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SUPERIOR COURT OF THE STATE OF CALIFORNIA

12

COUNTY OF LOS ANGELES

The World Business Academy, a tax-exempt 501(c)(3) public charity, and the Immaculate Heart Community, a tax-exempt 501(c)(3) public charity, Petitioners/Plaintiffs,

vs

California State Lands Commission, an agency of the State of California, Respondent/Defendant.

Pacific Gas & Electric Company, Real Party in Interest

Does 1-10, Real Parties in Interest

No.

VERIFIED PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS (CCP §1094.5)

CEQA CASE (California Public Resources Code §§ 21167, 21168, 21168.5)

13

NOTE: This action contains causes of action/claims pled under the California

14

Environmental Quality Act, Public Resources Code §§ 21000 *et seq.*

15

Petitioners, The World Business Academy and the Immaculate Heart of Mary

16

Community, petition this Court for a writ of mandate under Code of Civil Procedure

17

§1094.5, directed to respondent, the California State Lands Commission, an agency of the

18

State of California, and by this verified petition alleges as follows:

1 **PARTIES**

2 1. Petitioner World Business Academy ("Academy") is a non-profit, public
3 interest organization that works to inspire business to assume responsibility for the whole
4 of society. The Academy's offices are located at 2020 Alameda Padre Serra, Suite 135,
5 in Santa Barbara, California 93103. A major objective of the Academy is to transform
6 the planetary fuel system, as the shift to clean and safe energy is the highest moral calling
7 of our time, especially for the business world. Since its inception, the Academy has
8 created a unique resource in its assemblage of Academy Fellows, who include such
9 world-renowned thinkers as Lester Brown (global environment), Deepak Chopra (healing
10 and wellness), Ervin Laszlo (cultural consciousness), Hazel Henderson (economic
11 futures), Amory Lovins (energy policy), Michael Ray (creativity in business), Lance
12 Secretan (inspirational leadership), Peter Senge (organizational learning) and many
13 others. Publications by the Academy take on many of humanity's primary challenges
14 including environmental degradation; the transition from dirty, fossil-fuel energy to
15 clean, renewable energy; and the existential threat posed by climate change, among other
16 issues. The Academy's work also explores new metrics encompassing corporate
17 valuation, value-driven leadership, expanded development of human potential and
18 productivity, sustainable business strategies and global reconstruction. Specifically, the
19 Academy is authorized by Section 2.1(c) of its Bylaws "[T]o focus on preventing the
20 procurement of irresponsible nuclear energy generators, and/or any other energy
21 generating methodology that has actual or potential damaging effects on the environment,
22 and on reducing economic drivers for environmentally harmful technologies." The
23 Academy is a membership organization with 290 individual members and Fellows (*i.e.*,

1 persons, not businesses) together with over 5,000+ subscribers, many of whom live
2 within 100 miles of the Diablo Canyon nuclear power plant. These individual members
3 and subscribers look to the Academy to represent their interests in advocating for the
4 fastest possible deployment of clean energy in California, the United States and the
5 world. On behalf of its members and Fellows, the Academy actively participated in the
6 proceedings below, which are the subject of this Petition.

7 2. Petitioner, the Immaculate Heart Community ("IHC") is a not-for-profit
8 membership organization that owns and operates a spiritual retreat center in Santa
9 Barbara County, less than 100 miles from the Diablo Canyon nuclear power plant. The
10 members of the IHC are committed to build relations in society that foster access of all
11 persons to truth, dignity, and full human development, and to strategically change
12 practices and situations that impede such access. The members of the IHC believe that a
13 great moral issue of our time is our continual destruction of the Earth. The destruction of
14 the Earth presumes the destruction of all species. The urgent environmental issues of our
15 day include global warming, toxic waste, and dependence on fossil fuel, all of which lead
16 to poverty, violence, hatred and despair. The IHC's headquarters are located at 5515
17 Franklin Avenue, Hollywood, CA 90028. On behalf of its members, the IHC actively
18 participated in the proceedings below, which are the subject of this Petition.

19 3. Respondent, the California State Lands Commission (hereafter,
20 "Commission") is a statewide agency established by the legislature pursuant to the State
21 Lands Act of 1938 (California Public Resources Code -- hereinafter, "Pub. Res. Code" --
22 section 6001 *et seq.*) to manage public lands owned or controlled by the State of
23 California. The Commission is the entity authorized by Pub. Res. Code Section 6301 to

1 exclusively administer and control all un-granted tidelands and submerged lands owned
2 by the State, as well as to lease or otherwise dispose of such lands, as provided by law,
3 upon such terms and for such consideration, if any, as are determined by it. The
4 Commission's main office is located at 100 Howe Avenue, Suite 100 South, Sacramento,
5 California 95825.

6 4. Real Party in Interest, Pacific Gas & Electric Company ("PG&E"), is a
7 natural gas and electric utility provider for northern and central California. PG&E is the
8 lessee of certain interests in real property that may be affected by this action.

9 5. Petitioner does not know the true names and capacities, whether
10 individual, corporate, associate, or otherwise, of Real Parties in Interest Does 1 through
11 10, inclusive, and therefore sues said Real Parties in Interest under fictitious names.
12 Petitioner will amend this petition to show their true names and capacities when same
13 have been ascertained.

14 **THE COMMISSION'S ACTION**
15 **THAT IS THE SUBJECT OF THIS PETITION**
16

17 6. At its regular meeting on June 28, 2016, the Commission took up for
18 consideration under Calendar Item No. 96: "PACIFIC GAS AND ELECTRIC
19 COMPANY (APPLICANT): Consider termination of Lease Nos. PRC 4307.1 and
20 4449.1, a General Lease – Right-of-Way Use and a General Lease – Industrial Use, and
21 an application for a new General Lease – Industrial Use, for a cooling water discharge
22 channel, water intake structure, breakwaters, and associated infrastructure at the Diablo
23 Canyon Power Plant, near Avila Beach, San Luis Obispo County." Calendar Item No. 96
24 was accompanied by a staff report, a copy of which is attached hereto as Exhibit A. (For
25 ease of reference, the foregoing lease application, whether prior to or after Commission

1 action on same, shall be referred to as the "PG&E Lease.") The issuance of the new
2 PG&E Lease on June 28, 2016 had the effect of terminating Leases, PRC 4307.1 and
3 PRC 4449.1, under which PG&E had operated since 1969.

