congress in the Infrastructure Investment and Jobs Act.

Congress established the Civil Nuclear Credit Program to subsidize the operations of economically distressed nuclear power plants. The Diablo Canyon plant is not economically distressed. On the contrary, Pacific Gas and Electric Company (PG&E), the owner-operator of Diablo Canyon, recoups 100% of the plant's operating costs in the rates that PG&E is authorized by the California Public Utilities Commission to charge its retail customers. Moreover, given elevated prices in the wholesale power market administered by the California Independent System Operator (CAISO), Diablo Canyon currently is earning revenues that significantly exceed its operating costs,¹ and PG&E is (appropriately) passing the excess through to its customers in the form of reductions in dedicated charges on its utility bills. Awarding federal operating subsidies under such circumstances would be preposterous.

¹ See, e.g., California Energy Markets (May 20, 2022), p. 4.

For the reasons explained herein, the Department does not have legal authority to take the action requested by the Governor.

The statutory provisions establishing the Nuclear Credit Program, and setting forth the qualification requirements for prospective applicants, are contained in Section 40323 of the Infrastructure and Jobs Act, codified at 42 U.S.C. § 18753 (2022).

To begin, the definitions section for the Civil Nuclear Credit Program in the statute specifies that “[t]he term ‘certified nuclear reactor’ means a nuclear reactor that . . . competes in a competitive wholesale market[.]” (§ 18753(a)(1)(A).)

Although Diablo Canyon bids its output into the competitive wholesale market administered by the CAISO, the revenues it receives are netted against its authorized operating costs, and any negative balance is recovered through a dedicated charge paid by all PG&E customers. As a result, PG&E faces no competitive wholesale market risk with respect to the power generated by Diablo Canyon. And while the Governor’s letter correctly indicates that PG&E has historically recovered less than Diablo Canyon’s authorized operating costs from the wholesale market, at the elevated wholesale electricity prices of recent months the situation has reversed.

Moreover, the statute provides that “[t]he Secretary shall establish a civil nuclear credit program . . . to evaluate nuclear reactors *that are projected to cease operations due to economic factors* . . .” (§ 18753(b)(1) (emphasis added).) And the subsidy payments “shall not exceed the average projected annual operating loss.” *Id.* at (d)(1)(A).

Diablo Canyon conspicuously fails to meet these requirements. Although Diablo Canyon is scheduled to be retired at the end of its current operating licenses in November 2024 (Unit 1) and August 2025 (Unit 2), this is for sound policy reasons, not because of short-term “economic factors.” Nor could the plant show *any* projected annual operating losses, as explained above.

The affirmative rationale for retiring the Diablo Canyon plant can be found in the Decision of the California Public Utilities Commission authorizing the retirement (California PUC Decision No. 18-01-022, issued January 11, 2018), and in a statute codifying this mandate (Cal. Senate Bill 1090 [Monning], signed by then-Governor Jerry Brown on September 19, 2018). The California authorities found that continuing operation of Diablo Canyon beyond the expiration of its current operating licenses in 2024-2025 was neither necessary nor cost-effective for consumers. There was no suggestion that the plant itself was economically distressed, or that its owner, PG&E, was at risk of financial losses, and indeed it has incurred none.

The Governor’s letter acknowledges that Diablo Canyon operates under cost-of-service ratemaking principles that ensure cost recovery for PG&E, the plant’s owner.

The Honorable Jennifer Granholm
Secretary of Energy
May 27, 2022
Page 3

However, the Governor's letter argues that "[f]or [Diablo Canyon] to extend operations, it would incur significant transition costs over the next four years to perform necessary studies, invest in plant enhancements, and obtain licenses and permits." The letter reasons that such costs – if the plant's operations are extended – are not guaranteed recovery under the existing cost-of-service ratemaking that Diablo Canyon enjoys.

This rationale cannot withstand scrutiny, given the statutory criteria established by Congress for the Civil Nuclear Credit Program discussed above.

Essentially, the Governor's letter contends that a nuclear power plant that does not compete in a competitive market, and faces virtually no financial risk in its current operations, nevertheless should be shoehorned into the Civil Nuclear Credit Program, because the owner *might* face financial losses if the plant's operations were extended beyond the term of its existing operating licenses and the state utility commission denied recovery of associated costs. This is pure speculation and in the teeth of the law enacted by Congress.

Accordingly, we respectfully urge the Secretary to decline to adopt the "clarifications" requested by the Governor's letter, on the ground that doing so would exceed the Secretary's statutory authority under the Infrastructure Investment and Jobs Act.

Sincerely,



Ralph Cavanagh
Energy Co-Director
Climate & Clean Energy Program
Natural Resources Defense Council



Erich Pica
President
Friends of the Earth

cc: Samuel Walsh, General Counsel, DOE

From: Annemarie McGreehan <amcgreehan18@sjnd.org>
Sent on: Monday, June 27, 2022 8:08:50 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Re: Response to Proposed Guidance Amendment
Attachments: Response to Proposed Guidance Amendment.pdf (28.91 KB)

Hello DOE,

I oppose the amendment to the Guidance for the Civil Nuclear Credit Program's, relaxing eligibility requirements for nuclear power plants looking for federal funding to extend their operations. This will result in plants that environmental groups have advocated for the closure of to remain open.

PG&E struck a deal with environmentalists to close the Diablo Canyon power plant by 2025, but with the CNC Guidance amendment, Diablo Canyon could potentially stay open much longer. This means millions of dollars of funds will go towards extending the life of plants like Diablo Canyon, when PG&E already determined in 2016 that closing this plant by 2025 would help California reach its renewable energy standard (RES) and emissions standards more rapidly and cost-effectively.

This money would be better spent being allocated towards renewable energy, such as solar power.

Sincerely,

Annemarie McGreehan

To: rfi-cnc@nuclear.energy.gov

Subject: Response to Proposed Guidance Amendment

Hello DOE,

I oppose the amendment to the Guidance for the Civil Nuclear Credit Program's, relaxing eligibility requirements for nuclear power plants looking for federal funding to extend their operations. This will result in plants that environmental groups have advocated for the closure of to remain open.

PG&E struck a deal with environmentalists to close the Diablo Canyon power plant by 2025, but with the CNC Guidance amendment, Diablo Canyon could potentially stay open much longer. This means millions of dollars of funds will go towards extending the life of plants like Diablo Canyon, when PG&E already determined in 2016 that closing this plant by 2025 would help California reach its renewable energy standard (RES) and emissions standards more rapidly and cost-effectively.

This money would be better spent being allocated towards renewable energy, such as solar power.

Sincerely,
Annemarie McGreehan

From: Adam Stein <adam@thebreakthrough.org>

Sent on: Monday, June 27, 2022 8:19:12 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

CC: Alan Ahn <aahn@thirdway.org>; Ryan Norman <rnorman@thirdway.org>

Subject: [EXTERNAL] Proposed Guidance Amendment for the Civil Nuclear Credit Program

Attachments: Public Comment on Civil Nuclear Credit Guidance revisions - June 2022.pdf (148.59 KB)

Please see attached comments from the Breakthrough Institute and Third Way related to the proposed amendment to the Civil Nuclear Credit program guidance.

Best regards,

Adam Stein, Ph.D.

Director for Nuclear Energy and Innovation

The Breakthrough Institute

June 27, 2022

Proposed Guidance Amendment for the Civil Nuclear Credit Program
U.S. Department of Energy
Submitted electronically to rfi-cnc@nuclear.energy.gov

This letter is to provide the perspective of the Breakthrough Institute and Third Way on the proposed guidance amendment for the Civil Nuclear Credit Program. The Breakthrough Institute is an independent 501(c)(3) global research center that identifies and promotes technological solutions to environmental and human development challenges. Third Way is a non-profit national think tank that champions modern center-left ideas through policy innovations, rigorous research, and issue campaigns.

Background

The Civil Nuclear Credit Program was established in the Infrastructure Investment and Jobs Act (IIJA).¹ The Department of Energy (DOE) established guidance for potential applicants to the program on April 19, 2022.² After receiving requests to extend the application period, the DOE extended the initial application deadline from May 19, 2022 to July 5, 2022.³

¹ The Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58, codified at 42 U.S.C. § 18753 (November 15, 2021) <https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf>

² Notice of Availability of Guidance for the First Award Period of the Civil Nuclear Credit Program, 87 Fed. Reg. 24,291 (Apr. 25, 2022).
<https://www.federalregister.gov/documents/2022/04/25/2022-08773/notice-of-availability-of-guidance-for-the-first-award-period-of-the-civil-nuclear-credit-program>

³ U.S. Department of Energy Extends Application Deadline for \$6 Billion Civil Nuclear Credit Program, (May 18, 2022)
<https://www.energy.gov/ne/articles/us-department-energy-extends-application-deadline-6-billion-civil-nuclear-credit>

California requested amendments to the Civil Nuclear Credit program guidance in a letter dated May 23, 2022.⁴ Three changes were requested in that letter, as detailed in the DOE proposed guidance amendment.

Request for Comment

DOE seeks comments on all elements of this proposed Guidance Amendment. In addition, DOE seeks comment on the following specific questions:

1. If DOE revises the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market, should DOE revise the Guidance for a future award cycle, or amend the Guidance for the first award cycle?
2. If DOE amends the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market for the first award cycle, should DOE extend the deadline for submission of certification applications and sealed bids?

Recommendation

We recommend adopting the proposed amendment to the Civil Nuclear Credit guidance.

The purpose of the Civil Nuclear Credit program is to provide support for nuclear power reactors that may cease operations because of economic factors. The continued operation of these nuclear power plants is critical to achieving decarbonization goals, protecting public health by avoiding increase in pollution from other energy sources, and national energy security.

We agree with the DOE that the current guidance is overly limiting in the costs that can be considered. The IIJA specifically directs the DOE Secretary to “allocate credits to as many certified nuclear reactors as possible.” The clear intent is to use the funds provided by the Congress to prevent the premature closure of nuclear power plants.

⁴ Letter dated May 23, 2022 from California Cabinet Secretary Matosantos, to Department of Energy Secretary Granholm

The IJA requires that a certified nuclear reactor should “compete in a competitive energy market.” This term is not defined explicitly in the IJA. The requirement should be interpreted that the costs must be due to competition and cannot be recoverable through non-competitive channels, including regulated cost recovery. The requirement should not be interpreted to limit applicants to only the generally accepted competitive markets. Power plant operators may experience competitive risk from many sources that are outside of the market construct.

Applications are sealed and therefore we are unaware of any current application that may need to maintain the current deadline for certified reactors or would need an application to be expedited to continue operations. Submitted applications of this criteria should receive expedited review and consideration. If there are no submitted applications that need to be expedited, then we recommend including the proposed guidance amendments in the current award cycle and extending the deadline.

Sincerely,

Dr. Adam Stein
Director of Nuclear Energy Innovation
The Breakthrough Institute

Alan Ahn
Senior Resident Fellow
Climate and Energy Program
Third Way

Ryan Norman
Policy Advisor
Climate and Energy Program
Third Way

From: Chris Clarici <chrisclarici@gmail.com>
Sent on: Monday, June 27, 2022 9:06:53 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Response to Proposed Guidance Amendment
Attachments: Response to Proposed Guidance Amendment.pdf (38.09 KB)

To whom it may concern,

I write to you to express my unwavering opposition to the Department of Energy's proposed Guidance Amendment aimed to relax the eligibility criteria for the Civilian Nuclear Credit program. While I understand the ever-growing and pressing need for energy, this is not the means to that end. Our country should be striving for progress and acting as an example by expanding renewable energy sources. Instead, this amendment would take us backward, lulling us into a false sense of having solved a problem when really, it would create a much larger one.

Beyond the moral and environmental qualms, the DOE's proposed amendment also undermines the core legislative intent for the CNC program (to support reactors that would close due to financial hardship) by instead expanding the program eligibility to include reactors that operate in regulated (rather than competitive) contexts. That is to say, the funds intended for reactors that face financial challenges will be diverted to "supporting" those reactors that do not face financial hardship because they can recover costs (and then some) with their regulated rates. This alone should be reason enough for the amendment to be stricken.

The Diablo Canyon Nuclear Reactor serves as an example of the failure of this program. Indeed, the plant is slated to close as the result of an agreement between environmental groups, plant workers, and PG&E that will help California ensure it meets its energy goals. However, should DOE provide CNC funds to support the extension of Diablo Canyon's operation, it would use a substantial portion of the total CNC fund. Considering the power supplied by Diablo Canyon has already largely been replaced by renewable energy (and will be completely replaced by the recent renewable energy purchases made by the State very soon), this makes absolutely no sense. Misuse of this program means a regressive step in the face of multilateral compromise.

Thus, I plead that the DOE's proposed amendment to the guidance for the Civil Nuclear Credit program be denied, forcing the Diablo Canyon Power Plant to remain in adherence with its closure agreement. Moreover, the DOE should not be permitted to extend the application deadline past the already-delayed due date of July 5th.

Thank you kindly for your time and consideration.

Sincerely,
Chris Clarici

To whom it may concern,

I write to you to express my unwavering opposition to the Department of Energy's proposed Guidance Amendment aimed to relax the eligibility criteria for the Civilian Nuclear Credit program. While I understand the ever-growing and pressing need for energy, this is not the means to that end. Our country should be striving for progress and acting as an example by expanding renewable energy sources. Instead, this amendment would take us backward, lulling us into a false sense of having solved a problem when really, it would create a much larger one.

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Thus, I plead that the DOE's proposed amendment to the guidance for the Civil Nuclear Credit program be denied, forcing the Diablo Canyon Power Plant to remain in adherence with its

closure agreement. Moreover, the DOE should not be permitted to extend the application deadline past the already-delayed due date of July 5th.

Thank you kindly for your time and consideration.

Sincerely,

Chris Clarici

From: Holly Reuter <hreuter@catf.us>
Sent on: Monday, June 27, 2022 9:14:47 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] CATF Comments on CNCP Proposed Amendment to Guidance
Attachments: Comments of Clean Air Task Force on CNCP proposed amendment to Guidance.pdf
(238.82 KB)

Dear DOE Office of Nuclear Energy,

On behalf of the Clean Air Task Force, I respectfully submit our response to the request for comments on the Proposed Amendment to the Guidance for the First Award Period of the Civil Nuclear Credit Program (Docket ID No. DOE-HQ-2022-0001-0060). Please confirm receipt at your earliest convenience.

Thank you,

Holly Reuter
Climate and Clean Energy Policy Implementation Director

June 27, 2022

U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

Submitted via email to rfi-cnc@nuclear.energy.gov

Re: Comments in response to the Proposed Amendment to the Guidance for the First Award Period of the Civil Nuclear Credit Program, 87 Fed. Reg. 24,291 (Apr. 25, 2022), Docket ID No. DOE-HQ-2022-0001-0060.

On June 17, 2022, the Department of Energy (DOE) issued and requested comments on a proposed amendment to its Guidance for the First Award Period of the Civil Nuclear Credit Program (CNC) of April 25, 2022. The Clean Air Task Force (CATF) respectfully offers the following comments on the proposed amendment.

The Guidance established that a nuclear reactor is only eligible to submit a bid for credits into the CNC if it receives at least 50% of its revenues from sources that are exposed to electricity market competition, e.g., revenues derived from selling into an organized wholesale electricity market, or if it is under competitive contracts negotiated with a non-affiliated purchaser. The proposed amendment would change this eligibility criterion from requiring that a fixed percentage of revenues must come from competitive markets to requiring, instead, that the amount of revenue from competitive markets must be “material” to whether a nuclear reactor retires due to economic factors.

The proposed amendment is responsive to a request to the DOE by California Governor Gavin Newsom to modify the eligibility requirement so that the Diablo Canyon (Diablo) nuclear reactor would be eligible to submit a bid. Governor Newsom asserts that Diablo would not meet the 50% competitive revenue criterion, and further does not have available to it cost-of-service means to recover costs associated with the reversal of its earlier decision to retire in 2024/2025.

1. A materiality standard for competitive revenue, if appropriately applied, will effectively screen out applicants who do not face market-driven economic retirement.

CATF supports the intent of both the Infrastructure Investment and Jobs Act (IIJA) and the original Guidance that only those nuclear reactors that would retire, due to economic factors based on their participation in competitive markets, should be eligible to receive credits under the CNC. As the Guidance recognizes, the IIJA requires that to actually be awarded credits, an eligible nuclear reactor must, in addition to participating in competitive markets, be unable to recover its operating costs (that is, the costs that would be avoided by ceasing electricity production, whether operating expenditures or capital expenditures necessary for continued operation) and face the economic imperative to cease production permanently.

As an initial matter, there is no strong reason to require that a reactor's failure to recover operating costs be conditioned on an arrangement where half or more of the reactor's revenues come from sources exposed to competitive markets. Indeed, for any reactor with shares of capacity in both regulated and competitive markets, lower market prices (the primary source of economic risk to competitive power plants) will necessarily reduce the share of its total revenues that come from those competitive markets. When market prices drop and reactors experience greater adverse economic factors, the overall percentage of revenues received from those markets will drop as well. Accordingly, the 50% threshold should be expected to exclude more facilities with partial market exposure during periods when that exposure results in economic distress.

By contrast, a materiality standard could readily indicate when financial distress is material to the overall reactor's retirement decision, regardless of the share of its capacity or output that is exposed to market forces. Such a showing would more accurately screen out ineligible reactors than the 50% revenue threshold of the Guidance, and it would be equally, if not more, effective in responsibly shepherding tax-payer's money by maximizing the intended benefits of the CNCP under a given budget.

2. Avoiding inefficient strategic behavior with a materiality standard.

For the proposed materiality standard for eligibility to achieve these benefits and comport with the intent and purpose of the IIJA, however, we urge the DOE to consider and adopt several related guidance criteria. These relate to: (a) the availability of regulated alternatives for cost recovery, and (b) the avoidance of strategic changes to ownership or cost allocation of a reactor between competitive market and regulated cost recovery, done simply to take advantage of the CNCP.

(a) Add an eligibility standard of no existing cost-of-service alternative for recovery of a projected shortfall in operating cost or necessary cap-ex shortfall. One risk with allowing partial market/regulated recovery is that a reactor might avoid alternative regulatory recovery methods in order to rely on the CNCP. Under cost-of-service regulation, there are a number of approaches a utility may take to ensure it recovers sufficient revenue to maintain and operate its equipment without reliance on the CNCP. Examples include:

- a.** The most straightforward approach is filing a rate-case when its overall revenues fall below the level needed to recover both its operating and its fixed costs. Since operating costs are far less than the sum of fixed and operating costs, there usually is little risk that a regulated utility will fail to recover at least its operating costs; long before that happens, the utility will typically have filed a rate case to ensure it has a reasonable opportunity to recover its much higher total costs.
- b.** Additional opportunities for recovering operating costs are provided in many states that have "tracking" or balancing accounts through which most operating costs flow in between rate cases. This allows regulated utilities in those states to recover the vast majority of their operating costs without having to seek an additional formal rate

adjustment. As such, it is unlikely that even a partially competitive nuclear reactor in such a state that allows such accounts, will fail to recover at least its operating costs as it could do so through the establishment and operation of a tracking or balancing account.¹

- c. Under many state regulatory programs even significant capital expenditures (“cap-ex”) can be recovered as they are incurred in cost-of-service rates, without filing a rate-case. Such “construction work in progress” or CWIP provisions allow a utility to undertake major cap-ex initiatives without having to take on excessive debt during the construction and before the finished project is included in rates. Other states do not allow CWIP out of a concern that any capital expenditures should only be recovered after the asset is actually used and useful for serving customers.² A reactor under cost-of-service regulation in a state that allows CWIP may be tempted to shift its incremental cap-ex funding to the CNCP, rather than face the regulatory challenges of a CWIP proceeding. Such accounting practices should not be allowed since the nuclear reactor has a path to avoiding retirement and may prefer the CNCP approach simply because it is less costly or could be more politically palatable for its customers and other stakeholders.

