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March 6, 2024

Mr. Joe Stephenshaw, Director
Department of Finance
1021 O Street, Suite 3110
Sacramento, California 95814

Dear Mr. Stephenshaw:

In a letter dated February 5, 2024, you notified the Joint Legislative Budget Committee (JLBC), pursuant to SB 101 (Skinner), Chapter 12, Statutes of 2023, of your intention to approve an additional $400 million General Fund loan to Pacific Gas & Electric (PG&E) for the extended operation of the Diablo Canyon Nuclear Power Plant (DCPP).

Last week, the Senate Budget Subcommittee #2 on Resources, Environmental Protection and Energy raised a number of questions about the loan agreement and why the $400 million must be approved at this time. My staff followed up and submitted some additional questions about the state's oversight of the loan and whether or not the payments to PG&E are fully complying with the requirements of SB 846 (Dodd), Chapter 239, Statutes of 2022. Unfortunately, the responses we received were inadequate, and I continue to have a number of concerns about the loan.

First, I am concerned that the terms of the loan agreements may not adequately prevent the General Fund loan from being used in a way that could ultimately benefit shareholders. The terms of the agreement require DWR to provide PG&E with up to $300 million in "performance-based disbursements." According to the agreement, the proceeds of the disbursements cannot be treated as shareholder profits, used to pay any dividends or other business activities prohibited by SB 846. However, it appears that the agreement may allow PG&E to use funds to invest in rate base, pay fees and penalties, or cover any liability that would otherwise be the obligation of the company's shareholders. This means that PG&E would be able to use these funds to pay penalties related to wildfires or other civil and criminal law penalties or invest in rate base which could be interchangeable with shareholder benefits.

Second, I am troubled that the state may be required to forgive a portion of the loan. In January, the U.S. Department of Energy (DOE) finalized approval of a $1.1 billion credit award and payment agreement with PG&E -- $300 million less than the General Fund loan -- that will be used to repay a portion of the state loan. The loan agreement states that the only source of funds to satisfy any PG&E repayment obligation under this agreement shall be the DOE funds, other federal funds and excess revenues from power sales in 2030. DWR does not appear to know whether the DOE will permit the costs associated with Performance-Based Payments to be reimbursed under the award. The agreement goes on to state, "All other Disbursements and Performance-Based Disbursements received by PG&E under this Agreement shall be forgiven." This appears to allow DWR to forgive some portion of the loan. I am concerned that there are no criteria for determining the amount or appropriateness of the loan forgiveness.

Third, I believe we may need to reevaluate the timing of the final two loan payments. The Legislature is in the process of making some very tough budgetary decisions because of the large General Fund deficit. Every effort needs to be made to prevent cuts to housing, transportation, social services and health care. To that end, the timing and availability of the $1.1 billion in DOE funds is critical. It is unclear at this time, why PG&E needs the additional funds when the first tranche of funding ($600 million) was approved in December. Before the final $800 million is approved, we need to have PG&E submit a more detailed spending plan that shows the specific expenditures it must make before the company has access to the DOE funds. This could allow us to spread out the loan payments over a longer period of time, freeing up some desperately needed General Fund in 2024-25. SB 846 included several budget commitments that have since been proposed to be delayed due to the budget condition. We are doing our due diligence to ensure that funds will not be loaned to PG&E indefinitely at the expense of other important state programs. In a time of General Fund scarcity, we need to track every dollar and ensure accountability of these funds.

Because there are so many outstanding questions, I respectfully request an additional 15 days to review the notification letter and ask the Administration to provide the JLBC with more detailed information within 7 days. Specifically, I request the following:

- A full accounting of the "performance-based disbursements" including specific accounting for how PG&E has used and plans to use the funds, a demonstration that these funds do not constitute double recovery of costs from both taxpayers and ratepayers, a demonstration of how the use of these funds does not duplicate and cannot be used for expenses in the scope of any Public Utilities Commission (PUC) or Federal Energy Regulatory Commission rate case, a demonstration that any capital projects for which these funds have been used and have not created or contributed to a return on equity to the company, and a showing that these funds have not freed up any money that can be used to directly benefit shareholders or increase gross or net profits.

- How DWR is working with the PUC to enforce Public Resources Code section 25548.3 and ensure "performance-based disbursements" are not being indirectly used to pay dividends or for shareholder profits.

- A more detailed spending plan for the $1.4 billion loan, including the specific purposes of how and when the funds will be used.

- Justification for why the $400 million is needed at this time given the DOF approved $600 million in December 2023, and a detailed accounting of the funds expended to date to support license renewal by category, purpose, recipient, and other accounting information.

- DWR's estimate of how much of the $1.4 billion loan will be forgiven.

- Detailed information about the $1.1 billion credit award and payment agreement between DOE and PG&E and more specificity about when those funds will be available to repay the loan.

- A specific timeline for the loan repayment.

In conclusion, I appreciate your consideration of a 15-day extension and look forward to detailed responses from DWR.

Sincerely,

Scott Wiener

Scott Wiener
Chair

cc: Members of the Joint Legislative Budget Committee