4 7. The single most controversial issue regarding Calendar Item No. 96 that
5 was presented to the Commission at its June 28 meeting was whether or not the
6 Commission's approval of the PG&E Lease first required the preparation of an
7 Environmental Impact Report ("EIR") under CEQA. The Commission's staff report on
8 Calendar Item No. 96 superficially addresses this issue, at page 4, stating:

9 "Approvals and permits for existing facilities, however, are generally
10 categorically exempt from review. The State CEQA Guidelines, in fact,
11 provide as an example '[e]xisting facilities of both investor and publicly-
12 owned utilities used to provide electric power' Further, the 'leasing'
13 of an existing facility is specifically listed as an exempt action by CEQA
14 Guidelines section 15301. An exception to applying the categorical
15 exemption, however, applies where there is a 'reasonable possibility that
16 the activity will have a significant effect on the environment due to
17 unusual circumstances.'" (Footnotes omitted)

18 8. After a brief and incomplete discussion of the seismic issues associated
19 with the Diablo Canyon Power Plant ("Diablo Canyon"), the Commission's staff report
20 on Calendar Item No. 96 went on to conclude, at page 8:

21 "The issuance of the proposed limited-term lease fits squarely into the
22 categorical exemption for existing facilities under CEQA. The question
23 is whether the exception to this exemption applies. It is within the

1 Commission's authority to use its independent judgment, based on the
2 facts, to determine whether there is a reasonable possibility that the
3 issuance of the proposed limited-term interim lease will have a
4 significant effect on the environment due to unusual circumstances
5 based on substantial evidence. If the Commission determines that there
6 is not a reasonable possibility that the issuance of a limited-term lease
7 for existing facilities will have a significant effect on the environment
8 due to unusual circumstances then consideration of the proposed limited
9 term lease is exempt from CEQA."

10 However, the above-quoted language from the Commission's staff report is legally and
11 factually in error. An agency may *not* apply a categorical exemption without considering
12 the evidence in its files of potentially significant effects, regardless of whether that
13 evidence comes from its own investigation, the proponent's submissions, a project
14 opponent, or some other source. As is alleged below, public participants in the
15 Commission's proceedings on Calendar Item No. 96 provided numerous examples of
16 unusual circumstances associated with the on-going operations of Diablo Canyon
17 that *would result* in significant adverse environmental impacts. An agency presented
18 with such evidence must determine, based on the entire record before it, including
19 contrary evidence regarding significant environmental effects, whether there is an
20 unusual circumstance that justifies removing the project from the exempt class. Because
21 Respondent Commission failed to conduct a careful factual weighing of this evidence,
22 Respondent Commission abused its discretion, in violation Pub. Res. Code Section
23 21168.5.

1 9. After receiving extensive written materials into the record, including
2 substantial evidence provided by Petitioner and other parties, including the Alliance for
3 Nuclear Responsibility and the San Luis Obispo Mothers for Peace, which addressed the
4 unusual circumstances associated with the PG&E Lease and the concomitant need for a
5 full-fledged environmental review under CEQA before Respondent Commission
6 approved the PG&E Lease (*see*, Exhibit B, attached hereto, which includes all three sets
7 of these written comments), and after hearing the oral testimony of numerous speakers,
8 including representatives of Petitioners, the Commission determined that the issuance of
9 the PG&E Leases was "not a project" for purposes of the Commission's compliance with
10 the California Environmental Quality Act ("CEQA"), Pub. Res. Code Section 21000 *et*
11 *seq.* *See*, Exhibit C, a copy of the first two pages of the Commission's June 28, 2016
12 meeting agenda, which shows the results of its deliberations on Calendar Item No. 96.

13 10. The Commission's decision on Calendar Item No. 96, predicated as it was
14 on its staff's report, was factually erroneous, as well as arbitrary and capricious and a
15 prejudicial abuse of the Commission's discretion, in that it entirely ignored the significant
16 and substantial evidence presented to the Commission -- both in written comments
17 submitted before the June 28 meeting, as well as in numerous public comments presented
18 to the Commission at that meeting -- that there were numerous "unusual circumstances"
19 at play in this case, such that CEQA was, in fact, triggered in this case, and that the
20 Commission therefore *was* legally obligated to prepare an EIR before taking action on the
21 PG&E Leases.

22 11. Moreover, the Commission's decision on Calendar Item No. 96 was
23 legally erroneous, in that the Commission, by adopting the recommendation in its staff

1 report, claimed that it was entitled to use its "independent judgment" in determining
2 whether there was "a reasonable possibility that the issuance of a limited-term lease for
3 existing facilities will have a significant effect on the environment due to unusual
4 circumstances." However, the Commission's claim to rely on its "independent judgment"
5 in this regard was legally erroneous. Rather, the standard of review under CEQA is
6 whether the public agency's "act or decision is supported by substantial evidence *in light*
7 *of the whole record.*" (Emphasis added.) See, Pub. Res. Code Section 21168.

8 12. As will be demonstrated below, and in the additional Exhibits attached
9 hereto, the Commission utterly failed to consider "the whole record" before it in
10 determining whether there were, or were not, unusual circumstances in this case that
11 called out for the preparation of an EIR, even though the PG&E Lease was for existing
12 facilities. The Commission's failure in this regard was an abuse of discretion on the facts
13 in light of the whole record, thereby constituting a prejudicial abuse of its discretion
14 under CCP Section 1094.5.