In any of these or similar cases, allowing the reactor to participate in the CNCP bidding process, and potentially receive CNCP credits, would waste taxpayer money and risk diluting the environmental and other benefits that the IIJA intended the program to achieve. To prevent this, eligibility under a materiality standard should be conditioned on showing that there is no other regulatory path for the reactor to recover the material portion of its operating costs and necessary cap-ex that place it at economic risk of closure.

- (b) Mitigate strategic behavior regarding competitive market exposure.** Another risk associated with any approach to eligibility that allows a reactor to recover some costs in regulated rates and some in competitive markets is the potential for reactor owners to attempt to increase profits by strategically reallocating costs from regulated recovery to market recovery. Such a switch could be structured to make it appear that the competitive entity needs the CNCP credits, when in reality, the switch to competitive status was made simply to capture additional profits associated with the CNCP revenue stream. Such profits could be direct or indirect.

¹ See, e.g., California Public Utilities Commission, *Utility General Rate Case – A Manual for Regulatory Analysts* 7 (Nov. 13, 2017), https://www.cpuc.ca.gov/-/media/cpuc-website/files/uploadedfiles/cpuc_public_website/content/about_us/organization/divisions/policy_and_planning/ppd_work/ppd_work_products_-2014_forward-/ppd-general-rate-case-manual-1-.pdf (discussion of balancing and memorandum accounts).

² California does not allow CWIP recovery. *Id.* at 27.

- a. Direct profits could result, for example, from using potential CNCP credits as a way to increase the value and price that could be realized by selling off a share of a regulated reactor above its market value.
- b. Indirect profits could be realized by delaying, avoiding, or reducing the size of a proposed rate increase by allocating some of a reactor's cost to a new, competitive entity comprising a share of the reactor's capacity, and then counting on the CNCP to provide the unit with revenues that otherwise would have had to come from regulated ratepayers. The delayed, avoided, or smaller rate increase request could lead to more favorable treatment, including higher returns, by regulators and other key stakeholders.

A common feature of such strategic behavior is that it will likely involve changing the allocation of costs and revenues to a competitive unit after the CNCP opportunity was established. While some such changes may be efficient and unavoidable to keep the reactor in operation, it may be difficult or impossible to distinguish such bona-fide changes to competitive status from the inefficient, strategic behavior of concern in the eligibility determinations of the CNCP.

To prevent this latter type of behavior, and the waste of taxpayer money and dilution of environmental and other benefits of the CNCP it would cause, we recommend that the DOE add a required showing in the bid evaluation stage. This showing would require the clear demonstration that either:

- (I) A reactor show that the share of its revenue subject to competition, and the share of operating and total costs allocated to that competitive portion of the reactor, were both established at their current levels prior to the passage of the IIJA; or
- (II) If the reactor's allocation has changed since passage of the IIJA or changes in the future, DOE should require the reactor to demonstrate that such changes were made for reasonable purposes independent of its attempt to obtain CNCP eligibility.

3. DOE's additional questions.

The DOE also invited comment on whether the proposed modification to the eligibility criterion related to market participation should be revised for a future award cycle, or for the first award cycle; and for the latter, whether the deadline for submission of certified applications and sealed bids should be extended past July 5, 2022. CATF recommends that the eligibility requirement be changed for the first award cycle, and that the submission deadline be extended by 30 days. This, coupled with the scrutiny of the lack of regulatory alternatives and mitigation of strategic behavior described above, will ensure the most cost-effective use of taxpayer funds towards the environmental and other benefits that are the promise of the IIJA.

From: Kevin Stewart <kevinstewart20@hotmail.com>
Sent on: Monday, June 27, 2022 10:57:13 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Response to Proposed Guidance Amendment
Attachments: Response to Proposed Guidance Amendment.docx (12.04 KB)

Hello,

Attached is my comment.

Thank you,
Kevin

As a citizen of California, PG&E customer, and Health Physicist; I agree with the guidance changes proposed by the State of California. DCPD has long record of safety and reliability. The preemptive closure DCPD will exacerbate higher utility costs and increase CO2 emissions since the replacement source will likely be natural gas.

From: Lynne Goodman <lynnegoodmanlockett@gmail.com>

Sent on: Monday, June 27, 2022 10:27:53 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Response to Proposed Guidance Amendment on Civil Nuclear Credit Program

Attachments: Response to Proposed Guidance Amendment for Civil Nuclear Credit Program - ppn-cm.pdf (157.09 KB)

On behalf of Protect Nuclear NOW and the Climate Coalition, I am submitting the attached comments on the proposed amendment to the Civil Nuclear Credit Program.

Lynne Goodman



June 27, 2022

To: Department of Energy

Subject: Response to Proposed Guidance Amendment on Civil Nuclear Credit Program

We agree that the proposed amendment on the guidance on the Civil Nuclear Credit Program is a step in the right direction. The proposed guidance amendment would eliminate the exclusion from eligibility for an Applicant that recovers more than 50 percent of the Nuclear Reactor's cost from cost-of-service regulation or regulated contracts.

The amendment still requires that the nuclear reactor will receive a material amount of its total revenue from sources that are exposed to electricity market competition. The Infrastructure Investment and Jobs Act (IIJA) does require that the nuclear plant competes in a competitive electricity market, without specifying that 50% or a material amount of the plant's revenue is associated with the competitive electricity market. The IIJA directed the Department to establish the CNC Program to prevent premature closures of Nuclear Reactors by providing financial support for existing Nuclear Reactors projected to cease operations due to economic factors.

The discussion with the proposed amendment includes: "If the Guidance is amended as proposed, a Nuclear Reactor must still demonstrate that it competes in a competitive market, including by showing that, the revenues earned by a Nuclear Reactor that are exposed to market risk are sizable enough to influence the Nuclear Reactor's economics and retirement decision. In addition, the Nuclear Reactor would be eligible for the award of Credits only with respect to operating costs that are not recovered from either cost-of-service rates or market revenues (i.e., the Nuclear Reactor's bid for Credits may not exceed its projected operating losses, which would exclude those costs recovered through cost-of-service rates). Moreover, the Guidance retains the requirement that the Nuclear Reactor affirmatively demonstrate that it is projected to cease operations due to economic factors."

We agree that the reactor should only be eligible for the award of credits with respect to operating costs that are not recovered or able to be recovered from cost-of-service rates or market revenues. Otherwise, it would be a poor use of taxpayer dollars to provide credits to cover costs for which customers could pay. In the case of Diablo Canyon and possibly other nuclear plants that may be projected to cease operations due to economic factors, the revenues exposed to market risk may not be sufficient to influence the nuclear plant's

Protect Nuclear NOW is a project of the Climate Coalition, an informal coalition of individuals and organizations concerned about climate, working to build unity and collaboration within the broader climate community to prioritize emissions reductions. Protect Nuclear NOW seeks to prevent the premature closures of existing nuclear power plants, our largest sources of clean, firm energy.



retirement decision due to economics. If that is the interpretation of “material amount of revenue”, this change may not result in the desired outcome that the credits can cover costs that cannot be recovered through rates or market revenues so that the nuclear plant can continue operating economically and providing clean electricity to the community. We recommend that the proposed wording “a material amount of its total revenue” be replaced with “some of its total revenue” to cover the situation where the costs of continuing to operate the reactor would exceed the revenues available through rates and the market, but that the market-based revenue may not be sufficient to change the decision to shut down the plant for economic reasons.

We agree the transition costs to extend the operation of the plant, including large investments, are covered costs per the Civil Nuclear Credit Program.

Regarding the two questions DOE asked, we do think that the revisions should apply to both the first and future rounds of the Civil Nuclear Credit Program. Additionally, the date of the application submittal for the first cycle should be extended. The due date should be extended to allow Diablo Canyon the opportunity to apply if the proposed amendment is approved. The amendment is being proposed per the Governor of California’s request for Diablo Canyon.

The application, itself, is very onerous. It requires almost 50 uploads of information, including 8 narratives. To gather the information, prepare the documentation and review the application thoroughly would necessarily involve many person-months of effort and entail considerable expense.

The DOE should consider simplifying the application process. One option would be to make it a 2-step process. The first step would require less information and be used to determine eligibility for the credit. The second step would require more information and be used to determine the amount of credit the nuclear plant owner would receive after being determined eligible.

If you have any questions regarding these comments, contact Lynne Goodman, lynnegoodmanlockett@gmail.com.

Signed by the following organizations and individuals:

Signed on behalf of Protect Nuclear NOW and the Climate Coalition

Lynne S Goodman Valerie Gardner Gary Kahanak

From: Manuel Camargo <Manuel.Camargo@sce.com>

Sent on: Monday, June 27, 2022 10:09:47 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Edison/Sempra Comments on Proposed Guidance Amendments to CNC Program

Attachments: 20220627_DOE letter_final.pdf (61.39 KB)

To Whom It May Concern,

Attached are comments from Southern California Edison/Edison International and San Diego Gas & Electric/Sempra regarding proposed updated Guidance for the Civilian Nuclear Credit program. Thank you for the opportunity to comment.

Best regards,

Manuel C. Camargo Jr.

Principal Manager for Strategic Planning

San Onofre Nuclear Generating Station/Southern California Edison

Mobile: 213-361-3661

June 27, 2022

U.S. Department of Energy
1000 Independence Ave SW
Washington, D.C. 20024

To Whom It May Concern,

The Department announced proposed updated Guidance for the Civilian Nuclear Credit program on June 17, 2022. In that announcement, the Department asked the following questions for consideration and response:

1. If DOE revises the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market, should DOE revise the Guidance for a future award cycle, or amend the Guidance for the first award cycle?
2. If DOE amends the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market for the first award cycle, should DOE extend the deadline for submission of certification applications and sealed bids, currently July 5, 2022?

In response to the first question, Southern California Edison and San Diego Gas & Electric support California Governor Newsom's request that the Department remove the ineligibility of a Nuclear Reactor for Credits if it recovers more than 50 percent of its cost from cost-of-service regulation or regulated contracts. We think it is appropriate to make that adjustment for the current and future award cycles and agree that costs not included in cost-of-service-ratemaking be included in the definition of operating losses.

In response to the second question, as an adjustment is being made to the guidance for the Civilian Nuclear Credit program, we think it is appropriate to extend the Guidance deadline past July 5, 2022, in order that Nuclear Reactors that may now qualify have sufficient time to submit their applications for the program.

Thank you for the opportunity to comment.

Caroline Choi
SVP, Corporate Public Affairs
Southern California Edison/EIX

Brian L. Kelly
VP, Government Affairs
Sempra

From: Bruce Campbell <madroneweb@aol.com>
Sent on: Monday, June 27, 2022 11:00:12 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Response to Proposed Guidance Amendment (part one)

June 27, 2022

To whom it may concern at DOE and beyond,

The following are my comments (part one) on the Proposed Guidance Amendment for the Civil Nuclear Credit Program (dated April 19, 2022) while also seeking to assure that certain specified statutes of the Bipartisan Infrastructure Law are carried out rather than violated by the proposed Guidance Amendment.

I note that specific public comments are sought as to “whether the eligibility criteria should be revised to eliminate the requirement that an applicant (Applicant) for credits under the Civil Nuclear Credit (CNC) Program not recover more than 50 percent of a Nuclear Reactor’s cost-of-service regulation or regulated contracts.” DOE must not revise such criteria to pander to some bad actors among nuclear utilities, and instead respect taxpayers and ratepayers by adhering to the earlier promulgated guidelines.

Clearly the Guidance Amendment was promulgated due to interest by the hoodwinked Governor of California and by the hoodwinked Governor of Michigan who want to bail-out the powerful investor-owned utilities within their states. I will comment on the Guidance Amendment as well as some statutes set forth under the Bipartisan Infrastructure Law. And DOE appeared eager to leap to accommodate such by proposing the Guidance Amendment so that utilities that rig some of the market will be able to get bail-outs under the CNC Program. At least, as I will get to in the next paragraph, the last full paragraph of the Proposed Guidance Amendment admits that “the Guidance Amendment is drafted to be generic, that is to treat all potentially eligible Nuclear Reactors fairly and on equal terms. The Guidance, if modified by the proposed Guidance Amendment, would not constitute a finding that DCPD is likely to be certified nor awarded Credits.” This refers to Diablo Canyon Power Plant.

Besides seeking comment on Guidance Amendment generally, regarding question # 1 on page 5, I call upon the DOE to NOT REVISE the GUIDANCE for the CNC Program. Since the Guidance should not be amended, I also call for the ceasing of looking for any excuse to dish out more taxpayer funds to a long-lived industry, thus do not amend the Guidance for the first award cycle, and do not revise the Guidance Amendment for possible future award cycles.

The second question under “Request for Comments” on page 5 asks whether DOE should extend the deadline for utilities to submit certification applications and sealed bids seeking funding under the CNC Program. Absolutely not – the deadline must remain July 5th, 2022 !!!

So I am displeased with the swiftly proposed shift in regulations to make taxpayer bail-out of the deadly nuclear industry more likely even if the utility is not in a “competitive market” as mentioned in the second paragraph of this comment. I also was not enthused when Governor Newsom requested that the CNC Program Guidance be clarified to specify that “operating losses include ‘costs not recovered through cost-of-service-ratemaking’”. It shows how beholden elected officials are to utilities to simply call for taxpayers to pick up all costs no matter how large an expense or cost overrun may be. Perhaps

Newsom offered such general wording while considering timing, planning, & possible construction by PG&E of cooling tower(s) to finally try to alleviate the thermal pollution which has been impacting Diablo Cove wildlife for 38 years due to operation of Diablo Canyon's reactors. At least in regards to this issue, DOE clearly responded that "With respect to the definition of operating costs, the costs that the Governor refers to as 'transition costs' are already included in costs as set forth in IIJA section 40323(c) (1)(A)(i) and as described in the Economic Factor Guidance" beginning at page 14 of the Guidance."

In regards to Newsom's third request calling for the inclusion of grid reliability and state clean energy goals as part of the criteria for CNC Program Guidance, the DOE responded that "unlike the certification requirement that a Nuclear Reactor demonstrate avoidance of incremental air pollutants, the IIJA does not explicitly contemplate including grid reliability and support for state clean energy goals as a requirement for extending operations for purposes of the CNC Program."

And let us examine "grid reliability". Besides reading some disturbing things about the physical condition of the Palisades facility (leading the utility to shut it down), there also is notable deterioration of equipment exposed to corrosive sea air at Diablo Canyon, as well as a recent scandal about how there were fewer inspections than mandated at Diablo Canyon notably during much of the pandemic. I rarely quote this group because they were a part of the "sell-out" "Diablo deal" which allowed those reactors to operate thus continuing the thermal pollution which could have been addressed several years ago (as well as related entrainment and impingement of marine species). But David Weisman of Alliance for Nuclear Responsibility made 4 good points regarding declining oversight at the Diablo Canyon nuclear power facility in an article in the Santa Barbara Independent which I shall cut and paste below:

"Since the start of the pandemic, here are four examples of declining oversight:

(1) Corroded pipes in the vital emergency cooling water system at Unit 2 ruptured in July, spilling four gallons per minute. The plant shut down for a week of repairs — and more extensive corrosion was detected. Fearing that Unit 1 suffered similarly, PG&E asked the Nuclear Regulatory Commission (NRC) for a license to make repairs in place without shutting the reactor down. California's blackouts mean that the last thing PG&E wants to admit is that Diablo Canyon could fail at the time it might be most needed. Ignoring its own regulatory precedents, failing to wait for PG&E's responses to staff questions, and skirting public notification and comment requirements, PG&E's risky request was rubberstamped. The Takeaway: Despite decades of NRC requirements and inspection orders to PG&E for documented weaknesses, how was this external — visible — pipe corrosion allowed to fester? Have maintenance standards degraded now that the plant is slated for retirement in a few years ... the frightening prospect of what engineers call "run to failure?" What other undetected decay lurks in the system — and what will it cost ratepayers to keep this dinosaur running safely?

For those believing that Diablo Canyon is vital in a time of energy shortages, consider this from the New York Times in August:

Steve Berberich, president and chief executive officer of California Independent System Operator, on Tuesday defended his organization's decision to order rolling blackouts rather than dipping into reserve power supplies set aside for emergencies. He said the grid had to keep some reserves on hand in case a plant like Diablo Canyon unexpectedly shut down.

Perhaps Mr. Berberich rightly feared — or knew of — the situations plaguing Diablo this summer.

(2). Many customers have fled PG&E for Community Choice Aggregation programs (CCA), but they are still charged “exit fees” to cover Diablo’s extraordinary above-market costs — which PG&E projects will exceed \$1.25 billion in 2020. That’s money that could be better spent on the demand-response programs, electricity storage, and targeted capacity purchases needed to truly avoid blackouts. Desperate, PG&E tried to pawn off Diablo’s unneeded and overpriced energy on the CCAs (including Santa Barbara’s own Central Coast Community Energy) under the rubric of “Carbon Free.” But alert advocates caught the ruse and reminded the boards of CCAs across the region to remain true to their past commitments to “nuclear free” power sourcing.

(3) PG&E gained an additional eight months use (and associated profit) from Diablo through an unpublicized waiver from the State Water Resources Control Board (SWRCB). In 2010 the SWRCB ruled that all use of once through cooling (OTC) from ocean water would cease on December 31, 2024. Diablo’s Unit 2 has an NRC license through August 2025.

In a move quite similar to the NRC waiver, the Newsom SWRCB relied on a smokescreen staff report replete with internal contradictions and unsubstantiated claims by PG&E. The waiver was shoehorned into the OTC extensions for several Southern California gas plants. But the Southern California 1-3 year extensions allegedly address a 2021-2023 short-term need. No such claim was made for Diablo’s 2025 gift.

As a result, the SWRCB in a unanimous vote heaped an economic bonus on PG&E and perpetuated damage to our oceans through sea life entrainment. Once, the California Lands Commission declared, “It would be fair to categorize Diablo Canyon as California’s largest marine predator.” Maybe the SWRCB forgot.

(4) On a final and unsettling note, Forbes magazine investigated NRC files and revealed that unidentified drones have hovered above nearly a dozen nuclear power plants without interception, sometimes for 30 minutes or longer, “...and Diablo Canyon near San Luis Obispo in California had no less than seven separate incidents from December 2015 to September 2018, all of them unresolved.””
Thus, I call for no amendment which guts requirements for a more truly competitive market under the BIL – and reactor owner/operators would need to submit specific enough info to ascertain megawatt per hour amounts to satisfy DOE. Both the current Guidance as well as the current Guidance with the Proposed Guidance Amendment would still require that DOE declare that there would be at least an incremental increase in air pollutants due to replacement power (considered to generically be from “four sources”) that would be obtained upon reactor shutdown and closure. However, the “Diablo deal” has been worked out for awhile and I believe it was aiming to replace the electricity generated by its nuclear reactors with 100% renewable energy. So the irony is that I believe we are on course to replace Diablo Canyon’s energy with 100% renewable energy, and thus that determination regarding an incremental increase in air pollutants if Diablo’s power was replaced would very likely not be true – though that does not stop a lot of govt. agencies from rubber-stamping all sorts of bad proposals anyway.

