



OFFICE OF THE GOVERNOR

May 23, 2022

The Honorable Jennifer Granholm

Secretary of Energy

1000 Independence Avenue, SW

Washington, DC 20585

Re: Request for clarification to the Guidance issued by DOE for the first round of the Civil Nuclear Credit Program application

Dear Secretary Granholm:

Climate change is causing unprecedented stress on California's energy system, simultaneously driving higher demand as more frequent heat waves hit the state and constraining supply as drought conditions reduce hydropower and fires threaten electrical infrastructure. We have experienced serious electricity reliability challenges in the last two summers, including a multi-day extreme heat event across the western United States that resulted in rotating outages in August 2020 and the loss of a major transmission line due to fire in 2021 that reduced import capability into California by 4,000 megawatts. We are also contending with supply chain disruptions, tariff issues, and other factors that are delaying new clean energy installations, as 6,000 megawatts of existing generation is scheduled to retire. The single largest resource planned for retirement is Diablo Canyon Power Plant (DCPP), a zero carbon, base load generator that supplies approximately 8.5 percent of California's total electricity generation and provides capacity during the "net peak" evening hours.

California is committed to continuing to lead the fight against climate change and to taking necessary action to maintain reliability and address rising energy costs. To that end, Governor Newsom's proposed state budget allocates unprecedented funding to

accelerate the clean energy transition, enhance reliability and provide relief to ratepayers. It includes siting reform to substantially speed up permitting and building of clean energy resources in our state. It also includes funding for a strategic reliability reserve, an insurance to support necessary capacity to maintain reliability when the grid is most stressed. The proposed Strategic Reserve will consist of new emergency generation projects, contracts to temporarily extend resources planned for retirement, additional contracts for imports, compensation for the use of backup power with emissions controls, and other sources. The Strategic Reserve is designed to secure electricity for the critical “net peak” hours when there is little or no generation from solar projects.

If adopted, these proposals will speed up the state's transition to clean energy and support reliability. However, additional actions are needed to meet a projected gap of 1,800 megawatts between energy demand at net peak and already ordered procurement before reflecting extreme events and further delays in projects coming online. To maximize options to maintain electricity reliability as new projects come online, the state is evaluating a temporary delay of the planned retirement of DCP. DCP is slated for closure in part based on economic circumstances. Continuing operations would require substantial investments. Thus, a key factor for the state's evaluation of an extension and its economic viability is whether the first award period for the Civil Nuclear Credit Program applies to DCP.

I am writing to highlight some circumstances that may be unique to DCP 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.

The Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58, requires that a plant participate in a “competitive electricity market.” IIJA § 40323(a) (42 U.S.C. § 18753). DOE initially proposed an inclusive definition of this term that would consider a range of factors to assess whether a reactor could be deemed to compete in a competitive electricity market. See 87 Fed. Reg. 8570, 8572-73 (Feb. 15, 2022). The April 2022 Guidance, however, included an interpretation that would exclude reactors that recover more than 50 percent of their costs from cost-of-service regulation. In California's view, this exclusion is overly broad, especially where cost-of-service does not cover the costs for which funding is being sought. For DCP 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. Yet there is no existing cost recovery mechanism for those transition costs. Rather, those transition costs would be operating losses, and under the governing ratemaking, DCP's operator could not recover those costs when it sells output from the plant into the California Independent System Operator electricity market. The fact that the revenue that DCP may generate in the electricity market comes from cost-of-service ratemaking does not

alter the fact that extending operations at DCPD would cause significant economic losses of the sort that the Civil Nuclear Credit Program was designed to address.

To address this issue, DOE could delete the following sentence on cost-of-service ratemaking, which appears at page 11 of the April 2022 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.

As a complement to the above deletion, DOE could:

- Clarify on page 15 and page 18 of the Guidance that operating losses include "costs not recovered through cost-of-service ratemaking."
- Explicitly include grid reliability and support for state clean energy goals, as well as emissions reductions, as a rationale for extending operations.

We appreciate DOE's consideration of these suggestions and request a prompt response as this information is critical for California's due diligence efforts and will help inform the state's actions to maintain energy reliability as it continues leading in the transition to clean energy.

Sincerely,



Ana Matosantos
Cabinet Secretary