15 **THERE WERE NUMEROUS UNUSUAL CIRCUMSTANCES**
16 **APPLICABLE IN THIS CASE, EACH OF WHICH ESTABLISHES**
17 **A REASONABLE POSSIBILITY THAT THERE WILL BE A**
18 **SIGNIFICANT ADVERSE EFFECT ON THE ENVIRONMENT IF**
19 **THE LEASES IN QUESTION ARE NOT OVERTURNED**
20

21 13. **Unusually Vulnerable Seismic Location.** The extension of the PG&E
22 Lease to 2025 will increase the public's exposure to potential reactor core-damaging
23 seismic risk at Diablo Canyon by an amount equal to twenty-one percent (21%) of its
24 operating history to date. Whether this poses a "reasonable possibility" of significant
25 effects on the environment requires careful evaluation of seismicity at Diablo Canyon, an
26 analysis that the Commission did not conduct prior to approving the lease applications

1 submitted by PG&E. Such a seismicity analysis should incorporate the following items:

- 2 ▪ Seismic risk is a particular concern for Diablo Canyon's Unit 1 reactor, which
3 the United States Nuclear Regulatory Commission ("NRC") identified in 2013
4 as the third-most embrittled reactor in the United States.¹
- 5 ▪ The California Energy Commission's ("CEC") 2015 Integrated Energy Policy
6 Report contains a stunning graph from the Electric Power Research Institute
7 regarding the ground motion response spectrum acceleration reported by each
8 U.S. nuclear plant, noting "the unique nature of the seismic analysis imposed
9 upon" Diablo Canyon as the "most significant outlier" in the national nuclear
10 fleet."²
- 11 ▪ There is an ongoing controversy over whether Diablo Canyon is in current
12 compliance with its licensed seismic design basis, the so-called Double
13 Design Earthquake ("DDE"). As the NRC has acknowledged since 2012,
14 "using the DDE as the basis of comparison will most likely result in the
15 Shoreline fault and the Hosgri fault earthquake being reported as having
16 greater ground motion" than the plant's Safe Shutdown Earthquake."³ The
17 NRC senior resident inspector at Diablo Canyon, who cited PG&E for
18 violation of its seismic design standard, and recommended that the plant be
19 shut down until compliance could be established, was subsequently

¹ United States Nuclear Regulatory Commission, Summary of the March 19, 2013, Public Meeting Webinar Regarding Palisades Nuclear Plant, Item 4, Page 5 (<http://pbadupws.nrc.gov/docs/ML1310/ML13108A336.pdf>)

² [California Energy Commission, 2015 Integrated Energy Policy Report](http://www.energy.ca.gov/2015_energypolicy/), p. 183 (http://www.energy.ca.gov/2015_energypolicy/).

³ [Letter to Edward D. Halpin from Joseph M. Sebrosky](#), NRC Senior Project Manager for Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, October 12, 2012, p. 4. See also [Testimony by Dr. Cliff Munson](#), NRC seismologist, 2013 CEC workshop. Docket No.13-IEP-IJ, June 19, 2013, Transcript, p. 89.

1 transferred to an NRC position in Chattanooga, Tennessee. His determination
2 and recommendation remains unsatisfactorily resolved.

- 3 ■ Figure 56 from the CEC's 2015 Integrated Energy Policy Report graphically
4 displays the substantial exceedance of the DDE standard in the probabilistic
5 seismic hazard assessment contained in PG&E's March 11, 2015 Seismic
6 Hazard Re-evaluation Report. The CEC's conclusion: "Presumably for this
7 reason, and after a preliminary review of PG&E's PSHA study, the NRC
8 directed PG&E to undertake additional earthquake risk analysis and to submit
9 the additional analysis by June 2017."⁴

- 10 ■ The NRC in 2012 directed PG&E to notify the NRC if, "during the collection
11 of the data, new faults are discovered or information is uncovered that would
12 suggest the Shoreline fault is more capable than currently believed."⁵ PG&E
13 did just that on September 10, 2014, admitting that "additional offshore
14 seismic studies revealed that the Shoreline fault is longer by extending farther
15 south than in the Shoreline Fault report (Reference 3), and therefore, more
16 capable as described in the enclosure."⁶

17 14. **Unusual Risk from Tsunami and Rising Ocean levels.** Furthermore,

18 the risk associated with tsunamis was never considered when Diablo Canyon was
19 approved and built. The possibility of such a risk has only become apparent in the past
20 three years, following the 2011 Fukushima catastrophe in Japan that was caused, in part,

⁴ [California Energy Commission, 2015 Integrated Energy Policy Report](#), p. 183.

⁵ [Letter from Joseph M. Sebrosky](#), NRC Senior Project Manager for Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, to Edward D. Halpin, PG&E Senior Vice President and Chief Nuclear Officer, October 12, 2012, p. 4

⁶ [PG&E Letter DCL-14-081 from Edward D. Halpin](#), PG&E Senior Vice President and Chief Nuclear Officer, to NRC Commissioners and Staff, September 10, 2014, p. 2.

1 by an unanticipated tsunami associated with the earthquake that hit that plant from a
2 “subduction” fault. A similar subduction fault located directly off shore of Diablo
3 Canyon is well known. The tsunami contributed directly to failure of the Fukushima
4 intake structures, which are, in many ways, the Achilles heel of such plants, including
5 Diablo Canyon. More to the point, evidence of historical tsunamis having occurred at
6 precisely that section of the central California coastline prove that a tsunami event,
7 resulting from subduction plate movement, could clearly happen again. No examination
8 of this issue, or any findings with regard to this issue, were made by the Commission
9 even though significant geologic data was provided to it. Similarly, in the case of Diablo
10 Canyon, ocean level rise was not considered as a possibility at the time that Respondent
11 Commission granted the original Leases to PG&E. However, since that time, a large
12 body of scientific data and analysis has been gathered, establishing an accelerating rate in
13 rising ocean levels that could directly impact breakwater functionality and the integrity of
14 intake structures, especially in severe storms or in conjunction with a localized tsunami.
15 In the case of Diablo Canyon, such intake structures are located within the area subject to
16 the PG&E Leases, and the vulnerability of these intake structures to tsunamis and rising
17 ocean levels could lead to an emergency shutdown of the plant and a serious, unplanned
18 release of radioactivity to the atmosphere. Moreover, a recently published report⁷
19 identifies a heretofore-unanticipated local tsunami risk, immediately proximate to the
20 Lease site. These findings constitute yet another unusual circumstance that calls for the
21 preparation of a full EIR in connection with Respondent Commission's consideration of

⁷ Dr. R.T. Sewell, "A Preliminary Numerical Study of the Hazard from Local Landslide Tsunami Scenarios at the Diablo Canyon Site in Central California," Summary Report (Draft), November 22, 2003, prepared for Southwest Research Institute, U.S. Nuclear Regulatory Commission.

1 the PG&E Leases.