Also please consider that the only major jobs creator at this point at Diablo Canyon would involve construction of a cooling tower or two to cool down the discharge into Diablo Cove. It is also ironic that the cooling tower construction / installation project not only would take awhile to build and get approvals, but the amount of construction workers commuting to the Diablo Canyon facility to build and install those towers would itself result in an incremental increase in air pollutants due to their vehicle use! If one wants to create jobs, extending the “life” of nuclear power facilities is certainly not the way

to do it! However there would clearly be additional jobs if a cooling tower or two was constructed at the Diablo Canyon site, but that would add carbon and incremental air pollutant emissions due to the often 5-day-a-week commutes by workers building such cooling towers. Also, continued operation means demand for nuclear fuel which increases carbon emissions (primarily in eastern Europe) from various uranium enrichment-type activities and continues to threaten regions around nuclear power facilities with increasingly serious accidents which quite likely would involve the volatile spent fuel rod assemblies from “high burn-up fuel”.

DOE is exceedingly lazy in regards to apparently entirely relying on the Nuclear Regulatory Commission for information pertaining to whether there is a “REASONABLE ASSURANCE” that a reactor will continue to operate in accordance with its licensing basis. Even worse, apparently DOE will entirely rely on the NRC to determine that a certified nuclear reactor “poses no significant safety hazards”. This shows a reckless disregard for celled organisms (including human beings) as well as for due process because the NRC has virtually never admitted a significant safety hazard at a commercial nuclear power facility since they clearly are a lot more interested in promotion and in exercising improper influence over key decisions than in actually seriously regulating the commercial nuclear power industry.

Besides not trusting the NRC, I want to point out that the terms “reasonable assurance” and especially the term that the DOE wants a “COMMITMENT” that a specified amount of megawatt hours of electricity would be “provided” by a “certified nuclear reactor” are quite dangerous since it will encourage running reactors excessively even if a temporary shutdown would be wisest for the equipment and for public safety. Also, it is apparently presumed (but no evidence presented) by Governor Newsom that having Diablo Canyon’s reactors be “certified nuclear reactors” under the CNC Program of the BIL would help “grid reliability”, while the presumption is also there that the U.S. Comptroller is supposed to submit a report to Congress on incremental air pollution as well as upon “grid reliability”. There must be safeguards to prevent utilities from trying to get “too much juice” out of their reactors – either in terms of hesitating to shut down the reactor (despite some cause) because there is major pressure being exerted to abide by the “commitment” to get a certain amount of electricity from a certified nuclear reactor over a 4-year period, or in terms of (as at San Onofre) adding too many tubes to the steam generator so that the steam was not dry enough and began to rust that key expensive component of a nuclear reactor. The first of four “reduced oversight” examples given by Mr. Weisman indicates PG&E’s predisposition to seek to get around normal procedures so, in this case, they could try to repair a reactor while keeping it operational. This sort of reckless activity / requests for waivers will only increase if PG&E makes a COMMITMENT to produce a projected amount of megawatt hours of electricity despite its rapidly aging facility on the San Luis Obispo County coastline.

I note that the IJA (BIL) directs DOE to establish the CNC Program to “prevent premature closure” of Nuclear Reactors who would be expected to cease operations unless provided financial support. “Premature” from whose perspective? Large nuclear reactors were predicted to be able to run for about 40 years. A Diablo reactor first went “critical” in the spring of 1984, so it will be 40 years when the current licenses expire for the two units at that dangerously-sited San Luis Obispo County facility. But remember that there were various delays at Diablo Canyon including waiting for results of seismic hearings by the NRC’s Atomic Safety & Licensing Appeals Board, and waiting to pressure more water board members into seeing things PG&E’s way in regards to the waste discharge permit for the Diablo facility. Then there were more delays during the major blockade / encampment of Diablo Canyon when the workers came forward with info about switched blueprints for seismic reinforcements of the auxiliary cooling system, that delayed “criticality” by about a year and 2/3. When they finally did fire up Diablo, at the time there were 105 workers swearing (through the Government Accountability Project)

about 3000 problems at that facility, but Reagan's NRC sure did not care to address any of those! Thus, the Diablo Canyon reactors have at least another few years delay (while components age) beyond the generally predicted 40 years that a reactor may operate. So, besides other reasons I have pointed out as to why Diablo Canyon reactors should not be considered as "certified nuclear reactors", the fact that a reasonable person could easily determine that most of the Diablo Canyon facility is already 40 years old is another factor to consider. It would never be "premature" to close the particularly dangerously sited reactors at Diablo Canyon. It would take a brazen p.r. move to label the planned closure of a nuclear power facility (or the condition of that facility) as anything younger than "very mature". How many rules do you have to twist to give bail-out money to colluding reckless PG&E? It would clearly be a lie to call anything in regards to Diablo Canyon reactors "premature" – except some cancers may have begun which will get more serious when they "mature". Thus, yet again, Diablo Canyon fails to meet the criteria!!!

Before any facility's reactor should be considered for a bail-out under the BIL and Guidance Amendment, please look for signs of improper collusion between nuclear utilities, state regulatory agencies and governors of those states. I call for the RICO statute to be considered for use in investigating such reckless threats to humankind so that a deadly industry can stuff their pockets while spewing carcinogenic "false climate solutions". What happened to change Governor Jerry Brown from one challenging the approval of the Diablo Canyon's nuclear reactors to one with a sister on the Sempra board, whose wife likes to hob-nob with lobbyists, and who sells out to investor-owned utilities routinely by his PUC appointments. (I also find it is easier for CA A.G.s to "get along" with powerful utilities, and then see these electeds assume even more powerful positions – as Vice-President and as Secretary of DHHS.) Nuclear power has the highest carbon footprint of any non-fossil fuel energy source. Do you want to help climate or just pander to sleazy industry? Most of such carbon emissions are from foreign sources because most nuclear fuel comes from eastern Europe – the carbon footprint involved with enriching uranium is quite serious. Also, nuclear power facilities emit radioactive carbon-14 and spew radionuclides, while Diablo Cove and its species continue suffering from thermal pollution if they are lucky enough to survive the impingement and entrainment of species relating to the intake of ocean water at Diablo for use in primary coolant loops.

Please divulge the source of nuclear fuel for all commercial nuclear reactors in the country – or at least divulge the sources of nuclear fuel for all commercial nuclear reactors that submit applications to become "certified nuclear reactors" (and thus become eligible for a bail-out from federal taxpayers).

I object to the proposed change which would gut requirements in the BIL to show that a nuclear reactor operates in a competitive market. As it says in that "Proposed Guidance Amendment" document, "The proposed Guidance Amendment would eliminate the exclusion from eligibility for an Applicant that recovers more than 50 percent of the Nuclear Reactor's cost from cost-of-service regulation or regulated contracts." I vehemently object that there will no longer be a clear bright line "50% or more" of total revenues, but instead have that replaced with the incredibly vague "material amount" of total revenues which are supposed to amount to enough to tip a decision regarding whether to operate a reactor due to cost factors.

Sincerely yours,

Bruce Campbell
10008 National Blvd. # 163
Los Angeles, CA 90034

From: Bruce Campbell <madroneweb@aol.com>
Sent on: Tuesday, June 28, 2022 3:33:07 AM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Response to Proposed Guidance Amendment (part two)

June 27, 2022

To whom it may concern at DOE and elsewhere,

One item I don't believe I got to in part one of these comments was in regards to the DOE basically inviting utilities who are already get a subsidy from state taxpayers to apply for the federal subsidy as well. I am opposed to such double-dipping – though the proposal is not entirely surprising given the histories of DOE and the NRC who put much more energy into promotion of the nuclear industry rather than regulating it for ratepayers, taxpayers, and celled organisms.

In my scanning and reading of the BIL while looking for the section on Civil Nuclear Credits, I note many other sections even in the BIL that lavish nearly every part of the nuclear industry with hand-outs. (And recall that the \$6 billion specifically for CNC plus other subsidies in the BIL, plus there was \$11.4 billion for nuclear industry subsidies in the last appropriations bill under the Trump Adm. signed by Trump in January 2021. And both those pale compared to the proposed handouts in the Build Better Act.) Hold your horses! It is obvious that this industry is a corporate welfare queen with insatiable appetite for ratepayer and taxpayer funds for nefarious life-harming activities. And the more assurances there are that taxpayers will pay for various construction and repair activities, then the likelihood of cost overruns soar even higher. Most nuclear reactors that were largely constructed in the 1970s and opened in the 1980s cost more than times more to construct and install at a large commercial nuclear power facility.

I included some material from David Weisman in my last comment and now wish to add a couple things that Weisman said in the New Times San Luis Obispo publication. He mentioned that other states have more competition since they are not a "guaranteed captured monopoly [like] PG&E". The article said that, "Weisman added that PG&E would face an enormous set of deferred maintenance needs, regulatory hurdles, and other investments to successfully operate the plant past 2024-25", and pointed out that all PG&E's energy has gone into the assumption that the reactors would shut down as scheduled in 2024 and 2025. Sadly that changed because apparently now PG&E has expressed formal interest in a federal bail-out in very early summer 2022.

I'm not an expert on utility rates, but know that utilities like to exert their muscle with elected officials sometimes notably the Governor's office, the PUC (or variations thereof in other states), and the (California or other state) Legislature.

To my knowledge, PG&E has had it arranged so that it makes more profit the more the reactor operates which sometimes is problematic if one is concerned about safety and the environment since Attorney General John Van de Kamp, who had gubernatorial aspirations so wanted to pander to powerful PG&E he figured to help his chances, sold out to PG&E on the Diablo Canyon rate case in or around 1990.

Now let us examine "Congressional intent" behind the IJA / BIL. Congressional staffers likely generally believed the p.r. line from the nuclear industry that many reactors around the country were shutting down in the fairly near future due to economic reasons. I believe that staffers are generally expected to

be even-handed and not want to waste taxpayer money, and let the elected officials make the deals to reward shady companies with corporate welfare subsidies. Congressmembers themselves are somehow super-vulnerable to the nuclear (apparently bi-partisan death wish) industry during the pandemic, and it makes them want to bail them out even the most preposterously-sited nuclear power facilities in the country. Their judgment in recent times seems to be partially linked to such a high percentage of elected officials getting covid-19 often from their entourages which they figure they need to build their ego and campaign accounts but which deteriorates their brains as partially shown by amazing stupidity in recent times even by such usually sane people as the Governors of California and of Michigan.

It is highly suspect to work overtime to loosen the criteria to apply for Civil Nuclear Credits after becoming “Certified Nuclear Reactors” just because the public relations line of the nuclear industry that a number of nukes are looking to extend their “life” did not produce many applications in reality. The very acts of publishing Guidance and Guidance Amendment for the Civil Nuclear Credit program during 2022 indicates that DOE is trying hard to cave in to Governor Newsom’s confused and improper demands. To declare PG&E’s Diablo Canyon reactors as operating in an atmosphere of “competition” (rather than the reality of its rigged sweetheart deals) is a scandal in itself, and this bankrupt felonious corporation does not deserve one penny of taxpayer funds!

So, a “beyond mature” deteriorating nuclear power facility sited in the midst of 13 earthquake faults (including right next to the Shoreline Fault portion of the Hosgri Fault – while the main Hosgri Fault is a few miles offshore) is an odd candidate to choose if one is half-way paying attention to its siting and history. The San Simeon Fault, and then the San Gregorio Fault further north are the other two components of the essentially parallel and almost lined-up largest subsidiary of the San Andreas Fault which runs from offshore Santa Barbara County to offshore Marin County where it meets with the San Andreas Fault. There was a 7.3 to 7.5 quake offshore from Lompoc in the Hosgri Fault Zone on November 4th, 1927.

Does DOE really want to have the legendary “beyond mature” Devil Canyon facility plus a deteriorating and already shut-down facility on a Great Lake as their “super-models” / poster-children deserving bail-outs from federal taxpayers??? This indicates not only scandalous ignorance by normally pretty sensible governors, but also indicates that the nuclear industry wants to drum up corporate welfare recipients utilities apparently to try to abide by one of the climate myths perpetrated by the slick public relations people of the nuclear industry – that just a little taxpayer help will have their facilities running for additional years (but don’t worry about the physical condition of the facilities).

Quit doing contortions to assist an industry which causes birth defects and permanent genetic damage! Oh, and the facilities are just in the midst of the most populous state as well as on a Great Lake.

There has been such nuclear industry p.r. domination lately that very few are thinking clearly – even if they haven’t had covid which unfortunately many people with entourages like legislators tend to get it. I hate to make this argument – but maybe we need to hit bottom with nuclear stupidity (while hopefully avoiding nuclear war but that seems to be on the plate for some these days too) in order to shake people to rebuild the anti-nuclear movement if there is such stupidity that they move forward with extending the operating license and bailing out these scandal-ridden utilities.

SO DO WHAT YOU WANT – ACTUALLY IT CAN BE HELPFUL THAT THESE NUCLEAR REACTORS ARE THE POSTER-CHILDREN FOR NUCLEAR BAIL-OUTS. Any thinking fourth-grader could figure it out with a little true history presented to them, but these techno, agency, and corporate greed-heads get pressured by

foolish powerful elected officials and do very dumb things if one considers celled organisms or taxpayer pocketbooks. Come to think of it, I hear pretty scandalous things about Illinois and Ohio utilities as well.

So, do you really want to make DIABLO CANYON a major issue once again? And it does not take much of a brain to realize that the Great Lakes and the Caspian Sea (followed by the Amazon rainforest) are the main sources of surface freshwater on the planet. And obviously oceans are vital and connected, while the St. Lawrence River connects the ocean(s) with the Great Lakes. I guess even if a utility has decided to shut a facility, it is likely illegal in regards to investor rights to maximum profit to not entertain schemes which involve getting lots of funds for investor profits as well as for work at the facility.

DO YOU really WANT to EXPOSE the DEVIL to the LIGHT of DAY ??? It does deserve to be more of an issue in this odd era featuring a mass of ill-informed or sleepwalking humans in America.

Sincerely yours,

Bruce Campbell
10008 National Blvd. # 163
Los Angeles, CA 90034

From: Audrey Ford <audreytford@gmail.com>
Sent on: Tuesday, June 28, 2022 12:22:29 AM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Response to Proposed Guidance Amendment
Attachments: DOE public comment.pdf (27.39 KB)

To the US Department of Energy regarding the recently-proposed amendment to the guidance for the Civilian Nuclear Credit (CNC) program:

The request from California's Governor Newsom to expand the program criteria to include reactors that are currently ineligible on the basis of their operating in a regulated rather than competitive environment should be refused outright. The fundamental purpose of this program is to support reactors that are at risk of closing due to a lack of financial support. If the CNC program criteria were expanded, reactors facing closure for other justifiable reasons would be eligible to apply for funding. The Diablo Canyon Power Plant (DCPP) is one such reactor that provides a perfect example as to why this proposed amendment should not be adopted. The DCPP is slated to close not because of financial hardship, but because its closure would help the state of California reach its renewable energy goals more quickly. There is no justifiable reason for the CNC program to be amended in such a manner at this point. I ask that you reject the proposed amendment outright, reserving the funding for operations that are actually facing financial hardship as was originally intended by the program legislation, and that you stop extending the application deadline and commit to the already-delayed July 5 date. A PDF of this comment is attached below for your convenience.

Thank you in advance for your consideration.

Audrey Ford

To: rfi-cnc@nuclear.energy.gov

Subject: Response to Proposed Guidance Amendment

To the US Department of Energy regarding the recently-proposed amendment to the guidance for the Civilian Nuclear Credit (CNC) program: the request from California's Governor Newsom to expand the program criteria to include reactors that are currently ineligible on the basis of their operating in a regulated rather than competitive environment should be refused outright. The fundamental purpose of this program is to support reactors that are at risk of closing due to a lack of financial support. If the CNC program criteria were expanded, reactors facing closure for other justifiable reasons would be eligible to apply for funding. The Diablo Canyon Power Plant (DCPP) is one such reactor that provides a perfect example as to why this proposed amendment should not be adopted. The DCPP is slated to close not because of financial hardship, but because its closure would help the state of California reach its renewable energy goals more quickly. There is no justifiable reason for the CNC program to be amended in such a manner at this point. I ask that you reject the proposed amendment outright, reserving the funding for operations that are actually facing financial hardship as was originally intended by the program legislation, and that you stop extending the application deadline and commit to the already-delayed July 5 date.

Thank you in advance for your consideration.

Audrey Ford

From: McIntyre, Yvonne <Yvonne.McIntyre@pge-corp.com>

Sent on: Monday, June 27, 2022 11:15:01 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Response to Proposed Guidance Amendment

Attachments: PG&E Comments on DOE CNC Guidance Proposed Amendment.docx (36.98 KB)

Please find attached written comments from PG&E regarding the Department of Energy's Proposed Guidance Amendment for the Civil Nuclear Credit Program.

Thank you,

Yvonne McIntyre

Vice President, Federal Affairs

PG&E Corporation

yvonne.mcintyre@pge-corp.com

202-993-1604 (work mobile)



Yvonne A. McIntyre
Vice President
Federal Affairs

900 7th Street, NW
Suite 950
Washington, DC 20001

Tel: 202.638.3503
Cell: 202.993.1604
Fax: 202.638.3526
Yvonne.McIntyre@pge-corp.com

June 27, 2022

Office of Nuclear Energy
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Re: Response to the Department of Energy's Proposed Amendment to the Guidance for the Civil Nuclear Credit Program

Pacific Gas and Electric Company (PG&E) respectfully submits these comments in response to the U.S. Department of Energy's June 17, 2022 proposed amendment to the Guidance for the Civil Nuclear Credit (CNC) Program. PG&E, a subsidiary of PG&E Corporation, is a combined natural gas and electric utility serving more than 16 million people across 70,000 square miles in Northern and Central California.

PG&E appreciates the Department of Energy's efforts to support the continued operation of U.S. nuclear reactors through the Civil Nuclear Credit Program. PG&E is the operator of the Diablo Canyon Power Plant (DCPP) Units 1 and 2 that are slated to retire at the expiration of their current licenses in 2024 and 2025. However, in April 2022, California Governor Gavin Newsom indicated interest in re-evaluating the role of Diablo Canyon as the state continues its transition to a clean energy future. In light of this development and at the Governor's request, PG&E began assessing the option to extend operations of DCPP. As part of this assessment, PG&E evaluated the Guidance released by the Department of Energy for the first award cycle of its CNC Program as well as the proposed amendment to that Guidance.

PG&E agrees with the Department of Energy and the Office of the Governor of California that there are circumstances that were not contemplated in the Guidance where a reactor both receives cost-of-service rate recovery and also sells into an organized wholesale market, but nevertheless could still incur operating losses that threaten the reactor's ability to continue operations. If DCPP extends its operations beyond its currently planned decommissioning date, it will incur significant transition costs which are not recoverable through existing cost-of-service regulation and thus, those costs will be considered operating losses. Given these circumstances, PG&E supports the Department of Energy's proposed amendment to the CNC Program Guidance for the first award cycle.

PG&E also requests that, if the Guidance is amended, DOE provide a 75-day extension of the deadline for submission of certification application and sealed bid for the first award cycle under the Civil Nuclear Credit Program. The application requires a significant amount of detailed information and given the recent direction from the Governor, an extension is needed to provide PG&E the time to collect and analyze the information and prepare an application.

Thank you in advance for your consideration of PG&E's comments. Please contact me at Yvonne.McIntyre@pge-corp.com with any questions or to obtain additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Yvonne", enclosed within a thin black rectangular border.