2 15. **Likely Adverse Health Impacts from Radioactive Emissions during**
3 **Plant Operations.** On March 14, 2016, Petitioner Academy's representatives, along with
4 legal counsel, met with Commission staff and counsel for the Commission in order to
5 discuss the legal and public policy requirements for the preparation of a full EIR under
6 the CEQA prior to any action on the part of the Commission to grant the PG&E Lease.
7 During that meeting, the Academy made a convincing case that a full EIR under CEQA
8 was required in connection with the PG&E Lease -- despite the language in the State's
9 CEQA Guidelines that exempts review of existing facilities except where there is "a
10 reasonable possibility that the activity will have a significant effect on the environment
11 due to unusual circumstances".⁸

12 16. At said meeting, the Academy presented detailed information on a
13 recently completed 2014 study on the health impacts associated with the continuing
14 operation of Diablo Canyon (the "2014 Study"). This study demonstrated that in the
15 decades following the opening of Diablo Canyon in the mid-1980s, San Luis Obispo
16 went from being a low cancer county to a high cancer county, and also documented
17 significant increases in infant mortality and low birth weights in the zip codes closest to
18 and downwind from the reactors. *See*, Exhibits D and E, attached hereto. At the March
19 14, 2016 meeting, Petitioner Academy's representatives also presented Commission staff
20 with publicly available information regarding 2010-2014 increases in infant mortality and
21 noted that it was commissioning a scientific study of this new data (the "2016 Study").
22 This 2016 Study, prepared by a world-renowned radiation health expert concerning on-

⁸ *See*, Cal. Code Regs. tit. 14, sec. 15300.2(c).

1 going infant mortality risks associated with Diablo Canyon, was completed just weeks
2 before the Hearing of June 28th and was submitted to a peer-review journal on July 13,
3 2016. The 2014 Study and the 2016 Study demonstrate that the continuing operation of
4 the plant causes serious adverse public health impacts, including excess infant mortality.
5 Highlights of the infant mortality data in the 2016 Study were provided to the
6 Commission at the June 28th hearing, at which point the Academy specifically invited the
7 Commission to examine the findings of the 2016 Study as part of its EIR. *See* Exhibit F
8 attached hereto. There can be no doubt that excess infant mortality, as well as other
9 serious adverse health effects caused by the routine emissions of Strontium-90 that result
10 from the normal operations of an existing nuclear powerplant, rises to the level of
11 constituting an "unusual circumstance."

12 17. Incredibly, at the June 28, 2016 Commission meeting, the Commission did
13 not even acknowledge or reference the Academy's meeting with Commission staff, the
14 statistical studies submitted in support of its findings, or the written comments supplied
15 by the Academy in advance of that meeting regarding the likelihood of adverse health
16 impacts from the radioactive emissions, particularly Strontium-90, that are a *normal*
17 *result* of Diablo Canyon's continuing operations.

18 18. The high priority that society places on protecting the public health from
19 radioactive emissions cannot be overstated. Indeed, President John F. Kennedy, in
20 support of his decision to sign the 1963 nuclear test ban treaty in order to prevent
21 additional amounts of Strontium-90 and other radioactive isotopes from entering the
22 atmosphere due to above-ground nuclear weapons testing, stated that "*The loss of even*
23 *one human life, or the malformation of even one baby--who may be born long after we*

1 *are gone--should be of concern to us all. Our children and grandchildren are not*
2 *merely statistics toward which we can be indifferent.* (Emphasis added)”⁹

3 19. Given the high level of public interest in this issue, as well as the intrinsic
4 relationship of the common law Public Trust Doctrine that the Commission is obligated
5 to observe and enforce in its decision-making process in furtherance of the objectives of
6 CEQA, the Commission nonetheless excluded any consideration of the foregoing adverse
7 health impact information in its determination of whether or not its action on the
8 requested PG&E leases required the preparation of an EIR under CEQA. Indeed, in his
9 testimony at the June 28, 2016 hearing, Rinaldo Brutoco, Petitioner World Business
10 Academy's President, provided the statistic, based on the 2016 Study, that up to 24 as yet
11 unborn children would die within the first year of life as a result of radioactive emissions
12 from the continuing operation of Diablo Canyon if the requested PG&E Leases were
13 granted. Mr. Brutoco also offered to supply Respondent Commission with a copy of the
14 2016 Study in order to enable it to evaluate its conclusions as part of its CEQA review of
15 the requested PG&E Leases. Indeed, the omission by the Commission of this
16 information -- which is in the public record of the Commission's decision in this case, if
17 not in the Commission's staff report -- suggests that had the Commission actually given
18 serious consideration to this statistical analysis concerning adverse health impacts, it
19 could and should have, denied the application of a categorical exemption to the PG&E
20 Leases.

21 20. **Cumulative and Devastating Impacts to Marine Life from (i)**
22 **Abnormal Heat (18.5°F) Via Intake/Outtake Pipes and (ii) Excessive Salinity from**

⁹ John F. Kennedy Presidential Library and Museum, “[Address to the Nation on the Nuclear Test Ban Treaty, 26 July 1963](#),” ¶¶ 20 (last sentence) and 21.

1 **Brine Deposits of Desalination Plant.** The Resolution adopted on April 17, 2006
2 articulating Commission policy on once-through-cooling observes that "once through
3 cooling significantly harms the environment by killing large numbers of fish and other
4 wildlife, larvae and eggs" and "also significantly adversely affects marine, bay and
5 estuarine environments by raising the temperature of the receiving waters, and by killing
6 and displacing wildlife and plant life ..." ¹⁰

7 21. Diablo Canyon is California's largest marine predator, in the words of the
8 Coastal Commission staff recommendation to the State Water Resources Control
9 Board.¹¹ Every day, Diablo's cooling system processes 2.5 billion gallons of seawater,
10 the equivalent of 3,788 Olympic-size swimming pools. An estimated 1.5 billion fish eggs
11 and marine larvae a year get swept along for the ride, churned, cooked and killed. Over
12 Diablo's 30-year operational lifetime approximately 45 billion fish eggs and marine
13 larvae have died. Another nine years will increase the number to over 58 billion deaths,
14 clearly an unusual circumstance. Simply put, over time, Diablo Canyon has seriously
15 diminished California's marine populations as well as reduced our oceanic food supply,
16 and the cumulative, potentially exponential impacts from nine more years of plant
17 operations is an unusual circumstance that must be assessed in a comprehensive
18 environmental review under CEQA.