Yvonne A. McIntyre

From: Siewe, Sarah <SSiewe@beneschlaw.com>

Sent on: Tuesday, June 28, 2022 1:04:56 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Response to Proposed Guidance Amendment (Energy Harbor LLC)

Attachments: Energy Harbor Letter Regarding Proposed Guidance Amendment .pdf (175.99 KB)

Good evening,

Please find attached a letter from Energy Harbor LLC regarding the Department of Energy's proposed amendment to the April 2022 guidance regarding the Civil Nuclear Credit Program.

Please provide confirmation of receipt.

Thank you,

Sarah

Sarah Siewe

Associate Litigation

Benesch Friedlander Coplan & Aronoff LLP

41 South High Street, Suite 2600

Columbus, OH 43215--6164



168 E. Market Street
Akron OH 44308

June 27, 2022

Via e-mail to: rfi-cnc@nuclear.energy.gov

Re: 6450-01-P—Energy Harbor’s Response to Proposed Guidance Amendment

Dear Sir/Madam:

Thank you for the opportunity to provide comments on the U.S. Department of Energy’s (“DOE”) proposed amendment dated June 17, 2022 (“Guidance Amendment”) to the April 2022 Guidance for the Civil Nuclear Credit Program (“Guidance” for the “CNC Program”). Energy Harbor Corp. on behalf of its subsidiaries Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC (collectively “Energy Harbor”) believes that while California may wish for federal support for the Pacific Gas and Electric Co. (“PG&E”)’s Diablo Canyon Power Plant (“DCPP”), that assistance is not the type contemplated within the Infrastructure Investment and Jobs Act (“IIJA” or the “Act”)’s creation of the CNC Program.¹

In the IIJA Congress specifically directed DOE to structure the CNC Program to provide financial assistance to nuclear reactors that participate in competitive markets. Energy Harbor recommended that the DOE adopt a clear standard which would determine whether that legislative requirement had been met. The DOE appropriately did so, finding that an Applicant:

Must demonstrate that the Nuclear Reactor competes in a competitive electricity market during the Award Period. An Applicant can do so by showing that the Nuclear Reactor will receive 50 percent or more of total revenue from sources that are exposed to electricity market competition. These sources include but are not limited to (a) sales of energy, capacity and/or ancillary services into organized wholesale markets; (b) bilateral agreements with non-affiliated purchasers on competitively negotiated terms. Notwithstanding the amount of revenue a Nuclear Reactor receives as a result of clearing in energy, capacity, or ancillary services markets, or through bilateral agreements, a Nuclear Reactor for which an Applicant recovers more than 50 percent of the Nuclear Reactor’s cost from cost-of-service regulation or regulated contracts will not be deemed to compete in a competitive electricity market.²

California’s requested Guidance Amendment would eliminate this tangible and workable 50% cap and replace it with the ambiguous phrase “a material amount of its total revenue.”³

¹ 42 U.S.C. § 18753.

² Guidance, p. 11.

³ Guidance Amendment, p. 3.

More fundamentally, under the IJA reactors receiving state assistance in the form of cost-based recovery should be *prohibited* from applying for certification until all competitive reactors have had their full need met. The IJA was intended to provide critical support to reactors participating in the competitive market.

I. Reactors who receive state-assistance should not qualify under the CNC Program because they do not compete in a competitive electricity market.

The DOE's April 2022 Guidance correctly prioritized reactors that truly operate in a competitive market and should not change the competitive market parameters. Section 40323(a) of the Act requires that certified nuclear reactors "compet[e] in a competitive electricity market." This requirement exists because reactors that do not compete in a competitive electricity market for the majority of their revenues are in a fundamentally different position than those that are subject to market forces.

If DOE decides that the 50% cap should be eliminated, then the 50% cap should be eliminated to accommodate only those units meeting the other requirements of the First Award Period. Applicants in subsequent award periods should be required to meet the 50% market-based revenue requirement. This is necessary to align the program with the IJA's clear prioritization to aid the most needy reactors first and less needy reactors, such as those who receive state-based assistance, only after competitive reactors have their needs met in the Second Award Period.

If the DOE decides to eliminate the 50% cap for any entity other than those qualifying for the First Award Period, then DOE should not do so until after the plants which have a greater need have been provided with recovery. Specifically, Energy Harbor proposes that plants who do not meet the 50% cap be required to participate in a Third Award Period which would take place after plants which more clearly qualify under the statutory metrics have been given a chance to participate. That would appropriately allocate funds in order of risk: First Award Period (already announced closure); Second Award Period (units with extensive exposure to competitive markets who meet the 50% criteria and thus are at greater risk of closure); and Third Award Period (units who do not meet the 50% criteria and thus are at less risk of closure).

Sincerely,

/s/John W. Judge
John W. Judge
President and Chief Executive
Officer

Energy Harbor Corp.

From: Reiser, Caroline <Creiser@nrdc.org>

Sent on: Monday, June 27, 2022 11:01:59 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

CC: Fettus, Geoff <gfettus@nrdc.org>; Pica, Erich <EPica@foe.org>

Subject: [EXTERNAL] Response to Proposed Guidance Amendment

Attachments: NRDC and FOE Response to DOE Proposed Guidance Amendment.pdf (188.05 KB), Ltr to Secretary Granholm re Diablo Canyon Nuclear Plant 05.27.22.pdf (180.66 KB)

Please find attached comments from Natural Resources Defense Council and Friends of the Earth on the Department of Energy's June 17, 2022 Proposed Guidance Amendment.

Sincerely,

CAROLINE REISER

(she/her)

Staff Attorney

Nuclear & Sustainable FERC

Climate and Clean Energy Program



June 27, 2022

Via Electronic Mail

U.S. Department of Energy
Office of Nuclear Energy
rfi-cnc@nuclear.energy.gov

RE: Response to Proposed Guidance Amendment for the Civil Nuclear Credit Program

Dear Office of Nuclear Energy:

On behalf of the Natural Resources Defense Council (“NRDC”) and Friends of the Earth (“FOE”), we submit these comments on the Department of Energy’s (“DOE” or “the Department”) Proposed Guidance Amendment for the Civil Nuclear Credit Program (“Proposed Amendment”). Respectfully, the Department should not adopt the Proposed Amendment.

We want to start by making clear that, regardless of whether DOE adopts the Proposed Amendment or not, the statutory language in the Infrastructure Investment and Jobs Act (“IIJA”) creating the Civil Nuclear Credit Program (“CNC Program”) excludes Diablo Canyon from qualifying for the CNC Program. Congress established the CNC Program to assist the most at risk nuclear power plants projected to cease operations for economic reasons and to prevent such closures from increasing air pollution emissions. As we explained in our May 27, 2022 letter (attached), Diablo Canyon is neither economically distressed nor is it projected to cease operations due to economic factors, and California has a plan to prevent air pollution increases due to the plant’s closure. Thus, its situation comports with none of the intended criteria of the CNC Program.

Further, the Department should not adopt the Proposed Amendment because it would be arbitrary and capricious and not in accordance with the law. Congress writes statutes with the intent that no words are superfluous. Yet the Proposed Amendment would render meaningless the statutory requirement that a qualified reactor must compete in a competitive electricity market.

The Plain Language & Intent of the CNC Program

The competitive market requirement is a precondition to participate in the CNC Program. IIJA’s CNC Program defines “Certified Nuclear Reactor” as a reactor that (A) “competes in a competitive electricity market” and (B) is certified by the Secretary under subsection (c)(2)(A)(i) because it meets the economic, air pollution, and safety requirements. IIJA sec. 40323(a)(1). The

competitive market precondition is distinct from all other requirements in the CNC Program. Unlike economic factors, air pollution projections, and safety assurances, the competitive market requirement is not a standard for the Secretary to “determine.” *Compare* IJA sec. 40323(a)(1)(A) *with* sec. 40323(c)(2)(A)(ii)(I) & (II). The Secretary shall determine to certify reactors that meet the requirements in (c)(2)(A)(ii) “[t]o the maximum extent practicable,” but the Secretary has no such discretion regarding whether a reactor competes in a competitive electricity market. Rather, the competition requirement is an inherent criterion for a reactor to be defined as a “Certified Nuclear Reactor.”

DOE’s Proposed Amendment

The Proposed Amendment erroneously would treat the competitive market precondition like a determination for the Secretary to make rather than as a bright line rule that IJA’s structure intends.

DOE explains that the Proposed Amendment is designed to address “circumstances that were not contemplated in the Guidance where a Nuclear Reactor both receives cost-of-service rate recovery and also sells into an organized wholesale market, *but nevertheless could still incur operating losses that threaten the ability of the Nuclear Reactor to continue operations.*” Proposed Amendment at 3 (emphasis added). This ignores or minimizes the importance of the competitive market precondition and places the requirement of economic loss as more important—regardless of the fact that the structure of IJA places the former above the later.

Moreover, the Proposed Amendment flips the script. Rather than first confirming that a reactor competes and meets the criteria under (c)(2)(A)(i), the Proposed Amendment says that if a reactor meets the criteria then it can apply for credits to cover “costs that are incurred for the continued operation of the Nuclear Reactor and that are not recovered in the Nuclear Reactor’s cost-of-service rates or in the wholesale market”—i.e., if the reactor meets the criteria then it can receive credits to cover the cost of competition. Proposed Amendment at 4. But IJA does not say that uneconomic reactors can be awarded credits for the part of their operating loss related to competitive income. It says for a reactor to be certified it must compete in a competitive electricity market.

DOE Should Not Adopt the Proposed Amendment

Rather than create an expansive interpretation, DOE should rely on a plain language reading. As commenters to DOE’s regulations expressed, “The extent to which a nuclear reactor is facing economic pressure that may lead to its closure depends heavily on the level of exposure a particular resource has to market risk.” Comments of the Electric Power Supply Association on Notice of Intent and Request for Information Regarding Establishment of a Civil Nuclear Credit Program. Reactors that do not compete—or even just have to compete minimally—are not affected by market forces to the same degree as reactors that can rely on ratepayers. Congress’ plain aim in making the competitive market requirement a precondition to certification was to focus the CNC Program on those reactors most susceptible to market forces and therefore at the highest risk of retirement. The Proposed Amendment would expand the CNC Program beyond this plain meaning.

DOE asks if the Proposed Amendment would “better effectuate[] congressional intent of preserving economically distressed nuclear reactors while protecting taxpayer dollars.” Proposed Amendment at 3. This question is inapposite because it erroneously expands the CNC Program. The Program is more specific than economically distressed reactors and protecting taxpayer dollars. Congress designed it to be available to a subset of economically distressed reactors—those that, if they were to close, would increase air emissions and, more to the point here, those competing in a competitive electricity market. The Proposed Amendment would expand how DOE determines which reactors compete in a competitive market to such an extent that essentially any reactor exposed to any form of competition would qualify, thus rendering superfluous statutory language that Congress intended to have meaning.

As we explained in our comments on the Notice of Intent and Request for Information Regarding Establishment of a Civil Nuclear Credit Program, it is vital that this program have clear standards. We appreciated that the Department had at least set a clear and measurable standard in its April Guidance. The Department now is suggesting walking back even that standard and replacing it with the undefined “material amount.” Proposed Amendment at 3. States making decisions about their energy resources, communities living near nuclear plants, workers worried about their jobs, and owners of reactors all deserve to understand clearly which nuclear power plants may be able to take advantage of the CNC Program. The Proposed Amendment moves farther away from achieving such clarity.

Finally, the Department appears to be inappropriately altering the CNC Program to favor a specific plant. The Proposed Amendment originates directly from a request by the Office of the Governor of California on behalf of California’s Diablo Canyon Power Plant. This request from California, dated May 23, 2022, came significantly after the March 17, 2022 deadline the Department set for comments on the Notice of Intent and Request for Information Regarding Establishment of a Civil Nuclear Credit Program. 87 Fed. Reg. 8570 (Feb. 15, 2022). It therefore seems that the Proposed Amendment is solely an attempt to make Diablo Canyon eligible for the CNC Program. A federal program should not be crafted to fit specific beneficiaries; rather, to instill confidence and legitimacy, federal programs must ensure unbiased, impartial decisionmaking. Even if it is not the Department’s intent to single out Diablo Canyon, the appearance itself is unseemly and the Department should not adopt the Proposed Amendment.

Thank you for this opportunity to comment. Please don’t hesitate to contact us if you have any questions about these comments and we look forward to your close attention and consideration.

Sincerely,

Geoffrey H. Fettus
Director, Nuclear Program
Natural Resources Defense Council

Erich Pica
President
Friends of the Earth

Caroline Reiser
Staff Attorney, Nuclear Program
Natural Resources Defense Council



May 27, 2022

The Honorable Jennifer Granholm
Secretary of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Re: Diablo Canyon Power Plant: Letter from
California Governor's Office Dated May 23, 2022

Dear Secretary Granholm,

We write in response to the letter sent to you this week on behalf of California Governor Gavin Newsom, by the Governor's Cabinet Secretary, Ana Matosantos.

The Governor's letter requests what it characterizes as "a few minor adjustments" to the Department of Energy's April 2022 Guidance for prospective applicants under the Civil Nuclear Credit Program adopted by Congress in Section 40323 of the Infrastructure Investment and Jobs Act of 2021, Public Law 117-58, codified at 42 U.S.C. § 18753 (2022).

Respectfully, the submission by the Governor is not in the nature of "clarification," but rather a request that the Department disregard the statutory criteria for the Civil Nuclear Credit Program adopted by Congress in the Infrastructure Investment and Jobs Act.

Congress established the Civil Nuclear Credit Program to subsidize the operations of economically distressed nuclear power plants. The Diablo Canyon plant is not economically distressed. On the contrary, Pacific Gas and Electric Company (PG&E), the owner-operator of Diablo Canyon, recoups 100% of the plant's operating costs in the rates that PG&E is authorized by the California Public Utilities Commission to charge its retail customers. Moreover, given elevated prices in the wholesale power market administered by the California Independent System Operator (CAISO), Diablo Canyon currently is earning revenues that significantly exceed its operating costs,¹ and PG&E is (appropriately) passing the excess through to its customers in the form of reductions in dedicated charges on its utility bills. Awarding federal operating subsidies under such circumstances would be preposterous.

¹ See, e.g., California Energy Markets (May 20, 2022), p. 4.

For the reasons explained herein, the Department does not have legal authority to take the action requested by the Governor.

The statutory provisions establishing the Nuclear Credit Program, and setting forth the qualification requirements for prospective applicants, are contained in Section 40323 of the Infrastructure and Jobs Act, codified at 42 U.S.C. § 18753 (2022).

To begin, the definitions section for the Civil Nuclear Credit Program in the statute specifies that “[t]he term ‘certified nuclear reactor’ means a nuclear reactor that . . . competes in a competitive wholesale market[.]” (§ 18753(a)(1)(A).)

Although Diablo Canyon bids its output into the competitive wholesale market administered by the CAISO, the revenues it receives are netted against its authorized operating costs, and any negative balance is recovered through a dedicated charge paid by all PG&E customers. As a result, PG&E faces no competitive wholesale market risk with respect to the power generated by Diablo Canyon. And while the Governor’s letter correctly indicates that PG&E has historically recovered less than Diablo Canyon’s authorized operating costs from the wholesale market, at the elevated wholesale electricity prices of recent months the situation has reversed.

Moreover, the statute provides that “[t]he Secretary shall establish a civil nuclear credit program . . . to evaluate nuclear reactors *that are projected to cease operations due to economic factors* . . .” (§ 18753(b)(1) (emphasis added).) And the subsidy payments “shall not exceed the average projected annual operating loss.” *Id.* at (d)(1)(A).

Diablo Canyon conspicuously fails to meet these requirements. Although Diablo Canyon is scheduled to be retired at the end of its current operating licenses in November 2024 (Unit 1) and August 2025 (Unit 2), this is for sound policy reasons, not because of short-term “economic factors.” Nor could the plant show *any* projected annual operating losses, as explained above.

The affirmative rationale for retiring the Diablo Canyon plant can be found in the Decision of the California Public Utilities Commission authorizing the retirement (California PUC Decision No. 18-01-022, issued January 11, 2018), and in a statute codifying this mandate (Cal. Senate Bill 1090 [Monning], signed by then-Governor Jerry Brown on September 19, 2018). The California authorities found that continuing operation of Diablo Canyon beyond the expiration of its current operating licenses in 2024-2025 was neither necessary nor cost-effective for consumers. There was no suggestion that the plant itself was economically distressed, or that its owner, PG&E, was at risk of financial losses, and indeed it has incurred none.

The Governor’s letter acknowledges that Diablo Canyon operates under cost-of-service ratemaking principles that ensure cost recovery for PG&E, the plant’s owner.

The Honorable Jennifer Granholm
Secretary of Energy
May 27, 2022
Page 3

However, the Governor's letter argues that "[f]or [Diablo Canyon] to extend operations, it would incur significant transition costs over the next four years to perform necessary studies, invest in plant enhancements, and obtain licenses and permits." The letter reasons that such costs – if the plant's operations are extended – are not guaranteed recovery under the existing cost-of-service ratemaking that Diablo Canyon enjoys.

This rationale cannot withstand scrutiny, given the statutory criteria established by Congress for the Civil Nuclear Credit Program discussed above.

Essentially, the Governor's letter contends that a nuclear power plant that does not compete in a competitive market, and faces virtually no financial risk in its current operations, nevertheless should be shoehorned into the Civil Nuclear Credit Program, because the owner *might* face financial losses if the plant's operations were extended beyond the term of its existing operating licenses and the state utility commission denied recovery of associated costs. This is pure speculation and in the teeth of the law enacted by Congress.

Accordingly, we respectfully urge the Secretary to decline to adopt the "clarifications" requested by the Governor's letter, on the ground that doing so would exceed the Secretary's statutory authority under the Infrastructure Investment and Jobs Act.

Sincerely,



Ralph Cavanagh
Energy Co-Director
Climate & Clean Energy Program
Natural Resources Defense Council



Erich Pica
President
Friends of the Earth

cc: Samuel Walsh, General Counsel, DOE

From: <government@cgnp.org>
Sent on: Tuesday, June 28, 2022 12:46:14 AM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
CC: Cwurtz <cwurtz@CGNP.org>
Subject: [EXTERNAL] RE: Call for public comments regarding draft CNC guidance amendment
Attachments: CGNP comments regarding draft CNC guidance revisions 06 27 22.pdf (180.29 KB)

The Honorable Jennifer Granholm
Secretary of Energy
1000 Independence Avenue, SW
Washington, DC 20585

rfi-cnc@nuclear.energy.gov

June 27, 2022

Hello, Secretary Granholm: Attached find CGNP's comments. Please contact us with any questions or feedback. We would appreciate confirmation of its timely receipt.

Sincerely,

Gene Nelson, Ph.D. CGNP Legal Assistant
Californians for Green Nuclear Power, Inc. (CGNP)
1375 East Grand Ave Ste 103 #523
Arroyo Grande, CA 93420-2421



The Honorable Jennifer Granholm
Secretary of Energy
1000 Independence Avenue, SW
Washington, DC 20585
rfi-cnc@nuclear.energy.gov

RE: Call for public comments regarding draft CNC guidance amendment

June 27, 2022

Hello, Secretary Granholm:

Here are CGNP's answers to a pair of DOE's specific questions:

1. If DOE revises the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market, should DOE revise the Guidance for a future award cycle, or amend the Guidance for the first award cycle?

Please amend the guidance for first award cycle.