19 22. The area covered by the PG&E Lease offers habitat to at least 6
20 endangered species. These species were never listed nor was there ever a formal

¹⁰ [Resolution by the California State Lands Commission regarding Once-Through Cooling in California Plants, April 17, 2006, page 1, ¶ 7.](#)

¹¹ Comments of Tom Luster, California Coastal Commission, on the matter of once-through-cooling at the Diablo Canyon Nuclear Power Plant, delivered by CCC Legislative Director Sarah Christie to the Commissioners of the State Water Resources Control Board. November 18, 2014. Sacramento, California (<https://www.youtube.com/watch?v=VcqQtHBq6m8>, at 2:00)

1 regulatory consideration of the tidelands impacted by operations under the PG&E Lease
2 as habitat for endangered species. It is generally accepted by all CEQA experts that “a
3 categorical exemption does not apply if an activity may have a significant impact because
4 of unusual circumstances (such as an endangered species habitat)”.¹²

5 23. There is also cause for concern regarding adverse environmental impacts
6 that result from the operation of Diablo Canyon's desalination plant which, like the
7 nuclear plant, has never before been assessed in the context of an EIR under CEQA. The
8 desalination plant was installed as part of the 1985 license to operate Diablo Canyon. It
9 discharges toxic chemicals and brine into the cove, which is designated as endangered
10 species habitat. The desalination facility was not mentioned in the original Leases with
11 Respondent Commission. Over generations, the cumulative impacts of non-reproduction
12 of 1.5 billion fish and invertebrates a year adds up to trillions of lost lives over the past 30
13 years. Water overheating, ocean acidification, radiation, and heavy metals being
14 discharged into the cove have cumulative effects and were never part of any baseline
15 study. For example, Ocean Acidification is the subject of several recent articles and
16 reports,¹³ and acidification is weakening many of the phyto- and zoo-plankton, thereby
17 exacerbating the loss and damage to marine life from heat, radioactivity, desalination
18 brine and chemical discharge by rendering the populations more vulnerable.

19 24. Taken together, all of the foregoing cumulative adverse impacts on marine
20 life that *will result* from operation under the PG&E Lease, many of which have only been

¹² Bass, et al., CEQA Deskbook (2d), Solano Press Books, p.31.

¹³ See, e.g., "Nighttime Dissolution in a Temperate Coastal Ocean Ecosystem Increases Under Acidification," Lester Kwiatkowski, Brian Gaylord, Tessa Hill, Jessica Hosfelt, Kristy J. Kroeker, Yana Nebuchina, Aaron Ninokawa, Ann D. Russell, Emily B. Rivest, Marine Sesboué & Ken Caldeira. *Scientific Reports*, March 18, 2016. <http://www.nature.com/articles/srep22984>

1 identified in the past few years, constitute an unusual circumstance that demands the
2 preparation of a full EIR in connection with Respondent Commission's consideration of
3 the PG&E Lease.

4 25. **Terrorist Attack Resulting in Core Meltdown.** We now live in a world
5 where much of our infrastructure is controlled by artificial intelligence ("AI"). Since
6 everything from traffic lights to our electric grid is run by AI systems, these systems are
7 vulnerable to the same constant attacks suffered by any online resource, and can be
8 breached by unscrupulous saboteurs located anywhere on the planet. Last December,
9 several Ukrainian power companies experienced a cyber-attack that resulted in
10 unscheduled power outages that lasted up to six hours and impacted over 200,000
11 customers. On March 7, 2016, the Department of Homeland Security's Assistant
12 Secretary Dr. Andy Ozment and Deputy Assistant Secretary Brigadier General Gregory J.
13 Touhill wrote:

14 "U.S. critical infrastructure entities have been affected by targeted
15 intrusions in recent years, and it is imperative that critical infrastructure
16 owners and operators across all sectors are aware and up-to-date on the
17 cyber threat landscape and the measures they can take to protect their
18 assets."¹⁴

19 26. Nuclear facilities and nuclear materials in the private sector present
20 several different types of targets to a terrorist—wherever nuclear fuels are produced,
21 transported, and consumed, and wherever production wastes are accumulated.¹⁵ Nuclear

¹⁴ Dept. of Homeland Security, "[DHS Works with Critical Infrastructure Owners and Operators to Raise Awareness of Cyber Threats](#)," March 7, 2016, Para. 3.

¹⁵ [Congressional Research Service, Nuclear Power Plants: Vulnerability to Terrorist Attack, CRS Report for Congress RS21131](#) (Updated February 4, 2005).

1 reactors become preferred targets during military conflict and, over the past three
2 decades, have been repeatedly attacked during military air strikes, occupations, invasions
3 and campaigns.¹⁶ Terrorists could also target nuclear power plants in an attempt to
4 release radioactive contamination into the community. The United States 9/11
5 Commission has said that nuclear power plants were potential targets originally
6 considered for the September 11, 2001 attacks (in fact, the primary back up to attacking
7 the World Trade Center was a nuclear plant near the New York metropolitan area).¹⁷ If
8 terrorist groups could sufficiently damage cooling and/or safety systems to cause a core
9 meltdown at a nuclear power plant, and/or sufficiently damage spent fuel pools (with
10 electronic sabotage or a “dive bombing” small plane), such an attack could lead to
11 widespread radioactive contamination. Furthermore, according to a 2004 report by the
12 U.S. Congressional Budget Office, “The human, environmental, and economic costs from
13 a successful attack on a nuclear power plant that results in the release of substantial
14 quantities of radioactive material to the environment could be great.”¹⁸ An attack on a
15 reactor’s spent fuel pool is also a serious threat, as these pools are less protected than the
16 reactor core. The release of so much radioactivity could lead to thousands of near-term
17 deaths and greater numbers of long-term fatalities.¹⁹

18 27. There is a more than a reasonable possibility that California's elongated

¹⁶ Benjamin K. Sovacool (2011), “[Contesting the Future of Nuclear Power: A Critical Global Assessment of Atomic Energy](#)”, World Scientific, p. 192.

¹⁷ [The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States. National Commission On Terrorist Attacks](#) (Cosimo, Inc). July 30, 2010. ISBN 978-1-61640-219-8.

¹⁸ Congressional Budget Office, “[Homeland Security and the Private Sector, Civilian Nuclear Power - Vulnerabilities from Attacks on Power Reactors and Spent Material](#)”, p. 9.

¹⁹ Charles D. Ferguson & Frank A. Settle (2012). “[The Future of Nuclear Power in the United States](#)” (PDF). Federation of American Scientists.

1 and highly vulnerable electric grid can be brought down by sophisticated cyber (and
2 physical) attacks at any time over the next nine years. Because Diablo Canyon relies on
3 grid power when disabled, these malicious digital assaults could trigger a devastating
4 nuclear meltdown. Such a scenario, increasingly likely in an internationally conflicted
5 world,²⁰ must be considered reasonably possible and would likely lead to severe negative
6 environmental impacts, which certainly rises to the level of an "unusual circumstance"
7 requiring analysis of the PG&E Lease under CEQA.

8 28. **Leakage and Cumulative Buildup of Radioactive Waste.** Nuclear
9 facilities have one large drawback in that their operation results in the creation of large
10 amounts of low- and high-level radioactive waste. High-level waste consists of spent
11 uranium fuel rods that can no longer be used for energy or reprocessed into another
12 element that can yield power. Low-level waste consists largely of water and used
13 equipment from the nuclear facility in which power is being generated. Both types of
14 waste are highly toxic.

15 29. The United States uses light water reactors, which only use 1% of the
16 natural energy in the mined uranium for power, while breeder reactors are able to use
17 75% of this energy.²¹ While high-level waste represents only five-to-ten percent of the
18 nuclear waste each year in the U.S., its long-term storage is an important concern,
19 because it is highly toxic, and because some of the radioactive isotopes found in this
20 high-level waste have a radioactive half-life of thousands of years. Low-level waste is
21 more easily dealt with as radioactivity levels in low-level waste can decay to a safe level

²⁰ New York Times, "[Belgium Fears Nuclear Plants Are Vulnerable](#)," March 25, 2016.

²¹ HyperPhysics.com. Retrieved from the World Wide Web: <http://hyperphysics.phy-astr.gsu.edu/hbase/nucene/fasbre.html>.

1 in ten to one hundred years. However, nearly two million cubic feet of low-level waste is
2 created each year, presenting a large threat from a volumetric standpoint.²²

3 30. Low- and high-level wastes are dangerous to the environment surrounding
4 nuclear power plants, as well as to the people living in nearby communities. Should
5 waste not be stored adequately, radioactive substances could find their way into ground
6 water, or contaminate other valuable resources or sites. Moreover, nuclear waste must be
7 permanently contained for the safety of the environment, and the global community is not
8 prepared to manage its indefinite storage. Given the failure of the United States
9 government to address the nuclear waste problem associated with the operation of nuclear
10 power plants (which it was obligated to do under the Nuclear Waste Policy Act many
11 years ago, but has failed to comply with)²³, the reasonableness of society’s expectation of
12 continued reliance on such plants is a very serious public policy question. The
13 cumulative impacts from this very serious problem certainly rises to the level of an
14 unusual circumstance that triggers a need for careful scrutiny under CEQA regarding the
15 continued operation of Diablo Canyon for an additional nine years, which will create vast
16 amounts of both high- and low-level radioactive waste.

17 31. **Status as Sole Remaining Nuclear Plant in California.** As the
18 California Supreme Court determined in *Berkeley Hillside Preservation Council v. City*
19 *of Berkeley* (2015) 343 P.3d 834, 846, the unusual circumstances exception applies
20 whenever, “the project has some feature that distinguishes it from others in the exempt
21 class....” If any such feature is present, CEQA sets an extremely low bar to disqualify

²² United States Nuclear Regulatory Commission, “[Low-Level Waste Disposal Statistics](#),” 2005-2011 (Updated April 13, 2015).

²³ [Nuclear Waste Policy Act of 1982](#), Public Law 97-425, 42 U.S.C., ch. 108, § 10101 *et seq.*

1 the project from the exemption: there need only be a “reasonable possibility of a
2 significant effect due to that unusual circumstance.”²⁴

3 32. Such unusual circumstances precluding the use of a categorical exemption
4 clearly exist in the fact that Diablo Canyon is unique among existing power plants in
5 California. It is today the state’s only remaining nuclear power plant, and it is located on
6 the coast. The only other nuclear power plant that had been operating in California in
7 recent years, located at San Onofre, was closed due to a massive radiation “event” that
8 occurred in January 2012, and that plant was permanently designated as “closed” in June
9 2013. As the Commission staff previously (and correctly) determined, while there are
10 other coastal power plants in California, the Diablo Canyon is “the only active nuclear
11 power plant in California” and its “nuclear fuel source and proximity to fault lines
12 distinguish it from other power plants in California.”²⁵ It is also the only nuclear facility
13 sited on or near multiple earthquake faults. Diablo Canyon will also continue to
14 discharge high-temperature once-through-cooling water into the coastal waters far longer
15 than any other coastal power plant. These factors by themselves – and certainly in
16 combination – distinguish this facility from every other example cited in the June 24,
17 2016 staff report.²⁶ A catastrophic seismic event at a natural gas power plant (like Moss
18 Landing) would have a far smaller level of adverse effects, and at a far lesser scale and
19 degree of permanence than a similar event at Diablo Canyon.

²⁴ *Id.* See also, *Citizens Action to Serve All Students v. Thornley* (1990), 222 Cal.App.3d 748, 754 (describing the similar “fair argument” standard for significant impacts standard as creating a “low threshold” favoring environmental review through an EIR rather than through issuance notices of exemption from CEQA).

²⁵ Staff report for Calendar Item No. 83 (Feb. 9, 2016), at 3. This staff report is attached hereto as Exhibit F.

²⁶ Exhibit A, at 4.

1 33. Moreover, the daily effects of such facilities are not comparable. For
2 example, other natural gas facilities on the coast must terminate discharge of once-
3 through cooling water far earlier – many by the end of end of 2017, and the rest by no
4 later than 2020 – than Diablo Canyon, where the harm from these high temperature
5 discharges (and the impingement and entrainment of marine life from the intakes)
6 enabled by the PG&E Lease will continue through 2025.

7 34. Exhibit A, the June 24 Staff Report, refuses to even acknowledge the
8 "unusual circumstances" presented by the state's only operating nuclear plant as the sole
9 source of additional high-level nuclear waste. However, Diablo Canyon's nuclear fuel
10 source and proximity to fault lines distinguish it from all other power plants currently in
11 service in California.