2. If DOE amends the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market for the first award cycle, should DOE extend the deadline for submission of certification applications and sealed bids, currently July 5, 2022?

Please extend the deadline.

Sincerely,

Carl Wurtz CGNP President
Californians for Green Nuclear Power, Inc. (CGNP)
1375 East Grand Ave Ste 103 #523
Arroyo Grande, CA 93420-2421
(818) 427 - 4177 cell
cwurtz@CGNP.org email
<https://CGNP.org> website

N.B. Additional supporting details are found in the attached 2-page Appendix.

Appendix - 1. Introduction

Independent nonprofit intervenor Californians for Green Nuclear Power, Inc. includes several technical advisors with Ph.D.s related to nuclear power production. Our legal team includes attorneys from around the nation. Our members also include citizen advocates for nuclear power. All of us recognize the value of safe, abundant, reliable, cost-effective, and zero-emission nuclear power. DCPD annually produces 24/7 the equivalent of five Hoover Dams [18 TWh / year.] We respectfully request that our inputs be given greater weight in this Department of Energy deliberation than those with a doctrinal opposition to nuclear power. CGNP strongly supports DoE actions to assist in the extension of DCPD's operating license beyond 2025.

2. Diablo Canyon supports California grid reliability. There are no plausible replacements.

Furthermore, our perspectives regarding the importance of PG&E's Diablo Canyon Power Plant (DCPD,) which is located near San Luis Obispo are informed by filing well over 1,000 pages of written testimony in support of continued safe operation of DCPD before the California Public Utilities Commission (CPUC) and the Federal Energy Regulatory Commission (FERC) since the plan to retire DCPD in 2025 was revealed on June 21, 2016. During one of the CPUC hearings, we learned that this plan was developed in secret over a period of six months, mostly by organizations doctrinally opposed to nuclear power. CGNP also recognizes that California executive branch agencies exceeded the authority granted to those agencies by the Constitution of the State of California to achieve the goal of having DCPD's owners withdraw their NRC license extension request, despite having completed almost all of the activities required for license extension.

Southern California faces grid reliability challenges associated with its over-dependence on dispatchable natural-gas-fired generation after San Onofre Nuclear Generating Station (SONGS) was needlessly removed from service at the end of January, 2012. SONGS provided important voltage support services and rotational inertia for the greater Los Angeles and San Diego area.

In June, 2018, the Western Electricity Coordinating Council (WECC) developed the "DSW Scenario" which described the vulnerability of southern California natural-gas fired generation to a natural gas transmission pipeline rupture of the lines serving southern California.¹ SoCalGas's line 235-2 ruptured on October 1, 2017. The headline of a July 11, 2019 *Los Angeles Times* describes one of the consequences for southern California, "After Aliso Canyon, a gas pipeline exploded — costing Californians \$1 billion." Almost five years later, the repairs to line 235-2 (and Line 4000) in the Mojave Desert are still in progress. While "corrosive desert soil" is the proffered explanation for the repair delays, CGNP believes this pipeline corrosion is exacerbated by aseismic creep. SoCalGas's gas

1

https://www.wecc.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Reliability/Western%20Interconnection%20Gas-Electric%20Interface%20Study%20Public%20Report.pdf

"WECC Western Interconnection Gas — Electric Interface Study Public Report," June, 2018 Page 15 Of 30
...The DSW pipeline rupture scenario results in full disruption of gas service to 24 GW of gas generators, which translates into 428 GWh of unserved energy and 236 GWh of unmet spinning reserves. The impact can be traced back to the configuration of the pipeline system which yields two concentrated "islands" of power demand in Phoenix and Southern California; with the loss of a DSW mainline, there is simply not enough capacity remaining to provide the gas needed to compensate....

transmission lines cross several active seismic fault zones. CGNP provided to the CPUC and FERC detailed color photographs of SoCalGas's line 44-1088 being bent by aseismic creep where this line crosses the San Andreas Fault above the ground. Subsequently, El Paso Natural Gas line 2000 exploded on August 15, 2021 near Coolidge, Arizona, killing two and injuring another. This line also serves southern California. These pipeline impairments are some of the challenges providing natural gas to southern California's dispatchable generation via an aging and vulnerable interstate natural gas transmission system which supplies about 95% of California's natural gas. These observations are given greater urgency with SoCalGas sending out this critical message this morning. " Effective 10:45 AM PST on June 27, 2022, and until further notice, SoCalGas has issued a Southern System Curtailment Watch for the SoCalGas and SDG&E service territories that include Riverside, Imperial, and San Diego Counties due to low scheduled volumes into the Southern System. Noncore customers on the Southern System may be required to reduce or stop their natural gas use per SoCalGas Rule 23 and SDG&E Rule 14."

3. SoCalGas Transmission impairments significantly increase fuel and electricity costs.

CGNP's summation of SoCalGas's Pipeline and Station Maintenance schedule for June 24, 2022 reveals a daily receipt capacity reduction of 3,038,556 Dth. This is one of the contributing factors to an announcement on SoCalGas's website which reads, "Effective June 1, 2022, the procurement component of the core sales rate will increase 29.170 ¢/therm to 103.488 ¢/therm. [\$10.35 / MMBTu] This increase resulted from an overall 24.657 ¢/therm increase in commodity price and an increase of 4.513 ¢/therm in account adjustments. Compared to a year ago, the procurement rate is about 162.3% higher (39.460 ¢/therm) than what it was effective June 2021. [10 therms = 1 MMBTu. According to the EIA, natural gas combined-cycle power generators installed since 2015 have an average heat rate of 6,654 Btu/kWh or 6.654 MMBTu / MWh. Thus, southern California natural gas generator operators will pay over \$68.86 for the natural gas fuel necessary to generate 1 MWh. This SoCalGas fuel cost is likely to continue climbing.]

Contrast the high current energy cost of California natural gas for electric generation with the low price of DCP's generation. Per PG&E's 2020 FERC Form 1, DCP's line 35 cost is shown as \$32.10 / MWh, less than half the current natural gas *fuel* cost of \$68.87 per MWh for southern California. Rugged and reliable DCP is unlikely to be harmed by any plausible earthquake in the vicinity of the plant. DCP doesn't require natural gas to firm its output. Uranium prices are much less volatile than natural gas prices. DCP produced full power during and after the magnitude 6.6 San Simeon Earthquake on December 22, 2003 which killed two in Paso Robles. At the recently-concluded Diablo Canyon Independent Safety Committee meeting, PG&E revealed that DCP unit 1 has the best reliability record of any nuclear power reactor in the world. Unit 1 had no unplanned outages or reactor scrams for over two decades. Such a reliability record is a testament to PG&E's well - trained DCP personnel, rugged plant design, and PG&E's proactive maintenance program.

4. Conclusion

California needs DCP's cost-effective and 24/7 reliable power for the foreseeable future - not expensive and harmful "kludges" such as unproven grid-scale batteries or a proposed billion-dollar buildout of California emergency diesel generators embedded in the current California AB 205 "Energy Trailer Bill."

From: Michel Lee Council <lee2councilenergy@gmail.com>

Sent on: Tuesday, June 28, 2022 2:47:01 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Comments re Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program

The clear language of the Infrastructure Investment and Jobs Act makes use of the Civil Nuclear Credit (CNC) Program to extend the operation of the Diablo Canyon or Palisades nuclear reactors patently unlawful.

But the violation of the spirit of the Infrastructure Act would be even more egregious. The Infrastructure Act is – overall – a forward looking law animated by the widely shared bipartisan goals of fixing America's deteriorated infrastructure and creating the new modern systems and structures that will enable the nation to compete economically throughout the 21st century. Keeping a few aging, deteriorated, severely safety-challenged power plants in operation is hardly the way to go. Public funding should go to modernizing the grid, creating a robust system of electric vehicle charging stations, improving energy efficiency, and rapidly rolling out renewables.

Finally, continuing to subsidize already heavily subsidized reactors represents a damaging distortion of energy markets.

Let us move forward with creation of the energy system of the 21st century, not get stuck sinking more resources into obsolete power plants of the 20th.

Michel Lee, Esq.

Chairman

Council on Intelligent Energy & Conservation Policy (CIECP)

Senior Analyst

Promoting Health and Sustainable Energy (PHASE)

From: John Douglas <jed805@gmail.com>

Sent on: Tuesday, June 28, 2022 1:44:04 AM

To: Secretary <the.secretary@hq.doe.gov>; NE Communications
<necommunications@nuclear.energy.gov>; rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Deny California request for CNC program credits to continue operation of Diablo Canyon plant

Secretary Granholm and Asst. Secretary Huff:

I was disappointed to learn that California Governor Newsom has been in talks with the U.S. Dept. of Energy with the aim of extending the operational life of the Diablo Canyon Nuclear Power Plant. I urge you to deny the governor's request for Civil Nuclear Credit Program credits from DOE, and to let the plant shut down in 2024 and 2025, according to the schedule worked out between the Calif. Public Utilities Commission, plant operator Pacific Gas & Electric and community stakeholders.

Please don't be the government leaders that allowed for a catastrophic meltdown following an earthquake near the plant, rendering the entire Central Coast of California uninhabitable.

Thanks for considering my views.

John E. Douglas
Santa Barbara, Calif.

--

John Enrico Douglas
(805) 284-2082
jed805@gmail.com
www.JohnEDouglas.com

From: Rund, Jonathan <jmr@nei.org> on behalf of Rund, Jonathan
Sent on: Tuesday, June 28, 2022 1:28:34 AM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
CC: GINSBERG, Ellen <ecg@nei.org>; Fisher, Emily <efisher@eei.org>; CROZAT, Matt <mpc@nei.org>; Holdsworth, Eric <EHoldsworth@eei.org>; abond@eei.org
Subject: [EXTERNAL] EEI and NEI Comments on Proposed CNC Guidance Amendment
Attachments: 2022 06 27 EEI-NEI Comments on Proposed Guidance Amendment.pdf (200.55 KB)

On behalf of the Nuclear Energy Institute and Edison Electric Institute, please find the attached comments in response to the U.S. Department of Energy's proposed amendment to the guidance for the Civil Nuclear Credit program. We appreciate the opportunity to provide our views and look forward to further engagement with DOE on this important matter. Please feel free to contact us if you have any questions or require additional information.

Jonathan M. Rund | Associate General Counsel and Assistant Secretary
Nuclear Energy Institute



June 27, 2022

Office of Nuclear Energy
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Submitted via rfi-cnc@nuclear.energy.gov

Subject: Response to DOE's Proposed Guidance Amendment for the Civil Nuclear Credit (CNC) Program (June 17, 2022)

The Edison Electric Institute (EEI)¹ and Nuclear Energy Institute (NEI)² submit these comments in response to the U.S. Department of Energy's proposed amendment to the Guidance for the Civil Nuclear Credit Program.³ EEI and NEI support—for the first award period only—the Proposed Amendment to eliminate the blanket prohibition in the current Guidance on an applicant recovering more than 50 percent of its costs from cost-of-service regulation or regulated contracts.

DOE also seeks comment on whether, if it amends the Guidance, it should extend the deadline for submission of certification applications and sealed bids. DOE appropriately extended the deadline for the first CNC award period to allow plant owners and policymakers time to assess whether nuclear reactors in their states could qualify given the complex certification and other requirements. After DOE decides whether to amend the Guidance, DOE should likewise further extend the deadline for submission of certification applications and sealed bids if requested by a potential applicant. However, any such extension should not impact the start of the second award cycle in the first quarter of FY 2023.

¹ EEI is the trade association that represents all U.S. investor-owned electric companies. Our members provide electricity for more than 220 million Americans and operate in all 50 states and the District of Columbia. As a whole, the electric power industry supports more than 7 million jobs in communities across the United States.

² NEI is the trade association for the commercial nuclear technologies industry. NEI's mission is to promote the use and growth of nuclear energy through efficient operations and effective policy. NEI has hundreds of members, and its membership includes companies licensed to own or operate commercial nuclear power plants in the United States, as well as nuclear plant designers, major architectural and engineering firms, entities that process nuclear fuel, and other organizations involved in the nuclear industry.

³ U.S. Department of Energy, Proposed Guidance Amendment for the Civil Nuclear Credit Program (June 17, 2022).

EEI and NEI also request that DOE invite public comment seeking additional potential changes to the Guidance before the start of the next award cycle. Given that a broader set of applicants will be eligible in subsequent award periods, public comment will allow for further improvements to the certification criteria, application content requirements, evaluation processes and methodologies, and application timelines.

Thank you in advance for your consideration of EEI and NEI's comments. EEI and NEI appreciate the opportunity to provide our views and looks forward to further engagement with DOE on this important matter. If you have any questions or require additional information, please feel free to contact Alex Bond (abond@eei.org), Eric Holdsworth (eholdsworth@eei.org), Matthew Crozat (mpc@nei.org), and Jonathan Rund (jmr@nei.org).

Sincerely,

/s/ Emily S. Fisher

Emily S. Fisher
General Counsel, Corporate Secretary &
Senior Vice President, Clean Energy
Edison Electric Institute

/s/ Ellen C. Ginsberg

Ellen C. Ginsberg
Senior Vice President, General Counsel &
Secretary
Nuclear Energy Institute

From: Valerie Gardner <valerie@nucleationcapital.com>

Sent on: Tuesday, June 28, 2022 1:35:25 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

CC: Rod Adams <rod@nucleationcapital.com>; Grant Mills <grant@nucleationcapital.com>

Subject: [EXTERNAL] Nucleation Capital writes in Support of the Proposed CNC changes

Attachments: Nucleation Support of DOE Change to CNC.pdf (2.32 MB)

To Whom It May Concern,

Please accept this letter in support of the DOE's proposed changes to the CNC, so that not only Diablo Canyon but other at-risk nuclear plants can benefit from the intent of the CNC to deploy funds to help preserve our largest and most reliable sources of clean power.

Thank you for your consideration!

Regards,

Valerie Gardner
Managing Partner
Nucleation Capital
655 Oak Grove Avenue, #15
Menlo Park, CA 94026



Office of Nuclear Energy
U.S. Department of Energy
1000 Independence Ave. SW
Washington, DC 20585

Re: Proposed Guidance Amendment for the Civil Nuclear Credit Program

Dear Office of Nuclear Energy,

Nucleation Capital is writing to express strong support for the DOE's Proposed Guidance Amendment for the Civil Nuclear Credit Program as detailed in the release on June 17, 2022.

Climate change threatens our planet and, since we are dependent upon healthy and vibrant ecosystems for the success of agriculture and other vital life support systems—such as the supply of clean water—the failure to prevent climate change by reducing our emissions and accumulations of CO₂ in the atmosphere, threatens not only our lives but also our economy and our future.

Even to the relatively minor degree to which climate change has already impacted the planet, we have seen significant instability and disruption in our financial and economic systems. The prospect of far more severe disruptions, which would result in profound loss of life and security of the social fabric, infrastructure and systems upon which we rely, are rapidly approaching.

The Diablo Canyon Power Plant represents over 8% of California's total energy generation and over 17% of its emissions-free energy generation. A report published by researchers at Stanford and MIT has found that delaying the retirement of Diablo Canyon to 2045 could save the state up to \$21 Billion in power systems costs. In addition, the delayed retirement of the plant would prevent up to 90,000 acres of land from being utilized for energy production while keeping in line with California's commitment to be powered by 100% clean energy by 2045.

As such, Nucleation Capital supports the DOE's first proposal to revise the Guidance both for the first, and all future award cycles. As detailed by the Governor of California in his request, removing the limitation that a Nuclear Reactor will not be eligible for Credits if it recovers more than 50 percent of its cost from cost-of-service regulation or regulated contracts would allow the the Pacific Gas and Electric company to recover the transition costs necessary to delay Diablo Canyon's retirement. Considering the selective nature of this program and the state of California's determination to pursue renewable energy, we do not believe that this revision will cause significant disruption to the competitive electricity market.

In addition to Diablo Canyon, there are 54 additional nuclear power plants currently operating in the United States. They represent almost 19% of the country's total energy generation and over 50% of the emissions-free energy generation. These plants are vital to maintaining the reliability of the United State's power grids and will be instrumental in helping the country reach President Biden's target of achieving a 50% reduction of greenhouse gas pollution by 2030.



For this reason, Nucleation Capital also supports the DOE's proposal to extend the deadline for submission of certification applications and sealed bids, currently scheduled for July 5, 2022. This would allow more time for Diablo Canyon and other plants like it to evaluate whether submitting a certification application or sealed bid is in their best interest given this most recent amendment.

Additionally, we would like to see Governor Newsom's third request granted. It asks that the Guidance "[e]xplicitly include grid reliability and support for state clean energy goals, as well as emissions reductions, as a rationale for extending operations." As stated further in the amendment announcement, this proposal was rejected because "the IJJA does not explicitly contemplate including grid reliability and support for state clean energy goals as a requirement for extending operations for purposes of the CNC Program." While it is true that the IJJA does not explicitly use these criteria when it outlined the CNC program, it does use them several times when describing the effect that the legislation will have on the economy. We ask that the Department of Energy honor the intention of the bill and add reliability and support of clean energy goals to the criteria for extending the lifetime of a reactor.

Finally, it is worth noting that the design of the application itself is detrimentally onerous. We agree that the first round of funding should be released as soon as possible to those reactors who need it most, but if the barrier to entry is too high many potential applicants may choose not to apply at all.

The certification application and sealed bid process involves requiring applicants to upload 48 different files answering an array of questions which include 8 long-form narratives and 12 detailed excel spreadsheets. The vast majority of these submissions will be used in the process of assessing the applicant's bid, not in determining if the reactor qualifies for the program.

It is for this reason that we suggest implementing a two-stage process for reactor applicants to submit information. The first stage would consist only of the information required for certification. Once a reactor has been certified, the applicant would be prompted to submit the remaining information. This system would give applicants more time to collect the required information and lower the barrier to entry, increasing the likelihood that reactor owners and operators will take part in the program.

Please make this process as effective and therefore efficient as possible and do not place undue burdens on the operators of the very plants you are trying to save. Every time a plant shuts down, we increase emissions that cause additional climate damage which increases our global risk of hitting climate tipping points from which it is possible we may never recover.

Sincerely,

A handwritten signature in blue ink that reads "Valerie Gardner". The signature is fluid and cursive, with a long, sweeping underline.

Valerie Gardner
Managing Partner

From: Daniel Hirsch <danielhirsch558@gmail.com>
Sent on: Tuesday, June 28, 2022 1:34:31 AM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Opposition to Proposed Change to Nuclear Criteria
Attachments: CBG_opposition_to_nuclear_rule_change.pdf (474.65 KB)

Please find attached a letter strongly opposing the proposal to change the nuclear criteria that Diablo Canyon does not meet.



Board of Directors

Daniel Hirsch, President
Jack Miles, Board Chair
Anthony Zepeda, Secretary
Susan Clark, Treasurer
Cindi Gortner
Pauline Saxon
Ron Pomerantz

June 27, 2022

Secretary Jennifer Granholm
U.S. Department of Energy
Office of Nuclear Energy
Civilian Nuclear Credit Program
rfi-cnc@nuclear.energy.gov

Re: Comment Opposing Proposed Guidance Amendment for Civilian Nuclear Credit Program

Secretary Granholm,

We write to you to express our strong opposition to the Department's proposed Guidance Amendment for the Civilian Nuclear Credit (CNC) program, and to reject this proposed amendment. If DOE does go ahead with the Guidance Amendment, DOE should not extend the deadline past the already-postponed July 5 date.