12 35. **Lessened Regulatory Oversight under New PG&E Lease.** The original
13 Leases that Respondent Commission issued in 1969 were expressly conditioned upon
14 approval by the U.S. Bureau of Land Management ("BLM") and the Regional Water
15 Quality Control Board ("RWQCB"). However, the PG&E Lease that Respondent
16 Commission illegally issued on June 28, 2016 removed any requirement for permit
17 approval or oversight by either BLM or the RWQCB, and does not even mention these
18 important regulatory entities at all. CEQA defines collateral and collaborative review
19 and oversight as “mitigation.” Thus, a significant mitigation measure from the old PG&E
20 Leases has been stripped from the new PG&E Lease. This change in the form and terms
21 of the lease (like the addition of uses not included in the original PG&E Leases) reduces
22 the mitigation that the new PG&E Lease can and should have been subject to, thereby
23 constituting yet another unusual circumstance that demands the preparation of a full EIR

1 in connection with Respondent Commission's consideration of the PG&E Lease.

2 36. **Criminal Charges Against PG&E Resulting from San Bruno**

3 **Explosion Diminish Its Standing as a Credible Steward of the Public Interest.**

4 PG&E's current federal prosecution on safety-related and agency obstruction felony
5 counts related to its natural gas business is unprecedented for any utility holder of an
6 NRC operating license. The implications for the Diablo Canyon licenses of a potential
7 criminal conviction are unclear. Under such circumstances, however, state government's
8 transactional trust-but-verify standard deserves to be applied with forensic intensity. It is
9 abundantly obvious that such critically necessary, careful scrutiny has not happened in
10 this instance.

11 37. Since PG&E has been criminally charged with operating certain of its
12 facilities in a dangerous condition, with careless disregard for public health and well-
13 being, it would not be unreasonable to conclude that such bad corporate behavior could
14 be implied in PG&E's refusal to submit to an environmental review under CEQA of the
15 PG&E Lease. Much like what has been discovered from the corporate practices of
16 Exxon²⁷ and the tobacco industry²⁸, there is a more than reasonable possibility that PG&E
17 may have *actual* knowledge of the adverse impacts from the continuing operation of
18 Diablo Canyon and that PG&E's questionable corporate ethics and lack of regard for
19 potentially devastating environmental and health impacts, as evidenced in San Bruno, are
20 present here as well. This very real possibility constitutes another serious and unusual

²⁷ Neela Banerjee, Lisa Song and David Hasemyer, "[Exxon: The Road Not Taken - Exxon's Own Research Confirmed Fossil Fuels' Role in Global Warming Decades Ago](#)," Inside Climate News, September 16, 2015. See also Shannon Hall, "[Exxon Knew about Climate Change almost 40 years ago](#)," Scientific American, October 26, 2015.

²⁸ K. Michael Cummings, Anthony Brown and Richard O'Connor, [The Cigarette Controversy](#), Cancer Epidemiology, Biomarkers and Prevention, June 2007.

1 circumstance that should be investigated vigorously as part of the CEQA review process
2 that respondent Commission should be mandated to undertake.

3 38. **Commission Violation of the Public Trust Doctrine.** The staff report
4 that Respondent Commission relied upon in reaching its June 28, 2016 decision on the
5 PG&E Lease stated that Commission staff “recommends authorizing the subject lease as
6 it does not substantially interfere with public trust needs and values, is in the best
7 interests of the State, and is otherwise consistent with the common law Public Trust
8 Doctrine.” However, the cumulative environmental impacts from the continued
9 operation of Diablo Canyon, as discussed in paragraphs 16 through 40 above,
10 substantially interfere with both the express and implied responsibilities imposed on
11 Respondent Commission by the Public Trust Doctrine to protect the public interest
12 related to waterborne commerce, fisheries, recreation and most importantly, habitat
13 preservation. Since no EIR has ever been conducted concerning all of the possible
14 adverse environmental impacts of the operation of Diablo Canyon, there are likely
15 cumulative health, environmental and other impacts associated with the radioactive
16 emissions from, and the long-term storage of radioactive waste at, Diablo Canyon that
17 have yet to be fully measured. Absent the completion of an EIR under CEQA, there can
18 be no credible means of determining whether past or proposed measures concerning plant
19 operations adequately protect the public interest as required by the Public Trust Doctrine.
20 The existence of the Public Trust Doctrine, as a necessary element of Respondent
21 Commission's decision-making process in the context of the numerous unexplored
22 adverse environmental impacts associated with the Commission’s approval of the PG&E
23 Lease, constitutes yet another unusual circumstance that mandates that the otherwise

1 applicable categorical exemption under CEQA should not apply in this case.

2 **FIRST CAUSE OF ACTION**

3 (Violations of CEQA -- Pub. Res. Code § 21100 *et seq.*; CEQA Guidelines §
4 15130 *et seq.*)

5
6 39. Petitioners incorporate each paragraph of this Petition herein.

7 40. Respondent Commission's decision, based on Exhibit A and as shown in
8 Exhibit C, is invalid under Code of Civil Procedure §1094.5, because the Commission's
9 approval of the PG&E Lease under Calendar Item No. 96 on June 28, 2016 constituted a
10 prejudicial abuse of discretion on the facts in light of the whole record.

11 41. The Commission violated CEQA, prejudicially abused its discretion,
12 failed to proceed in a manner required by law, and failed to support its findings and
13 conclusions with analysis and facts by determining that the issuance of the PG&E
14 Lease was "not a project" under CEQA, and, by implication, that *no unusual*
15 *circumstances* existed in this case.

16 **SECOND CAUSE OF ACTION**

17 (Violations of the California Public Trust Doctrine, Pub Res Code § 6900)

18 **Failure to Protect Public Trust Uses**

19 42. Petitioner incorporates each paragraph of this Petition, herein.

20 43. The Commission violated the Public Trust Doctrine, prejudicially abused
21 its discretion, failed to proceed in a manner required by law, and failed to support its
22 findings and conclusions with analysis and facts by not requiring the preparation of an
23 EIR under CEQA before approving the PG&E Lease.

24 **Failure to Protect Public Trust Resources**

25 44. Petitioner incorporates each paragraph of this Petition, herein.