The Civilian Nuclear Credit program was created, under the 2021 Infrastructure Investment and Jobs Act, with the express intent of supporting nuclear reactors slated to close due to financial hardship. The Diablo Canyon nuclear power plant in California is not such a reactor; as will be discussed, it is not for financial reasons that Diablo Canyon is set to shut down in 2024 and 2025. Nonetheless, in a misguided attempt to keep Diablo Canyon open past its planned close date, the office of California's Governor Newsom wrote to Energy Secretary Granholm in a May 23 letter requesting changes to the CNC Program's Guidance that would make Diablo Canyon eligible. DOE should refuse to grant Governor Newsom's office those changes.

In response to Governor Newsom's request, DOE has proposed to change the CNC Program Guidance to remove the eligibility requirement that a reactor compete in a competitive electricity market (specifically, changing the requirement for the amount of its revenue that a reactor receives from a competitive energy market from "50 percent or more" to, merely, "a material amount"). This would undercut the essential legislative intent for CNC funds to be made available to reactors that are struggling financially. Under this change, CNC eligibility would be expanded to include reactors that are regulated and so can recover their costs at regulated rates, rather than the low rates reactors receive in competitive markets. For example, as a regulated reactor, Diablo Canyon charges regulated rates which allow it to make a profit (and even provide a regulated return on investment). PG&E's own Vice President of Decommissioning and Technical services couldn't have said it more clearly earlier this year: "First and foremost, you know,

Diablo Canyon is not closing because of financial reasons or financial challenges like other plants in the United States are. And that that program, that \$6 billion is focused on — on those reasons.”

There are good reasons beyond the scope of the CNC Program why the lifetime of Diablo Canyon in particular should not be extended. Closing Diablo Canyon will not result in an increase in greenhouse gas emissions, another reactor eligibility requirement under the CNC Program. Renewable energy procurements by the California Public Utilities Commission have already replaced (or will soon replace) the power supplied by Diablo Canyon several times over. Furthermore, there continues to be significant risk of a catastrophic accident every day that the aging Diablo Canyon reactors continue operating. These risks are heightened by what is now known about earthquake risk: the site is surrounded by seismic faults with the potential to produce an earthquake that exceeds the reactor’s design capacity.

Thus, there does not exist good reason for DOE to go out on a limb, making post-hoc changes to program guidance, in order to appease Governor Newsom and attempt to keep Diablo Canyon open. There is something very unseemly about being asked to change the rules when it is clear the potential applicant does not meet the requirements. DOE should reject the proposed Guidance Amendment.

Sincerely,

Haakon Williams
Deputy Director

From: Karp, Aaron I. <Aaron.Karp@pseg.com>

Sent on: Tuesday, June 28, 2022 2:07:05 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Response to Proposed Guidance Amendment - PSEG Nuclear LLC

Attachments: Response to Proposed Guidance Amendment - PSEG Nuclear LLC (1520345v1).pdf (195.9 KB)

Please find attached written comments from PSEG Nuclear LLC regarding the Department of Energy's "Proposed Guidance Amendment for the Civil Nuclear Credit Program" dated June 17, 2022.

Please confirm receipt.

Aaron I. Karp

Associate Counsel - Regulatory

PSEG Services Corporation

80 Park Plaza, T5D

Newark, New Jersey 07102



June 27, 2022

VIA EMAIL

United States Department of Energy
Office of Nuclear Energy
1000 Independence Ave., SW
Washington, DC 20585
rfi-cnc@nuclear.energy.gov

RE: Proposed Guidance Amendment for the Civil Nuclear Credit Program

On behalf of PSEG Nuclear LLC ("PSEG") please find below comments on the Department of Energy's ("DOE" or "Department") June 17, 2022 "Proposed Guidance Amendment for the Civil Nuclear Credit Program" (the "Proposed Amendment"), which seeks public comment on whether the eligibility criteria in the Department's April 19, 2022 Guidance (the "Guidance") should be revised to eliminate the requirement that an applicant ("Applicant") for credits ("Credits") under the Civil Nuclear Credit ("CNC") Program not recover more than 50 percent of a Nuclear Reactor's cost from cost-of-service regulation or regulated contracts.

Respectfully, PSEG urges the Department not to make the changes proposed in the Proposed Amendment and not to further extend the first-round application deadline, and instead to rethink the timing of the CNC Program to allow all reactors that truly compete in a competitive electricity market to immediately apply for Credits. The proposed change to this eligibility requirement is fundamentally contrary to the CNC Program's core reason to exist, which is to preserve nuclear plants at risk of closure for economic reasons. A plant that receives a majority of its revenues outside a competitive market is insulated from those economic pressures and should not be eligible to apply.¹

Below, PSEG addresses each question in the Proposed Amendment.

1. *If DOE revises the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market, should DOE revise the Guidance for a future award cycle, or amend the Guidance for the first award cycle?*

PSEG recommends that DOE not revise the Guidance, whether for this award cycle or a future cycle. As described in PSEG's March 8, 2022 response to the Department's original February 15, 2022 RFI,² the CNC Program should be available to only those merchant nuclear plants that truly "compete in a

¹ For these reasons, PSEG is not aligned with the joint letter submitted by the Edison Electric Institute ("EEI") and the Nuclear Energy Institute ("NEI") dated May 27, 2022 supporting the request from the State of California to modify the definition of "competes in a competitive electricity market" set in the Guidance, and PSEG is not aligned with EEI/NEI's June 27, 2022 comments supporting the Proposed Amendment's proposal to make California's requested modification.

² Notice of Intent and Request for Information Regarding Establishment of a Civil Nuclear Credit Program, 87 Fed. Reg. 8570 (2022).

competitive electricity market.” A plant that has a rate permitting the recovery of its cost of service should not be eligible to apply, even if that rate does not cover 100% of the plant’s costs. Rather, satisfaction of the Infrastructure Investment and Jobs Act’s (the “Act”) requirement that a resource “competes in a competitive market”³ should be based on two concepts:

- (i) Whether the amount paid to a resource for the sale of its energy/capacity output is based on a competitive clearing price; and
- (ii) Whether the amounts paid to the resource as a result of the competitive clearing price exerts competitive pressure on the participating resource such that the resource is incentivized to operate in an efficient manner.

That second criterion is of particular applicability here. That criterion focuses on whether the resource’s participation in a “competitive market” incentivizes the resource to be more efficient—i.e., by forcing the resource to “compete” by keeping its cost of operations as low as reasonably possible. Application of this criterion should disqualify a plant that has a rate permitting the recovery of its cost of service, including a return on investment, even if that recovery does not cover the entirety of its operations. The revenue amounts recovered by such entities in competitive markets do not determine whether they cover their cost of operations as is the case with merchant plants. Resources that have cost of service rates receive revenues independent of the amounts they realize from market sales. These cost of service resources do not have the same incentives to “compete” by keeping their costs as low as possible compared to merchant generators. Indeed, the Department’s consideration of plants that receive even 50% of their funding from cost-of-service rates may be inconsistent with Congress’s purpose in creating the CNC Program. The Act states that the purpose of the CNC Program is “to evaluate nuclear reactors that are projected to cease operations due to economic factors.”⁴ But reactors with cost of service rates have insulation from the “economic factors” such as low commodity prices addressed in the law. And if such entities are considering ceasing to operate because they do not believe they have sufficient funding under their current rates, they have recourse to their respective regulatory agencies for seeking rate increases. The risk of closing down would not be “due to economic factors” but would be due to the failure to obtain necessary rate increases.

Therefore, PSEG recommends against further lowering the threshold for this eligibility requirement.

2. *If DOE amends the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market for the first award cycle, should DOE extend the deadline for submission of certification applications and sealed bids, currently July 5, 2022?*

DOE should not extend the first-round application deadline, but rather use this opportunity to establish a level playing field for all plants, and allow all plants to immediately submit applications for CNC Program funds. The Guidance established a two-tiered application process that prevents nearly all domestic reactors—including PSEG’s three reactors—from applying for CNC funds until Fiscal Year 2023,

³ Pub. Law No. 117-58, 135 Stat. 429, section 40323(a)(1)(A).

⁴ Section 40323(b)(1).

and delays issuing any credits until October 2023, nearly two years after the passage of the Act.⁵ PSEG is concerned that extending the deadline for the first application round may further delay the second round.

PSEG is acutely aware of the impact of any further delay on New Jersey citizens. Since 2019, PSEG's three nuclear plants have received support from New Jersey's Zero Emission Certificate ("ZEC") program—a ratepayer-funded program that would be reduced dollar-for-dollar for every dollar received through the CNC Program. PSEG, therefore, seeks Credits not to benefit itself or its shareholders, but rather to relieve the disproportionate burdens borne by New Jersey citizens, who have been supporting these plants for over three years while citizens of neighboring states have received the benefits of these plants' clean energy.

The Department already has once extended the first-round application deadline. Any additional delay of the CNC Program's timeline may only exacerbate the impact on New Jersey citizens.

* * *

PSEG appreciates the opportunity to supply these comments on the CNC Program, which is an important step by the Biden administration to support at-risk nuclear plants and to achieve the President's goal of making the power grid consist of 100% clean energy by 2035. PSEG sees the CNC Program as the beginning of a path towards valuing the environmental benefits of nuclear power, and as the first of other policy solutions, including and especially the proposed federal production tax credit for existing nuclear, which PSEG views as critical to providing longer-term stability for these critical zero-carbon resources.

PSEG remains available to the Department should it have any questions.



Eric Carr
President and Chief Nuclear Officer
PSEG Nuclear LLC



Joseph F. Accardo Jr., Esq.
Vice President - Regulatory &
Deputy General Counsel
PSEG Services Corporation

⁵ PSEG reiterates its March 8, 2022 comments that the Act permits the Department to receive applications from all eligible reactors in a single application period, regardless of whether those reactors currently receive state support, as PSEG's reactors do.

From: Timothy Smyth <timsmyth@outlook.com>
Sent on: Tuesday, June 28, 2022 5:24:20 AM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] DOE Civil Nuclear Credit Program

All,

I would like to strongly encourage the department to expand the eligibility of phase 1 of the program to plants that may receive over 50% of there revenues from regulated or fixed rates. The most important thing for the department in my opinion at this point is to maintain as much of civil nuclear power fleet as possible and expanding the eligibility of the program in phase 1 while also avoiding moral hazard by making participation contingent on having publicly announced a plant closure prior to the enactment of the infrastructure bill is in my opinion is the best decisions for the Department of Energy

Thanks

Tim Smyth

From: Silverman, Abe [BPU] <Abe.Silverman@bpu.nj.gov>

Sent on: Tuesday, June 28, 2022 2:58:24 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] New Jersey Comments on CNC Amendment Proposal

Attachments: NJBPU Comments on Proposed Guidance Amendment for CNC - As Filed.docx (36.24 KB)

Please find attached comments from the New Jersey Board of Public Utilities on the proposed amendment to the CNC Program guidance. Please let me know if you have any questions.

Regards,

Abe

Abe Silverman
Executive Policy Counsel
New Jersey Board of Public Utilities
44 South Clinton Avenue
Trenton, New Jersey 08625-0350

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
OFFICE OF NUCLEAR ENERGY**

Notice of Intent and Request for Information)	Reference No. 6450-01-P
Regarding Establishment of a Civil Nuclear)	*via email
Credit Program)	Rfi-cnc@nuclear.energy.gov

**OPPOSITION OF THE NEW JERSEY BOARD OF PUBLIC UTILITIES TO THE
PROPOSED GUIDANCE AMENDMENT FOR THE CIVIL NUCLEAR CREDIT
PROGRAM**

On February 15, 2022, the Department of Energy (“DOE”) published in the Federal Register the Notice of Intent and Request for Information Regarding Establishment of a Civil Nuclear Credit Program (“Notice” and “CNC”).¹ The DOE is establishing the CNC program pursuant to the recently passed Infrastructure Investment and Jobs Act (“IIJA”).² On March 8, 2022, the New Jersey Board of Public Utilities (“BPU” or “Board”) filed comments that offered the Board’s perspective on the proposed CNC program, which were, in part, informed by New Jersey’s longstanding support for nuclear facilities and its implementation of a Zero Emission Certificate (“ZEC”) program in 2018.³

On June 17, 2022, the DOE invited public comment on a proposed amendment (“Guidance Amendment”) to the Guidance for the Civil Nuclear Credit Program.⁴ The original

¹ Notice of Intent and Request for Information Regarding Establishment of a Civil Nuclear Credit Program, 87 FR 8570 (2022).

² 42 U.S.C. § 18753.

³ N.J.S.A. § 48:3-87.3 et seq.

⁴ Invitation for Public Comment on U.S. Department of Energy Proposed Guidance Amendment for the Civil Nuclear Credit Program. Issued June 17, 2022.

CNC proposal included eligibility criteria that required an applicant to recover no more than 50 percent of a nuclear reactor’s cost from cost-of-service regulation or regulated contracts, stating that a facility that “recovers more than 50 percent of the Nuclear Reactor’s costs from cost-of-service regulation or regulated contracts will not be deemed to compete in a competitive electricity market.”⁵ The Guidance Amendment proposes to weaken the 50 percent limit and instead adopt allow resources to qualify if they can show that they “receive a material amount of its total revenue from sources that are exposed to electricity market competition.”⁶ The Board offers these comments in opposition to the proposed Guidance Amendment.

I. The Proposed Guidance Amendment is Inconsistent with the Program’s Statutory Requirements.

In the IIJA, Congress evidenced a special concern for nuclear resources operating in *competitive* electricity markets. This focus is plainly set forth in the requirement that a nuclear reactor can only qualify for federal support if it “competes in a competitive electricity market.”⁷ The initial CNC guidance adopted the commonsense reading of the IIJA statutory text that “competes in a competitive electricity markets” means that the facility receive no more than 50 percent of its revenues from cost-of-service regulation or through regulated contracts.

The IIJA’s choice to focus on resources operating in competitive markets appears to have been a deliberate one. The Congressional Research Service’s (“CRS”) report on Nuclear shutdowns, noted that the “[e]conomic pressure on nuclear power plants is less immediate in areas of the country where electricity prices are set by state regulators rather than markets, such

⁵ Notice of Intent and Request for Information Regarding Establishment of a Civil Nuclear Credit Program, 87 FR 8570 (2022).

⁶ Invitation for Public Comment on U.S. Department of Energy Proposed Guidance Amendment for the Civil Nuclear Credit Program. Issued June 17, 2022.

⁷ 42 U.S.C. § 18753, Section 40323(a)(1)(A).

as in much of the Southeast.”⁸ Indeed, the recent, rapid shutdowns of nuclear reactors in the U.S. has largely affected merchant units, *i.e.*, those operating in the competitive electricity markets operated by PJM Interconnection (“PJM”), the New York Independent System Operator (“NYISO”), and the New England Independent System Operator (“ISO-NE”). Merchant units account for slightly less than 50% of the total amount of generation produced from civil nuclear power plants, but account for 100% of the nuclear reactors that were proposed to be shuttered for economic reasons.⁹

The 50 percent requirement is necessary to fulfill the statutory criteria set forth in the IIJA by ensuring that federal funds are directed to reactors facing greater risk of shutting down due to economic pressures. Reactors operating in competitive markets face the day-to-day at the risk of being driven out of the market because their carbon-free generation attributes are not recognized by the existing market structures, and thus are required to either close or seek support either from state regulators – or now, with the creation of the CNC Program, the federal government.

In contrast, the proposed Guidance Amendment would provide financial assistance to nuclear reactors who do not face the same economic risk of competing in competitive markets and thus contradict the plain requirement of the statute by allowing units earning less than 50 percent of their revenue from market sources to be qualify for the CNC program. Nuclear units with greater than 50 percent of operations contracted to a secure revenue stream (*i.e.* cost-of-

⁸ Mark Holt and Phillip Brown, Congressional Research Service, Nuclear Plant Shutdowns, State Interventions, and Policy Concerns 3 (June 10, 2021) (“CRS Report”)

⁹ CRS Report at 6.

service regulation), simply do not operate under the same competitive market pressures as resources where at least a majority of their revenues are subject to merchant electricity markets.

As the Board noted in its initial comments, utilities operating under a cost-of-service regime make complicated tradeoffs about which resource mix to select. Indeed, the proposal that resources derive only a “material amount” of their revenue from competitive operations would allow CNC funds to go to resources that are not facing competitive pressures, but instead are shuttering because the utility that owns the resource (or the state regulators that regulate that utility) elects not to value the carbon attributes of the nuclear reactor.

Using an undefined “material amount” as a critical program eligibility criteria risks skewing the awarding of scarce CNC funds towards nuclear reactors that are not subject to market risks. The CNC program can only achieve its goal of preserving what, for the time being, is the nation’s largest source of carbon-free electricity, if it appropriately prioritizes its limited funding to those units that actually need financial assistance to continue operating in competitive markets.

II. The Proposed Guidance Amendment is Not Properly Justified.

By letter dated May 23, 2022, the Office of the Governor of California requested that the DOE make three revisions to the proposed CNC,¹⁰ one being the Guidance Amendment. The Governor’s letter claims that there are scenarios where a nuclear reactor’s cost-of-service does not cover its operating costs and additional funding is needed, as exemplified by Diablo Canyon Power Plant (“DCPP”).¹¹ These additional costs consist of “extend[ing] operations beyond the

¹⁰ Letter from the Office of the Governor of California to the U.S. Department of Energy dated May 23, 2022.

¹¹ Invitation for Public Comment on U.S. Department of Energy Proposed Guidance Amendment for the Civil Nuclear Credit Program. Issued June 17, 2022.

current license expirations” which increases the owner’s costs for license and permitting, conducting studies, and plant enhancements.¹²

The financial challenges cited by Governor Newsome appear to focus on costs that do not relate to participation in competitive markets, but are true of all nuclear resources. Relicensing and other costs are expected costs of owning and operating a nuclear reactor that all owners incur no matter their business model, and are relatively small compared to the financial risks associated with participating in a competitive market. In jurisdictions with rate-based recovery mechanisms, consumers not only fund plant enhancements and operating licenses, but also the operating losses plants face from participating in a competitive market. In short, the types of costs cited by California are not unexpected operating losses caused by volatile market activities of the type the IIJA directs the DOE to focus on.

While the Board certainly supports keeping nuclear units across the country open, the CRS Report concludes that the major contributing factor to the shutdown of DCPD was settlement with labor and environmental groups, not financial loss or poor economic forecasts.¹³ Whatever the reason, the underlying structure of the IIJA requires that the DOE focus on nuclear resources operating in competitive markets and not on resources that receive the majority of their revenues from captive customers.

III. If the Proposed Guidance Amendments are Adopted in the Final Program, the DOE must ensure that the changes do hamper the award cycles.

The DOE’s invitation for public comment, requested that interested parties respond to the following questions:

- a. If DOE revises the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market, should DOE*

¹² Id.

¹³ CRS Report at 6.

revise the Guidance for a future award cycle, or amend the Guidance for the first award cycle?

- b. If DOE amends the Guidance with respect to the criteria to determine whether a Nuclear Reactor competes in a competitive electricity market for the first award cycle, should DOE extend the deadline for submission of certification applications and sealed bids, currently July 5, 2022?*

While the Board does not support the proposed Guidance Amendment, should the DOE pursue changing the program's eligibility criteria, it is imperative that the DOE use this opportunity to expedite its second application period. Immediately commencing the second funding round would enable the DOE to ensure a fair playing field for all nuclear reactors by inviting *all* eligible reactors to participate. This would ensure that the DOE to evaluate all nuclear applicants against each other and determine what represents the best expenditure of scarce CNC funding. Re-opening the first round appears contrary to the statutory deadlines established by the IIJA, and would almost certainly require delaying the opening of the second round, thereby delaying the possibility that units, including those receiving state support, such as the nuclear reactors subject to New Jersey ZEC Program, receive timely consideration. Otherwise, the DOE could succeed in saving one nuclear unit while putting even more of our country's nuclear fleet on precarious financial footing.