1 45. The Commission violated the Public Trust Doctrine, prejudicially abused
2 its discretion, failed to proceed in a manner required by law, and failed to support its
3 findings and conclusions with analysis and facts by approving the PG&E Lease, which
4 will irreparably injure and deplete public trust resources, including but not limited to, the
5 marine ecosystem in the vicinity of Diablo Canyon, special status fish and wildlife, and
6 California's coastal shoreline, without first requiring the preparation of an EIR under
7 CEQA.

8 **PROCEDURAL ALLEGATIONS**

9 46. Pursuant to Section 21168 of the Pub. Res. Code, in any case alleging a
10 violation of CEQA, the court shall not exercise its independent judgment on the evidence
11 but shall only determine whether the act or decision is supported by substantial evidence
12 in the light of the whole record.

13 47. Petitioner has exhausted all available administrative remedies required to
14 be pursued, as there is no appeal of the Commission's violation of CEQA in connection
15 with the issuance of the PG&E Lease on June 28, 2016 other than via this Petition.

16 48. Petitioner does not have a plain, speedy, and adequate remedy in the
17 ordinary course of law.

18 49. Petitioner Academy has standing to sue, in that said Petitioner met with
19 Respondent on the issues raised in this Petition prior to the date of the Commission's
20 decision to approve the new PG&E Lease, submitted in written comments to Respondent
21 on the day before the Commission issued its decision on June 28, and in oral comments
22 by several representatives of Petitioner Academy at the June 28 hearing in opposition to
23 the issuance of the PG&E Lease. Petitioner IHC has standing to sue, in that a

1 representative of said Petitioner spoke at the June 28 hearing in opposition to issuance of
2 the PG&E Lease. Moreover, both Petitioners have a direct and specific interest in
3 protecting the environment and society from the risks of nuclear power, which interest
4 will be adversely affected unless the PG&E Lease that Respondent Commission issued to
5 PG&E on June 28, 2016 is set aside, and Respondent Commission is mandated by this
6 honorable Court to conduct a thorough and legally sufficient environmental review under
7 CEQA before said Lease is extended or re-issued or a new Lease is issued to PG&E.

8 50. Venue is proper in the County of Los Angeles, because Respondent
9 Commission has offices in Los Angeles County at 200 Oceangate, Long Beach, CA,
10 90802.

11 51. By e-mail dated June 30, 2016, the undersigned requested senior staff of
12 Respondent Commission to prepare a copy of the complete administrative record
13 connected with the Commission's decision of Tuesday, June 28, 2016, on Calendar Item
14 96.

15 52. By reply e-mail of July 14, 2016, one of Respondent Commission's
16 attorneys responded to said e-mail, explaining that he was not prepared to make any
17 commitments or representations regarding the completion date of the administrative
18 record.

19 53. Pursuant to Pub. Res. Code Section 21167.6(a), the undersigned will serve
20 a formal request on Respondent Commission to prepare the administrative record within
21 10 days after the filing of this Petition.

22 54. Pub. Res. Code Section 21167(d) establishes a deadline for the filing of a
23 lawsuit to set aside an improper determination of a state agency that a project is not

1 subject to CEQA review of 35 days from the date on which that agency files a Notice of
2 Exemption with the State Office of Planning and Research ("OPR"). Respondent
3 Commission filed a Notice of Exemption for its decision of June 28, 2016 on Calendar
4 Item No. 96 with OPR on June 29, 2016. Thus, to be timely filed, this Petition must be
5 filed with the Court by August 3, 2016. Since this Petition is being filed on August 2,
6 2016, it is timely filed.

7 55. Pursuant to Pub. Res. Code Section 21167.6(b) and (c), Respondent
8 Commission must complete the preparation of said administrative record within 60 days
9 after being served, unless the parties stipulate to an extension of said deadline.

10 56. Petitioner will lodge said administrative record with this honorable Court
11 as soon as feasible after it is prepared and a copy of same is provided to the undersigned.

12 57. Prior notice of the filing of this Petition, pursuant to Public Resources
13 Code §21167.5, was provided by e-mail to Patrick Huber, a staff attorney for Respondent
14 Commission on July 13, 2016. Mr. Huber acknowledged receipt of that notice by return
15 e-mail dated July 14, 2016.

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Petitioners pray for judgment and further relief as follows:

18 1. A peremptory writ of mandate issue, under Code of Civil Procedure
19 §1094.5, directed to respondent Commission, and compelling respondent Commission to
20 set aside its decision dated June 28, 2016 on Calendar Item No. 96 to terminate Lease
21 numbers 4307.1 and 4449.1, and to approve a new General Lease-Industrial Use Lease
22 ("PG&E Lease) and requiring Respondent to proceed with further CEQA compliance,
23 including preparation of an initial study and a determination of whether further

1 environmental review would require an EIR or a mitigated negative declaration under
2 CEQA, before Respondent extends, re-issues or issues any new or existing Lease or
3 Leases to PG&E;

4 2. For the Court to order Respondent Commission to set aside its approval of
5 the PG&E Lease unless and until the project can be brought into full compliance with the
6 Public Trust Doctrine;

7 3. For the Court to enjoin Respondent and Real Parties in Interest from any
8 activity or operation under the PG&E Lease unless and until Respondent complies with
9 all applicable California regulations and statutes, including CEQA, so as to bring its
10 approval of the project into full compliance with CEQA;

11 4. For the Court to enjoin operation under the PG&E Lease unless and until
12 the project is brought into full compliance with the Public Trust Doctrine;

13 5 For the Court to order Respondents to pay Petitioner's costs of suit and
14 reasonable attorneys fees related to this proceedings; and

15 6. For such other and further equitable and legal relief as the Court considers
16 proper.

Date: August 2, 2016



Laurence G. Chaset
Attorney for the World Business Academy

17

1 **VERIFICATION**

2

3 I, Matt Renner, am the Executive Director of the World Business Academy, and
4 am authorized to make this verification pursuant to California Code of Civil Procedure
5 section 446. I have read the Petition for Writ of Mandate and know its contents. All
6 facts alleged in the Petition are true of my own personal knowledge, or based upon my
7 information and belief, which I believe to be true.

8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct.

Date: August 2, 2016



Matt Renner
Executive Director
World Business Academy

10

11