There are 21 known nuclear units currently operating having publicly announced some level of financial uncertainty. Any further delay in awarding federal financial support will only aggregate operating losses that a unit has realized, making it more difficult and expensive to fulfill the CNC program's purpose of providing funds to maintaining the operation of these nuclear units.

IV. CONCLUSION

The Board recommends that the DOE not pursue implementing the Guidance Amendment for the eligibility criteria of the CNC program. The current requirement that a nuclear reactor recovers at least 50 percent of its revenue from the competitive markets is needed to ensure the CNC program's legal validity. It will also ensure that the CNC program prioritizes funding to those nuclear reactors that are at the greatest risk of ceasing operations due to economic reasons.

Respectfully,

NEW JERSEY BOARD OF PUBLIC UTILITIES

By: /s/ Abraham Silverman
Abraham Silverman
Ryann Reagan
David Schmitt
Ian Oxenham
New Jersey Board of Public Utilities
44 South Clinton Ave.
Trenton, NJ 08609
(609) 292-1629
Ryann.Reagan@bpu.nj.gov
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Ian.Oxenham@bpu.nj.gov

Dated: June 27, 2022
Trenton, New Jersey

From: Maxwell Szabo <max@szaboandassociates.com>
Sent on: Tuesday, June 28, 2022 4:53:19 AM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>; jennifer.granholm@hq.doe.gov; Secretary <the.secretary@hq.doe.gov>
Subject: [EXTERNAL] Public Comment Submission from 37 Scientists, Academics & Experts RE: Diablo Canyon
Attachments: Letter to Secretary Granholm.pdf (728.09 KB)

Dear Madame Secretary:

Please see attached correspondence from 37 experts spanning a variety of disciplines. Their letter details the import of keeping the Diablo Canyon power plant online, and therefore they are weighing in to support the proposed amendment.

Thank you for your time and consideration. Regards,

Max Szabo

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Maxwell Szabo, Esq.
C: 415.828.6158
Principal | Szabo & Associates
www.SzaboAndAssociates.com



www.savecleanenergy.com

June 27, 2022

Honorable Jennifer Granholm
Secretary of Energy
1000 Independence Ave. SW
Washington DC 20585

Dear Secretary Granholm,

We are some of the leading scientists, entrepreneurs and academics spanning disciplines including climate science, marine biology, air pollution research, energy, planetary science and land conservation. Many of us have dedicated our lives to studying the problems and solutions to energy security and climate change as well as planetary processes in general.

We write in support of the proposed guidance amendment for the Civil Nuclear Credit (CNC) Program. Given the accelerating threat that climate change poses to life on Earth—let alone the impact of energy independence as the war in Ukraine rages on and as gas prices have reached all-time highs—President Biden's efforts to delay the closure of nuclear power plants like Diablo Canyon are imperative to our climate goals and national security alike. The impact of this amendment cannot be overstated.

The eligibility criteria must be revised to eliminate the requirement that an applicant for credits under the Civil Nuclear Credit (CNC) Program not recover more than 50 percent of a Nuclear Reactor's cost from cost-of-service regulation or regulated contracts. This amendment would enable the State of California to secure funding that would offset the costs, if any, necessary to keep the state's single largest source of carbon-free electricity online.

It is unfortunate that some oppose nuclear power regardless of the consequences, including climate change, air pollution, reduced energy independence, and the corresponding threat to our national security. For example, the Nuclear Information and Resource Service recently submitted a letter with claims that are as cavalier as they are aspirational. California does have state laws and orders from the California Public Utilities Commission (CPUC) that seek to ensure Diablo Canyon would not be replaced by greenhouse gas emitting sources of energy like natural gas. Those laws and orders, however, have not translated into reality.

While California boasts a very high portion of electricity from renewable sources, California will have to boost its total renewable energy production by an enormous 20% in just two years to replace the clean energy being produced at Diablo Canyon.¹ With hydroelectric generation in California falling because of historic droughts (and with that resource likely to remain unpredictable due to climate effects) we are convinced it is impossible to replace the carbon-free electric output of Diablo Canyon at or near the time the plants are scheduled to close.² Even the authors of the joint proposal to close the plant conceded in 2016 that, “the full solution [for Diablo Canyon replacement] will emerge over the 2024-2045 period.”³

The need for more energy—at a time when the state is producing less—came to a head in August of 2020, when a heat wave triggered rolling blackouts across the state. Ultimately, the CPUC’s recently adopted procurement order is ambitious and should be applauded, but it is seemingly impossible to bring

¹ California Energy Commission. (n.d.). *Electric generation capacity and energy*. California Energy Commission. Retrieved September 16, 2021, from <https://www.energy.ca.gov/data-reports/energy-almanac/california-electricity-data/electric-generation-capacity-and-energy>.

² *U.S. energy information administration - eia - independent statistics and analysis*. California’s hydroelectric generation affected by historic drought - Today in Energy - U.S. Energy Information Administration (EIA). (n.d.). Retrieved September 10, 2021, from <https://www.eia.gov/todayinenergy/detail.php?id=48616>.

³ Joint Proposal of Pacific Gas & Electric Company, Friends of the Earth, Natural Resources Defense Council, Environment California, International Brotherhood of Electrical Workers Local 1245, Coalition of California Utility Employees and Alliance for Nuclear Responsibility to Retire Diablo Canyon Nuclear Power Plant at Expiration of the Current Operating Licenses and Replace it with a Portfolio of GHG Free Resources. Available at: <https://www.pge.com/includes/docs/pdfs/safety/dcpp/JointProposal.pdf>

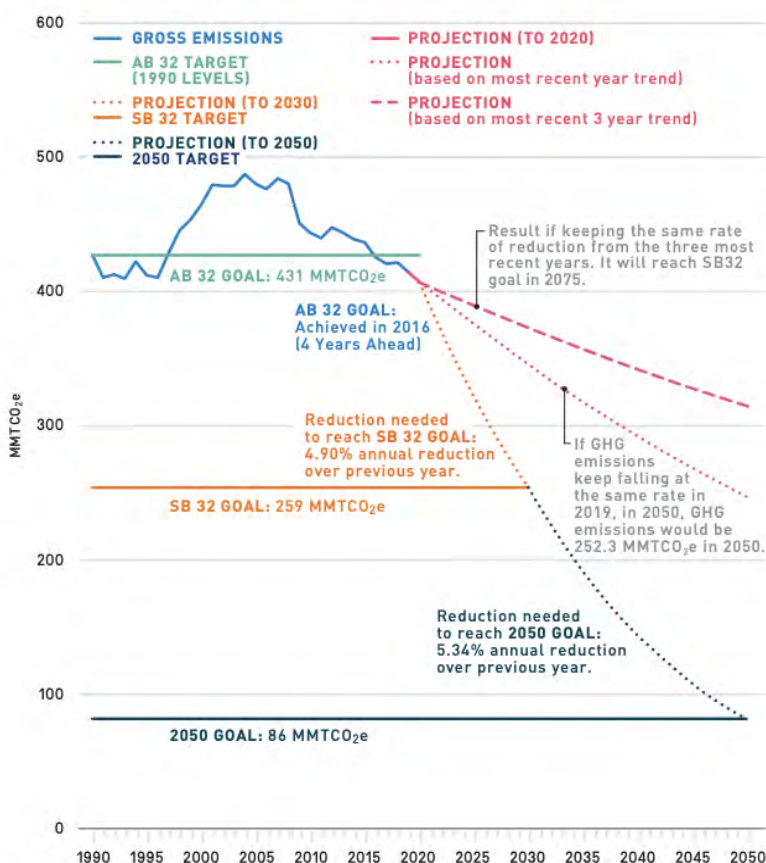
on sufficient resources in time to replace the plant.^{4 5} When that happens California will once again be faced with a choice: Let the lights go out or turn to GHG emitting sources like natural gas. Replacing the Diablo Canyon nuclear power plant will have the same impact as adding more than 1 million gasoline powered cars on our roads and streets per year.

Regrettably, replacing clean nuclear energy with GHG emitting natural gas is exactly what occurred in California following the closure of the San Onofre nuclear power plant. According to the U.S. Energy Information Administration, “after the retirement of the San Onofre Nuclear Generating Station outside Los Angeles, California, natural gas-fired generation *increased* to offset lost nuclear generation and, at the time, relatively low hydroelectric generation.”⁶

Furthermore, California is falling far short of what is needed to comply with the state’s decarbonization goals, which mandate a cut in emissions of 40 percent below 1990 levels by 2030. At the current rate, California will reach its 2030 and 2050 goals in 2063 and

Figure 1. GHG Emissions and Projected Reduction Goals

CALIFORNIA, 1990–2050



NEXT 10 CALIFORNIA GREEN INNOVATION INDEX. Data Source: California Air Resources Board, California Greenhouse Gas Inventory. NEXT 10 / SF • CA • USA

⁴ Order Instituting Rulemaking to Continue Electric Integrated Resource Planning and Related Procurement Processes. California Public Utilities Commission, June 24, 2021. Available at: <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M389/K155/389155856.PDF>

⁵ Order Instituting Rulemaking to Continue Electric Integrated Resource Planning and Related Procurement Processes. California Public Utilities Commission, August 17, 2021. Available at: <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M399/K450/399450008.PDF>

⁶ U.S. energy Information administration - eia - independent statistics and analysis. Fort Calhoun becomes fifth U.S. nuclear plant to retire in the past five years - Today in Energy - U.S. Energy Information Administration (EIA). (n.d.). Retrieved September 10, 2021, from <https://www.eia.gov/todayinenergy/detail.php?id=28572>

2111, respectively. In fact, renewable energy growth has slowed in recent years, with the state adding more gas power capacity (1.5 gigawatts) than any other source, including solar (1.3 gigawatts) in 2020.⁷ Accordingly, closing the Diablo Canyon Power Plant is simply incompatible with meeting California's clean energy goals.

As a recession looms, a recent analysis by researchers at Stanford University and MIT concluded that keeping the plant online could reduce the cost of our zero-carbon transition by \$2.6 Billion in the short term and up to \$21 Billion over the coming decades. This is the first analysis to look at the economics of Diablo Canyon in the context of the zero-carbon power sector requirement established by law; previous analyses that supported the 2018 shutdown assumed that cheaper gas generation would be available to help provide system reliability, and that is no longer the case.⁸

In conclusion, even if California could replace Diablo Canyon with renewable energy in the near term, that is not the right goal. Mere replacement is not enough; replacement would merely freeze emissions at their currently dangerous level. The right goal is to reduce carbon emissions as fast as possible, and the right means to do that is to add renewables on top of Diablo Canyon's carbon free energy, not in place of that energy. This would enable California to achieve its long term decarbonization goals that much sooner.

This source of clean, zero-emissions power, avoids 7.2 million metric tons of carbon from being added to the atmosphere every year, and the reactors at Diablo Canyon provide approximately 10% of the state's entire electricity portfolio.⁹ Considering our climate crisis, failing to pass this amendment could lead to the plant's closure. That would not only be irresponsible, the consequences could be catastrophic. We are in a rush to decarbonize and hopefully save our planet from the worsening effects of climate change. We categorically believe that shutting down Diablo Canyon in 2025 is at odds with this goal. It will increase greenhouse gas emissions, air pollution and

⁷ S&P. (2021, December 14). *2021 California Green Innovation Index*. Next 10. Retrieved June 23, 2022, from <https://www.next10.org/publications/2021-gii>

⁸ Aborn et al, **An Assessment of the Diablo Canyon Nuclear Plant for Zero-Carbon Electricity, Desalination, and Hydrogen Production**, <https://energy.stanford.edu/publications/assessment-diablo-canyon-nuclear-plant-zero-carbon-electricity-desalination-and>

⁹ California Energy Commission. (n.d.). *Electric generation capacity and energy*. California Energy Commission. Retrieved September 16, 2021, from <https://www.energy.ca.gov/data-reports/energy-almanac/california-electricity-data/electric-generation-capacity-and-energy>.

make reaching the goal of 100% clean electricity by 2045 much harder and more expensive.

Thank you for your attention to this important issue.

Sincerely,

1. Richard Rhodes, Science Historian, Pulitzer Prize Laureate
2. Dr. Bruce Damer, Chief Scientist, BIOTA Institute
3. Dr. Kerry A. Emanuel, Professor of Atmospheric Science, MIT
4. Ron Gester, MD, Co-founder & CFO of the Science Council for Global Initiatives; Sierra Club member
5. Dr. James Hansen, Director, Climate Science, Awareness and Solutions, Columbia University Earth Institute
6. Dr. Eric Hittinger, Professor and Interim Department Chair of Public Policy, Rochester Institute of Technology
7. Dr. Jesse Jenkins, Assistant Professor, Department of Mechanical and Aerospace Engineering and the Andlinger Center for Energy and the Environment, Princeton University
8. Dr. Pushker A. Kharecha, Climate Scientist and Deputy Director , Awareness, and Solutions Program, Columbia University Earth Institute
9. Dr. Ross Koningstein, Researcher at Google Climate and Energy Research, PhD in Robotics at Stanford University
10. Dr. Joseph B. Lassiter, III, Heinz Professor of Management Practice in Environmental Management, Retired, Harvard Business School
11. John Mackey, Founder of Animal Compassion Foundation, Board of Directors of Global Animal Partnership, Board of Directors for the Humane Society of the United States, Board Member of Farm Forward, Founder and CEO of Whole Foods
12. Carl Page, President of Anthropocene Institute
13. Dr. David Victor, Professor of Innovation and Public Policy, UC San Diego School of Global Policy and Strategy
14. Dr. George Tynan, Kazuo Iwama Distinguished Professor & Chair of the Mechanical Engineering Department, UC San Diego Jacobs School of Engineering
15. Ramez Naam, Co-Chair Energy and Environment, Singularity University
16. Dr. Zeke Hausfather, PhD, Climate Research Lead, Stripe

17. Dr. Paulina Jaramillo, Professor of Engineering & Public Policy, Carnegie Mellon University
18. Dr. Carolyn Porco, Planetary Scientist, Visiting Scholar University of California, Berkeley, Fellow of the California Academy of Sciences
19. Creon Levit, Chief Technologist and Director of R&D at Planet Labs. Foresight Institute Senior Fellow
20. Dr. Prof. M. Granger Morgan, Hamerslag University Professor of Engineering Carnegie Mellon University
21. Dr Christopher T M Clack, Chief Executive Officer, Vibrant Clean Energy, LLC, Boulder Colorado
22. Christine Peterson, Co-Founder and former president of Foresight Institute. Adviser of Machine Intelligence Research Institute, Global Healthspan Policy Institute, National Space Society, and the Voice & Exit conference.
23. Dr. Sudip Mukhopadhyay, co-inventor of [1234yf](#), the world's first low Global Warming Potential automobile refrigerant
24. Jaan Tallinn, co-founder of the Cambridge Centre for the Study of Existential Risk ([cser.org](#)) and Future of Life Institute ([futureoflife.org](#)). Board of Sponsors of the Bulletin of the Atomic Scientists ([thebulletin.org](#)), and has served on the [High-Level Expert Group on AI](#) at the European Commission, as well as on the Estonian President's Academic Advisory Board. Founding Engineer of Skype.
25. Dr. Adam Brandt, Associate Professor, Energy Resources Engineering, Stanford University
26. Dr. Jacopo Buongiorno, Professor, Nuclear Science and Engineering, Massachusetts Institute of Technology (MIT)
27. Brendan McCord, former HQE/SGE at the Department of Defense, Author of the Department of Defense Artificial Intelligence Strategy, founder of the Joint Artificial Intelligence Center at Center for Green Chemistry and Green Engineering
28. Dr. Michael Springborn, Associate Professor, Department of Environmental Science and Policy, U.C. Davis
29. Dr. Linda Cohen, Professor Emerita of Economics and Law, University of California, Irvine
30. Dr. Suzanne E. Paulson, Chair, Department of Atmospheric and Oceanic Sciences, Prof., UCLA Institute of the Environment and Sustainability, Director, Center for Clean Air, University of California at Los Angeles

31. Dr. Jasper A. Vrugt, Department of Civil and Environmental Engineering, Associate Professor, University of California, Irvine
32. Dr. Soroosh Sorooshian, University of California, Irvine, Distinguished Professor and Director, Institute of the Environment and Sustainability, Center for Hydrometeorology and Remote Sensing
33. Dr. Gregory Okin, Professor and Chair, Department of Geography, Professor, Institute of Environment and Sustainability, University of California, Los Angeles
34. Dr. Edward A. Parson, Dan and Rae Emmett Professor of Environmental Law, Faculty Director, Emmett Institute on Climate Change and the Environment Leader, AI Pulse Project, UCLA School of Law
35. Dr. Charles F. Driscoll, Emeritus Professor of Physics, University of California, San Diego
36. Dr. Thomas O'Neil, Distinguished Professor of Physics, Emeritus, University of California, San Diego
37. Ronald Amundson, Professor, Department of Environmental Science, Policy & Management, University of California at Berkeley

From: Jan Boudart <janboudart1@gmail.com>

Sent on: Tuesday, June 28, 2022 1:07:26 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Comments due yesterday sent here by PDF. Please consider my comments

Attachments: 220627(Due)Jan'sComments.pdf (97.52 KB)

Thank you for the opportunity to comment. Please include my remarks inspite of their lateness. I have included in this email only my last paragraph.

Here is the conclusion of my comments, but the entire document is the attached PDF file.

Conclusion

The hype directed at nuclear power plants is a cover for the prodigious amount of money this nation spends on defense, including nuclear ordnance. Any nation that uses a nuclear explosion or a dirty bomb to kill people will kill a lot more than people and will become an international pariah. We cannot use the weapons that are draining our national treasure and whose production is damaging our land, air and water. As a U.S. citizen, I plead that you not bailout aging, uneconomic reactors and that you allow Palisades and Diablo Canyon to remain closed (Palisades) or close on schedule, if not before (Diablo Canyon).

Every dollar spent on nuclear power makes climate change worse.

Nuclear power is not clean — it has proven itself to be a huge danger to the public — it's not safe, and it's too expensive to consider. And that was when reactors, turbines, and transmission lines were new. Now the dinosaurs Palisades and Diablo Canyon are old and embrittled; if revived, their expense will increase as well as the danger posed to people, plants, animals, aquatic life near them, and ultimately to us all. Not just for myself (I live in Chicago, use Lake Michigan water and observe steam from Michigan nukes from my 7th floor window); but for the irreplaceable welfare of Michiganders and the dear biota of Lake Michigan that I studied for 8 years as a zooplanktologist.

Nuclear Power is Not Clean:

Studies both in Europe and the U.S. (Joe Mangano and Marco Kaltofen at Dresden) have shown an increase in strontium 90 (^{90}Sr) incorporated into baby teeth, and by extrapolation, the bones. In fact after one-third of it is digested, almost 100% of this dangerous, irradiating isotope lands in the bones and teeth to disrupt metabolism and normal cell function for its 30-year biological half-life.¹ But it remains in the environment for 10 times (some say 20 times) longer than its physical half life, also 30 years.² Babies absorb ^{90}Sr 60% more efficiently than adults. The follow-up study by Mangano & Kaltofen and others showed that these very children grew up to have a higher rate of negative health outcomes, including cancer, than the population that lived farther away from nuclear power plants (NPPs).³ But it doesn't stop there. The "dose" enters the body and radiates throughout the lifespan of the person or the tree. ^{90}Sr is just one example of the deadly result of routine — ROUTINE — emissions from supposedly well-functioning NPPs.

Irradiated fuel, spent fuel (SF), from NPPs produces more than 100 isotopes, many of them dangerous to environmental health. [Let's face it: environmental health means you and me and our precious surrounds here on earth, where all locations and territories are sacred. The earth belongs to all of us: "Man is that he might have joy."⁴]

¹ "Strontium can be taken into the body by eating food, drinking water, or breathing air. Gastrointestinal absorption from food or water is the principal source of internally deposited strontium in the general population. On average, 30 to 40% of ingested strontium is absorbed into the bloodstream. Absorption is higher (about 60%) in children in their first year of life. Adults on fasting and low-calcium diets can also increase intestinal absorption to these levels, as the body views strontium as a replacement for calcium. Strontium behaves similarly to calcium (but is not homeostatically controlled, i.e., where the body actively regulates levels within the cells), but living organisms generally use and retain it less effectively. About 15% of what enters the bloodstream is deposited in bone; the remainder goes to soft tissue (**mainly the kidney**) and plasma extracellular fluid and is excreted in urine. The biological half-life of strontium remaining in the body is about 30 years." <http://hpschapters.org/northcarolina/NSDS/strontium.pdf>. ¶: "What happens to [Strontium 90] in the body."

² <https://semspub.epa.gov/work/HQ/175430.pdf>

³ "Previous studies show that when reactors close, there is an immediate reduction in local infant deaths and cancer cases in young children; over time there are reductions in cancer rates of all ages. The recent shutdown should improve public health in the area around Three Mile Island and should serve as a reminder that future energy policies rely on truly "clean" sources, and not harmful ones like nuclear power." <https://www.post-gazette.com/opinion/Op-Ed/2019/10/16/Joseph-Mangano-Need-to-focus-on-health-not-money/stories/201910160054>

⁴ <https://www.churchofjesuschrist.org/study/scriptures/bofm/2-ne/2?lang=eng>

Nuclear Power is Not Safe:

"As of 2014, there have been more than 100 serious nuclear accidents and incidents from the use of nuclear power. Fifty-seven accidents or severe incidents have occurred since the Chernobyl disaster, and about 60% of all nuclear-related accidents/severe incidents have occurred in the USA."⁵ Enumeration these incidents is nauseating.⁶ Government officials (that's Y*O*U*) and nuclear plant owners and operators have access to the stats showing the inevitability, and FREQUENCY, of incidents and accidents; yet greed and denial continue to operate in their (your) psyches such that they (you) continue to spend billions of dollars of our national treasure to support projects that depress the well-being of the population whose work and earnings you are using against us.

Nuclear Power is Too Expensive to Consider

Even if you don't include (1) the cost of future health problems, (2) the social cost of its environmental injustice or (3) the extraordinary cost of the end line of the nuclear fuel chain (SF storage), the present ongoing cost to build and maintain NPPs, both large and "small" — NOT small — SMNRs (Small Modular Nuclear Reactors), exceeds by far the cost of renewals. Many people have made IN-DEPTH studies of the cost of nuclear power compared to the cost of renewable and storage of solar, wind, geothermal, etc. power. The energetic and admirable work of Amory Lovins, Arjun Makijani, Stephen I. Schwartz, The Indigenous Environmental Network led by Tom B.K. Goldtooth, Gordon Edwards and Susan O'Donnell, Mycle Schneider, to name only a VERY few, is testament to this simple fact: HUMANITY and OUR EARTH — PRESENT AND FUTURE — CANNOT AFFORD NUCLEAR POWER.

Do Not Try to Restart Palisades

Entergy's economic wisdom in shutting down Palisades early should be respected. David Lochbaum at the Union of Concerned Scientist has compiled a 38 page list in excruciating detail of the stops, partial shutdowns, re-starts and grid connections of the Palisades NPP, including 5 shutdowns for control-rod valve leaks between March 2017 and December 2018, a period of 22 months.⁷ And indeed, the reason for Palisades' early, permanent shutdown is ". . . increasing Primary Coolant System leak-off due to a degrading seal on the #23 Control Rod Drive Mechanism."⁸ As Lochbaum said, ". . . if Palisades had been a horse, it would have been put down years ago out of mercy."

In addition, Palisades has the reputation for having the most embrittled reactor vessel (RV) in the U.S. fleet. I, personally, waited in 2019 for the coupon from Palisades' RV to be put through the Charpy impact test for brittleness; but it was never to be. Instead computer

⁵ https://en.wikipedia.org/wiki/Nuclear_and_radiation_accidents_and_incidents, reference 10 to Benjamin Sovacool

⁶ https://en.wikipedia.org/wiki/Nuclear_and_radiation_accidents_and_incidents

⁷ Palisades History.pdf, May 24, 2022.

⁸ ML22143A937

algorithms were trusted for how brittle the RV had become. The Japanese have shown that this is a bad idea. For example, in evaluating which NPPs to restart after the March 11, 2011 tsunami, they compared the brittleness algorithm to a real, brittleness test at Genkai 1. The computer prediction was found to be much lower than the physical brittleness when a coupon was put through the physical brittleness test; therefore Genkai 1 was no longer considered as a candidate for re-start.⁹ Thus, ¿why would the algorithm be trusted at Palisades, when its RV brittleness is already in evidence?

¡¡NO!! to All Nuclear Bailouts and Subsidies

The Department of Energy, is catering to directives from the Department of Aggression (Department of "Defense") as it supports the research of companies like NuScale, TerraPower, Kairos, X-Energy, etc. to the tune of \$42.4Billion.¹⁰ This money should be in the Aggression/Defense budget but is hidden from taxpayers in the Energy budget. So the obvious, obscene use of our national treasure to make environment-killing ordnance is even larger, MUCH LARGER, than it looks.

Conclusion

The hype directed at nuclear power plants is a cover for the prodigious amount of money this nation spends on defense, including nuclear ordnance. Any nation that uses a nuclear explosion or a dirty bomb to kill people will kill a lot more than people and will become an international pariah. We cannot use the weapons that are draining our national treasure and whose production is damaging our land, air and water. As a U.S. citizen, I plead that you not bailout aging, uneconomic reactors and that you allow Palisades and Diablo Canyon remain closed (Palisades) or close on schedule, if not before (Diablo Canyon).

⁹ http://www.cnrc.jp/english/newsletter/nit148/nit148articles/irradiation_embrittlement.html

¹⁰ Alfred Meyer's article *NukeWatch*, quarterly is titled "Can Nuclear Power Be the Answer? ISSN 1942-6305 Spring 2022, p.6. An extremely abbreviated set of A.Meyer's qualifications is included in this article along with end notes that support his thesis.

From: Eric Meyer <eric@generationatomic.org>

Sent on: Tuesday, June 28, 2022 4:08:14 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Comments on Proposed Guidance Amendment to the DoE Civilian Nuclear Credit Program

Attachments: Generation Atomic June 27 Public Comment.pdf (127.85 KB)



TO: Department of Energy, rfi-cnc@nuclear.energy.gov

FROM: Generation Atomic

RE: The Proposed Guidance Amendment to the DoE Civilian Nuclear Credit Program

DATE: 06/27/22

We at Generation Atomic agree with the proposed amendment, and with DOE's reasoning as to why the elimination of the 50% competitive market revenue criterion does not violate the letter or intent of the Infrastructure Investment and Jobs Act (IIJA).

We agree with DOE's interpretation, expressed on page 4 of the June 17 Proposed Guidance Amendment document, which states that if a plant's revenue exposure to competitive markets is sufficient to cause an economically-based closure decision, then the IIJA's criterion that a plant "competes in a competitive electricity market" is met. This criterion makes more sense than a simple 50% criterion, given that the goal of the DOE program is to prevent nuclear plant closures for economic reasons. Whether or not the plant will close due to competitive market *forces* is the real issue.

We also concur with DOE's argument that applicants whose reactors are only partially in competitive markets will still have to make the case, in their application, that competitive market losses/risks are sufficient to cause plant closure. A rigorous analysis, based on each plant's specific situation, makes more sense than the application of a simple 50% competitive market criterion. As discussed in the letter from the California Governor, Diablo Canyon provides a specific example of circumstances where a plant will close due to insufficient competitive market revenues, even though it gets most of its overall revenue from the regulated market.

We are not sure we agree with the DOE's decision to not consider grid reliability benefits in the qualification process. While the IIJA does not explicitly list grid reliability as a requirement for certification, it does include grid reliability as a consideration in Subsection (h) ("Report") near the end of the Civil Nuclear Credit Program section. "Avoiding air pollutants while ensuring grid reliability" is a benefit that nuclear plants, in particular, provide.

That said, all applying plants should, by default, meet the reduced air pollution criterion. As long as significant fossil generation remains in the region/grid, the closure of a nuclear plant (i.e., a large source of emissions-free power) will *always* result in a net increase in air pollution. In the case of Diablo Canyon, gas generation still provides ~50% of California's power. It does not matter if overall emissions go down in the years after the closure of a nuclear plant, due to conservation or large additions of other non-emitting generation, as the



net decrease will be significantly be less if the nuclear plant had remained open. The net effect of closure will always be higher emissions. Ensuring that renewable energy growth replaces fossil generation, as opposed to other non-emitting sources like nuclear, is the very intent of the Civil Nuclear Credit Program. It was the clear intent of congress when they drafted that section of the IIJA.

If DOE changes the guidance concerning the 50% competitive electricity market requirement, the new guidance should apply for the first award cycle, as well as future cycles. We can't see any reason why it shouldn't. Also, our understanding is that the Diablo Canyon plant, for which the California Governor's request is being made, will be applying in the first cycle.

With respect to extending the application deadline (again) if DOE amends the guidance, our position is that DOE should do whatever will maximize the amount of nuclear generation that is preserved. Another deadline extension would likely help with Diablo Canyon, as it would give PG&E more time to complete their application. On the other hand, it's possible that further delay would make the Palisades situation worse. We don't have enough information to know which decision would be best with respect to preserving the most nuclear generation. Thus, we defer to DOE's judgment, in that regard.

Signed,

Eric Meyer, Executive Director

James Hopf, Policy Lead

Madison Schroder, Policy Coordinator

Direct Replies To: madison@generationatomic.org

From: Joan Lobell <ojdart@fastmail.fm>

Sent on: Tuesday, June 28, 2022 6:22:23 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

Dear rfi-cnc@nuclear.energy.gov rfi-cnc@nuclear.energy.gov,

The CNC was created by the bipartisan Infrastructure Investment and Jobs Act (IIJA) to mitigate potential greenhouse gas emissions (GHG) increases due to the closure of unprofitable nuclear reactors that operate exclusively in competitive electricity markets. The express language of the IIJA would make the application of the CNC to utility-operated reactors illegal. Extending Diablo Canyon's operation would require much more than modifying the CNC program guidelines and would, in fact, violate the express meaning and intent of the IIJA.

- Diablo Canyon is not closing because it is unprofitable. Its owner, Pacific Gas & Electric (PG&E) operates it as part of its regulated utility and recovers all of its costs plus a regulated rate of return on investment through its regulated electricity rates.

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- There will be no emissions increases due to Diablo Canyon's closure because state law mandates the CPUC and PG&E to ensure that outcome.

The inclusion in the proposed guidance amendments of capital and legal/regulatory costs that a PUC had decided are not prudent or recoverable through approved electricity rates is especially outrageous. IIJA requires that the subsidy only be awarded to reactors that show they are able to operate with lower or no subsidies after CNC expires. In the case of Diablo Canyon NPP in California, the costs that PG&E would incur to continue operating Diablo Canyon include up to \$2 billion in capital projects and regulatory and licensing approvals. Those expenses would normally be spread out over 20 years or more, not incurred in just the 4-year period of the CNC program. If taxpayers bear all of those costs, it would unjustly enrich PG&E shareholders and violate the express intent of the law.

Furthermore, allocating credits to cover the potentially enormous costs suggested by California Governor Newsom would violate the intent of the IIJA, where it specifies that, "To the maximum extent practicable, the Secretary shall use the amounts made available for credits under this section to allocate credits to as many certified nuclear reactors as possible." The "transition" costs for Diablo would consume such a large share of the program's resources for just two reactors (neither of which are certified nuclear reactors) that it would deplete the CNC program of funds that could be applied in the phase 2 solicitation.

Diablo Canyon's closure will do much more for California's climate goals, local communities, and economic and environmental justice than the CNC program. The phaseout plan which California is implementing is a model DOE should promote instead of seeking to preempt it. The proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program violates the law. Do not award illegal credits to Diablo Canyon NNP.

Sincerely,
Joan Lobell
5107 Whiteford Ave
Baltimore, MD 21212

From: Linda Silversmith <lindas@capaccess.org>

Sent on: Friday, June 24, 2022 10:19:36 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

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Sincerely,
Linda Silversmith
260 New Mark Esplanade
Rockville, MD 20850

From: Sandra Cobb <smcobb@beechmere.com>

Sent on: Saturday, June 25, 2022 10:45:48 AM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

Dear rfi-cnc@nuclear.energy.gov rfi-cnc@nuclear.energy.gov,

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Sincerely,
Sandra Cobb
3880 Ellendale Rd
Moreland Hild, OH 44022

From: Harold Watson <watsonh1956@gmail.com>

Sent on: Friday, June 24, 2022 9:58:53 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

Dear rfi-cnc@nuclear.energy.gov rfi-cnc@nuclear.energy.gov,

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Sincerely,
Harold Watson
2223 W Farm Road 98
Springfield, MO 65803

From: Benyo <crystalbenyo@gmail.com>
Sent on: Friday, June 24, 2022 7:38:53 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Diablo

I believe and support the notion that the department of Energy should revise the eligibility criteria to eliminate the requirement that a nuclear reactor applying for credits under the CNC Program not recover more than 50 percent of its cost from cost-of-service regulation or regulated contracts, including cost of maintaining units to continue to operate safely and efficiently.

From: Rochelle Gravance <rmg13@hotmail.com>

Sent on: Friday, June 24, 2022 7:38:56 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

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Sincerely,
Rochelle Gravance
PO Box 1205
Columbus, MT 59019

From: Rob Carter <callcarter@comcast.net>

Sent on: Friday, June 24, 2022 8:42:25 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

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Sincerely,
Rob Carter
2855 Whitetail Cir
Lafayette, CO 80026

From: Lynne Glaeske <lglaeske@comcast.net>

Sent on: Friday, June 24, 2022 7:38:40 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

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Sincerely,
Lynne Glaeske
3945 S Uinta St
Denver, CO 80237

From: I. Engle <1ieengle@gmail.com>

Sent on: Friday, June 24, 2022 7:37:37 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

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Sincerely,

I. Engle

605 Bosque St.

Village of Tularosa, NM 88352

From: Eric Morris <ewmorr@hotmail.com>

Sent on: Friday, June 24, 2022 7:09:35 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program Violates the Law

Dear rfi-cnc@nuclear.energy.gov rfi-cnc@nuclear.energy.gov,

The CNC was created by the bipartisan Infrastructure Investment and Jobs Act (IIJA) to mitigate potential greenhouse gas emissions (GHG) increases due to the closure of unprofitable nuclear reactors that operate exclusively in competitive electricity markets. The express language of the IIJA would make the application of the CNC to utility-operated reactors illegal. Extending Diablo Canyon's operation would require much more than modifying the CNC program guidelines and would, in fact, violate the express meaning and intent of the IIJA.

- Diablo Canyon is not closing because it is unprofitable. Its owner, Pacific Gas & Electric (PG&E) operates it as part of its regulated utility and recovers all of its costs plus a regulated rate of return on investment through its regulated electricity rates.

- Diablo Canyon is closing because PG&E determined in 2016 that doing so would enable it to meet California's renewable energy standard (RES) and emissions standards more rapidly and cost-effectively.

- There will be no emissions increases due to Diablo Canyon's closure because state law mandates the CPUC and PG&E to ensure that outcome.

The inclusion in the proposed guidance amendments of capital and legal/regulatory costs that a PUC had decided are not prudent or recoverable through approved electricity rates is especially outrageous. IIJA requires that the subsidy only be awarded to reactors that show they are able to operate with lower or no subsidies after CNC expires. In the case of Diablo Canyon NPP in California, the costs that PG&E would incur to continue operating Diablo Canyon include up to \$2 billion in capital projects and regulatory and licensing approvals. Those expenses would normally be spread out over 20 years or more, not incurred in just the 4-year period of the CNC program. If taxpayers bear all of those costs, it would unjustly enrich PG&E shareholders and violate the express intent of the law.

Furthermore, allocating credits to cover the potentially enormous costs suggested by California Governor Newsom would violate the intent of the IIJA, where it specifies that, "To the maximum extent practicable, the Secretary shall use the amounts made available for credits under this section to allocate credits to as many certified nuclear reactors as possible." The "transition" costs for Diablo would consume such a large share of the program's resources for just two reactors (neither of which are certified nuclear reactors) that it would deplete the CNC program of funds that could be applied in the phase 2 solicitation.

Diablo Canyon's closure will do much more for California's climate goals, local communities, and economic and environmental justice than the CNC program. The phaseout plan which California is

implementing is a model DOE should promote instead of seeking to preempt it. The proposed Guidance amendment for the Civil Nuclear Credit (CNC) Program violates the law. Do not award illegal credits to Diablo Canyon NNP.

Sincerely,
Eric Morris
1530 Woodland Dr
Peninsula, OH 44264

From: Lauren Rice <lor97973@icloud.com>

Sent on: Monday, June 27, 2022 6:15:14 PM

To: rfi-cnc <rfi-cnc@nuclear.energy.gov>

Subject: [EXTERNAL] Response to Proposed Guidance Amendment

To whom it may concern,

I strongly oppose the DOE both the newly proposed Civilian Nuclear Credit program amendment and the extension of the July 5th deadline. This amendment clearly relaxes eligibility criteria and therefore negatively shifts the impact of the program. Such relaxation will allow money to go to reactors like Diablo Canyon, which operate in regulated contexts and are less likely to financially struggle. Therefore, the money that would be sent to reactors like Diablo Canyon weakens the CNC program and undermines its original intentions, not to mention wasting some of the \$6 billion dollar CNC fund on reactors that do not actually need financial assistance. The Diablo Canyon reactor is not closing for financial hardship reasons, but rather to help California reach renewable energy goals, and therefore is not in need of the CNC program. The DOE should not further delay the application deadline, nor expand the eligibility criteria for the CNC program.

Regards,

Lauren Rice

From: Edwin Lyman <ELyman@ucsusa.org>
Sent: Monday, June 20, 2022 12:43 PM
To: rfi-cnc <rfi-cnc@nuclear.energy.gov>
Subject: [EXTERNAL] Comment period extension request

To the DOE:

The Union of Concerned Scientists requests an extension of at least two weeks to provide comments on this amendment. DOE issued the request late on a Friday afternoon before a three-day holiday weekend, effectively providing only five working days to prepare comments. UCS staff who would play a critical role in comment preparation are unavailable this week, and it is unfair and unreasonable to expect public comments on such a consequential amendment in such a brief time frame.

We would appreciate favorable consideration of our request.

Sincerely,

Edwin Lyman
Director of Nuclear Power Safety
Union of Concerned Scientists
Washington, DC
elyman@ucsusa.org

